

# Foundations of a Queer Natural Law

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# Foundations of a Queer Natural Law

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A Dissertation

submitted to the Faculty of

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## **Foundations of a Queer Natural Law**

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The queer natural law is an ethical framework at the intersection of queer theory, queer theology, and the natural law ethical tradition largely used in Roman Catholic moral theology. As a framework, queer natural law adopts the eudaimonist, realist, and teleological emphases of the natural law virtue ethics tradition exemplified by Thomas Aquinas and restored by revisionist natural lawyers, and it refines the operations of these normative emphases through queer theory's critical investigation of conceptual normativity. Conceived as a dynamic dialectical enterprise, queer theory offers to the natural law tradition a toolset for a more comprehensive assessment of human nature, specifically by taking a critical look at the operation of heteronormativity in normative frameworks. Symbiotically, the natural law tradition offers to queer theory a scaffold for conceiving of an ethics based in equality and nondiscrimination that allows queer theory's ethical impulses to avoid postmodernity's tendency towards circularity in ethical reasoning, precisely by grounding queer theory's ethical motivations in a participatory discourse based in universal human goods. Using sexuality as a test case, this dissertation proceeds in four chapters. In the first, the notion of a queer natural law is explained in more detail. In the second, an account of human flourishing compatible with the queer natural law is articulated. In the third, a review of two natural law accounts of sexuality—magisterial and revisionist—is conducted. In the fourth and final chapter, differences between a revisionist natural law account of sexuality and a queer natural law account of sexuality are explored, defending the queer natural law thesis that the telos of sex is inter/personal pleasure.

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## **1.0 QUEER THEORY, QUEER THEOLOGY, AND THE NATURAL LAW: PROSPECTS FOR RAPPROCHEMENT**

### **1.1 THE SCOPE OF THE PROJECT**

For those who are familiar with the terms raised here—‘Queer Theory’, ‘Queer Theology’, and ‘Natural Law’—it is perhaps quite easy to generate an image of ‘Queer Natural Law’ as some form of intellectual abomination. At first glance, this might be the one thing that both queer thinkers and Christian theologians can agree upon. Nevertheless, in the pages that follow, I wager that one can develop an ethical framework that is adequate to queer theory’s counterhegemonic, normatively skeptical impulses. And I believe that such a project can be accomplished by adopting an ethical framework that takes its normative cues from an ongoing investigation into the moral significance of our own bodies considered at both an individual level and at a social level. This is a natural law approach to ethical reasoning. And to place this ethical framework in a theological key is to acknowledge that any moral norms authentically derived from this ongoing moral investigation will also reflect God’s providential design for our well-being as

creatures. As beautifully said by Thomas Aquinas, whose natural law framework will serve as a model for the one developed here, “[T]he light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the Divine light.”<sup>1</sup> The account that I propose here, then, is a foundation for a queer theological ethic that seeks to negotiate the tensions and opportunities afforded to it by drawing the insights of queer theory and the natural law tradition together within one productive framework.

Why would anyone want to do this? And—even better—how could such an account be given? Let’s take each of these questions in turn. In a phrase, the answer to the question ‘Why’ comes from my judgment that, on the one hand, queer thought—both in its theological and non-theological forms—needs the natural law tradition and that, on the other, the natural law tradition stands in need of queer thought. Stated in broad terms, the natural law tradition needs queer theory not only in order to dismantle the deleterious effects of heteronormativity that lurk in its premises and conclusions, but also in order to institutionalize a constant dissatisfaction with its own set of ethical prescriptions rendered at any historical moment, through recognition of the need to revise those prescriptions as new movements of the Holy Spirit in our midst demand. In turn, what queer theory and queer theology gain from the natural law framework is the ability to ground its sociopolitical commitment to the flourishing of all persons, regardless of sex or gender identity, in a vision of liberation, justice, and the common good—all of which

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<sup>1</sup> Thomas Aquinas, *Summa Theologiae* (hereafter, *ST*), trans., Fathers of the English Dominican Province, (Notre Dame, IN: Ave Maria Press, 1948), I-II 91.2, resp.

are on offer in a natural law framework. It allows us, to speak in terms more familiar to queer theorists, to give a specific account of the connection between queer *theory* and queer *politics*—a relationship that has been problematized since queer theory entered the 21<sup>st</sup> century, and which we will take up as this project unfolds.

The other question—perhaps the more interesting one—asks how a project like this is to be carried out. In the pages that follow, our itinerary is to lay a conceptual foundation for a queer natural law; to use that conceptual framework in order to argue for criteria for human flourishing which would be acceptable on a queer natural law framework; and then to apply those criteria to a queer natural law theology of sexuality. The result will hopefully not only be one in which the reader will see how a queer natural law trajectory carries forward elements of queer theory, queer theology, and the natural law as they have evolved historically, but one hopes the result also will be one with respect to which the reader will appreciate new horizons for ethical thought opened up at the intersection of queer theory and the natural law.

Chapter two, for example, seeks to articulate the foundations of a queer theological anthropology, arguing that an understanding of human nature, taken along Thomistic lines, is dynamic enough to serve a queer counterhegemonic project for discerning the contours of human flourishing in our day. Such an anthropology is possible, however, only if we can successfully confront the objections to ‘universal’ concepts put up by postmodern and queer thinkers. The postmodern “condition,” as explained by Jean-François Lyotard, is that our current world is one in which we no longer subscribe to meta-narratives in order to structure our investigation of the

world. But it was precisely the role of such meta-narratives—with the ability to claim a universal dimension or significance existence—which allowed for a “sense of the whole” in our piecemeal investigation of the world.<sup>2</sup> This has alternatively and famously been described by Alasdair MacIntyre as the effect of modernity which sought to deny teleological analyses of human existence.<sup>3</sup> In any case, the consequences of such losses of in the area of ethics and morality within the postmodern condition has been the production of profound skepticism about any normative account of human flourishing that is said to be comprehensive. Following Nietzschean analyses of truth as the will-to-power, postmodern critiques of truth and human flourishing have accused concepts of human flourishing and, more broadly, “truth” about human nature of being conceptual vectors through which the powerful oppress others.<sup>4</sup> Queer thinkers like Michel Foucault and Judith Butler have amplified this critique by supplementing an account of power as not only repressive, but also productive insofar as the operations of power produce “truths” that we allow ourselves to reflect both in our self-concepts and in our lives more broadly.<sup>5</sup>

To concretize this discussion, we will examine the discourse of human rights from a postmodern perspective, funded in large part through the insights of the fairly recently developed field of postcolonial studies. The upshot of this discussion will be that while it is possible to integrate a postmodern perspective into a queer

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<sup>2</sup> Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, trans. Geoff Bennington and Brian Massumi (Minnesota: University of Minnesota Press, 1984).

<sup>3</sup> Alasdair MacIntyre, *After Virtue*, 3<sup>rd</sup> ed., (Notre Dame: University of Notre Dame Press, 2007), 51-78.

<sup>4</sup> Friedrich Nietzsche, *The Genealogy of Morality*, trans. Carol Diethe (New York: Cambridge University Press, 1997)

<sup>5</sup> Michel Foucault, “Truth and Power,” in *The Foucault Reader*, ed., Paul Rabinow (New York: Vintage Books, 2010), 51-75, and Judith Butler, *Bodies that Matter: On the Discursive Limits of “Sex”* (New York: Routledge, 1993).

natural law, it is *not* possible to integrate a moral antirealism into a queer natural law perspective. Here I give two sorts of objections to antirealist postmodern accounts—one descending from logical concerns and another descending from practical concerns—and then I argue that the significance of the postmodern objection for queer natural law is that postmodernity offers to the queer natural law ethical project more searching criteria for acceptability. After going through those criteria, I then conclude with the contention that the theological account of human nature given by Thomas Aquinas can serve as the normative “background concept” out of which accounts for flourishing acceptable on queer natural law grounds can grow.

With the anthropological grounds cleared for a concept of human flourishing that can be acceptable on a queer natural law account, we then turn in chapters three and four to rendering an account of sexuality that proceeds from a queer natural law account of flourishing. The first task, which is largely the task of chapter three, is situating a queer natural law discussion of sexuality within a natural law conversation about sexuality that has evolved over the last 150 years—roughly since the papacy of Leo XIII (reign: 1878-1903). In this chapter I distinguish two strands of natural law teaching on sex and gender, one that has developed largely from within the Roman Catholic Church’s magisterium, and the other which had its roots in the early twentieth century movements for theological reform from the wing of theologians who came to be known as the revisionists. I characterize the magisterium’s engagement with the natural law as a natural law authoritarianism, which I recognize further as an inappropriate account of human flourishing based

on the criteria enumerated in chapter two. By contrast, I characterize revisionist natural law account of gender and sexuality as a natural law account distinguished for its emphasis upon historical consciousness as well as for its retrieval of the medieval understanding of the natural law as a capacity for participation in God's own wisdom that is accessed through the practice of the virtues. Queer natural law is revisionist because its method for approaching human flourishing is congruent with the revisionist approach to the natural law.

In the final chapter, chapter four, I offer what I take to be a queer natural law theology of sexuality. Whereas part of the mission of the previous chapter was to see how queer natural law is a descendent of revisionist natural law, this chapter shows the disagreements between revisionist natural law accounts of sexuality, on the one hand, and queer natural law accounts of sexuality, on the other. As the tradition has developed, the magisterial strand of natural law has emphasized two ends to sexuality: a unitive end, which corresponds to the "good of the spouses themselves," and the procreative end, which concerns the "transmission of life," or sexual reproduction, within the context of the family.<sup>6</sup> Engaging this understanding, the revisionist strand of natural law has accepted the unitive end of the sexual act (while perhaps drawing out more explicitly the importance of sexual pleasure as a part of that unitive end),<sup>7</sup> but has sought to expand an understanding of the procreative end to include both sexually reproductive as well as sexually non-reproductive couples. Accordingly, 'procreativity' has generally been

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<sup>6</sup> See, for example, Paul VI, *Humanae Vitae* (1968), no. 12.

<sup>7</sup> For example, see Lisa Sowle Cahill, *Sex, Gender, and Christian Ethics* (New York: Cambridge University Press, 1996), 111.



reconceptualized within a broader notion of ‘generativity’ or ‘fruitfulness’ which orients the relationship between the spouses beyond their own relationship towards the good of society’s next generation.<sup>8</sup> The upshot of such efforts has been to establish criteria that are more inclusive of sexually reproductive and sexually non-reproductive couples within an understanding of marriage in relative proximity to the magisterium’s understanding of marriage, with no small advantage to the cause of marriage equality within the church.

Benefits to same-sex couples notwithstanding, I argue that this revisionist view of sexuality is unacceptable on a queer natural law framework insofar as the ideal relationship in such a framework remains the heterosexual, monogamous, sexually reproductive couple. To the extent that this remains the ideal, the revisionist framework is heteronormative and therefore fails as an account of sexuality that truly promotes human flourishing. Instead, I argue for a queer natural law theology of sexuality in which sexuality is understood as ordered towards the end of inter/personal pleasure alone, which can secondarily be ordered towards a variety of other ends, one of which is reproduction.<sup>9</sup> Such an account, I argue, not only makes better sense of what we know about human sexual experience, but it also better realizes the virtue of justice understood as equality, for in a queer natural law framework sexually non-reproductive intimacies are now valued as equivalent to sexually reproductive ones. This chapter concludes with a short

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<sup>8</sup> Margaret A. Farley, *Just Love: A Framework for Christian Sexual Ethics* (New York: Continuum, 2008), 290-291.

<sup>9</sup> My use of the catechetical term ‘inter/personal pleasure’ highlights the fact that the pleasure of sexuality can be as expressed within interpersonal intimacies in which multiple partners are involved as legitimately they can be expressed within solitary intimacies not involving others.

excursus about the outline of what it would mean to articulate an ethics of sexuality based in an understanding of its *telos* as inter/personal pleasure.

## **1.2 THE IDEA OF A QUEER NATURAL LAW**

The task of this current chapter, however, is to articulate the contours of an approach that aspires to exist at the intersection of natural law, queer theory, and queer theology. At its base, the queer natural law is an ethical framework that combines the eudaimonist, realist, and teleological emphases of the natural law tradition with queer theory's critical investigation of conceptual normativity and queer theology's liberationist framework for articulating theologies that take the experiences of sex and gender minorities as a central site for understanding divine activity in our midst. The relationship among these three fields can be seen as symbiotic. What queer theory offers to the natural law tradition is a toolkit for a more comprehensive assessment of human flourishing that gives critical significance to lives that do not, in some way, approximate expected norms, especially those related to sex and gender. In turn, what the natural law offers to queer theory is a scaffold for conceiving of an ethics that maintains a close connection between the 'is' of human experience and the 'ought' of ethical reasoning. It provides for queer theory not only a grounding for permitting multiple, different normative realizations of flourishing, but it allows queer theorists grounds to criticize unacceptable nonnormative practices and sexualities.

### 1.2.1 Queer Natural Law as Natural Law

As a natural law theory, queer natural law is most proximately related to the revisionist school of natural law thought, with special proximity to the strand of critical revisionist natural law thought carried alongside critical feminist insights. In this section, I trace this trajectory from classical natural through its medieval synthesis to the present day, ending with a consideration of critical points of agreement and disagreement between queer and feminist accounts over how to conceive of the significance of gender and sexual embodiment for a natural project.

The natural law can perhaps most accurately be described as a tradition of ethical thinking based on the fundamental hypothesis that acting rightly depends on conforming to our nature as human beings, comprehensively considered. Its origin is commonly understood to be in the Stoic philosophy of the Greeks of the third century BCE. For thinkers like Cicero (d. 43 BCE), who loomed large among the Stoic philosophers, living rightly depended on conformity to human nature defined principally as living *according to reason*. This made the natural law, in a phrase, right reason corresponding to nature.<sup>10</sup>

I'm inclined to think they are right, if indeed law is the highest reason, inherent in nature, which enjoins what ought to be done and forbids the opposite. When that reason is fully formed and completed in the human

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<sup>10</sup> Cicero, *De Republica* 3.22.33.

mind, it, too is law...For law is a force of nature, the intelligence and reason of a wise man, and the criterion of justice and injustice.<sup>11</sup>

Reason was highlighted as the illuminating criterion for defining human flourishing because reason was held out to be the feature of human beings that both distinguished them from nonhuman creatures while also likening them to their gods. “Since, then, there is nothing better than reason,” Cicero would write, “and reason is present in both man and God, there is a primordial partnership in reason between man and God.”<sup>12</sup>

Yet as perhaps is expected, within this natural law tradition there arose various trajectories. The trajectory which I follow for this queer natural law project is a Thomistic one, which is to say that it is based in the natural law tradition descending from Thomas Aquinas, specifically from his writings in his *Summa Theologiae*. His continuity with the Stoic tradition comes from his agreement that the moral life is the life lived in accord with reason,<sup>13</sup> but Thomas’s distinctive contribution to the natural law tradition comes from his particular understanding of the context and the shape of a life lived in accord with reason. For Thomas, the possibility of a life lived in accord with reason stems from God’s providential act of creation, in which God not only chooses to create without any obligation to do so, but, in creating, God also wills the well-being of each and every creature. This two-fold aspect to creation Thomas will understand as a description of divine love, “since

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<sup>11</sup> Cicero, *The Laws*, trans. Niall Rudd (New York: Oxford University Press, 1998), I. 18-19.

<sup>12</sup> Cicero, *The Laws*, I.23.

<sup>13</sup> Aquinas, *ST I-II* 18.5; 64.1.

to love anything is nothing else than to will the good of that thing.”<sup>14</sup> Moreover, Thomas will identify this providential love that God has for all of creation with God’s act of grace, and so God’s grace becomes the vehicle by which creatures not only have the ability to do anything, but God’s grace also becomes the vehicle by which they achieve their particular well-being. When human beings become the explicit focus of Thomas’s engagement, it is possible to say that, in virtue of God’s creating human being, God wills that achieve their particular well-being known as happiness or *eudaimonia*.<sup>15</sup> Thomas’s account of the natural law, then, begins with and is suffused with grace, and is from the very outset oriented towards fulfillment.

Thomas’s thoroughly theological context for understanding *eudaimonia*, then, places God at the origin of what it would mean for a human being to act in accord with reason and thereby to achieve flourishing. This is represented in Thomas’s natural law account by understanding the natural law primarily as a participation of God’s eternal law, which Thomas will identify with God’s wisdom which directs all creatures to their fulfillment as the type of creature they are.<sup>16</sup> On a Thomistic account, then, the natural law is our discernment, with our reason, about how God wants human beings to act in the world.<sup>17</sup> As Michael Baur explains, “It is important to note that, for Aquinas, natural law is not something separate from eternal law. Rather, for Aquinas, the natural law is the eternal law itself, but regarded under the aspect of its being in [human beings] in this unique two-fold

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<sup>14</sup> Aquinas, *ST I* 20.2.; see also James Brent, O.P., “God’s Knowledge and Will,” in *Oxford Handbook of Aquinas*, ed., Brian Davies (New York: Oxford, 2012), 158-170, esp. 168-170.

<sup>15</sup> Aquinas, *ST I-II* 110.2.

<sup>16</sup> Aquinas, *ST I-II* 93.1.

<sup>17</sup> Aquinas, *ST I-II* 91.1.

way: it is in [human beings] as in created beings that are ruled, measured, and directed by means of it, but also in us as in created (rational) beings that rule, measure and direct (both ourselves and other things) by means of it.”<sup>18</sup>

But nevertheless, this natural law is not something primarily propositional, but rather it is a *capacity* which, insofar as it is a capacity of *human* reason, is necessarily discursive.<sup>19</sup> As Thomas understood it, this capacity allowed for a discernment of God’s plan for our flourishing fundamentally through our inclinations—that is, through certain tendencies towards certain behaviors which are understood as ‘natural’ to the extent that such inclinations seems universally instantiated across the relevant class of creatures. So, for Thomas, human beings, like all creatures, have the inclination to stay alive; human beings, like all animals, have to reproduce and care for the next generation; and human beings, *qua* human beings, have the desire to know the truth and to live in community. These are called the “primary precepts” of the natural law.<sup>20</sup> Writing about these primary precepts, Jacques Maritain has noted that such precepts cannot be considered “clear knowledge through concepts and conceptual judgments,” but is rather knowledge that distinctly comes through inclination. “It is obscure,” he writes, “unsystematic, vital knowledge by connaturality or congeniality, in which the intellect, in order to bear judgment, consults and listens to the inner melody that the vibrating strings of abiding tendencies make present in the subject.”<sup>21</sup> In other words, the natural law,

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<sup>18</sup> Michael Baur, “Law and Natural Law,” in *Oxford Handbook of Aquinas*, 238-250, at 246.

<sup>19</sup> Aquinas, *ST I* 79.8.

<sup>20</sup> Aquinas, *ST I-II* 94.2.

<sup>21</sup> Jacques Maritain, *Man and the State* (Washington DC: Catholic University of America Press, 1951), 91-92.

considered in its primary sense, is more directive in the sense of pointing us towards what is good for us to do, and less didactic, in the sense of providing particular instruction. To get from the natural law either to prohibited or prescribed actions by the natural law—that is, to what are called the ‘secondary precepts’ of the natural law— requires the meticulous operation of practical reasoning,<sup>22</sup> an operation that cannot be perfected outside of proper cultivation of the virtues, especially the virtue of prudence, the virtue which applies right reason to things to be done.<sup>23</sup> As James Keenan writes, “Prudence functions to perfect a person’s natural inclinations through integrating them into a coordinated way of acting and living in a right manner...it recognizes the ends to which a person is naturally inclined, it establishes the agenda by which one can pursue those ends, it directs the agent’s own performance of the pursued activity, and finally, it measures the rightness of the actions taken.”<sup>24</sup>

Thomas was not the only thinker who worked within this tradition that related the proper execution of human acts ultimately to God’s divine wisdom disclosed through the natural law. It was, rather, a feature of medieval natural lawyers more broadly, and the sources that they used for insight into the natural law were equally wide-ranging. Among interlocutors within the Christian tradition whom one would expect the medieval natural lawyers to engage—namely sources like Augustine, other church fathers, as well as church councils from the first millennium of the Church’s existence—medieval natural lawyers also engaged other

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<sup>22</sup> Aquinas, *ST I-II* 94.2.

<sup>23</sup> Aquinas, *ST II-II* 47.4.

<sup>24</sup> James F. Keenan, “The Virtue of Prudence (IIae IIae, qq. 47-56),” in *Ethics of Aquinas*, 259-271, at 259.

contemporary theologians and canon lawyers writing in this period. Peter Lombard and Gratian, respectively, were especially prominent thinkers in this regard. But equally significant were the variety of *non-Christian* sources that would inform the Christian theological tradition: classical philosophers like Aristotle, Plato, and, most prominently, Cicero, were given pride of place, but so also were the sacred texts and commentators of Jewish and Muslim provenance.<sup>25</sup> In fact, in Thomas's particular synthesis of the natural law, a simple inventory of citations reveals that his specific contribution was to uncover a synthesis between Augustine (cited 1,630 times) and Aristotle (cited 1,546 times).<sup>26</sup> The tradition informing the natural law in the medieval period was, therefore, quite expansive, and not all of it was explicitly Christian.

It is nevertheless the case that the most important source for discerning the natural law was Scripture and this, for a very specific reason: Scripture contained the divine law revealed by God to the Jews through Moses, and Scripture contained the teachings of Jesus Christ (called the New Law) as well as the writings attributed to the Apostles.<sup>27</sup> Scripture, specifically the moral norms described therein, were never to be contradicted. But this was hardly to say that Scripture did not need to be interpreted. After all, a straightforward reading of Scripture would land *any* reader—medieval or not—into potential contradictions and difficulties.

Paradigmatic instances of such difficulties occur when a prohibition that God makes in the Decalogue is contradicted by some act that God either rewards or commands.

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<sup>25</sup> Jean Porter, *Nature as Reason*, 7-12.

<sup>26</sup> Servais-Théodore Pinckaers, O.P., "The Sources of the Ethics of St. Thomas Aquinas," in *Ethics of Aquinas*, 16-29, at 16.

<sup>27</sup> Porter, *Natura as Reason*, 8-9"; Pinckaers, "The Sources of the Ethics of St. Thomas Aquinas," 19.



For example, the eighth commandment roundly prohibits lying (Ex. 20:16), yet this seems to be exactly what God rewards in the famous case of the midwives who explicitly lie to Pharaoh and refuse to execute Pharaoh's order to kill the male Hebrew newborns (Ex. 1:19). God apparently recompenses them for this favor: "And because the midwives feared God, [God] gave them families" (Ex. 1:21). More darkly, the fifth commandment prohibits killing (Ex. 20:13), and yet God commands a genocide when the Israelites arrive in the Promised Land, with God even advertising that God's own agency will be involved in the process:

When the Lord your God bring you into the land that you about to enter and occupy, and he clears away many nations before you—the Hittites, the Girgashites, the Amorites, the Canaanites, the Perizzites, the Hivites, and the Jebusites, seven nations mightier and more numerous than you—and when the Lord your God gives them over to you and you defeat them, then you must utterly destroy them. Make no covenant with them and show them no mercy (Deut. 7:1-2).

Jean Porter provides one of the most illuminating analyses with respect to how the medieval natural lawyers interpreted Scripture. On the one hand, she maintains, it is legitimate to maintain that the medieval natural lawyers understood Scripture to be supremely authoritative insofar as Scripture, specifically in the form of Jesus's promulgation in the New Testament of the golden rule and Moses's promulgation in the Old Testament of the Decalogue, provide the paradigmatic shape of morality. But, on the other—and with equal force—it is legitimate to maintain that not everything written in Scripture illuminates that morality in the

same way. And so, the medieval natural lawyers were willing to say that, at times, in order to preserve the “true” meaning of Scripture, Scripture in problematic cases must be interpreted either symbolically or with respect to its historical function within salvation history. Such a dialectical movement, rather than seen as a logically vicious circle, turns out to be a process of harmonization.<sup>28</sup> So not only did the medieval natural lawyers use Scripture and Tradition as a source, they used their reasoning as a legitimate source of moral understanding.

These sources therefore led to a complex understanding of “nature” in the context of the natural law. Once again, Jean Porter’s analysis is instructive. As she explains it, Thomas and the other medieval natural lawyers understand ‘nature’ in two senses: first, they understood nature in the sense of ‘nature as nature’, which is to say, nature understood as the intelligible basis upon which a variety of ways of being-in-the-world can be seen as reasonable; and second, they understood nature as ‘nature as reason,’ which names the capacity that human beings have to use their reason in order to shape ways of being-in-the-world that reflect the best way to be human.<sup>29</sup> It is this complex interaction between nature-as-nature and nature-as-reason, for example, that led Thomas, in his examination of polygamy, to say that because all human beings have a desire for sexual intimacy and the propagation of the species (nature as nature), a society that allows polygamous marriage constitutes *one* rational realization of this desire (nature as reason); though, the *best* realization of such a desire, however, would be a society in which only monogamous

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<sup>28</sup> Jean Porter, *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics*, (Grand Rapids, MI: Eerdmans, 1999), 136-140.

<sup>29</sup> Porter, *Nature as Reason*, 71.

marriage is realized (nature-as-reason, this time drawing together his theological convictions as well).<sup>30</sup> Such nimbleness within the tradition was funded by a dialectical interaction between Scripture, Tradition, and reason, the latter of which harmonized how Scripture and Tradition would be deployed in their medieval context.

This sort of approach to the natural law would be continued in the 20<sup>th</sup> century by the revisionist school of natural law thought associated with various thinkers throughout the mid to late 20<sup>th</sup> century.<sup>31</sup> In the European theater, prominent revisionist thinkers include, among others, Bernard Häring, Joseph Fuchs, and Klaus Demmer.<sup>32</sup> These thinkers have been complemented by other scholars in the North American theater, including James Keenan,<sup>33</sup> Stephen Pope,<sup>34</sup> and Todd Salzman and Michael Lawler,<sup>35</sup> as well as by a number of North American natural lawyers whose understanding of the tradition has developed in explicit conversation with feminist commitments. Among this latter group, Lisa Sowle

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<sup>30</sup> Aquinas, *Summa Contra Gentiles* 123-124, quoted in Porter, *Natural and Divine Law*, 202-203.

<sup>31</sup> For a comprehensive history of Catholic moral theology in the 20<sup>th</sup> century, see James F. Keenan, *A History of Catholic Moral Theology in the 20<sup>th</sup> Century: From Confessing Sins to Liberating Consciences* (New York: Continuum, 2010).

<sup>32</sup> See, for example, Bernard Häring, *The Law of Christ: Moral Theology for Priests and Laity*, 3 vols., trans. Edwin G. Kaiser (Westminster, MD: Newman Press, 1961); Joseph Fuchs, *Natural Law: A Theological Investigation*, trans. Helmut Reckter and John A. Dowling (New York: Sheed and Ward, 1965); and Klaus Demmer, *Living the Truth: A Theory of Action*, trans. Brian McNeil (Washington DC: Georgetown University Press, 2010).

<sup>33</sup> James F. Keenan, *Goodness and Rightness in Thomas Aquinas's Summa Theologiae* (Washington DC: Georgetown University Press, 1992).

<sup>34</sup> Stephen Pope's various essays on the natural law are indispensable for gaining an appreciation of the development of the tradition historically, philosophically, and, of course, theologically. See in particular the following: his "Overview of the Ethics of Thomas Aquinas," in *The Ethics of Aquinas*, ed. Stephen J. Pope (Washington DC: Georgetown University Press, 2002), 30-53; "Natural Law in Catholic Social Teachings," in *Modern Catholic Social Teaching: Commentaries and Interpretations*, 2<sup>nd</sup> ed., ed. Kenneth R. Himes, O.F.M., (Washington DC: Georgetown University Press, 2018), 43-74; and *The Evolution of Altruism and the Ordering of Love* (Washington DC: Georgetown University Press, 1994).

<sup>35</sup> Todd A. Salzman and Michael G. Lawler, *The Sexual Person: Toward a Renewed Catholic Anthropology* (Washington DC: Georgetown University Press, 2008).

Cahill,<sup>36</sup> Jean Porter,<sup>37</sup> and Cristina Traina<sup>38</sup> are particularly prominent. Together they would carry forward the fundamental convictions of natural law theology as teleological (insofar as the goal of human life is union with God), as eudaimonistic (insofar as the moral life is understood to be the life that will make us happy), as theocentrically humanistic (insofar as the human creature is understood to be made in the “image of God,” but nevertheless free), as realistic (insofar as it takes the materiality of the world and our needs in it seriously), as enlivened by a virtue theory which makes sense of progress in the moral life, and, finally, as understanding that this entire process of development is preceded and supported by grace.<sup>39</sup>

As a group, revisionist natural lawyers understand “naturalness” most fundamentally as a trait, behavior, or description that promotes human flourishing. In contrast to other natural law trajectories they tend to give relatively greater weight to human experience in discerning that in which human flourishing consists, and revisionists tend to emphasize the cultivation of the virtues, particularly that of *epikeia*, in order to realize the natural law concretely in the terms of the common good.<sup>40</sup> Because of these emphases, the overall epistemological orientation of

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<sup>36</sup> Among Cahill’s important works at the intersection of the natural law and sexuality see her *Between the Sexes: Foundations for a Christian Ethics of Sexuality* (Philadelphia: Fortress Press, 1985); *Sex, Gender, and Christian Ethics* (New York: Cambridge University Press, 1996), and, most recently, her *Global Justice, Christology, and Christian Ethics* (New York: Cambridge University Press, 2013).

<sup>37</sup> Jean Porter, *The Recovery of Virtue: The Relevance of Aquinas for Christian Ethics* (Louisville, KY: Westminster John Knox Press, 1990); *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics* (Grand Rapids, MI: Eerdmans, 1999); and *Nature as Reason: A Thomistic Theory of the Natural Law* (Grand Rapids, MI: Eerdmans, 2005).

<sup>38</sup> Cristina Traina, *Feminist Natural Law: The End of the Anathemas* (Washington DC: Georgetown University Press, 1999).

<sup>39</sup> Stephen Pope, “Overview of the Ethics of Thomas Aquinas,” 49; cf., Cahill, *Global Justice, Christology, and Christian Ethics* (New York: Cambridge University Press, 2013), 250-251.

<sup>40</sup> Stephen Pope, “Natural Law in Catholic Social Teachings,” 63.

revisionist natural law is inductive, allowing for changes in our understanding of human nature comprehensively considered based on newer understandings of that in which human flourishing consists. As Pope observes in relating the natural law to theories of evolution, “These moral truths are rooted in human nature as it has been created by God through the process of evolution: that we have an inherent dignity rooted in our capacity to understand and to love, that we flourish by attaining certain goods in community, and that we take responsibility for one another and for ourselves.”<sup>41</sup> Revisionist natural lawyers therefore resemble their medieval counterparts in recognizing a diversity of sources in order to come to understand that in which human flourishing consists.

Though revisionist views of sexuality and gender will be considered in greater details in chapters three and four, it can be said now without too much anticipation of the argument that revisionist theologians have approached the topics of sexuality in gender with an eye towards integration among the many different sources for insight into the natural law. Lisa Cahill and others, for example, highlight the important of locating moral discernment at the intersection of scripture, tradition, reason, and human experience.<sup>42</sup> In her own framework, Cahill, like the medieval natural lawyers, saw Scripture as a foundational text for making sense of the moral demands of the Christian life. Also like the medieval natural lawyers, she accords respect to the tradition of thought on moral questions as they have

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<sup>41</sup> Stephen Pope, “Tradition and Innovation in Natural Law,” *Concilium* 2010/3: 17-25, at 24.

<sup>42</sup> Cahill, *Between the Sexes*, 4; and, for example, Thomas Massaro, S.J. *Living Justice: Catholic Social Teaching in Action*, 3<sup>rd</sup> Classroom edition (New York: Rowman and Littlefield, 2016), 57-80, and Margaret A. Farley, *Just Love: A Framework for Christian Sexual Ethics* (New York: Continuum, 2008), 182-195.

developed within the Christian tradition, and similar to the medieval natural lawyers' use of reason, Cahill regards both philosophical accounts of human nature and scientific accounts of human existence as indispensable for doing ethics well. Bringing all of these aspects together, at last, is an appreciation for human experience—which while clearly a specific hallmark of the revisionist school, is clearly presupposed in the deliberations of the medieval natural lawyers as well insofar as human experience of a certain good (e.g., reproduction) framed their understanding of what would be the best way to pursue that good (e.g., marriage).

The tendency to take human experience—especially the experience of women— seriously within the context of moral deliberation about sexuality and gender is a hallmark of the feminist approach to natural law taken by Cahill and by others. But in this regard, Cristina Traina's *Feminist Ethics and the Natural Law* is particularly noteworthy. Situated at the intersection of feminist ethics and the natural law tradition, Traina argues that an authentic feminist natural law framework incorporates from the revisionist natural law tradition an understanding of nature that takes the circumstances of human life to provide, in a positive sense, “loose criteria” for human flourishing, in addition to, in a negative sense, providing limits to what is viewed as genuinely good “philosophical, personal, and social transformation.”<sup>43</sup> Conversely, from the feminist ethical tradition, an authentic feminist natural law framework incorporates an understanding of knowledge bound

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<sup>43</sup> Traina, *Feminist Ethics and Natural Law*, 13.

by culture; a purposeful privileging of the experience of women; as well as a critical and prescriptive anthropology.<sup>44</sup> At the point of synthesis, Traina urges,

Natural law thus models elements that any viable, constructive feminist theological ethic must also possess: above all, an overarching telos, as well as an inductive method of matching cases and principles; an eschatology and a developmental virtue theory that connect individual and communal ends at both the immediate and ultimate levels; a tradition of social analysis; an argument for self-preservation; and an integral rather than ambivalent reading of human embodiment.<sup>45</sup>

There are clearly strong resonances between Traina's feminist natural law project and the queer natural law project articulated here: both clearly are animated by similar, if not exact, impulses. The revisionist natural law tradition is appealing to both projects insofar as the tradition offers a teleological and morally realist scaffolding with respect to understanding human flourishing—a feat accomplished by taking concrete human experience and critical reflection upon human experience seriously. And similarly in both projects, both feminist ethics, on the one hand, and queer theory and queer theology, on the other, stand as critical theories by which human experience can be more adequately analyzed. These similarities notwithstanding, however, both a feminist natural law and a queer natural law framework approach differ in how they conceive of sex and gender as fundamental categories.

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<sup>44</sup> Traina, *Feminist Ethics and Natural Law*, 39-48.

<sup>45</sup> Traina, *Feminist Ethics and Natural Law*, 319.

As Traina observes, one important feminist intervention has been the recognition that gender is a socially constructed concept—the recognition that women’s roles in society are not determined by their sex as much as they are instead the products of various ideas about what women are supposed to do in society.<sup>46</sup> It is to maintain the view famously articulated by Simone de Beauvoir that “One is not born, but rather becomes, a woman.”<sup>47</sup> What it means to be a “woman,” then, is determined according to the various expectations of womanhood that are instantiated in, and moreover differ by, culture.

Alongside this recognition of the social construction of gender, however, rises the conviction among feminists that the material foundation for the construction of gender roles are biological notions of sex and sex-based differences—differences which are understood to represent the possibility of permanent differences between the sexes that, in turn, yield differences in experience that are explained those by sex and sex-based differences.<sup>48</sup> This idea rose in prominence, in part, through the efforts of feminist psychologists like Carol Gilligan who, in 1982, generated a theory of psychological development which were taken to be based in sex-based differences,<sup>49</sup> and such work continues to be appropriated by prominent feminist thinkers—theological or otherwise—who see sexual identity as either male or female (as indicated by sex chromosomes, gonads,

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<sup>46</sup> Traina, *Feminist Ethics and Natural Law*, 2.

<sup>47</sup> Simone de Beauvoir, *The Second Sex*, trans. Constance Borde and Sheila Malovany-Chevallier (New York: Knopf, 2010), 283.

<sup>48</sup> Traina, *Feminist Ethics and Natural Law*, 298.

<sup>49</sup> Carol Gilligan, *In a Different Voice: Psychological Theory and Women’s Development* (Cambridge, MA: Harvard University Press, 1982).



reproductive organs, sex-related hormones, etc.) as the “natural” basis for its culturally and socially constructed expression in the notion of gender.<sup>50</sup>

This account of the distinction between sex and gender is challenged within a queer natural law framework insofar as queer theorists have questioned the asserted “naturalness” of the biological category of sex. Instead, for queer thinkers—and most famously among them, for Judith Butler—the very notion of sex itself, like gender, is a product of social construction. “In other words, ‘sex’,” Butler writes, “is an ideal construct which is forcibly materialized through time. It is not a simple fact or condition of a body, but a process whereby regulatory norms materialize ‘sex’ and achieve this materialization through a forcible reiteration of those norms.”<sup>51</sup> The root of the disagreement between feminist and queer thinkers on the point is located in the differing assessments that queer and feminist thinkers make about the adequacy of the binary notion of sex as male and female and about the epistemic significance of bodies which do not unambiguously reflect the two options within the binary. On this point, feminist thinkers adopt the paradigm popularly accepted by the scientific community that maintains that, on observational grounds, sex comes in male and female forms and that bodies that do not unambiguously fit either of these options are not statistically significant enough to challenge the adequacy of the binary.<sup>52</sup> As a result, intersex persons—persons whose bodies do not unambiguously fit the options within the sex binary—are

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<sup>50</sup> This, for example, is the view of feminist theologian and natural lawyer Lisa Cahill in one of her most recent works *A Theology and Praxis of Gender Equality* (Bengaluru, India: Dharmaran Publications, 2018), 4-6, but it is nevertheless the very common view.

<sup>51</sup> The classic reference for this is Judith Butler’s *Bodies the Matter: On the Discursive Limits of “Sex”* (New York: Routledge, 1990), xii.

<sup>52</sup> Though, as Cahill writes, specifically, in reference to intersex persons “It is nevertheless true that what is ‘given’ can be uncertain or confusing” (*A Theology of Gender Equality*, 6).

understood to be outliers and their bodies are understood to bear “birth defects.” On the other hand, queer thinkers maintain that the presence of intersex bodies reveals that the category held out to interpret the basic physical significance of bodies—that is, sex—effects the pathologization of otherwise healthy bodies, that, in turn, funds the violence of homophobia and transphobia which sustains the ideology of heteronormativity.

The pathologization of intersex bodies began with the medicalization of intersex conditions, especially intersex conditions that are visible on an individual’s genitals. Beginning in the mid-late 20<sup>th</sup> century, doctors began to take it upon themselves to surgically “correct” the genitals of newborns whose genitals were taken to be ambiguous, on grounds that such procedures would help ensure a more normal social development for the child. These procedures commonly occurred without the consent of the newborn’s parents.<sup>53</sup> What is important to take notice of, however, is the *justification* given for the authorization of such procedures: the grounds for such procedures were *not*, in general, medical necessity in the sense that medical nonintervention would result in some physical impairment to the newborn in the future; but rather, the justification was a judgment about *social acceptability* of the intersex body as a function of conformity to the binary notion of sex. It was the presumed social costs of sexually ambiguous genitalia that were viewed as intolerable, and this presumption was then coded as medically necessary. Such an operation—which queer theorists call a ‘dissimulation’— renders the operation of the *priority* of the social judgment about which sort of bodies are

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<sup>53</sup> Susannah Cornwall, *Sex and Uncertainty in the Body of Christ: Intersex Conditions and Christian Theology* (New York: Routledge, 2010), 34-41.

permissible in social space as ostensibly “objective,” as that which, simply as a matter of course that is, moreover, in conformity with the “nature” of sexed embodiment, must be done in order to give this person a life that that individual (and, more importantly, the rest of society) would in the future come to recognize as socially valuable. The assumption that is necessary to support this sort of intervention, however, is the pathologization of the intersex body, even as we know that embodiment as intersex, in general, poses no medical danger to the individual.

But if this is the case, then the pathologization of the intersex body—or, to use the language of queer thinkers, the *abjection* of the intersex body from positive signification within a discourse about embodiment— is really the *effect* of certain ideological processes that are then “naturalized,” in the sense of becoming conceptually unarguable because they are held out as descending from a space that is prior to discursive or cultural signification. Such operations occur when the notion of binary notion of sex is understood to be ‘biological’ and therefore ‘natural’, and gender is taken to be ‘socially constructed’ and therefore open to re-articulation. In other words, because bodies are *imagined* to *naturally* manifest according to a binary notion of sex, medical interventions onto intersex bodies are imagined as restorative and therapeutic. But, in reality, such interventions ultimately work to maintain a demonstrably inadequate notion of healthy/acceptable bodily differentiation insofar as maintenance of the binary has resulted in the alteration of bodies which many intersex persons would classify as a form of violation of the bodily integrity. This is to say, in other words, that the

maintenance of such a binary requires violence against intersex bodies in order to continue to function.

To recognize a common point of connection between sex and gender as socially constructed reveals a common ideological root of heteronormativity that funds each in related, yet distinct ways. Upon examination, the medicalization of intersex identity reflects in stark ways the medicalization of homosexuality throughout the twentieth century, especially as seen in the rise of so-called reparative therapies designed to restore persons exhibiting same-sex attraction to putatively desirable heterosexual functioning. In both cases, the operation of a social ideal dissimulating through naturalized categories of sex identity and sexuality, respectively, allowed for the medical classifications of intersex and homosexual to emerge as abnormal and therefore as candidates for ostensibly therapeutic medical intervention. Yet, in both cases, the costs of such social ideals were violently exacted upon intersex and homosexual bodies. This ideal—to be perspicuously clear—is a *heteronormative* one which demands that bodies be mapped onto clear relationships that will allow for the emergence of putatively normal heterosexual relationships during adolescence and adulthood. Heterosexual relationships require the presence of opposite-sex sexual desire, and therefore requires the abjection of homosexual desire. And the prerequisite for such desire is the presence of bodies which can be identified as opposites, and, therefore, heterosexuality requires the abjection of intersex bodies. Funding the operation of such structural heteronormativity is the co-presence of homophobia—the prejudice that

homosexual bodies and lifestyles are undesirable—and transphobia—the prejudice that bodies that defy gender and sex binaries are undesirable.

Feminist natural law thinkers like Cahill and Traina therefore take the important step of recognizing gender as the social effect of (patriarchal) culture, but their analyses tend to downplay how sex identity is the social effect of heteronormativity. This tendency appears to be founded, on both of their parts, by misreadings of Judith Butler. Traina, for example, reads Butler's understanding of the social construction of sex identity as entailing the reemergence of a "mind-body dualism" insofar as seeing the body merely as a "political construct" means that we can "chop up sexual identity into its identifiable elements and use them, like building blocks, to experiment with constructing new combinations." Traina sees this as devastating for a feminist natural law project because of "the loss of the material body as a concrete criterion of womanhood" that subsequently delegitimizes the category of experience—"the entire subject matter of practical moral reason"—within an ethical project.<sup>54</sup>

These claims are both inaccurate and overinflated. For example, Traina's claim that the ethical significance of the body disappears if sex is accepted as socially constructed presumes a metaphysics about social construction that Butler is not asserting. To say that a phenomenon is socially constructed does not entail that the phenomenon fails to have significance in an ethically realist project. Instead, what *is* entailed is an interrogation of the categories that are taken as basic in an ethically realist project. Insofar as these putatively basic categories can be

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<sup>54</sup> Traina, *Feminist Ethics and Natural Law*, 3-5.

legitimately recognized as the effects of problematic structural realities (like heteronormativity), then it is to that extent that the categories are themselves unethical and, therefore, untenable. Traina worries that Butler's interventions threaten the loss of the material body as a "concrete criterion of womanhood," but her analysis does not sufficiently appreciate the extent to which womanhood itself is an ideological formation supported by homophobia and transphobia. Butler's analysis and the analysis of gender and sex done by queer thinkers more broadly attend to and interrogate this dimension.

It is important to recognize what this response is asserting and what it is not. To say that the category of 'womanhood' is metaphysically untenable on a queer project does not deny that women exist *or* that one can have an experience as an individual woman *or* that one's experience can be potentially aggregated with the experience of other women in certain contexts as "women's experience." This would be as nonsensical as maintaining that because "race" is metaphysically untenable one is thereby forced to deny that black people exist; that someone can have an experience as a black person; and that there is such a generalizable phenomenon as "black experience." Once again, that this is false is shown by the fact that understanding a phenomenon as socially constructed does not entail that the effects of the category are not "real" in the relevant sense for an ethical project which takes its cue from embodiment. Far from it: such experiences as "women's experience" and "the black experience" are relevant precisely because the ideologies of race and gender bear real effects on bodies that are identified as women and as black. Ethics becomes no less real because the body as sexed phenomenon does not exist prior to

signification, as Traina would like to maintain; rather, ethics becomes much more accurate to the extent that we recognize, as queer scholars do, that our bodies are recruited to maintain certain ideological hegemonies that shape the real experience of life that ethics is called to address.

Cahill, by contrast, seems to understand Butler's point but then appears to misconstrue the significance of Butler's insight into the sexed body. In her *Sex, Gender, and Christian Ethics*, Cahill reads Butler principally as a representative of a postmodern epistemic worldview in which the social construction of knowledge is taken to undermine the possibility of a universal understanding of human flourishing, particularly with respect to the requirements of justice. Reflecting worries similar to those had by Traina, Cahill believes that such a postmodern view will be devastating to feminist goals insofar as an ethical antirealism does not serve the end of women's liberation, which depends on a commonality of cross-cultural experience for coalition building.<sup>55</sup> Following Martha Nussbaum and other feminists, Cahill observes that the concrete needs of the human body can serve as the relevant locus of experience for such cross-cultural coalition-building. As Cahill writes, "The recognizable 'humanity' of the bodies of our species; the body's status as prerequisite of our species' intellectual, emotional, and spiritual distinctions; and the intrinsic social interdependence of human bodies as the foundation of social life: these all lead us toward nonrelative definitions of good necessary to human flourishing, and of the virtues which social relation should realize."<sup>56</sup> From here, Cahill reads Butler correctly when she observes of Butler that "to grant [the body's]

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<sup>55</sup> Cahill, *Sex, Gender, and Christian Ethics*, 27-30.

<sup>56</sup> Cahill, *Sex, Gender, and Christian Ethics*, 76-77.

facticity or its materiality... is always to assert it in some *version*.”<sup>57</sup> But then immediately she asks “But if sex (or femaleness) is versicolor, pluriform, and in some ways unique to each individual—does that mean that it is infinitely malleable? Or that a reliable and lasting sense of the moral relations among sexual (or male or female) bodies must forever allude us? Or that such a sense must be irrelevant to the ways in which we might actually behave? I think not.”<sup>58</sup>

Here again arises another misreading of Butler, one which, as in Traina’s case, asserts a metaphysics that Butler is not asserting. As we’ve seen already, Butler’s point about the social construction of sex is that the phenomenon of the sexed body is the result of certain processes of interpretation about how a body signifies over an extended period of time. The concept of sex, therefore, is discursive; it is not prior to signification within language. None of this implies that sex (or gender) is “infinitely malleable” and therefore incapable of critical generalization, as Cahill charges, since this would imply a rejection of basic sensory experience of human bodies.<sup>59</sup> As with Traina, so with Cahill: to speak accurately about the discursive forces acting on the human body, and to assert the priority of these discursive forces as that which “materializes” the body as one sex or another is to draw attention to, in a sense, the *most basic* realities impinging on human existence. And to the extent that such discursive forces reflect the operation of oppressive ideologies they must be rethought and, if necessary, discarded.

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<sup>57</sup> Cahill, *Sex, Gender, and Christian Ethics*, 87 (emphasis hers).

<sup>58</sup> Cahill, *Sex, Gender, and Christian Ethics*, 87.

<sup>59</sup> Indeed, Butler is even aware of this own misreading, and she makes a joke of it in her own preface to the book that Cahill cites. Butler writes, “And if I persisted in this notion that bodies were in some way *constructed*, perhaps I really thought that words alone had the power to craft bodies from their own linguistic substance? Couldn’t someone simply take me aside?” (Butler, *Bodies the Matter*, ix.)



So, Butler's analysis and the queer analysis in general of sex *would* maintain that, indeed, a "reliable and lasting sense of moral relations among sexual (or male or female) bodies must forever allude us" if those relations are obscured by homophobia and transphobia. And what is the reason? It is that refusing to interrogate the homophobia and transphobia encoded into the very categorization of our bodies will remove the critical leverage needed in order to dismantle the oppressive forces that constitute the daily lives lived not only by sex and gender minorities—whom the homophobic and transphobic discourse affects most prominently—but also by every human body that is forced and constricted by the norms of masculinity and femininity that dissimulate as "sex" through various mechanism of naturalizations and normative regulation. As Butler will go to write later, "If the bodily traits 'indicate' sex, then sex is not quite the same as the means by which it is indicated. Sex is made understandable through the signs that indicate how it should be read or understood. These bodily indicators are the cultural means by which the sexed body is read. They are themselves bodily, and they operate as signs, so there is no easy way to distinguish between what is 'materially' true and what is 'culturally' true about a sexed body."<sup>60</sup>

Considered as 'natural law', then, queer natural law draws from the revisionist natural tradition its understanding of the natural law as teleological, eudaimonistic, realist, and epistemically inductivist. Also like the natural law tradition received by the revisionists, queer natural law understands the discernment of moral truth to occur at the intersection of a variety of sources:

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<sup>60</sup> Judith Butler, "Undiagnosing Gender," in *Undoing Gender* (New York: Routledge, 2004), 75-101, at 87.

scripture, tradition, reasoned reflection, and human experience. And as seen with the feminist strand of revisionist natural law, a queer natural law integrates a critical theorization of human experience as well; though, also as we have seen, this does not insulate queer natural law from offering critiques of feminist critical appropriations of the natural law. In this way, queer natural law shares in the overall trajectory of the natural law as an ethical tradition of reasoned contestation about how best to theorize human flourishing, all while basing such a contestation on a more fundamental agreement that we all share in a common human condition beneath the many discursive formations that have regrettably come to segregate, categorize, and benefit the lives of some over the lives of others.

### **1.2.2 Queer Natural Law as Queer Theory**

From queer theory, queer natural law draws two important critical tools in its discernment of human nature comprehensively considered: first, is queer theory's multifaceted critique of heteronormativity, and second is queer theory's 'open normativity' concerning the possibility of the derivation of norms which authentically promote human flourishing.

Unlike the natural law tradition—a tradition that has developed over at least the last two millennia—queer theory is relatively new. How new, however, is the question. In one sense, queer theory began in 1991 when Teresa de Laurentis first deployed the term “queer” in a formal academic context.<sup>61</sup> However, a more

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<sup>61</sup> See William B. Turner, *A Genealogy of Queer Theory* (Philadelphia, PA: Temple University Press, 2000), 5.

adequate understanding of queer theory would be one in which ‘queer’ is understood not primarily as a sort of academic endeavor but more generally as a style of critique that has critically engaged the reality of heteronormativity understood on three distinct, but interrelated levels: heteronormativity as compulsory heterosexuality; heteronormativity as structural phenomenon; and heteronormativity as symbolic phenomenon.

At the first level, heteronormativity illuminates the psychological burden of heterosexuality enjoined upon all bodies—that is, it illuminates what Adrienne Rich has identified as compulsory heterosexuality, the persistent belief that anything *other* than a heterosexual lifestyle is undesirable, unlivable, or both.<sup>62</sup>

Heteronormativity in this mode exists as a way of mapping and diagramming a society in which every single person is conducted into a heterosexual existence. It can take overt forms—for example, in proscribing same-sex sexual behavior between consenting adults through anti-sodomy statutes—or it can take more covert forms—as, for example, shown through how to understand sex as a discursive, socially constructed phenomenon. To the extent that compulsory sexuality becomes an organizing principle for individual life projects—for example, the desire popular among many American citizens to reproduce a life that reflects the “American Dream” of a “nuclear” family and of a life of accumulated possessions centered around a single-family home—to that extent does compulsory

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<sup>62</sup> For Rich’s presentation of the concept, see her classic “Compulsory Heterosexuality and Lesbian Existence,” *Signs* 5.4 (Summer 1980): 631-660. An important dimension of this essay to highlight is the signal contribution it made to providing visibility to what Rich calls “lesbian existence,” that is, providing visibility to the fact that compulsory heterosexuality makes unequal demands on gay men and lesbians to the extent that the patriarchal configurations of society unequally benefit gay men as *men*, even if they are also disadvantaged by homophobia.

heterosexuality invoke a heteronormative societal fantasy, which can be understood as the presence of an organizing mechanism for the pursuit of certain goods with respect to which the operation of compulsory heterosexuality has dissimulated as “normal” or “natural.”<sup>63</sup>

Accordingly, resistance to heteronormativity as compulsory heterosexuality has primarily occurred at the level of queer activism. Perhaps the most famous of these movements is the organization ACT-UP (AIDS Coalition to Unleash Power), which was instrumental in drawing attention to the homophobia that led to inequities in access to adequate research about and healthcare in relation to drugs for those living with HIV and AIDS.<sup>64</sup> Though even before the arrival of the AIDS crisis in the 1980’s, there were various legal reform movements calling for the extension of government benefits to families of all types, not just to families which feature a married heterosexual (or now, homosexual) couple.<sup>65</sup> Queer activists have also resisted compulsory heterosexuality through the construction of public spaces designed to decenter heteronormativity—spaces like gay bars, night clubs, and sex

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<sup>63</sup> One can compare this notion of the heteronormative societal fantasy to what Emilie Townes has called the ‘fantastic hegemonic imagination,’ in which a belief in white supremacy (specifically the form that presumes access to black women’s bodies for sexual violence) leads to the instantiation of a white supremacist, patriarchal, and racist society. See her *Womanist Ethics and the Cultural Production of Evil* (New York: Palgrave Macmillan, 2006). Compare this understanding also to Judith Butler’s decision—following Jean Laplanche—to consider sexual identity as a ‘phantasmatic’ process. “Fantasy in this sense is to be understood not as an activity of an already formed subject, but of the staging and dispersion of the subject into a variety of identificatory positions,” see Butler, “Phantasmatic Identification and the Assumption of Sex,” in *Bodies that Matter: On the Discursive Limits of Sex* (New York: Routledge, 1993), 68n7.

<sup>64</sup> See, for example, Deborah B. Gould, *Moving Politics: Emotion and ACT UP’s Fight Against AIDS* (Chicago: University of Chicago Press, 2009).

<sup>65</sup> Nancy D. Polikoff, *Beyond (Straight and Gay) Marriage: Valuing All Families under the Law* (Boston: Beacon Press, 2008). The problem with the extension to homosexual couples is not that same-sex couples should not have access to benefits that were formerly exclusively enjoyed by opposite-sex couples. Rather, the issue is that the horizon of justice for all families is obscured by imagining that justice towards queer persons has been meted out because same-sex couples can now enjoy the rights of opposite-sex couples. Other family forms—like multiple-parent households; unmarried couples of any sexual orientation; and extended-family units—are left out of these benefits.

clubs<sup>66</sup>—of which perhaps one of the most famous is the Stonewall Inn, heralded as the birth place of the gay rights movement because of the violent resistance on the part of queer persons to police surveillance. Most recently, queer activism has taken as a distinct focus the needs of transgender persons, gender non-conforming persons, and (though to a lesser extent) intersex persons.<sup>67</sup> As a result, a variety of awareness campaigns and research programs have been launched in order to draw attention to the plight that trans\* and genderqueer persons take as they navigate a globe that is hostile to them.<sup>68</sup> In this regard, the locus of queer activism in the United States has taken the forms of legal advocacy for gender non-discrimination protections.

Heteronormativity also operates as a structural phenomenon as well, which is to say compulsory heterosexuality functions at the comparatively more impersonal level as a description of how society's economic, political, and cultural institutions are organized. Heteronormativity operates as a structural phenomenon when heterosexuality is "naturalized"—that is, it is understood as the "default" mode for human sexual experience. As a result, because heterosexuality is "natural," institutions are created to support it, on the one hand, and, on the other, to punish

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<sup>66</sup> See Samuel R. Delany, *Times Square Red, Times Square Blue* (New York: NYU Press, 1999). At times, these queer spaces were also spaces that decentered whiteness as well as heteronormativity. See, for example, Jeffrey Q. McCune, Jr. *Sexual Discretion: Black Masculinity and the Politics of Passing* (Chicago: University of Chicago Press, 2014).

<sup>67</sup> A very accessible introduction to this work is found in Kate Bornstein, *Gender Outlaw: On Men, Women, and the Rest of Us* (New York: Random House, 1995).

<sup>68</sup> In 2015, for example, 50% of all transgender persons experienced rejection by their families. See Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet, and Ma'ayan Anafi, *The Report of the 2015 U.S. Transgender Survey* (Washington DC: National Center for Transgender Equality, 2016), [www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf](http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf), 65. See also the National Coalition of Anti-Violence Project, "Hate Violence against Transgender Communities." *Anti-Violence Project*, [avp.org/wp-content/uploads/2017/04/ncavp\\_transhvfactsheet.pdf](http://avp.org/wp-content/uploads/2017/04/ncavp_transhvfactsheet.pdf).

or discourage deviant sexualities. Heteronormativity as a structural phenomenon therefore serves as an analogue to investigations of other oppressions like ‘antiblackness supremacy’ as a structural or cultural phenomenon that associates blackness with slave status; that inculcates a society that “produces, sustains, and enables this association”; and that “names the dominating power as well as the masterly pleasure that nonblacks derive from this relation.”<sup>69</sup>

Because of the convergence between heteronormativity understood as a structural phenomenon and the understanding of other oppressions as structural, engagements with structural heteronormativity have lent themselves easily to intersectional analysis—that is, a form of analysis that foregrounds identity construction as the production of a negotiation among multiple aspects of embodiment including race, gender, sex, class, and nationality, among others.<sup>70</sup> If one studies writing intersection of racism and homophobia as relevant, then one can support the case made forcefully by Michael Hames-García that the literary and philosophical origins of queer theory among queer-of-color in the 1960’s rather than with white queer writers speaking out of European intellectual contexts—like Michel Foucault and Judith Butler—writing nearly a decade later.<sup>71</sup> With queer of color thinkers at the forefront of producing queer theory, one can see, for example,

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<sup>69</sup> Katie Walker Grimes, “Black Exceptionalism: Anti-Blackness Supremacy in the Afterlife of Slavery,” in *Anti-Blackness and Christian Ethics*, ed., Vincent Lloyd and Andrew Prevot (Maryknoll, NY: Orbis, 2017), 41-60, at 49.

<sup>70</sup> The term ‘intersectionality’ came into being with the work of Kimberlé Crenshaw. See her “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics,” *University of Chicago Legal Forum* 1989.1 (1989): 139-167.

<sup>71</sup> Michael Hames-García, “Queer Theory Revisited,” in *Gay Latino Studies: A Critical Reader*, ed., Michael Hames-García and Ernesto Javier Martínez, (Durham: Duke University Press, 2011), 19-45. The import of this article, however, is not only to reconfigure a genealogy of queer studies; it is also to make the broader point that whiteness is erased as an identity marker when problems of race are distanced from problems of sexuality.

James Baldwin's 1962 work *Another Country* as a foundational text.<sup>72</sup> Other texts and authors would also be given proper credit for their contributions as well. For example, the Combahee River Collective's statement articulates a politics dependent on intersections between race, class gender and sexuality (1979); Gloria Anzaldúa's *The Bridge Called My Back* (1981), attempts to create an identity-based politics attentive to multiplicity as well as to economic exploitation, and, lastly, her *Borderlands/La Frontera* (1987) calls for an epistemology sensitive to being a queer woman of color.<sup>73</sup>

Equally vital to understanding heteronormativity as a structural phenomenon is understanding how heteronormativity operates at various level of societal discourse. It is here where Michel Foucault's work on the nature of power has made its signal contribution. Throughout his career Foucault makes the case for understanding power not so much as a repressive phenomenon in which those in power act oppressively with respect to those who do not, but instead he articulates an understanding of power primarily as a *productive phenomenon* in which various constellations of discourse *create* ideas which are subsequently accepted as true insofar as these ideas are believed to be authoritative and truth-preserving. Such ideas become truth especially quickly when they achieve validation through medical, psychological, and other scientific discourses.<sup>74</sup> It is no small part due to

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<sup>72</sup> James Baldwin, *Another Country* (New York: Dial Press, 1962).

<sup>73</sup> Hames-García, "Queer Theory Revisited," 26-28. For slightly different ends, James Baldwin's writings are appreciated for their distinctly queer character in Michael Cobb, *God Hates Fags: The Rhetorics of Religious Violence* (New York: New York University Press, 2006), 53-78.

<sup>74</sup> The text in which Foucault makes these claims in relation to sexuality is his *The History of Sexuality, Vol. 1: An Introduction*, trans. Robert Hurley (New York: Vintage Books, 1990). This idea receives greater development beyond sexuality per se in his *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1995). For a good introduction to Foucault's account

Foucault's work that other queer scholars have become skeptical of the notion of 'identity' as such, especially in understanding the relationship between queer theory and political activism. For if identities—the truth about who individuals—are produced as the result of a complex operation of power, then using identity as a critical lever can only ultimately be an instrumental strategy, not a strategy based in some sort of ontological truth about the persons employing it. Queer theorist Michael Warner's work emerges as particularly important in this regard to the extent that his work has explicitly placed gay and lesbian politics—a sort of "identity" politics—into critical conversation with queer politics as a utopian politics that seeks to envision new ways of living that are not yet theorized or accepted in current civil society nor authorized as legitimate by the state.<sup>75</sup>

Lastly, queer theory is a style of critique of heteronormativity operating in a symbolic mode. Though I name it here as the "third" level, it can plausibly be understood as the level that is conceptually prior to the other two. For in its symbolic mode, heteronormativity is projected as an organizing principle for understanding the whole of reality itself beyond sexuality per se, where the world is understood as the interaction of entities that can be organized across binary logics: male/female; man/woman; active/passive; straight-gay—what queer theologian Marcella Althaus-Reid identified as heterosexualistic thinking.<sup>76</sup> In other words, in its symbolic mode, queer theory aims to interrogate and reorganize systems of

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of the relationship between power/knowledge, see his "Truth and Power," in *The Foucault Reader*, ed., Paul Rabinow (New York: Vintage, 2010), 51-75.

<sup>75</sup> An important essay in this regard is his "Something Queer about the Nation State," in *Publics and Counterpublics* (New York: Zone Books, 2005), 209-223.

<sup>76</sup> See, for example, her *Indecent Theology: Theological Perversions in Sex, Gender, and Politics* (New York: Routledge, 2000), 170ff.



categorization that require the abjection from critical recognition material instances in which those categories fail, as we've seen above in our examination of intersex persons. The emerging field of transgender studies, which, at a philosophical level, challenges a binary notion of gender (and even of sex) with the notion of a gender spectrum, takes its cue from this form of critique.<sup>77</sup>

The prospect of understanding queer theory as a style of critique which investigates the operations of heteronormativity as compulsory heterosexuality, as structural phenomenon, and as symbolic phenomenon opens up the question about what sort of stance queer theory has towards the question of norms in general. To ask a singular question: is queer theory inherently—or, if that is too much of an oxymoron, is queer theory constitutionally—*anti-normative*? The question has been raised recently by queer scholars who take the evolution of queer theory to be one that has trended towards becoming a field that is, apparently, opposed to any sort of normativity. Arguing within an entire issue of *Differences* articulating the thesis that queer theory has taken this antinormative turn, Annamarie Jagose charges that queer theory has ultimately undermined itself, by allegedly installing a binary—normativity/anti-normativity—that actually ends up installing 'antinormativity' as the distinctive identity-political marker of queerness.<sup>78</sup> Extending this critique, the editors of this volume, Robyn Wiegman and Elizabeth A. Wilson, argue that queer theory in its current state has, in fact, obscured the positive potential for seeing norms as a way to think inclusively, not exclusively. They locate this inclusive

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<sup>77</sup> See Susan Stryker and Stephen Whittle, eds., *The Transgender Studies Reader* (New York: Routledge, 2006), and Sally Hines and Tom Sanger, eds., *Transgender Identities: Towards a Social Analysis of Gender Diversity* (New York: Routledge, 2010).

<sup>78</sup> Annamarie Jagose, "The Trouble with Antinormativity," *Differences* 26.1. (2015): 26-47.

possibility in recovering an understanding of normativity within the field of statistics. “So a norm, a system of averaging,” they write, “is not invested in singularity. Nor is a norm a demand that each of us bend to a common point....To be measured in relation to an average is to be compared not to a singularity, but rather to be associated with (and therefore dispersed across) the group as a whole... A norm is a wide-ranging, every moving appraisal of the structure of a set; and this operation generates each of us in our particularity.”<sup>79</sup>

There is another sense of antinormativity which is important to consider besides those critiques raised by Jagose, Wiegman and Wilson. This critique charges queer theory with be uninterested, opposed to, or otherwise lacking a foundation for thinking about normativity in the ethical sense of proscribing or promoting certain actions and ways of life in the interest of authentic human flourishing. To this extent, queer theory is charged with the same sort of ethical problems that postmodern ethical thinking is charged with more broadly: that it presumes an ethical framework (typically a Western one) without arguing for it, thereby reinstalling another Western ethical worldview; and that the moral costs of having an antifoundationalist ethics are too great for those who live under oppressive conditions, since some notion of commonality is necessary in order for the work of cross-cultural ethical thinking and coalition-building to begin.<sup>80</sup>

The reality, however, is that queer theory is not antinormative in any of the senses presumed by these critiques, but neither is queer theory sanguine about the

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<sup>79</sup> Robyn Wiegman and Elizabeth A. Wilson, “Introduction: Antinormativity’s Queer Conventions,” *Differences* 26.1 (2015): 1-25, at 16.

<sup>80</sup> Cahill, *Sex, Gender, and Christian Ethics*, 25-30.

installation of norms, either. The ethical impulse of queer theory, instead, is oriented towards what queer activist and philosopher Alexis Shotwell calls ‘open normativities’—that is, normativities that tend both towards an ideal of human flourishing while at the same time allowing for the articulation of as many different accounts of human flourishing as possible.<sup>81</sup> The goal, then, is to resist normativities that “flatten complexity and close down flourishing for others,”<sup>82</sup> while also having the courage to name which sorts of practices and forms of collective life do and do not—to use Shotwell’s words—“deserve a future.” Such a project implies that, minimally, it is possible judgments about which accounts of human flourishing are deserving of a future. “Calling for open normativities and proliferation, under this conception of flourishing, does not mean that any and all norms are to pursued or even accepted...Indeed, working to proliferate open normativities will close down many norms.”<sup>83</sup> This further presumes, then, that there are principles and criteria for such judgments. The question to ask with respect to queer theory, then, is just how explicit these principles and criteria are.

What cannot be doubted in any case, however, is that queer theory as an ethical project has engaged this stance of open normativity about norms related to human flourishing since its inception. Writing in 1999—only eight years after queer theory was inaugurated as an academic discourse—Michael Warner understood queer resistance to norms to be a resistance towards *the regulation of sexuality by the state*, not to the notion of any sort of regulation of sexuality or of norms related

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<sup>81</sup> Alexis Shotwell, *Against Purity: Living Ethically in Compromised Times* (Minneapolis: University of Minnesota Press, 2016), 139.

<sup>82</sup> Shotwell, *Against Purity*, 156.

<sup>83</sup> Shotwell, *Against Purity*, 155.

to sexuality per se. This conviction was animated by Warner's judgment that queer work adequately considered constitutes a tradition undergirded by a commitment to enacting policies that will benefit *all persons*, not just some. At the very least, this is an account of justice, which is intrinsically related to any comprehensive ethical vision. In fact, it is out of such an ethical conviction that Warner (as well as other queer thinkers) have criticized the primary of marriage equality campaigns in queer activist work. "Those who now advocate for gay marriage have no shown how doing so is consistent with this tradition," Warner writes. Instead,

They have induced widespread amnesia about it. It is possible, at least in theory, to imagine a politics in which sex-neutral marriage is seen a step towards the more fundamental goals of sexual justice: not just formal equality before the law, based on a procedural bar to discrimination, but a substantive justice that would target sexual domination, making possible a democratic cultivation of alternative sexualities...The advocates of gay marriage have not made this case. Many, indeed, have made the opposite case—that pursuing marriage means abandoning the historical principles of the queer movement as an antiquated "liberationism."<sup>84</sup>

What Warner draws attention to, then, is the tension in progressive politics towards realizing substantive justice "for all" versus justice "for some." The problem with viewing progress *for all* as the expansion of marriage equality is that, for Warner and for other queer thinkers, such an understanding of justice with respect to sexuality is circumscribed by the limits of the heteronormative societal fantasy that

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<sup>84</sup> Michael Warner, *The Trouble with Normal: Sex, Politics, and the Ethics of Queer Life* (Cambridge, MA: Harvard University Press, 1999), 89-91, at 90.

restricts “normal” sexual experience to life-long monogamous sexual relationships (that can be inclusive, obviously, of both same- and opposite-sex couples). The result is that sexualities that do not resemble this ideal continue to be left out, thereby undermining the queer ethical vision that is truly “for all.” Insofar as this is a political vision based in a discussion about the human good of sexuality, it is also an *ethical* vision with a normative standard for justice, but it is obviously an incomplete one. While Warner is animated by a vision of justice with respect to sexuality, he leaves a variety of questions unanswered, one of them being which sort of sexualities will count as legitimate alternative sexualities, and another one being the principles by which he would arrive there, and a third one being what role, if any, the state would play in enforcing these judgments about legitimate alternative sexualities. But it is possible to raise all of these questions and still deny that, because they do not yet have answers, queer theory is antinormative. Far from it: the vision that Warner is articulating is open, and, as such, it awaits greater specification in order to arrive at a more concrete sense of what justice “for all” really looks like, as opposed to justice “for some.”

There are more examples of this normative axis within queer theory. One that occurs even earlier than Warner’s interventions—and which emphasizes the ‘open’ in open normativities— are those made by Judith Butler as early as in her *Bodies That Matter*. There she invokes an understanding of ‘queer’ as the site of “collective contestation, the point of departure for a set of historical reflections and future imaginings...never fully owned, but always and only redeployed, twisted, queered from a prior usage and in the direction of urgent and expanding political

purposes.”<sup>85</sup> In an ethical mode, Butler relates this notion of queerness directly to the project of deriving norms about sex and gender. Subverting norms, Butler points out, is not in service of an antinormative project, but occurs, rather, in service of a project ultimately of reforming them. Relating this prospect of rearticulation to the normative significance of gender performance as drag, Butler writes, “The resignification of norms is thus a function of their *inefficacy*, and so the question of subversion, of *working the weakness in the norm*, becomes a matter of inhabiting the practices of its rearticulation. The critical promise of drag does not have to do with the proliferation of genders, as if a sheer increase in numbers would do the job, but rather with the exposure or the failure of heterosexual regimes every fully to legislate or contain their own ideals.”<sup>86</sup> Indeed, towards the end of the essay, Butler, through asking a series of rhetorical questions, names the desires of an open normativity:

The goal of this analysis, then, cannot be pure subversion, as if an understanding were enough to establish and direct political struggle. Rather than denaturalization or proliferation, it seems that the question for thinking discourse and power in terms of the future has several paths to follow: how to think power as resignification together with power as the convergence or interarticulation of relations of regulation, domination, constitution? How to know what might qualify as an *affirmative resignification*—with all the

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<sup>85</sup> Butler, *Bodies that Matter*, 173.

<sup>86</sup> Butler, *Bodies That Matter*, 181.

weight and difficulty of that labor—and how to run the risk of reinstalling the abject at the site of its opposition?<sup>87</sup>

In her later work, Butler will relate this desire more explicitly to an ethic of nonviolence which she believes descends from queer thinking. Speaking in an unabashedly ethical key, Butler writes, “The critique of gender norms must be guided by the question of what maximizes the possibilities for a livable life, what minimizes the possibility of unbearable life, or, indeed, social or literal death.”<sup>88</sup> Indeed, even more revealingly, “This means that we must learn to live and to embrace the destruction and rearticulation of the human in the name of a more capacious and, finally, less violent world, not knowing in advance what precise form our humanness does and will take...The nonviolent response lives with its unknowingness about the Other in the face of the Other, since sustaining the bond that the question opens is finally more valuable than knowing in advance what holds us in common, as if we already have all the resources we need to know what defines the human, what its future life might be.”<sup>89</sup> Once again, to maintain that queer theory is antinormative requires a complete discounting of what animates queer theorists to write in the first place.

The ‘open normativity’ of queer work continues into the 21<sup>st</sup> century present day. In this regard, Jack Halberstam’s work (pronouns: ‘they’ series), stands out as an exemplary case of structuring queer work around the ethically utopian vision of human flourishing for which the contours have not yet entered the realm of sensible

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<sup>87</sup> Butler, *Bodies That Matter*, 184 (emphasis mine).

<sup>88</sup> Judith Butler, “Introduction: Acting in Concert,” in *Undoing Gender*, 1-16, at 8.

<sup>89</sup> Butler, “Beside Oneself: On the Limits of Sexual Autonomy,” in *Undoing Gender*, 17-39, at 35.

articulation. Presumed as the ideological background to Halberstam's projects is a pervasive heteronormativity which, taken seriously, they argue, makes finding solutions that don't accidentally reinscribe heteronormativity very difficult. Halberstam's scholarship can be understood, in part, as attempting to chart a way towards such a queer utopian future. Halberstam will frequently draw attention to such recalibration occurring through political and social disruption of expectations around sex and gender in order to put into practice what they call a 'gaga feminism.' Equally inspired by the work of Lady Gaga as well as by the not-yet-linguistic-sense that the word 'gaga' denotes, Halberstam understands gaga feminism as "a form of political expression that masquerades as naïve nonsense but that actually participates in big and meaningful forms of critique...Gaga feminism grapples with what cannot yet be pronounced and what still takes the form of gibberish, as we wait for new social forms to give our gaga babbling meaning."<sup>90</sup> In other places, Halberstam has understood the process of theorizing out of this "gaga babbling" to be doing the work of low, as opposed to high, theory—low theory that constitutes "the name of a counterhegemonic theorization of alternatives within an undisciplined zone of knowledge production."<sup>91</sup> In this regard, Halberstam resembles the work done by other queer of color scholars, particularly by the late José Muñoz, who understands the normative work of queerness as "essentially about the rejection of a here and now and an insistence on potentiality or concrete

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<sup>90</sup> Jack Halberstam, *Gaga Feminism: Sex, Gender, and the End of Normal* (Boston: Beacon Press, 2012), xxv.

<sup>91</sup> Jack Halberstam, *The Queer Art of Failure* (Durham, NC: Duke University Press, 2011), 18.



possibility for another world.”<sup>92</sup> The project of queer world-making, of living into alternative possible futures, is essentially a normative one insofar as such projects involve critiques in favor of a world that *should* come into existence. Does this grant to queer theory the status of a full ethical theory? Of course not. But it cannot be denied that there is a normative axis within queer theory, and it is one that is drawn out slowly, deliberately, humbly, and with great awareness of the potential for norms to reinscribe the violence and oppressions they were created to address. Utopia, imagined as the perfect world, perhaps names an impossibility, but it nevertheless draws queer thinkers towards thinking of a better world, which, once again, presumes judgments—inevitably normative ones—that help distinguish the ethical relations in one world from ethical relations in another.

Whatever can be said about queer theory, then, it can hardly be regarded as ‘antinormative’. But, with the foregoing examples in mind, it might be possible to see why queer theory has been mistaken as such. As pointed out by many of the authors in the volume of *Differences* dedicated to queer theory without antinormativity, it is easy to come across accounts of queerness that hold it out as opposed to “normative” sexualities in preference to “nonnormative” sexualities, pleasures, and lifestyles. But, as we’ve seen in Michael Warner’s case, attacks on the “normative” are not attacks on the notion of normativity per se as much as they are attacks on the colonization of the normative by heteronormativity inspired by the desire for open normativities that open up accounts of human flourishing with such heteronormativity decentered. So, as feminists fight for a world not structured by

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<sup>92</sup> José Esteban Muñoz, *Cruising Utopia: The Then and There of Queer Futurity* (New York: New York University Press, 2009), 1.

sexism and patriarchy, queer thinkers fight for a world not structured by homophobia and transphobia. As in both cases, there is a presumption of an ethical vision; the next question concerns how to spell it out. Unlike philosophers and theologians trained in ethics, the vast majority of scholars who have built out queer theory's ethical axis have not had such formal training, and then even if they are in a field proximate to ethics—like philosophy—they may have reasons to be suspicious of offering an account of queer theory that would resemble an ethic, and some thinkers may adopt, perhaps following in the poststructural footsteps of a thinker like Derrida, the idea that ethics, in an ideal sense, is impossible.<sup>93</sup>

The queer natural law arises as a vote *in favor of* the possibility of ethics insofar as a queer natural law seeks to develop the normative axis within queer theory by providing the conceptual groundwork for supporting the open normativity that queer theory expresses in its political (and ethical) aspirations of queer world-making. The first step is to recognize as queer natural law's critical tool queer theory's critique of heteronormativity as compulsory heterosexuality, as structural heteronormativity, as a symbolic heteronormativity. With such an anchoring, queer natural law proceeds by anchoring any and all discussions of normativity within an assessment not only of real bodies, but of real bodies as they are produced by the various discursive worlds that make them "appear" in certain ways to us, whether as male or female, masculine or feminine, gay or straight. This is what it would mean to take 'nature' seriously within a queer natural law project: it

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<sup>93</sup> See, for example, Jacques Derrida, *The Gift of Death and Literature in Secret*, 2<sup>nd</sup> ed., trans. David Wills (Chicago: University of Chicago Press, 2008). Interestingly, the reader of Derrida's essay here will find that, ethics is impossible, Derrida may be seen as agreeing with Kierkegaard interventions in *Fear and Trembling*.

means not to take any notion of human flourishing at face value, but, instead, to subject each and every notion of human flourishing, as well as each and every normative statement about human 'nature' more broadly, to a rigorous analysis in order to figure out which discursive formations are operating therein. And to the extent that these formations can be identified as not authentically conducive to human flourishing, those formations are discarded towards the end of establishing a more accurate view of nature from which to theorize about human flourishing. In this regard, queer natural law shares the epistemic humility of revisionist natural lawyers, while also taking this epistemic humility in newer directions.

### **1.2.3 Queer Natural Law as Queer Theology**

In addition to drawing inspiration from the natural law tradition and from queer theory, queer natural law also stands as a descendant of the field of queer theology as well. Here I draw out two particular influences. The first influence comes from queer theory's participation within the larger tradition of liberation theology more broadly, one which views the experiences of sex and gender minorities as a primary lens by which to develop an understanding of God and the requirements of the reign of God. The second influence reflects on this liberating mission through the queer theology of Marcella Althaus-Reid, ending with an articulation of points of intersection between her project—largely hailed to be one of the most important queer theological projects—and a queer natural law.

Describing the nature of liberation theology, Gustavo Gutiérrez—frequently heralded as the ‘father’ of liberation theology—regards the building of the reign of God as integrally related to any and all projects that seek to root out oppression and unjust inequality. Such efforts aimed at political and historical revelation exist in dialectical relationship with God’s promise of spiritual salvation: communion with God is strengthened and, at the same time, made possible by projects, for social and political liberation, while at the same time not being reducible merely to social and political projects. “Without liberating historical events,” Gutiérrez explains, “there would be no growth of the Kingdom. But the process of liberation will not have conquered the roots of human oppression and exploitation without the coming of the Kingdom, which is above all a gift... We can say that the historical, political liberating event *is* the growth of the Kingdom and *is* a salvific event; but it is not *the* coming of the Kingdom, not *all* of salvation.”<sup>94</sup> Queer natural law, insofar as it comprises an ethical tradition that takes critical notice of forms of oppression—particularly those based in heteronormativity—also participates in this dialectical theological relationship which holds the establishment of justice and human flourishing as integral to God’s saving work. In doing so, queer natural law joins the broader liberation theology tradition coming from the black experience,<sup>95</sup> from the AmerIndian experience,<sup>96</sup> the LatinX experience,<sup>97</sup> from feminists,<sup>98</sup> and from womanists.<sup>99</sup>

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<sup>94</sup> Gustavo Gutiérrez, *A Theology of Liberation*, 15 anniversary ed., trans. Sister Caridad Inda and John Eagleson (Maryknoll, NY: Orbis Books, 1988 [orig. 1971]), 104.

<sup>95</sup> James Cone, *A Black Theology of Liberation*, 40<sup>th</sup> anniversary ed., (Maryknoll, NY: Orbis, 2012).

<sup>96</sup> Vine Deloria, Jr., *God is Red: A Native View of Religion* (Golden, Co: Fulcrum Publishers, 1994).

<sup>97</sup> Ada María Isasi-Díaz, *La Lucha Continues: Mujerista Theology* (Maryknoll, NY: Orbis, 2004).

Specifically as a liberationist tradition within theology more broadly, queer natural law arrives as the ethical counterpart to a history of theological intervention speaking out of the experience of sex and gender minorities, especially of gay and lesbian persons. Like queer activists efforts more broadly, one can locate the origins of such interventions in the late 1960's and 1970's, among both Protestant and Catholic thinkers calling for the inclusion of same-sex relationships and the depathologization of homosexual individuals in the church more broadly.<sup>100</sup> Its origins are also located in ministries such as that conducted by the Metropolitan Community Church, founded in 1968 for the purpose of celebrating queer bodies and their loves.<sup>101</sup> Its Catholic counterpart, later to be spurned by the Catholic bishops, was founded a year later and went by the name DignityUSA.<sup>102</sup> Both organizations are still active today, and in fact are joined by other organizations that are currently actively working within the liberation strand of queer theology: one that has gained particular prominence in the Catholic Church is New Ways Ministry, begun in 1976 by Sister Jeannine Gramick, SSND, and Father Robert Nugent, SDS.<sup>103</sup> Exemplary also for its contributions to a queer theology centered on inclusivity in

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<sup>98</sup> Elizabeth Johnson, *She Who Is: The Mystery of God in Feminist Theological Discourse*, 10<sup>th</sup> Anniversary ed. (New York: Crossroad Publishing Company, 2013).

<sup>99</sup> Stacey M. Floyd-Thomas, ed., *Deeper Shades of Purple: Womanism in Religion and Society* (New York: New York University Press, 2006)

<sup>100</sup> Early examples from the Protestant side include James B. Nelson, "Homosexuality and the Church: Toward a Sexual Ethics of Love," *Christianity and Crisis* 37.5 (04 April 1977): 63-69. For the Catholic side, see John J. McNeil, *The Church and the Homosexual* (1976), 4<sup>th</sup> ed., (Boston: Beacon Press, 1993).

<sup>101</sup> "History of MCC," Metropolitan Community Church, released Fall 2004 <http://mcccchurch.org/overview/history-of-mcc/>, (accessed 26 September 2017).

<sup>102</sup> "What is Dignity?" DignityUSA, <https://www.dignityusa.org/article/what-dignity> (accessed 26 September 2017). Dignity's expulsion from Catholic churches was fueled, in part, by the Congregation for the Doctrine of the Faith's document *On the Pastoral Care of Homosexual Persons*, no. 14-15.

<sup>103</sup> Francis DeBernardo, "Ministering in New Ways to Gay and Lesbian Catholics and the Church: A Brief History of New Ways Ministry," New Ways Ministry, <http://www.newwaysministry.org/history.html> (accessed 26 September 2017).

our present day is the work of Patrick Cheng in his two main monographs, *Radical Love* and *Rainbow Theology*.<sup>104</sup>

In the past few decades, queer theology has exploded with academic interest. Representing an intellectual provenance heavily influenced by Foucault, Mark Jordan's research has been of seminal importance. Of particular interest is his 1997 monograph, *The Invention of Sodomy in Christian Theology*, in which he argues that the notion of 'sodomite' as an identity—the theological ancestor to the modern identity of the homosexual—began with the pen of an 11<sup>th</sup> century Benedictine monk named Peter Damian.<sup>105</sup> Jordan has also contributed greatly to understanding the interactions between politics and theology in America's 20<sup>th</sup> century discourse surrounding homosexuality.<sup>106</sup> Queer theologians have also specialized in various areas of Christian theology, operating within the strand of liberating confrontation with heteronormative theology. Robert Goss, for example, has made strides in the area of queer Christology.<sup>107</sup> Various theologians have made contributions to queer biblical studies: Kenneth Stone, for example, has contributed much to queer readings of the Hebrew Bible,<sup>108</sup> as Dale Martin has contributed much to queer readings of the New Testament.<sup>109</sup> A variety of work has been done at the intersection of queer theology and historical/systematic theology, so much that

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<sup>104</sup> Patrick Cheng, *Radical Love: An Introduction to Queer Theology* (New York: Seabury Books, 2011), and *Rainbow Theology: Bridging Race, Sexuality, and Spirit* (New York: Seabury Books, 2013).

<sup>105</sup> See Mark Jordan, *The Invention of Sodomy in Christian Theology* (Chicago: University of Chicago, 1997), and his *Ethics of Sex* (Malden, MA: Blackwell Publishing, 2002), 76-106.

<sup>106</sup> Mark Jordan, *Recruiting Young Love: How Christians Talk about Homosexuality* (Chicago: University of Chicago Press, 2011).

<sup>107</sup> Robert Goss, *Jesus Acted Up: A Gay and Lesbian Manifesto* (San Francisco: HarperSanFrancisco, 1993), and *Queering Christ: Beyond Jesus Acted Up* (Cleveland, OH: Pilgrim Press, 2002).

<sup>108</sup> See, for example, Kenneth Stone, *Queer Commentary and the Hebrew Bible* (Sheffield: Sheffield Academic Press, 2001), and "Queering the Canaanite," in *The Sexual Theologian*, 110-134.

<sup>109</sup> Dale Martin's collection of essays in his *Sex and the Single Savior* (Louisville, KY: Westminster John Knox Press, 2006).

giving a representative list would be a foolhardy task—though, among its many contributors one must mention the work done by theologians like Eugene Rogers,<sup>110</sup> Linn Marie Tonstad,<sup>111</sup> and Gerald Loughlin and the many theologians he has recruited in his authoritative collection *Queer Theology*.<sup>112</sup> Other collections of essays, like those compiled in *Queer Christianities*, articulate an intersection between what one might regard as queer theology and ecclesiology.<sup>113</sup> And recently, a collection of essays have come out at the intersection of queer theology, temporality, and affect theory.<sup>114</sup> Intersections between womanist studies and queer studies have also emerged from scholars like Pamela Lightsey,<sup>115</sup> a person whose work continues a racially conscious strand of queer work that, as a whole, simultaneously critiques and complements the feminist queer scholarship of persons like Mary Hunt and Elizabeth Stuart.<sup>116</sup> Lastly, a bibliography of scholarship at the intersection of queer theology and theological ethics explicitly has been somewhat slim,<sup>117</sup> though this state of affairs might most proximately be explained

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<sup>110</sup> Eugene F. Rogers, Jr., *Sexuality and the Christian Body: Their Way into the Triune God* (Malden, MA: Blackwell Publishers, 1999).

<sup>111</sup> Linn Marie Tonstad, *God and Difference: The Trinity, Sexuality, and the Transformation of Finitude* (New York: Routledge, 2016).

<sup>112</sup> Gerald Loughlin, ed., *Queer Theology: Rethinking the Western Body* (Malden, MA: Blackwell Publishers, 2007).

<sup>113</sup> Kathleen T. Talvacchia, Michael F. Pettinger, and Mark Larrimore, eds., *Queer Christianities: Lived Religion in Transgressive Forms* (New York: New York University Press, 2015).

<sup>114</sup> Kent L. Brintnall, Joseph A. Marchal, and Stephen D. Moore, eds., *Sexual Disorientations: Queer Temporalities, Affects, Theologies* (New York: Fordham University Press, 2018).

<sup>115</sup> Pamela Lightsey, *Our Lives Matter: A Womanist Queer Theology* (Eugene, OR: Pickwick Publications, 2015).

<sup>116</sup> Mary E. Hunt, *Fierce Tenderness: A Feminist Theology of Friendship* (New York: Crossroad, 1991); and, Elizabeth Stuart, *Just Good Friends: Towards a Lesbian and Gay Theology of Relationships* (London: Mowbray, 1995).

<sup>117</sup> See, for example, Kathy Rudy's *Sex and the Church: Gender, Homosexuality, and the Transformation of Christian Ethics* (Boston: Beacon Press, 1997). This, of course, is not to say that the above works are without ethical implications—they most certainly do have ethical implications—but it is to say that these works tend to shy away from engaging the tradition of theological ethics directly.

by the fact that the project of ethics, in general, has been put into crisis by the challenge of postmodern epistemology.

As has occurred within queer theory and queer activism with respect to the prospect of inclusion within the institution of marriage, so within queer theology have different perspectives arisen concerning how to value “inclusivity” as a central queer theological value. The issue can be formulated as a question: can inclusivity validly be seen as leading to liberation if one takes queerness seriously? Insofar as queerness names by definition that which is excluded, the adoption of an inclusivist liberative frame in the name of queer theology may appear to be a contradiction.

A thinker whose contributions to this question has proven timeless are those of Argentinian queer theologian Marcella Althaus-Reid. In Althaus-Reid’s view, the chief problem with Christian theology is that the theology that descends from official church sources as well as from other systematic theologies (which she will gather under the name of ‘T-Theology or ‘Capital-T Theology’) can be more accurately identified as theological rationalizations of heteronormative thinking. “Systematic Theology,” Althaus-Reid writes, “can be considered as the case of an arbitrary sexual theory with divine implications.”<sup>118</sup> One of the reasons why—as we’ve seen before—has to do with Althaus-Reid’s charge that theology is plagued by heterosexualistic thinking, remarked in the framework above as symbolic heteronormativity. Althaus-Reid regards such thinking as totalizing, as rejecting fluidity and difference; it forecloses diversity of expression within a binary logic: “Heterosexuality is not a neutral science and the inner logic of the system works

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<sup>118</sup> Althaus-Reid, *Indecent Theology*, 87.



with its own artificially ‘either/or’ concepts. It unifies the ambivalence of life into one official version.”<sup>119</sup>

Althaus-Reid’s premier example of this—one which also shows the violence of T-Theology—is the colonization of the Americas by Europeans. For in addition to enacting literal, physical violence upon the native persons living in Latin and South America, the Europeans also imposed a cultural violence which Althaus-Reid identifies as a culture of decency. As a term, ‘decent’ convokes the evaluative standard the colonizers brought to the Americas and which they identified with their own ways of life, with the result that native ways of living were termed *indecent*. It is the category of ‘decency’, therefore, that grants Althaus-Reid transit across a variety of allegedly disparate discursive fields. “What the colonial masters made illegal for native men and for their society in terms of economic organization, jurisprudence, religious and educational structures, for women, and for those of other sexual orientations was termed *indecent*.”<sup>120</sup>

For Althaus-Reid, T-Theology is essentially a decent discourse, and she believes that, once subjected to queer critique, the theology of the colonizers passed down to the present day will reveal that the heretofore unexamined violence of T-Theology is its compulsory heterosexuality, its structural heteronormativity, and its symbolic heteronormativity. Critiquing colonization along heteronormative symbolic lines that also provides a genealogy for sexism in the Americas, Althaus-Reid writes, “As part of the colonial Christian mythopoetics, the male colonizers genderized their subjects as women, depriving them of the male status of their own

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<sup>119</sup> Althaus-Reid, *Indecent Theology*, 13.

<sup>120</sup> Althaus-Reid, *Indecent Theology*, 169.

patriarchal societies and therefore produced in them a reinforcement of heterosexual stereotypes regarding women in their societies in forms which were sometimes unknown before colonization processes.”<sup>121</sup> Extending this critique the forms of capitalism that would develop both in the Americas and throughout the world, Althaus-Reid observes that, “the main characteristics of capitalism could be considered to be a binary economic epistemology, or a process of capital accumulation based on hierarchal exploitation (based on the man-woman heterosexual relation) and dominion through warfare and force.”<sup>122</sup>

This process of ideological colonization also, of course, affected sexual practices on the continents which the Europeans invaded in such ways that the discursive formations that sexuality took in Latin America were supplanted by the European ideal of heterosexuality. Althaus-Reid regards this sort of sexual struggle as inherently theological. Reflecting queer critiques of heteronormativity at the level both of compulsory heterosexuality and of heteronormativity as a structural phenomenon, Althaus-Reid writes,

The *chamames* (religious and political leaders of the Guraní nation) called people not to disbelieve in the Virgin Mary and the Trinity, but to actively defend bigamy and concubinage as part of a social, political, and religious rebellion against the imposed colonial order. However, that act was also a part of a theological struggle for a different understanding of God and sexuality, which has much to do with the way people organize themselves as society. Idolatry was homologized to dissident sexual behaviors. Therefore,

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<sup>121</sup> Althaus-Reid, *Indecent Theology*, 172.

<sup>122</sup> Althaus-Reid, *Indecent Theology*, 171-172.

what we can now call a sexual dissident was in reality a discontent with Christianity, and a legal discontent against the state.<sup>123</sup>

Boldly drawing connections among heteronormativity, sexism, and colonization, Althaus-Reid can boldly claim that “[h]eterosexuality is the ideology of patriachalism, and also its true God, and Christianity reinforced this alliance of heterosexually constructed gods in continents such as Latin America...Heterosexuality becomes divinized, and that which cannot be discussed or retheorized, because it has God-like qualities: like capital in Marx’s criticism, it has become an abstract concept, a given, a metanarrative which claims to be natural and not created...Our souls are in reality *colonial souls*, born of that religious violence based on exclusion, and exclusion seems to have its origin in sexual violence or the primary conceptualization of the world according to sexual differences.”<sup>124</sup>

Under the examination of Althaus-Reid, T-Theology is unmasked as articulating the demands of a heteronormative—and therefore idolatrous—God. Consequently, calls for “inclusion,” within a theological system that depends on such heteronormative ideological configurations (namely, but not exclusively, monogamy and an understanding of social life configured according to the specifications of the heteronormative societal fantasy) are suspect for Althaus-Reid as well as for other queer theologians. Althaus-Reid even sees this heteronormative ideology infecting Latin American *liberation* theology, and her twofold critique of liberation theology—first, that it does not take critical notice of sexuality, and that, when it does, it

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<sup>123</sup> Marcella Althaus-Reid, “Queer I Stand,” in *The Sexual Theologian: Essays on Sex, God, and Politics*, ed., Marcella Althaus-Reid and Lisa Isherwood (New York: T&T Clark, 2004), 99-109, at 101-102.

<sup>124</sup> Althaus-Reid, *Indecent Theology*, 173.

conceives of sexuality in ways that continue to disempower women and uphold heteronormativity—causes her to reject liberation theology’s calls for equality.<sup>125</sup> “There are essentialist sexual assumptions about womanhood and manhood which are seldom addressed and which come from *Machista* ideology.”<sup>126</sup> Reflecting the queer natural law critique given of feminist natural law, Althaus Reid observes among the liberation theologies of her day that “[Gender] roles may be discussed, sexuality, never.”<sup>127</sup> Once again, thinking at the intersection of capitalism, heteronormativity, and theology—but drawing explicit attention to sexism—Althaus Reid offers the following diagnosis:

[E]quality presupposes a heterosexual model which even dares to claim that heterosexuality is a homogenous category with a constructed subject with whom women must be equal, which is not far from the old developmentalist theories which encouraged countries from the periphery to aim for the progress of the centre. In other words, this is a model of welfare as equality with the hegemonic powers which have constructed themselves, precisely, by a logic of hierarchies and inequality...Equality is part of the discourse of essential decency.<sup>128</sup>

To put Althaus-Reid’s ideas in slightly different form: the reason why calls for equality and inclusion within liberationist discourses are problematic is because they leave unexamined the justice of the systems into which equality and inclusion is being sought. What Althaus-Reid offers here is reminiscent of Michael Warner’s

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<sup>125</sup> Althaus-Reid criticizes Gustavo Gutiérrez on these grounds. See *Indecent Theology*, 133-134.

<sup>126</sup> Althaus-Reid, *Indecent Theology*, 179.

<sup>127</sup> Althaus-Reid, *Indecent Theology*, 179.

<sup>128</sup> Althaus-Reid, *Indecent Theology*, 179.

intervention: equality is not really a call of justice “for all,” but only for “the some,” and therefore does not constitute real justice.

Against T-Theologies, against decent discourses, against systematic theologies that traffic in heterosexist ideology, Althaus-Reid recommends that theologians articulate *indecent* theologies, theologies that challenge the status quo with human experience our binary-busting, messy yet passionate sexual lives and loves which are inadequately conceptualized with heterosexist theologies and the heteronormative societal fantasy that supports its normalization. “Binary thought can only be challenged in theology and capitalism alike by people whose bodies are living parables of transgression. From pattern of love and friendship between lesbians, gays, bisexuals, and transsexuals, from stories of adultery and fetishism, we may be able to learn something about difference.”<sup>129</sup>

Now, one may be surprised to find ‘adultery’ on this list, especially coming from a queer theologian speaking out of Christian convictions—but this example provides an important case in understanding what Althaus-Reid’s calls for an indecent theology are about. In this instance, the theological significance she draws from the reality of adultery is that human sexual desire and theologies of loving relationship may not be adequately conceptualized according to monogamous specifications. Speaking of those guilty of “adultery,” Althaus-Reid writes, “They are not faulty people, but people for whom the spectrum of human relationships as it is presented is not satisfactory...Heterosexuals may find it harder to come out with their truth concerning the telling of their stories, because heterosexuality assumes a

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<sup>129</sup> Althaus-Reid, *Indecent Theology*, 179-180.

hegemonic state of presence which denies that heterosexuality can be anything other than the standard description found in the textbooks.” She continues,

The heterosexual marriage has been advertised as a relationship between a woman and a man for life. It is the unique case of a legal contract which discourages intimate friendships for life, while trying to see in the controlled setting of marriage a foundation for goodness in society. However, adultery often seems to be the desire to escape from the control and predictability of life, from the non-creative confinements of particular domestic and public ideologies...Adultery is therefore chaotic, not because it necessarily produces chaos, but because it uncovers it in the supposed predictability of the ideal model of heterosexual marriage.”<sup>130</sup>

For Althaus-Reid, providing visibility to the reality of human relationships that take place outside of the marriage bond serves as an indecent theological critique of a Theological account of sexuality. Adultery is the therefore the flashpoint which occasions theological reconceptualization. It is our body’s visceral escape from theologies which constrain it. Our bodies, in other words, break the sixth commandment in favor of a higher law: “Adultery may not be a divine commandment,” Althaus-Reid writes with great compassion, “but, in a real sense, intimacy with others has a divine nature, and is by far the more divine commandment.”<sup>131</sup>

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<sup>130</sup> Althaus-Reid, *Indecent Theology*, 142-143.

<sup>131</sup> Althaus-Reid, *Indecent Theology*, 143. To be clear, this is an indecent theological critique of adultery, not of all committed relationships. The problem of adultery, as Althaus-Reid observes, is secrecy and lack of communication (143-144). The indecent theological critique of adultery, then, is oriented towards an overall ethic of truth-telling about our relationships. The possibility that Althaus-Reid’s critique therefore opens is the possibility of developing theologies that will allow for

Accordingly, Althaus-Reid sees the human body and specifically human sexual experience as a site of important theological insight. Althaus-Reid writes, “Sexual and gender issues are not addenda in the minutes of a meeting, but key epistemological and organization elements which, if ignored, never allow us to think further and differently.”<sup>132</sup> It is therefore here in a queer theological liberation theology where queer theologians continue to look for the movement of the Spirit in our midst. Sexual stories are the building block of indecent, and therefore queer, theology. Like other praxis-based theologies, indecent theologies are theologies ‘from below.’ “Sexual theologies are the opposite of idealistic processes,” Althaus-Reid writes. “They are materialist theologies which have their starting points in people’s actions...It is from human sexuality that theology starts to search and understand the sacred, not vice-versa. Indecent theologies are sexual theologies without pages cut from the books of our sexual experiences.”<sup>133</sup>

When these sexual stories are told, and when indecent theologies are garnered after reflection on those stories, new theological understandings of God and of sexuality result. Against T-Theologies which imagine Christ as “dressed theologically as a heterosexually oriented (celibate) man” with “erased genitalia” and “minus an erotic body,”<sup>134</sup> indecent theologies which take critical notice of Christ’s “strong attachment to deviant people”<sup>135</sup> allows for queer theologian to proclaim

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truth-telling in all relationships—monogamous or polyamorous—that circumvent the desire for secrecy that comes from inadequate theologies of human sexual relating.

<sup>132</sup> Althaus-Reid, *Indecent Theology*, 132.

<sup>133</sup> Althaus-Reid, *Indecent Theology*, 146.

<sup>134</sup> Althaus-Reid, *Indecent Theology*, 114.

<sup>135</sup> Althaus-Reid, *Indecent Theology*, 113.

God, the Faggot; God, the Drag Queen; God, the Lesbian; God, the heterosexual woman who does not accept the constructions of ideal heterosexuality; God, the ambivalent, not easily classified sexuality...To say 'God the Faggot' is to claim not only a sexuality which has been marginalized and ridiculed, but a different epistemology and also a challenge to positively appropriate a word which has been used with contempt to humiliate people.<sup>136</sup>

Althaus-Reid's theological interventions are not only, properly speaking, theological or Christological, they are also ethical. As expected from a praxis-based ethical framework, Althaus-Reid's ethical vision takes its cue from the popular 'see-judge-act' model of reasoning within Catholic Social Teaching.<sup>137</sup> As she outlines it, the first step is to name one's sexual experiences, preferably in a community where one can do so honestly and openly. This can be incredibly difficult. "Learning to see, as a methodological step," Althaus-Reid writes, "is in itself a sexual challenge for Christianity. Theology, through influential systems including liturgies, hymns, and prayers, powerfully maintains the sexual metaphors of heterosexuality in their conditions of invisibility and pervasiveness. This invisibility is what stops us from questioning."<sup>138</sup>

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<sup>136</sup> Althaus-Reid, *Indecent Theology*, 95.

<sup>137</sup> This paradigm comes from John XXIII's formula for social action. "There are three stages which should normally be followed in the reduction of social principles into practice. First, one reviews the concrete situation; secondly, one forms a judgment on it in the light of these same principles; thirdly, one decides what in the circumstances can and should be done to implement these principles. These are the three stages that are usually expressed in the three terms: look, judge, act" (*Mater et Magistra*, no. 236).

<sup>138</sup> Althaus-Reid, *Indecent Theology*, 126-127, quote at 127.



The second step is discernment—that is, “critical appraisal of the situation and strategic planning for further action on the problems which afflict the community.”<sup>139</sup> It is at this point where Althaus-Reid recommends bringing in Scripture and applying as hermeneutical lenses “the radical principles in the Bible which subsume the rest: justice, peace, and love/solidarity.”<sup>140</sup> Such reflection is meant to invoke not only new theological understandings, but also new political understandings as well, because, as Althaus-Reid says, “sexuality does not stay at home, or in a friend’s bedroom, but permeates our economic, political, and societal life.”<sup>141</sup> The result of such intersectional thinking is nothing less than the discovery of what Althaus-Reid calls “Christ’s resurrected presence,” witnessed “as a craving, an enthusiastic passion for life and justice, in the diversity and unfenced identity which is searching for that land called *Basileia* by European theologians and ‘the project of liberation of the Kingdom’ by Latin Americans, in which we are all called to be coworkers.”<sup>142</sup> It leads to the recovery of “Jesus Messiah,” the Jesus “in whom we may find the particulars of our life concretized and not transcendentalized, divinely sensualized, socially sexualized, and always for our time and the precise present moment...As we learn to indecent this process, multiple bodies of Jesus Messiah appear, and the richness of his contradictions help us to continue a journey outside the realm of heterosexual ideology.”<sup>143</sup> It leads to new theological—and therefore, to new political, economic, and societal—insights that, in their wake,

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<sup>139</sup> Althaus-Reid, *Indecent Theology*, 129.

<sup>140</sup> Althaus-Reid, *Indecent Theology*, 130.

<sup>141</sup> Althaus-Reid, *Indecent Theology*, 131.

<sup>142</sup> Althaus-Reid, *Indecent Theology*, 123.

<sup>143</sup> Althaus-Reid, *Indecent Theology*, 163.

reconfigure our ethical world. By dissolving the binary logic that undergirds symbolic heteronormativity, Althaus-Reid observes that we can move past ‘toleration’ as an ethical ideal for living in community with persons whom we find to be different, and, instead, embrace an ideal of “internal differentiation,”<sup>144</sup> where notions of inside and outside give way to a notion of substantive, celebrated difference. Centering these reflections around the ideal of the Bi/Christ or the ‘Larger Christ’—the Christ who moves fluidly, dissolving binary categories—Althaus-Reid writes, “The Bi/Christ takes it all into his life: economic deprivation and social marginalization, exacerbated by a kind of heterosexual excommunication from God with which people who happen to be sexual political dissenters are confronted. Excommunicated from love, not only the divine, but the love-solidarity of their communities and neighbors, this larger Christ goes beyond ‘either this or that’, because there are so many sexual identities to which we do not have names to give.”<sup>145</sup>

The final step, of course, is to take action, to live in to this ethical vision of internal differentiation sponsored through reflection on sexual stories filtered through the radical biblical values of justice, peace, and love/solidarity. It is the step, in other words, of liberating others. “This is the bi/liberationist standpoint: the oppressors are engulfed by their own oppression too...Only very hypocritical people may claim to live according to the rules, *contra natura*, of heterosexual politics and theology. Deep in our hearts, we are all ‘Queer Nation’ needing to come out and

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<sup>144</sup> Althaus-Reid, *Indecent Theology*, 131.

<sup>145</sup> Althaus-Reid, *Indecent Theology*, 116.

denounce that human beings live and love according to reality, and not to Christian indices on morals.”<sup>146</sup>

I’ve made the case here that Althaus-Reid’s theology offers an ethical vision along with principles by which to help refine that vision. It is, of course, not a full ethic in any systematic sense. In any case, setting up such a system is not what Althaus-Reid wants to do. Describing the task of queer theology, Althaus-Reid explains, “It is precisely that sense of preoccupation with the production of new identities and the role of theological imagination, more than of continuation, which is at the root of a queering theology. What we need is to remake our past, challenging the notion of established links between past and present, or between origins and identity. For queer, indecent theologies are theologies of disruption which do not look for legitimization in the past or for a memory of a harmonious trajectory.”<sup>147</sup> Elsewhere she will say that queer theology dreams of an “aleatory theology,” which works from “contingency and encounters,” rather than from a teleological theology, “which implies idealism.”<sup>148</sup> Queer theology, in other words, is not about building new systematic theologies as much as it is about interrogating them, and—if necessary—toppling them in the name of justice.

As I read Althaus-Reid, then, there is no way to downplay the role that transgression of unlivable norms structured according to heteronormativity plays within her thought. But such an acknowledgment—as in the case with queer theory—does not make her project antinormative. Instead, as we saw above,

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<sup>146</sup> Althaus-Reid, *Indecent Theology*, 120.

<sup>147</sup> Althaus-Reid, “Queer I Stand,” 109.

<sup>148</sup> Althaus-Reid, *Indecent Theology*, 29.

Althaus-Reid's system constitutes one that aspires for an open normativity. Indeed, without such an acknowledgement, her notion of bi/liberation theology, her bi/Christology, as well as her injunction to see/judge/act becomes meaningless insofar as there are no grounds for judging how and why the worldview she paints is desirable. But if the world accessed by the bi/Christ is better—and there is no doubt in Althaus-Reid's theology that it is—then the possibility of such a judgment once again presumes some account of human flourishing and criteria by which it can be accessed.

This is, once again, where a queer natural law can enter into conversation, building out this normative axis within queer theology. In fact, the case for placing an ethical framework like the natural law—which takes, as its starting point, the inclinations of the human person as a *prima facie* guide to the good—in dialogue with a queer theology like that of Althaus-Reid—which begins with a praxis of telling sexual stories as a guide to developing theologies that credibly relate to human experience—is strong. The case becomes even stronger when one recognizes that the object of Althaus-Reid's critique is not theology as such, but T-Theology, a theology in “permanent search of coherence,”<sup>149</sup> a theology that is closed off to the possibility of indecency, to the insurgence of new sexual stories that are able, in its wake, to reconfigure our understanding not only of sexuality, but of the divine as well. What Althaus-Reid's queer theology works to do is always disrupt our theologizing—which, to be sure, will, as it seeks to make conceptual sense of sexual stories, begin to think categorically and to think therefore in an “idealist”

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<sup>149</sup> Althaus-Reid, *Indecent Theology*, 24.

mode. But if we stay as close to the experiences of those whose voices are marginalized as possible, we will be arriving closer to queer theology's goal. "This is what Juan Luis Segundo was referring to when in the 1940's he sought to find a theological reflection 'which would not leave us on our own at the time of having a meal'."<sup>150</sup> In writing these words, Althaus-Reid reflects on the inadequacy of theological constructs to make a material difference in the lives of the poor. Such a difference, Althaus-Reid believes, can be made up for by queer liberation theology striving to do theology without underwear, striving to do theology indecently.

We could further extend this now: a theological reflection that does not separate prayer times from meal times cannot separate prayer times from those of intimacy; from times of going to bed with someone. That is the point for a theology without underwear, made by people whose sexual misfortunes, personal or political, need to be reflected upon as part of our theological praxis.<sup>151</sup>

### **1.3 TOWARDS A THEOLOGY OF QUEER NATURAL LAW**

At this point, we have addressed the points of contact made between the current queer natural law project and its progenitors: the natural law tradition, queer theory, and queer theology. From the natural law tradition, queer natural law appropriates its teleological, eudaimonistic, and realist elements, and—specifically

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<sup>150</sup> Althaus-Reid, *Indecent Theology*, 28.

<sup>151</sup> Althaus-Reid, *Indecent Theology*, 28.

form the feminist natural law tradition, it appropriates the use of critical theory in coming to interpret the sources for Christian ethics: Scripture, tradition, philosophical/scientific discourse, and human experience. From queer theory, queer natural law draws its own critical axis, the queer critique of heteronormativity understood not only as compulsory heterosexuality, but also as structural and symbolic heteronormativity, respectively. It also seeks to build out, from within queer theory, queer theory's own normative axis—to build out what queer thinker Alexis Shotwell calls “open normativities.” And from queer theory, queer natural law endeavors to speak passionately by centering the voices and lives of sex and gender minorities, recalling, in the manner lifted up by Marcella Althaus-Reid, that the project of justice begins with, and constantly returns to, the sharing of sexual stories in the production of a theology that competes with its inherent own ideological, idealist tendencies. As is the case with queer theory and queer natural law, queer natural seeks to work within the normative axis that lies within queer theology.

In the pages that follow, we will see how far a queer natural law can take us in understanding the phenomenon of human sexuality. But, to conclude this chapter here, it seems appropriate to say a few words about what it means to view queer natural law specifically as a *theology*, that is as a way of speaking about the reality of God in our midst. Here I close with four theological principles of the queer natural law: apophaticism, diversity, non-exclusivity, and incarnation.

After describing the nature of sacred doctrine in his *Summa Theologiae*, Thomas turns to the question of who God is and about what we can say we know about God. The answer, as he famously receives it through Dionysius, is that we

cannot say what God is; only what God is not.<sup>152</sup> However, Thomas does believe that we learn about God through God's creation, which is to say through God's effects with respect to which God is the cause,<sup>153</sup> and—of course, through divine revelation.<sup>154</sup> The natural law provides us with insight into how we come to learn about God through God's effects, since it is knowledge of God's will (and therefore, of God) to which we have access by means of reflection on human nature broadly considered. What follows from this—almost trivially—is that we do not have any unmediated access to knowledge of God or about what God is like, and it is this chasm, this lack of direct knowledge, that leads to the possibility of idolatry, of false conceptions of God. In a sense, Thomas observes, idolatry is the “most grievous sin,” since “the greatest of all [sins] seems to be for man to give God's honor to a creature, since so far as he is concerned, he sets up another God in the world, and lessens the divine sovereignty.”<sup>155</sup>

A queer natural law, insofar as it descends from queer theology and liberation theologies more broadly, is especially attuned to the reality of the existence of the heteronormative God, which is the idol with respect to which a queer natural law contends in theology. And though it seeks to speak “about God” insofar as it seeks to provide an understanding of human flourishing, queer natural law is also aware that speaking *too much, too quickly* can result in queer natural law projecting an idea of a God marked by prejudices heretofore unknown. It is the risk of trying to build theologies and normativities out of sexual stories: it may result in

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<sup>152</sup> Aquinas, *ST* I.3.pream.

<sup>153</sup> Aquinas, *ST* 2.1.

<sup>154</sup> Aquinas, *ST* I 12.13.

<sup>155</sup> Aquinas, *ST* II-II 94.3.

new problematic ideological formations, reflecting the agendas of various idols. For this reason, queer natural law attempts to bear in mind the lessons of the apophatic tradition: that we can say with much more authority what God is not, rather than what God is. In an ethical mode, a queer natural law appropriates this insight by upholding that ultimately we can say much more authoritatively what human flourishing is *not* than we can say about what it is in a positive, closed sense. Queer natural law's normativity is, therefore, open, but each of its speech acts seek to be appropriately chastened by humility.

This is a lesson that a queer natural law can appropriate from its queer theory forebears, especially through the poststructuralist meditations of Jacques Derrida, whose critiques of metaphysics includes one in which God's transcendence is challenged if there is a concept of 'God' that human beings can comprehend fully.<sup>156</sup> Such a 'God' would be an idol insofar as God fully comprehensible to a (necessarily finite) creature cannot, by definition, be infinite. This idolatrous God would, instead, be an onto-theological God, a God that ultimately reflects human conceptions as well as human prejudices about God.<sup>157</sup> Doctrines of God in liberation theologies share in this particular trajectory of thought. Consider, for

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<sup>156</sup> See, for example, Jacques Derrida, "How to Avoid Speaking: Denials" in *Derrida and Negative Theology*, ed., Harold G. Coward and Toby Foshay (Albany, NY: State University of New York Press, 1992), 73-142. See also the volume *God, the Gift, and Postmodernism*, ed., John D. Caputo and Michael J. Scanlon (Bloomington, IN: University of Indiana Press, 1999), esp. the exchange between Jacques Derrida and his former student John-Luc Marion in "On the Gift: A Discussion Between Jacques Derrida and Jean-Luc Marion," 54-78.

<sup>157</sup> One thinker who attempts to think God beyond onto-theology is Jean-Luc Marion in his *God Without Being*, 2<sup>nd</sup> ed., trans. Thomas A. Carlson (Chicago: University of Chicago Press, 2012). The problem of onto-theology has been particularly generative for scholars of Karl Barth. As many know, Barth's theology famously challenged any form of natural theology as idolatrous. See his famous debate with Emil Brunner on this question in Emil Brunner and Karl Barth, *Natural Theology*, trans., Peter Fraenkel (Eugene, OR: Wipf and Stock, 2002). For an excellent study of Barth and Derrida, see Graham Ward, *Barth, Derrida, and the Language of Theology* (New York: Cambridge, 1995).



example, the queer theology of Marcella Althaus-Reid. For if the problem with the onto-theological God is that it is necessarily an idol—something that, in Marion’s beautiful phrase “acts as a mirror that reflects the gaze’s image” and “not as a portrait,”<sup>158</sup> of God—then the goal after making such a recognition will be iconoclasm. This is, in a phrase, what Althaus-Reid’s doctrine of God espouses: to the extent that doctrines of God or other theologies implicate heteronormativity, it is to that extent that queer theory adopts the goal of “liberating God from God’s current hostage status to Heterosexual Theology, thus challenging us to a theology from loving relationships at the margins.”<sup>159</sup> This liberation of God is, in queer theology, the squashing of the icon of the heterosexist God.

Consider, also, the work of groundbreaking theologian James Cone who in his classic *A Black Theology of Liberation* dared to say that God is Black and that, by contrast, the God that white people served—a god that permits racism and segregation—is an idol. “Oppressed and oppressors cannot possibly mean the same thing when they speak of God,” Cone writes.<sup>160</sup> Instead, “The God of black liberation will not be confused with a bloodthirsty white idol. Black theology must show that the black God has nothing to do with the God worshipped in white churches whose primary purpose is to sanctify the racism of whites and to daub the wounds of blacks.”<sup>161</sup> Just as in queer theology, so in black theology: God must be liberated from toxic constructs in order to liberate others.

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<sup>158</sup> Marion, *God Without Being*, 12.

<sup>159</sup> Marcella Althaus-Reid, *The Queer God* (New York: Routledge, 2003), 34.

<sup>160</sup> James H. Cone, *A Black Theology of Liberation*, 40<sup>th</sup> anniversary ed. (Maryknoll, NY: Orbis Press, 2012), 61.

<sup>161</sup> Cone, *A Black Theology of Liberation*, 65.

This apophatic awareness continues even in a queer natural law's process of deriving norms by which to conceptualize human flourishing. For I see queer natural law as ethically oriented toward norm production in the mode of a 'negative optimism,' in which optimism for deriving a normative ideal of human flourishing is always chastened by the willingness not only to "negate" the norms we install—on grounds that those norms, in this life, very likely will unjustly oppress someone—but to also "negate the negation," which is to understand that, though the norm may be harmful (and is therefore negated) it is nevertheless oriented towards an ideal of flourishing for which the exact normative specification has not yet arrived. The exact understanding of the norm is then, in a sense, beyond our words, but nevertheless not beyond our intention.

This sort of understanding of norm-production is therefore heavily indebted to the apophatic strand in Christian thinking which is commonly applied within doctrines of God with similar points of emphasis. Corresponding to the initial articulation of a norm, an apophatic doctrine of God begins with the assertion of a positive trait for God (e.g., that God is good). Then, corresponding to the first negation of the norm, an apophatic doctrine of God negates that understanding of God on grounds that a human understanding of a trait is infinitely transcended by God so much so that the human understanding cannot be regarded as true (so, in the first-negation, God is *not* good because human understandings of goodness cannot possible approximate God's infinite self-understanding of goodness). Last, corresponding to the second-negation or to the negation-of-the-negation, an apophatic doctrine of God recognizes that the first negation must be negated insofar

as it, too, is a false description of God for the same reason that the initial statement was: it originates from a finite frame of reference to understand an infinite reality. (The result in our example, then, is to say that God is not not-good). Just as in the case of norm production, we are not left simply with a positive statement (insofar as the negative of a negative yields a semantic positive) as much as we are left with a notion of intellectual inadequacy structured by a fundamental desire for a truth that presently eludes our conceptual grasp. Explaining this movement, Denys Turner brilliantly writes, “[N]egation operates in two roles or at two mutually interacting levels: at a first-order level of experience and at a second-order level of the critique of experience...But what this first-order complex of theological discourse leads ultimately to is that negation which transcends the opposition of affirmation and negation, the negation *of* negation itself, so that, in this level of second-order ‘negation of the negation’ we negate but no longer know what our negations do...Consequently, in the highest apophatic negations, we know only what affirmations we deny; but we know nothing of what our denials affirm.”<sup>162</sup>

So, then, when a queer natural law does speak, what are some of the principles by which it hopes to be guided away from idolatry to the God that is the object of its theoretical longing? The first is the principle of diversity, which specifies that, all other things being equal, a queer natural law should decide in favor of multiple, diverse conceptions of human flourishing within an overall understanding of a teleological and eudaimonistic conception of morality aimed at happiness in God. This principle descends from two convictions. In the first place, it

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<sup>162</sup> Denys Turner, *The Darkness of God: Negativity in Christian Mysticism* (New York: Cambridge, 1995), 270-271. Once again ‘nothing’ is not literally ‘nothing,’ but the more complex ‘not-nothing.’

descends from a theology of creation that takes critical notice of the fact that the way God works to show God's love is through creation—indeed, through a wide-ranging and diverse creation. “Furthermore the entire universe, with all its parts, is ordained towards God as its end, inasmuch as it imitates, as it were, and shows forth the Divine goodness, to the glory of God.”<sup>163</sup> Diversity, in other words, is God's gift, and, absent some grave reason for discounting a particular way of life in pursuit of the good as immoral, the diversity in the pursuit should be maintained. Proximately to a queer natural law, such a principle would allow for multiple legitimate sexual practices and gender identities. But, most importantly, such a principle places the burden of proof on the queer natural law to articulate why a given sexual practice or identity is not permissible.

The second conviction comes from within the natural law tradition itself. As the medieval natural lawyers understood it, the natural law was not supposed to be mechanism for discounting different ways of life observed by other nations as much as it was to find ways of showing how disparate ways of life all realize the fundamental inclinations of natural law differently. The natural law, in other words, was a tool to preserve diversity among human institutions, especially with respect to the laws of different states.<sup>164</sup>

The second principle is that of non-exclusivity. This is how a queer natural law represents its impulse for social justice. We have seen in this chapter critiques of inclusivity both on queer theoretical grounds as well as on queer theological grounds, but there is nevertheless an ideal of unity that operates beneath it. As we

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<sup>163</sup> Aquinas, *ST I* 65.2.

<sup>164</sup> Porter, *Nature as Reason*, 267.

saw in Warner's case, it was called the ideal of 'substantive justice for all'; whereas for Marcella Althaus-Reid, it was the ideal of 'internal differentiation.' In a queer natural law, this impulse—rather than being called the impulse towards inclusivity—can rather be seen as the impulse towards non-exclusivity. In naming the impulse this way, a queer natural law highlights, first, the desire to have a goal of inclusion without also centering a particular identity as the basis upon which inclusion is granted. Indeed, avoiding a situation like this is exactly what Warner and Althaus-Reid have in mind when they criticize paradigms (like marriage equality) which are premised on conformity to a heteronormative ideal in order to confer equal recognition. But, second, being guided by the impulse of non-exclusion allows for a conception of justice on a queer natural law framework, where access to goods are not restricted on the basis of identity, but instead follow from an equal regard for another dignity as a human being.

Lastly, a queer natural law embraces the theological principle of 'incarnation,' which Marcella Althaus-Reid and Lisa Isherwood describe as the starting point of queer theology as an enterprise.<sup>165</sup> Incarnation as a theological principle reflects queer natural law's commitment to seeing embodiment as an important locus for understanding the mystery of God accessible through creation. "God dwells in flesh and when this happens all our myopic earth-bound ideas are subject to change; the dynamic life-force which is the divine erupts in diversity and the energy of it will not be inhibited by laws and statutes...It does not shut us off from the world; it is the world drawing us into more of ourselves as we spiral in the

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<sup>165</sup> Lisa Isherwood and Marcella Althaus-Reid, "Introduction: Queering Theology; Thinking Theology and Queer Theory," in *The Sexual Theologian*, 1-15, at 7.

human/divine dance.”<sup>166</sup> Indeed, queer theologians, they write, “are perhaps afraid but nevertheless courageous enough to plunge into flesh in its unrefined fullness in order to embrace and be embraced by the divine. Bodies tell very complex and challenging stories, and these now become the stuff of the salvific tale.”<sup>167</sup> A queer natural law seeks to embody this courage, to be willing to see God wherever God is, especially among those whose lives are abjected and rendered invisible by our theological, economic, and political systems. A queer natural law must not be afraid to take the risk of hospitality towards the unknown; it must concern itself not only with going to margins, but also with being willing to be present there and take up residence, just as God did in Christ in the first century. It is to make of queer natural law a praxis-based ethics that strives to remain true to the material realities of bodies in the real world, to stave off unnecessary abstraction in favor of the messy communion of real life, real bodies, and real pleasures. “Queer theologians wish to take seriously the stories we tell ourselves and each other,” Isherwood and Althaus-Reid write. “Queer theology challenges the boundaries and wishes to propel us into a much wider paradise, one no longer walled and narrow like that in Genesis. Incarnation will not be thus confined.”<sup>168</sup>

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<sup>166</sup> Isherwood and Althaus-Reid, “Introduction,” 7.

<sup>167</sup> Isherwood and Althaus-Reid, “Introduction,” 7.

<sup>168</sup> Isherwood and Althaus-Reid, “Introduction,” 7.

## 2.0 HUMAN FLOURISHING IN A QUEER KEY

Embarking upon a queer natural law project that seeks to generate norms about human sexuality presupposes, insofar as it is a natural law account, an account of human flourishing, and—in particular—a *teleological* account of human flourishing. Such an account maintains, in essence, that it is impossible to determine what will allow a human being to thrive in a moral sense unless and until one also gets an idea of what a human being is *supposed to do* and of what a human being is *supposed to be*. It is, in other words, an account that maintains an inseparability between a descriptive account of a humanity and a functional, normative, account of that same thing. But it is exactly in offering such an account that controversy arises.

In this chapter, we will look at objections levied at a teleological concept of human flourishing from a postmodern point of view as well as from a queer point of view. As we will see, the latter point of view is so closely derived from the former that I see the substance of the objection as the ‘postmodern objection,’ that, in a queer key, is subsequently given a ‘queer inflection.’ The core of the postmodern objection is that all concepts that are understood to apply universally are ultimately weapons of domination used by the powerful in order to enforce conformity by those who are oppressed. The queer inflection to such an objection is that, *in addition* to seeing power as something that is used by the powerful to oppress those

with less power, power is more fundamentally a discursive reality which all persons—from the most powerful to the least powerful—are implicated in maintaining. Both versions of the objection see the notion of *truth* as the vector of power. In the postmodern objection to human flourishing, the truth about “what it means to be human” becomes a function of what the most powerful think it is—which is a notion that had its modern genesis in Nietzsche’s philosophical notion of the will to power.<sup>1</sup> And in its queer inflection, truths about human flourishing or about what it means to be human—whether we regard its operations as oppressive or not—is the price we are willing to pay in order to give our concepts normative force. As these truths are more widely accepted—both by the powerful and by those who aren’t—they become more normative. The chief architect of this latter formulation—which he encapsulated as the ‘demand for truth’<sup>2</sup>— is Michel Foucault, on whose work Nietzsche left an indelible impression.

The argument of this chapter is that it is possible to develop a normative account of human flourishing that is adequate to meet the objections put to it by postmodern and by queer thinkers. It proceeds in three parts. First, after presenting both perspectives in a bit more detail—using, as my example, human rights discourse—I argue that the postmodern objection as well as its queer inflection fails if the postmodern objection is taken to entail a moral antirealism. The argument will be that such an entailment will be illogical, impractical, or both insofar as maintaining an anti-realism about truth is a nonstarter in ethical argument, and is

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<sup>1</sup> Friedrich Nietzsche, *On the Genealogy of Morality*, trans. Carol Diethe (New York: Cambridge University Press, 1997), 2.18.

<sup>2</sup> Michel Foucault, “Truth and Power,” in Michel Foucault, *The Foucault Reader*, ed., Paul Rabinow (New York: Vintage Books, 2010), 51-75, at 73.



moreover functionally disproven in actual cross-cultural ethical deliberation. A normative ideal of the human or of human flourishing, in other words, is always operative, and so it is upon this foundation that we must start. The philosophical task is to make this ideal as explicit as possible; otherwise, any ethical argument is bound to be susceptible to objections on grounds of circularity. For their part, natural law projects provide an anthropological account as the basis for its ethical reasoning in order to avoid just this type of objection.

The next part of the argument, then, is to derive a normative account of the human that would serve as a basis for understanding a queer natural law account of sexuality. In order to maintain the hybridity of queer theory and the natural law tradition that is required in a queer natural law project, I transform the critiques levied at a normative concept of human flourishing by postmodern and queer thinkers into three specific criteria for granting normative force to a concept alleged to reflect human nature in this normative sense. Rather than dismissing the postmodern and queer critiques of the concept of human nature, then, these critiques are integrated into the queer natural law framework itself.

In the last place, I make the argument that a Thomistic account of cognition and epistemology can serve as a basis for talking about human flourishing within a queer natural law project. Its chief asset, as I will argue, will be Thomas's emphasis upon an epistemic fallibilism in the construction of knowledge broadly understood.

## 2.1 THE POSTMODERN CRITIQUE OF THE CONCEPT OF HUMAN FLOURISHING

Postmodernism as a philosophical concept was first articulated by Jean-François Lyotard in his 1979 book *The Postmodern Condition: A Report on Knowledge*, in which he observed that a loss of meaning in an objective sense followed from the separation of philosophical discourses—which sought to generate metanarratives that drew together various aspects of human existence into a vision of the “whole”—from scientific discourses, which sought to “explain” phenomena without recourse to metanarrative.<sup>3</sup> To contextualize Lyotard’s formulation for understanding the significance of a postmodern worldview upon a concept of human flourishing, we will look at two fields which grew out of a postmodern impulse: the first is poststructuralism, and the other is postcolonial studies.

As a field, poststructuralism was the translation of the postmodern ethos into the philosophical study of linguistics, specifically of structuralism. The chief architect of this translation is arguably Jacques Derrida, who engaged the then-common structuralist conception about reference and meaning descending from Ferdinand de Saussure. In Saussure’s philosophy, Saussure held that every “sign” (for example, a symbol) is composed of both a “signifier” (a sound or a mental projection of a word) and a “signified” (a concept that is referenced by the sign) and that, furthermore, all signs ultimately gain intelligibility within the whole context of

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<sup>3</sup> Gary Aylesworth, “Postmodernism,” in *Stanford Encyclopedia of Philosophy* (Spring 2015 edition), ed., Edward N. Zalta, <https://plato.stanford.edu/entries/postmodernism/#2>.

a given linguistic community existing in time.<sup>4</sup> Saussure believed his theory was an improvement upon an ‘nomenclaturalism’ which maintained that meaning was prior to language in the sense of having metaphysical independence from any given linguistic community’s language system,<sup>5</sup> but Derrida’s famous challenge was to maintain that, in fact, there was no substantive difference between Saussure’s system and the traditional one insofar as both presume the “presence” of meaning in a linguistic system.<sup>6</sup> The concept Derrida used to break this association between meaning and presence was his notion of *différance*, an intentional misspelling meant to denote two things at once: first, that there is no original meaning to a given word—that instead, such an original meaning is always ‘deferred’; and second, that any time a word is used, the meaning changes—it “differs,” even if ever so slightly, from speaker to speaker.<sup>7</sup> There is, therefore, ultimately no metaphysical “signified” from which language draws its meaning. There is ultimately, for Derrida, only what he would call the ‘trace’ of such an ultimate meaning.

Poststructuralism would prove to be generative for postcolonial studies, which, as a field, would bring poststructuralism both into cultural studies as well as into political science. Amidst mid-twentieth century nationalist movements for independence among then-colonized nations arose a political consciousness of their oppression by colonizing nations. This consciousness was theorized using the critical axis of imperialism understood within a framework of white supremacy, and

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<sup>4</sup> John E. Joseph, “The Linguistic Sign,” in *Cambridge Companion to Saussure*, ed., Carol Sanders (New York: Cambridge University Press, 2006), 59-75.

<sup>5</sup> Joseph, “The Linguistic Sign,” 63.

<sup>6</sup> Jacques Derrida, *Of Grammatology*, trans. Gayatri Chakravorty Spivak (Baltimore, MD: Johns Hopkins University Press, 1997), 10-18.

<sup>7</sup> Derrida, *Of Grammatology*, 93; 142-143.

so this period brought together both national anticolonialist movements as well as national antiracist movements (e.g., the civil rights movement in the US and apartheid in South Africa).<sup>8</sup> Critical race scholar Howard Winant considers this period of time to be the “The Racial Break,” and though he considers this period to be “the most significant challenge to white supremacy that had been mounted since the rise of Europe a half-millennium earlier,” these antiracist and anticolonial movements did not dismantle, but instead “only somewhat weaken[ed], the tenacious traditions of white racist world domination.”<sup>9</sup> Indeed, even after movements for independence and the passing of various civil rights laws, the political economy of the world continues to remain conspicuously stratified by race. Once again, Howard Winant—this time, speaking of the actions of formerly colonizing nations in the Global North:

So, too the racial legacies of the imperial epoch continued.[...] Rather than send their troops to dictate policy, break strikes, or enforce the superexploitation of labor, they use financial instruments: the threat to withhold credit if strikes are not broken or perhaps if education and public health budgets are not cut. Using intermediaries like the IMF, they control commerce, finance, labor practices, and social policy nearly as complete and every bit as onerous in the twenty-first century as British or Portuguese colonial policy was in the nineteenth...This global system of social stratification correlates very well with racial criteria: the darker your skin is,

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<sup>8</sup> Howard Winant, “One Hundred Years of Racial Politics,” and “The Modern World Racial System,” in *The New Politics of Race: Globalism, Difference, Justice* (Minneapolis: University of Minnesota Press, 2004), 3-24, and 94-107, respectively.

<sup>9</sup> Winant, “One Hundred Years of Racial Politics,” 15.

the less you earn; the shorter your life span, the poorer your health and nutrition, the less education you can get. This too is a legacy of empire, a continuity of empire.<sup>10</sup>

Postcolonial studies—a phrase coming into currency in the 1980's and replacing the field of "third world studies"—names the theoretical opposition to this continued state of colonial imperialism politically, culturally, and economically as a modality of new racist and nationalist formations.<sup>11</sup> It takes critical notice of the 'trace' of such terms like freedom and happiness, which while proclaimed during the European enlightenment as having universal application to primordial, meta-ethical truths—as seen, for example, in the United States Declaration of Independence—have only been applied to white persons or to those who were able to accede to whiteness.<sup>12</sup> The postmodern result has been to see these concepts themselves as "white" as "Western" or variously, as "Northern," and therefore as unusable for those seeking independence or liberation in a broader sense. The postmodern explanation for such unusability is that such concepts have no inherent connection to notions of "freedom" or "happiness"—that, instead, these concepts, through their being the products of social construction, bear a truth value that is transparent to the interests of the persons articulating them.

One particular case the postmodern theorist can use to defend such a position involves a discussion of the ethical status of human rights discourses. The

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<sup>10</sup> Winant, "The New Imperialism, Globalization, and Racism," in *The New Politics of Race*, 129-149, at 134-135.

<sup>11</sup> Neil Larsen, "Imperialism, Colonialism, Postcolonialism," in *A Companion to Postcolonial Studies*, ed., Henry Schwartz and Sangeeta Ray (Malden, MA: Blackwell, 2000), 23-52, at 40-44.

<sup>12</sup> This was famous case of the white racialization of Irish immigrants in the United States. See, for example, David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (New York: Verso, 2007), 133-163.

argument made here is that even though rights are held out to be universal, they presume a Western notion of the subject that, at the same time, institutes neocolonial hegemonies on the part of those same Western nations.

As typically understood, the birth year of modern discourses on human rights is 1948, the year the United Nations Declaration on Human Rights was passed. In that document were enumerated over thirty different rights which were held to be in recognition of the “inherent dignity and of the equal and inalienable rights of *all* members of the human family” (emphasis added). These rights included, among others, the right to nondiscrimination, to due process before the law, to freedom of movement and to seek asylum, to participation in government, to gainful employment, to education, and to an adequate healthy standard of living.<sup>13</sup> Scholars have typically divided these rights into three “generations,” with the first consisting of various civil and political rights; the second consisting of social and economic rights; and the third consisting of rights to self-determination and self-rule.<sup>14</sup> Considered ethically, these rights can be taken to provide some conception of what human flourishing consists in.

Controversies since the document’s inception, however, have thrown up postcolonial/postmodern concerns. For example, while the document was officially promulgated in 1948, the admission of decolonized members into the United Nations did not occur until the 1950’s and 1960’s. Consequently, member states

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<sup>13</sup> United Nations, “Universal Declaration of Human Rights (1948),” <http://www.un.org/en/universal-declaration-human-rights/>.

<sup>14</sup> Chris Brown, “Universal Human Rights? An Analysis of the ‘Human Rights Culture’ and Its Critics,” in *Universal Human Rights?* ed., Robert G. Patman (New York, NY: St. Martin’s Press, 2000), 31-49, at 32.

from Africa and Asia were skeptical of the document's alleged universality on grounds of their not having been involved in its production.<sup>15</sup> This suspicion would grow throughout the period of the Cold War, with Western nations (led by the United States) emphasizing the priority of various civil and political rights, on the one hand, and, on the other, with developing nations emphasizing their rights to social and economic development as well as to self-determination.<sup>16</sup> Indeed, the insistence on the part of Western nations that all countries uphold the political and civil rights of individuals as foundational to society has been seen by non-Western nations as the assertion of continued colonial domination to the extent that Western nations appear unwilling to consider other, more communal, ways of life as foundational to human society and thus to human rights. As political scientist Chris Brown notes, the People's Republic of China frequently refuses to accept the legitimacy of international criticisms of its human rights record on grounds that the current international human rights regime is a form of cultural imperialism. And other religious sects—such as the Confucians—reject the individualism of Western notions of human rights in order to contextualize human rights within extended kin groups. “Indigenous peoples,” Brown observes, “advocate group rights which override the freedom of the individual.”<sup>17</sup> Indeed, as former deputy minister of primary industries and former chairman of the United Malays National Organization in Malaysia, Hishammuddin Tun Hussein, notes, “The belief in the universality of one's ideas and values, no matter how sincere, has meant that many in the ‘North’

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<sup>15</sup> Robert G. Patman, “International Human Rights after the Cold War,” in *Universal Human Rights?*, 1-18, at 4.

<sup>16</sup> Patman, “International Human Rights after the Cold War,” 4.

<sup>17</sup> Brown, “Universal Human Rights?” 33-34.

are unable to accept the principle of diversity in this regard. Other notions and priorities of what constitutes human rights do exist.”<sup>18</sup>

Other developments beyond the refusal to countenance other accounts of human rights that originate from non-Western perspectives have expanded this neocolonial critique. Western nations like the United States under President Jimmy Carter, for example, began to make foreign aid to developing nations contingent on an assessment, made by the United States State Department, of how human rights are maintained in potential recipient countries.<sup>19</sup> Concerning this practice, Hussein reflects, “It is hard not to feel that the North is using human rights, and, especially, the issue of civil and political rights, as a means of enforcing its will as well as enforcing the privileged position of its industries and businesses.”<sup>20</sup>

Now, as stated, the purpose of the assessment by the US State Department was to monitor human rights *abuses*, but, commentators have observed that, if genuine, such sentiments have been used in defense of double standards which countries like the United States believe they can freely reject. As Robert Patman notes, “While America holds other countries to international rights standards, it apparently subscribes to the view that US practice sets the international standard for respect for human rights.” Famously the United States has declined to ratify the 1997 Ottawa Treaty banning anti-personnel landmines and it has failed to ratify the establishment of the International Criminal Court, on grounds that such ratification

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<sup>18</sup> Hushammudin Tun Hussein, “Human Rights—The Asian Perspective,” in *Universal Human Rights?*, 75-80, at 76.

<sup>19</sup> Patman, “International Human Right after the Cold War,” 6.

<sup>20</sup> Hussein, “Human Rights—The Asian Perspective,” 79.



would not serve US interests.<sup>21</sup> Similar justifications have been invoked for why the United States has failed to ratify other UN agreements, including the Kyoto Protocol, which would have required thirty-seven industrialized nations to lower greenhouse gas emissions while not requiring the same for developing countries; for why the US did not sign on to the UN Convention on the Rights of the Child; and for why the US declined to endorse the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>22</sup> Most recently, under President Donald Trump, the United States has *both* withdrawn from the 2015 Paris Climate Agreement—because the agreement “will undermine [the US] economy” and “put [the US] at a permanent disadvantage”<sup>23</sup>—*and* the United States has removed itself from the Human Rights Council, arguing that it can better guard human rights outside of the international body. Commenting on the withdrawal, US Ambassador to the United Nations Nikki Haley remarked that the Human Rights Council has been a “cesspool of political bias.” Such comments would be preceded by Secretary of State Mike Pompeo, who introduced Haley before she spoke. “The United States has no opposition in principle to multilateral bodies working to protect human rights,” Pompeo would say. “But when organizations undermine our national interests and our allies, we will not be complicit.”<sup>24</sup>

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<sup>21</sup> Patman, ‘International Human Rights after the Cold War,’ 11.

<sup>22</sup> Kevin Robillard, “10 Treaties the U.S. Hasn’t Ratified,” *Politico*, 24 July 2012, <https://www.politico.com/gallery/10-treaties-the-us-hasnt-ratified?slide=6>.

<sup>23</sup> Barnini Chakraborty, “Paris Agreement on Climate Change: US Withdraws as Trump Calls It Unfair,” *Fox News*, 01 June 2017, <http://www.foxnews.com/politics/2017/06/01/trump-u-s-to-withdraw-from-paris-climate-pact-calls-it-unfair-for-america.html>.

<sup>24</sup> Both comments from Mike Pompeo and Nikki Haley are in their “Remarks on the UN Human Rights Council,” U.S. Department of State, 19 June 2018, <https://www.state.gov/secretary/remarks/2018/06/283341.htm>.

Where the postmodern emphasis on *différance* and the trace meets the politically inflected concerns about power that descend from postcolonial studies is at the point of explaining the significance of hypocrisy and double standards among Western nations vis-à-vis the enforcing of human rights. The United States can be implicated here again. For example, in 1992, then-presidential candidate Bill Clinton condemned the Bush administration for failing to highlight the suppression of democracy in Tiananmen Square in June 1989. In 1996, pressured by American businesses to have a more amiable relationship with China because of the latter's growth as a global economic superpower, Clinton started to downplay China's human rights abuses. This culminated in Clinton's 1998 trip to China.<sup>25</sup> This would occur four years after Clinton introduced 'Presidential Directive 25' which mandated that US support for UN Peacekeeping efforts were contingent on whether vital American interests were at stake. This directive in addition to other actions taken by the US at the United Nations both prevented the delivery of humanitarian food aid in Somalia as well as hindered the deployment of peacekeeping troops during the Rwandan genocide.<sup>26</sup> Hussein remarks, "The passivity of seemingly powerful European nations when genocide was committed on their doorstep has torn away any shred of moral authority that the North has arrogated for itself. Such blatant partisanship undermines the moral authority of those who seek to introduce greater observance of human rights."<sup>27</sup>

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<sup>25</sup> Patman, "International Human Rights after the Cold War," 9-10.

<sup>26</sup> Since then, Clinton has publicly apologized. See Patman, "International Human Rights after the Cold War," 13-14.

<sup>27</sup> Hussein, "Human Rights—The Asian Perspective," 77.

This selective enforcement of human rights only when such enforcement would further US interests has been identified by political theorists as validating the 'Realist' school of political theory that maintains, in part, that, regardless of the presence of international agreements to enforce human rights, the world is fundamentally organized around notions of national autonomy and sovereignty above any other political value.<sup>28</sup> In a postmodern/postcolonial key, such a realist position is taken to provide persuasive evidence for the conclusion that any normative value that is offered as 'true' is understood as such ultimately because (a) those in power are able to define the value, and because (b) this definition is enforced by those with enough power to maintain allegiance to the concept or to suppress resistance to it. The recognition of hypocrisy or the imposition of double standards are taken to show the truthfulness of this view: the powerful make the "truth" that the rest of the world lives by, but such "truth" is not enforceable against the powerful.

The postmodern view can become a critique of the concept of human nature by asking the question—*Cui bono?*—with respect to the articulation of a concept of human nature. In this instance, we can, once again, consider human rights, this time from a feminist perspective. As V. Spike Peterson argues, "Both in application and in

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<sup>28</sup> See Patman, "International Human Rights after the Cold War," 9. Alison McQueen defines 'political realism' as "a family of approaches to the study, practice, and normative evaluation of politics that (a) affirms the autonomy (or, more minimally, the distinctiveness) of politics; (b) takes disagreement, conflict, and power to be ineradicable and constitutive features of politics; (c) rejects as 'utopian' or 'moralist' those approaches, practices, and evaluations which seem to deny these facts; and (d) prioritizes political order and stability over justice (or, more minimally, rejects the absolute priority of justice over other political values)". See her "Political Realism and the Realist 'Tradition,'" *Critical Review of International Social and Political Philosophy* 20.3 (2017): 296-313, at 297.

theory, human rights are based on the male as the norm.”<sup>29</sup> As her argument unfolds, Peterson makes, at the level of gender, the argument that we saw above from postcolonial scholars in relation to non-Western nations: whereas the West’s emphasis on political rights has resulted in the neglect of granting substantive access to the socioeconomic goods non-Western nations need to build a sustainable national existence (thus resulting in charges of neocolonial domination), Peterson argues that the West’s emphatic insistence on understanding the individual abstractly as politically prior to the social as seen represents an androcentric sexist obscuration of the socioeconomic labor surrounding and provision of material goods—generally performed by women—which would need to be acknowledged (thus resulting in the charge of sexism in the construction of the concept of human nature supporting the notion of human rights).<sup>30</sup> Such an obscuration is enabled in human rights discourse through the maintenance of the public/private distinction that segregates responsibilities based on gender. Men are allowed to participate both in public and in private life, whereas women are allowed only to participate in private life, and are thus not given the requisite political visibility in documents like the declaration of human rights. “In other words,” Peterson writes,

a woman’s capacity for *biological* reproduction becomes essentialized as her nature; the “givenness” of this capacity is then extended to the entire process of *social* reproduction, thereby consigning women to the restricted ‘family’ domain...Men are seen as “fully human,” that is, rational, self-interested

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<sup>29</sup> V. Spike Peterson, “Whose Rights? A Critique of the ‘Givens’ in Human Rights Discourse,” *Alternatives: Global, Local, Political* 15.3 (Summer 1990): 303-344, at 305.

<sup>30</sup> Peterson, “Whose Rights?” 324.

individuals who participate in the public, political world. Women are dependents—lesser individuals consigned “naturally” to the realm of familial, private, and apolitical affairs. References to equality among individuals in fact refer to (propertied) males only, as heads of families.<sup>31</sup>

In a postmodern key, this feminist intervention can be used as evidence for the argument that human rights are only ultimately weapons in the hands of men to oppress women; that human rights are ultimately only a currency for men to keep power among themselves, and that it is only this far—at the level of male solidarity—that persons are truly equal.

Such an observation can be generalized beyond gender to putatively neutral concepts of human nature that have been used, along racist axes, to the detriment of black persons and other persons of color. This, for example, is the diagnosis of Siobhan Somerville in her discussion of certain eugenic endeavors—ostensibly based in the universal discourse of “science”—that sought to discover race-based differences in order to justify the political and social disenfranchisement of black persons.<sup>32</sup> Indeed, this sort of “scientific racism” takes its place—particularly within the United States—within a white supremacist history of continued political and social disenfranchisement of black persons by white persons beginning with slavery, continuing through the Jim Crow Era, and manifesting today in a culture of mass incarceration of black male bodies as well as a culture of police brutality.<sup>33</sup> As

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<sup>31</sup> Peterson, “Whose Rights?” 314-315.

<sup>32</sup> Siobhan B. Somerville, *Queering the Color Line: Race and the Invention of Homosexuality in American Culture* (Durham, NC: Duke University Press, 2000), 21-25.

<sup>33</sup> See, for example, Michelle Alexander’s *The New Jim Crow: Mass Incarceration in an Age of Colorblindness* (New York: New Press, 2012); Katie Walker Grimes, *Christ Divided: Antiblackness as Corporate Vice* (Minneapolis: Fortress Press, 2017), 1-86; and Jeanine Hill Fletcher, *The Sin of White*

postmodern critique, such an investigation of white supremacy could be used to ground the conclusion that, ultimately, concepts such as ‘justice’ and ‘personhood’ are only ultimately applied to whites only, and that such ideals are only ultimately used to maintain power among whites to the oppression of black persons and other people of color.<sup>34</sup>

This view, however, did not have its origins with postmodern and postcolonial thinkers. It was one of Nietzsche’s central theses concerning morality a century before. It is frequently with him that a genealogy of postmodernity begins with respect to ethics. In his 1887 work, *On the Genealogy of Morality*, Nietzsche subjects the concept of morality to a philological critique and discovers that the word ‘good’ was inherently connected to political designations of nobility and aristocracy—in other words, with those with power. Conversely, he discovered that the word ‘bad’ was associated with those without power—with the commoner or the plebian.<sup>35</sup> From here, Nietzsche develops an account of our current moral system centered around his anti-Semitic notion of *ressentiment*, in which those who lack the noble ideal of aristocratic excellence, who lack physical power and physical prestige—and, in Nietzsche’s mind the Jews were a “priestly nation of *ressentiment par excellence*”<sup>36</sup>—generate a moral system in which the true virtues of strength, power, and domination, are devalued in order to uphold ideals of the false virtues of humility and meekness. Nietzsche sees this as the backbone of ‘slave morality’ in

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*Supremacy: Christianity, Racism, and Religious Diversity in America* (Maryknoll, NY: Orbis Books, 2017).

<sup>34</sup> One thinker whose view reflects this is Ta-Nehisi Coates, though it is commonplace among many adherents to the ‘Afro-Pessimist’ school of thought of which he is a part. See his, *Between the World and Me* (New York: Spiegel and Grau, 2015).

<sup>35</sup> Nietzsche, *On the Genealogy of Morality*, 1.4.

<sup>36</sup> Nietzsche, *On the Genealogy of Morality*, 1.16.

which weakness becomes falsely idolized and strength and power become “unnaturally” disvalued. “[B]ut this grim state of affairs, this cleverness of the lowest rank which even insects possess, has, thanks to the counterfeiting and self-deception of powerlessness, clothed itself in the finery of self-denying, quiet, patient virtue, as though the weakness of the weak were itself...a voluntary achievement, something wanted, chosen, a *deed*, an *accomplishment*.”<sup>37</sup> To the extent that Christianity partakes of the ideal—particularly through the Beatitudes—it is to that extent that Nietzsche sees an extension of this slave morality. Nietzsche writes, “This Jesus of Nazareth, as the embodiment of the gospel of love, this ‘redeemer’ bringing salvation and victory to the poor, the sick, to sinners—was he not seduction in its most sinister and irresistible form, seduction and the circuitous route to just those very *Jewish* values and innovative ideals?”<sup>38</sup>

As the book unfolds, Nietzsche takes himself to articulate what it would mean to appreciate this “naturalist” account of morality that has been obscured by slave morality. One observation he has that intersects with our current account is to recognize the fundamental ethical impulse as the ‘will to power’, which is the desire to dominate and control, two features which Nietzsche will associate with a distinctively human capacity to create and innovate. Indeed, Nietzsche calls the will to power the “essence of life.”<sup>39</sup> Correlatively, Nietzsche believes this entails the denial of any sort of teleology, since, in his mind, to predetermine the function of

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<sup>37</sup> Nietzsche, *On the Genealogy of Morality*, 1.10-1.14; quote at 1.13.

<sup>38</sup> Nietzsche, *On the Genealogy of Morality*, 1.8.

<sup>39</sup> Nietzsche, *On the Genealogy of Morality*, 2.12.

thing fundamentally preclude humanity's creative power to achieve something better. "But every purpose and use is just a *sign*," Nietzsche writes,

that the will to power has achieve mastery over something less powerful, and has impressed upon it its own idea of a use function; and the whole history of a 'thing' an organ, a tradition can to this extent be a continuous chain of signs, continually revealing new interpretations and adaptations, the causes of which need not be connected even amongst themselves, but rather sometimes just follow and replace one another at random. The 'development' of a thing, a tradition, an organ is therefore certainly not its *progressus* towards a goal...instead it is a succession of more or less profound, more or less mutually independent processes of subjugation exacted on a thing...<sup>40</sup>

Nietzsche's interventions are therefore meta-ethical as well. Denying anything that would seem like a formal or final cause, Nietzsche believes that 'truth' ultimately reduces to the operation of the powerful. What something is, in other words, is unconnected to some essential identity—this would get picked up by Derrida and the poststructuralists. And what something is *for* ultimately is for the benefit of the person(s) who can wield it above all others—a point that would get picked up by the postcolonialists. Such a view requires, as Lyotard observed, a loss of a "vision of the whole," and this is exactly what Nietzsche's anti-teleological metaphysics implies. Together these features—an anti-teleological and nominalist metaphysics combined with an epistemological conception of truth as will to power—build out the basic philosophical blocks of the postmodern view.

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<sup>40</sup> Nietzsche, *On the Genealogy of Morality*, 2.12.



### *The Queer Inflection to the Post-Modern Critique*

It may be possible already to see homologous elements between postmodern critiques of human nature based in charges of sexism and racism and critiques of human nature based on grounds of heteronormativity and the privileging of cisgender identity. And indeed there are, but queer approaches have offered a slightly different account of power in order to fund these critiques. In postmodern critiques of power *simpliciter*, power operates punitively from oppressor to oppressed with the assumption of stable identity, even as identities are taken to intersect. (So, even though someone may be oppressed both as a woman and as a black person, both of these identities are taken in a postmodern critique to be relatively stable even as the way oppression manifests may vary from person to person. Insofar as the postmodern critique presumes stability of identity then, we will consider these views 'identitarian-based critiques.) In its queer inflection, power is not merely punitive, but it is also productive; and identity is not stable, but is, rather, the effect of complex operations of power.

We can invoke three queer thinkers—Michel Foucault, Eve Kosofsky Sedgwick, and Judith Butler—in order to see how such an inflection is enacted with respect to the concept of sexuality. For his part, Foucault's work on sexuality begins with the now-commonly accepted notion of sexual orientation as a stable part of an individual's identity, and he also begins with the standard account which identifies sexuality as the object of repression over roughly the last two hundred years, only ending with the "sexual revolution" of the 1960's. Foucault engages this account

skeptically as the “repressive hypothesis.”<sup>41</sup> But rather than understanding sexuality according to the repression hypothesis, rather than believing sexuality to be a drive that needed to be controlled or channeled—an observation certainly reminiscent both of psychoanalysis and of Augustine and the Christian tradition more broadly—Foucault saw sexuality as a tendentious, elusive, and unstable category used to categorize, organize, and control the functioning of bodies. “Sexuality must not be thought of as a kind of natural given which power tries to hold in check, or as an obscure domain which knowledge gradually tries to uncover,”<sup>42</sup> Foucault writes. Instead, “It is the name that can be given to a historical construct: not a furtive reality that is difficult to grasp, but a great surface network in which the stimulation of bodies, the intensification of pleasures, the incitement to discourse, the formation of special knowledges, the strengthening of controls and resistances, are linked to one another, in accordance with a few major strategies of knowledge and power.”<sup>43</sup>

Whatever else sexuality is exactly, by calling it a “great surface network” through which a variety of circumstances are linked to one another, Foucault is signaling that sexuality as identity is at best the tip of an iceberg. It is a symptom of something else. The world has held its breath in waiting for a full-answer to what that ‘something else’ is. Foucault’s answer has typically been ‘power’—that productive force that creates in its wake knowledge and truth as discussed in chapter one—but many readers of Foucault, especially his critics, have found the

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<sup>41</sup> Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction*, trans. Robert Hurley (New York: Vintage Books, 1990), 15-49.

<sup>42</sup> Foucault, *History of Sexuality, Vol. 1*, 105.

<sup>43</sup> Foucault, *The History of Sexuality, Vol. 1*, 106.

answer dissatisfying.<sup>44</sup> The reason: to many people, talking about power as an impersonal force with such organizing activity as Foucault does seems to give power agential qualities, which, in turn, would seem to raise questions about purpose and intention. But Foucault's account of power pushes against these centralizing impulses by positing power itself as an epiphenomenal effect of decentralized deployments of human agency—what Foucault calls “points”— dialectically shaped, reshaped, and redeployed within discourse about a given subject. Indeed, it is worth quoting at length to see how Foucault manages this delicate articulation of power:

By power, I do not mean “Power” as a group of institutions and mechanisms that ensure the subservience of the citizens of a given state. By power, I do not mean, either, a mode of subjugation which, in contrast to violence, has the form of the rule. Finally, I do not have in mind a general system of domination exerted by one group over another, a system whose effects, through successive derivations, pervade the entire social body...rather these are only the terminal forms power takes. It seems to me that power must be understood in the first instance as the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization; as the process which, through ceaseless struggles and confrontations, transforms, strengthens, or reverses them; as the support which these force relations find in one another, thus forming a chain or system...and lastly, as the strategies in which they take effect, whose general

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<sup>44</sup> For critiques of Foucault's views of power, see the famous debate between Foucault and Jürgen Habermas in Michael Kelly, ed., *Critique and Power: Recasting the Foucault/Habermas Debate* (Cambridge: MIT Press, 1994).

design or institutional crystallization is embodied in the state apparatus, in the formulation of the law, in the various social hegemonies. [...] One needs to be nominalistic, no doubt: power is not an institution, and not a structure; neither is it a certain strength we are endowed with; it is the name that one attributes to a complex strategical situation in a particular society.<sup>45</sup>

What allows Foucault to give sexuality its current taxonomic anatomy—what makes there to be homosexuals, heterosexuals, and queers of all stripes, locked, as they are, in a struggle with heteronormativity and cisgender privilege—is that Foucault sees this current “regime of truth” concerning sexuality as the radically historical result of discursive engagement with what our bodies “mean,” meaning which we then circulate through an economy of power that reinforces those meanings. In other words, sexuality is a site of construction from which we articulate meaning, and, by wanting our sexuality to mean something, and through the various interactions between the descriptive and normative moments in articulating an anthropological worldview as well as a portrait of human nature more broadly, we’ve revealed to ourselves these “truths” of sexuality. Once again, Foucault:

It is through sex—in fact, an imaginary point determined by the deployment of sexuality—that each individual has to pass in order to have access to his own intelligibility...Hence the importance we ascribe to it, the reverential fear with which we surround it, the care we take to know it. [...] By creating the imaginary element that is “sex,” the deployment of sexuality established one of its most essential internal operating principles: the desire for sex—the

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<sup>45</sup> Foucault, *History of Sexuality*, Vol. 1, 92-93.

desire to have it, to have access to it, to discover it, to liberate it, to articulate it in discourse, to formulate it in truth. And it is this desirability of sex that attaches each one of us to the injunction to know it, to reveal its law and its power; it is the desirability that makes us think we are affirming the rights of our sex against all power, when in fact we are fastened to the deployment of sexuality that has lifted up from deep within us a sort of mirage in which we think we see ourselves reflected—the dark shimmer of sex.<sup>46</sup>

If in identitarian-based critiques to heteronormativity and cis-gender privilege, identity is ontologically primary, as it were, then in this more deeply queer critique of heteronormativity and cis-gender privilege, discourse is what is ontologically primary. But even as ontologically primary, discourse has interesting characteristics. As Foucault pointed out, discourse about anything (but, in our case, discourse about sexuality) is a historical construct; it is, in other words, a contingent enterprise: our current understanding of sexuality has been different and, indeed, can continue to change and develop. That is, after all, a large part of what makes sexuality an unstable phenomenon.

This instability, this contingency, has been helpfully developed by other queer thinkers—and here is where we can bring in some of the insights of thinkers like Eve Sedgwick and Judith Butler, who have extended this insight from Foucault in different ways. For example, in its current form, sexuality has been illuminated as a contrast among genders: if one is attracted to someone of the “opposite” gender, then one is considered heterosexual; if one is attracted to someone of the “same”

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<sup>46</sup> Foucault, *History of Sexuality*, Vol. 1, 156-157.

gender, then one is homosexual. But why is the gender of an individual the most interesting distinction when classifying sexuality?

In choosing gender as a point of demarcation, other potentially more interesting differences as inflection points for the 'hetero' and 'homo' is heterosexual and homosexual are passed over. In her *Epistemology of the Closet* Sedgwick names at least thirteen, from which I draw a few examples here. For example, the fact that, for some people, the pleasure derived from sex comes from genital activity, while for others it doesn't; some people like having lots of sex while others do not; some people want their sex lives to be "embedded in contexts resonant with meaning, narrative, and connectedness with other aspects of their life" while others do not; some people's sexuality are principally marked by the presence of fetishes, while for others it does not; and, lastly, for some people, sexuality is profoundly and sometimes exclusively circumscribed by autoeroticism, while for others autoerotic acts have less central importance.<sup>47</sup> "The impact of such a list may seem to depend radically on a trust in the self-perception, self-knowledge, or self-report of individuals, in an area that is if anything notoriously resistant to the claims of common sense and introspection," Sedgwick concedes. "Yet I am even more impressed by the leap of presumptuousness necessary to dismiss such a list of differences than by the leap of faith necessary to entertain it."<sup>48</sup> Why organize sexuality along gender-object choice when it can perhaps be more helpfully illuminated among other axes?

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<sup>47</sup> Eve Kosofsky Sedgwick, *Epistemology of the Closet* (Berkeley, CA: University of California Press, 2008), 25-26.

<sup>48</sup> Sedgwick, *Epistemology of the Closet*, 26.

If Sedgwick illustrates how discourse can ossify, closing off potential modalities, then Butler can help us make sense of how discourse extends itself in time and space, incarnating itself within bodies that are thereby rendered heterosexual, homosexual, man and woman. It is here where one can review Butler's seminal observations related to gender performance. In parallel with queer theory's rejection of identity as ontologically primary, Butler denies that gender expresses some essential dimension, instead understanding gender to be "the truth *effects* of a discourse of primary and stable identity."<sup>49</sup> What is the content of such discourse, in this instance? Sets of acts, habits, and ways of being which we associate with the binary notion of gender. In other words, we receive information about what it means to be a man or a woman from a variety of channels—religion, family, television, friends, medicine—and we put this information into practice: we, to use Butler's famous phrasing, *perform gender*. We give it life by inscribing our bodies, our mannerisms, our voicing, our desires, along axes that we find to appropriate to the gender which we choose to inhabit. More than this, these appropriations are formulae—one could easily call them norms—that we impose on others to follow through these various informal systems. This is one way to interpret how Foucault understood the operation of power. "Gender ought not to be constructed as a stable identity or locus of agency from which various acts follow," Butler writes, "rather, gender is an identity tenuously constituted in time[...]." She continues,

The effect of gender is produced through the stylization of the body and, hence, must be understood as the mundane way in which bodily gestures,

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<sup>49</sup> Judith Butler, *Gender Trouble* (New York: Routledge, 2007), 186, emphasis mine.

movements, and styles of various kinds constitute the illusion of an abiding gendered self...Significantly, if gender is instituted through acts which are internally discontinuous, then the *appearance of substance* is precisely that, a constructed identity, a performative accomplishment which the mundane social audience, including the actors themselves, come to believe and to perform in the mode of belief.<sup>50</sup>

Here as an important place to take stock, and, thereby, come to argument of the chapter so far. What we have just seen is a queer inflection to the postmodern critique of human nature. This inflection indeed poses a formidable challenge. For not only does such a challenge incorporate identitarian formulations of the objection that we saw launched by critical scholars of race as well as feminists—that views of human nature are ultimately universal projections of operations of power used to benefit some and oppress others—but the queer inflection on this objection provides an ontology of that power precisely as discourse. And as Foucault's meditations on power suggests, and as Butler's analysis of gender as performance makes clear, this power is not something merely that the powerful use against the powerless. Though power is this, power also demands tribute, not just from the oppressor, but from every single person. The reason why is because power produces effects that we like—or, to use the term often used, power produces pleasures. In *History of Sexuality, Vol. 1*, Foucault understands those pleasures to be epistemological, though not exclusively so. In *Gender Trouble*, Butler understands those pleasures to be the very representability of the person as an individual among

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<sup>50</sup> Butler, *Gender Trouble*, 191-192.



individuals. After all, gender is not optional—far from it, it is necessary in order to participate in the social world. Performing gender, in other words, provides us with a ticket into society. There is no other literally viable alternative to life without gender.

The argument, in sum, would be proceed as follows. If discourse provides the ontological ground, as it were, for organizing bodies into identities; and if these bodies, through various configurations of power, organize the world along certain axes of race, gender, class, sexuality, and gender identity; and, lastly, if these various axes name relations of privilege and oppression as cisgender privilege, heteronormativity, patriarchy, and white supremacy—all of which are, once again by means of power, sustained by problematic normative understandings of human flourishing—then a concept corresponding to “human flourishing,” is anything but universal. Similar to what is argued to be the case in human rights discourse, human flourishing is, instead, precisely and irreducibly, the speech act of the powerful who form the world according to their own normative specifications. To speak of human flourishing, which is to speak in a universal key, is itself a form of linguistic violence that awaits incarnation in the next lynching, the next gay bashing, and the next murder of a transgender person. It’s a violence, in other words, that finally unveils itself as such when it meets resistance by persons whose embodiments or ways of life go against the norm. This is what, from a queer perspective, makes human flourishing so vexing of a concept: contemplating it can be seen as contemplating violence itself.

## 2.2 RESPONDING TO THE POST-MODERN CRITIQUE OF HUMAN FLOURISHING

### 2.2.1 The Post-Modern Objection: Logical and Practical Deficiencies

The queer inflection builds off of the postmodern observation that knowledge claims, that is, claims to truth, reduce, ultimately, to claims of power. In certain senses, it corresponds to the claim that “might makes right,” but postmodern objections to truth apply this objection to every concept, especially those that are held to be universal in scope. Postmodern objections to truth, in other words, bring a power critique to any and all “grand narratives.” The queer inflection to this view increases the density of this critique by identifying power itself as the effect of discourse. The major upshot of this intervention is that while the terms of discourse may be in a significant sense “set” by those with power, discourse is not essentially the discourse of the powerful. Rather, as Foucault famously maintained, discourse itself is the complex product of a variety of interactions that take place among actors and institutions engaging with bodies and ideologies. Power is not just used oppressively and coercively *against* certain persons in the interests of some, but power also operates in a productive mode, as a fundamentally cooperative project of emotional and intellectual investment by all who are affected by it.

The potentially devastating consequence of the queer inflection to the postmodern objection to truth is that a metaphysical antirealism about truth seems inevitable. If truth is merely an effect of certain discursive formations, then the idea

that the truth about a concept or about something that we experience exists independently of our perception of it becomes unintelligible. More than this, this postmodern inflection—also thanks to Foucault—explains how societal notions concerning truth can change as well. As discursive formations change, so then does “truths” about the world change. There is no reason, in other words, to see the timeline of history as one of “progress” towards some greater enlightenment; there is only change mediated by different social constructions of knowledge. Applied to the concept of human nature, then, the queer inflection to the postmodern objection to truth maintains that it, like all concepts, is “discourse” all the way down, a fanciful object that we make powerful by our continued investment in letting the concept “do” something for us. But, crucially, simply because the concept of human nature “does” something for us does not give us grounds to believe that it “is” real.

There is another way to state this: if either the postmodern objection or the postmodern objection with its queer inflection were to succeed, then—to put it succinctly—Nietzsche would have to be right. Nietzsche would have to be right to maintain that, at the end of the day, truth is ultimately a function of the will to power, and that, moreover, the resiliency of manifestations of white supremacy, sexism, and heterosexism—evidence for which we’ve seen in the above pages—testify to Nietzsche’s construal of this meta-ethical antirealist state of affairs.

But there are other ways to construe the evidence, beginning with the observation that the states of affairs that we’ve reviewed—everything from the exclusion of non-Western states from the initial articulation of human rights to the sexist anthropology underlying human rights—do not automatically entail an

antirealist position like Nietzsche's. Rather, Nietzsche's arguments concern a meta-ethics of truth, namely a moral antirealist position for which the above states of affairs, in a postmodern critique, are construed as evidence.<sup>51</sup> The relevant question, then, asks whether we have good reasons for accepting moral antirealism as true.

The argument of this section is that we do not, and that—more pointedly—we have reasons for accepting a moral realism vis-à-vis truth which maintains that (a) moral judgments are capable of truth or falsity; that (b) some of our judgments are truth; and that (c) we can generate criteria for justifying those judgments.<sup>52</sup> I do this by arguing that the moral antirealist position suffers from two specific deficiencies—logical deficiencies and practical deficiencies—and then I argue for three criteria which can be used to propose a “just” understanding of human nature.

One philosopher who has thought deeply about the nature of moral argument within a postmodern milieu is Alasdair MacIntyre. For our current project, there are two considerations which make his observations especially interesting. The first is that MacIntyre's framework begins with the spectre of moral relativism insofar MacIntyre's response concedes the existence of (at least) two rival epistemic standpoints which each claim “rational justification for their own standpoint and none of whom seems able, except by their own standards, to rebut

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<sup>51</sup> In the rest of the chapter, I will use the shorthand ‘moral antirealism.’ Nevertheless there is an important point about terminology to make. Technically, moral antirealism is the position that moral judgments lack truth value. Moral judgments, in other words, simply are the preferences of the person who makes them. It can be distinguished from moral relativism, which concedes the existence of the truth or falsity of moral judgments, but denies that their truth and falsity can be adjudicated at universal or cross-cultural level. For more information, see Chris Gowans, “Moral Relativism,” *Stanford Encyclopedia of Philosophy*, 20 April 2015, <https://plato.stanford.edu/entries/moral-relativism/#ForArg>.

<sup>52</sup> Gowans, “Moral Relativism.”

the claims of their rivals.”<sup>53</sup> The second is that MacIntyre’s framework could be potentially *more demanding* than that initially envisioned by the postmodern objection, since the queer inflection to that objection, as stated, requires only *different* discursive formations. MacIntyre’s framework, in contrast, presumes what one might regard as *mutually exclusive* discursive frameworks, where the reasoning within one discursive formation might seem unconscionable under another discursive formation. So not only does MacIntyre’s response address the critique at this point, but MacIntyre’s response could be seen as reflecting an even more demanding queer objection.

MacIntyre’s response proceeds in two steps. The first step concerns the relationship between assertion and moral realism, and it is here where one can challenge moral antirealism on logical grounds. For in MacIntyre’s view, the very nature of assertion—for example, saying that ‘p’ is true— commits the speaker to a moral realism with respect to the proposition that is being asserted. In other words, MacIntyre believes that it is logically incoherent both to say that a moral proposition is true while at the same time believing, of the same proposition, that is not true everywhere under the relevant circumstances. “For if I assert that ‘p’ is true,” MacIntyre reasons,

I am thereby committed to holding that, through the history of any set of enquiries concerned to discover whether it is ‘p’ or ‘~p’ that is true, either ‘~p’ will never be supported by any scheme and mode of rational justification, or, if it is so supported, that scheme and mode of rational

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<sup>53</sup> Alasdair MacIntyre, “Moral Relativism, Truth, and Justification,” in *The MacIntyre Reader*, ed., Kelvin Knight (Notre Dame, IN: University of Notre Dame Press, 1998), 202.

justification which at some particular stage of enquiry appears to provide support for the conclusion that ‘~p’ will in the longer run be rationally discredited. And in asserting that ‘p’ is true I am also committed to holding that anyone whose intellect is adequate to the subject matter about which enquiry is being made would have to acknowledge that ‘p’.<sup>54</sup>

If MacIntyre is right, then, what he is saying is that having any moral beliefs at all entails a denial of moral antirealism. But equally if not more importantly, what MacIntyre is saying is that such a denial is *also* an invitation to moral argument. And it is MacIntyre’s account of moral argument in our contemporary moment—which he initially signaled in his *After Virtue* and brought to fruition in his *Whose Justice? Which Rationality?*—for which he is famous, and for which his work is relevant here.<sup>55</sup>

So if the assertion of moral beliefs entails a denial of moral antirealism, then what follows when two cross-culturally different, opposing moral beliefs are both asserted on their respective sides? Crucial to understanding MacIntyre’s response is first appreciating what MacIntyre considers the “sides” to be. In this case, these “sides” represent different traditions of inquiry, different “argument[s] extended through time in which certain fundamental agreements are defined and redefined in terms of two kinds of conflict: those with critics and enemies external to the tradition who reject all or at least key parts of those fundamental agreements, and

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<sup>54</sup> MacIntyre, “Moral Relativism, Truth, and Justification,” in *The MacIntyre Reader*, ed., Kelvin Knight (Notre Dame, IN: University of Notre Dame Press, 1998), 213-214.

<sup>55</sup> Alasdair MacIntyre, *After Virtue*, 3<sup>rd</sup> ed. (Notre Dame, IN: University of Notre Dame Press, 2007 [orig. 1981]), 264-278; and *Whose Justice? Which Rationality?* (Notre Dame, IN: University of Notre Dame Press, 1988), esp. 349-403.

those internal, interpretative debates through which the meaning and rationale of the fundamental agreements come to be expressed and by whose progress a tradition is constituted.”<sup>56</sup> In dealing with the postmodern objection, we have the first, external, type of conflict in view, and it is into such an external conflict that we might imagine two different construals of human nature coming into conflict. MacIntyre then suggests the following solution, which is the second step MacIntyre takes: adherents of one tradition should imaginatively place themselves within the opposing tradition, and then see if that rival tradition can solve a given ethical or moral problem better than one could within one’s own native tradition. If a rival tradition can solve that problem better, one has reasons to regard that tradition’s account of a given phenomenon as superior to one’s own.<sup>57</sup>

One strength of MacIntyre’s solution that is relevant to the current project is that his account of the logical inconsistency of the moral antirealist position authorizes a different interpretation of the significance of contemporary cross-cultural moral contestation. Without denying that there are problematic manifestations of structural oppressions like racism, sexism, and heterosexism within certain understandings of human nature, MacIntyre’s framework reorients the conflict beyond the confines of a perhaps looming moral relativism and instead sees these conflicts as disagreements about how best to solve a problem with respect to which different cultures, using their own distinctive narrative frameworks, have all tried to answer. Indeed, this is one way to characterize the contestation within human rights discourses. In this sense, then, it is *not* the case that

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<sup>56</sup> MacIntyre, *Whose Justice? Which Rationality?*, 12.

<sup>57</sup> MacIntyre, “Moral Relativism, Truth, and Justification,” 216-220.

the West believes in human right and the “East” does not; the question is about how to generate an equitable account of what those rights would be that take into account the particular emphases of cultures beyond those principally influenced by the European enlightenment. To recall Hussein’s words here, the problem in human rights discourse is the *imperialism* associated with the concept, not the concept itself: “[T]he belief in the universality of one’s ideas and values, no matter how sincere, has meant that many in the ‘North’ are unable to accept the principle of diversity in this regard. Other notions and priorities of what constitutes human rights do exist.”<sup>58</sup>

But MacIntyre’s account has also come under criticism, and generally from two directions. One set of critiques—which we will not pursue further since to do so would go beyond the bounds of the project—accepts MacIntyre’s account of tradition but maintains that MacIntyre’s account of liberal modernity as a tradition is reductive.<sup>59</sup> The other set of critiques attack the validity of MacIntyre’s notion of ‘tradition’. As we will see, this sort of critique is offered strongly by Martha Nussbaum.

Though she does not take an issue with MacIntyre’s argument against moral antirealism—indeed, she is a moral realist herself—Nussbaum remains unconvinced of the truth of MacIntyre’s account of moral argumentation as structured by incommensurate rival traditions. In fact, in her review of *Whose Justice? Which Rationality?*, one discovers that the crux of her disagreement with

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<sup>58</sup> Hussein, “Human Rights—The Asian Perspective,” 76.

<sup>59</sup> This for example, is Jeffrey Stout’s view. See his *Democracy and Tradition* (Princeton, NJ: Princeton University Press, 2004), 118-139. Also, Alexander Green, “MacIntyre and Nussbaum on Diversity, Liberalism, and Christianity,” *Perspectives on Political Science* 46.2 (2017): 137-147, at 142.



MacIntyre is twofold. First, she disagrees with MacIntyre's understanding of a tradition as an intergenerational argument based in fundamental agreements about the good life. As she contends, the framework for rational debate in the Greek world—the same world that MacIntyre extols as the paradigmatic example of a 'tradition' in his sense—was not premised on a set of fundamental agreements about the good life, but instead, was more precisely characterized through its lack of fundamental disagreement. "The unanimity imagined by MacIntyre never existed, so far as Aristotle can see," Nussbaum writes. "But he believed it is possible to provide a reasoned justification for convictions without it."<sup>60</sup> And second, Nussbaum refuses to believe that our epistemic worlds are co-extensive with whatever our "traditions" happen to be. Instead, in making moral claims, we are not provincially limited by the epistemic boundaries of our tradition which we then subsequently overcome. But rather, we make moral claims out of access to a human experience that is universally shared, though expressed in different ways. Indeed, when Nussbaum considers aspects of human life like humor, friendship, love, and a thirst for understanding, she writes,

All these are to some extent understood differently by different societies; but the fact that we can understand a Homeric hero's fear of death, or share Euripides' perplexity about the beauty and destructive power of erotic passion, or be struck by the insights of ancient Indian thought about the nature of perception, shows us that it is not foolish to suppose that there is

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<sup>60</sup> Martha C. Nussbaum, "Recoiling from Reason," *New York Review of Books*, 07 December 1989, <https://www.nybooks-com.proxy.bc.edu/articles/1989/12/07/recoiling-from-reason/>.

common ground from which secular rational inquiry into the human good can begin.<sup>61</sup>

If one accepts Nussbaum's critique, then one can force a revaluation of the evidence ostensibly used to defend a moral antirealism within a postmodern critique. Though, rather than understanding the argument over human rights as MacIntyre does—that is, as a clash between two independent traditions coming into conflict and imaginatively placing themselves in the other tradition in order to judge superiority—one can understand the argument in terms suggested by Nussbaum. In this framing, the moral argument taking place over human rights concerns how to generate a normative account of human nature out of a common human experience differentially lived. Hussein's words—"Other notions and priorities of what constitutes human rights do exist"—thereby take on a different argumentative texture.

The argument with MacIntyre notwithstanding, Nussbaum's work can, on its own, be considered another response to the postmodern objection we are investigating. But rather than considering it as a logical objection, like MacIntyre's was, Nussbaum's account argues for moral realism out of practical human experience. Following Aristotle, Nussbaum emphasizes that moral deliberation begins not with any abstract considerations about the good life, but instead, about a set of universal experiences. "Everyone has *some* attitude and behavior towards her own death; toward her bodily appetites and their management; toward her own property and its use; toward the distribution of social goods; toward telling the

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<sup>61</sup> Nussbaum, "Recoiling from Reason."

truth; toward being kindly or not to others; toward cultivating or not cultivating a sense of play or delight; and so on. No matter where one lives one cannot escape these questions, so long as one is living a human life.”<sup>62</sup> The practical response therefore engages the moral antirealism of the postmodern objection by saying that the antirealist position is less plausible when one examines the presuppositions behind moral disagreements. Though surely people will disagree about what human nature consists in and what it would mean to respect it in a human rights framework; and though, equally surely, disagreements occur that are not unrelated to questions of sexism and racism and other forms of structural oppression—when people deliberate about what human nature is and what is required to respect it, they are assuming there is something common that they are talking *about*; that proposals rise and fall in probability to the extent that these proposals seem adequate to an experience of life that they all share. In other words, the antirealist objector does not look deeply enough: the antirealist objector encounters disagreement and then mistakenly ontologizes it by positing the existence of different epistemic life-worlds to explain that disagreement, whereas the practical approach sees disagreement as a process of ongoing clarification about human experience.

It is out of this reflection upon appropriate action in universal experience that Nussbaum believes a normative account of human flourishing can be given. Accordingly, Nussbaum has spent a good amount of her scholarly career refining what she calls a list of capabilities—things that every person should be able to do—

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<sup>62</sup> Martha C. Nussbaum “Non-Relative Virtues: An Aristotelian Approach,” *Midwest Studies in Philosophy* 13.1 (September 1988): 32-53, at 36.

in order to have a life that is capable of flourishing. She identifies ten “central capabilities”: life (i.e., being able to live a life of normal length); bodily health; bodily integrity (including freedom of movement and safety against violence); senses, imagination, and thought (being able to cultivate a life of the mind, requiring—among other things—an adequate education); emotions (being able to generate deep attachments to others); practical reason (being able to form a conception of the good life and being able to pursue it); affiliation (to create communities and to receive respect as a member of those communities); other species (cultivating a sustainable lifestyle); play (having unstructured leisure time); and control over one’s environment (enjoying civil and political freedoms while also having a life stabilized through the possession of property, the securing of employment, and a respect for privacy).<sup>63</sup>

Nussbaum’s capabilities approach has much to commend it in the current context. In addition to its status as a realist rejoinder to postmodern antirealism about truth, the approach is also conscious of many of the objections that skeptics of the universality of human rights have raised to the concept. Unlike the rights approach criticized above by V. Spike Peterson, Nussbaum’s capabilities approach attempts to remedy the sexist construal of human nature that stands in the background of human rights by grounding its claims not in any abstract formulation of human nature, but in the concrete experience of “human birth and minimal agency”—an approach which allows her to be more inclusive of individuals with

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<sup>63</sup> Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Harvard Belknap Press, 2011), 33-34.

disabilities.<sup>64</sup> In addition, in response to claims from non-Western nations that Western nations tend to insist on political and civil freedoms to the exclusion of socioeconomic freedoms, the capabilities approach articulates both as equally central and equally important—and it is government’s job to make sure that these capabilities are realistic possibilities for the citizens they serve.<sup>65</sup> In cases where an individual government cannot ensure these capabilities, Nussbaum maintains that it is incumbent upon richer nations to offer assistance.<sup>66</sup> Through these features, one can also see Nussbaum’s attempt to transcend the realist paradigm of political theory by making the enabling of capabilities a truly global responsibility that reflects, in turn, Nussbaum’s turn to the universal experience of the human condition as the grounds for building out the capabilities she lists.

The capabilities approach has also been criticized as well on grounds that, despite its aspiration to universality, the capabilities approach still reflects a modern liberal bias *against* religion. Indeed, in her review of MacIntyre’s work, Nussbaum reveals her trenchant judgment against Christianity. “No moral system,” she writes, “has exterminated local traditions more relentlessly and more successfully than Christianity.”<sup>67</sup> Moreover, in her list of capabilities, religion itself is relegated to the capability of “senses, imagination, and thought” without a clear account of what religion is supposed to do.<sup>68</sup> But, religion plays a major role in the cultural and political worlds of many who do not live in the West. So to the extent

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<sup>64</sup> Nussbaum, *Creating Capabilities*, 63.

<sup>65</sup> Nussbaum, *Creating Capabilities*, 66-67.

<sup>66</sup> Nussbaum, *Creating Capabilities*, 64.

<sup>67</sup> Nussbaum, “Recoiling from Reason.”

<sup>68</sup> As she describes it, part of the capability of “senses, imagination, and thought” is “being able to use imagination and thought in connection with experiencing and producing works and events of one’s own choice, religious, literary, musical, and so forth” (Nussbaum, *Creating Capabilities*, 33).

that Nussbaum's account precludes a substantive place for religion and spirituality, it is to that extent that the portent of a Western bias manifests even in an approach as aspirationally capacious as the capabilities approach.<sup>69</sup> Neocolonial concerns are also raised to the extent that Western nations and other nations from the Global North are suspected to be the ones who would "ensure" that other governments are properly implementing the capabilities approach within their own countries.

The case against moral antirealism continues to deepen when one continues to investigate other praxis-based theological approaches to generating a concept of human flourishing and of its constitutive concept, human nature. For example, in her recent articulation of a praxis-based natural law approach to human flourishing, Lisa Cahill foregrounds the advantages of a pragmatist approach towards understanding the good. In explaining her choice of the pragmatist tradition, she highlights how the pragmatist tradition exemplifies how "ethical and theological truths have practical origins, practical meaning, and practical criteria for verification, even though they can also be true across particular communities or 'universally'."<sup>70</sup> She goes on to highlight three features of pragmatism that are especially relevant in understanding human nature. First, pragmatic approaches understand selves as socially constituted with individual identity complexly formed within particular worldviews and cultural practices of a given worldview. Second, pragmatic epistemology is realist: that is to say that there is a correspondence

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<sup>69</sup> For similar critiques, see Green, "MacIntyre and Nussbaum on Diversity, Liberalism, and Christianity," 142-143, and Lisa Sowle Cahill, *Sex, Gender, and Christian Ethics* (New York: Cambridge University Press, 1996), 58-59.

<sup>70</sup> Lisa Sowle Cahill, *Global Justice, Christology, and Christian Ethics* (New York: Cambridge University Press, 2013), 4.

between reality and our perception of it. And third, pragmatic approaches to truth recognize that truth is not morally neutral, but, rather, that what we recognize as true shapes the moral realities that persons live.<sup>71</sup> Subsequently and similar to Nussbaum's approach, a conversation about norms develops out of a common recognition of the basic realities that human beings experience in common.<sup>72</sup>

Praxis-based approaches are not limited to theological ones. Far from it, a praxis-based approach, including with it the presumption of moral realism, best explains the approaches taken by people doing cross-cultural dialogue about human flourishing. As Cahill notes with great accuracy, "[A]t the level of experientially recognized and practically important needs, social ethics proceeds on the assumption of a shared humanity and at least a fundamentally shared moral vision, whether or not the philosophical warrants for that assumption are in place. Without some essential unity of human moral experience and common recognition of values, virtues, and vices, social criticism in the name of justice would be impossible."<sup>73</sup>

And indeed political theorists who work on questions of human rights are not ceding any ground to moral antirealism. Indeed, even though she critiques the sexist anthropology in the background to human rights, V. Spike Peterson does not believe the solution is to turn our back on a universalism, but, instead, the task is to articulate what she calls an "interactive universalism," which sees universality as an ideal, but as one that "does not deny our embodied and embedded identity, but aims at developing moral attitudes and encouraging political transformations that can

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<sup>71</sup> Cahill, *Global Justice, Christology, and Christian Ethics*, 10-18.

<sup>72</sup> Cahill, *Global Justice, Christology, and Christian Ethics*, 259-260.

<sup>73</sup> Cahill, *Sex, Gender, and Christian Ethics*, 33.

yield a point of view acceptable to all.”<sup>74</sup> Political scientist Chris Brown maintains a similar optimism in the face of moral antirealism. Between the “moral monism” of conventional human rights and “moral relativism,” Brown believes that “one answer to propose is that even if we cannot find ‘a view from nowhere’ we may be able to construct one.”<sup>75</sup> For his part, Robert Patman looks to the persistence of belief in human rights as one of the strongest reasons to continue to work within the tradition. “Because human ‘wrongs’ still constitute one of the dominating aspects of world politics, the enduring strength of the Declaration [on Human Rights] lies in its vision of emancipating all victims across the world...As well as serving as a source of hope for the downtrodden, the Declaration has also served as a reminder that the world should not turn a blind eye to the sufferings of human beings regardless of frontiers.”<sup>76</sup>

And lastly, from a postcolonial perspective, Bruce Robbins advocates for a return to a humanist paradigm for postcolonial studies, one which “if the world universal applies, it applies not as an already-existing foundation that all reasonable men and women must naturally agree on, but as a risky, uncertain balancing of the different values, vocabularies, and priorities that reasonably emerge from different circumstances.”<sup>77</sup> Indeed he sees this project as devastatingly urgent, for—in agreement with thinkers like Cahill—Robbins writes, “When postcolonial critics

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<sup>74</sup> Peterson, “Whose Rights?”, 333, quoting Seyla Benhabib, “The Generalized and the Concrete Other,” in *Feminism as Critique: On the Politics of Gender*, ed., Seyla Benhabib and Drucilla Cornell (Minneapolis: University of Minneapolis Press, 1987), 81n70.

<sup>75</sup> Brown, “Universal Human Rights?”, 43. He eventually commends Nussbaum’s capabilities approach and Richard Rorty’s postmodern account of rights (45-49).

<sup>76</sup> Patman, “International Human Rights after the Cold War,” 15-16.

<sup>77</sup> Bruce Robbins, “Race, Gender, Class, Postcolonialism: Toward a New Humanistic Paradigm?” in *A Companion to Postcolonial Studies*, 556-573, at 567.



assert that ‘universalism’ is the main prop of imperialism, they do the non-Western world no favors.”<sup>78</sup> More than this, there is a danger of an insurgent racism among Western academic who do see universalism in this way. Robbins charges, “To believe one is fighting colonialism by deconstructing the Enlightenment is a bit too convenient for European and American scholars.”<sup>79</sup>

There is also one more praxis-based account that would speak against the adoption of moral antirealism: queer activism and the queer theory that has proceeded from that activism. In the previous chapter, I provided a genealogy that based both queer theory and queer theology in various gender and sexuality-based liberation movements. It is crucial to remember that these movements were *political* ones, which meant that they were fighting for specific goods like nondiscrimination and healthcare, among others. Buttressing the fight for these goods are a variety of normative claims—including, for example, the claims that healthcare *should* be available to all, and that gender and sexual orientation *should* be protected classes with respect to employment law.<sup>80</sup> It would thus be odious to queer theory to, at once, claim a genealogy based in the material reality of queer activism and yet deny the normativity that is implied within queer and other liberation movements, and it is one that is based, as we’ve seen in other praxis-based accounts in either implicit or explicit appeals to a commonality of human experience. There is, in other words, a normativity implied within the intellectual life of queer theory itself. Such an argument would imply, then, that moral realism is

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<sup>78</sup> Robbins “Race, Gender, Class, Postcolonialism,” 556.

<sup>79</sup> Robbins, “Race, Gender, Class, Postcolonialism,” 562-563.

<sup>80</sup> See, for example, Jeremiah J. Garretson, *The Path to Gay Rights: How Activism and Coming Out Changed Public Opinion* (New York: New York University Press, 2018).

required in order to be a queer theorist, even as contestation persists about how to draw up an account of human flourishing.

### **2.2.2 Postmodernism without Anti-Realism: Criteria for a Queer Natural Law Concept of ‘Human Flourishing’**

If, as argued in the previous section, there are logical and practical grounds for rejecting a moral antirealist account of truth concerning human flourishing for a moral realist account of it, the question then arises: what kind of account should we adopt? As the title of this work would suggest, a queer natural law project would endorse one that is inspired both by queer interventions as well as by a natural law ethical project. Its contours will be one that will be postmodern without being antirealist—meaning that it will accept the truth-as-discourse model that descends from queer theorists like Foucault and Butler while also recognizing that various critiques of truth, specifically the critique of truth as will-to-power that we descending from Nietzsche and others inspired by him, do not ultimately deny the reality of moral truth as much as they point out how vigorously our criteria must be in order to guard against oppressive concepts of truth.

This sort of approach is not unprecedented in a natural law project. As we’ve already seen in the last section, Lisa Cahill’s pragmatist account of the natural law explicitly combines a moral realism with an understanding of reality as socially constructed. To this extent, then, it can be seen as a “postmodern” account, or at least an account that takes postmodernism seriously. But prior to this account

stands Cristina Traina's account of natural law which sought to draw together both the natural law tradition and feminist convictions in her account of 'feminist natural law'. "Feminist natural law thought," Traina writes,

has the advantage of combining the post-modern capacity for rigorous, inductive, open-ended criticism with a substantive if flexible version of the good and a moral mandate to pursue it, for oneself and for others...Through a commitment to holistic flourishing and to inductive reflection, it embraces both the traditionalist view that our bodies and the natural world in some sense encode information about God's provident desires for us and the post-modern view that bodies and their goods are for better and worse socially constructed.<sup>81</sup>

And, though not specifically a natural law theologian, Margaret Farley articulates a relationship between deconstruction and ethical method that resonates with what has been said above. "Experience may indeed be socially constructed, lodged in a hermeneutical circle, layered with meanings never fully accessible, manipulated by forces never fully understood. But deconstructive methods yield more than an infinite regress. These *are* processes of discovery, of consciousness raising, of interpreting more accurately our experiences present and past, of making explicit what was previous implicit."<sup>82</sup> And while she notes that the effect of deconstruction has been that ethicists probably believe that a smaller number of previously-articulated moral norms are accurately formulated, still Farley defends universal

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<sup>81</sup> Cristina Traina, "Feminist Natural Law," in *Concilium* 3 (2010): 79-87, at 84.

<sup>82</sup> Margaret Farley, "The Role of Experience in Moral Discernment (1996)," in *Changing the Questions: Explorations in Christian Ethics*, ed., Jamie L. Manson (Maryknoll, NY: Orbis, 2015), 47-68, at 63.

moral norms on grounds of common human experiences like sorrow and rejoicing, among others.<sup>83</sup>

Similar, then, to a feminist natural law project which sought to bring feminist concerns into a natural law framework, a queer natural law framework will bring queer concerns into a natural law framework within the context of developing criteria for discerning human flourishing. In other words, instead of seeing truth about human flourishing ultimately as a function of power, as the postmodern-antirealist objection holds, we must instead develop criteria for understanding normative for human flourishing as legitimate candidates for truth. Such candidates will (a) be consonant with what I call a capacious understanding of human flourishing; will (b) take our position as fallible knowers seriously, and therefore, makes room for perhaps considerable revision, *and* will (c) recognize that the nature of articulation for *any* candidate for truth, regardless of whether it is ultimately true or false, is social; hence, it is discursive; and, hence, can never be responsibly separated from questions about power.

A candidate for a normative account of human flourishing is capacious just in case it allows for multiple and different types of interdisciplinary engagement to help fill in what human flourishing consists in. It is at this point where disciplines like biology, sociology, psychology and others can participate explicitly by treating the *human being* as the phenomenon to be encountered. The definition sets the stage, in other words, investigate what it means to be human from as wide of an angle as possible. This criterion helpfully meets the expectations both of queer

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<sup>83</sup> Margaret Farley, "Feminist and Universal Morality," in *Changing the Questions*, 88-111, at 101.

thinkers and of natural law thinkers in order to be considered a viable candidate as a criterion that reflects a queer natural law perspective. When specific candidates are put forward to more closely define human nature—say, along the lines that biology or psychology might—that can be subsequently identified as attempting to universalize one particular standpoint to the detriment of others (which is one way of understanding what it is that critiques of theories as hetero/sexist and racist are meant to do), then we have grounds for rejecting any such specification. Such specifications, in other words, fail to be capacious. This is one thing that queer theory does when it attempts to denaturalize the binary heterosexist understanding of gender, as our review of Judith Butler’s work on gender above shows.

The second, fallibilist criterion, also represents a rapprochement between queer and natural law concerns. As we’ve seen with all the natural lawyers reviewed already, the emphasis upon an inductive approach to human flourishing is paramount. Indeed, when Lisa Cahill describes the ethical orientation of the natural law she understands it to maintain a view of human nature “as purposeful (teleological); a conviction that basic moral values are ‘objective’ and shared among culturally different human beings (moral realism), [and] a moral epistemology of inductive, experience-based, critical practical reasoning (a connection between the ‘is’ and the ‘ought’) in which contingent contexts are highly influential in discerning priorities among goods and concrete choices about them.”<sup>84</sup> This criterion also can be endorsed as queer insofar as one can discern a similar epistemic orientation with respect all subject matters that undergo queer critique. There is no other way

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<sup>84</sup> Cahill, *Global Justice, Christology, and Christian Ethics*, 250-251.

coherently to argue for a change in understanding without also betraying a fallibilism to undergird it. Indeed, some queer thinkers, like Sara Ahmed, have made such an orientation a cornerstone of their academic projects, by showing that the world and what one knows about it completely depends on what types of persons and ways of life you allow to form one's worldview—in other words, it depends on how we are epistemically oriented.<sup>85</sup> More recent work by Judith Butler has also emphasized how self-knowledge is difficult to attain because, in a certain sense, we remain “opaque” to ourselves.<sup>86</sup> If what we know can change—whether that knowledge is with respect to ourselves or with respect to others—we are dealing with a fallibilist framework.

The last criterion—that an appreciation of the discursive effects of truth is necessary—does not require squaring with a queer account, since this criterion itself is the substance of the queer inflection to the postmodern objection to human flourishing. The question, then, is how the natural law tradition can rise to it. I believe there are resources for us upon reflection on the notion of (God's) primary causality, and (human beings) secondary causality that is Thomistically inspired. Theologians make this distinction between primary and secondary causality in order to explain how genuine free will is possible while retaining God's status as the originary cause of each human act of willing.<sup>87</sup> Now, crucially, Thomas understood God's activity to act in a specific fashion, namely in a providential fashion, which

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<sup>85</sup> Sara Ahmed, *Queer Phenomenology: Orientations, Objects, Others* (Durham, NC: Duke University Press, 2006).

<sup>86</sup> Judith Butler, *Giving an Account of Oneself* (New York: Fordham University Press, 2005).

<sup>87</sup> Aquinas, *ST I* 83.1, ad. 3.

directs us towards eternal life.<sup>88</sup> We are, to use O'Meara's words, "predestined to grace" in God, and God's action in the world is directed towards both our attainment of eternal life in the world to come, but also towards attainment of who we are to be as terrestrial creatures.<sup>89</sup> When an understanding of God's action in the world is charged with the understanding of God that we receive from liberation theology—in which God acts in the world in order to help bring about a flourishing for all persons, both in this life and in the life to come—we gain an understanding of God's providence as one in which our understanding is not only directed towards true understanding, but is also oriented towards truly liberative outcomes as well for all of God's creation. The doctrine of primary and secondary causality thus helps us appreciate two things at once: on the one hand, it specifies God's activity as one that helps us attain true and liberating knowledge in the present world; and, on the other, it qualifies God's activity as a cooperative relationship between both human beings and God that takes the epistemological limitations of human knowing seriously.

This appropriation of Thomas makes a point of contact with the Foucaultian account of power/knowledge as both discursive and productive, while not losing sight of power's operation also as oppressive. For Foucault truth is a truly social project—what we remarked above as, using his words, a "great surface network"—in which different acts of agency with different sorts of social qualifications interact in order to produce knowledge that then gets applied to certain bodies. Certainly,

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<sup>88</sup> Aquinas, *STI* 23.1.

<sup>89</sup> Thomas F. O'Meara, O.P., *Thomas Aquinas: Theologian* (Notre Dame: University of Notre Dame Press, 1997), 103-105.

Foucault has in mind the operations of various acts of human agency in this production of power/knowledge, but in a queer natural law framework that appropriates Thomas's insight into primary and secondary causality, we can include God's own providential activity within this discursive paradigm of truth production as well. Once again, this providential activity is not coercive, but rather, working with human beings as fallen creatures, God moves human beings to know and to act into a liberating truth for all of God's creation. The task then becomes not whether God is involved in our discursive operations, but how it is that we can cooperate with God's providence in order to sanctify this discourse. If we cooperate with God in the sanctification of discourse, we then will find ways to produce candidates for human nature that are consciously aware of the inseparability of questions of truth from questions of power, without thereby collapsing truth into power.

### **2.3 THOMAS'S EPISTEMOLOGY AND THEORY OF COGNITION: A FOUNDATION FOR A QUEER NATURAL LAW ACCOUNT OF HUMAN FLOURISHING**

The arguments of the previous sections have shown that a queer natural law account of human flourishing is, in principle, possible, insofar as it is possible to generate a postmodern conception of the natural law that takes queer concerns substantively into account without recruiting a moral antirealism. But an important account remains in the background: a concept of human nature upon which such a conception of human flourishing can be based. In this final section, I believe a queer



natural law approach can look fruitfully to the theological anthropology of Thomas Aquinas in order to gain a foothold onto articulating an epistemology that meets the criteria that I've specified above.

To explore Thomas's anthropology is to explore one that is constantly pointing heavenward, which is to say that Thomas's anthropology makes sense only if one understands that the human being is fundamentally oriented towards God. As M-D Chenu puts it, "When creation came about, at the heart of the being that it receives from God is placed an ontological link—a pure relation where the poverty of the created one is expressed—and the creature is therefore bound to God as it is set forth in existence."<sup>90</sup> What is therefore never lost in Thomas's anthropology is the judgment that relationship—namely that between creator and creature—is foundational to what it means to be a human being. To speak of such a creator-creature relationship is to recognize that our status as creatures is complete gift; our being is completely gratuitous. It is to recognize that be a creature is to be the sort of thing that need not exist. Instead, as Christian theologians have recognized it, it is to recognize that we come to exist out of nothing, *ex nihilo*: "[I]t is not necessary that God should will anything except Himself....but the world exists forasmuch as God wills it to exist, since the being of the world depends on the will of God, as on its cause."<sup>91</sup> Therefore, "nothing can be, unless it is from God, Who is the universal

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<sup>90</sup> M-D Chenu, *Aquinas and His Role in Theology*, trans. Paul Philibert, O.P. (Collegeville, MN: Liturgical Press, 2002), 87.

<sup>91</sup> Aquinas, *ST I* 46.1.

cause of all being. Hence it is necessary to say that God brings things into being from nothing.”<sup>92</sup>

Since Thomas inherits an understanding of causality from Aristotle, a discussion of the subject of creation not only involves considerations about who is the agent behind creation (efficient causality), but it also recruits questions about what creation is for (final causality): why create? The answer for Thomas continues to reflect the utter gratuitousness of God’s activity: the reason why we exist is so that God can express God’s own goodness through the particular way in which a given creature was created.<sup>93</sup>

This last observation is important, since it signals an appreciation on Thomas’s part for the diversity of God’s creation in the midst of a common final cause. Though creatures differ from one another in function, they—each in their own way—express God’s gratuitous goodness through the particular ways in which they exist: rocks express God’s goodness in a way appropriate to their being rocks; rabbits express God’s goodness in a way appropriate to them; and human beings do so in a way that is appropriate to their way of being. Thomas, infusing his doctrine of creation with the book of Genesis, will recognize this common element, this mark whereby all creatures in their own way share in God’s goodness, with the observation that all creatures share in the divine likeness.<sup>94</sup> To be created, in other words, is to reflect the divine likeness at the deepest level of one’s own being.

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<sup>92</sup> Aquinas, *STI* 45.2.

<sup>93</sup> Aquinas, *STI* 44.4.

<sup>94</sup> Aquinas, *STI* 93.2; cf., Robert Pasnau, *Thomas Aquinas on Human Nature: A Philosophical Study of Summa Theologiae Ia 75-89* (New York: Cambridge University Press, 2002), 402; James Brent, O.P., “God’s Knowledge and Will,” in *Oxford Handbook of Aquinas*, ed., Brian Davies (New York: Oxford University Press, 2012), 158-170, at 165.

An appreciation of the diverse ways in which the divine likeness is reflected in God's creatures leads Thomas to an appropriation of perhaps the widest neo-platonic framework used within the Christian tradition to date: the metaphysical framework of participation. In this framework, the different manifestations of the divine likeness that are represented by the diversity of creatures illustrate the different ways in which all creatures *participate* in the divine being. This is an important synthesis within Thomas's doctrine of creation, for when one thinks about creation *ex nihilo*, one is under the impression that there is, indeed, the greatest difference between God and creation (namely, necessity and utter contingency), but where one speaks about participated existence, one is thinking in terms of similarity within a hierarchical representation of reality. In a participation metaphysics, if one grants that God is perfect, then all creatures exhibit this perfection more or less perfectly to the extent that they more or less completely participate in God's perfection (understood as the manner in which God exists). "Therefore, all beings apart from God are not their own being, but are beings by participation," Thomas writes. "Therefore it must be that all things which are diversified by the diverse participation of being, so as to be more or less perfect, are caused by one First being, Who possesses being most perfectly."<sup>95</sup>

We can now approach a justification for understanding why inquiring about Thomas's anthropology is to inquire about one that faces heavenward: another way of asking about the human being on Thomas's view is to ask about how it is that the human being, as a creature, participates in God's existence. It is to ask about what

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<sup>95</sup> Aquinas, *ST* 44.1.

form of creatureliness distinguishes the human being from other creatures. For Thomas, the major mark of distinction that sets the human being apart from other creatures is the observation, once again drawing from Scripture, that human beings are made not only in the likeness of God (as are all creatures), but that human beings are made in the *image* of God as well. In Thomas's anthropology this becomes a technical term for naming those features of human existence that resemble in a meaningfully proximate way the manner of God's own existence. For Thomas, what makes human beings images of God is the fact that human beings, like God, are able to understand and to act freely, or—to use Thomas's language—human beings are images of God in view of the fact that we have an “intellectual nature.”<sup>96</sup>

With such aspirations, we can see that Thomas is moving towards a concept which we would recognize as human nature. The next step is to ask Thomas what it is that this human nature consists in—what it is that this distinctly intellectual nature, this image of God, consists in. “Now the intellectual nature imitates God chiefly in this,” Thomas writes, “that God understands and loves Himself.” This response gives us a clue: that the operation of an intellectual nature is overall oriented towards understanding and loving God more deeply.<sup>97</sup> Put in terms of participation metaphysics, human beings participate in God by coming to know and to love God, and this mode differs from the ways that other creatures like rocks and rabbits participate in God, since neither of them have the ability to understand, which is a prerequisite both for knowing and for loving.

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<sup>96</sup> Aquinas, *STI* 93.4.

<sup>97</sup> Aquinas, *STI* 93.4

So, for Thomas, the human creature's *telos* is knowing and loving God, an end that is built into Thomas's conception of what human nature, as an instantiation of an intellectual nature, consists in. But how does such loving and such knowing come about? This is where we turn to Thomas's epistemology. Just as Thomas's anthropology points heavenward, so we can say validly that his epistemology points heavenward as well. For the possibility of knowing anything—that is, coming to justified, true belief in anything—depends on God's knowing them, a task which God, as creator, can easily fulfill.<sup>98</sup> As one would expect from Thomas's participation metaphysics, the main difference between God's knowing something and our knowing that same thing is a matter of degree: God knows things perfectly; whereas we, on the other hand, know things imperfectly. Also, as one would expect from Thomas's participation metaphysics, the reason *why* we know imperfectly has to do with certain circumstances surrounding our creation specifically as human beings and not as other types of creatures like rocks and like rabbits.

When describing those circumstances concerning what it means for human beings to know something, Thomas highlights the various advantages and limitations to coming to know specifically as *embodied* creatures. Because we are creatures with bodies, we need our bodies in order to know anything.<sup>99</sup> This is in contrast, for example, with the angels, who do not need bodies in order to know, but

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<sup>98</sup> Brent, "God's Knowledge and Will," 158-161.

<sup>99</sup> At least this is true with respect to terrestrial existence, but what about in heaven? After the resurrection of the body, there is, strictly speaking, no issue, since all human beings will be reunited with their bodies. But what about now? How do the saints in heaven know anything if, as human beings, their bodies are required—the very thing that is lacking? Thomas's answer shows the agility of his mental prowess: prior to the resurrection, the souls in heaven know by way of God's providing their minds with information proportionate to the level of understanding they would have had with a body (see *STI* 89.1, ad. 3).

rather understand things more perfectly than we do, though less perfectly than God does.<sup>100</sup> The distinctively human mode of understanding is always already embedded in a sensory, material world in which the human knower encounters objects that, in a certain sense, have a story to tell. As Martin Pickavé summarizes, “Our intellect simply cannot operate under normal conditions without receiving input from the senses and without cooperation of the sensory powers.”<sup>101</sup> This hardly can be used to say that it is impossible to have knowledge of non-sensory things—otherwise it would be impossible to come to know God in any way—but it *is* to say—as Thomas often affirms—that anything we know we come to know through the senses.<sup>102</sup> In other words, we gain knowledge of God through our senses. Chenu remarks, “The true means for entering into God’s plan is to become attached to the knowledge of sensory causes to the degree that we can know them.”<sup>103</sup>

At this point, it will be helpful to use an example, as Aquinas’s understanding of what happens in cognition is at some variance with how we would understand it today. Let’s say that you are studying the behavior of an animal that has recently captured your attention and which you are currently observing. According to Thomas, what happens when you observe this animal is a complex transaction between visible and invisible realities. As you observe the animal, your senses—perhaps in this case your senses of sight and of hearing—focus on the animal and receive what we would call impressions from that object. At this point, you have received these sense impressions—what Thomas calls phantasms—but you,

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<sup>100</sup> Aquinas, *STI* 57.1.

<sup>101</sup> Martin Pickavé, “Human Knowledge,” in *Oxford Handbook of Aquinas*, 311-324, at 312.

<sup>102</sup> Pickavé, “Human Knowledge,” 314-315.

<sup>103</sup> Chenu, *Aquinas and His Role in Theology*, 90.

technically, have no idea what it is that you are perceiving. At this point, you begin to reason about what it is that you are perceiving; this Thomas calls the action of the *active* intellect which interacts with these impressions in order to make sense of what it is that you are perceiving.<sup>104</sup> It is through this process that Thomas believes that human beings eventually come to know the metaphysical truth about an entity and about what that entity is supposed to be. This is what it means for Thomas to say that through the operation of the active intellect we come into contact with an entity's form.<sup>105</sup> Thomas will call this process the "lighting up" of the phantasms received by means of the senses,<sup>106</sup> a process which has its origin in a light which, in a beautiful appropriation of the psalmist's words, Thomas will identify with God Godself.

For the intellectual light which is in us, is nothing else than a participated likeness of the uncreated light...whence it is written *Many say: Who showeth us good things?* Which question the Psalmist answers, *The Light of the Countenance, O Lord, is signed upon us*, as though he were to say: By the seal of the Divine light in us, all things are made known to us.<sup>107</sup> (*ST I* 84.5, resp.)

One might easily and readily object that, whatever this account maintains by way of beauty, it loses by way of reasonableness, since fewer things seem more obviously true than the statements that (a) human beings clearly do not have knowledge of all things, and that (b) of those things with respect to which human

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<sup>104</sup> Aquinas, *ST I* 79.3.

<sup>105</sup> Aquinas, *ST I* 85.6.

<sup>106</sup> Aquinas, *ST I* 79.4.

<sup>107</sup> Aquinas, *ST I* 85.4. The interested reader can compare this account to the more detailed one given in Pasnau, *Thomas Aquinas on Human Nature*, 267-329. See also Pickavé, "Human Knowledge," 312-316.

beings do have knowledge, that knowledge or understanding is hardly complete. On the basis of this, one might suggest either that we don't have this divine light in the way that Thomas says we do, or that this divine light doesn't exist at all. But this sort of reasoning rushes too quickly. Since, for Thomas, while the divine light—God's action in helping us understand—enables the process of understanding to occur, God is not the only cause of our understanding. We, as individual knowers, have a role to play as well, and how well we understand a given entity—or cognize an entity's form, to use different language—does in significant part depend on us. Right understanding depends on, principally, what sort of knowledge the individual already possesses; how adept the reasoner is at reasoning; and whether there are any impediments to reasoning because of limitations affecting the individual knower.

These are some important epistemic qualifications. The first qualification—that what we can know depends to a certain extent on what we already know—shows Aquinas's appreciation for the progressive nature of the pursuit of truth, something that further testifies to Thomas' recognition that there is no guarantee of right understanding simply because God is involved in the process of cognition. A distinction that Aquinas makes throughout his epistemology is one between the wise and those who are not properly so-called. What distinguishes the wise are differences in their learnedness: they not only know certain facts, but they have justifications for those facts (i.e., they know the *truth* of certain propositions). In his article on Thomas's epistemology, Scott MacDonald distinguishes three main types of knowledge that the wise have. The first is knowledge in a paradigmatic sense,



which Thomas calls *scientia*, that, is truth by demonstration. The latter two types are both more provisional. The first of these latter two are *demonstrationes quia* or ‘factual demonstrations’, demonstrations that largely correspond to inferential arguments in which one can establish that something is the case but lack a “theoretically deep explanation of it.” The final type of knowledge MacDonald identifies as ‘probabilistic *scientia*,’ or “for-the-most-part” truths. Knowledge of this type concerns contingent matters that allow one to say that one can “know” something will occur as long as no external factors intervene.<sup>108</sup> If these latter two forms of *scientia* sound familiar, there is a reason for it: they resemble, for the most part, how we understand scientific reasoning to proceed today, giving us justified inferential, though incomplete, knowledge of contingent phenomena. So, in Thomas’s view, the pursuit of knowledge is a race that is run particularly well by the wise, who, in turn, have knowledge of certain truths with varying levels of certainty.<sup>109</sup> As MacDonald observes,

Our initial encounters with sensible objects might give us only rudimentary, shadowy, or vague cognition of their real natures [essences], cognition that can be developed and refined with further experience. Given these remarks, it seems best to think of the abstracting activity of the agent [active] intellect not as a sort of mysterious instantaneous production of a universal form out

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<sup>108</sup> Scott MacDonald, “Theory of Knowledge,” in *Cambridge Companion to Aquinas*, ed., Norman Kretzman and Eleonore Stump (New York: Cambridge University Press, 1993), 174-178.

<sup>109</sup> Aquinas, *STI* 85.7.

of the data provided to it by sensation, but as a gradual, perhaps arduous, intellectual process.<sup>110</sup>

More than this, not only is Thomas' epistemology sensitive to the types of knowledge that can be had in this world, it is also sensitive to the fact that understanding is a skill that everyone—wise or not—has to cultivate over time. This is the second qualification: that what we know depends on how adept we are at reasoning. This is one of the features of our intellectual nature as humans that separates us from other sorts of rational beings (namely, angels and God). Not only, as said above, do we require sense impressions for understanding anything,<sup>111</sup> but our minds have to labor in order to understand the essences (i.e., the forms) of the phenomena that we encounter. Thomas provides a spatial metaphor for this process of understanding as the operation of reason “advancing from one thing to another.” He writes,

But man arrives at the knowledge of intelligible truth by advancing from one thing to another; and therefore he is called rational. Reasoning, therefore, is compared to understanding, as movement is to rest, or acquisition to possession; of which one belongs to the perfect, the other to the imperfect...hence it is that human reasoning, by way of inquiry and discovery, advances from certain things simply understood--namely, the first principles; and again, by way of judgment returns by analysis to first principles, in light of which it examines what it has found.<sup>112</sup>

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<sup>110</sup> MacDonald, “Theory of Knowledge,” 184.

<sup>111</sup> Aquinas, *ST I* 85.2.

<sup>112</sup> Aquinas, *ST I* 79.8.

In the *Summa*, Thomas will identify this ‘operation of reasoning as the intellect’s work of ‘composition and division’. Thomas notes that this process can fail—that is, we can misidentify what we are experiencing—in two distinct ways. In the first way, we might be mistaken about what we believe we are experiencing “when, for instance, the definition of a thing is false in relation to something as, as the definition of a circle applied to a triangle”—that is, we fail to apply to a phenomenon an inappropriate category; while, in the second way, we are mistaken by attributing a nonsensical or contradictory category to something that we are experiencing.<sup>113</sup>

Lastly, a limitation upon knowing that applies to human creatures has to do with whether we are living with any sort of physical or psychological conditions that would prevent us from being able to carry out the act of understanding. The easiest set of cases to call to mind are those in which an individual human knower is deprived of one or more of the five basic senses of sight, touch, hearing, taste, or smell. As we’ve seen, Thomas maintains that all knowing for human beings comes from sense impressions, so to lack one of these senses is to lack the ability to obtain knowledge appropriate to that sense.<sup>114</sup> Likewise, persons living with some sort of cognitive impairment would not be able to come to certain knowledge about phenomena since the process of reasoning itself would come only with great difficulty, if the process can be said to occur at a substantive level at all.

With this brief description in hand, we are able to say what serves as basic account of human nature for Thomas that can subsequently be elaborated for the purposes of understanding human flourishing. As expected, it is a description that

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<sup>113</sup> Aquinas, *ST* 86.5.

<sup>114</sup> Cf. Aquinas, *ST I* 84.8.

traverses at one and the same time both the descriptive and the normative. Our human nature, Thomas believes, is to be embodied as epistemically fallible creatures who are tasked with knowing and loving God, and the only way in which we go about fulfilling this task is through the messy engagement with phenomena in the world at an individual level and at a social level—taking these phenomena in through our senses and extracting knowledge from this engagement, at times, only with great difficulty. But what can never be forgotten in such a process is that, for Thomas, God’s directive, providential activity of drawing the creature into a deeper knowledge of God. This world, and God’s creative activity in it, all exists to point us to the gratuitous love of God. As Chenu remarks, “Providence is not a gracious supplement given to help us through our incapacities and precarious moments. Providence is the act through which we receive everything we need to achieve our destiny.”<sup>115</sup>

Now, it is one thing to give a basic account of Thomas’s epistemology of theory of cognition; it is another thing to explain why they should be held as useful today. In my view, the main reason why a contemporary thinker should care about Thomas’s epistemology is that the metaphysical realism that undergirds Thomas’s account has more in common with our scientific worldview today than does any form of anti-realism. Just as the scientific method with which many of us become familiar during the course of our schooling presumes the existence of objects in a world that is “real” insofar as these objects are believed to be both external to the

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<sup>115</sup> Chenu, *Aquinas and His Role in Theology*, 87. Remarking on the relevance of this providence to our creation, Mark Jordan will write, “To say that human beings have natural desire for God is to say that their unimpeded motion would be towards God.” See Mark D. Jordan, *Teaching Bodies: Moral Formation in the Summa of Thomas Aquinas* (New York: Fordham University Press, 2017), 112.

knower *and* furthermore susceptible to critical assessment, so does Thomas's framework presume the existence of objects for our experience. As one might expect, contemporary natural lawyers have asserted such a foundation in articulating their frameworks.<sup>116</sup> But this observation is not limited to theologians. In fact, this observation has served as the core of contemporary retrievals of Thomas's metaphysics and epistemology among philosophers more broadly. Calling Thomas's framework a 'clarified realist' one, Callum David Scott argues not only that Thomas's framework is compatible with our contemporary scientific worldview, but also that a retrieval of Thomas's framework can serve as a response to contemporary metaphysically antirealist accounts that have descended from thinkers like Kant and Hegel.<sup>117</sup> One can even recognize a resurgence of an interest in metaphysically realist positions that do not explicitly attempt to integrate Thomas. Depending on which literature one is reading, this emerging school of thought is identified variously either as speculative realism (metaphysics), critical realism (philosophy of science), or new materialism (English).<sup>118</sup> To the extent, then, that there is a convergence between the realist frameworks in play in contemporary philosophical and scientific accounts, to that extent does Thomas's framework deserve consideration potentially as a companion framework.

But a question can be raised at this point—one that is relevant to a queer natural law account. It asks whether Thomas's account is truly as capacious as it

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<sup>116</sup> See, for example, Jean Porter's *Nature as Reason: A Thomistic Theory of the Natural Law* (Grand Rapids, MI: Eerdmans, 2005), 57-68.

<sup>117</sup> See his "Saint Thomas Aquinas' Ontological Epistemology as Clarified Realism: The Relating of Subject to Object for Ontological Knowledge," *South African Journal of Philosophy* 35.3 (2016): 249-260.

<sup>118</sup> For some helpful introductory texts, see the well-written assessment of the state of the question in Peter Gratton, *Speculative Realism: Problems and Prospects* (New York: Bloomsbury, 2014).

could be? The charge here is that this anthropology can fail to be sufficiently capacious insofar as it excludes non-Christians. There are three different responses that can be raised here, one that I believe is able successfully to dodge the objection, and the other which is unable to do so, and a third which is a possible compromise. If the objection is that there is something inherent to queer theory as a theory that demands neutrality with respect to the question to the existence of God, and therefore, this Thomistic definition is irreconcilable with queer theory on those grounds, my response would be that queer theory is equally at home in theistic, atheistic, or agnostic metaphysical frameworks. After all, the question of the existence of God cannot be settled by philosophical argument in any case.<sup>119</sup> Moreover the existence of queer theologians, queer theorists, and queer people inhabiting other wisdom and religious traditions would suggest that, in order to be capacious, queer theory cannot exclude them because, presumably, some queer thinkers are nonbelievers. But, of course—and this is the second form of the objection—this Thomistic definition obviously presumes a theology of creation (and arguably a Christian one at that) which clearly not all religious belief systems have; and so, insofar as this sort of theology is presumed, this Thomistic definition fails to be capacious. It is here where I have to bite the bullet, though I think there are justifiable reasons to do so. The biggest one is that I am not attempting to articulate a new avenue within queer theory as much as I am trying to articulate a new avenue at the intersection of two fields: queer theory and the natural law tradition. So, the

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<sup>119</sup> For a contemporary defense of this view, as well as an account of the rationality of belief in God, see Denys Turner, *Faith, Reason, and the Existence of God* (New York: Cambridge University Press, 2004), esp. 1-25.

nature of the project—that is, the desire to speak to two different audiences by bringing together aspects of both—necessitates choices about where to start the collaboration. For me, a theology of creation is a place to begin. Now, the third thing I want to note—the compromise—is to say that there is still a way to see this is viewpoint as capacious, even granting its Christian provenance. The key here is to see God as whatever it is about the world that guarantees its truth as metaphysically realist (which is what God, as creator in Thomas’s framework, assures). In this way, this criterion regains its capaciousness by being able to translate ‘God’ as ‘Truth’, which is an identification that Thomas himself makes.<sup>120</sup>

The itinerary of this chapter has been to offer criteria for an understanding human flourishing that is responsive both to the postmodern objection to the concept of human flourishing as well as to the queer inflection to that postmodern objection. The answer was to avoid a moral antirealism by recognizing, either on logical or on practical grounds, that it is possible to maintain a moral realism about human flourishing while at the same time respecting the penetrating insights that have descended from postmodern and queer understandings of normativity by incorporating these critiques as criteria for the derivation of an acceptable account of human flourishing. These criteria, once again, were that any acceptable account of human flourishing must be capacious; must be fallibilist; and must take critical note of the operation of the discursive effects of truth.

In this last section, I offered an account of Thomas’s epistemology and theory of cognition as a suitable foundation on the basis of which one can work to derive

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<sup>120</sup> Aquinas, *ST I* 16.5, ad 2: “The truth also of things is according to the conformity to their principle, namely the divine intellect.”

certain understandings of human flourishing within a queer natural law framework. By reviewing this portion of Thomas's anthropology—which emphasizes that we are epistemically fallible creatures tasked with gaining knowledge of God through an empirical encounter with the world—we find that his account is helpful to normative projects which emphasize experience and praxis in the derivation of moral norms. With such an account of human nature in hand, we turn in the next two chapters to deriving a queer natural law account of sexuality.



### **3.0 MAGISTERIAL AND REVISIONIST NATURAL LAW THEOLOGIES OF SEXUALITY**

At the end of the previous chapter, we sought to derive an anthropological basis for a queer natural law project—one that would not only be universal in order to serve as the proper base for a natural law project, but one that would also be able to meet objections put to it by postmodern and by queer thinkers. With that in hand, we turn to the central question with which we will be occupied for the rest of this dissertation: on the basis of such an anthropological account, what determinations can we make about a theology of sexuality that descends from a queer natural law account? As we've seen in natural law accounts more generally, the answer will involve a construal based upon the generally accepted four sources of Christian ethics—scripture, tradition, reason, and experience—but in order to contextualize and justify fully the answer that I believe descends from a queer natural law account of sexuality, we will need to build our argument gradually over both this chapter as well as over the next, and final, chapter.

In this chapter, we investigate two prominent contemporary trajectories within the natural law tradition of theological ethics: one that descends from the magisterium of the Roman Catholic Church, and as such, accedes to the position of

“official church teaching”; and another that has consolidated itself as the revisionist school within the natural law tradition. The argument is that the magisterium’s trajectory within the natural law tradition on the topic of sexuality constitutes a natural law authoritarianism that is distinguished by the following characteristics: (1) It is one in which Augustine’s tripartite distinction among the goods of marriage serves as the architectonic structure that underlies the magisterium’s positions not only with respect to marriage, but also with respect to its prohibition on divorce (insofar as divorce is held out to contravene the good of indissolubility), its prohibition on homosexuality and contraception (insofar as they are held out to contravene the good of children), and its resistance to contemporary understandings of gender (insofar as ‘gender ideology’ is held out to deny the ontological binarism that is constitutive of the conjugal bond which the good of faithfulness presupposes); and (2) these prohibitions are enforced primarily through an understanding of the natural law and conscience that stress the former’s propositional nature and stresses, with respect to the latter, its obligation to conform itself to magisterial teaching.

In contrast, the revisionist natural law approach to sexuality is distinguished by the following characteristics: (1) a willingness to import a historical consciousness into the questions of marriage and sexuality which stresses the importance of seeing theologies of marriage and sexuality as subject to development in light of contemporary circumstances, and (2) an account of the natural law that, instead of stressing a propositional slant, instead retrieves its medieval emphasis as a capacity for participation in God’s wisdom that is accessed through the practice of

the virtues These latter two characteristics, furthermore, are aspects that are fundamental to a queer natural law theological account of sexuality as well, insofar as queer natural law is a descendant of revisionist natural law, especially those put forward by feminists. In these two latter points, queer natural law and revisionist natural law speak “in one voice,” as it were.

One final introductory note about the scope of these traditions will be relevant here. The trajectory that I will defend as the magisterium’s natural law authoritarianism is a tradition comprised primary of papal teaching or the teaching of various Vatican offices beginning with the papacies of Leo XIII (d. 1903) through that of the current pope, Francis. On the other hand, the trajectory that I will identify as revisionist is quite large. Dating back from the early 20<sup>th</sup> century, on the Catholic side it draws together both scholars would identify themselves as natural lawyers and those who wouldn’t, and—regardless of whether the revisionist is a specialist in the natural law—all revisionist scholarship tends to be ecumenical in scope, drawing from scholarship both within and beyond the Catholic tradition. So, though the designation ‘revisionist’ generally only makes sense in Catholic circles, the revisionist natural law tendency to use scholarship written by non-Catholic theologians accounts for the presence of the scholarship of non-Catholic scholars who would not identify themselves as revisionist as well as for the presence of the work of Catholic scholars who, while they would identify as revisionists, would not necessarily identify themselves as natural lawyers.

### 3.1 AUGUSTINE'S ARCHITECTONIC STRUCTURE FOR MAGISTERIAL TEACHINGS ON MARRIAGE AND THE FAMILY

The root of magisterial teachings related to marriage and sexuality finds its origin in the theology of Saint Augustine, who bequeathed to the tradition not only an account of the relationship between sexuality and marriage, but also an account of marriage itself.<sup>1</sup> Augustine believed that, as a consequence of the Fall, human sexuality was constantly besieged by lust—that is, by inordinate sexual desire—and that it was the presence of lust in the sexual act that made the pleasure felt from sex sinful.<sup>2</sup> Marriage in Augustine's theology is positioned as a divine providential remedy: within marriage, sexuality can accomplish its end—which Augustine believed was procreation—within a bond of love that would restrict the disastrous effects of lust, which Augustine believed propelled individuals towards fornication and adultery.<sup>3</sup> Augustine would consolidate these benefits into his now well-known three goods of marriage: *fides*, or faithfulness between the spouses; *proles*, or children; and *sacramentum*, or the indissolubility of the marriage bond.

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<sup>1</sup> Augustine, "On the Good of Marriage," in *Treatises on Marriage and Other Subjects*, trans. Charles T. Wilcox (Washington DC: Catholic University of America Press, 1955), 3-51.

<sup>2</sup> Augustine, *City of God*, trans. Henry Bettenson (New York: Penguin Books, 2003), XIV. 23. This has occasionally led to the misreading that Augustine believes that all sexual pleasure is the result of sin, as can be seen in the reading of Augustine given by John T. McNeil in his *Church and the Homosexual*, 4<sup>th</sup> ed., (Boston: Beacon Press, 1993), 95. Augustine's actual position is that, as a postlapsarian reality, sexual pleasure is always accompanied by sin because Augustine believed that lust, rather than the will, leads to physical indications of sexual arousal. But, in the original integrity of creation, the will would have been the sole cause of physical sexual arousal. This does not entail the denial that, at least in a prelapsarian account of human sexuality, there would have been no physical pleasure in the sexual act. For an account that presents this view sympathetically, see John Cavadini, "Feeling Right: Augustine on Passions and Sexual Desire," *Augustinian Studies* 36.1 (2005): 195-217.

<sup>3</sup> Augustine, "On the Good of Marriage," 3-4.

This account is foundational for the modern papal teaching on marriage and sexuality: that sexuality is ultimately ordered towards marriage. The first to affirm this association in the trajectory we are considering is Leo XIII in his document *Arcanum Divinae* (1880). There he adopts Augustine's theology of marriage and reads it into the book of Genesis:

We record what is to all known, and cannot be doubted by any, that God, on the sixth day of creation, having made man from the slime of the earth and having breathed into his face the breath of life, gave him a companion, whom He miraculously took from the side of Adam when he was locked in sleep. God thus, in His most far-reaching foresight, decreed that this husband and wife should be the natural beginning of the human from whom might be propagated and preserved by an unfailing fruitfulness throughout all futurity of time. And this union of man and woman, that it might answer more fittingly to the infinite wise counsels of God, even from the beginning manifested chiefly two most excellent properties—deeply sealed, as it were, and signed upon it—namely, unity and perpetuity.<sup>4</sup>

In just these last three sentences, Leo finds in the primeval history of the Jewish people a description of the Christian three goods of marriage that Saint Augustine would be first to articulate. Where Leo discusses the fruitfulness of Adam and Eve, he makes an obvious reference to the good of children; and where Leo discusses the bond between the companions as both unifying and perpetual, he makes allusions to the marriage bond as serving the fidelity of the spouses as well as to the nature of

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<sup>4</sup> Leo XIII, *Arcanum Divinae*, 5.

the marriage bond as indissoluble. This viewpoint would be affirmed by Pius XI in his document, *Castii Connubii*—written to commemorate the 50<sup>th</sup> anniversary of *Arcanum*—in which he would also affirm Augustine’s tripartite understanding of marriage.<sup>5</sup>

But more important than drawing the observation that Augustine’s theology of marriage would be affirmed as authoritative for the tradition is the observation that Augustine’s tripartite distinction among the goods of marriage would serve as the framework by which to combat contemporary developments affecting marriage and sexuality. We can once again begin here with Leo XIII, who, in writing *Arcanum*, sought to combat the uptick in the number of divorces<sup>6</sup> as well as to contest a notion of civil or secular marriage separate from the marriage overseen by the Church.<sup>7</sup> Leo saw the latter phenomenon as leading to the growth in the former. For, in taking upon itself the power to dissolve marriages, Leo regarded the state as doing something that “pervert[s] utterly the nature of marriage”<sup>8</sup> insofar as divorce threatens the good of indissolubility. His recommendation, therefore, was that the state stay out of the question of marriage altogether.<sup>9</sup>

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<sup>5</sup> Pius XI, *Castii Connubii* (31 December 1930), no. 17, 19, 31.

<sup>6</sup> Leo XIII, *Arcanum Divinae*, no. 28-32.

<sup>7</sup> “Let no one, then, be deceived by the distinction which some civil jurists have so strongly insisted upon—the distinction, namely, by virtue of which they sever the matrimonial contract from the sacrament, with intent to hand over the contract to the power and will of the rulers of the State, while reserving questions concerning the sacrament of the Church,” Leo XII, *Arcanum Divinae*, no. 23.

<sup>8</sup> Leo XIII, *Arcanum Divinae*, no. 16.

<sup>9</sup> “As, then, marriage is holy by its own power, in its own nature, and of itself, it ought not to be regulated and administered by the will of civil rulers, but by the divine authority of the Church, which alone in sacred matters professes the office of teaching” (*Arcanum Divinae*, no. 19). This view would be explained more delicately in no. 36, where Leo will admit that, while with respect to marriage there is a common interest between church and state, the state should “depend on the other power which has in its charge the interest of heaven.”

The theological justification he gives for such a recommendation, however, draws together Augustine's theology of marriage within a broader supersessionist soteriological theology of history. Like Augustine, Leo maintained that after the Fall marriage became corrupted by sin, descending into more debased forms. Here Leo mentions, among other things, Moses's allowance of divorce, the ascendancy of forms of polygamous marriages, and, impressively, the objectification of women by men in the context of marriage. "So manifold being the vices and so great the ignominies with which marriage was defiled," Leo declares, "an alleviation and a remedy were at length bestowed from on high."<sup>10</sup> In other words, the solution to the degradation of marriage, as to all sin in general, was the incarnation. In this regard, not only did Jesus apply "early in his ministry no little solicitude to the question of marriage"—a task which included, in part, an operation in which Jesus "set aside the difficulties which were induced by the law of Moses," who permitted divorce<sup>11</sup>—Jesus also restored to marriage "such and so great excellence," that Christ "commended and entrusted all the discipline bearing upon these matters to the Church."<sup>12</sup> In contemporary controversies around divorce, then, Leo observes a contemporary degradation of marriage that harkens back to the first degradation of marriage that took place after Adam and Eve were expelled from the garden. Just as "shameful lusts"<sup>13</sup> led to the degradation of marriage after the Fall, so now are those lusts, in Leo's view, destroying marriage again.

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<sup>10</sup> Leo XIII, *Arcanum Divinae*, 7.

<sup>11</sup> Leo XIII, *Arcanum Divinae*, 8.

<sup>12</sup> Leo XIII, *Arcanum Divinae*, 13.

<sup>13</sup> Leo XIII, *Arcanum Divinae* 7.

Pius XI would continue this trend of using Augustine's theology of marriage in order to condemn contemporary trends regarding marriage and sexuality. For example, Pius affirmed Leo's diagnosis that "the power of unbridled lust"<sup>14</sup> and "the inordinate desire for pleasure"<sup>15</sup> can make divorce and other violations of marriage more likely—divorce which, itself, is a violation of the third good of marriage.<sup>16</sup> In fact, so much did Pius want to emphasize this point that most of the third section of the document is aimed at the eradication of behaviors that reflect "every kind of idolatry of the flesh and... the base slavery of the passions."<sup>17</sup> Also, similarly to Leo, on grounds of violating the second good of fidelity between the spouses, Pius forbids polygamy.<sup>18</sup>

Pius also extended a number of Leo's views, giving us more of the current landscape of magisterial teachings concerning sexuality with which we are familiar today. More clearly than in Leo's case, for example, was Pius's emphasis that the primary end of marriage is the procreation and education and children (making the deepening of the mutual love between the spouses a secondary end).<sup>19</sup> Equally emphatic were Pius's declarations stating that all sex outside of the marriage context is illicit,<sup>20</sup> that women should be subjected to men in the context of the

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<sup>14</sup> Pius XI, *Casti Connubii* (31 December 1930), no. 97.

<sup>15</sup> Pius XI, *Casti Connubii*, no. 102.

<sup>16</sup> Pius XI also saw cohabitation as a violation of the third good of marriage; see *Casti Connubii*, no. 51.

<sup>17</sup> Pius XI, *Casti Connubii*, no. 107. This third and final section extends roughly from no. 94 through the end, no. 130.

<sup>18</sup> Pius XI, *Casti Connubii*, no. 73.

<sup>19</sup> Pius XI, *Casti Connubii*, no. 17.

<sup>20</sup> Pius XI, *Casti Connubii*, no. 18.



marital relationship;<sup>21</sup> and that divorce was impermissible, even in cases of adultery.<sup>22</sup>

This development would continue throughout subsequent papacies, though rather the focusing on divorce—a violation of the good of indissolubility—papal energy over the course of the 20<sup>th</sup> century would be oriented towards violations of the second good of marriage, children. For example, twenty years after the release of *Casti Connubii*, Pius XII (reign: 1939-1958) would affirm Pius XI's understanding of the primary end of marriage as procreation.<sup>23</sup> And Paul VI, in the document, *Humanae Vitae* will prohibit the use of contraceptives, writing that “responsible parenthood” entails, among other things, a sexual act that is open to procreation in each and every case.<sup>24</sup> This observation will be directly quoted twenty-seven years later in John Paul II's encyclical *Evangelium Vitae*, into which he will consciously envelop prohibitions on abortion and euthanasia.<sup>25</sup> And in our current day, Francis will affirm both Paul's observation concerning responsible parenthood as exclusive of the use of contraceptives well as John Paul II's understanding that abortion in any circumstance is impermissible, which is what we saw in Pius XI's *Casti Connubii*.<sup>26</sup>

Magisterial prohibitions on contraception will also play a part in the development of papal teaching on the question of homosexuality, a question that would gain magisterial attention specifically in the 1970's with the publication of the document *Persona Humana* put out by the Congregation for the Doctrine of the

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<sup>21</sup> Pius XI, *Casti Connubii*, no. 25-29; cf. Leo XIII, *Arcanum Divinae*, no. 11.

<sup>22</sup> Pius XI, *Casti Connubii*, no. 89.

<sup>23</sup> Pius XII, “Allocution to Midwives” (29 October 1957).

<sup>24</sup> Paul VI, *Humanae Vitae*, no. 10. Paul also relates this essentially to the competency of the magisterium in its understanding of the moral law; see *Humanae Vitae*, no. 4.

<sup>25</sup> John Paul II, *Evangelium Vitae* (25 March 1995), no. 52.

<sup>26</sup> Francis, *Amoris Laetitia*, no. 80-83.

Faith in 1975. As arguments go, it is fairly simple: if the divine plan for sexuality prohibits all sexual practices that do not lead to procreation, then sexual activity that cannot result in conception is illicit. “For according to the objective moral order,” the Congregation writes, “homosexual relations are acts which lack as essential and indispensable finality.” As a result of this lack, these acts are termed “objectively disordered.”<sup>27</sup> Nine years later, that Congregation will clarify, moreover, that both same-sex sex acts as well as the desire that leads to those acts are objectively disordered.<sup>28</sup> Conjoined to these arguments which extend, as we’ve seen, from how same-sex sex acts violate the good of children in a marriage is the development of a biblical argument against homosexuality as well. This argument is given most prominently in the Congregation’s letter *On the Pastoral Care of Homosexual Persons*, in which the story of Sodom and Gomorrah, the Levitical prohibitions (18:22 and 20:13) as well as Paul’s comments in relation to same-sex sex acts (Rom. 1:18-32) are marshalled as a “constant biblical testimony” against homosexual behavior.<sup>29</sup> In our current day, Francis has not shown any willingness to institute any substantive change in regard to this papal tradition.<sup>30</sup>

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<sup>27</sup> Congregation for the Doctrine of the Faith, *Persona Humana* (07 November 1975), VIII. Masturbation is condemned for similar reasons in the same document one section below.

<sup>28</sup> Congregation for the Doctrine of the Faith, *On the Pastoral Care of Homosexual Persons*, no. 3.

<sup>29</sup> Congregation for the Doctrine of the Faith, *On the Pastoral Care of Homosexual Persons*, no. 5-6.

<sup>30</sup> This is true despite Francis’s comments which specifically call for a stance of nonaggression and charity towards same-gender-loving persons, as seen, for example, in his famous 2013 comments “Who am I to judge?” with respect to persons who identify as gay. For information on this incident see, among many sources, John L. Allen and Hada Messia, *CNN*, 29 July 2013, <http://religion.blogs.cnn.com/2013/07/29/pope-francis-on-gays-who-am-i-to-judge/>. In fact, Francis’s behavior can be seen precisely as carrying out well what the magisterium has already previously taught:

It is deplorable that homosexual persons have been and are the object of violent malice in speech or in action. Such treatment deserves condemnation from the Church’s pastors wherever it occurs. It reveals a kind of disregard for others which endangers the most fundamental principles of a healthy society. The intrinsic dignity of each person must always

During the latter half of the twentieth century alongside the development of teachings and prohibitions based in Augustine's second good of marriage are developments related to gender and embodiment. These developments, I'd like to contend, can be seen as descending from an understanding of Augustine's first good of marriage, *fides*, or faithfulness. Strictly speaking, the good of faithfulness can be understood as the good of sexual exclusivity. And Augustine, as well as the tradition, would regard the violation of this good as adultery "when either by instigation of one's own lust, or by consent of lust of another, there is sexual intercourse on either side with another against the marriage compact".<sup>31</sup> However, presupposed by such a good as spousal exclusivity is an account of gender that subsequently specifies which sorts of relationships are candidates for the spousal, or conjugal, relationship in the first place. That type of relationship is possible only between a man and a woman; it is not at all possible between two men or two women, for instance, and—in fact—Thomas, as well as the tradition after him, will see sexual relationships between two men or two women as species of the sin of lust.<sup>32</sup> Similarly, closer to our current day, the Pontifical Council for the Family will consider the proposal to regard households headed by same-sex couples as families as a sort of category mistake: these relationships, according to the Council's understanding, are simply incapable of being the *type* from which a family could issue. "The bond between two

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be respected in word, in action, and in law (Congregation for the Doctrine of the Faith, *On the Pastoral Care of Homosexual Persons*, no. 10; cf., United States Conference of Catholic Bishops, *Always Our Children: A Pastoral Message to Parents of Homosexual Children and Suggestions for Pastoral Ministries*, <http://www.usccb.org/issues-and-action/human-life-and-dignity/homosexuality/always-our-children.cfm>.)

<sup>31</sup> Augustine, "On the Good of Marriage," 4. This is, of course, related to the sin of fornication, which is sexual activity outside of the bond of marriage.

<sup>32</sup> Aquinas, *ST* II-II 154.11.

men or two women,” the Council writes, “cannot constitute a real family and much less can the right be attributed to that union to adopt children without a family.”<sup>33</sup> Yet, if this is true, then the development of this teaching shows that the mere presence of *fides* understood as sexual exclusivity is not enough to meet the requirement stipulated by the good; what is required instead is a certain type of *fides*, namely that which descends from a given metaphysics of gender. Any elaboration of a metaphysics of gender, then, is related to the good of *fides* insofar as such elaborations ultimately provide clarifications for the type of relationship to which *fides* can properly be said to apply. And since the 1960’s, magisterial teaching related to gender, and the theological significance to gender differentiation, has become more prominent.

In the first place, one can consider the development of papal teaching related to women—a development which has issued, in Paul VI’s words, in a distinct theology of women’s vocation in contradistinction to that of men.<sup>34</sup> The lion’s share of development of this idea, however, occurred under the papacy of John Paul II who would identify the vocation of women with the enactment of the “feminine genius”—a mechanism for identifying those traits which he thought were ontologically inherent within the embodiment of every woman.<sup>35</sup> As he would go on to explain, a woman’s vocation—“two particular dimensions of the fulfillment of the female personality”<sup>36</sup>—are virginity and motherhood, which are expressed

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<sup>33</sup> John Paul II’s *Angelus* from 20 February 1994, quoted in Pontifical Council for the Family, *Family, Marriage, and ‘De Facto’ Unions* (09 November 2000), no. 23. See no. 22-23 as well.

<sup>34</sup> See Paul VI, “Address of Paul VI to Women,” 08 December 1965.

<sup>35</sup> John Paul II, *Mulieris Dignitatem*, 15 August 1988, no. 30.

<sup>36</sup> John Paul II, *Mulieris Dignitatem*, no. 17.

primarily through the gift of self in service to others and obedience to the word of God. It is therefore unsurprising that the Virgin Mary herself becomes an image of what the feminine genius looks like embodied.<sup>37</sup>

This teaching also bears a genealogy that goes back to the time of Leo XIII.<sup>38</sup> In fact, articulating more precisely the connection between, on the one hand, the feminine genius as a vocation of service, obedience, and primary custody over the moral health of the household and, on the other, women's liberation movements more broadly is one way to articulate the background against which papal teaching with respect to women has developed. For example, Leo mentions women specifically in *Arcanum*, but in order to point out they should be obedient to their husbands: "The woman, because she is flesh of *his* flesh, and bone of *his* bone, must be subject to her husband and obey him; not, indeed, as a servant, but as a companion, so that her obedience shall be wanting neither in honor nor dignity."<sup>39</sup> Adding to this in his famous encyclical on labor, *Rerum Novarum*, Leo will mention "Women, again, are not suited for certain occupations; a woman is by nature fitted for home-work, and it is that which is best adapted at once to preserve her modesty and to promote the good bringing up of children and the well-being of the family."<sup>40</sup> Pius XI will carry this sentiment forward this sentiment in *Casti Connubii*, calling for the "the ready subjection of her wife and her willing obedience."<sup>41</sup>

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<sup>37</sup> John Paul II, "Letter to Women" 29 June 1995, no. 9-12.

<sup>38</sup> For an excellent review of papal documents related to women—while also trying to stay as "theologically neutral" as possible, see Ivy A. Helman, *Women and the Vatican: An Exploration of Official Documents* (Maryknoll, NY: Orbis, 2012).

<sup>39</sup> Leo XIII, *Arcanum Divinae*, no. 11, emphasis added.

<sup>40</sup> Leo XIII, *Rerum Novarum*, 15 May 1891, no. 42.

<sup>41</sup> Pius XI, *Casti Connubii*, no. 26.

John Paul II will provide somewhat of a new direction within this papal tradition, by being the first pope to apologize on behalf of “not just a few members of the Church” for how these persons have “relegated women to the margins of society and even reduced to servitude.”<sup>42</sup> And while he will even acknowledge the extremity of those who believe that women have “no public function,” he will continue to maintain the position that “society must be ordered in such a way that wives and mothers are not in practice compelled to work outside the home.”<sup>43</sup> Yet, this openness towards working outside the home notwithstanding, it will be John Paul II who will write that the Church “has no authority whatsoever to confer priestly ordination on women.”<sup>44</sup> This position has been affirmed fully by Francis.<sup>45</sup>

Starting in the 1970’s, the Vatican began to articulate a theology of gender complementarity which sought to place a growing body of theology with respect to women’s vocation in conversation with the vocation ascribed to men.<sup>46</sup> The importance of this concept cannot be overstated, especially because it stands as a concept that ties together the magisterium’s stances on women, on sexual orientation, and on transgender identity. As a concept, it maintains that the genders exhibit a fundamental, non-overlapping compatibility at an ontological level that is subsequently expressed through various physical and psychological differences. To use less technical language, it is the thesis that the genders “complete” one another both as spiritual, biological, and psychological beings.

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<sup>42</sup> John Paul II, “Letter to Women,” no. 3.

<sup>43</sup> John Paul II, *Familiaris Consortio*, no. 23.

<sup>44</sup> John Paul II, *Ordinatio Sacerdotalis*, no. 4.

<sup>45</sup> Robert McClory, “Pope Francis and Women’s Ordination,” *National Catholic Reporter*, 16 September 2013, <https://www.ncronline.org/blogs/francis-chronicles/pope-francis-and-womens-ordination>.

<sup>46</sup> Ivy A. Helman, *Women and the Vatican*, 12.

John Paul II would be the thinker who would develop this idea the most over the last half-century, and he would do so specifically through the collation of his Wednesday audiences that would subsequently become known as the *Theology of the Body*.<sup>47</sup> As an intellectual undertaking, the Theology of the Body represents John Paul's theological reading of the book of Genesis. The choice of Genesis as subject should by this point not be surprising, especially since—as we've seen—popes have commonly turned to the book of Genesis in order to articulate theologies concerning sexuality and gender. For as we saw in *Arcanum*, Leo found in the creation of Eve and Adam's recognition of Eve not only all three goods associated with marriage, but he also saw a natural hierarchy between the genders. "Since the husband represents Christ, and since the wife represents the Church, let there always be, both in him who commands and in her who obeys, a heaven-born love guiding both in their respective duties."<sup>48</sup> When John Paul II looks into the book of Genesis he sees in these same passages warrant for a specific theological anthropology and theology of creation that can undergird these teachings concerning marriage. Precisely in humanity's creation *as man and woman*, John Paul II observes a constitutive duality within a primordial unity that the man and woman share, namely their common identity as being made in the image of God.<sup>49</sup> Speaking of the genders, John Paul writes, "Their unity denotes above all the identity of human nature; duality, on the other hand, shows what, on the basis of this identity,

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<sup>47</sup> John Paul II, *Man and Woman He Created Them: A Theology of the Body*, trans. Michael Waldstein (Boston: Pauline Books and Media, 2006).

<sup>48</sup> Leo XIII, *Arcanum Divinae*, no. 5, and no. 11, respectively. This would be affirmed by Pius XI in *Casti Connubii*, no. 29.

<sup>49</sup> John Paul II, *Theology of the Body*, 8.1

constitutes the masculinity and femininity of created man.”<sup>50</sup> In this duality-in-unity, John Paul sees, therefore, a direct image of the trinitarian life: “The account in Genesis 2...reveals...that the complete and definitive creation of “man” expresses itself in giving life to the ‘*communio personarum*’ that man and woman forms.”<sup>51</sup> Gender complementarity explains this ontological reality built into creation, making of ‘man’ and ‘woman’, respectively different, but compatible “essences” that come to express a common human nature. Placed into a sexual key—that will also hearken back to a theology of marriage—John Paul will name this static compatibility between the difference essences of man and woman the “spousal meaning of the body”: “the power to express that love in which the human person becomes a gift and—through this gift—fulfills the very meaning of being and existence.”<sup>52</sup> This is a particularly impressive synthesis, since, in performing it, John Paul continues a tradition of describing the relationship between the spouses as one of reciprocity and gift that in the modern era has been mentioned by Leo XIII, Pius XI, Pius XII, and Paul VI.<sup>53</sup> This theme continued in other writings by John Paul II, and was featured prominently by Ratzinger (who would become Benedict XVI), and is featured prominently in Francis’s meditations on the subject of the spousal relationship today.<sup>54</sup>

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<sup>50</sup> John Paul II, *Theology of the Body*, 9.1

<sup>51</sup> John Paul II, *Theology of the Body*, 9.3

<sup>52</sup> John Paul II, *Theology of the Body*, 15.1.

<sup>53</sup> And, through this, back to the second gift of marriage—*fides*—as enumerated by Augustine in the fifth century. For the relevant papal affirmations, see Leo XIII, *Arcanum Divinae*, no. 11; Pius XI, *Casti Connubii*, no. 23-24; Pius XII, “Allocution to Midwives”; and Paul VI, *Humane Vitae*, no. 8.

<sup>54</sup> See, for example, John Paul II, *Familiaris Consortio*, no. 4, and his “Letter to Women,” 7; Francis, *Amoris Laetitia*, no. 13. The best evidence for Ratzinger’s agreement with John Paul II’s theology of the body is the document he authored while head of the Congregation for the Doctrine of the Faith,



Not only does John Paul's reasoning confer divine sanction on what we would come to understand as heterosexuality, but it also gives a new foundation for why sex is solely ordered to marriage. His reading of the book of Genesis continues to fund his insights here. Like his predecessors, John Paul understands the relationship between Adam and Eve to conjugal—that is, a marriage. And also like his predecessors, he sees both in Adam's recognition of Eve as "bone of my bones and flesh of my flesh" (Gen. 2:23) and in the Yahwist editor's immediate commentary—"That is why a man leaves his father and mother and is united to his wife, and they become one flesh"—a *telos* for human interpersonal relationships for which the (hetero)sexual sex act becomes the primary symbol. "When they unite with each other (in the conjugal act) so closely so as to become 'one flesh,' John Paul observes, "man and women rediscover every time and in a special way the mystery of creation, thus returning to the union in humanity that allows them to recognize each other reciprocally and to call each other by name, as they did the first time."<sup>55</sup> This sort of reasoning follows in parallel the line of reasoning from which John Paul derives gender complementarity in general: a theological reading of Scripture funds a specific theological anthropology which, in turn, is attested to by various physiological and psychological traits that men and women are said to maintain. Indeed, it is this theological operation that occurs also in his theology of the feminine genius, which we discussed above.<sup>56</sup> Whereas the man's body carries a

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*On the Collaboration of Men and Women in the Church and in the World* (31 May 2004), which reads more or less as a summary of John Paul's theology of gender and sexuality.

<sup>55</sup> John Paul II, *Theology of the Body*, 10.2, 20.5.

<sup>56</sup> Such an operation can be detected in the reasoning explaining why the magisterium maintains that it does not have the authority to ordain women. According to Paul VI, the masculine identity of the priest is required, since, at the Eucharistic celebration, the priest acts *in persona Christi*, and Christ

“generative and paternal meaning,” John Paul writes of the woman that the “[w]oman’s constitution differs from that of man; in fact, we know today that it is different even in the deepest bio-physiological determinants. The difference is shown only in a limited measure on the outside, in the build and form of her body. Motherhood shows this constitution from within, as a particular power of the feminine organism.”<sup>57</sup> The genders are essentially demarcated by God’s very act of creation, and—just as before—this is evidenced ostensibly by the differences men and women have in the process of sexual reproduction.

John Paul’s reading of Genesis offers a genealogy of another important teaching related to sexuality and gender that is becoming the subject of great discussion in Catholic moral theology today. That concept is gender essentialism, which is the thesis that, at a physiological-because-ontological level, every body is always created *either* as a man or as a woman. It stands as a corollary to gender complementarity to the extent that every male body is *in potentia* compatible with any female body. “The fundamental fact of this existence of man in every stage of his history,” John Paul II observes, “is that God ‘created them male and female’; in fact, he always creates them in this way, and they are always such.”<sup>58</sup>

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was embodied as a male (see, Paul VI, *Inter Insigniores* (15 October 1976), no. 5)). That the man’s body, in other words, has the ability to represent Christ is simply constitutive of *and only of* masculinity. “Women who express a desire for the ministerial priesthood are doubtless motivated by the desire to serve Christ and the Church... But it must not be forgotten that the priesthood does not form part of the rights of the individual, but stems from the economy of the mystery of Christ and the Church. [...] It therefore remains for us to meditate more deeply on the nature of the real equality of the baptized which is one of the great affirmations of Christianity; equality is in no way identity, for the Church is a differentiated body, in which each individual has his or her role (no. 6).

<sup>57</sup> John Paul II, *Theology of the Body*, 21.2 and 21.3, respectively.

<sup>58</sup> John Paul, *Theology of the Body*, 18.4; cf. 10.1: “Precisely the function of sex [that is, being male or female], which in some way is “constitutive for the person,” (not only an attribute of the person), shows how deeply man...is constituted by the body as ‘he’ or ‘she.’ The presence of the feminine

Together gender complementarity and gender essentialism are the two theses which the magisterium wields in opposition to any movement that would attempt to normalize homosexuality or transgender identity. Persons who find themselves attracted to bodies which they would identify as belonging to the same-sex possess desires which, as we've seen, testify to a disorder to a putatively natural sexual object choice and make the desire "objectively disordered." Transgender persons, in questioning their very constitution as either man or woman, thus challenge the judgment that all bodies are *always* created either as a man or as a woman. Benedict XVI (then Cardinal Ratzinger) named the magisterium's worry pointedly while also relating it to his understanding of feminism:

In order to avoid the domination of one sex or the other, their differences tend to be denied, viewed as mere effects of historical and cultural conditioning. In this perspective, physical difference, termed *sex*, is minimized, while the purely cultural element, termed *gender*, is emphasized to the maximum and held to be primary. The obscuring of the difference or duality of the sexes has enormous consequences on a variety of levels. This theory of the human person, intended to promote prospects for equality of women through liberation from biological determinism, has in reality inspired ideologies which, for example, call into question the family, in its natural two-parent structure of mother and father, and make homosexuality

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element next to the masculine and together with it, signifies an enrichment for man in the whole perspective of his history, including the history of salvation."

and heterosexuality virtually equivalent, in a new model of polymorphous sexuality.<sup>59</sup>

With the advent of Francis's papacy, both Francis and the bishops have taken aim at any conceptual resistance to either gender complementarity or gender essentialism, calling it 'gender ideology'. Consider, for example, Francis's words. He writes of 'gender ideology' that it

denies the difference and reciprocity in nature of a man and a woman and envisages a society without sexual differences, thereby eliminating the anthropological basis of the family. This ideology leads to educational programs and legislative enactments that promote a personal identity and emotional intimacy radically separated from the biological difference between male and female. Consequently, human identity becomes the choice of the individual, one which can also change over time." It is a source of concern that some ideologies of this sort, which seek to respond to what are at times understandable aspirations, manage to assert themselves as absolute and unquestionable, even dictating how children should be raised. It needs to be emphasized that "biological sex and the socio-cultural role of sex (gender) can be distinguished but not separated."<sup>60</sup>

Critiquing this theological perspective, revisionists will generally draw attention to the lack of attention to historical detail given by the papal tradition to these questions of marriage and sexuality. *Pace* Leo and Pius, revisionists will

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<sup>59</sup> Congregation for the Doctrine of the Faith, *On the Collaboration of Men and Women in the World*, no. 2.

<sup>60</sup> Francis, *Amoris Laetitia*, no. 56; internal quotes are from the *Ratio Finalis* of the bishops from the 2015 Synod on the Family.

maintain that is has not been the case that the Church has opposed a singular understanding of marriage restored by Christ to the wider world.

As we've seen, the account of marriage given by the popes—particularly by Leo and Pius—is that marriage shares in the general theological arc of fallenness and redemption in a supersessionist key: it was perfectly realized in the putatively conjugal relationship lived by Adam and Eve; it was obscured under Jewish law permitting divorce and polygynous marriage; and it was restored to perfection through Christ's ministry, and passed down through the Apostles and other early Church leaders in a format ideologically equivalent to what Augustine would later articulate as the three goods of marriage. Both the anachronism and the inaccuracy this narrative weaken the magisterium's assertions here. For while Leo quotes Paul's admonition for Christians not to divorce,<sup>61</sup> he declines to quote Paul's suggestion that Christian spouses married to non-Christian spouses should not offer resistance to divorce proceedings if the non-Christian spouse wants to end the relationship.<sup>62</sup> And while it is true that Augustine's theology lifted the three goods of marriage out of Scripture, Augustine's ideas concerning indissolubility were not accepted by subsequent theologians who believed—following Jesus's prohibition of divorce in the Gospel of Matthew—that adultery (*porneia*) constituted grounds for dissolving a marriage.<sup>63</sup> Theologies which integrated indissolubility as we currently understand it within marriage began in the medieval period, and it would not be

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<sup>61</sup> Leo XIII, *Arcanum Divinae*, no. 9. "To the married I give this command (not I, but the Lord): A wife must not separate from her husband. But if she does, she must remain unmarried or else be reconciled to her husband. And a husband must not divorce his wife" (1 Cor. 7:10-11).

<sup>62</sup> "But if the unbeliever leaves, let it be so. The brother or sister is not bound in such circumstances; God has called us to live in peace" (1 Cor. 7:15).

<sup>63</sup> Lisa Sowle Cahill, *Sex, Gender, and Christian Ethics* (New York: Cambridge University Press, 1996), 188.

until the 16<sup>th</sup> century at the Council of Trent that indissolubility would be formally defined.<sup>64</sup> Even today the Church's theology on marriage continues to evolve. For example, theologians have recently argued that indissolubility is a magisterial teaching open to revision insofar as there can be valid grounds for dissolving a sacramental marriage.<sup>65</sup> There is even activity at the level of papal writing. For while under John Paul II Catholics were forbidden to receive the Eucharist if they had divorced and remarried,<sup>66</sup> Pope Francis has indicated that such a punishment defies the "logic of the Gospel," a premise taken to be part of an argument for allowing priests to offer communion to Catholics who have divorced and remarried.<sup>67</sup>

Similarly, the question of whether and how marriage is a sacrament has evolved.<sup>68</sup> Initially, the Church was not formally involved in marriage, with early Christians taking part in otherwise pagan rituals surrounding marriage. Indeed, theologians debate whether Jesus's and Paul's theologies concerning marriage actually encourage Christians to eschew marriage altogether.<sup>69</sup> Later, beginning in

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<sup>64</sup> Cahill, *Sex, Gender, and Christian Ethics*, 192.

<sup>65</sup> See, for example, Margaret Farley, *Personal Commitments: Beginning, Keeping, Changing* (New York, Harper and Row, 1986), and the debate in *Theological Studies* between Kenneth Himes and James Coriden, "The Indissolubility of Marriage: Reasons to Reconsider," *Theological Studies* 64 (2004): 453-499, and Peter Ryan and Germain Grisez, "Indissoluble Marriage: A Reply to Kenneth Himes and James Coriden," *Theological Studies* 72 (2011): 369-415. John T. Noonan Jr.'s *A Church that Can and Cannot Change: The Development of Catholic Moral Teaching* (Notre Dame: University of Notre Dame Press, 2005), takes up the question of indissolubility as well as changes in church teaching in the areas of slavery, usury, and religious liberty.

<sup>66</sup> John Paul II, *Familiaris Consortio*, no. 84.

<sup>67</sup> See Francis, *Amoris Laetitia*, no. 297. Much theological debate has been generated over Francis's comments at no. 305 and at no. 305n248, in which Francis includes access to the sacraments as a way to enable spiritual growth even for those who are "fully culpable" of living in an "irregular situation," of which remarriage after divorce is one.

<sup>68</sup> For the information in this paragraph, I follow Cahill, *Sex, Gender, and Christian Ethics*, 185-187.

<sup>69</sup> For one of the most powerful statements of this view, see Dale Martin, "Familiar Idolatry and the Christian Case against Marriage," in *Authorizing Marriage?*, ed., Mark D. Jordan (Princeton: Princeton University Press, 2006), 17-40. Cahill, by contrast, regards the primary NT witness as one that emphasizes "solidarity and sharing across the traditional status boundaries, such as sex (male-female), class (slave-free), and culture (Jew-Greek)" and she will read NT remarks on marriage and

the fourth and fifth centuries, priests would bless marriages and hold nuptial masses, though there was no obligation to undergo such rituals until the 10<sup>th</sup> century. As marriage evolved, the Church became interested in assuming jurisdiction over marriage, primarily in order to settle disputes about when marriage ended, not in order to legislate the contract. And over the course of the middle ages, the Church would begin to institute laws that would regard marriage primarily as a personal relationship between the spouses, not as one essentially organized by members of the spouses' families. It is this development which, through the efforts of medieval canon lawyers and theologians, made the existence of a marriage depend completely on the consent of the partners.

It is equally difficult to draw other elements of a Christian theology of marriage out of the Genesis story. For example, even if one grants that Adam and Eve were married, there is no positive evidence for any sexual relationship between Adam and Eve in either of the creation stories—an observation that, in a strict sense, puts pressure on the idea that procreation is a part of the marriage in its primordial form in Genesis. In fact, the question of whether there was any sexual activity in the garden was debated by early Christian thinkers. For example, Jerome believed that Eve was a virgin in Paradise and did not enter into marriage until after

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family through a similar lens in which passages that putatively relativize the value of marriage and family actually, instead, seek to place it in a wider context of seeing the community of believers as a family beyond the biological kinship model available in the Greco-Roman world (*Sex, Gender, and Christian Ethics*, 150 and 153-154). Martin will use this same evidence to argue that, if people sought to interpret the NT without projection, the conclusion that no one should get married would follow. Martin moreover denies that Paul can be recruited into projects to read him even as a proto-gender egalitarian, see Martin, *The Corinthian Body* (New Haven, CT: Yale University Press, 1999), 230-233.

expulsion from the garden.<sup>70</sup> Later in the tradition theologians debated whether to be licit a marriage required consummation in the form of sexual activity after consent or whether consent was all that was required. The worry was that, if sex was required, then the relationship between Joseph and Mary—believed to be sexless—could not be considered a perfect example of marriage.<sup>71</sup>

If one reads the Genesis story, it becomes clear how the Christian theology of marriage defined at Trent is being retrojected onto the text. As Michael Carden summarizes, “While some Genesis narratives have become crucial in contemporary Christian debates on sexuality and gender, the erotic world of Genesis marks a sharp contrast to the conservative Christian ‘family values’ being promoted as essential to Christianity today.”<sup>72</sup> After all, there is no evidence in Genesis 1-3 that the relationship between Adam and Eve was conjugal, because there is no evidence of any sort of vow-exchange between the two of them. Genesis can only with great artifice be said to be about marriage in any reputable sense. As Carden notes, “The story is really a type of coming of age of puberty story and is as much about the origins of sex as it is of death.”<sup>73</sup> There is even less evidence in the text to support the evocative conclusions drawn by John Paul II in his theological defense of gender complementarity and gender essentialism coming out of his reading of Genesis. In fact, rather than understanding God’s creation of Adam and Eve to correspond to the two distinct incarnations of one human creature—which is how John Paul and

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<sup>70</sup> St. Jerome, “Letter 22”: “In paradise Eve was a virgin, and it was only after the coats of skins that she began her married life (19)” (<http://www.newadvent.org/fathers/3001022.htm>).

<sup>71</sup> Cahill, *Sex, Gender, and Christian Ethics*, 189.

<sup>72</sup> Carden, “Genesis/Bereshit,” 23.

<sup>73</sup> Michael Carden, “Genesis/Bereshit” in *The Queer Bible Commentary*, ed., Deryn Guest, Robert E. Goss, Mona West, and Thomas Bohache (London: SCM Press, 2006), 28.



others will read 1:26, “Male and Female He created them”—commentators will observe that the first creature in both creation stories (but especially the second) was an androgynous creature who, “combining male and female within itself, reflects the primal unity underlying the world.”<sup>74</sup> It is probably this myth of the primal androgyne widely circulating in the near east at the time, along with the influence of certain Greek creation myths on Jewish writers, that provided the immediate context for how the writers of the Genesis creation stories understood human anthropology “in the beginning.”<sup>75</sup>

Other theologians have taken John Paul to task for other aspects his interpretation of Genesis. Jennifer Bader, for example, has argued that John Paul II’s personalist anthropology is compromised to the extent that the notion of personhood for men and women—where ‘person’ here should be understood as representing the *uniqueness* of an individual—is regulated by mandatory shared characteristics of a human nature rigidly denominated along gendered lines. In other words, ‘biology-is-destiny’ is not a helpful for personalism.<sup>76</sup> Along lines similar to Bader, Susan Rakoczy remarks that it is difficult within John Paul II’s theology of the body *not* to see a hierarchy between male and female that favors the male, even as John Paul will assert otherwise.<sup>77</sup> Engaged less with philosophical issues and more interested in the ethical sturdiness of the theology of the body,

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<sup>74</sup> Carden, “Genesis/Bereshit,” 25. See also, Phyllis Trible, *God and the Rhetoric of Sexuality* (Philadelphia: Fortress Press, 1978), 79-81.

<sup>75</sup> Carden, “Genesis/Bereshit,” 27-28.

<sup>76</sup> Jennifer Bader, “Engaging the Struggle: John Paul II on Personhood and Sexuality,” in *Human Sexuality in the Catholic Tradition*, ed. Kieran Scott and Harold D. Horrell (New York: Rowman and Littlefield Publishers, 2007), 102-103.

<sup>77</sup> Susan Rakoczy, IHM, “Mixed Messages: John Paul II’s Writings on Women,” in *The Vision of John Paul II: Assessing His Thought and Influence*, ed. Gerald Mannion (Collegeville, MN: Liturgical Press, 2008), 171. Cf. Bader, “Engaging the Struggle,” 101-102.

Luke Timothy Johnson comments that John Paul II's system describes a human sexuality "observed by telescope from a distant planet...the effect is something like that of a sunset painted by the unsighted," mainly because John Paul II "dwells on nuances of words in biblical narratives and declarations while fantasizing an ethereal and all-encompassing mode of mutual self-donation between man and woman that lacks any of the mess, clumsy, awkward, charming, casual, and yes, silly aspects of love in the flesh."<sup>78</sup> Here Johnson's words bear a family resemblance to those of Ronald Modras, who writes that "the greatest challenge to the pope's theology of the body is people's experience."<sup>79</sup> Charles Curran also notes that John Paul's exegetical freedom allows him to use not only Genesis but the whole of the biblical text with feeling beholden to context, which he complains is one of the most frustrating aspects of John Paul II's scholarship.<sup>80</sup>

If these interventions have been to challenge magisterial understandings of gender complementarity, gender essentialism, and marriage as allegedly authorized by the book of Genesis, they have also been marshalled in order to critique other aspects of magisterial theology concerning gender. A good number of these interventions have occurred as a result of the work of feminists working in Catholic theology, particularly those energized by second and third-wave feminism.<sup>81</sup> Ivy

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<sup>78</sup> Luke Timothy Johnson, "A Disembodied 'Theology of the Body': John Paul II on Love, Sex, and Pleasure," in *Human Sexuality in the Catholic Tradition*, 114.

<sup>79</sup> Robert Modras, "Pope John Paul II's Theology of the Body," in *Readings in Moral Theology No. 10: John Paul II and Moral Theology*, ed. Charles E. Curran and Richard A. McCormick, S.J. (New York: Paulist Press, 1998), 156.

<sup>80</sup> For Charles Curran's comment, see his "The Sources of Moral Truth in the Teaching of John Paul II," in *The Vision of John Paul II*, 131-134.

<sup>81</sup> Ivy Helman, *Women and the Vatican*, 2-8.

Helman summarizes the entire 150-year tradition of papal teaching on women as follows:

Femininity means living for others. Women do this naturally. They are also better at relationships than men. Women are naturally tender, loving, caring, unselfish, humble, patient, generous, sensible, and understanding. Women also offer others the gift of themselves, have an innate respect for life, and operate out of love...[W]omen mature earlier, take on responsibility sooner, cherish the sacredness of life more, and are better at problem-solving than men. All of these gifts arise out of the natural feminine natures.<sup>82</sup>

Defining the field of feminist ethics negatively as the field standing opposed to all forms of unjust discrimination and patterns of domination on the basis of gender, race, class, age, and sexual orientation, on the one hand, and, on the other, positively as the field committed to the equality of respect and concrete well-being of all persons regardless of gender,<sup>83</sup> Margaret Farley argued that existing gender roles needed to change because they were “based on inadequate understandings of human persons, preventive of individual growth, inhibitive of the common good, conducive to social injustices, and in the Christian community not sufficiently informed by or faithful to the teachings of Jesus Christ.”<sup>84</sup>

What she and other feminist theologians have had in mind include especially critiquing John Paul II’s concept of the ‘feminine genius’. Diagnosing the various

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<sup>82</sup> Helman, *Women and the Vatican*, 240-241.

<sup>83</sup> Margaret Farley, “Feminist Ethics,” in *Feminist Ethics and the Catholic Moral Tradition: Readings in Moral Theology*, No. 9, ed., Charles E. Curran, Margaret A. Farley, and Richard A. McCormick, S.J. (New York: Paulist Press, 1996), 1-10, at 1.

<sup>84</sup> Margaret Farley, “New Patterns of Relationship: Beginnings of a Moral Revolution,” in *Changing the Questions: Explorations in Christian Ethics*, ed. Jamie L. Manson (Maryknoll, NY: Orbis), 1-23, at 2.

documents John Paul has written concerning everything from women's ordination to the role of women primarily as physical or spiritual mothers, Christine Gudorf has written that magisterial treatment of women has resulted in a "romantic pedestalization of women." She continues, "In an attempt to persuade women to acquiesce to traditional divisions of power which favor men, the popes have lifted women's pedestal so high as to deny in many ways the basic humanity and Christian potential of men."<sup>85</sup> Other feminists have written works aimed at reframing how the doctrine of the Trinity can be viewed in a feminist lens;<sup>86</sup> how the early Christian community can be viewed as a "discipleship of equals" between men and women (and thus as a model for envisioning gender relationships today);<sup>87</sup> and how women can be seen as candidates for priestly ordination.<sup>88</sup>

As we've seen, engagements with gender complementarity and gender essentialism tie directly into Catholic discussions concerning homosexuality, and because they do so, discussions about homosexuality are tied, in the magisterium's mind, to the book of Genesis. One of the most popularly cited verses in this regard is Genesis 1:27—"Male and female he created them"—but, as we've seen, this verse can hardly be seen as a prooftext providing divine authorization for opposite-sex marriages, and—in view of the primal androgyne myth which more than likely

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<sup>85</sup> Christine Gudorf, "Encountering the Other: The Modern Papacy on Women," in *Feminist Ethics and the Catholic Moral Tradition*, 66-89, at 70-71.

<sup>86</sup> Elizabeth Johnson, *She Who Is: The Mystery of God in Feminist Theological Discourse* (New York: Crossroad, 1992).

<sup>87</sup> Elisabeth Schüssler Fiorenza, *In Memory of Her: A Feminist Theological Reconstruction of Christian Origins* (New York: Crossroad, 1994).

<sup>88</sup> Contrary to the judgment of the magisterium, Phyllis Zagano argues that the question is open. See her *Women and Catholicism: Gender, Communion, and Authority* (New York: Palgrave Macmillan, 2011). See also Zagano, ed., *Women Deacons? Essay with Answers* (Collegeville, MN: Liturgical Press, 2016).

shaped this story—it can be seen even less a proof-text for making heterosexuality the only acceptable sexual orientation. As Michael Carden notes, gender was understood along different lines in the 4<sup>th</sup> century BCE when Genesis was written. It was not a bifurcated phenomenon of male and female as has been assumed by some contemporary conservative readers. In fact, gender was organized hierarchically based on the penetration, with the penetrating male at the top; the penetrated woman next; then eunuchs, female virgins and hermaphrodites occupying a third level; and, at bottom, the “monsters”: penetrated men and penetrating women.<sup>89</sup>

The magisterium, however, does not pull only from Genesis in order to substantiate its teachings related to homosexuality. In addition to the Genesis passage, it recruits from a variety of passages putatively collated to show that same-sex sex acts (and the attraction that leads to them) are outside of God’s plan for human flourishing. The stories by now are familiar: among them is the famous Sodom and Gomorrah story; the Levitical prohibitions in chapters 18 and 21; as well as various NT writings attributed to Paul that are taken to discourage homosexuality. Since the 1970’s theologians and biblical scholars have vigorously debated whether these verses are (1) actually condemning same-sex sex acts as opposed to something else—as has been argued, for example, in the Sodom and Gomorrah story, or (2) if the verses *are* about same-sex sex acts, then the question becomes whether and how these verses are relevant in the current day.<sup>90</sup> In the

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<sup>89</sup> Carden, “Genesis/Bereshit,” 23-24.

<sup>90</sup> This debate had its heyday from the 1970’s through the beginning of the current millennium. Among the sources on this debate are the following: John J. McNeil, *The Church and the Homosexual* (Boston: Beacon Press, 1976), 36-66; Robert J. Brawley, ed., *Biblical Ethics and Homosexuality: Listening to Scripture* (Louisville, KY: Westminster John Knox Press, 1996); David P. Gushee, “Reconciling Evangelical Christianity with Our Sexual Minorities: Reframing the Biblical Discussion,”

wake of biblical debates have arisen theologies that try to use the experiences of gays and lesbians as the basis for developing new theologies of sexuality.<sup>91</sup> Today's theological engagements with same-sex sex acts have moved towards questions about social justice, with debates concerning same-sex marriage at the forefront.<sup>92</sup> The overall tendency of the scholarship in our present moment is in favor of same-sex relationships.<sup>93</sup>

### 3.2 CONSCIENCE AND THE EPISTEMOLOGY OF THE NATURAL LAW

To this point, the natural law has not been raised explicitly as a topic thus far. But this is not to say that it is not operative. For even as it is true—as we've seen with particular fervency in John Paul II's theology of the body—the magisterium's theology of gender can be substantively derived from a certain theological reading of Genesis. But—and this we also saw with John Paul II—he does believe that

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*Journal of the Society of Christian Ethics* 35.2 (2015): 141-158. The most comprehensive biblical discussion of homosexuality which takes a disapproving stance (of which I am aware) is Robert A. J. Gagnon's *The Bible and Homosexual Practice: Texts and Hermeneutics* (Nashville, TN: Abingdon Press, 2001). The most comprehensive biblical discussion of sex and gender which takes a positive stance towards homosexuality is the *Queer Bible Commentary*, ed., Deryn Guest, Robert E. Goss, Mona West, and Thomas Bohache (London: SCM Press, 2006).

<sup>91</sup> See, for example, Patricia Beattie Jung and Ralph F. Smith, *Heterosexism: An Ethical Challenge* (New York: State University of New York Press, 1993), and Elizabeth Stuart, *Just Good Friends: Towards a Lesbian and Gay Theology of Relationships* (Woonsocket, RI: Mowbray Press, 1996); also, Mary E. Hunt, *Fierce Tenderness: A Feminist Theology of Friendship* (New York: Crossroad, 1991).

<sup>92</sup> Among the many recent examples of theologians who have written about same-sex marriage see Margaret A. Farley, *Just Love: A Framework for Christian Sexual Ethics* (New York: Continuum, 2006); Todd A. Salzman and Michael G. Lawler, *The Sexual Person: Toward a Renewed Catholic Anthropology* (Washington DC: Georgetown University Press, 2008); Lisa Cahill, "Same-Sex Marriage and Catholicism: Dialogue, Learning, and Change," in *More than a Monologue: Sexual Diversity and the Catholic Church*, ed., J. Patrick Hornbeck II (New York: Fordham University Press, 2014), 141-155; Jean Porter, "The Natural Law and Innovative Forms of Marriage: A Reconsideration," *Journal of the Society of Christian Ethics* 30.2 (2010): 79-97.

<sup>93</sup> We will go into more detail concerning revisionist natural law accounts of homosexuality in the next chapter.

gender complementarity and gender essentialism is attested in the natural world, which is another way of saying “in nature.” Phrasing like this signals a natural law provenance, insofar as the natural law takes as its starting point a substantive investigation of human nature in order to formulate an understanding of human flourishing. For example, in *Arcanum*, Leo maintains of marriage not only that it is authored by God, but that this authorship is “not extraneous, but innate; not derived from men, but implanted by nature.”<sup>94</sup> And later, Pius will write of movements to make the use of contraceptives permissible that they are violations both of divine and natural law.<sup>95</sup> Paul VI will also make extensive use of the natural law in order to extend Pius’s reasoning concerning contraceptives.<sup>96</sup> And, for his part, John Paul II is distinguished among both his predecessors and successors for invoking the natural law to support his positions regarding gender and sexuality.<sup>97</sup>

The most important place to turn for grasping the magisterium’s understanding of the natural law is to the writing of John Paul II in his 1993 encyclical *Veritatis Splendor*. There he conceives of the natural law in terms that are quite similar to the understanding with which this project began. Quoting Thomas Aquinas, John Paul understands the natural law to be “nothing other than the light of understanding infused in us by God, whereby we understand what must be done and what must be avoided.”<sup>98</sup> He expands elsewhere: “[The natural law] refers to man’s proper and primordial nature, ‘the nature of the human person’, which is *the*

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<sup>94</sup> Leo XIII, *Arcanum Divinae*, no. 19.

<sup>95</sup> Pius XI, *Casti Connubii*, no. 47 and 56.

<sup>96</sup> Paul VI, *Humanae Vitae*, no. 11.

<sup>97</sup> See, for example, John Paul II’s *Evangelium Vitae*, (25 March 1995), no. 70ff.

<sup>98</sup> John Paul II, *Veritatis Splendor* (06 August 1993), no. 12.

*person himself in the unity of soul and body*, in the unity of his spiritual and biological inclinations and of all the other specific characteristics necessary for the pursuit of his end.”<sup>99</sup> John Paul, then, shares an awareness not only of what the natural law is—a capacity whereby determinations about right and wrong actions are made—but he also is aware of what the subject of the natural law—namely, human nature comprehensively considered.

From here, John Paul makes three incredibly crucial interpretative pivots. The first is his movement from talking about the natural law as a capacity for discernment of truth to his drawing putative general conclusions about what sorts of activities are commanded or prohibited by the natural law—a move that aligns the ‘law’ in natural law with its more conventional usage today. In John Paul’s analysis, the decalogue functions both as the primordial symbol of law in this more juridical sense. Making use of the distinction between the first table and the second table of the law as representing the natural law’s positive and negative precepts, respectively, John Paul understands all of these precepts as “universally binding,” “unchanging,” and “universally valid,” obliging, “each and every individual, always and in every circumstance.” These precepts even oblige everyone “regardless of the cost.”<sup>100</sup> John Paul therefore understands the natural law to be universal in extension, immutable, unamendable, and indispensable.

If in the first pivot, John Paul chooses to privilege the natural law as a conglomeration of precepts rather than as a capacity for discernment, then in the second pivot he chooses to specify how discernment of the natural law occurs. This

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<sup>99</sup> John Paul II, *Veritatis Splendor*, no. 50 (emphasis in original).

<sup>100</sup> John Paul II, *Veritatis Splendor*, no. 52.



is, in other words, John Paul's theology of conscience. Here he begins with the theology of conscience given in *Gaudium et Spes*, where even here the reader can detect a juxtaposition between conceiving of the natural law in the more juridical sense, on the one hand, to, on the other, conceiving of the natural law in more personalist terms. In a more juridical mode, the Second Vatican Council describes the conscience as the place where "man detects a law which he does not impose upon himself, but which holds him to obedience." And, in that same section, one can conceive of conscience in this more personalist mode: "Conscience," the bishops write, "is the most secret core and sanctuary of a man. There he is alone with God, Whose voice echoes in his depths. In a wonderful manner conscience reveals that law which is fulfilled by love of God and neighbor."<sup>101</sup> Yet, in his encyclical, not only does John Paul choose to emphasize the juridical understanding of the conscience, he actively rejects the personalist understanding of the conscience if one interprets it in a way different from its juridical sense. Drawing attention to how this personalist understanding of conscience has been handled by "some theologians"—who are never actually named—John Paul attributes to these theologians an understanding of God's "voice" heard in the conscience as one that "leads man not so much to a meticulous observance of universal norms as to a creative and responsible acceptance of the personal tasks entrusted to him by God."<sup>102</sup> This view John Paul dismisses in no uncertain terms as a "creative" understanding of moral

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<sup>101</sup> Second Vatican Council, *Gaudium et Spes*, no. 16.

<sup>102</sup> John Paul II, *Veritatis Splendor*, no. 55.

conscience that dissolves an understanding of the voice of God precisely as a law-giver who, in the conscience, renders a judgment for or against a given act.<sup>103</sup>

By conceiving both of the natural law and of the conscience in their more juridical senses, John Paul II gives himself the logical ground to equate the two: in John Paul's view, heeding the requirements of the natural law is equivalent to hearing the voice of God—a perhaps apt illustration considering that the bible represents the process of the decalogue's creation as one in which the commandments are literally the words of God. This juridical framework also gives the reader an understanding of how the natural law and the conscience relate to one another: the natural law precept presents a general requirement, whether positive or negative, and then the conscience applies that precept syllogistically to a given case. To hear the voice of God in one's conscience, in John Paul's view, is to hear God telling you how to act in a given case. "But whereas the natural law discloses the objective and universal demands of the moral good," John Paul observes, "conscience is the application of the law to a particular case; this application thus becomes an inner dictate for the individual, a summons to do what is good in this particular situation. Conscience thus formulates a *moral obligation* in the light of the natural law."<sup>104</sup>

In the third and last of the pivots, John Paul moves from focusing on negative precepts of the natural law (e.g., as they are formulated in the second table of the decalogue) to providing a focus on particular *acts* that are always prohibited by the natural law. John Paul views these acts as intrinsically evil in view of the judgment

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<sup>103</sup> John Paul II, *Veritatis Splendor*, no. 58.

<sup>104</sup> John Paul II, *Veritatis Splendor*, no. 59 (emphasis in original).

that the given object of the action—that is, a determination of the *type* of act that an action is—is always an everywhere impermissible, regardless of intention or circumstances. John Paul’s list of examples, drawing from *Gaudium et Spes*, is quite extensive:

Whatever is hostile to life itself, such as any kind of homicide, genocide, abortion, euthanasia and voluntary suicide; whatever violates the integrity of the human person, such as mutilation, physical and mental torture and attempts to coerce the spirit; whatever is offensive to human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution and trafficking in women and children; degrading conditions of work which treat laborers as mere instruments of profit, and not as free responsible persons: all these and the like are a disgrace, and so long as they infect human civilization they contaminate those who inflict them more than those who suffer injustice, and they are a negation of the honor due to the Creator.<sup>105</sup>

To this list of intrinsically evil acts John Paul also adds the use of contraceptives—a belief that was shared by Paul VI in the latter’s *Humanae Vitae*<sup>106</sup>—and same-sex sex acts—a belief previously articulated in the Post-Vatican II era most strongly by the Congregation for the Doctrine of the Faith.<sup>107</sup>

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<sup>105</sup> John Paul II, *Veritatis Splendor*, no. 89.

<sup>106</sup> Paul VI, *Humanae Vitae*, 14.

<sup>107</sup> “Although the particular inclination of the homosexual person is not a sin, it is a more or less strong tendency ordered toward an intrinsic moral evil; and thus the inclination itself must be seen as an objective disorder” (Congregation for the Doctrine of the Faith, *On the Pastoral Care of Homosexual Persons*, no. 3). For John Paul’s citation, see *Veritatis Splendor*, no. 81.

As we saw was the case in John Paul's theology of gender, John Paul's engagement with the natural law also bears a meaningful genealogy that goes back to Leo XIII. Instead of returning to *Arcanum Divinae*, however, we go to another one of his encyclicals: *Aeterni Patris*, Leo's encyclical on the "Restoration of Christian Theology." Written in 1879—one year before *Arcanum*—*Aeterni Patris* is frequently remembered as the document that elevated scholastic theology, particularly that of Thomas Aquinas, as *the* or something very nearly *like* the official theology of the Catholic Church. "But the chief and special glory of Thomas, one which he shared with none of the Catholic doctors," Leo writes, "is that the Fathers of Trent made it part of the order of conclave to lay upon the altar, together with sacred Scripture and the decrees of the supreme Pontiffs, the Summa of Thomas Aquinas, whence to seek counsel, reason, and inspiration."<sup>108</sup>

Though this observation concerning Thomas's theology is certainly worth noting, the main project to which Leo sets himself in *Aeterni Patris* is towards contending with a secularized notion of reason. Leo's juridical reading of Thomas's scholasticism, envisioned as the perfect integration of divine revelation and human reason, is meant to supply a model of reasoning operating at its fullest capacities.

Many of those who, with minds alienated from the faith, hate Catholic institutions, claim reason as their sole mistress and guide. Now, We think that, apart from the supernatural help of God, nothing is better calculated to heal those minds and to bring them into favor with the Catholic faith than the

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<sup>108</sup> Leo XIII, *Aeterni Patris* (04 August 1879), no. 22. Though, to be fair, the words "official theology of the Roman Catholic Church" have not been used expressly, and the idea that the Church has an official theology has been denied by other popes (e.g., John Paul II, *Veritatis Splendor*, no. 29). Nevertheless, Leo's image is striking.

solid doctrine of the Fathers and the Scholastics, who so clearly and forcibly demonstrate the firm foundations of the faith, its divine origin, its certain truth, the arguments that sustain it, the benefits it has conferred on the human race, and its perfect accord with reason, in a manner to satisfy completely minds opens to persuasion, however unwilling and repugnant.<sup>109</sup>

Behind this conviction lies a particular understanding of the relationships among faith, reason, divine revelation, and the role of the magisterium. Epistemically most valuable—because it is understood to be inculpable, and therefore to be knowledge—is divine revelation. Reason, by contrast, is tasked with exploring, as far as can be demonstrated (and therefore capable of being known), truths about the natural world—a world that, as creation, indirectly points to the identity of a creator. Reason, therefore, has a valuable function both scientifically and with respect to articulating a natural theology. Faith, for its part, grasps, as it were, truths that are outside of the realm of demonstration, or, importantly, anything that is divinely revealed.<sup>110</sup> Secularization's effect on reason, as we've seen Leo note, is to enact a positivism about truth that short-circuits reason's connection both to natural theology (since, on this view, because God's existence cannot be demonstrated, God does not exist) and to faith (since, if God does not exist, then there is, *a fortiori*, no such thing as divine revelation). But the dysfunction does not stop there; for, in Leo's view, if a positivism about reason reigns, then the discipline of philosophy—the discipline that, above all others, is concerned with the pursuit of truth in the widest sense—becomes antireligious and therefore incapable of

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<sup>109</sup> Leo XIII, *Aeterni Patris*, no. 27.

<sup>110</sup> Leo XIII, *Aeterni Patris*, no. 5-8.

reaching a full understanding of the truth. So the malady affecting reason with respect to natural theology and faith comes to affect philosophy with respect to theology and divine revelation as well. Philosophy, after secularization, relinquishes status as a prolegomenon to any sort of investigation that could be qualified as theological, first, and, second, *a fortiori*, philosophy has no sort of contact with divine revelation. For Leo, this disrupts the divinely ordained order with respect to which one encounters truth. “In the first place, philosophy, if rightly made use of by the wise, in a certain way tends to smooth and fortify the road to true faith, and to prepare the souls of its disciples for the fit of revelation...And assuredly, the God of all goodness, in all that pertain to divine things, has not only manifested by the light of faith those truths which human intelligence could not attain of itself, but others, also, not altogether unattainable by reason, that by the help of divine authority they may be known to all at once and without any admixture of error.”<sup>111</sup>

Important to note is that, in this taxonomy, truth can be communicated via multiple avenues: (1) they can be divinely revealed and be outside of reason’s scope, and therefore have to be known by faith; or (2) they can be divinely revealed and be within reason’s scope, and therefore can be known either by faith or by whatever is taken to be reasonable demonstration; or (3) they can be known by whatever is taken to be reasonable demonstration—that is, by reason alone. For our purposes it is important to point out two sorts of propositions that are forbidden by this

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<sup>111</sup> Leo XIII, *Aeterni Patris*, no.4. Cf, no. 9: “Faith *frees* and saves reason *from error*, and endows it with *manifold* knowledge. A wise man, therefore, would not accuse faith and look upon it as opposed to reason and natural truths, but would rather offer heartfelt thanks to God, and sincerely rejoice that, in the density of ignorance and in the flood-tide of error, holy faith, like a friendly star, shines upon his path and points out to him the fair gate of truth beyond all danger of wandering” (emphasis in original).

arrangement of sentences. The first is a tautology: it can never be the case that something can be divinely revealed that also fails to be true (whether reason can prove it or not); and the second is that it can never be the case that something can be known by reason that cannot, in principle, be divinely revealed.<sup>112</sup> The first statement guarantees that anyone who has access to divine revelation with respect to a matter at hand cannot be gainsaid; and the second statement guarantees that anything subject to rational/scientific investigation can be subject to the person who has access to divine revelation on the matter at hand. (In other words, there is nothing outside of divine revelation's scope.)

It is at this point where we can speak meaningfully about the magisterium's view of itself, and, for Leo, we do not have to venture beyond the first paragraph.

This is how he opens *Aeterni Patris*:

The only-begotten Son of the Eternal Father...commanded the Apostles to go and teach all nations, and *left the Church which He had founded to be the common and supreme teacher of the peoples*...Since, then, according to the warning of the apostle, the minds of Christ's faithful are apt to be deceived and the integrity of the faith to be corrupted among men by philosophy and vain deceit, the supreme pastors of the Church have always thought it their duty to advance, by every means in their power, science truly so called, and at the same time to provide special care that all studies should accord with

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<sup>112</sup> The first is the definition of divine revelation, and the second is the contrapositive of (2).

the Catholic faith, especially philosophy, on which a right interpretation of the other sciences in great part depends.<sup>113</sup>

The magisterium, being the guardian of divine revelation, has the duty to communicate what it understands to be the truth to the rest of the world. Over the last 150 years, this self-understanding hasn't changed.

To see how the natural law interfaces with this taxonomy, we return to John Paul II's *Veritatis Splendor*. As we've seen, before John Paul's three interpretative pivots take place, he expresses an understanding of the natural law as a capacity to discern right and wrong, and this he borrows from Aquinas. He also borrows from Aquinas the latter's construal of the relationship between the natural law and that which the natural law participates—namely the eternal law.<sup>114</sup> Crucial to recognize here is that eternal law is 'truth' in the fullest possible sense, since it coincides with divine wisdom itself.<sup>115</sup> Natural law, therefore, participates or "tracks," as it were, divine wisdom—wisdom that may or may not be demonstrable by human reason. Interfaced with the above taxonomy, then, the "content" of the natural law coincides with item (2), namely with those truths that can be known either through divine revelation or by human reason. It is therefore possible on this framework legitimately to identify deliverances of the natural law solely on the grounds of

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<sup>113</sup> Leo XIII, *Aeterni Patris*, no.1 (emphasis added).

<sup>114</sup> "On the other hand, reason draws its own truth and authority from the eternal law, which is none other than divine wisdom itself" (John Paul II, *Veritatis Splendor*, no. 40). For Aquinas's understanding of the relationship between the eternal law and the natural law, see *ST* I-II 91.2.

<sup>115</sup> By understanding the eternal law to be divine wisdom itself, one can see a certain logical relationship developing between divine wisdom, on the one hand, and, on the other, divine revelation—namely that anything considered a part of divine revelation must, necessarily, be an aspect of divine wisdom, but it is *not* necessarily the case that the entirety of divine wisdom has been divinely revealed. There is, then, a greater "intimacy," as it were, between God Godself and divine wisdom than between God Godself and divine revelation, even as both "issue" from God.



divine revelation, since—as we’ve seen—what is divinely revealed cannot fail to be true, and what is divinely revealed can pertain to matters which reason may also be able to address.<sup>116</sup>

All one needs, then, is a reliable organ by which divine revelation can be made known that can, in principle, be understood by reason. And, indeed, for the last 150 years of its history, this is how the magisterium has both positioned itself and has justified its teachings related to sex and gender for every issue we have so far examined. So, for example, appended to Leo’s proclamations concerning the three goods of marriage and the prohibition of divorce as “implanted by nature” is the notification that the God commanded the Church—and note the scope here—“to set in order whatever might have become deranged in human society, and to restore whatever might have fallen into ruin.”<sup>117</sup> Or, note Pius’s divine authorization as he pronounces the use of contraceptives an intrinsically evil act:

Since, therefore...some have judged it possible solemnly to declare another doctrine concerning the question, the Catholic Church, to whom God has entrusted the defense of the integrity and purity of morals, standing erect in the midst of the moral ruin which surrounds her...raises her voice in token of her divine ambassadorship and through Our mouth proclaims anew: any use whatsoever of matrimony exercised in such a way that the act is deliberately

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<sup>116</sup> This is what Aquinas believed happened in the case of the decalogue. After concluding that all the precepts of the decalogue belong to the natural law, Aquinas specifies how they all relate to divine revelation: “For there are certain things which the natural reason of every man, of its own accord and at once, judges to be done or not done...And there are certain things which, after a more careful consideration, wise men deem obligatory...And there are some things to judge of which human reason needs divine instruction , whereby we are taught about the things of God” (*ST I-II* 100.1). This last category is reasonable, even as it must be revealed by God.

<sup>117</sup> Leo XIII, *Arcanum Divinae*, no. 2.

frustrated in its natural power to generate life is an offense against the law of God and of nature and those who indulge in such are branded with the guilt of a grave sin.<sup>118</sup>

Paul VI will give us an example stellar for demonstrating the overlap between divine revelation, natural law, and the position of magisterium to proclaim the truth:

No member of the faithful could possibly deny that the Church is competent in her magisterium to interpret the natural moral law. It is in fact indisputable, as Our predecessors have many times declared that Jesus Christ, when He communicated His divine power to Peter and the other Apostles and sent them to teach all nations His commandments, constituted them as the authentic guardians and interpreters of the whole moral law, not only, that is, of the law of the Gospel but also of the natural law. For the natural law, too, declares the will of God, and its faithful observance is necessary for men's eternal salvation.<sup>119</sup>

The Congregation for the Doctrine of the Faith follows suit in its flagship document for its sexual ethics, *Persona Humana*, the document in which it provides its arguments for the prohibition of premarital sex, same-sex sex acts, and masturbation while also presenting its perspective on mortal sin and chastity:

Furthermore, Christ instituted His Church as "the pillar and bulwark of truth." With the Holy Spirit's assistance, she ceaselessly preserves and transmits without error the truths of the moral order, and she authentically interprets not only the revealed positive law but "also . . . those principles of

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<sup>118</sup> Pius XI, *Casti Connubii*, no. 56.

<sup>119</sup> Paul VI, *Humanae Vitae*, no. 4.

the moral order which have their origin in human nature itself" and which concern man's full development and sanctification. Now in fact the Church throughout her history has always considered a certain number of precepts of the natural law as having an absolute and immutable value, and in their transgression she has seen a contradiction of the teaching and spirit of the Gospel.<sup>120</sup>

This last quote starts to bring the particular theology of John Paul II into view, particularly his interpretative pivots that authorize a more juridical and propositional understanding of the natural law. For—as we've seen— not only can natural law be reduced from a capacity of discernment to natural law as an enumeration of specific *acts* that are prohibited—especially acts regarded as intrinsically evil—but the magisterium (and particularly John Paul II) is able to communicate exactly what those acts are. Indeed, when one takes the magisterium's understanding of its own competency both to understand and transmit the content of the natural law, one is constrained to conclude that hearing the voice of the magisterium is not significantly different from hearing the voice of God Godself. As John Paul II himself writes of himself and his fellow bishops, quoting Luke 10:16, "The task of interpreting these prescriptions was entrusted by Jesus to the Apostles and to their successors, with the special assistance of the Spirit of truth: 'He who hears you hears me.'"<sup>121</sup> In fact, for John Paul so important is this observation for his readers that he mentions something like it at least ten more times in that same

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<sup>120</sup> Congregation for the Doctrine of the Faith, *Persona Humana*, IV.

<sup>121</sup> John Paul II, *Veritatis Splendor*, 25.

encyclical.<sup>122</sup> When this is paired with his theology of conscience, one can find few, if any, grounds for resisting an identity between an authentic judgment of conscience, where one hears God's voice, and the opinion of the magisterium. To be a morally upright agent, in the magisterium's view, is to believe and do exactly what the magisterium says. "It follows that the authority of the Church, when she pronounces on moral questions, in no way undermines the freedom of Christians...because the Magisterium does not bring to the Christian conscience truths which are extraneous to it; rather it brings to light the truths which it ought already to possess, developing them from the starting point of the primordial act of faith."<sup>123</sup>

John Paul's teachings with respect to women place the potentially severe consequences of this magisterial theology into perspective. For example, Pius denies abortions in cases where such a procedure would save the life of the mother on grounds that, in part, her duty never to take life is "allotted to her by nature."<sup>124</sup> John Paul will reaffirm this very teaching in his own encyclical concerning the value of human life,<sup>125</sup>

and so will Francis.<sup>126</sup> Indeed, John Paul bases his entire theology of the feminine genius on the same grounds that the papal tradition has drawn its theology of marriage: it descends "from the beginning," that is, from Genesis, the figurative location of primordial truth. Like the natural law, this understanding of woman's vocation is "unchangeable and ever relevant in them."<sup>127</sup> And following John Paul II,

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<sup>122</sup> John Paul II, *Veritatis Splendor*, 27, 29, 53, 64, 85, 95, 110, 113, 114, 119.

<sup>123</sup> John Paul II, *Veritatis Splendor*, no. 64.

<sup>124</sup> Pius XI, *Casti Connubii*, no. 58.

<sup>125</sup> John Paul II, *Evangelium Vitae* (25 March 1995), no. 58.

<sup>126</sup> Francis, *Amoris Laetitia*, no. 83.

<sup>127</sup> John Paul II, *Mulieris Dignitatem*, no. 30.

the Congregation for the Doctrine of the Faith will make the judgment that women “by nature” have a vocation to service of the family,” and even though men are also called to service, women are “immediately attuned to these values,” so much so that femininity itself “designates the fundamental capacity to live for the other and because of the other.”<sup>128</sup> Francis’s teachings on sex and gender, as well as his teachings on women, draw consistently from this primordial place of unalterability, even as his choice of language is clearly less juridical than his predecessors’.<sup>129</sup> For example, his condemnation of contraception is set against a cultural background in which defenders of contraception “attempt to sunder what are inseparable aspects of reality.”<sup>130</sup> And Francis’s opposition towards transgender persons is based in the fact that they do not accept the gender complementarity and gender essentialism of John Paul II, for “an appreciation of our body as male or female is also necessary for our own self-awareness in an encounter with others different from ourselves. In this way we can joyfully accept the specific gifts of another man or woman, the work of God the Creator, and find mutual enrichment.”<sup>131</sup>

One more aspect of this magisterial theology concerning sex and gender deserves consideration here. Paired to the magisterium’s self-proclaimed competency to interpret and transmit the natural law has been the magisterium’s strategy of discouraging and, at times, silencing opposing voices. In the American theater, the firing of Charles E. Curran in 1986 remains a stark reminder that

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<sup>128</sup> Congregation for the Doctrine of the Faith, *On the Collaboration of Men and Women in the Church and World*, no. 13-14.

<sup>129</sup> Francis, *Amoris Laetitia*, no. 9-13.

<sup>130</sup> Francis, *Amoris Laetitia*, no. 56.

<sup>131</sup> Francis, *Amoris Laetitia*, no. 285.

disagreeing with the magisterium as a theologian can cost a person one's livelihood.<sup>132</sup> More recently, theologians have received the equivalences of warnings of theological heterodoxy for challenging various topics in sexual ethics as well as for challenging the role aspects of the magisterium's theology of gender as it functions in the Church's doctrine of God.<sup>133</sup> These sorts of disciplinary penalties are no accident. For example, in John Paul's mind, "Moral theologians are to set forth the Church's teaching and to give, in the exercise of their ministry, the example of a loyal assent, both internal and external, to the Magisterium's teachings in the areas of both dogma and morality."<sup>134</sup> Indeed, public opposition to the magisterium's teachings—understood to be "carefully orchestrated protests and polemics carried on in the media"—"cannot be seen as a legitimate expression either of Christian freedom or of the diversity of the Spirit's gifts."<sup>135</sup>

Accompanying this culture of conformity is also the magisterium's strategy of discrediting convictions within academic disciplines that would contradict magisterial teachings on sex and gender. The most common form of this can be seen through distinctions made by the magisterium between true and flawed science. For

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<sup>132</sup> See Charles E. Curran, *Catholic Moral Theology in the United States: A History* (Washington DC: Georgetown University Press, 2008), 96-97. Curran publicly disagreed with the magisterium's teachings on contraception, sterilization, divorce, masturbation, homosexuality, and the beginning of human life, among others.

<sup>133</sup> See, for example, the notification issued from the Congregation for the Doctrine of the Faith on Margaret Farley's *Just Love*, at [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20120330\\_nota-farley\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20120330_nota-farley_en.html), and two statements on Elizabeth Johnson's *Quest for the Living God*, and Todd Salzman and Michael Lawler's *Sexual Person*—both issued by the doctrinal committee of the USCCB— at <http://www.usccb.org/about/doctrine/publications/upload/statement-quest-for-the-living-god-2011-03-24.pdf>, and [http://www.usccb.org/about/doctrine/publications/upload/Sexual\\_Person\\_2010-09-15.pdf](http://www.usccb.org/about/doctrine/publications/upload/Sexual_Person_2010-09-15.pdf), respectively. Other theologians censured include John J. McNeill, Jon Sobrino, and Roger Haidt.

<sup>134</sup> John Paul II, *Veritatis Splendor*, no. 110.

<sup>135</sup> John Paul II, *Veritatis Splendor*, no. 113.

example, Leo in *Aeterni Patris* will distinguish science that supports the Church's teachings as "science truly so called."<sup>136</sup> And, for its part the Congregation for the Doctrine of the Faith will embrace "contemporary scientific research" when it finds it helpful, as it does when it borrows from psychology the concept of sexual orientation in order to provide the building blocks for gender essentialism.<sup>137</sup> But that same congregation will disregard any finding of contemporary psychology if the latter would suggest that homosexuality should not be pathologized.

However, the Catholic moral viewpoint is founded on human reason illumined by faith and is consciously motivated by the desire to do the will of God our Father. The Church is thus in a position to learn from scientific discovery *but also to transcend the horizons of science and to be confident that her more global vision does greater justice to the rich reality of the human person in his spiritual and physical dimensions*, created by God and heir, by grace, to eternal life.<sup>138</sup>

As the above quote would suggest, this selective use of scientific inquiry on the magisterium's part does have a theological justification. Recall that the magisterium's epistemic evaluation of itself permits it to make pronouncements on the natural law on matters that are also addressable on independent grounds by reason. But when a scientific finding—that is, a finding based in reason—contradicts the magisterium's assertion concerning the natural law, the magisterium paints this use of reason as reflecting reason operating in a fallen mode. In other words,

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<sup>136</sup> Leo XIII, *Aeterni Patris*, no. 1.

<sup>137</sup> Congregation for the Doctrine of the Faith, *Persona Humana*, no. 1.

<sup>138</sup> Congregation for the Doctrine of the Faith, *On the Pastoral Care of Homosexual Persons*, no. 2 (emphasis added).

because of the operation of sin, these scientific findings are flawed—not, importantly, because of anything internal to the practice of the scientific discipline—but simply because the finding disagrees with the magisterium’s understanding. Pius identifies his opponents to his teaching on contraception as “emissaries of the great enemy who is ever seeking to sow cockle among the wheat.”<sup>139</sup> And why are they Satan’s emissaries? Leo gave us this answer. It is because these emissaries, using their secularized notion of reason combined—as we’ve seen—with a desire to give into their passions, are challenging the magisterium’s understanding of marriage by seeking to normalize divorce and institute civil marriage.<sup>140</sup> It is because these emissaries, according to John Paul II, are using the enlightenment ideal of political and cultural liberalism to violate the sanctity of human life.<sup>141</sup> More generally—and most illuminatingly—it is because these emissaries are untethering “human freedom from its essential and constitutive relationship to the truth...Thus, the traditional doctrine regarding natural law, and the universality and the permanent validity of its precepts is rejected...”<sup>142</sup> It is this thread that ties together Leo’s first volleys against the Enlightenment in the 19<sup>th</sup> century to John Paul’s indictment of the same at the dawn of the 21<sup>st</sup>: we are using our reason—our freedom—to justify sinning. It is literally the oldest, primordial sin in the book—the original sin of Adam and Eve in

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<sup>139</sup> Pius XI, *Casti Connubii*, no. 47.

<sup>140</sup> Leo XIII, *Arcanum Divinae*, no. 16: “[B]ut in our own age, much more pernicious is the sin of those who would fain pervert utterly the nature of marriage...The chief reason why they act in this way is because very many, imbued with the maxims of a false philosophy and corrupted in morals, judge nothing so unbearable as submission and obedience; and strive with all their might to bring about that not only individual men, but families, also—indeed human society itself—may in haughty pride despise the sovereignty of God.”

<sup>141</sup> John Paul II, *Evangelium Vitae*, no. 18-20.

<sup>142</sup> John Paul II, *Veritatis Splendor*, no. 4.



Genesis—and its continued use by the magisterium to enforce adherence to its own teachings is one of the most striking symbols of the last 150 years of papal teaching on gender and sexuality.<sup>143</sup>

Just as before, revisionists have critically engaged this magisterial understanding of conscience and the epistemology of the natural law both through an attention to historical development of the natural law tradition as well as through a critical retrieval of Thomas's own theological account of the natural law. For example, attention to the historical development of the natural law will reveal that, in the modern period, the natural law that descended from Thomas Aquinas underwent a secular transformation as a result of its encounter with the Enlightenment that sought to make morality more like the emerging empirical science of the day.<sup>144</sup> In the medieval period, natural law claims were justified on the grounds that a given act was seen to rightly realize a person's nature conceived teleologically. However, with teleological theories falling out of favor generally, natural law thinkers began to appropriate, in various ways, divine voluntarist justifications for the natural law—meaning that the natural law was justified not on grounds of a given act being in accord with nature, but it was justified instead on grounds of divine command. The most famous philosopher dissatisfied with this

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<sup>143</sup> One also can draw another genealogy through Aquinas, who, in his analysis of the moral precepts of the old law, notes that God gave the law, in part, because "the reason of many men went astray, to the extent of judging to be lawful, things that are evil in themselves. Hence there was need for the authority of the Divine Law to rescue man..." (*ST* 99.2. ad. 2.). Such a thread makes John Paul II's use of the decalogue in *Veritatis Splendor* even more impressive. Even if this is disregarded as a mere rhetorical inference, John Paul II (as well as Thomas) were familiar with Paul's words in Romans 1, where sexual immorality is the punishment for the sin of idolatry.

<sup>144</sup> For this and what follows in this paragraph, I draw from Stephen J. Pope, "Natural Law in Catholic Social Teachings," in *Modern Catholic Social Teaching: Commentaries and Interpretations*, 2<sup>nd</sup> ed., ed., Kenneth R. Himes, O.F.M., 43-74 (Washington DC: Georgetown University Press, 2018), 48.

formula, however, was Immanuel Kant, who argued that all such “heteronomous” justifications for morality were insufficient to produce an ethical theory. The only sort of theory that would work, he reasoned, was a theory in which rightness of the will were determined by its acting autonomously—that is, on the basis of reason alone—and by its responding appropriately to categorical imperatives, that is, exceptionless moral norms applied to a given situation.<sup>145</sup>

Catholic moral theologians working at this period in time began to see moral theology through a lens similar to the one that Kant used: acts were categorized based on abstract classifications; from there, universal principles were applied deductively to cases.<sup>146</sup> This was the intersection of the natural law—which provided the norms to be followed—and Enlightenment rationalism, which provided the method. These calculations were famously codified in the 19<sup>th</sup> and early 20<sup>th</sup> century moral manuals, used almost exclusively in seminary contexts in order to prepare future priests to hear confessions.<sup>147</sup> Curiously, these manuals were *purposely* unconnected to cultivating a life of faithful discipleship among those making confessions. Instead, as James Keenan quotes from one moral manual, “The manuals of moral theology are technical works intended to help the confessor and the parish priest in the discharge of their duties...They are not intended for

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<sup>145</sup> Pope, “Natural Law in Catholic Social Teaching,” 50.

<sup>146</sup> Cahill, *Sex, Gender, and Christian Ethics*, 67.

<sup>147</sup> Curran, *Catholic Moral Theology in the United States: A History*, 2-6. For a detailed investigation of the most commonly used moral manuals see James F. Keenan, *A History of Catholic Moral Theology in the Twentieth Century: From Confessing Sins to Liberating Consciences* (New York: Continuum, 2010), 9-34.

edification, nor do they hold up the high ideal of Christian perfection for the imitation of the faithful...They are books of moral pathology.”<sup>148</sup>

It is at this point where the natural law meets the papal tradition descending from Leo XIII that we have already investigated, but what becomes clearer now is just how rigid the natural law was understood to be before it was applied to the popes. For example, the manuals spoke about human sexuality in terms of the “sexual act” before Pius began to employ that distinction for wider dissemination in *Casti Connubii*,<sup>149</sup> and it is moreover clearer now what served as this historical inspiration for John Paul II’s particular vision of the natural law as objective moral truths which can be formulated propositionally into prohibitions of certain acts. The difference between the era of moral theology before the age of papal interventions into moral theology was that, prior to popes, moral theology was debated among scholars. As the 20<sup>th</sup> century dawned, moral theologians would find themselves primarily concerned with interacting with the pronouncements coming from the magisterium. James Keenan notes, in fact, that to the extent that moralists became detained by the “Vatican’s internal-ecclesial agenda,” the less they were able to reflect on the most pressing moral questions in the world.<sup>150</sup>

Dissatisfaction with the magisterium’s natural law authoritarianism grew among European theologians, particularly in the case Bernard Häring, who prior to the Second Vatican Council but after the Second World War wrote what would become known in English as *The Law of Christ*. His work was critical in reorienting

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<sup>148</sup> James F. Keenan, S.J., “Vatican II and Theological Ethics,” *Theological Studies* 74 (2013): 162-190, at. 165.

<sup>149</sup> Cahill, *Sex, Gender, and Christian Ethics*, 194.

<sup>150</sup> Keenan, “Vatican II and Theological Ethics,” 165.

moral theology away from what he saw as a moral theology obsessed with following Church rules to one that emphasized the importance of history and tradition; human freedom as the basis of Christian morality; the formation of the conscience; and the relevance of worship for moral formation. Häring's work—together with the efforts of other theologians working at the Second Vatican Council—would constitute the basis for revisionist moral theology, and one of its hallmark emphases is the formation of conscience understood as the place where the right action is discerned.<sup>151</sup>

John Paul II's interpretative pivot away from this understanding of the conscience as the place of discernment of the will of God in this more personalist mode constitutes, then, his rejection of the revisionist agenda in Catholic moral theology more broadly. This is a fact about which he was fairly transparent: John Paul II rejected developments in moral theology coming both from Europe—where revisionists had started to embrace a Kantian-inspired autonomous ethics—and from the United States—where proportionalism became ascendant. But, crucially, John Paul's rejections do not constitute a rejection of personalism. In fact, his theology of the body and *Veritatis Splendor* are famous for being exactly the opposite—that is, they are famous for being the personalist transformations of *Humanae Vitae* from a language that emphasized natural law and conformity to the competent teaching authority of the magisterium to one that—as we've seen—seeks to root those teachings in a theological anthropology proceeding from John Paul II's

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<sup>151</sup> Keenan, "Vatican II and Theological Ethics," 169-171.

unique reading of Genesis.<sup>152</sup> But, crucially, the conclusions of both *Humanae Vitae* and the *Theology of the Body* are identical where they address the same issues. What John Paul did, then, was place natural law authoritarianism in a new key, one that did not seem as aggressive—or, at least that was the idea. Today, it is in Francis's papacy where we can see just how relatable this natural law authoritarianism in a personalist mode can be: where Francis is not interested in introducing any change into the Church's teaching related to marriage and family, he simply quotes John Paul II, placing his ideas in a different rhetorical key in those cases where he does not cite John Paul's language word-for-word.<sup>153</sup>

Theologians who were the putative targets of *Veritatis Splendor* were not silent. The word 'putative' is important here, since, as many theologians have persuasively argued, John Paul II's treatments of moral ideas with which he engages are frequently inaccurate caricatures. James Gaffney, in his thunderous reply to John Paul's treatment of proportionalism, flatly accuses John Paul II of employing strawmen and straw-women in order, ultimately, to show his dissatisfaction towards anyone who has a way of analyzing controversial sexual issues in ways that differ from that of John Paul II.<sup>154</sup>

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<sup>152</sup> For a similar point with more sympathy to John Paul's project see, Janet E. Smith, "Natural Law and Personalism in *Veritatis Splendor*," in *Veritatis Splendor: American Responses*, ed., Michael E. Allsopp and John J. O'Keefe (Kansas City, MO: Sheed and Ward, 1995), 194-207.

<sup>153</sup> See, for example, the third chapter of *Amoris Laetitia* (esp. no. 73-74), where Francis's teachings on marriage and the family are congruent with John Paul II's, even as his language is altogether more engaging and "pastoral" than that used by his predecessor.

<sup>154</sup> More specifically, Gaffney accuses John Paul II of seeking to overturn an even older tradition in Catholic moral theology—the use of proportionate reason. "If... the adversaries as the Pope describes them are a real and present danger, it would not seem too much to ask that out of one hundred and eighty-two footnotes at least a few would identify in some bibliographically verifiable way, the persons and writings that explicitly profess the 'moral theories' to which he objects. The recognition of 'proportionate reason' as a significant moral factor in moral choice has been a part of Catholic moral theology since its earliest beginnings and among its most illustrious practitioners." See James

And even though it would be John Paul II who would call for a “new feminism” to correspond to his theology of the feminine genius that would correlate the reality of women’s lives with their divine vocation, Kathleen Talvacchia and Mary Elizabeth Walsh in their “The Splendor of Truth: A Feminist Critique,” highlight that the encyclical “does not acknowledge contextual perspective and particular lived experiences as valid components of moral reasoning...the norms it articulates are viewed as objective and universal, without any awareness of the ideological overlay they carry.” The consequence: John Paul’s theology is “unconcerned with the complexities of human experience.”<sup>155</sup> And as a final example, whereas John Paul II maintains that autonomous ethics is a framework that authorizes the conscience to disregard “the dependence of human reason on Divine Wisdom and the need, given the present state of fallen nature, for Divine Revelation as an effective means for knowing moral truths the existence of the moral law,”<sup>156</sup> Joseph Fuchs—one of the most prominent exponents of autonomous morality—shows just how inaccurate this is: “The ‘theonomy of moral autonomy’ therefore means that...[m]an has to search, find, and experience a way of freely living out his being as image of God...Such knowledge is possible only if God has communicated himself to us in history in such a way that his communication is

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Gaffney, “The Pope on Proportionalism,” in *Veritatis Splendor: American Responses*, 60-71, at 67. For a summary of proportionalism as an ethical theory, see Christina Traina, *Feminist Ethics and the Natural Law: The End of the Anathemas* (Washington DC: Georgetown University Press, 1999), ch. 6.

<sup>155</sup> Kathleen Talvacchia and Mary Elizabeth Walsh, “*The Splendor of Truth: A Feminist Critique*,” in *Veritatis Splendor: American Responses*, 296-310, at 307.

<sup>156</sup> John Paul II, *Veritatis Splendor*, no. 37.

primarily aimed at shedding light on our own real situation and on also on the morality which is demanded of us.”<sup>157</sup>

The most significant critique of John Paul II’s deployment of natural law authoritarianism, however, lies in how John Paul and his predecessors in the modern period have interacted with the natural law as a tradition of theological reasoning. As we’ve seen, John Paul’s juridical understanding of the natural law leads him to emphasize the prominence of intrinsically evil objects in the moral act. John Paul’s general presentation of moral objects is that it is possible to understand the “object” of an act—that is, what is “going on” or “freely chosen” in a moral act—in a way that does not require taking into account either the intentions or the circumstances surrounding the act.<sup>158</sup> Though John Paul attributes this position to Aquinas, his citations of Aquinas are few. Jean Porter, on the other hand, is a long-time scholar of Thomas’s *Summa*, and shows that John Paul’s interpretation is false. “In order to determine the object of an action...it is *first* necessary to arrive at a correct description of the act from the moral point of view. That process, in turn, depends on prior evaluative judgments...Description is not prior to evaluation; to the contrary, to describe an action from the moral point of view *is* to form a moral evaluation of the action.”<sup>159</sup> John Paul’s position, in other words, while it might reflect an understanding of moral action descending from the manuals, is not one that finds its basis in the theology of Thomas Aquinas. *A fortiori*, John Paul’s

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<sup>157</sup> Josef Fuchs, S.J., “Autonomous Morality and Morality of Faith,” in *Personal Responsibility and Christian Morality*, trans. William Cleves, et al, (Washington DC: Georgetown University Press, 1983), 84-111, at 98-99.

<sup>158</sup> John Paul II, *Veritatis Splendor*, no. 77.

<sup>159</sup> Jean Porter, “The Moral Act in *Veritatis Splendor* and in Aquinas’s *Summa Theologiae*: A Comparative Analysis,” in *Veritatis Splendor: American Responses*, 278-295, at 281.

assertion of the intrinsically evil object in moral theology stands at a distance equal from Thomas's theology and the natural law he employs within it.

Theologians have also continued to draw attention to how John Paul II and the magisterium employ an epistemology of the natural law that stands at a distance from the theology of natural law present in Thomas Aquinas. One area to consider here is exactly how the natural law functions in determining what act is right in a given situation. As we've seen, John Paul and other popes over the course of the 20<sup>th</sup> century have conceived of the natural law juridically, which allows them to communicate the demands (precepts) of the natural law propositionally (and, as we've also seen, with great specificity), especially when it comes to acts that are ruled out as intrinsically evil. This conception, however, is a direct descendent of the modern natural law tradition descending from Kant and from a desire for a more positivist understanding of morality in general. It is, once again, not Thomas's understanding.

By contrast, Thomas conceived of the natural law fundamentally as a capacity that we have for discerning God's will for our flourishing. In this sense, natural law is understood by Thomas to be a "participation" of the eternal law.<sup>160</sup> There is a sense in which Thomas's choice of words here—the choice of the word 'law' for something that is something more like a capacity—might seem to pose a bit of puzzle. The answer is that Thomas uses the word 'law' in a way that is somewhat divergent from the sense in which we use the word in our contemporary day. For Thomas, law has two aspects. It is first primarily related to reason, insofar as reason

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<sup>160</sup> Aquinas, *ST I-II* 91.2.



assists us in realizing what it is that we choose to do, whatever we decide to do. In this sense reason can be said to “command” our actions. And in its second aspect, reason gains its binding force as ‘law’ just to the extent that reason commands correctly—that is, to the extent that it conforms to the eternal law, God’s plan for our flourishing.<sup>161</sup>

Thomas does not believe that we lack insight into what God wants for our flourishing, which is to say, that Thomas thinks we know something of the natural law simply by existing.<sup>162</sup> For Thomas, the natural law is intrinsically connected to our practical reasoning, that is, reason about things to be done. At a general level, we know that good is to be done and evil is to be avoided.<sup>163</sup> From this general principle, we receive greater insight into God’s plan for our flourishing by paying heed to certain fundamental inclinations that we have as human beings. For Thomas, there are three: the first is the inclination to stay alive; the second is to reproduce and nurture younger members of the species; and the third is to know the truth and to live in community—that is, to seek the good.<sup>164</sup> Reflection upon these inclinations leads us to general norms—what Thomas calls ‘primary precepts’—of the natural law. They are classically represented in the decalogue, which provides prohibitions of types of acts, such as the prohibition on stealing,

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<sup>161</sup> Aquinas, *ST*, I-II 90.1, ad. 1.

<sup>162</sup> Thomas is making a presumption here about the type of human being he has in mind: minimally, the person would need to be able to use reason. On the basis of this, one can see that Thomas would not regard this account as inclusive of persons with perhaps severe cognitive disabilities.

<sup>163</sup> Aquinas, *ST* I-II 94.2.

<sup>164</sup> Aquinas, *ST* I-II 94.2.

lying, and killing, and well as exhortations to certain acts, such as honoring one's parents.<sup>165</sup>

It is important analytically to understand that primary precepts of the natural law are *categories* of acts. It still matters whether any given instance of an act properly falls under the prohibition, that is, whether *this* act that an agent is about to commit counts as stealing, adultery, etc. Thomas calls this more specific application of the natural law to acts the derivation of *secondary* precepts of the natural law. And this process is not easy, and most importantly—if we take Thomas's words for it—it is first of all *not* like other forms of knowing. In other words, knowing what to do practically in a given situation is not a deductive process as one might understand it to be in a discipline like the natural (in this sense, speculative) sciences:

As to the proper conclusions of the speculative reason, the truth is the same for all...But as to the proper conclusions of the practical reason, neither is the truth or rectitude the same for all... And this principle will be found to fail the more, according as we descend further into detail, e.g. if one were to say that goods held in trust should be restored with such and such a guarantee, or in such and such a way; because the greater the number of conditions added, the greater the number of ways in which the principle may fail, so that it be not right to restore or not to restore.<sup>166</sup>

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<sup>165</sup> Aquinas, *ST I-II*, 100.1; 100.3.

<sup>166</sup> Aquinas, *ST I-II* 94.4. As we've seen, some commentators (specifically the papal commentators on the natural law that we have investigated, especially Leo XIII and John Paul II) believe that (1) the failure to follow the natural law results from some moral failing (e.g., the desire to give in to sin) and (2) secondary precepts can be articulated generally. They attribute this reading to Thomas, ostensibly warranted by the next few lines in Thomas's response:

On Thomas's understanding of the epistemology of the natural law, then, we have no warrant to think of the natural law as authorizing some form of moral deductivism. Instead, using the inclinations as presenting the horizons of what is good, Thomas maintains that human beings must discern the natural law by using their reason rightly. This then introduces for Thomas a conversation about the virtues, which help perfect not only the operation of reason (prudence and faith), but help perfect the will, our desire for the good (love, hope, courage, temperance, and justice).<sup>167</sup> The conscience, for Thomas, becomes a specific intellectual *act* whereby our actions are judged in such a way that we are honest with ourselves about whether we have or haven't truly performed an act (conscience as witness); about whether something about which we have reasoned should or should not be done (prospective conscience); or about whether an action previously done was

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Consequently we must say that the natural law, as to general principles, is the same for all, both as to rectitude and as to knowledge. But as to certain matters of detail, which are conclusions, as it were, of those general principles, it is the same for all in the majority of cases, both as to rectitude and as to knowledge; and yet in some few cases it may fail, both as to rectitude, by reason of certain obstacles (just as natures subject to generation and corruption fail in some few cases on account of some obstacle), and as to knowledge, since in some the reason is perverted by passion, or evil habit, or an evil disposition of nature. This is a misreading of the passage. Maintaining position (2) requires one to understand "majority of cases" as having a scope that is wider than what Thomas says about the general derivation of secondary precepts *in general*. But if this were the case then Thomas would be clearly contradicting himself. A much better interpretation is one that simply maintains that Thomas didn't think there would be a large amount of variance in secondary precepts. We, living in a more culturally pluralistic world, understand that Thomas's position is uncritical and has more in common with colonialist epistemologies. Moreover, to maintain position (2) would also force inconsistencies at other places in the text where Thomas understands the natural law specifically as authorizing substantive variances in civil law from one society to another (e.g., *ST I-II* 100.2; cf. *ST I-II* 99.3). Lastly, it is important to contextualize position (1) within Thomas's total response. It cannot be the case that failure to observe the secondary precepts of the natural law is *always or typically* the result of defective constitution as a rational being or the result of sin when Thomas explicitly points out that variance in the derivation of secondary precepts happens as a result of the practical reasoning functioning normally. The best interpretation is once again conjunctive: the derivation of secondary precepts is in general difficult and can be compounded by difficulties in the use of reason or through habituation into vice, *and* when they are derived correctly, there can be variance in how they are realized.

<sup>167</sup> Aquinas, *ST I-II*, 55.1;

done well or poorly (retrospective conscience).<sup>168</sup> The above, in outline, is the consensus revisionist position regarding Thomas.<sup>169</sup>

### 3.3 THE MAGISTERIUM'S NATURAL LAW AUTHORITARIANISM

The Magisterium's positions and arguments concerning gender and sexuality give one grounds to conclude that its theology is justified most adequately as a form of natural law authoritarianism. This conclusion is particularly irresistible in the aftermath of the interpretative pivots within the natural law tradition effected by John Paul II.<sup>170</sup> By understanding the natural law in a juridical key which can furthermore be expressed reliably and completely (at least with respect to negative precepts) in propositional form, the natural law can essentially be "legislated" in a way similar to how contemporary governments create laws. Moreover, strengthening—indeed indemnifying—the magisterium's judgments is its own self-understanding as being able to issue judgments that cannot be theologically contested, insofar as these judgments are held out to delineate the moral requirements of human nature comprehensively considered. Conjoined to this epistemic indemnification is the magisterium's strategy to interpret all dissent

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<sup>168</sup> Aquinas, *STI* 79.13.

<sup>169</sup> See, for example, Pope, "Natural Law in Catholic Social Teachings," 63-64; Cahill, *Sex, Gender, and Christian Ethics*, 46-48; Jean Porter, *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics* (Grand Rapids, MI: Eerdmans, 1999), 63-119; Cristina Traina, *Feminist Ethics and Natural Law: The End of the Anathemas* (Washington DC: Georgetown University Press, 1999), 56-99.

<sup>170</sup> It is important to note that this trend continues in Francis, who, when talking about the natural law, will follow John Paul II very closely. When talking about marriage, for example, Francis will invoke the "objective demands of the law," speaking about the law as a "gift of God which points out the way, a gift for everyone without exception[...]." See *Amoris Laetitia*, no. 295.

from its teachings or contrary conclusions relevant to its teachings as continued manifestations of the primordial fall. In the magisterium's view, you either believe what it says, or you are sinning. And with a theology of conscience that ties the voice of God to the voice of the bishops, the stakes of not believing the magisterium are so high, theologically speaking, that it is possible to believe that disagreeing with the bishops is disagreeing with God Godself. Believe us, the magisterium essentially says, because if you don't your reason is flawed. There are scant few ways to encapsulate what a better form theological authoritarianism could possibly be.

One other point is important to make here. It is not only that the magisterium's understanding of the natural law constitutes a form of authoritarianism, but it is also that this natural law authoritarianism is thoroughly heteronormative through and through—thus making it a target of queer intervention. This becomes particularly clear if one applies the definition of heteronormativity developed in the first chapter of this dissertation to the magisterium's positions with respect to sex and gender. In that first chapter, heteronormativity was understood to be a phenomenon existing at three conceptual levels. At the first level, heteronormativity illuminates the psychological burden of heterosexuality enjoined upon all bodies—that is, it illuminates what Adrienne Rich has identified as compulsory heterosexuality, the persistent belief that anything *other* than a heterosexual lifestyle is undesirable, unlivable, or both.<sup>171</sup> At the second

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<sup>171</sup> For Rich's presentation of the concept, see her classic "Compulsory Heterosexuality and Lesbian Existence," *Signs* 5.4 (Summer 1980): 631-660. An important dimension of this essay to highlight is the signal contribution it made to providing visibility to what Rich calls "lesbian existence," that is, providing visibility to the fact that compulsory heterosexuality makes unequal demands on gay men and lesbians to the extent that the patriarchal configurations of society unequally benefit gay men as *men*, even if they are also disadvantaged by homophobia.

level, heteronormativity operates as a *structural phenomenon*, which provides visibility to the operation of compulsory heterosexuality as a function of how society's economic, political, and cultural institutions are organized.

Heteronormativity operates as a structural phenomenon when heterosexuality is “naturalized”—that is, it is understood as the “default” mode for human sexual experience. As a result, because heterosexuality is “natural,” institutions are created to support it, on the one hand, and, on the other, to punish or discourage deviant sexualities. Last, both of these two levels of heteronormativity are related to heteronormativity operating in its third mode, as a *symbolic phenomenon*. Though I name it here as the “third” level, it can plausibly be understood as the level that is conceptually prior to the other two. For in its symbolic mode, heteronormativity is projected as an organizing principle for understanding the whole of reality itself beyond sexuality per se, where the world is understood as the interaction of entities that can be organized across a binary logic: male/female; man/woman; active/passive; straight-gay—what queer theologian Marcella Althaus-Reid identified as heterosexualistic thinking.<sup>172</sup>

The magisterium's natural law authoritarianism is heteronormative at all of these levels. For example, the operation of heteronormativity as a symbolic phenomenon is clear from the magisterium's understanding of binary gender as the exclusive incarnations of human embodiment, an understanding that is projected

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<sup>172</sup> See, for example, her *Indecent Theology: Theological Perversions in Sex, Gender, and Politics* (New York: Routledge, 2000), 170ff.

into God's own creative intentionality.<sup>173</sup> It is also shown through the magisterium's understanding of marriage specifically as an instantiation of the divine-human relationship that takes place between Christ and the Church, a relation which—curiously enough—is also gendered along binaristic lines. As a phenomenon in the second, structural, sense, the magisterium's theology with respect to sex and gender specifically as a theology of *marriage* reveals its heteronormativity, since the institution of marriage—an institution into which only heterosexuals or those willing to live like heterosexuals are invited to enter—has been identified by the magisterium as the very *telos* of human sexuality itself. Thus, for the magisterium, every institution touching the sexual lives of human beings are supposed to reflect an understanding of sexuality in ways congruent with the magisterium's understanding of gender complementarity, gender essentialism, and a “natural” heterosexual destiny for each person in which each sexual act should be open to procreation and in which all sex acts should be restricted to the marriage context.<sup>174</sup> Lastly, the magisterium's theology concerning sex and gender is heteronormative in the first sense of underwriting compulsory heterosexuality in view of the fact that

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<sup>173</sup> “[The equal dignity of men and women] as persons is realized as physical, psychological, and ontological complementarity, giving rise to a harmonious relationship of ‘uni-duality’ which only sin and the structures of sin inscribed in culture render potentially conflicted” (Congregation for the Doctrine of the Faith, *On the Collaboration of Men and Women in Church and World*, no. 8.).

<sup>174</sup> This plays out particularly strongly in Catholic secondary schools, which, in general, do not offer safe-sex education; nor are Catholic schools viewed as particularly hospitable places for transgender persons or to non-heterosexual employees (or at times, to students). For information about incidents of homophobia and transphobia in Catholic secondary schools, the interested reader is referred to the *Bondings 2.0* blog of New Ways Ministry (<https://www.newwaysministry.org/blog/>). This dynamic also has played out in the various conflicts that have recently emerged between the US government and the United States bishops over, for example, the requirement that Catholic schools and hospitals provide health plans that include contraceptives to its employees. As a final example, Catholic adoption agencies have also sued the US government on religious liberty grounds because they are required to comply with laws that forbid discrimination against same-sex couples seeking to adopt.

the magisterium understands same-sex sexual desire to be intrinsically disordered; in view of that fact that it understands each same-sex sex act a grave matter;<sup>175</sup> and in view of the fact that persons with same-sex sexual attraction are compelled to live celibate lives if they are unable to live sexually fulfilling lives with those whom they can identify as the opposite sex.<sup>176</sup> With theological concepts like these articulated by the magisterium, it is no surprise that a person hearing them for the first time—or, indeed, over a protracted period of time—would find any lifestyle other than a heterosexual one to be unlivable. It is clearly undesirable.

Revisionist theologians have certainly done their part to combat the magisterium's natural law authoritarianism. Their attention to the historical development of theologies of marriage, gender, and to the natural law, have led to new ways not only to appropriate Genesis within the life of the Church, but also to have led to the recovery of an epistemology of the natural law like that which we see in Thomas's own *Summa*.

What remains to be investigated in detail—and which will be the topic of the next chapter—is how revisionists have conceived of sexuality. It will be at this juncture where a queer natural law and a revisionist natural law will come to heads.

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<sup>175</sup> This understanding of same-sex sex acts is particularly devastating, since, when grave matter is conjoined to “free consent” and “full knowledge,” each same-sex sex act becomes, by definition, a mortal sin. See Congregation for the Doctrine of the Faith, *Persona Humana*, X.

<sup>176</sup> Congregation for the Doctrine of the Faith, *On the Pastoral Care of Homosexual Persons*, no. 12.



## **4.0 A QUEER NATURAL LAW THEOLOGY OF SEXUALITY**

### **4.1 INTRODUCTION: FROM REVISIONIST NATURAL LAW TO QUEER NATURAL LAW**

As we've seen in the previous chapter, there are places where a queer natural law—with its emphasis on combatting heteronormativity within the Catholic moral tradition on sex and gender—and revisionist natural law—with its general interest in promoting a historically-conscious and inductive account of the natural law in ways that, in the US context, have been deeply inflected by the work of feminist natural lawyers—are aligned. There are reasons to expect such a congruency insofar as queer theory and queer theology, on the one hand, have an intellectual provenance within feminism and feminist theology, respectively, on the other. Their common point of contact—which, as we will see, will also be their point of disagreement—has been each school of thought's work in (1) accessing and articulating an understanding of justice and (2) making various proposals about how justice can be realized at a societal, and even at a global, level.

In this final chapter, we investigate what it would mean to come to an understanding of sexuality that descends from a queer natural law account. Its aim will still be to dismantle heteronormativity, but this time, however, our focus will be

on combatting the heteronormativity that arises within contemporary revisionist natural law frameworks. As such, while the principal subject of this chapter is homosexuality, the revisionist account of sexuality in general must be analyzed at the same time in order to make sense. Our argument, in fine, is that revisionist natural law frameworks for understanding sexuality are heterosexist—and therefore unjust—insofar as, good intentions notwithstanding, the ideals governing theologies of sexuality, marriage, and family are heteronormative. The solution, I propose, is to reconfigure an understanding of the *telos* of sexuality. Rather than seeing sexuality as ordered both towards a unitive end—understood below, as we will see, as an end that promotes interpersonal pleasure—and towards procreation, a queer natural law advances an argument that sexuality is ordered to inter/personal pleasure, that is, delight in one’s own embodiment as well as in mutual delight with other bodies. Such a solution will help realize the value of equality, which is indispensable for actualizing a contemporary understanding of the virtue of justice.

## **4.2 CONFRONTING REVISIONIST NATURAL LAW HETEROSEXISM**

### **4.2.1 The State of the Revisionist Question on Marriage and Homosexuality**

As argued in the last chapter, revisionist natural lawyers have made a two-fold challenge to the magisterium’s authoritarian reading of the natural law tradition on marriage. From one angle, revisionist natural lawyers have challenged the

magisterium's reading on historical grounds—noting, among other things, that far from considering the Christian “witness” on marriage to be a virtually unchanging account, revisionist natural lawyers, utilizing the works of historians, sociologists, and bible scholars, have shown that the magisterium's theology of marriage is a decidedly Augustinian one that has both developed throughout the last two millennia and which continues to develop even in the reign of Pope Francis. From another angle, revisionist natural lawyers have applied these various historical, sociological, biblical observations to challenge the gender essentialism and gender complementarity that provides the foundational supports for the magisterium's theology of marriage. One result of such an intervention has been the adoption on the part of revisionist natural lawyers the goals of the marriage equality movement as part of a general account of justice. Put in other words, one result of revisionist natural law work has been to see the extension of the institution of marriage to same-sex couples as a requirement of justice.

The last thirty years of revisionist scholarship on the question of marriage shows this inclusive stance as more or less a consensus position. For example, after their analysis of the Christian tradition on marriage and the arguments for restricting marriage to opposite-sex couples, Patricia Beattie Jung and Ralph F. Smith concluded that “[t]heologically, one can view marriage, whether between male and female or between people of the same sex, as an idea part of the created order.”<sup>1</sup> Indeed, they continue, “Nothing, apart from a narrow and heterosexist reading of the ritual evidence about procreation and complementarity, restricts

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<sup>1</sup> Patricia Beattie Jung and Ralph F. Smith, *Heterosexism: An Ethical Challenge* (New York: State University of New York Press, 1993), 162.

marriage to heterosexual unions.”<sup>2</sup> When this book was published—in 1993—the authors were conscious of the fact that their intervention did not amount to the articulation of a full sexual ethic. Such an ethic would come, however, in the famous 2006 book written by Margaret Farley, who would not only concur with Jung and Smith’s conclusions, but who would also place those conclusions within a sexual framework that would justify the relationships of both same-sex and opposite-sex couples if they met certain criteria for what could be understood as a “just” relationship. For Farley, these criteria were a commitment to nonmaleficence; an honoring of free consent; and the presence of mutuality (a spirit of reciprocity between the partners), equality (balance of power between the partners), commitment, fruitfulness (understood as the requirement to nourish others beyond the relationship between the two spouses—that is, not necessarily as procreative sex), and social justice (the recognition that each relationship should meaningfully contribute to the common good).<sup>3</sup> Such a framework would add the theoretical backbone to support the work that other revisionist theologians had been doing in order to place same-sex relationships onto equal footing with opposite-sex relationships, by arguing, for example, that the heritage of the Old Testament prohibitions on same-sex sexual activity in our current day is to emphasize how all of our relationships should contribute to the common good; by de-emphasizing the value of procreation within a theology of marriage more broadly; by arguing against the view that the homosexual orientation is disordered; or by providing a more

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<sup>2</sup> Jung and Smith, *Heterosexism*, 163.

<sup>3</sup> Margaret A. Farley, *Just Love: A Framework for Christian Sexual Ethics* (New York: Continuum, 2006), 207-232; 271-296. See also her “Same-Sex Marriage and the Catholic Community,” in *Catholic Women Speak*, 106-109.

robust account of pleasure in coming to understand the purpose of sexuality.<sup>4</sup> This view would receive a powerful parallel treatment in Todd Salzman and Michael Lawler's *The Sexual Person*, insofar as they argue that heterosexual acts and homosexual acts are moral under the same exact conditions: that (1) the sex-acts reflect the sexual orientation "natural" to the person; that (2) they are moral, meaning that they occur as the result of an informed judgment by the person in such a way that these acts are conducive to human flourishing; and that (3) that they are 'truly human', which is to say that these sex acts exhibit what Salzman and Lawler name 'holistic complementarity'—a term which includes not only sexual complementarity, but complementarity at the level of personality considered as a physical, emotional, psychological, spiritual, and relational being.<sup>5</sup>

Of the accounts given by revisionists for understanding homosexuality and marriage, however, three—each given by revisionists who work specifically in the natural law—are of particular importance for our analysis: the first is by Stephen Pope; another is by Jean Porter, and the last is by Lisa Sowle Cahill, the theologian to whose account we will give the most attention. These accounts interest us primarily because they represent three different types of engagement with the natural law. Pope's engagement is decidedly revisionist without being explicitly feminist; Porter,

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<sup>4</sup> See, for example, four essays published in the *Sexual Diversity and Catholicism: Towards the Development of Moral Theology*, ed., Patricia Beattie Jung with Joseph Andrew Coray (Collegeville, MN: Liturgical Press, 2001), which represents each of these issues, respectively: Robert A. Di Vito, "Questions about the Construction of (Homo)sexuality: Same-Sex Relations in the Hebrew Bible," 108-132; Sidney Callahan, "Homosexuality, Moral Theology, and Scientific Evidence," 201-215; Isaiah Crawford and Brian D. Zamboni, "Informing the Debate on Homosexuality: The Behavioral Sciences and the Church," 216-251; and Cristina L. H. Traina, "Papal Ideals, Marital Realities: One View from the Ground," 269-288.

<sup>5</sup> Todd A. Salzman and Michael G. Lawler, *The Sexual Person: Toward a Renewed Catholic Anthropology* (Washington DC: Georgetown University Press), 214-235.

for her part, is known as a feminist, but her analysis is based almost exclusively on evaluating an evolution of marriage within the natural law tradition; and Cahill's account is both explicitly feminist while also being one that operates explicitly in the natural law tradition.

Pope engages the ethical question of homosexuality in two articles appearing seven years apart from one another. In the first, he establishes himself as a revisionist with respect to the question of homosexuality, and in the second, he provides a critique of the magisterium's position concerning homosexuality.<sup>6</sup> Both pieces are excellent tributes to his characteristic attention to argumentative detail, which afford him the opportunity to draw several important conclusions. Pope's work in the first article is oriented towards dismissing two sorts of arguments made in the natural law tradition: the first style is based in the conviction that what one finds in nature is therefore 'natural', therefore 'moral', and therefore a part of the natural law; and the second style is what he calls 'revealed natural law,' the type of natural law argument given by the magisterium and which is equivalent to my account of what I've called, in the last chapter, the magisterium's natural law authoritarianism. The problem with the first type, according to Pope, is that such arguments elide the descriptive uncritically into the normative. For to reduce what is 'natural' to what occurs in nature is to fail to make a moral assessment of what one finds in nature. But, obviously, there may be many sorts of behaviors that we find in nature that we might want to critique as morally problematic (e.g., greed).

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<sup>6</sup> See his, "Scientific and Natural Law Analyses of Homosexuality: A Methodological Study," *Journal of Religious Ethics* 25.1 (Spring 1997): 89-126, and "The Magisterium's Arguments Against 'Same-Sex Marriage': An Ethical Analysis and Critique," *Theological Studies* 65 (2004): 530-565.

And, moreover—in a theological key—such an elision fails to take notice of the fact that, in this life, we negotiate what is good for us specifically as fallen creatures affected by sin. As Pope notes with respect to our status as postlapsarian creatures, “Human experience testifies not to ‘perfect’ or ‘integral’ human nature, but rather to ‘corrupted’ human nature, which is incapable of fulfilling even the dictates of the natural law without healing grace (I-II 109.2).”<sup>7</sup>

Pope critiques the magisterium’s revealed natural law on two grounds. First—and as we’ve seen especially in John Paul II’s *Theology of the Body*—the magisterium tends to present certain interpretations of scripture unproblematically as moral law. But as we’ve seen with the natural law tradition, especially as engaged by medieval natural lawyers, scripture always complemented reason in the natural law. This leads to Pope’s second critique that revealed natural law tends to “isolate its *theological* interpretation of the descriptively human from *empirical* interpretations of the descriptively human.” Indeed, he continues, “It seems difficult, if not impossible, to maintain this separation in practice, primarily because theological interpretations of the descriptively human refer to features of human behavior that are, as a matter of fact, subject to empirical examination.”<sup>8</sup> These two sorts of natural law approaches fail as natural law arguments, then, but in exactly opposite ways: whereas in one case contemporary scientific findings are held up uncritically as revealing the content of the natural law, in the other, contemporary scientific findings are uncritically eliminated as revealing the content of the natural

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<sup>7</sup> Pope, “Scientific and Natural Law Analyses of Homosexuality,” 101-102, at 102.

<sup>8</sup> Pope, “Scientific and Natural Law Analyses of Homosexuality,” 107-110, quotes at 109, emphasis in original.

law. Instead what Pope upholds is the revisionist approach to the natural law, an approach that is distinguished neither by an uncritical appropriation nor by a rejection of scientific finding, but rather it is distinguished by its openness to contemporary science—together with scripture and tradition—to help fill out a picture of human flourishing.<sup>9</sup>

Pope investigates the contours of the magisterium's revealed natural law approach in 2004. Unlike in the previous article, Pope aspires in this piece not to take a constructive stance on the question of marriage, but instead he seeks to analyze the arguments of the magisterium on its own terms. After examining four arguments given by the magisterium against same-sex marriage—the argument from the alleged immorality of homosexual acts; its argument for a distinction between homosexual acts and a homosexual orientation; its argument that society can justly discriminate against homosexuals because homosexuals have no right to marry; and the argument against changing the definition of marriage insofar as marriage is a social institution will be weakened through the introduction of same-sex marriage—Pope concludes that the only plausible argument that the magisterium could advance is the last one. In fact, he gives it for them. The argument would maintain, offers Pope,

that the legal acceptance of same-sex marriage would involve a radical change in the definition of marriage, and in particular that it would detach marriage from procreation and its attending responsibilities. The Church's message is that marriage establishes stable bonds between men and women

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<sup>9</sup> Pope, "Scientific and Natural Law Analyses of Homosexuality," 110-115.



so that children will have mothers and fathers; if marriage is significantly diminished, so will the well-being of children.<sup>10</sup>

The chief problem that Pope notes, however, is that the magisterium has presented its arguments in ways that demonize and alienate gay and lesbian persons—in a phrase, the problem is that magisterial teaching is transmitted in a homophobic rhetoric. “[The magisterium] has no justification,” Pope writes, “for continuing to issue documents that perpetuate stereotypes against gay people, stigmatize them, tacitly approve of unjust discrimination against them, discount their generosity, refuse to acknowledge their contribution to the common good, or suggest that they are in any way inferior human beings or less trustworthy members of the Body of Christ.”<sup>11</sup> In other words, the Church has a massive public relations nightmare in which it undermines the integrity of its own arguments by losing the goodwill of persons who should give them a hearing.

Importantly, this alarm has not only be signaled by Pope. Earlier, Lisa Cahill pointed out a similar deficiency in the magisterium’s approach to issues like these—not once, but twice. In one place, she critiques the magisterium’s rhetoric in talking about its vision of heterosexual sex in marriage vis-à-vis contraception. “If the ‘prophetic’ message of today’s church is to be that sexual expression should arise from personal commitment which—barring exceptional circumstances—is open to and responsible for children,” she writes, “it will have to find a language to ground the meanings of sex and parenthood convincingly in the personal relation of

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<sup>10</sup> Pope, “The Magisterium and ‘Same-Sex Marriage,’” 557.

<sup>11</sup> Pope, “The Magisterium and ‘Same-Sex Marriage,’” 564.

partners.”<sup>12</sup> That is, the personalist theology of John Paul II—which as we’ve seen in the previous chapter has been critiqued precisely as changing the act-centered tone of *Humanae Vitae* without changing any of its substance—has not been a sufficient enough change to shift the opinion of many readers. In the second place, she offers the same critique of the magisterium’s approach to women. On the one hand she praises the Vatican for positioning the Church as an organization with “‘special attention to the woman and children, especially the poor,’” but, on the other, she writes, “undisguised hostility towards ‘feminists,’ and greater apparent expenditures of energy and activism on abortion than on maximizing opportunities for women, undercut the Catholic Church’s social commitment.”<sup>13</sup>

Rhetoric aside, Pope did advance one argument—which, at the time of publication, he did not advance in any sort of conclusive way—for the acceptance of the morality of homosexuality: the Thomistic argument from connaturality.<sup>14</sup> Its presupposition is the thesis—common in virtue ethics—known as the ‘unity of the virtues’. It maintains that, formally speaking, it is impossible for a virtuous person truly to have any single virtue without also possessing all of the others.<sup>15</sup> But, for

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<sup>12</sup> Lisa Sowle Cahill, *Sex, Gender, and Christian Ethics* (New York: Cambridge University Press, 1996), 233.

<sup>13</sup> Cahill, *Sex, Gender, and Christian Ethics*, 213.

<sup>14</sup> Pope, “Scientific and Natural Law Analyses of Homosexuality,” 112-113. Importantly—though Pope does not mention it in his article—a version of the connaturality argument was given twenty-one years earlier in 1976 by John J. McNeil in his *The Church and the Homosexual*, 4<sup>th</sup> ed. (Boston, MA: Beacon Press, 1993), 97-98.

<sup>15</sup> Aquinas, *ST I-II* 65.1. The idea here is *not* that an act cannot be understood as corresponding to a particular virtue (e.g., that appropriate consumption of alcohol can be understood as corresponding to the virtue of temperance). Rather, the idea is that in order for any act to be executed well, it must be the result of a felicitous coordination among all the virtues. So—to continue this example—in addition to having temperance, to consume alcohol responsibly requires determination in every case where one needs to overcome obstacles against moderation in drinking (fortitude); it requires recognizing that drinking in moderation allows one to meet one’s obligations to others (justice); and it requires that one be able recognize that drinking in moderation is required right now (prudence).

someone to have all of the virtues means that one is living the best possible life; which is to say, furthermore, that one is as happy as possible in this life.<sup>16</sup> Using language familiar to Thomas, then, one can say that the virtuous person possesses a ‘connaturality’ with the concrete good, meaning that the virtuous person knows how to realize one’s acts well—it is, in a certain sense, ‘natural’ to them to act well. In a revisionist key, such connaturality is seen in one whose life exhibits human flourishing. So, when revisionists witness persons who seem to be flourishing this provides a hermeneutical key, as it were, that such a person is living a virtuous life. If homosexual persons, then, can be shown to be flourishing—not only in their relationships but outside of them in other areas of their life—and, furthermore, if one can show that homosexual persons deprived of relationships with persons to whom they are attracted cause them not to flourish, then same-sex attraction can be seen as a part of the good life for that particular individual. What makes this argument significant is that it uses Thomas’s concepts in a way that goes beyond Thomas’s own conclusions regarding homosexuality—for as many persons know, Thomas’s position on same-sex sex acts was that they were against nature in such a way that they cannot be ordered towards proper human flourishing. They were, in other words, contrary to the natural law.<sup>17</sup>

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The ‘unity of the virtues’ thesis also prevents virtue ethicists from needing to defend absurdities, as perhaps could be imagined in saying that Hitler lacked justice but possessed fortitude (i.e., it allows virtue ethicists to maintain the contrapositive: that if one doesn’t have all the virtues, then one doesn’t have any of them).

<sup>16</sup> Aquinas, *ST* I-II 3.5. Thomas, of course, will draw a distinction between perfect happiness (which can be had only in the vision of God) and imperfect happiness (which can be had in this life). See also Micah Lott’s article where he argues (in my opinion, successfully) for understanding the virtuous person as one who possesses knowledge of the human form. See his “Moral Virtue as Knowledge of the Human Form,” *Social Theory and Practice* 38.3 (July 2012): 407-431.

<sup>17</sup> Aquinas, *ST* II-II 154.11.

One might be tempted to say that this revisionist reading of Thomas commits revisionists to recognizing homosexuality as a *good* thing, but this would be false. As we see in Pope's case, for example, he draws on Aquinas's comments on connaturality not necessarily in order to draw the normative conclusion that homosexuality is a good thing, but rather in order to explain *how* it is that the "corruption" of human nature, evidenced by same-sex sex acts, can be seen as 'natural' to a given person. "Consequently," Thomas writes, "it happens that something which is not natural to man either in regard to reason, or in regard to the preservation of the body, becomes connatural to this individual man, on account of their being some corruption in him...thus some take pleasure in cannibalism or in the unnatural intercourse of man and beast."<sup>18</sup> Pope's argument, then, is that *despite* homosexuality being clearly outside of the natural law, the evidence of homosexual persons flourishing in relationships indicates that they are living the best life that is possible *for them*, and so their lifestyle should be encouraged if the relationships otherwise display all the virtues that should be manifested in romantic relationships. Here are Pope's words:

In response to Thomas's understanding of homosexual connaturality as a corruption of nature, the revisionist can maintain that these objects may in fact be suitable for people who are constitutionally homosexual and that their connaturality ought to be granted the status of normatively human, at least under the other standard moral conditions. They are able to argue, in other words, that the connaturality of homosexuals is natural in its

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<sup>18</sup> Aquinas, *ST I-II* 31.7.

normative as well as descriptive senses, in spite of the fact that it is capable of fulfilling the unitive but not the procreative natural end of sex.<sup>19</sup>

This position is clearly not exactly a ringing endorsement of homosexuality, and it quite easy to read it as patently patronizing from our vantage point in the 21<sup>st</sup> century. But this was clearly the standard compassionate (even if, a bit more than pitying) position taken by revisionist theologians, and not just by revisionist natural lawyers. It was the position also taken, for example, by the famous revisionist Richard McCormick, who in language clearly attempting to be deeply compassionate, maintains a position equivalent to Pope's. He writes, "It has been and remains the Church's conviction (based on biblical, anthropological, philosophical evidence, her own experience and reflection) that the sexual expression of interpersonal love offers us the best chance for our growth and humanization...if it is structured within the an-woman covenanted (permanent and exclusive) friendship. Hence she invites all men and women to reach for this ideal in the interests of their own well-being." But, nevertheless,

If, however, an individual is incapable of structuring his sexual intimacy within such a relationship (is irreversibly homosexual) and is not called to celibacy for the Kingdom, the liberating presence and concern of the community will take a different form. In this instance, both the Church and her ministers will be a liberating presence to the homosexual: (a) by inviting him to approximate the qualities of the covenanted man-woman relationship through fidelity and exclusiveness; (b) by aiding the individual to develop

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<sup>19</sup> Pope, "Scientific and Natural Law Analyses of Homosexuality," 112-113.

those healthy, outgoing attributes and emotional responses that make this possible; (c) by extending the full sacramental and social supports of the Church to his striving; (d) by condemning and combatting all social, legal, and ecclesial discrimination against and oppression of the homosexual.<sup>20</sup>

The chief import of this revisionist position on homosexuality, then, is that it can be seen as a compromise position with the magisterium. With the magisterium, it maintains homosexuality as morally problematic (even as it questions the magisterium's justifications for *why* it is problematic)<sup>21</sup>, but unlike the magisterium, this revisionist position does not demand mandatory celibacy on the part of homosexual persons. In other words, if homosexual persons are capable of relationships that otherwise resemble those had by heterosexuals, they can be seen as morally permissible, even if not ideal.

It is Jean Porter who takes this revisionist logic outside of questions of homosexual orientation and same-sex acts and imports it into an analysis of marriage in natural law terms. Recall that, for Pope, one of the distinctive convictions of the revisionist perspective is its openness to scientific analysis as a meaningful component in discerning the requirements of the natural law. (To use his, in my opinion, well-chosen phrasing, the revisionists follow Thomas with

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<sup>20</sup> Both quotes are from Richard A. McCormick, S.J., "Homosexuality as a Moral and Pastoral Problem," in *The Critical Calling: Reflections on Moral Dilemmas Since Vatican II* (Washington DC: Georgetown University Press, 2006), 289-314, at 308.

<sup>21</sup> For example, both Pope and McCormick see the distinction between homosexual acts and a homosexual orientation as problematic. See Pope, "The Magisterium and 'Same-Sex Marriage,'" 549-550, and McCormick, "Homosexuality as a Moral and Pastoral Problem," 300. McCormick's words further in the essay are both challenging and insightful: "One can say that homogenital acts always depart from the ideal or the normative. I would have little, indeed no, problem with that. But why not leave it at that? To work back from that tenet to the assertion that the orientation is disordered is neither necessary (to support of that tenet) nor pastorally helpful" (312).

respect to the notion that “some moral truths are best grasped ‘by way of experience’ [ST II-II 47.15]”).<sup>22</sup> Porter believes that our experience with homosexual persons allows for us to see that their relationships are clearly candidates for marriage in view of the observation that their relationships resemble those had by heterosexuals. “In this case,” Porter writes,

I want to suggest that the obvious, popular answer to this question is right—that is to say, such acts can serve as an expression of deep interpersonal love and deserve respect to the extent that they do. I think there can be no real doubt that same-sex couples can and do experience deep interpersonal love, which they are moved to express sexually. The real question that arises at this point is whether we have good grounds, in natural law terms and theologically considered, for affirming and seeking to protect this love. I argue that we do.<sup>23</sup>

What is that argument? As we will see, it maintains striking similarities to the connaturality argument that we just examined. Porter’s most important argumentative is to show that a good (in this case, marriage) can be legitimately realized even if the realization of that good is not its *ideal* realization. It is once again a transposition of an argument that essentially compromises with the magisterium—but this time in a different key. In this case, like Pope, Porter accepts the magisterium’s position that sex has both a unitive and procreative end, but rather than conclude that same-sex sex acts are immoral because they cannot meet

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<sup>22</sup> Pope, “Scientific and Natural Law Analyses of Homosexuality,” 111.

<sup>23</sup> Jean Porter, “The Natural Law and Innovative Forms of Marriage: A Reconsideration,” in *Sex and Gender: Christian Ethical Reflections*, ed., Mary Jo Iozzio and Patricia Beattie Jung (Washington DC: Georgetown University Press, 2017), 19-44, at 39.

both ends, she concludes that they can be moral because they do meet one of the two ends—a position which she thinks becomes all the more reasonable to the extent that one recognizes that even opposite-sex couples can fail to have procreative sex for reasons that go beyond their own volition. And clearly, since opposite sex couples whose sex fails to be procreative are still allowed to be married, one can also legitimately extend marriage to same-sex couples whose sex will presumably always be non-procreative.<sup>24</sup>

Finally, marriage serves what many today would regard as a centrally important function of providing a framework for the public expression and support of interpersonal love. These purposes are secondary, seen from the vantage point of a natural law analysis that takes its starting point from the paradigmatic notion of marriage as an institution directed towards sustaining the physical and social life of humankind. But that need not imply that they are secondary in the sense of being lesser in value or somehow less admirable or worthy—indeed, for some couples and in some contexts, these secondary purposes may well be more centrally important, desirable, and admirable than the primary purpose of procreation.<sup>25</sup>

Crucially, Porter's argument doesn't end there. Indeed, what makes the piece significant is that Porter identifies this sort of evaluation as operative among the medieval natural lawyers, who, for their part, were able both to recognize polygamy as nonnormative *and* were able to see that polygamy fulfilled the primary purpose

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<sup>24</sup> Porter, "The Natural Law and Innovative Forms of Marriage," 39.

<sup>25</sup> Porter, "The Natural Law and Innovative Forms of Marriage," 35.



of marriage, understood at the time to be procreation of children.<sup>26</sup> Porter's argument, in other words, is just as for the medieval natural lawyers, polygamy was less than ideal but could be a permissible realization of the natural law, so, in our day, can one see homosexuality as less than ideal but nevertheless a permissible realization of the natural law. The difference between their time and ours: experience with people in same-sex relationships.

This was not always Porter's position. Indeed, her essay has the subtitle "A Reconsideration" for very good reason. In contrast to the position she takes in "The Natural Law and Innovative Forms of Marriage" where Porter focuses on same-sex relationships, in her initial consideration of homosexuality she analyzes its morality not on the basis of persons living in committed relationships, but instead she bases her analysis on what she regards as "contemporary gay culture" and "how homosexuality is institutionalized in the wider society."<sup>27</sup> Breathtakingly, without any citation or argumentative support—perhaps suggesting that this is simply 'common knowledge'—she writes of contemporary gay culture that "it seems fair to say that these lifestyles are typically characterized by a celebration of the erotic, as expressed through a cult of personal beauty and the practice of widespread sexual activity."<sup>28</sup> And even though she recognizes that "worship of youth and beauty are not unknown among heterosexuals either," she is able to conclude that, "The privileging of the erotic and the affirmation of sexual freedom do reflect natural

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<sup>26</sup> Porter, "The Natural Law and Innovative Forms of Marriage," 26.

<sup>27</sup> Jean Porter, *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics* (Grand Rapids, MI: Eerdmans, 1999), 231. And she does this despite the testimony of Andrew Sullivan, whose comment she regards as suggesting "a way in which the Christian community could incorporate the goodness of procreation and marriage" (231).

<sup>28</sup> Porter, *Natural and Divine Law*, 231.

human tendencies and genuine goods. But such a construal of human sexuality, with its privileging of the value of the erotic and its concomitant de-emphasis of the value of procreation, stands in tension, at least, with a Christian sexual ethic.”<sup>29</sup>

This passage is remarkable for its confusing logic. Read straightforwardly, Porter seems to locate the problem with “contemporary gay culture” *not* with the privileging of the erotic and affirmation of sexual freedom, per se—since presumably, this is something that heterosexuals do as well—but the problem is with *such a construal* of human sexuality. The suggested inference, then, is that the way “contemporary gay lifestyle” construes sexuality is problematically different from the way that heterosexual culture(?) does it. But in what does such a construal consist? The answer is hard to find. A few lines below we read that “the difficulty with some forms of contemporary gay culture...is not that they represent an evil or unnatural way of life. Rather they are problematic because they represent *an alternative construal of human nature* that has its own value and integrity but that is nonetheless in tension with fundamental Christian commitments.”<sup>30</sup> We learn two new things in this passage, but nothing in answer to our question: the first thing we learn is that apparently she is able to make a diagnosis upon all of “contemporary gay culture” only on the basis of “some forms” of contemporary gay culture; and the second thing we learn is that, whatever sort of form this takes, it clearly stands outside what Christians can defend, even as she admits it is true that heterosexuals apparently have a similar privileging of the erotic.

A few lines down, Porter gives us one more clue. She writes,

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<sup>29</sup> Both quotes from Porter, *Natural and Divine Law*, 232.

<sup>30</sup> Porter, *Natural and Divine Law*, 232.

The tension does not stem from the fact that homosexual activity is non-procreative. Rather it reflects a more basic tension between the values of erotic experience and procreation, when these are considered as potentially key values for a socially embodied sexual ethic. The bearing and raising of children is not particularly sexy, and more important, it requires a degree of stability in interpersonal relationships that is not readily compatible with a primary commitment to the pursuit of the erotic. I am not saying that the two values cannot be brought together, but it is difficult to see how individuals, or much less communities, could give equal weight to both. One or the other must be given priority, and it is here, in the choice of priorities, that a Christian sexual ethic will be in tension with some aspects of gay culture.<sup>31</sup>

What the problem *may* be—but which she doesn't name for certain—is that the unacceptable construal of human nature exemplified in “contemporary gay culture” is that a primary feature of such “contemporary gay culture” is its promiscuity, unstable families, and lack of interpersonal commitment. But what of same-sex relationships that are not marked by these three qualities? To them, Porter provides no comment, which leads the reader to believe that either such relationships are ultimately cannibalized by the culture with which she is apparently intuitively familiar, or they stand outside of that culture altogether.

At this point in our argument Porter's reconsideration is significant for two reasons. First, we can note that her conclusion shifts when she evaluates homosexuality from its place in “contemporary gay culture” to when she evaluates it

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<sup>31</sup> Porter, *Natural and Divine Law*, 232.

from the perspective of the lives actually lived by persons living in same-sex relationships, which shows her actualizing, in the context of her own work, the impulse of revisionists to turn to human experience in order to understand the natural law. And second, we can note that, once this difference in focus is maintained, the natural law argument remains essentially unchanged despite the different conclusions. If one assumes that by “Christian culture” she means a culture that exemplifies, in its ideals, realizing the natural law as graced reality—which, depending on how isolationist her notion of ‘Christian culture’ is, may be too generous to grant— then one can see both of Porter’s assessment as asking one question: does one see a realization of certain goods across communities that allow the practices of both communities to be seen as multiple, legitimate realizations of the natural law? When she is guided by the concrete lives led by human beings, she is able to do so; when she is guided by uncited stereotypes about those same human beings, she cannot. There is more than a cautionary tale for how to do ethics here.

Porter’s views are not the only ones that have evolved on the subject of homosexuality. Such is the case, also, with the final revisionist whose views on homosexuality we will consider here: Lisa Cahill. Like Pope’s and McCormick’s, Cahill’s views on homosexuality can be seen as partaking in the standard revisionist connaturality argument, though one can notice an evolution in the language with which she evaluates homosexuality. In 1980, for example, she writes, as we would come to expect from this view, that the “broken” and “less-than-ideal” situation—that is homosexuality—“can and must be ‘redeemed’ through fidelity to the higher religious and moral values, even if unavoidably embodied in less-than-ideal material

decisions and acts. In the concrete situation, this is the best alternative and therefore a positive and morally commendable one, which should be appreciated in light of the Christian values, qualities, and ideals which it positively achieves.” This thus brings her to the conclusion that “it is possible to judge sexual acts in other contexts as non-normative but objectively justifiable in the exceptional situation, including that of the confirmed homosexual.”<sup>32</sup> Less attractively, but nonetheless equivalently, she will state that “[a]nother way to state my conclusion would be to say that genital homosexual acts are “evil” in the sense that they are to be avoided generally. However...the total act is not sinful if there is sufficient reason in *this* case for causing ‘pre-moral’ or ‘ontic’ evil.”<sup>33</sup>

When Cahill writes her own framework for sexual ethics five years later, her focus will begin to change. On the one hand, she will retain the connaturalist center of her argument when talking about sexual relationships—“Departures even from the essential meaning of the norm, while they should be rare, are not intolerable if they represent the most morally commendable courses of action concretely available to individuals caught in those tragic or ambiguous situations that agonize the decision-maker and vex the analyst”<sup>34</sup>—but she will begin to formulate a positive account of Christian sexual relationships articulated as two norms: (1) “an intentionally permanent commitment of partnership and love”, and (2) “the willingness of the couple to welcome and nurture children that result from their

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<sup>32</sup> Lisa Sowle Cahill, “Moral Methodology: A Case Study,” *Chicago Studies* 19.2 (1980): 171-187, at 186.

<sup>33</sup> Cahill, “Moral Methodology,” 186.

<sup>34</sup> Lisa Sowle Cahill, *Between the Sexes: Foundations for a Christian Ethics of Sexuality* (Philadelphia, PA: Fortress Press, 1985), 148.

union.”<sup>35</sup> Remarkably, Cahill believes that persons who remarry after divorce; persons who have premarital sex in the context of a committed relationship; couples who use contraception; and persons in a homosexual relationship all can be understood as reasonable exceptions.<sup>36</sup> On the other hand, Cahill will advert to a distinctively Christian account of sexuality that attempts to steer midway between an individualist ethics of sexuality in which sex’s meaning is determined by one’s own values (“liberal individualism and relativism”) and a physicalist ethics in which sex’s meaning is solely determined by procreation. Instead, she has in mind a Christian community-centered ethical framework in which the concrete goods of the sexual lives of individuals are included, but never submerged, within a wider concern about the common good—which, in the case of sexuality, includes the connection between procreation, the family, and the perpetuation of society.<sup>37</sup>

A full articulation of this point of view with respect, specifically, to same-sex marriage will come more recently in her 2012 essay “Same-Sex Marriage and Catholicism: Dialogue, Learning, and Change.” There she draws attention to two ‘models’ of marriage: one that is focused on “procreation and the organization of intergenerational kinship networks,” and another that celebrates “a union of two deeply committed individuals tied by their love and the public recognition of that love.”<sup>38</sup> Ideally—she will maintain—any candidate for marriage will be responsive to the chief concerns of both models. Indeed, she sees this configuration as built into

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<sup>35</sup> Cahill, *Between the Sexes*, 148.

<sup>36</sup> Cahill, *Between the Sexes*, 149.

<sup>37</sup> Cahill, *Between the Sexes*, 139-143.

<sup>38</sup> Lisa Sowle Cahill, “Same-Sex Marriage and Catholicism: Dialogue, Learning, and Change,” in *More than a Monologue: Sexual Diversity and the Catholic Church*, ed., J. Patrick Hornbeck II and Michael A. Norko (New York: Fordham University press, 2014), 141-155, at 153.

sex itself: “In general (as a species phenomenon),” she observes, “sex is ‘about’ *both* procreation and intergenerational family building *and* the lasting devotion of two partners.”<sup>39</sup> To the extent that candidates for same-sex marriage are willing not only to enjoy the interpersonal aspect of marriage but also to respect the family-building aspect as well—which, for same-sex couples is a respect for an “ethos of responsibility for spouse, children if any, larger family, and community”<sup>40</sup>—then it is to that extent that same-sex marriages are valid. They are acceptable, in other words, because in their own way, they fulfill the two identical ends, not only of sex, but also of marriage.

#### **4.2.2 Analyzing Revisionist Natural Law Heterosexism**

##### **4.2.2.1 The Heterosexism of the Connaturality Argument with Respect to Marriage**

All three of these revisionist natural law approaches to homosexuality and marriage are heterosexist insofar as all of them are structurally heteronormative.<sup>41</sup> As I will show, this structural heteronormativity manifests chiefly in the maintenance of heterosexually reproductive monogamy as the ideal from which norms concerning sex and marriage descend. Consequently, these revisionist natural law perspectives are inadequate from a queer natural law perspective. To see why, let’s take stock of where we are. The first thing to note is that all three of these natural lawyers

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<sup>39</sup> Cahill, “Same-Sex Marriage and Catholicism,” 154.

<sup>40</sup> Cahill, “Same-Sex Marriage and Catholicism,” 154-155.

<sup>41</sup> Recall, once again, that structural heteronormativity is the second of three types of heteronormativity. Its presence is marked by conceiving of heterosexuality as a ‘default’ or ‘naturalized’ aspect of our existence so much so that it is both embedded and privileged in a given society’s economic, political, and cultural institutions.

employ versions of the connaturality argument, but—upon assessment—the connaturality argument is itself structurally heteronormative. This can be seen most plainly in Pope’s, Porter’s, and Cahill’s early writings on homosexuality. The connaturality argument at its base is a comparative argument that functions first by establishing a baseline and then by measuring deviations from that baseline. At some point, deviations from that baseline become morally unacceptable. The difference between Thomas’s treatment of homosexuality<sup>42</sup> and the treatment of homosexuality given by the revisionist natural lawyers lies *not*, then, at whether homosexuality should be seen as a deviant sexual behavior—that, instead, is patently assumed—but, rather, it lies at whether this deviance is immoral in view of other things that we know about homosexuality theologically considered. At this point, the revisionist natural lawyers simply highlight different aspects of homosexuality that should be taken into consideration in order to render the judgment that it is acceptably deviant. Whereas Thomas could not see homosexuality as acceptably deviant from the heterosexual norm in any case, Pope and McCormick are able to see otherwise in view of the observation that the lives led by homosexuals exhibit a certain virtuous form when they are permitted to engage in relationships with persons of the same-sex. In this sense, homosexuality is acceptable because homosexual persons seem to be flourishing *despite* their deviation, and because the presence of flourishing is a sign of a life well-lived—even

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<sup>42</sup> While I am aware that homosexuality meant different things in Thomas’s day and in our own day, I am using the term as a common object between the two eras. It risks asserting an anachronism, but I do not believe that much more argumentative clarity comes from distinguishing, in this instance, same-sex sex acts (the object of Thomas’s interventions) from homosexuality (understood as a sexual orientation which includes the desire to engage in same-sex sex acts).



if disadvantaged—this forces a re-evaluation of the moral status of homosexual acts from impermissible to permissible.

Porter performs a similar trick with the connaturality argument, but she does it with respect to marriage. It is essentially an argument from analogy. In the first part of the analogy, she finds a place in medieval natural law in which the natural lawyers (in this case, Thomas) argued that a given practice—polygyny—was nonnormative yet acceptable in view of the fact that a given practice need not fulfill all the ends of marriage for it to be seen as a valid institutional manifestation of the natural law. She then, in the second part of the analogy, proposes same-sex marriages as legitimate candidates for marriage on the same grounds. Once again, homosexual persons are allowed to marry despite the idea that their unions are deviations from the norm. The heterosexual norm, however, is not argued for; it is simply presumed.

The same operation appears in Cahill's theology concerning homosexuality. Clearly, Cahill's earlier arguments concerning homosexuality are practically indistinguishable from Pope's and McCormick's. Homosexuality is clearly a deviation, in this instance, but it is a morally acceptable one in view of the fact that, for some homosexual persons, the "condition" is irreversible, and because there is evidence of flourishing for persons who engage in same-sex relationships. But can the same be said with respect to Cahill's 2012 essay? There is good reason to think that she is no longer advancing the connaturality argument, especially since the thrust of her argument is that same-sex relationships are acceptable not despite the fact that they are not heterosexual relationships, but rather they are acceptable

because, like heterosexual relationships, both heterosexual and homosexual relationships pursue the two ends associated with marriage in the own proper ways. Both types of relationships clearly celebrate the interpersonal dimension of love between spouses, and both types of relationship support the institution of the family, though they do this differently. What she is unintentionally doing, however, is advancing the connaturality argument in its most potent form, by showing that the normative marital relationship is an ideal that is not adequately lived out by a number of homosexual *and* heterosexual couples. But, in addition to recreating a new version of the connaturality argument, these revisionists are also installing a heterosexist framework for understanding human sexuality.

We begin, then, with the connaturality argument. As I've pointed out above, the last half-century of revisionist teaching on homosexuality and marriage can be understood as potential compromise positions with magisterial teaching, but one could also apply this lens to revisionist teaching with respect to heterosexuality and marriage. That teaching—we can recall—is that sex has two ends: a unitive end, and a procreative end. Moreover, under the interpretative regime of Paul VI and especially of John Paul II, the procreative end has been construed as meaning that *each and every sexual act* must be open to the possibility of procreation, thus ruling out the use of artificial contraceptives. Since the 1960's revisionist theologians have been working assiduously to change this understanding of the procreative end of sex. (Though, importantly, theologians were not the first ones to push for change in this area. Immediately after *Humanae Vitae* was issued, the episcopal conferences in France, Germany, Canada, Scandanavia and in the Netherlands all instructed the

laity to follow their consciences as they received the encyclical.<sup>43</sup>) As Cahill herself notes in her 2012 essay,

Procreative sexual responsibility does not apply to all marriages or apply in the same way...The Magisterium has played into a truncated marriage model by promoting an image of marital love as total self-gift without showing realistically and persuasively what procreation and children actually have to do with it. Tying these important dimensions of sexual meaning to the supposedly universal and normative “complementary” structure of the male-female sex acts does not connect to the sexual and parental experiences of most people and is not credible.<sup>44</sup>

Indeed, the reason why the teaching is not credible is because—like John Paul II’s theology of the body which sought to place this teaching in a more personalist mode—this teaching does not reflect the sexual lives led by faithful couples. It is clearly not possible for same-sex couples, since their sex acts are never sexually reproductive, and it is clearly not even true for opposite-sex couples. For if the procreative and unitive dimensions of sex had to be expressed in *every* sexual act for sex to be valid, then the sexual acts of (knowingly) sterile couples would be invalid as well as the sexual acts of couples once the relationship grows beyond childbearing age. Cahill herself draws attention this point with respect to nonprocreative heterosexual sexual acts,<sup>45</sup> but it is Porter who makes the argument

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<sup>43</sup> James F. Keenan, S.J., “Vatican II and Theological Ethics,” in *Theological Studies* 74 (2013): 162-190, at 176.

<sup>44</sup> Cahill, “Same-Sex Marriage and Catholicism,” 154.

<sup>45</sup> Cahill, “Same-Sex Marriage and Catholicism,” 154

as well—both in reference to marriage between heterosexual couples unable to procreate and homosexual couples:

These extensions [for nonprocreative heterosexual marital relationships] are justified, it will be said, because for us marriage represents more than just a framework for sustaining reproduction and kinship bonds; it also provides a framework for expressing and supporting the mutual love of two people, and it would be cruel and perhaps even unjust to deny that support to those who are incapable of reproduction. For the same reason, refusing to extend this framework to same-sex couples appears to be arbitrary and therefore unjust, given the purposes of marriage as we understand and practice it today.<sup>46</sup>

From here, there are two interpretative options left open to revisionists. One would be to drop the procreative requirement altogether, or the other would be to reinterpret the procreative requirement. As we've seen, revisionists have taken the second option, rethinking procreativity creatively in order to be inclusive of both same-sex and opposite-sex couples. The ostensible accomplishment is that such an argument leaves the comparative structure of the connaturality argument behind, on the grounds that there is now a parity between opposite-sex and same-sex couples, but what is *actually* occurring is that *now*, the sexual lives led by opposite-sex and by same-sex couples are *both* deviations from another idealized version of sexuality. And what is that ideal? That in order for the sexual lives both of heterosexual and homosexual couples to be legitimate, they must be willing not only to maintain monogamous, committed relationships but that their relationships

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<sup>46</sup> Porter, "The Natural Law and Innovative Forms of Marriage," 37.

maintain also an allegiance to supporting the fundamental connection between sexual reproduction, marriage, and the family as the foundational institution in society in whatever way that is appropriate to that couple. This is one way to translate the conjunctions of Farley's "social justice" and "fruitfulness" requirements in her *Just Love* framework, but it is also a way of bringing to the fore Cahill's desire to embed individual sexuality and sexual relationships within a societal frame of reference.

The clearest place in which Cahill makes this connection is in what is perhaps her most important work in sexual ethics: *Sex, Gender, and Christian Ethics*. There she advances an account of embodiment that makes good on her promise to have an ethics of sex and gender oriented around an account of the common good that never leaves behind, but rather meaningfully incorporates, the concrete goods of individuals. The account begins with recognizing that each person's embodiment is irreducibly individual and social. "Fundamental to our embodiment is the fact that each person in his or her individuality is both body and the 'more' which selfhood entails (intellect, will, emotions, 'spirit', and relationality, especially to other embodied individuals)."<sup>47</sup> It then continues with the recognition that we, within communities of relevant scale, establish institutions in order for us to gain access to the basic goods which all of us need in life in order to thrive.<sup>48</sup> Turning to human sexuality, she analyzes the phenomenon both at an individual level and at a social level, uncovering three bodily meanings—"meanings which are realized and elaborated in personal relationships over time and in social institutions." They are

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<sup>47</sup> Cahill, *Sex, Gender, and Christian Ethics*, 76.

<sup>48</sup> Cahill, *Sex, Gender, and Christian Ethics*, 76-77.

(1) the individual good of reproduction understood as the physiological process of conception, pregnancy, and birth which is subsequently socially realized in the family and then supported as a social institution through intergenerational relationships of kinship—that is, the family as recognized by the state; (2) the individual good of sexual pleasure which is subsequently realized through “socially reliable or predictable forms of sexual relationship,” one of which is the institution that socializes reproduction, otherwise known as marriage; and (3) the individual good of intimacy, which is expressed in “socially recognized partnerships of sexual couples, like marriage or homosexual covenants.” This leads her to the conclusion that “[h]uman sexual experience is complex and complete when all three bodily dimensions of sex are developed...and integrated in relationships over time.”<sup>49</sup>

If this account is taken as an elaboration of what it means to maintain a fundamental connection between sexual reproduction, marriage, and the family, it can be critiqued as an ideal that, while not as demanding as the magisterium’s ideal, nevertheless trades an overly demanding one for one that seems both simultaneously amorphous and, like the magisterium’s account, seem distanced from the actual experience of sexuality beyond those already led by married persons with families. On the one hand, it certainly seems accurate to maintain that reproduction, sexual pleasure, and intimacy are foundational to human embodiment, but it seems strange to think that that their only teleological tendencies on an individual and a social level are towards marriage (or

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<sup>49</sup> Cahill, *Sex, Gender, and Christian Ethics*, 111-113.

relationships featuring long-term commitment) and the family.<sup>50</sup> This seems to be a judgment based on a truncated account of how sexuality is experienced for most people. For example, in many people's sexual experience, one pleasure that endures throughout their entire lives—masturbation—does not seem to fit immediately into this framework. After all, masturbation can only with some conceptual heavy lifting be understood as oriented towards an institution like marriage and the family, and—in fact—because it does not seem so oriented, masturbation, like same-sex sex acts, are understood to be intrinsically evil acts and violations of the sixth commandment in the *Catechism of the Catholic Church*. “For [in masturbation],” the *Catechism* states, “pleasure is sought outside of “the sexual relationship which is demanded by the moral order and in which the total meaning of mutual self-giving and human procreation in the context of true love is achieved’.”<sup>51</sup>

In addition, the sexual intimacies and sexual pleasures had by nonmarried sexually active heterosexual persons who choose neither to engage in long-term relationships nor to start a family do not fit easily within this framework either. In fact, if it is indeed the case, as Cahill maintains, that the human sexual experience is “complex and complete” only when human sexual experience is embedded within long-term sexual relationships, then it must follow that these people's sexual lives, regardless of how satisfied they feel with them, remain in some state of sexual immaturity or incompleteness. Such a judgment seems awfully stipulative, and it

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<sup>50</sup> To be fair, Cahill does note that pleasure can be institutionalized in certain forms like prostitution or taking mistresses (112). But, as she says, these are problematic insofar as they tend to be institutions oriented towards male pleasure alone. Moreover, as we've seen, Cahill maintains that the mature realization of all dimensions of human sexuality occurs in interpersonal relationships that endure over time. Prostitution and mistress-taking do not seem to have such longevity at their core, so I exclude them from my analysis here.

<sup>51</sup> *Catechism of the Catholic Church*, no. 2352.

echoes, once again, the treatment that the magisterium gives to single persons: conceptual neglect. Whether intentionally or not, it seems that the only two vocations granted visibility both in Cahill's theology here and in the Church's sexual teaching are celibacy and marriage.<sup>52</sup>

But, most importantly, there is a sense in which this framework represents an unnecessarily high ideal for heterosexual married persons, making it demanding in a sense reminiscent of the magisterium's norm that Cahill was seeking to replace. "The *most complete and morally attractive experience of sex*," Cahill writes, "is at the intersection of its three sides—the pleasurable, the interpersonal, and the parental."<sup>53</sup> Even though Cahill's efforts in this part of her work are commendable insofar as she is attempting to create a theology that is as inclusive of as many family forms as possible—after all, she writes that "[t]here are many human circumstances in which the conjunction in a sexual relation of pleasure, intimacy, and reproduction is not possible or even desirable"<sup>54</sup>—it nevertheless remains the case for Cahill that the ideal, normative (indeed the most morally attractive!) sexual relationship is heterosexual, monogamous, and procreative. But why maintain such a perspective when one is consciously aware that many married relationships consciously aren't procreative (and, in fact, couples in these relationships may actively be trying to *avoid* procreating)? The result is the installation of another hierarchy, even as Cahill is trying to break one down—perhaps even despite her

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<sup>52</sup> Cahill provides a nuanced, historically-conscious, and compassionate reading of celibacy and the problems of our current day with respect to the Christian tradition in *Sex, Gender, and Christian Ethics*, 168-183. She proposes—and I believe, helpfully—that we reconceptualize celibacy "in communitarian terms, not in those either of personal perfectionism or of a new sexualization of the celibate state" (182).

<sup>53</sup> Cahill, *Sex, Gender, and Christian Ethics*, 115, emphasis mine.

<sup>54</sup> Cahill, *Sex, Gender, and Christian Ethics*, 115.



own intention. It is in view of this hierarchy, based in this ideal of this most complete and morally attractive heterosexual, monogamous, and procreative relationship, that we are faced once again with another version of the connaturality argument. The difference, however, is that, this time, both homosexual couples as well as heterosexual couples who choose either not to procreate or who choose not to have every sexual act open to the possibility of procreation are acceptable deviants.

For this critique to be successful, my perspective here presumes a certain account of the relationship between ideals and norms, but not one that is counterintuitive. Ideals, in this framework, stand to norms as sorts of argumentative exemplars. In turn, norms systematically disambiguate or specify how best to realize that exemplar within everyday life. Crucial to such an observation is to recognize how ideals can remain operative even when the norms that “express” those ideals change over time. With respect to revisionist interventions into theologies concerning sexuality, there is no doubt that there has been adjustment of norms. Indeed, one cannot move from a magisterial account of sexuality (one that generates the norm that each and every sexual act must be open to the possibility of procreation) to a revisionist account of sexuality (one in which procreation is heavily de-emphasized and even reconstructed, as in a theology like Farley’s) without observing that the procreative norm has been rethought. But equally crucial—and here is my central contention—is to observe that rethinking a normative expression of an ideal does not necessarily entail the installation of a new ideal, and my contention with respect to revisionist natural law theologies of sex

and sexuality is there has not been a change in the reigning ideal of what sexuality fully expressed would be: monogamous and procreative.

Let's evaluate the argument again. In view of the foregoing, it should be possible to see that the revisionist ideal is thoroughly heterosexist: for standing at the center of these revisionist interventions into homosexuality is the normative relationship of the heterosexual, monogamous, procreative couple. Same-sex sex acts (and, by extension, relationships) are always deficient or "acceptable deviations" on such a model. Now, it could be asked at this point whether such a vision constitutes a fault. After all, one could maintain—as Cahill does—that she is taking this relationship to be her normative focus because such a relationship is "the cross-cultural sexual 'center'."<sup>55</sup> The justification for such a focus, then, would be something equivalent to a claim that the statistical prominence of this sort of relationship makes it the rightful focus for normative assessment. But such a justification moves too quickly from descriptive/statistical normativity to normativity in the sense that ethicists are generally concerned with, since it would seem to imply that what is ethical is what is statistically significant. But this cannot be right, of course, because then ethicists would not be allowed any critical leverage over generally observed, but morally problematic traits. Moreover, such a justification would be counterintuitive within a project designed be inclusive of statistical outliers, since such a justification would be enough to preclude considerations about homosexuality in the first place, given that its statistical incidence—for what that's worth—is not very high. If, then, the installation of the

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<sup>55</sup> Cahill, *Sex, Gender, and Christian Ethics*, 116.

ideal is *not* due to a desire to elide statistical normativity into ethical normativity, and if this ideal *is* due to a desire to be inclusive of statistically marginal couples, then an explanation for the choice of this particular heterosexist ideal lies elsewhere.

At this point, my comments can only be speculative, but my suspicion—once again—is that this ideal functions out of an unthinking structural heteronormativity that manifests as a result of the intellectual fault of bias—specifically bias against viewing sexually reproductive and sexually nonreproductive relationships equally with respect to an ideal sexuality. In other words, the connaturality argument within revisionist natural law frameworks—even in the seemingly benign form offered by Cahill in her 2012 essay—fails to apply the value of ‘equality’ in the process of deriving ethically normative ideals in sexual relationships.

One can ask an important question at this point: if the ideal represented by the heterosexually reproductive and monogamous couple should be removed, then what ideal would a queer natural law put in its place? Here we have to proceed with caution, especially if we wish to do justice to the queer impulses that animate this queer natural law project. In chapter one, I specified four theological values that inform my queer natural law project here: apophaticism, diversity, non-exclusivity, and incarnation. The project of installing a normative ideal that aspires to diversity and non-exclusivity as witnessed within the human experience (incarnation) is one that is inherently imbued with tension, since ideals function if not as limiting *concepts*, then, at the very least, as limiting *images* with respect to the horizon out of which norms are articulated. And yet, the reality of human existence in which we

negotiate right and wrong is an inherently normative one. On the one hand, then, it seems that we are confronted with the demand to think and speak normatively, even as, on the other, we are confronted with the demand *not* to speak and to *let be*.

My proposal at this time is to recognize these two movements not as a paradox but as what it looks like to take the apophaticism of queer natural law seriously. As I said above, in the classical Dionysian doctrine of God—indeed, the one that animates Thomas’ project—apophaticism functions as a way to preserve the aseity of God, as a way to recognize the inherent inadequacy of our speech about God, as a way to recognize that God is always “more than” what we currently say we know. But yet, we are not left without insight into who God is. For simply by inhabiting the creator-creature relationship, we know *something* about God’s own being and *something* about God’s own goodness which inspires within us analogous concepts of being and goodness. And this ‘something’ for Thomas results in an explosion of ideas about God: that God is good;<sup>56</sup> that God is perfect;<sup>57</sup> that God is infinite;<sup>58</sup> that God is omnipresent;<sup>59</sup> that God is immutable;<sup>60</sup> and that God is eternal,<sup>61</sup> among other things. All of these are ideas that point to the ultimately inarticulable exemplarity that is God’s own very Trinitarian existence.

To take this concept of analogy in the apophatic dimension of queer natural law seriously allows us to evaluate how ideals function within a queer natural law project. As we see happen in apophatic projects concerning doctrines of God, the

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<sup>56</sup> Aquinas, *ST* I.6.

<sup>57</sup> Aquinas, *ST* I.4.

<sup>58</sup> Aquinas, *ST* I.7.

<sup>59</sup> Aquinas, *ST* I.8.

<sup>60</sup> Aquinas, *ST* I.9.

<sup>61</sup> Aquinas, *ST* I.10.

ethical ideal which we pursue here is also, in a real sense, beyond our words, but it is nevertheless not beyond our intention. Instead it is something that we gradually gain knowledge into by looking at human experience deeply and critically, and, as a result of our continued investigations, it is something that we can speak about in an explosion of salutary values. Just as we can attribute characteristics like goodness and infinity to God the exemplar of existence without thinking that we can formulate a simple 'ideal' of God, so we can attribute, by analogy, characteristics like equality and justice to a normative ideal of sexuality without needing to formulate an ideal that we take to be all-encompassing. It is an ideal, in other words, that may be beyond our words, but is not beyond our intention.

What then would it look like to apply equality (and by extension, justice) in the production of a normative ideal of sexual relationships? I stated earlier that revisionist theologians had two options before them: either to reconceptualize the procreative requirement given in magisterial teaching or attempt to get rid of it altogether. What I have argued with respect to taking the first option is that, as long as the ideal of procreativity is held as normative within sexual relationships, as the "center" in Cahill's framework; or the "paradigm" in Porter's framework;<sup>62</sup> or as the "intrinsically procreative relationship constituted by husband and wife," in Pope's analysis,<sup>63</sup> we will be inevitably reinstall a hierarchical ideal that fails to place sexually reproductive and sexually nonreproductive in a relationship of equality (or, if they do—as I've argued—they are equal in their sense of deviance from the

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<sup>62</sup> Porter, "Natural Law and Innovative Forms of Marriage," 33-34.

<sup>63</sup> Pope, "The Magisterium and 'Same-Sex Marriage'," 559.

ideal).<sup>64</sup> In other words, I believe that the ‘reinterpretation option’ for procreativity is a dead end for a natural law ethics that wants to enact justice understood, in part, as equality. It is high-time, I think, for us to explore the other option: drop the procreative requirement altogether in the name of equality.

The first question to ask at this point, though, is whether the goal of equality is an unqualified good to pursue in the first place. As it turns out, the discussion has taken on different valences in natural law circles and in queer circles. It is common knowledge that equality defined as a political relationship among individuals came to the fore in the Enlightenment amidst discussions of natural rights that inhere in the person. Natural lawyers writing in the late 20<sup>th</sup> and early 21<sup>st</sup> centuries have been keen to point out that the origins of natural rights can be located within medieval natural law discourses which conceive of natural law—as the present account does—as an innate capacity within the person.<sup>65</sup> Moreover, considerations about equality have been of seminal importance, especially in feminist movements for gender equality between men and women. But, as Lisa Cahill notes in her most recent investigation of the natural law, it is not so easy to justify equality vis-à-vis access to basic goods that are held to be universally valuable, precisely because, on the one hand, not all cultures value equality, and, on the other, in cultures that do, deontological and communitarian justifications typically put forward to defend them are not airtight.<sup>66</sup> Her proposal—and about this, I think she is right—is that

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<sup>64</sup> Important to mention here

<sup>65</sup> See, for example, Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* (Atlanta: Scholars Press, 1997), and Jean Porter, *Nature as Reason: A Thomistic Theory of the Natural Law* (Grand Rapids, MI: Eerdmans, 2005), 342-378.

<sup>66</sup> See Lisa Sowle Cahill, *Global Justice, Christology, and Christian Ethics* (New York: Cambridge University Press, 2013), 260-265. As Cahill notes, equality as an ethical value will not be persuasive

recognition of the ethical value of equality depends on compassion and solidarity fueled by an expansive imagination of equal regard for others.<sup>67</sup>

From the queer side, the value has been more contested. Queer scholars, like their postmodern cousins, tend to ask the question about the social location of certain values. It asks, first, the question: *equal to whom?* And second, it asks *what are the costs of such equality?*<sup>68</sup> This question was brought to light particularly by queer activists who were resisting the marriage equality movement in addition to resisting the inclusion of gay persons in the military. Queer critiques of the former centered around the identification of marriage as a sexist and classist institution that, as a political goal, failed to give visibility to the main problems of the day faced by queer persons: discrimination and adequate healthcare.<sup>69</sup> Marriage equality was moreover seen as problematic insofar as a commitment to marriage on the part of queer persons would result in a new class of “excluded” relationships, namely queer relationships that did not take the monogamous form, while also ushering married queer persons into capitalism’s *bourgeoisie*.<sup>70</sup> On the other hand, queer activists

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to a person who declines to see others (or groups of others) as equal to oneself in the relevant respect, challenging the deontological justification. And communitarian justifications—since they admittedly descend from a particular group of persons—have to argue themselves into some sort of universal position, and so the problem is the same (262).

<sup>67</sup> Cahill, *Global Justice, Christology, and Christian Ethics*, 264.

<sup>68</sup> See, for example, Yasmin Nair, “Against Equality, Against Marriage: An Introduction,” in *Against Equality: Queer Revolution, Not Mere Inclusion*, ed. Ryan Conrad (Baltimore, MD: AK Press, 2014), 15-21.

<sup>69</sup> See Eric A. Stanley, “Marriage is Murder: On the Discursive Limits of Matrimony” in *Against Equality*, 27-30, and Ryan Conrad, “Against Equality, In Maine and Everywhere,” in *Against Equality*, 57-64.

<sup>70</sup> This is the most common critique. For numerous examples, see the following essays, all from *Against Equality*: Dean Spade and Craig Willse, “I Still Think Marriage is the Wrong Goal,” 31-32; Kate and Deeg, “Marriage is Still the Opiate of the Queers,” 45-49; John D’Emilio, “The Marriage Fight is Setting Us Back,” 51-56”; and Yasmin Nair, “Who’s Illegal Now? Immigration, Marriage, and the Violence of Inclusion,” 65-73.

opposed participation in the military because of the complicity of the US government in the violations of the rights of others.

The gay marriage agenda fights to abolish the “don’t ask don’t tell” policy, promoting the military’s policy and seeking inclusion. We’ve thought long and hard about this, and we can’t remember liking anything the U.S. military has done in a really long time. What we do remember is how the military mines places where poor people and people of color live, taking advantage of the lack of opportunities that exist for kids in those communities and convincing them to join the army. We think it’s time that queers fight the army and the wars it is engaged in instead of asking for permission to enter.<sup>71</sup>

Queer theorists are not alone in their critique of equality operating as a politics of inclusion; queer theologians have taken up this mantle as well. For her part, Marcella Althaus-Reid decried a paradigm of inclusion because it maintained what she saw essentially as a colonialist paradigm. Campaigns for inclusion, in her view, resembled a theology in which a God goes from the center *out* to the margins; not unlike the logic of empire whether that be respect to evangelization, resource allocation, or both. However, if we took the incarnation seriously, Althaus-Reid maintains, we would not want a God who goes from the center to the margins—an operation which leaves the theologies and politics of the center uninterrogated—but rather, we want a *marginal God*, who lives among those who are excluded, who is native to them, and who—therefore—can take a critical look at the politics of the

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<sup>71</sup> MJ Kaufman and Katie Miles, “Queer Kids of Queer Parents Against Gay Marriage!” in *Against Equality*, 75-86.



center.<sup>72</sup> Relatedly, queer theologian Linn Tonstad points out that a queer theological agenda primarily focused on the question of the inclusion of same-sex marriages within the paradigm of marriage inhabited by heterosexuals is problematic precisely because it doesn't change the paradigm of inclusion, which is the heteronormative requirement that legitimate relationships must look like heterosexual ones.<sup>73</sup> This sort of theo-political orientation fails to give queer theology critical leverage over heteronormativity.

There is a way for a queer natural law framework to integrate both of these impulses, while also promoting the ethical norm of equality. The key is to draw a distinction among *types* of normative equalities. This, for example, is done in one intervention in the queer activist text *Against Equality*. There, in protest of mainstream efforts to include openly gay persons in the military, Cecilia Cissell Lucas draws a distinction between whether queer persons should maintain a fundamental allegiance to civil rights or to human rights.

Civil rights would dictate that if a military exists, everyone, regardless of race, gender, sexuality, class, or religion, should have an equal opportunity to serve in it. But human rights dictate otherwise. Human rights do not support the equal right of everyone to kill. They support the right of everyone NOT to

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<sup>72</sup> Marcella Althaus-Reid, "Queer I Stand: Lifting the Skirts of God," in *The Sexual Theologian: Essays on God, Sex, and Politics*, ed., Marcella Althaus-Reid and Lisa Isherwood (New York: T&T Clark, 2004), 99-109, at 105-106.

<sup>73</sup> Linn Marie Tonstad, "Everything Queer, Nothing Radical?" *Svensk Teologisk Kvartalskrift* 92 (2016): 118-129, at 125. Specifically Tonstad points out that the normative requirement is that homosexual relationships are accepted if and when they can be shown no longer to be sinful. Tonstad's work in this article is to argue that rather than justifying relationships based on sinlessness, we should instead enact a 'solidarity among the sinners' which is based on a mercy and compassion extending from a universal condition of sinfulness.

be killed, occupied, and exploited—another key function militaries carry out.

As such, human rights are anti-military in nature.<sup>74</sup>

This point can be expanded more generally to permissible and impermissible types of normative equalities. A normative equality is impermissible when its assertion is insensitive to the consequences its institution would have on the most vulnerable around the world. A notion of equality is impermissible, in other words, if it has not also been critiqued on the basis of the Catholic social value of preferential option for the poor and vulnerable, “the abiding commitment... to support social justice by placing oneself on the side of the vulnerable and marginalized.”<sup>75</sup> On the other hand, a normative equality is permissible when it can be seen as upholding the option for the poor and vulnerable. One can argue that, in the current case we are considering regarding equality between sexually reproductive and sexually nonreproductive couples, the equality is permissible in view of its desire to find a more adequate notion of sexuality that does not place sexually reproductive persons on a pedestal. It wants, in other words, to abolish a hierarchy, not include more people within the privileged part of that hierarchy.

With a justification for equality in hand, the next step in establishing equality is to locate and diagnose the heterosexist hegemony within Christian theology. Indeed, such a maneuver should be persuasive to any ethicist who writes explicitly from a feminist standpoint, as Cahill does. For one cannot get to the second page of *Sex, Gender, and Christian Ethics* without reading the feminist credo: “But the

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<sup>74</sup> Cecilia Cissell Lucas, “Don’t Ask, Don’t Tell, Don’t Serve,” in *Against Equality*, 109-112, at 110.

<sup>75</sup> Thoms Massaro, S.J., *Living Justice: Catholic Social Teaching in Action*, 2<sup>nd</sup> Classroom edition (Lanham, MD: Rowman & Littlefield Publishing, 2012), 113.

fundamentally egalitarian inspiration of Christianity is perennially liable to perversion by powerful authorities interested in maintaining their status. This book is thus written from a feminist perspective, by which is meant simply a commitment to equal personal respect and equal social power for men and women.”<sup>76</sup> The final step in establishing equality, then, is to get rid of frameworks that privilege sexually reproductive relationships; just as, for the feminists, the next step is to get rid of frameworks that privilege men—or, to use Cahill’s words once again, to get rid of “warrants for social systems which grant men in general authority and power over women in general.”<sup>77</sup>

I am not the first Catholic theologian to interact with the natural law tradition and suggest such a course of action. That award, I think, goes to Christine Gudorf and her 1994 book *Body, Sex, and Pleasure: Reconstructing Christian Sexual Ethics*. There she makes an argument in an enthralling chapter entitled “Ending Procreationism,” in which she defines ‘procreationism’ as “the assumption that sex is naturally oriented towards the creation of human life.”<sup>78</sup> From there she identifies three chief areas where the effects of procreationism are felt most strongly.<sup>79</sup> In one place, embracing procreationism entails the understanding that the ‘real’ sexual act is penile-vaginal intercourse, entailing further that other acts are viewed either as “perversions” or as “foreplay designed to prepare for the real sex act.”<sup>80</sup> As a second

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<sup>76</sup> Cahill, *Sex, Gender, and Christian Ethics*, 1.

<sup>77</sup> Cahill, *Sex, Gender, and Christian Ethics*, 1-2.

<sup>78</sup> Christine E. Gudorf, *Body, Sex, and Pleasure: Reconstructing Christian Sexual Ethics* (Cleveland, OH: Pilgrim Press, 1994), 29. This definition is slightly more radical than the one that she gives earlier in the text, where she defines procreationism as “the understanding that the primary or exclusive purpose of sexual activity is procreation” (24).

<sup>79</sup> Gudorf, *Body, Sex, and Pleasure*, 29-32.

<sup>80</sup> Gudorf, *Body, Sex, and Pleasure*, 29.

feature, Gudorf notes that procreationism “denigrates sexual relationships in which *coitus* is not possible,”<sup>81</sup> which places not only relationships where non-coital sex is a feature on (at most) a second tier, but it also denigrates the sexual activity possible for those who live with disabilities where coitus is not physically possible or for older persons for whom coitus may no longer be physically possible. And last, Gudorf notes how procreationism has an adverse effect on persons who are otherwise inclined towards sexual acts where sexual reproduction is a possibility, by urging them to see children as “the ‘cost’ of sex”—a mentality that “encourages [an understanding of] sexual activity without contraception as more moral than sex with contraception, even when conception is neither desired nor advisable, and thus encourages irresponsible parenthood.”<sup>82</sup> In other words, procreationism entails a hierarchy among sexual acts, with the sexually reproductive at the top of the pedestal, and with more or less ‘deficient’ understandings of sexual activity for everyone whose sex acts aren’t reproductive or who choose to render their sexual acts nonreproductive.

Instead, Gudorf prophetically proposes a re-envisioning of sexual ethics from people’s lived sexual experiences—not from the procreative ideal—and she proposes to do this by separating the ethics of sex from the ethics of reproduction. In her project, the ethics of sex is oriented around an understanding of the goodness of pleasure within a normative environment of mutuality, and the ethics of reproduction is oriented around an awareness of planetary responsibility given

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<sup>81</sup> Gudorf, *Body, Sex, and Pleasure*, 30.

<sup>82</sup> Gudorf, *Body, Sex, and Pleasure*, 30.

unsustainable population growth.<sup>83</sup> Such a project is significant within a history of theological intervention on this subject, because it will turn out to be the foundational rallying cry for what would later become known as queer theology. Whereas Gudorf will propose—drawing on the calls of other theologians like Norman Pittenger, James Nelson, and Andre Guidon<sup>84</sup>— calling for a sexual theology in which “we must not only discern God’s intentions for human sexuality but we must also integrate our sexual experience into our broader human experience, which is our principal resource for discerning who God is and how God works in our world,”<sup>85</sup> pioneering queer theologian Marcella Althaus-Reid will propose that Christians begin by producing sexual theologies. These sexual theologies “are the opposite of idealistic processes. They are materialist theologies which have their starting points in people’s actions...It is from human sexuality that theology starts to search and understand the sacred, not vice-versa.”<sup>86</sup> These sexual theologies become tantamount to the production of an “indecent theology” to the extent that the realities exposed by persons’ actually lived sexual lives challenge heteronormative frameworks for gender and sexual practice. They challenge, in other words, the “sexual prayers” we learn from our traditional theologies of sexuality and gender in which we “ask God” to constrain our desires and sexual

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<sup>83</sup> Gudorf’s proposal for an ethics of reproduction would certainly be challenging for a Catholic sexual ethics. With respect to responsible reproduction, Gudorf writes, “It requires reversing the prevailing understanding that sex is normally procreatively open unless special circumstances require contraception, to one in which sex is seen as normally contraceptive, so that only very special and consciously selected circumstances justify procreative openness” (46).

<sup>84</sup> Norman Pittenger, *Making Sexuality Human* (Philadelphia: Pilgrim Press 1970); James Nelson, *Embodiment: An Approach to Sexuality and Christian Theology* (Minneapolis: Augsburg Press, 1978), and Andre Guidon, *The Sexual Creators: An Ethical Proposal for Concerned Christians* (Langham, MD: University Press of America, 1986).

<sup>85</sup> Gudorf, *Body, Sex, and Pleasure*, 24.

<sup>86</sup> Marcella Althaus-Reid, *Indecent Theology: Theological Perversions in Sex, Gender, and Politics* (New York: Routledge, 2000), 146.

practices to fit within inadequate theologies of sexuality<sup>87</sup>—or, in this case, theologies which privilege procreationism or theologies which re-install heterosexist ideals (as will inevitably be the case with connaturality arguments). With this unflinching commitment to recognizing divine revelation as coming through our lived sexual experiences primarily and not (first) through theological frameworks, theologians like Gudorf and Althaus-Reid show how feminist theologies and queer theologies share in the liberationist tradition.

In order to do this properly, I've argued that we have to get rid of the procreative norm in sexual ethics. For if we take Cahill's framework as representative for a revisionist framework animated by feminist principles— and this without prejudice to her intentions to create an inclusive framework for sexually reproductive and sexually nonreproductive couples—this revisionist framework fails as an account of sexuality insofar as some aspects of sexuality do not fit within the framework; it fails insofar as some persons' sexual lives are illegible within the framework; it fails insofar the lives of some heterosexual couples are placed into marginality as a result of the reigning ideal; and it fails because that reigning ideal is heterosexist in view of the observation that, rather than normalizing nonprocreativity (as would be required for an ethical ideal that embraces sexually nonreproductive relationships on equal terms with sexually reproductive ones), this sexually reproductive normative ideal is upheld as "the most morally attractive" form of relationship possible for human beings.

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<sup>87</sup> Althaus-Reid, *Indecent Theology*, 127-128.

#### 4.2.2.2 The Heterosexism of Arguments Invoking Intrinsic Connections Between Sexuality and Procreation

There is no doubt that this proposal will be controversial. Certainly for defenders of the magisterium's natural law authoritarianism, this proposal will be immediately out-of-bounds. But—as I've hinted above—it will also be seen as controversial for revisionist natural lawyers. For if our current understanding of sexuality is one in which sexual practice is oriented towards inter/personal pleasure and towards procreation, and, further, if I am proposing that we drop the teleological requirement that sexuality be “about” procreation, then what I am proposing is that sexuality be seen as “oriented towards” or about inter/personal pleasure<sup>88</sup>—end of sentence.

Protest votes fly in from the revisionists whom we have been engaging thus far in this chapter. For even though Jean Porter is willing to extend marriage to same-sex couples, she would argue “that a theological commitment to the goodness of creation implies that we as Christians have a particular stake in affirming the value of procreation and giving this value a central place in the interpretations and practices surrounding sex and marriage.”<sup>89</sup> Indeed to put a rather apocalyptic spin on it, she continues, “By affirming the vital link between marriage a procreative purpose, we acknowledge that this is the one purpose that must be successfully pursued if a society is to have a future at all.” Stephen Pope—not *necessarily* giving

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<sup>88</sup> By making use of the catechesis ‘inter/personal’ pleasure, I am highlighting both how sexuality is oriented toward interpersonal pleasure (i.e., pleasure between or among individuals), but also how there is an ethical integrity in understanding sexuality as ordered towards one’s own personal pleasure without prejudice towards the interpersonal dimension.

<sup>89</sup> Porter, “The Natural Law and Innovative Forms of Marriage,” 33 and 33-34, respectively.

us his own views, but giving the magisterium its most plausible view—also makes appeals to future generations in order to keep the connection between sexuality and procreation. His strategy, perhaps oddly enough, is to invoke this link between sexuality and procreativity as a way to curb men’s “natural” proclivity towards promiscuity: “Whatever their sexual orientation and marital status, men overall are more prone to engage in extra-partner sex than women who are similarly situated. The health of marriage requires that the ‘unitive’ and the ‘procreative’ purposes of marriage not be completely severed from one another.”<sup>90</sup> And Lisa Cahill—though certainly done with more nuance—is able flatly and succinctly to dismiss the entire enterprise: “But when all is said and done,” she writes, “the idea that there is no such thing as ‘sex’ or that sex in humans has no intrinsic connection to reproductive physiology, is more rhetorical than factual.”<sup>91</sup>

Is this intrinsic connection between sexuality, sexual reproduction, and the family in a theological account of these phenomena so obvious that I am wasting my time arguing against it? Or, to place it in terms more proximate to this study: even if it can be shown that a heterosexist conception of marriage lies behind revisionist conceptions of the relationship between sexuality and marriage, can the same be said about the assertion of an intrinsic connection between sexuality, sexual reproduction, and the family? If we can uncover heteronormativity as that which supplies the “glue” for this putative intrinsic connection, then the answer to our question will be yes.

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<sup>90</sup> Pope, “The Magisterium and ‘Same-Sex Marriage,’” 561.

<sup>91</sup> Cahill, *Sex, Gender, and Christian Ethics*, 111.



One option is that the intrinsic connection between sexuality, sexual reproduction, and family is divinely revealed. This is James Hanigan's position, and his is one that explicitly engages the natural law while also drawing a conclusion that is congruent with those offered by the revisionists whom we have been considering. "In our present context," he writes,

it is proper to note that Paul VI refers to marriage, the union in sexual duality, as one way God has of realizing in human history the divine plan of love. That suggests that there are other ways God has to achieve this plan. But conjugal union is the way *that fully enacts human sexuality*, that effects the reconciliation, the unity of that most fundamental, created difference, male and female, and establishes the most basic community of both Church and society, the family.<sup>92</sup>

The emphasis in the text is mine, in order to highlight the congruency. Hanigan's conclusion restates the revisionist position that the best (the most morally attractive?) way to enact human sexuality is within the context of a marriage that issues in the family. But how does he get there? His two proximate contexts for justification are Scripture and *Humanae Vitae* as articulated and defended both by Paul VI and by John Paul II. But, as we will see, the ultimate justification that Hanigan offers is that the inseparable link between the unitive and the procreative is literally "willed by God."<sup>93</sup>

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<sup>92</sup> James P. Hanigan, "Unitive and Procreative: The Inseparable Link," in *Sexual Diversity and Catholicism*, 22-38, at 30.

<sup>93</sup> Hanigan, "Unitive and Procreative," 24.

As we saw was famously the case in John Paul II's *Theology of the Body*, Hanigan invokes the former's emphasis on conducting a normative analysis of sexuality "from the beginning"—that is, from the book of Genesis—in order to understand human sexuality. Also like John Paul II, Hanigan draws a purpose for sexuality out of the purported gender complementarity and gender essentialism that they read out of the text.<sup>94</sup> At this point, Hanigan's argument takes two crucial turns. The first:

God's intentions for [Adam and Eve] and their life together as male and female are specified in Genesis in a number of ways. The most obvious is that they are commanded to be fruitful and multiply. Human beings are to have a family history, not just a personal story. The capacity to procreate, to become participants with God in the creation of new human life is not an accidental or casual feature of human sexual duality, but a fundamental aspect of human sexual responsibility, of the human vocation as male and female.<sup>95</sup>

And the second:

Genesis presents the gift of sexuality in the creation of man and women not simply as the gift of sexual pleasure or of physical intimacy, as one gift among many gifts by God to human beings for their delight, but as a cleaving together to become one flesh, as a relationship that has its nature and its goodness in reference to God and to the divine plan which already looks to

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<sup>94</sup> "The man and the woman are each in his and her own right fully human and made by God for God, but are ordered to and given to one another as mutual helpmates to constitute the human" (Hanigan, "Unitive and Procreative," 27).

<sup>95</sup> Hanigan, "Unitive and Procreative," 27.

the story of Abraham and Sarah and the creation of the chosen people, and for Christian theology ultimately to the coming of Christ.<sup>96</sup>

The argument, as given, flows in the following way. As warranted by Genesis, the twin ontological theses of gender complementarity and gender essentialism, combined with the command of God to be fruitful and multiply, render a purpose to human sexuality: procreativity. This capacity to procreate, as further drawn from the creation stories, is linked to marriage insofar as sexuality is further oriented towards the “cleaving together” which is marriage. And all of this—that is, marriage, procreation, and the creation of family— is ultimately part of God’s providential plan within the economy of salvation, encapsulating the cast of major biblical characters from the establishment of the covenant with Abraham to the Incarnation. Indeed, Hanigan notes, “Despite failure and sin, marriage has taken the human family where God intended it to go.”<sup>97</sup> And with a brief nod to Augustine’s fifth century in which Augustine distinguishes the three goods of marriage, Hanigan meets the reader in the 21<sup>st</sup> century where “more contemporary language has spoken about the unitive, procreative, and sacramental meanings of sexual relationships”—citing, as a thinker whose thought he takes to be supportive of his own at this point, Lisa Sowle Cahill.<sup>98</sup>

Though Hanigan may, through his citation of Cahill, suggest a similar argument—or, at least, an argument which features nonsubstantive differences, Hanigan is leaving out a good bit of context that would help to represent accurately

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<sup>96</sup> Hanigan, “Unitive and Procreative,” 29-30.

<sup>97</sup> Hanigan, “Unitive and Procreative,” 30.

<sup>98</sup> Hanigan, “Unitive and Procreative,” 31.

Cahill's own understanding of the three goods of marriage. Hanigan takes Cahill simply to be re-describing official church teaching using more up-to-date terminology, most likely in a way that gives the teaching a more personalist tone.<sup>99</sup> Such a judgment, however elides over Cahill's primary intervention into marriage, which, moreover, we have seen consistently across her scholarship. Like other revisionists, Cahill calls for a *better* personalism than what she sees coming from the pen of John Paul II. Uncited by Hanigan, but written below in the same article, Cahill writes, "In other words, it is not enough to refer in sexual morality or marriage merely to the physical or to the intersubjective in a forced or artificial way that does not ring true to the experience of married persons and parents. Spousehood and parenthood must be linked together as ongoing personal and embodied *relationships* that have a definitive sexual/procreative dimension, not through an analysis of *acts* of sexual intercourse."<sup>100</sup> Following this are two other interventions into marriage and family: a critique of gender roles, which she observes in Church teaching as feeding into a "biologistic view of women's maternity"; and the second is a critique of the third good of marriage, indissolubility, as insensitive to the need for the church to recognize "marital disintegration."<sup>101</sup> Yet there is no doubt that Hanigan would disagree with Cahill's last intervention. And insofar as Hanigan describes the male and female sexual vocation in terms of procreativity, he would be

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<sup>99</sup> "Lisa Sowle Cahill...has described [the unitive, procreative, and sacramental meaning of sexual relationships] as sex, love, and procreation. Official Church teaching always speaks about conjugal love in this complex of good or values in the attempt to distinguish it clearly from simple sexual attraction and romantic love" (Hanigan, "Unitive and Procreative," 31n33). For the personalist tone, cf. Hanigan, "Unitive and Procreative," 33.

<sup>100</sup> Lisa Sowle Cahill, "Marriage: Institution, Relationship, Sacrament," in *One Hundred Years of Catholic Social Thought: Celebration and Challenge*, ed., John A. Coleman, S.J. (New York: Maryknoll Books, 1991), 103-119, at 117.

<sup>101</sup> Cahill, "Marriage," 117 and 118, respectively.

missing the opportunity to place more emphasis upon the relationship between the spouses, as Cahill calls for.<sup>102</sup>

So, even though this argument reaches a conclusion that is identical to that of the revisionists—that, indeed, there is an intrinsic connection between sexuality and reproduction—Hanigan argues for it in terms that are already dismissed on revisionist grounds as problematic both on exegetical and moral levels. But if the revisionists don't turn to the primordial past in order to justify the intrinsic connection between sexuality and reproduction, where do they go? The answer: to the present, to concerns about the family, to generating arguments that rely on the *social* significance of the connection between sexuality and reproduction. In this mode, sexuality, in its social dimension, is *for* the establishment of families and of children within those families. In logical terms, what is taking place in this revisionist formulation of the argument is the substitution of “family and society” for the “theology of the body” in the argument: this is new “glue” that preserves the ostensible intrinsic relationship. For rather than there being an intrinsic connection between sexuality, marriage, and reproduction because of the justifications given by defenders of the theology of the body, there is an intrinsic connection between sexuality, marriage, and reproduction because of sexuality's social realization in the establishment of healthy family life and the continued replacement of dying members of the human species in order to preserve society. This is an important

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<sup>102</sup> To be fair to Hanigan, he does acknowledge other ends of the marriage and the sexual act, but these are explicitly secondary for him—and perhaps even secondary in a truly cosmic sense: “The relationship of man and woman has attached to it a basic social significance, a procreative significance, that, to be sure, does not exhaust the meaning of their relationship, but whose absence from the sexual relationship would render the creation accounts, the promise of the covenant, and the angelic annunciation to Mary, as we have them, unintelligible” (Hanigan, “Unitive and Procreative,” 30).

shift because it reflects, as we've seen, the revisionist tendency to look at concrete realities, especially those that can be studied by the natural or social sciences, *together* with an understanding of sexuality given from scripture and tradition. It is from a dialectical examination of these four "sources" of Christian ethics that natural lawyers discern the requirements of the natural law.

Revisionists, along with the magisterium, take as axiomatic a certain sociopolitical significance to the family. As John Paul II writes, "The family has vital and organic links with society, since it is its foundation and nourishes it continually through its role of service to life: it is from the family that citizens come to birth and it is within the family that they find the first school of the social virtues that are the animating principle of the existence and development of society itself."<sup>103</sup> Similarly, when understanding the significance of the family for Christian ethics, Cahill reflects a fairly standard revisionist view in regarding the family as the institutionalization of kinship ties which moreover "as both a material and a social network of interdependence, must accomplish the nurturance of children, but it should also respect the needs and encourage the virtues of adults, and sponsor the contribution of all family members to the social common good."<sup>104</sup> Family comes to be seen, therefore, as the bedrock of society, and it is this that is supposed to account for their intrinsic connection. Accordingly, the stability of the family gets tied into the stability of society—a relationship that is therefore seen as bidirectional: instability in the family is construed to lead to instability in society, and vice-versa.

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<sup>103</sup> John Paul II, *Familiaris Consortio*, no. 42.

<sup>104</sup> Cahill, *Sex, Gender, and Christian Ethics*, 104.

Nevertheless it is important to note that when revisionists and the magisterium speak about 'family' the terms cover different sorts of arrangements. For its part—and as we have seen—the magisterium historically has been uninterested in considering forms of family that do not feature, as its core, the monogamous heterosexual couple. On the other hand, feminist revisionists and revisionists in general have been willing to extend the valid family form to same-sex couples and perhaps to other networks of co-dependency. Cahill observes, "Families may be large and complex; their boundaries may be flexible; family and marital ties may or may not be a primary factor in the social organization of authority and goods; and the roles of 'kin' may be exchangeable or extendable so that persons with no biological tie may function in the family as 'fictive kin', that is, analogously to blood kin or relations-by-marriage."<sup>105</sup>

We should not be deceived, however: this sort of 'inclusion' does not constitute a valid extension of the family concept on the basis of equality; rather, it is another form of the connaturality argument. For even as Cahill is willing to extend the notion of family, the normative ideal remains the heterosexual, sexually reproductive couple. For after she extends a blessing on other family forms Cahill writes,

But "family" has a *basic and constitutive relation* to biological relationship (including reproductive partnership to produce the next generation), for which other relations, however valid, are analogues, not replacements.

Families cross-culturally are based on the biological realities of sex,

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<sup>105</sup> Cahill, *Sex, Gender, and Christian Ethics*, 105.

reproduction, shared male-female parenthood, being the child of two older parents, and being biologically tied to other children of one's mother and to a wider range of relatives.<sup>106</sup>

This redeployment of the connaturality argument among revisionist natural lawyers shows some potential convergences with papal teaching on the family under Francis in his apostolic exhortation on marriage and the family. There, while he provides no doubt that he sees as the paradigmatic form of marriage as the “union between a man and woman who give themselves to each other in a free, faithful and exclusive love, who belong to each other until death and are open to the transmission of life, and are consecrated by the sacrament, which grants them the grace to become a domestic church and a leaven of new life for society”—he observes that other forms of union realize this ideal in “a partial and analogous way.”<sup>107</sup> Accordingly Francis counsels bishops and priests to employ a “logic of integration” with respect to persons living in these “irregular situations.”<sup>108</sup> What this exactly means, however, is hotly debated.<sup>109</sup> Francis's elucidation of a “logic of integration” is that it reflects a pastoral care approach for persons in irregular situations that “would allow them only to realize that they belong to the Church as the body of Christ, but also to know that they can have a joyful and fruitful experience in it.”<sup>110</sup> While this is certainly less than a call for change in canon law—indeed, Francis explicitly considers this logic to be a component of pastoral care—

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<sup>106</sup> Cahill, *Sex, Gender, and Christian Ethics*, 106.

<sup>107</sup> Francis, *Amoris Laetitia*, no. 292.

<sup>108</sup> Francis, *Amoris Laetitia*, no. 299.

<sup>109</sup> For a helpful commentary on this chapter given by the president of the Pontifical Council for Legislative Texts, see Cardinal Francesco Coccopalmerio, *A Commentary on Chapter Eight of Amoris Laetitia*, trans. Sean O'Neill (New York: Paulist Press, 2017).

<sup>110</sup> Francis, *Amoris Laetitia*, no. 299.



Francis's clear emphasis on accompaniment rules out a condemnation that would understand these "irregular situations" as irredeemable moral failures, making these arrangements at least minimally acceptable deviants from the ideal.

In the last section we've uncovered a heterosexism at the root of the revisionist notion of marriage (through the use of the connaturality argument); now, we've also uncovered—once again through the use of the connaturality argument—a heterosexism at the root of revisionist invocations of the "family." It is this heterosexist connection tying both of the terms together which can explain why it is so easy to refer to "marriage and family," in one breath while conceiving of heterosexual couple at its center. But even more importantly, such a transitivity between marriage and the family also extends the instability argument: if introducing instability into society introduces instability into family, then—insofar as interpretations of family and marriage are connected by a heterosexist interpretation of each—introducing instability into family introduces, by extension, instability into marriage. Thus, destabilizing *marriage* destabilizes society, and vice versa.

What we begin to witness, then, is an alliance between the magisterium and revisionists: both have interests in defending marriage—because both of them see an intrinsic connection between sexuality, marriage, family, and society—though they do so with different visions of marriage and family in mind. As we've seen, what accounts for differences in those visions are the variances in their assessments of nonnormative relationships as acceptable deviants from the heterosexist ideal. There are, unsurprisingly, some major divergences. For example, in 2009 the United

States Conference of Catholic Bishops released a document “Marriage: Love and Life in the Divine Plan,” in which they highlighted four “fundamental challenges” to marriage which were immediately construed as destabilizing forces introduced from the outside, from society: contraception, divorce, cohabitation, and same-sex unions.<sup>111</sup> Revisionists, for their part, have clearly argued for the legitimacy of contraception, divorce, and same-sex unions, and as Julie Hanlon Rubio notes, theologians are arguing for “greater tolerance and pastoral inclusion of cohabiting couples.”<sup>112</sup>

But if revisionists and the magisterium disagree about the above four threats to marriage, are there any grounds on which the two of them *will* agree? In a phrase, they both will appeal to the good—that is, the well-being of—the children, which they will both see as, in part, guaranteed by keeping marriages intact. Once again, however, their allegiances are divided predictably on the basis of which nonnormative family arrangements are acceptable. For example, in November 2000, the Pontifical Council for the Family declared that the bond between two men and two women could not be considered familial, and, in view of that “much less can the right be attributed to that union to adopt children without a family.”<sup>113</sup> And in a similar vein, we can also return to an observation that we made earlier from Stephen Pope’s analysis of magisterial teaching on ‘Same-Sex Marriage’. There he determined that the most viable argument that the magisterium had in the debate

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<sup>111</sup> United States Conference of Catholic Bishops, “Marriage: Love and Life in the Divine Plan,” <http://www.usccb.org/issues-and-action/marriage-and-family/marriage/love-and-life/upload/pastoral-letter-marriage-love-and-life-in-the-divine-plan.pdf>, 17ff.

<sup>112</sup> Julie Hanlon Rubio, “Family Ethics: Beyond Sex and Controversy,” *Theological Studies* 74 (2013): 138-161, at 141-145.

<sup>113</sup> Pontifical Council for the Family, *Family, Marriage, and ‘De Facto’ Unions* (09 November 2000), no. 23

over same-sex marriage was that the institution might suffer as a result of extending it to opposite-sex couples. Here Pope cites a 2003 speech given by Cardinal Sean O'Malley who linked the redefinition of marriage to a continued destabilization of marriage already begun by cohabitation and divorce that will "indirectly contribute to incidence of poverty, child abuse, and drug addiction."<sup>114</sup> On the other hand, revisionists have noted—following social scientific evidence—that children in households headed by same-sex couples do not suffer any developmental disparities, nor are couples in same-sex marriage more or less moral than their heterosexual counterparts.<sup>115</sup> Nevertheless, as we see in Cahill's appeal to celebrating same-sex marriage, all marriages should be stabilized in the interests of keeping families (and presumably the children within those families) intact. As Cahill observes, "I would not want to go back to condemnation of divorce or the stigmatizing of all those who divorce, but most Catholics would agree that a 50 percent national divorce rate is a problem. The same applies to the fact that in 2010, 40 percent of all births in the United States were to unmarried parents."<sup>116</sup>

But if we've shown—as I believe we have—that there is a heterosexism at the root of revisionist appeals to an intrinsic connection among the goods of sexuality, marriage, the family, and society, there is nevertheless still another question that can be asked: is this heterosexist construal *necessarily the case* when analyzing a connection between sexuality, marriage, family, and society, or is it

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<sup>114</sup> Pope, "The Magisterium and 'Same-Sex Marriage'," 561.

<sup>115</sup> For one very helpful source, see Isaiah Crawford and Brian D. Zamboni, "Informing the Debate on Homosexuality: The Behavioral Sciences and the Church," in *Sexual Diversity and Catholicism*, 216-251, esp. 236-239; Farley, *Just Love*, 280-281; Salzman and Lawler, *The Sexual Person*, 229-230; and Pope, "The Magisterium and 'Same-Sex Marriage'," 561-562.

<sup>116</sup> Cahill, "Same-Sex Marriage and Catholicism," 153.

possible that such a construal just *happens to be the case*? The significance of this question is the following: if the latter is true, one can still maintain that there is an intrinsic connection among the goods of sexuality, marriage, family, and society, but one can also simply just claim that—at present—an argument has not been given for it that is not heterosexist. There would, therefore, be an intrinsic connection between sexuality (in a general sense) and procreation (in a general sense), and my argument to upend the requirement of procreation from a teleological account of sexuality would fail. To see why the argument does not fail, we need to draw attention to the insights both of queer theorists and queer theologians.

One of the most fruitful areas of queer theory has been to show that the alleged intrinsic connection between sexuality and procreation is actually the effect of a complex intersection and interaction among various social, scientific, political, and economic discourses that, in turn, offer a *telos* to human sexual practice. We then subsequently contour our sexual practices along normative lines in order to develop the concept of ‘sexuality’, which is to say that sexuality becomes the normative result of how the sexual practices of our bodies “fit” in to the larger normative world which we’ve created. This normative world is frequently remarked in queer work as ‘culture’, and this for two reasons. First, because it is within a culture that a given society retrieves the primary symbols and values from which it generates meaning; and second, because, by lexically locating culture as prior to signification, it increases the plausibility of seeing notions of sexuality as a certain configuration among those symbols further rationalized within other discourses. “Heterosexuality is not a thing,” Lauren Berlant and Michael Warner confidently

write in their important essay, "Sex in Public."<sup>117</sup> Rather, they choose to speak of heterosexual culture, and what they say of it is worth quoting at length:

A complex cluster of sexual practices get confused, in heterosexual culture, with the love plot of intimacy and familialism that signifies belonging to society in a deep and normal way. Community is imagined through scenes of intimacy, coupling, and kinship. And a historical relation to futurity is restricted to generational narrative and reproduction. A whole field of social relations becomes intelligible as heterosexuality, and this privatized sexual culture bestows on its sexual practices a tacit sense of rightness and normalcy. This sense of rightness---embedded in things and not just in sex---is what we call heteronormativity. Heteronormativity is more than ideology, or prejudice, or phobia against gays and lesbians; it is produced in almost every aspect of the forms of arrangements of social life: nationality, the state, and the law; commerce; medicine; education; plus the conventions and affects of narrativity, romance, and other protected spaces of culture. It is hard to see these fields as heteronormative because the sexual culture straight people inhabit is so diffuse, a mix of languages they are just developing with notions of sexuality so ancient that their material conditions feel hardwired into personhood.<sup>118</sup>

The project of showing how the alleged intrinsic connection between sexuality and procreation is really a function of heteronormativity—and therefore, is not merely a

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<sup>117</sup> Lauren Berlant and Michael Warner, "Sex in Public," in Michael Warner, *Publics and Counterpublics* (New York: Zone Books, 2005), 187-208, at 192.

<sup>118</sup> Berlant and Warner, "Sex in Public," 194.

“fact” external to interpretation, as it were—involves showing two things: first, how bodies and the sexual practices they enact have meaningful significance that are not explained without remainder within the normative confines of what we understand as heterosexual culture; and second, how a better normative account of human sexual practices and bodies can be offered when we “queer” sexuality—that is, when we redraw the normative lines, as it were, by thinking with the insights about the significance of human sexual practice that comes from bodies whose sexual practices and cultures are not granted visibility in heteronormative space (or if they are granted visibility, they are granted visibility as pathological). It is a project that Berlant and Warner name as a “wrenching sense of recontextualization” as we “piece together how it is that social and economic discourses, institutions, and practices that don’t feel especially sexual or familiar collaborate to produce as a social norm and ideal an extremely narrow context of living.”<sup>119</sup> My wager is that such a recontextualization in this project will reveal that the better normative account of sexuality will be to see it as oriented towards inter/personal pleasure, and that—insofar as this better approximates equality between sexually reproductive and sexually nonreproductive relationships and intimacies—better realizes what it means to think of sexuality not only more accurately, but also more justly.

Several strategies can be used to show how heteronormativity alone accounts for the “intrinsic” relation between sexuality and procreation. One simple retort is to examine the wide range of human sexual practices—almost as an

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<sup>119</sup> Berlant and Warner, “Sex in Public,” 195.

informal frequency analysis—and to see if speaking of human sexual practice as fundamentally oriented towards procreation seems to make the most sense of the phenomenon. As we will see, to hold procreativity as one of the main purposes of sexual practice does very little justice to the fact that the vast majority of human sexual acts are nonprocreative. Masturbation—as noted above—has a long shelf-life within the sexual practice of an actual human being, and yet is nonprocreative. In fact masturbation seems to be completely oriented towards self-pleasure, as even infants by age one are able to reliably enact the practice.<sup>120</sup> Moreover, as Christine Gudorf notes, the most generally imagined sexual practice for men is fellatio, which is nonreproductive; and the most satisfying sexual practice for women involves the direct stimulation of the clitoris, which is something that does not automatically happen within penile-vaginal—that is, sexually reproductive—intercourse.<sup>121</sup> There is also the simple fact that all sex acts between persons with relatively similar genitalia are nonreproductive, as are all sex acts where one partner is not fertile, and as are all sexual acts where one partner has reached the end of their reproductive cycle (as is the case for all persons who reach menopause).

Subjecting the alleged intrinsic connection between sexual practice and procreativity to a gendered analysis also raises questions. For example, one can argue that it might be true that there is an intrinsic connection between sexual practice and procreativity in the *male* body, but that this is shown to be sexist once women's bodies are placed on an equal analytical footing. For while in the nonsterile

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<sup>120</sup> Reported in Gudorf, *Body, Sex, and Pleasure*, 3.

<sup>121</sup> Gudorf, *Body, Sex, and Pleasure*, 30-32. In fact, Gudorf notes, lesbians report higher levels of sexual satisfaction than do their heterosexual counterparts.

male body one's procreative potential is only an ejaculation away, the procreative potential for the female body is limited by the period of time between menarche and menopause—and moreover, within this time period, is furthermore limited by a women's ovulation cycle. In other words, for the vast majority of *women's* lives of a certain length, procreativity is not a possibility.

Questions can also be raised on ableist grounds. For those whose bodies do not allow them to enact coitus, but yet are capable of sexual pleasure, what is revealed about the significance of their sexual practices? Similar questions can be asked concerning the sexual practices among the elderly, whose bodies may no longer be capable of enacting coitus, but nevertheless are sexually active.

What if these facets of human sexual practice were given social visibility? How would that change the social significance of sex? For example, in addition to the above, what does one make of the fact that there are entire communities built around nonreproductive sexual acts—sex clubs where men meet other men for sex, and where women do the same with respect to other women—and that, moreover, the places where these sexual practices happen are open to the public? If they were given their proper social visibility, they would be seen as revealing sexuality as oriented towards an inter/personal pleasure that, under certain circumstances, can be further ordered towards procreation. But under the influence of heterosexual culture, what is really only a possibility for some forms of sexual intimacy (heterosexual ones) for a very limited amount of time (fertility) and for a certain group of persons (bodies capable of coitus) is upheld as one of the primary purposes



of sexual practice. As Berlant and Warner note of heterosexual culture, it is “obnoxiously cramped.”<sup>122</sup>

### **4.3 SEXUALITY AS ORDERED TO INTER/PERSONAL PLEASURE: TOWARDS NEW UNDERSTANDINGS OF MARRIAGE AND FAMILY**

If sexuality’s *telos* is reconceptualized away from procreation, then it will also have reverberations within marriage, parenthood, and family as well, or—to conceive of it more accurately—such a reconceptualization will allow us to welcome new trends within marriage, parenthood, and family. As most historians of marriage and family maintain, one of the main reasons why marriage emerged as such a central institution was in order to establish socioeconomic ties, to pool labor, and to establish partnerships between different kin groups. And, particularly in patriarchal societies, marriages were the way to establish legitimate children and to enable succession of property to them.<sup>123</sup> The idea that marriage should be about a psychologically satisfying relationship of love between the spouses is a fairly recent innovation within marriage—only dating back roughly to the 19<sup>th</sup> century<sup>124</sup>—and it is now in the 20<sup>th</sup> and 21<sup>st</sup> centuries that we are seeing persons enter marriage not *in order to* consolidate economic resources, but rather *after* they have already consolidated them and have been living a life together as an economic unit. Indeed,

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<sup>122</sup> Berlant and Warner, “Sex in Public,” 197.

<sup>123</sup> Stephanie Coontz, *Marriage, A History: How Love Conquered Marriage* (New York: Penguin Books, 2005), 31.

<sup>124</sup> Coontz, *Marriage, A History*, 23.

as marriage has become less vital for economic survival—particularly for women, who historically have had to enter marriages in order to survive<sup>125</sup>—greater numbers of people are delaying marriage. This, for example, has happened in the United States, where the median age of first-marriage was 29.5 for men and 27.4 for women in 2016, up from 26.1 and 23.9, respectively, in 1990.<sup>126</sup> The trend is distinctly felt among millennials: in 2014, only 26 percent of millennials between the ages of 18-32 were married, compared to 37 percent in 1997 (Gen X), and 48 percent in 1980 (Baby Boomers).<sup>127</sup> Accordingly, as marriage rates have fallen, cohabitation has risen, with 18 million people cohabiting in 2017, a 27% percent increase from 2007's number of 14 million cohabiting adults.<sup>128</sup> If current projections are accurate, when today's young adults reach their mid-40's to mid-50's, 25 percent of them are likely ever to have married.<sup>129</sup>

Accordingly, household configurations have changed. For example, in 1960, 73 percent of children were living in a family with two married parents in their first marriage; today less than 46 percent are.<sup>130</sup> In fact, 26 percent of children are living

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<sup>125</sup> Coontz, *Marriage, A History*, 48-49.

<sup>126</sup> Renee Stepler, "Led by Baby Boomers, Divorce Rates Climb for America's 50+ Population," *Pew Research Center* (09 March 2017), <http://www.pewresearch.org/fact-tank/2017/03/09/led-by-baby-boomers-divorce-rates-climb-for-americas-50-population/>.

<sup>127</sup> Pew Research Center, "Millennials in Adulthood," *Pew Research Center*, <http://www.pewsocialtrends.org/2014/03/07/millennials-in-adulthood/>.

<sup>128</sup> Renee Stepler, "Number of U.S. Adults Cohabiting with a Partner Continues to Rise, Especially Among Those 50 and Older," *Pew Research Center* (06 April 2017), <http://www.pewresearch.org/fact-tank/2017/04/06/number-of-u-s-adults-cohabiting-with-a-partner-continues-to-rise-especially-among-those-50-and-older/>.

<sup>129</sup> Wendy Wang and Kim Parker, "Record Share of Americans Have Never Married," *Pew Research Center*, (24 September 2014), <http://www.pewsocialtrends.org/2014/09/24/record-share-of-americans-have-never-married/>. According to the same study, 25% of never-married Americans age 25-34 are cohabiting.

<sup>130</sup> Pew Research Center, "Parenting in America," (17 December 2015), <http://www.pewsocialtrends.org/2015/12/17/parenting-in-america/>.

with a single parent, up from 9 percent in 1960 and 22 percent in 2000.<sup>131</sup> In 2015, 40% of births occurred to women who were single or who were living with a cohabiting partner. And though today 7 percent of children are living with cohabiting parents, statisticians are predicting that 39 percent of children will have had a mother in a cohabiting relationship by age 12 and that almost half (46 percent) will experience this by the time they turn 16.<sup>132</sup> Blended families—that is, families with step-parents, step-siblings, or half-siblings—make up 16% of households, and 63 percent of women in remarriages are in blended families.<sup>133</sup> And lastly, today, 20% of the US population (or 64 million people) are living in multigenerational households defined as households in which there are two or more adult generations, or a household including grandparents and grandchildren younger than 25, under the same roof.<sup>134</sup>

Nevertheless, it remains the case that most unmarried millennials (69%) say that they would like to marry.<sup>135</sup> So, when combined with the data surrounding changing households, an increasing delay in marriages, and an increasing number of persons exiting marriage, one plausible construal of the data is that people enter marriage when they reach a certain level of security with a loving partner (and will remain in them as long as that sort of relationship is in place), but that previous associations between marriage and procreation are fading. One would expect here more tolerance for contraceptives and premarital sex, and that is what the data bear

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<sup>131</sup> Pew Research Center, "Parenting in America."

<sup>132</sup> Pew Research Center, "Parenting in America."

<sup>133</sup> Pew Research Center, "Parenting in America."

<sup>134</sup> Pew Research Center, "A Record 64 Million Americans Live in Multigenerational Households," (05 April 2018), <http://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/>.

<sup>135</sup> Pew Research Center, "Millennials in Adulthood."

out. Seventy-one percent of millennials view artificial birth control as morally acceptable; 50 percent view cohabitation without intention of marriage to be acceptable; 40 percent believe having children out of wedlock is acceptable; and 37 percent see “hooking up”—that is, sex between two adults who have no intention of establishing a relationship—as acceptable.<sup>136</sup>

Nor is this view restricted to non-Christians. For example, in 2015, ahead of Pope Francis’s highly acclaimed visit to the United States, a Pew Research poll found that 84% of American Catholics maintained the view that it was acceptable for unmarried parents to raise children, and 66% of American Catholics believed that it is acceptable for children to be raised by same-sex couples. Similarly defiant, 88% percent of American Catholics believed it is acceptable that a husband and wife choose not to have children; 85% of American Catholics approved of men and women cohabiting, and 70% approved of cohabitation by same-sex couples.<sup>137</sup>

It is, then, indeed the case that society is changing, but if one removes the lenses that norm notions of marriage and family to their heterosexist ideals, and if one—as I have argued above—notes that heterosexual culture’s view of the social

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<sup>136</sup> Shifts occur when one takes into account college-educated millennials. In their case, 58% approve of cohabitation without intending to marry, and 46% approve of hooking up. For all of these data, Robert P. Jones and Daniel Cox, “How Race and Religion Shape Millennial Attitudes on Sexuality and Reproductive Health.” *Public Religion Research Institute* (27 March 2015), <https://www.prri.org/research/survey-how-race-and-religion-shape-millennial-attitudes-on-sexuality-and-reproductive-health/>.

<sup>137</sup> This is just the beginning. Researchers also looked at the attitudes that American Catholics had about sin. A majority of American Catholics (66%) do not believe that it is a sin to use artificial contraceptives, and a majority (54%) do not believe it is sinful to live with a romantic partner outside marriage. A near majority (49%) believe that it is not a sin to remarry after divorce without annulment. Majorities of American Catholics also believe that the Roman Catholic Church should permit the use of birth control (76%); should allow Catholics who are cohabiting to receive communion (61%); and should allow Catholic who are divorced and remarried to receive communion (62%). For all of these data, see Pew Research Center, “U.S. Catholics Open to Non-Traditional Families” (02 September 2015), <http://www.pewforum.org/2015/09/02/u-s-catholics-open-to-non-traditional-families/>.

significance of sexuality and procreation is also controlled by a similar heterosexist ideal, then one can recognize that it is indeed a heteronormativity that accounts for the putative intrinsic connection among all of the goods of sexuality, marriage, procreation, and the family. What these data are showing—and as Gudorf called for in 1994—is that people see the norms of responsible sexuality and the norms of responsible parenthood/reproduction as separate ethical problems.

We will also need to come to a different normative vision of ‘family’ in order to accommodate the understanding that though sexuality is “ordered to” inter/personal pleasure, it can also secondarily be ordered to procreation. Enacting such a vision will mean valuing, defending, and promoting societal support for all household arrangements, regardless of whether the partners are married, and regardless of the number of adults living in a romantic arrangement with one another. Legal scholar Nancy Polikoff has named this the “Valuing All Families” approach, which has, as a goal, not distributing benefits to household relationships based on marriage, but rather extending such benefits to all families currently excluded—families which include “unmarried couples of any sexual orientation, single-parent households, extended-family units, and any constellation of individuals who form relationships of emotional and economic interdependence that do not conform to the one-size fits-all marriage model.”<sup>138</sup> Doing this will actually redound to the benefit of any dependents or children living in any arrangements, because—as Polikoff also shows citing the sociologist Judith Stacey—“Most research indicates that a stable, intimate relationship with one responsible,

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<sup>138</sup> Nancy D. Polikoff, *Beyond (Straight and Gay) Marriage: Valuing All Families Under the Law* (Boston: Beacon Press, 2008), 2.

nurturing adult is a child's surest track lane to becoming one too. In short, the research scale tips handily towards those who stress the quality of family relationships over their form."<sup>139</sup> And which features qualify as desired qualities? "Inter alia," Polifoff recounts, "parental love, warmth, involvement and consistency; pre- and post natal care; adequate nutrition and health care'; whether the child was planned or wanted; the mother's age at conception; parental socioeconomic resources; quality of neighborhood and schools; influence of peers and siblings; and the child's own abilities, temperament, attitudes, and psychological resources."<sup>140</sup> Indeed, optimal outcomes do not depend on the genders of the parents, nor on the presence of exactly two parents (biological or not).<sup>141</sup> Instead, most important for promoting just outcomes for children would be to devote more *public* resources to "improving employment, education, and mental health, and to decreasing substance abuse, domestic violence, and rates of incarceration."<sup>142</sup> This is one proposal for what it means to "defend family values" in a world where we differentiate between sexuality and procreation.

Even if the foregoing is true, on what grounds do we stand to assert that such a change—that is, viewing sexuality as ordered to inter/personal pleasure alone—is morally *good*? The argument for such a view represents case study in a method that seeks to draw from queer theory and the natural law in the production of a queer natural law theory. To start, we have borrowed the premier critical maneuver from

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<sup>139</sup> Polikoff, *Beyond (Straight and Gay) Marriage*, 68, citing Judith Stacey, "Scents, Scholars, and Stigma: The Revisionist Campaign for Family Values," *Social Text* 40 (Autumn 1994).

<sup>140</sup> Polikoff, *Beyond (Straight and Gay) Marriage*, 73, citing Brief for Andrew E. Cherlin, et. al as amici curiae supporting appellees, *Baehr. V. Miike*, No. 91-1394-05, 1996 WL 694235 (Hawaii Cir. Ct. Dec. 3, 1996).

<sup>141</sup> Polikoff, *Beyond (Straight and Gay) Marriage*, 74-75.

<sup>142</sup> Polifoff, *Beyond (Straight and Gay) Marriage*, 75.

queer theory, which is its critique of normative concepts by taking notice of ways of life that have to be excluded from view in order for those normative conceptions to take shape in the first place. This involved unearthing the heteronormativity both of the connaturality argument as well as the heteronormativity behind assertions of intrinsic connection between the goods of sexuality and procreation (and, by extension, marriage and family). But unearthing heteronormativity is not the same as making an evaluative judgment that heteronormativity is wrong. For that an ethical theory is required, and it is at this point that the natural law begins to make its contribution.

As stated above, queer natural law is deeply indebted to feminist deployments of the natural law, particularly insofar as the latter have adopted the notion of equality as a normative value—a value which is most nearly related to the virtue of justice. Whereas with respect to gender, the hierarchical inequality to be overcome exists between structures and/or concepts that unjustly privilege men over women or allow men to dominate women, with respect to sexuality the hierarchical inequality to be overcome is with respect to structures and/or concepts that unjustly privilege sexually reproductive intimacies over sexually nonreproductive intimacies. Combatting heteronormativity, then, becomes just as imperative as fighting patriarchy, and following the initial impulses of the revisionists, this queer natural law account appropriated revisionist critiques of magisterial teaching related to sexuality and gender that reflected the presence of patriarchy and heterosexism. This was the mission of the previous chapter. In this current chapter, our queer natural law account went further in order to weed out

the heteronormativity lurking in revisionist accounts of sexuality ostensibly held out to be inclusive. The argument here, in fine, was that any account in which the presence of a heterosexist ideal could be detected was, in fact, not a valid solution for equality, but was, rather an extension of the connaturality argument that maintains the heteronormative distinction between sexually reproductive and sexually nonreproductive intimacies. Only an equality that gets rid of such a distinction can be said properly to be a deployment of equality that truly makes a preferential option for the poor and vulnerable within our normative structures.

We can go further than linking the fight against heteronormativity to the fight for justice. Once again, the natural law comes into play. For, in the natural law tradition descending from Thomas, justice is not merely a state of affairs, it is also a virtue.<sup>143</sup> To adopt a worldview that dismantles heteronormativity is not merely a good thing to do for others (though that it is), it is also something that helps perfect the virtue of justice within oneself. To the extent, then, that one adopts the disposition to dismantle heteronormative structures, it is to that extent that one becomes a more virtuous person; in other words, it is to that extent that one can begin to make judgments that are in accord with virtue. One category of judgments—hearkening back to the second chapter of this work—has to do with determining candidate concepts with universal extension, like that of human nature and the inclinations thereof. Through the work of this current chapter, we’ve seen that the assertion of an intrinsic connection between sexuality and procreation is indeed a heterosexist formulation. Therefore, proposing such a formulation as a

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<sup>143</sup> Aquinas, *ST* II-II 58.3.



*telos* to sexuality is inappropriate because heterosexist concepts fail criterion (1) with respect to being a viable candidate for a judgment about human nature: in view of its heteronormativity, it fails to be critically capacious. In accord with the natural law methodology of revision—now, this time, using the critical tools bequeathed to it by queer theory—we have corrected this problem by proposing a teleological definition of sexuality that nevertheless descends from the tradition—the unitive dimension, transformed by the revisionists to include the good of mutual sexual pleasure—while dropping the heterosexist dimension: the procreative dimension. In a phrase, we can propose this understanding of sexuality as oriented towards inter/personal pleasure alone as morally good, then, precisely because it gives us better insight into human nature, comprehensively considered, which is exactly what the natural law is supposed to provide insight into.

#### **4.4 EXCURSUS: THE CONTOURS OF A SEXUAL ETHICS OF INTER/PERSONAL PLEASURE**

Of course, to maintain that, at a teleological level, sexuality is ordered to inter/personal pleasure is not simply to call for a hedonist ethics and be done with it. What is then called for—but which goes beyond the scope of the current project—is a sexual ethics of inter/personal pleasure. Nevertheless, at this point, a few words are in order to see what the contours of what such an ethic would look like.

First, such a call is, once again, not theologically unprecedented. Christine Gudorf is one of the first Catholic theologians to call for a separation between an ethics of sex and an ethics of reproduction. She also calls for a substantive appreciation of family pluralism in Christian theology. “No one marital or family pattern is normative,” she writes. “Families do not need to include children. Families need not include blood kin. Families need not be based on marriage. Families can be collections of persons who are committed to the physical, moral, spiritual social, and intellectual development of other members of the collective unit in an on-going way.”<sup>144</sup> Sounding a similar call, Susannah Cornwall in her new book *Un/Familiar Theology: Reconceiving Sex, Reproduction, and Generativity*, has called for a newer appreciation of the role of human creativity in the ongoing development of institutions like marriage and the family. There she draws our attention to how the unfamiliarity of newer meanings to marriage and the family are not *neos*, in the sense of novel, but are *kainos*—that is, the Greek word translated as ‘new’ in the sense of putting the “new wine” in the new wineskins (Matt. 9:17), or the new wine of the kingdom (Matt. 26:28); or, indeed, the new heavens and the new earth (2 Pet. 3:13). “*Kainos*-newness is newness in quality or opportunity,” Cornwall explains, “not a complete rupture with past incarnations.”<sup>145</sup> Finally, less radically, but nonetheless still significantly in the history of Catholic moral theology, Margaret Farley’s *Just Love* presented a framework for sexuality which effectively decentralized the prominence of procreation by reconfiguring it as the more general

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<sup>144</sup> Gudorf, *Body, Sex, and Pleasure*, 78-80, at 79.

<sup>145</sup> Susannah Cornwall, *Un/Familiar Theology: Reconceiving Sex, Reproduction, and Generativity* (New York: Bloomsbury, 2017), 155.

criterion of “fruitfulness,” that is, the ability for a committed couple to seek to benefit others beyond the bounds of their intimate romantic relationship.<sup>146</sup>

Theologians have also called for newer theologies centered around desire. Rethinking sexuality from the perspective of nonheterosexuals, former archbishop of Canterbury and theologian Rowan Williams presses Christians to consider that “[s]ame-sex love annoyingly poses the question of what the meaning of desire is in itself, not considered as instrumental to some other process (the peopling of the world); and this immediately brings us up against the possibility not only of pain and humiliation without any clear payoff, but—just as worryingly—of non-functional joy; or, to put it less starkly, joy whose material production is an embodied person aware of grace.”<sup>147</sup> And more recently, Patricia Beattie Jung has called for a new eschatology of desire that places our erotic attraction for each other and for God once again in a place of prominence in our theological frameworks.<sup>148</sup> Such a call dovetails nicely with what queer theologian Mark Jordan has called for in Christian theology—namely, redeeming the value of pleasure in our theologies rather than being suspicious of it.<sup>149</sup>

Second, to call for a sexual ethics of inter/personal pleasure specifically within a queer natural law framework is to invite reflection on what would constitute virtuous development of sexual practice, both with oneself and with others. So rather than foreclosing a conversation about how to integrate chastity

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<sup>146</sup> Farley, *Just Love*, 226-228.

<sup>147</sup> Rowan Williams, “The Body’s Grace” (1989), <https://www.anglican.ca/wp-content/uploads/2010/10/the-bodys-grace.pdf>.

<sup>148</sup> Patricia Beattie Jung, *Sex on Earth as it is in Heaven: A Christian Eschatology of Desire* (New York: SUNY Press, 2017).

<sup>149</sup> Mark Jordan, *The Ethics of Sex* (Malden, MA: Blackwell Publishing, 2002), 155-175.

and justice into one's sexual development, a sexual ethics of inter/personal pleasure can creatively engage them. This will involve creative retrieval of insights coming from scripture, from tradition, from other revisionist works, and—of course—from the actual lives that people, particularly *queer people*, live in order to establish patterns of moral relationship. In this way, our sexual theologies can catch up with our ethical sexual praxes.

Last, calling for a sexual ethics of inter/personal pleasure does not entail the denial of all connections between sexuality and procreation. Such a position would obviously be absurd. Instead, what this account calls for is to think about what an ethics of reproduction would look like without heteronormative assumptions lying in the background about what particular shapes sexual practice, marriage, and family life are to take. Though there will be many facets to such a conversation, it will, at the very least, render greater visibility to the queer bodies which, while they not be in relationships where their sexual acts are sexually reproductive, nevertheless are capable of reproduction. What would justice look like in their case?

Even less does an ethics of inter/personal pleasure entail an individualism about sexuality that denies a social dimension to sexuality. As the material from Berlant and Warner hopefully made clear, the choice is not between a privatized individualist notion of sexuality that denies a social dimension, on the one hand, and, on the other, a “social” or “communal” sexual ethics in which the individual's sexual life is helpfully integrated.<sup>150</sup> Instead, the choice is between two types of “social” accounts of sexuality: one that allow heteronormative ways of construing

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<sup>150</sup> This dichotomy, for example, is put forward by Cahill in her *Sex, Gender, and Christian Ethics*. Indeed, it is one of the motivating questions in the text. See, for example, pp. 108-120.

the relationship between sexuality, marriage, and family to be visible, and another which imagines new ways of construing those relations. In either case, sexuality will have a social meaning, but, on a queer account, procreation will not be its prominent social characterization.

## **5.0 CONCLUSION—BEYOND HOMOSEXUALITY: THE PROMISE OF QUEER NATURAL LAW**

### **5.1 WHY QUEER NATURAL LAW?**

This project began with a question that asked whether it was possible to make an ethics out of a theology inspired both by the Catholic moral tradition and by the critical impulses of queer theory. This dissertation was the beginning of a positive answer to that question.

The ethical theory that I chose for this project was the natural law virtue ethical theory inspired by Thomas Aquinas that has been recovered and rearticulated by prominent American revisionist theologians, many of whom I have interacted with in the pages above: Jean Porter, Stephen Pope, James Keenan, Cristina Traina, Todd Salzman, Michael Lawler and—both critically and appreciatively—Lisa Sowle Cahill. But why choose the natural law as the ethical framework? As Cahill writes in her most recent recapitulation of the natural law, the natural law tradition supplies “a view of human existence and of morality as

purposeful (teleological); a conviction that basic moral values are “objective” and shared among culturally different human beings (moral realism); a more epistemology of inductive, experience-based, critical practical reasoning (a connection between the “is” and the “ought”), in which contingent contexts are highly influential in discerning priorities among goods and concrete choices about them.”<sup>1</sup> Or, placed into my own words, the reason why the natural law stands as a viable ethical theory in our current day is that its fundamental wager is that the best way to arrive at answers about what we *should* do must be shaped by a critical investigation of who we are, comprehensively considered. It is an ethical theory with a fundamental commitment to looking at the human condition and—only *after* such looking—then venturing to articulate norms by which we structure our common life.

What makes queer theory in particular a suitable partner in such a project of critical investigation of human existence, comprehensively considered, is that queer theory’s fundamental drive is to show two things in particular: first, how the structure of our common life has been stifled through a commitment to heteronormative ideals that are problematic not only for queer persons but also for persons who would, in many contexts, identify as heterosexual; and second, it strives to show which sort of worlds are possible when we decenter such heteronormativity and allow ourselves to think of a common life that draws normative significance from the lives and loves that are marginalized within what Lauren Berlant and Michael Warner call “heterosexual culture.” Contrary to various

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<sup>1</sup> Lisa Sowle Cahill, *Global Justice, Christology, and Christian Ethics* (New York: Cambridge University Press, 2013), 250-251.

assertions and prejudices about queer theory that it is “anti-normative”—a charge recently levied against the field in a 2015 issue of *Differences*<sup>2</sup>—queer theory’s impulse for a life beyond heteronormativity is properly speaking a view of the *good life*. Indeed, as Jack Halberstam (pronouns: they, them, their) points out in their critical review of the volume, the most prominent queer theorists writing in the United States today have all thought deeply about the relations between “nationalism and norms, sexuality and terror, identity and repetition, race and disidentification, sexuality and death, pessimism and optimism, negativity and utopia, recognition and failure.”<sup>3</sup> Though these writers—among which are Halberstam, Lauren Berlant, Lee Edelman, José Muñoz, Roderick Ferguson—are not united by any singular ethical theory, the idea that their projects are “anti-normative” reflects the desire to construct and dismantle what Halberstam regards as a “straw queer.”<sup>4</sup> Indeed, as Berlant and Warner pointed out in their 1998 essay “Sex in Public:”

To be against heteronormativity is not to be against norms. To be against the processes of normalization is not to be afraid of ordinariness...Nor is it to decide that sentimental identifications with family and children are waste or garbage, or to make people into waste or garbage.<sup>5</sup>

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<sup>2</sup> Robyn Wiegman and Elizabeth A Wilson, eds., “Queer Theory Without Antinormativity,” *Differences* 26.1 (May 2015).

<sup>3</sup> Jack Halberstam, “Straight Eye for the Queer Theorist: A Review of “Queer Theory Without Normativity,” <https://bullybloggers.wordpress.com/2015/09/12/straight-eye-for-the-queer-theorist-a-review-of-queer-theory-without-antinormativity-by-jack-halberstam/>.

<sup>4</sup> Halberstam, “Straight Eye for the Queer Theorist.”

<sup>5</sup> Lauren Berlant and Michael Warner, “Sex in Public,” in Warner, *Publics and Counterpublics* (New York: Zone Books, 2005), 187-208, at 197.



As I argued in the fourth chapter, the place where such a queer impulse makes contact with the natural law tradition is with the virtue of justice through a substantive notion of the value of equality—a notion inspired, once again, by the natural law theory articulated by Lisa Cahill. As queer theory makes critical evaluations of the world based on those whose ways of life are most marginalized within it, queer theory gives to the natural law tradition a more careful way to go about making comprehensive assessments of human nature. In a word, it applies the aspiration of *non-exclusivity* in determining an account of human nature, comprehensively considered. (This is in contrast to the value of *inclusivity*, which can emphasize a normative framework based on assimilation into the dominant way of living.) As natural law theory sees the morally good life as the one that contributes to the flourishing of all persons (and indeed, beyond persons to the health of the planet), natural law provides queer theory with an ethical scaffold upon which to make claims about the good life in a systematic way that can stave off attacks of question-begging in ethical argument. Queer natural law is the product of both of these helpful approaches to thinking critically about the good life.

## **5.2 WHY SEXUALITY? A REVIEW OF THE ARGUMENT**

With the plausibility of a queer natural law as an ethical framework secured—the task of the first chapter—it was necessary to clear two major hurdles which would build out the balance of the dissertation’s argument. The first hurdle to overcome

featured the burden of generating an account of human nature that would be able to serve not only as a foundation for an anthropology with universal normative significance, but that would also be able to overcome the objections put to it by postmodern and by queer thinkers. This was the argument of the second chapter. There I argued two things: one, that objections put to universal concepts like 'human nature' were not successful because thinking ethically entails thinking universally at either a logical or pragmatic level, and so it is better to think of postmodern and queer objections to concepts of human nature as *criteria* for thinking about what a potentially reasonable statement about human nature would be; and two, that an examination of aspects of Thomas's anthropology can provide us with an account from which contemporary anthropological explorations can build. With such an account in hand, we now had the anthropological basis upon which a queer natural law could proceed.

From here, we needed a test question—something to test the sturdiness of this anthropological frame. It is for this reason that I chose the topic of sexuality in order to ask the question: *what would it mean to talk about sexuality from a queer natural law perspective?* The prospect of doing so would mean combining the queer natural law value of non-exclusivity with the natural law method of using scripture, tradition, reason/scientific investigation, and human experience as sources for generating norms. This part of the argument unfolded in chapters three and four. In chapter three, we critically investigated one of the most prominent schools of natural law thought (if not also the one that comes to mind most frequently when people think of the natural law): the natural law tradition as developed by the popes

and by various Vatican offices since the late-19<sup>th</sup> century. This tradition we were able to diagnose as natural law authoritarianism in view of its tendency to conceive the natural law primarily as propositional—indeed, as one might expect a legal text to be—and in view of its tendency to emphasize conformity to the magisterium’s understanding of the natural law as the sole rightful judgment of conscience. This view was judged to be heterosexist at all three levels of heteronormativity: heteronormativity understood as compulsory heterosexuality; heteronormativity understood as a structural phenomenon; and heteronormativity understood as a symbolic phenomenon. But, in order to get to this diagnosis, we had to recognize how much of this labor had been done by revisionist natural lawyers and theologians, whose work challenged the magisterium’s conclusions on sexuality not only on the grounds of gender justice, but also on Thomistic grounds and on the grounds of a theological methodology thoroughly imbued with historical consciousness.

Yet—as the argument of chapter four revealed—the theology of sexuality put forward by the revisionists was not exempt from a critique as heterosexist. The argument here was that, despite the genuine desire among certain natural lawyers to dismantle heterosexism within Christian theology, their arguments were deficient in two ways that ultimately reinstalled a heterosexist ideal. As we saw, the first way the revisionists reinstalled the heterosexist ideal was through their use of the connaturality argument, which ultimately upheld as the most morally desirable conception of sexuality one that is lived by the monogamous, heterosexual, sexually reproductive couple. The second way revisionists reinstalled the heterosexist ideal

was through the assertion of an intrinsic connection between sexuality and procreation, where the latter is understood as bearing a social significance of perpetuating the species in society. This latter ideal was understood to be heterosexist insofar as the ideal was, once again, derived from a narrow conception of sexual practice that is generally lived only by monogamous, heterosexual, sexually reproductive couples.

What, then, is sexuality conceived without heteronormativity on a queer natural law framework? Basing our response within the Catholic tradition's understanding of the purpose of sexuality as both ordered towards the interpersonal or "unitive" dimension of sexuality and towards the procreation, I argued that the only way to realize the virtue of justice understood as equality with respect to sexuality is to no longer see procreation as one of the primary ends of sexuality, but rather, to see procreation as a secondary but non-intrinsic end in light of its primary end of inter/personal pleasure in one's bodily existence. As I noted, reconceiving of the teleology of sexuality in this way does not eviscerate the social significance of sexuality, but, rather, it expands its social significance beyond the confines of sexuality conceived from within a heteronormative view of sexuality and society. More than this, such a conclusion shows queer natural law's affinity with queer theology more broadly, the latter of which enacts a liberationist paradigm for conceiving of theological ethics using as its normative lens the lives and experiences of those marginalized on the basis of sex and gender identity.

### 5.3 WHERE TO GO? HORIZONS FOR A QUEER NATURAL LAW

As Halberstam noted in their observation about the scope of queer theory's normative reach, the framework of queer theory not only encompasses critical thinking about sexuality, but thinks about how the superstructure of heteronormative thinking has given intelligibility to other ideas that might not initially be thought of as connected to heterosexuality. In a similar spirit, I want to suggest two other directions for a queer natural law to explore in subsequent projects: gender identity and the common good.

Within queer theory, it is very difficult to separate questions of gender identity from questions of sexuality, and this observation becomes all the more irresistible to the extent that one takes seriously the existence of persons whose gender identities confound the gender-and-sex binaries we've constructed for making sense of our bodies. One question that beckons for an answer then, is how to think ethically from the normative value of equality when we think about the lives led by transgender and intersex persons in our theological frameworks? Work has already been done on this score, both by queer theorists like Jack Halberstam and by queer non-Catholic theologians like Susannah Cornwall.<sup>6</sup> The Catholic conversation, however, has tended to lag behind. Revisionists, as a group, tend to think about sex-identity as more or less culturally *unconditioned*, while thinking about gender as

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<sup>6</sup> See, for example, Judith Halberstam, *In a Queer Time and Place: Transgender Bodies, Subcultural Lives* (New York: New York University Press, 2006), and Susannah Cornwall, *Sex and Uncertainty in the Body of Christ* (New York: Routledge, 2010).

culturally *conditioned*.<sup>7</sup> The challenge that queer theorists, particularly Judith Butler, have posed to this framework is to think of sex itself as constructed—which does *not* entail a denial of the materiality of the body (which would be absurd), but *does* entail a denial of the idea the materiality of the body can be mediated to us without social categories.<sup>8</sup> What signification our bodies give depends on how we read the “signs” of our bodies, something that is clearly the case with intersex persons for whom the dividing line between ‘male’ and ‘female’ is ambiguous. Elsewhere I have begun to think about what it would mean to think beyond the gender-and-sex binary and to let the lives that transgender persons lead help us think through sex and gender development more broadly within the natural law tradition, but a much fuller account of gender identity needs to be developed within this natural law idiom in order to be adequate.<sup>9</sup>

Last is the question of what constitutes the common good in a queer natural law ethical perspective. What such considerations invite is a critical formulation of the intersection of queer politics and the natural law, and it asks about which sorts of conditions best realize justice at a societal level. In Catholic natural law conversations, to ask such a question is to bring to the fore questions about what constitutes the common good—famously defined in *Gaudium et Spes* as “the sum of those conditions of social life which allow social groups and their individual

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<sup>7</sup> For this view, consult works written particularly by feminist natural lawyers. See, for example, Lisa Cahill’s *Sex, Gender, and Christian Ethics* (New York: Cambridge University Press, 1996), 82ff, and her recent *A Theology and Praxis of Gender Equality* (Bengaluru, India: Dharmaran Publications, 2018), 4-6. This view is also expressed in Cristina Traina’s major work on gender *Feminist Ethics and the Natural Law: The End of the Anathemas* (Washington DC: Georgetown University Press, 1999), 1-7, et passim.

<sup>8</sup> Judith Butler, *Bodies the Matter: On the Discursive Limits of Sex* (New York: Routledge, 1993).

<sup>9</sup> Craig A. Ford, Jr. “Transgender Bodies, Catholic Schools, and a Queer Natural Law Theology of Exploration,” *Journal of Moral Theology* 18.1 (2018): 70-98.

members relatively thorough and ready access to their own fulfillment”<sup>10</sup>—and about how to realize the goals of Catholic Social Teaching. In queer conversations, the question of “the political” has been particularly lively. There are, for example, a variety of questions about what sort of shape queer activism should take—for example, does “queerness” support of a politics of marriage equality, or political initiatives to be included within the United States army? But equally, there have been conversations at a philosophical level. The most famous—if not also the most controversial—intervention has been and still remains Lee Edelman’s *No Future*, in which he argued that the political significance of queer life is to be opposed to the politics of reproductive futurism, a politics that conscripts queer bodies into supporting what we’ve broadly identified as heterosexual culture. Instead, according to Edelman, queer bodies always represent (and moreover, *should* strive to represent) that which does *not* invest in heterosexual culture, that which, to use Edelman’s words, imagines the value of queerness in “its resistance to a Symbolic reality that only ever invests us as subjects insofar as we invest ourselves in it, clinging to its governing fictions, its persistent sublimations, as reality itself.”<sup>11</sup>

Edelman has received a variety of critical responses: his views have been criticized both on the basis of race,<sup>12</sup> on the basis of gender,<sup>13</sup> and on theo-political

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<sup>10</sup> Vatican II, *Gaudium et Spes* (07 December 1965), no. 26.

<sup>11</sup> Lee Edelman, *No Future: Queer Theory and the Death Drive* (Durham, NC: Duke University Press, 2004). For a precis of his argument, see his essay “Ever After: History, Negativity, and the Social,” *South Atlantic Quarterly* 106.3 (Summer 2007): 469-476.

<sup>12</sup> José Esteban Muñoz, *Cruising Utopia: The Then and There of Queer Futurity* (New York: New York University Press, 2009), 91-94.

<sup>13</sup> Judith Halberstam, *The Queer Art of Failure* (Durham, NC: Duke University Press, 2011), 106-110.

grounds,<sup>14</sup> but the common thread running through them all is that Edelman's framework does not sufficiently allow for how queerness, as lived, is indeed a *political* project that is nevertheless, in some way, authentically transformational. Indeed, one queer theorist who has thought deeply about conceiving of queerness as a transformation political project without giving in to assimilationist thinking is Jack Halberstam.<sup>15</sup> A queer natural law account might think with Halberstam at this intersection, at the various tensions that exert themselves when thinking through the value of non-exclusivity while nevertheless trying to articulate a general concept of justice that allows for the flourishing of all.

Other possible intersections remain. For example, queer theologians continue to ask about the ramifications of a different anthropology on thinking about the Christian tradition in general.<sup>16</sup> Linn Marie Tonstad, for her part, has begun to think at the intersections of queer theory, queer theology, and post-industrial capitalism.<sup>17</sup> Other queer thinkers write at the intersection of queer theology and eco-theology,<sup>18</sup> and still other queer theologians write in the area of

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<sup>14</sup> Susannah Cornwall, *Un/Familiar Theology: Reconceiving Sex, Reproduction, and Generativity* (New York: Bloomsbury, 2017), 136-137.

<sup>15</sup> See Judith Halberstam's *The Queer Art of Failure*, and Jack Halberstam, *Gaga Feminism: Sex, Gender, and the End of Normal* (Boston: Beacon Press, 2012).

<sup>16</sup> See, for example, Andy Buechel's *That We Might Become God: The Queerness of Creedal Christianity* (Eugene, OR: Cascade Books, 2015), or Laurel Schneider's "Promiscuous Incarnation," in *The Embrace of Eros: Bodies, Desires, and Sexuality in Christianity*, ed., Margaret D. Kamitsuka (Minneapolis: Fortress Press, 2010), 231-246.

<sup>17</sup> Linn Marie Tonstad, "The Entrepreneur and the Big Drag: Risky Affirmation in Capital's Time," in *Sexual Disorientations: Queer Temporalities, Affects, Theologies* (New York: Fordham University Press, 2018), 218-239.

<sup>18</sup> Jacob J. Erickson, "Theophanic Materiality," in *Entangled Worlds: Religion, Science, and New Materialisms*, ed., Catherin Keller and Mary-Jane Rubenstein (New York: Fordham University Press, 2017), 203-220.



ethics in registers that do not invoke the natural law.<sup>19</sup> But perhaps the most important element about which to remark when speaking of queer theology is the observation that one does not know exactly where it will lead. The legacy of queer theology that descends from Marcella Althaus-Reid is that queer theology “has its own deconstructive forces, its own instabilities and imprecisions which always create new ways of understanding. This has made theology something still worth the effort, a path of permanent revelation and rediscovery of the engagement between the sensual and divine in our lives.”<sup>20</sup> And Mark Jordan, in his characteristically moving style, writes of queer theology that “the hope is that we will be able to make pedagogical structures, text-schools, scripts for ethical performance, that enable someone to hear more than what we know to say.”<sup>21</sup> Whatever comes of queer natural law, the hope is that it will share in that spirit, allowing the ethical values of equality and non-exclusivity to permit more voices to tell us what it means to be the human beings God has created us to be.

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<sup>19</sup> Robyn Henderson-Espinoza, “Perversion, Ethics, and Creative Disregard,” in *Indecent Theologians: Marcella Althaus-Reid and the Next Generation of Postcolonial Activists*, ed., Nicholas Panotto (Alameda, CA: Borderless Press, 2016), 213-239.

<sup>20</sup> Marcella Althaus-Reid, *Indecent Theology: Theological Perversions in Sex, Gender, and Politics* (New York: Routledge, 2000), 148-149.

<sup>21</sup> Mark Jordan, “In Search of Queer Theology Lost,” in *Sexual Disorientations*, 296-309, at 306.

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