

# GAY MARRIAGE, PUBLIC REASON, AND THE COMMON GOOD

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“Public reason as it is currently configured in numerous court decisions, acts of legislation, and in political debate generally, in its blindness to communities as natural and integral wholes, effectively conceives *all* marriages as essentially ‘gay.’”



## I. INTRODUCTION

An essay linking “gay marriage” and the “common good” via “public reason” invites a predictable pattern of argument: discussions of how marriage has historically contributed to that common good, how the civil recognition of gay unions might challenge this contribution, and how we can prove it within the ambit of secular public discourse, often with an appeal to empirical or statistical evidence of some kind.

That this pattern might be anticipated is understandable. For those of us who think the very meaning of marriage requires that it be between a man and a woman, the evidence and the weight of these sorts of arguments seem almost overwhelm-

ing. From ancient times and in all cultures, marriage's integral relationship with childbearing has made its relevance to the common good obvious. Indeed, refusing marriage, and therefore legitimate children, has been at times considered a kind of crime against society, as can be seen clearly in ancient responses to the early Church's promotion of virginity or celibacy as possible human vocations.<sup>1</sup> Represented in this ancient outlook is a forward-looking stance. The generations and their ethical formation matter, because the city as a whole matters.

Similar patterns have also characterized Christian thought, although the future that counts most is now eschatological. The Gospel and the tradition of the Church open this future to the *civitas Dei*. This shift is of course fundamental. Certainly the person is more than his or her familial and civic relations. Creation *ex nihilo* means that God is both radically transcendent and immanent, that he is, as Augustine put it, closer to us than we are to ourselves. The new family and the new city take absolute precedence, as the advent of consecrated virginity testifies. Indeed, from this perspective, an ambiguity in marital and family life is brought forward: if sexual generation brings new life, it also brings death by communicating original sin. Nevertheless, if God precedes all human relations, he also underlies and supports them. For this reason, human relations are a "real symbol" of personal relations with God. Another implication is this: God's relationship with humans does not occur as billions of parallel relations with individual persons, but only in the form of a communion of persons, both "vertically" and "horizontally." Nowhere in created reality is this astonishing truth made more visible than in marriage and the family that is its normal fruit. And this is precisely because in marriage and the family the communion of persons can never be reduced to legal, moral, or chosen commitments, however important these are, but is a set of natural relations, visibly inscribed in the beings of the spouses, their children, and other relatives.

So in taking family "down a notch," the effect of Christianity—perhaps paradoxically—has been in another sense to

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1. Cf. Peter Brown, *The Body and Society: Men, Women, and Sexual Renunciation in Early Christianity*, rev. ed. (New York: Columbia University Press, 2008).

radically deepen its metaphysical weight and magnify the importance of its role. One expression of this deepening occurs in John Paul II's *Letter to Families*, where the new saint characterizes marriage's origin and mission as a progression from the Trinitarian structure of marital communion and the family, through what he calls the "genealogy of the person" (that is to say, the source of all personal generation in the Father), through "responsible parenthood," to the task of forming a "civilization of love."<sup>2</sup> As with the ancients, the task remains giving birth, nurturing, and formation for the "city," but now even this civic responsibility bears within itself all of the infinite weight of humanity's ecclesial and eschatological destiny.

It is precisely these perennial truths about marriage's meaning and purpose for the civil order that "gay marriage" seems to turn on their heads. As a legal and cultural development it follows a logic that would entirely privatize marriage. It seems to declare that civil marriage is simply a creature of the state, rather than the codification of a natural and sacramental relationship inscribed already in humanity's articulation into male and female. In assuming that sexual desire can be just as reasonably directed to one's own sex as to the other, it thereby suggests that the sexual correlation of man and woman is of only material importance, perhaps only an artifact of evolutionary biology of little personal significance. It correlates with broader cultural assumptions that sexuality and therefore marriage are not intrinsically ordained or even necessarily related to childbearing and rearing, but that children are a kind of option or lifestyle choice for adults.<sup>3</sup> In doing so, it seems to assume that the survival of society over time is a happy chance or by-product of these lifestyle choices, similar to a beneficial externality in the marketplace.<sup>4</sup> It also suggests—based on these biologistic reductions—that when

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2. John Paul II, *Letter to Families*, 6–14.

3. This more general problem is highlighted in the recently released *Instrumentum laboris* (Third Extraordinary General Assembly: The Pastoral Challenges of the Family in the Context of Evangelization) (Vatican City, 2014), published in advance of the upcoming Synod on marriage and the family.

4. See, for example, Richard A. Posner's *Sex and Reason* (Cambridge, MA: Harvard University Press, 1994), for an interpretation of sexuality in purely economic and utilitarian terms.

there *are* children present in a household, having both a mother and a father is not an especially important consideration.<sup>5</sup> In this way, it would seem implicitly to slight the significance of fundamental human realities, such as fatherhood, motherhood, and even childhood itself, as well as being conceived in a bodily act of love, being carried in a womb, being born, being nursed.

Naturally, our first reaction is to try to rebut the disconnection between marriage and the child head on. We try to focus attention on the perennial and seemingly obvious relationship between marriage and the bearing of children, and we recall attention to the interest of society in stabilizing and promoting the community between mothers, fathers and the children they bear together. Unfortunately, however compelling these rebuttals may seem to many of us, they have already been found wanting, and at least in the American context, *even irrational* from the standpoint of public debate.<sup>6</sup> It seems important therefore to ask why these very straightforward arguments have been such a stunning failure over the last decade and more.

The discussion of this essay approaches the topic from what I hope is a new direction. Rather than ask how gay marriage might affect the common good, it will instead question our assumptions about what constitutes a common good and how those assumptions might give rise to a form of both public reason and sexuality whose clearest expression in fact occurs in “gay marriage.” In a word, our mission here is, at least in the

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5. Pope Francis has called attention specifically to the problematic features of this tendency, reminding of the importance of having a mother and a father and reaffirming the teaching that children have the right to them. See his “Address to Members of the International Catholic Child Bureau (BICE)” (11 April 2014), cited in *Instrumentum laboris*.

6. E.g. *Goodridge v. Department of Public Health*, 798 N.E.2d 941 (Mass. 2003), overturning the state marriage law limiting marriage to the man-woman couple and *Perry v. Schwarzenegger*, 721 F. Supp. 2d 921 (2010), invalidating the referendum vote in favor of Proposition 8, which had defined marriage as between a man and a woman. Both of these courts ruled, not on the basis that “sexual orientation” is a protected category, like race, and that the laws’ defenders would have to meet a higher standard (such as “strict scrutiny”) for the law to be upheld, but rather on the basis of the lowest possible standard of review (rational basis), indicating that the arguments presented in the defense of the definition of marriage as limited to a man and a woman *failed even the lowest possible threshold question, basic legal rationality* (i.e. the “rational basis” standard of review).

first instance, *diagnostic*. According to my view, our culture's re-conception of common good has made the Catholic understanding of marriage and family—or *any* traditional understanding, for that matter—largely unintelligible and has replaced it with a paradigm for marital and sexual love that is, to state the point rather provocatively, already “gay.”

## II. THE COMMON GOOD

1. It is frequently noted that the precise meaning of “common good” remains a bit obscure. In part this is because the primary sources from the tradition—e.g. Aristotle, Augustine, and Aquinas—did little by way of offering us explicit or entirely unambiguous definitions. Subsequent authors have generally failed to bring uncontroverted light to the question. They have argued about whether it is simply the individual goods offered to a community's members, or the aggregation of those goods,<sup>7</sup> or a common goal of a community, or the ongoing formation and dialogue about the goods of a community, or the virtues of the members of a community, or the goods that are intrinsic to the proper order of a community, or some other such configuration. The only constituents that seem certain are also definitional, even tautological: the “common good” must be both “good” and “common.”<sup>8</sup> But little agreement it seems can be found concerning the content of these two elements.

For our purposes, it is perhaps warranted to begin by citing Vatican II's characterization of the “common good” (*bonum commune*), a characterization reiterated by the *Catechism of the Catholic Church* and more recently by the *Compendium of the Social Doctrine of the Church*.<sup>9</sup> These tell us that the common good may be defined as “the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfill-

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7. Mark Murphy, “The Common Good,” *The Review of Metaphysics*, vol. 59, no. 1 (September 2005): 133–64, and in his *Natural Law in Jurisprudence and Politics* (Cambridge: Cambridge University Press, 2006), ch. 3.

8. Murphy, “The Common Good,” 133–34.

9. *Catechism of the Catholic Church*, no. 1906; *Compendium of the Social Doctrine of the Church*, no. 164.

ment more fully and more easily.”<sup>10</sup> The last part of this clause emphasizes the idea of fulfillment. The common good is intrinsically linked, as the *Compendium* tells us, to the authentic *moral good* of the person,<sup>11</sup> which of course means his “good” in the absolute sense, that is to say his destiny, finally, in God. It is the social expression of the moral good of the person. As the *Compendium* also tells us, it cannot be reduced to the particular goods that are nevertheless important to its achievement.<sup>12</sup> For its part, the *Catechism* emphasizes as the foundation of the common good the “freedoms indispensable for the development of the human vocation.”<sup>13</sup>

If this definition is a logical place to start, it nevertheless raises interesting questions. It does seem to reflect the point made earlier about the relationship between civic life, via the concept of the “civilization of love,” and man’s eschatological destiny. But as we saw, the common good properly understood must at the very least be *common* and not just a collection of individual goods. This perhaps suggests a certain ambiguity in the definition, which seems to emphasize the fulfillment of the members of society. What, then, are we to make of this definition?

Presumably disagreement over the meaning of common good is due in part to the phrase’s inherently analogous character. Perhaps the various views cited above are in fact *all* right, albeit focusing on different senses. Without in any way claiming or intending to offer a definitive resolution to disagreements over the term’s meaning, perhaps we might at least suggest a few possible ways of looking at it.<sup>14</sup> First, we could mean by “common good” the sum total of those individual goods that in some way fulfill the members of a community. The warrant for calling them “common” then would be that only life in a community or a society allows us to realize them, or to realize them with

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10. *Gaudium et spes*, 26; see also *Dignitatis humanae*, 6.

11. *Compendium*, no. 164.

12. *Ibid.*

13. *Catechism*, no. 1907.

14. Needless to say, the following argument, while drawing on classical sources, particularly St. Thomas, is not offered as an exegesis or interpretation, but as an argument that draws on principles proposed by Thomas and others.

greater predictability, certainty, or security. This sense of common good might include good sought by communities conceived for the sole purpose of achieving some single goal or set of goals, since these presumably must be for the benefit of all or part of the community or for a larger community, such as civil society, of which the smaller community is a part. Obviously this sense of common good is not necessarily simply self-interested, at least in a negative way. For example, a charitable group intended to reduce poverty likely will see its “common good” as a good for both the poor and civil society as a whole. This sense of common good could also characterize the common good of civil society as a whole, insofar as we see it from the perspective of the goods and benefits provided to the members of society by virtue of their membership. In all cases, then, the focus is on benefits for individual people (either the members of the community or of a larger society or both). At the level of civil society, it might refer to infrastructure, social services, and economic conditions that serve to make individual citizens’ personal aspirations and fulfillments possible. Often this sense of common good refers to material goods, such as wealth or physical security. But if we think of it more broadly in terms of any goods or fulfillments that flow to members, then there is no reason why it should not include intangible, immaterial or even spiritual goods, such as social stability or shared knowledge or the personal or vocational fulfillment mentioned by *Gaudium et spes* and *Dignitatis humanae*. Clearly the family offers a common good in this sense: certainly a purpose of the family is to benefit its members and society in general. The key here is that this first sense, taken simply on its own, understands the common good from the perspective of its directedness to the goods, benefits, or fulfillments of a community’s individual members, considered strictly as such.

A frequent criticism of this and similar ideas of common good is that mentioned a moment ago: at the end of the day, they may lack the element of commonness, or at least offer a very thin version of it. While individual goods might be considered products or fruits of communal life, they nevertheless seem more properly to be goods of individuals made available by that life. The common good, then, would be reduced to what we realize together or in parallel as individual fulfillments. In that case, these goods seem to be suspiciously “extrinsic” to the

community itself, which in turn might seem only instrumental to their achievement. Even the goods of social, economic, or physical infrastructure—albeit not belonging to any individual—would be “extrinsic” in this sense, insofar as we understand their purpose only in terms of making individual fulfillments and goods possible.

Indeed, taken to its logical conclusion, this view of common good might leave us with a dilemma. On the one hand, surely the common good must in fact be beneficial or fulfilling to the community’s members, lest it lack the element of goodness (because it offers them no practical reason to pursue it).<sup>15</sup> On the other hand, if the common good is viewed exclusively in these terms, it tends to lack the basic requirement of commonness, because the “good” is conceived strictly in individual terms. In effect, this view sets the two elements of “goodness” and “commonness” at odds: insofar as we emphasize the “goodness” of the common good, we detract from its “commonness;” insofar as we emphasize the “commonness” of the common good we detract from its “goodness.” Hence, this conception of common good, taken strictly on its own merits, would not seem to be a fully proper usage. More would therefore have to be said about the common good in order to rescue it. Nevertheless, because the common good must surely be in fact good for its members, lest it give them no rational reason to pursue it, this first sense seems to be one that must never simply be omitted as part of a complete statement.

My suspicion is that we nevertheless (understandably perhaps) generally think of this sense when we hear the phrase “common good.” If I am correct, it is probably a result of our cultural outlook that so highly prizes personal liberty and initiative and that tends to think of communities as collections of individuals. One reading of Vatican II’s definition, then, might confine it to this meaning. But, that the common good must both be good or authentically fulfilling to its members and yet more than simply parallel or private fulfillments, suggests that this first sense of common good must be rooted in a deeper one.

A second reading might mean the goodness of the members of a community, a goodness that they bring to the com-

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15. Cf. Murphy, “The Common Good,” 134.

munity as a whole. For example, a group of people is not really even a community at all, but rather an anarchical mob, if at least rudimentary ordering principles, such as justice, do not obtain, and this requires at least a certain level of goodness on the part of the members. Presumably even the proverbial “honor among thieves” represents some level (however unenlightened) of “goodness.” The goodness of the community’s members, their virtue, is not separable from the community<sup>16</sup> insofar as a community in a real way *is* its members. This would be the warrant for calling this sense of common good “common”: not only are virtues intrinsic requirements of any genuine community, they also, as Aristotle taught, in principle require a community for their realization, both in terms of formation or education and in terms of their practice.<sup>17</sup>

Clearly this sense of common good overlaps to some degree with the first sense. If the common good is at least in some sense “perfectionist,” that is to say, if it brings about the moral improvement of its members, then it converges a bit with the first sense, as I have described it above. Nevertheless, its distinctness lies in its focus on the goodness possessed by the members themselves, which they then bring to the community in its character and organization. A community can only be *good* insofar as its members lend it a virtuous order, including basic communal standards of conduct: reasonableness, justice, love, friendship, peaceful relations, and so on. If the first sense of “common good” looked to goods *for* the individual members, this second one begins with the goodness *of* the members and the goodness they together offer the city as an ordered whole. This second sense of common good is also clearly implicated in the Vatican II definition, given its emphasis on the moral growth of citizens. Nevertheless, this second sense of good, pertaining as it does to the goodness of community members, is still, at least conceptually, distinct from the community itself, if community is understood as being more than simply its members. Like the first sense, therefore, it may not yet say enough about what makes the common good truly “common.”

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16. Aristotle, *Nicomachean Ethics*, bk. 1, ch. 2.

17. Hence, sometimes Aristotle’s typology of virtues can strike us moderns as odd, including such items as magnificence (*Nicomachean Ethics*, bk. 4, ch. 2).

2. This suggests yet another possibility: we might mean the good that is the community itself. Of course, this notion of common good could never be thought of as alien to the community members' individual goods, but it is also not simply reducible to them either.<sup>18</sup> In effect it is another way of saying that a community is its members but not only its members considered as a mere collection of individuals. In order to see this sense of common good, we need to be able to say that it is good that we are a "we," and that this statement is not simply reducible to saying it is good that we are two "I's" or even an "I-thou," insofar as these latter possibilities are understood from the standpoint of the two individuals involved. The sense of "we" then must transcend the two "I's" or the "I-thou," as a community and as a good.

Like the two senses of common good just described, this third one is suggested at points in traditional formulations. For example, when Thomas following Aristotle speaks of individual or singular goods in relation to the common good, or when he speaks of the relation of individuals to the community, he often compares it to a parts-to-whole relationship, or variations thereof.<sup>19</sup> This account is significant, for the relation of parts to a whole is intrinsic. Also important, the greater and more substantial reality is the whole: the parts take their meaning from that whole, which is not reducible to its parts, but transcends and perfects them, as form transcends and actualizes matter.<sup>20</sup>

Thomas uses this relationship to characterize both individual substances' relation to the universe and individual citizens' relation to political society. In both cases, he argues that individuals naturally love the whole or common good more than they love themselves or their private good. He also argues that the

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18. Charles De Koninck, "On the Primacy of the Common Good: Against the Personalists," trans. Sean Collins, *The Aquinas Review*, vol. 4, no. 1 (1997, orig. ed. 1943).

19. E.g. Aquinas, ST I-II, q. 92, a. 1, ad 3; II-II, q. 47, a.10, ad 2; II-II, q. 58, a. 7, ad 2; II-II, q. 64, a. 2; *Commentary on Politics*, bk. 1, c. 1, n. 31; *Commentary on Ethics*, bk. 1, c. 1.

20. Cf. *Commentary on Politics*, bk. 1, c. 1, n. 31; see also, M. S. Kempshall, *The Common Good in Late Medieval Political Thought* (Oxford: Oxford University Press, 1999), 104; D.C. Schindler, "Liberalism, Religious Freedom, and the Common Good: The Totalitarian Logic of Self-Limitation," *Communio: International Catholic Review* 40 (Summer-Fall 2013): 576-615, at 598.

good of the whole of, say, civil society is not greater or different than private goods only by way of magnitude, but rather by way of kind.<sup>21</sup> For both reasons it would seem that we must think of the common good as primarily the good that is the community and not just the collective good of or for its members.

That members would love the whole more than themselves might at first glance seem a little like pulling a rabbit out of a hat. The good is that which all things seek, since all things seek their perfection. This Platonic-Aristotelian-Thomistic starting point might seem inherently individualistic, rather than communal. Even the sacrifice of one's life for the community might be reduced to a form of "self-realization."<sup>22</sup> If this were true, then this sense of common good (as well as the second sense) would inevitably collapse back into the first.<sup>23</sup> However, the more universal a good, the more complete and encompassing it is and the more universally it moves things. If, on the one hand, we have the greatest unity with ourselves and therefore would seem to love ourselves the most, on the other, the whole offers an ever-greater perfection and unity as universal and is therefore even more lovable. Hence the more universal a good is, the more diffusive of its goodness, the more universal and ultimate its causality, the more it must be lovable.<sup>24</sup> From this point of view, then, if the relationship between whole and part implies that the whole "perfects" the part,<sup>25</sup> as actualizing its potency to participate in the wholeness of the whole, and if members of a community can be considered at least in some sense parts, then they must also in fact love the whole—the community—even more than themselves.

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21. ST II-II, q. 58, a. 7, ad 2.

22. Cf. Robert Spaemann, *Happiness and Benevolence*, trans. Jeremiah Alberg (Notre Dame: University of Notre Dame Press, 2000), 55, where he says that "honor" for Aristotle serves as a kind of "indemnification" of the one whose self-sacrifice, including his life, for the polis puts him beyond the possibility of *eudaimonia*.

23. Indeed, Murphy argues that both the "instrumental" view and what he calls the "detached" view of common good must ultimately collapse back into what he calls the "aggregative" view. See Murphy, "The Common Good," 136–37.

24. See De Koninck, "On the Primacy of the Common Good."

25. ST II-II, q. 64, a. 2.

One way to see this is to note that it is only the whole that allows the part to be or to be fully itself. Because parts of the higher perfection of the whole allow the whole to be the whole, and in that way fulfill their “partness,” they also naturally love the whole more than themselves. Or perhaps, in loving themselves, they must love the whole more than themselves in order to be themselves. So the love of the parts for their whole is not a “selfless” love, but it is also not a simply self-directed, let alone selfish, love. Rather it is embedded within a reciprocal relationship between parts and whole, albeit with a strict priority of the whole.<sup>26</sup> Hence, the part loves the whole not “so as to refer the good of the whole to itself, but rather itself to the good of the whole.”<sup>27</sup>

That there is a community of persons, and that it has the ratio or order of a community, is in itself and as such already therefore a good distinct and generically higher than the goods *for* or goodness *of* each of its members taken as individuals. Of course, Thomas especially has in mind God, who is the common good of all of creation.<sup>28</sup> Hence, Thomas also tells us that the man who has virtue but no charity does indeed have virtue, but not its fullness, because, while such a man may fight with genuine courage to defend the city, his courage is not given the form of charity, that is love of God.<sup>29</sup> As the highest good, and therefore also the most universal, God is the most common. Such a man’s virtue, precisely as natural virtue, is therefore not fully or properly ordered. Which means even his love for the city is not everything it should be. While he may have loved a community or common good more than himself, he has not loved the highest common good more than himself. His ordination to the “common good” is still insufficiently “common.”

This last point raises another important distinction. Thomas distinguishes between common goods that lie beyond

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26. See D.C. Schindler, “Liberalism, Religious Freedom, and the Common Good,” 598.

27. ST II–II, q. 26, a. 3, ad 2; See also Kempshall, *The Common Good*, 104; De Koninck, “On the Primacy of the Common Good.”

28. Cf. ST I, q. 60, a. 5, ad 3; see also, for example, *Letter to Families*, 11.

29. ST II–II, q. 23, a. 7.

the community as such from those that are integral to the community. Again, the primary example of the first is God. God is the common good of every created community and of the universe insofar as all have their end in God. This sense of common good might seem to reflect a category different from the common good understood as the community itself, since in one sense God can be taken as an “extrinsic” goal. On the other hand, unlike other sorts of goals, God is the most universal good precisely because he is the good of the whole by being in communion with the whole (while not himself being in any sense a “part” of the whole; “God plus the world” is not more than God);<sup>30</sup> he is the good not as simply another good comparable with other goods, but as the good that allows all goods to be.

The integral sense of common good, on the other hand, focuses on the very order of a community, the ordering of the parts to each other as the order that is the whole. In this way, we might seem to have found our way back to the second sense of common good, discussed earlier. But that sense had to do with the goodness of the members bringing order to the community; here we are speaking of the good that *is* the community itself, as an order of personal relations ontologically prior to the conscious or moral acts of its members.<sup>31</sup> The order of the multiplicity of parts that together make the whole is itself a kind of perfection or good. In attempting to explain multiplicity, Thomas tells us for example that the multiplicity of created things causes the whole of the universe to reflect God’s splendor.<sup>32</sup> Evidently it takes a lot of different kinds of created things to reflect the unity-coincident-with-personal-multiplicity of God.

Now it is important to note here that this multiplicity opposes interchangeability. While each equally being the one di-

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30. Hans Urs von Balthasar, *Theo-Drama: Theological Dramatic Theory*, vol. 2: *Dramatis Personae: Man in God* (San Francisco: Ignatius Press, 1990), 193.

31. Cf. David L. Schindler, *Heart of the World, Center of the Church: Communio Ecclesiology, Liberalism, and Liberation* (Grand Rapids: Wm. B. Eerdmans Publishing, 1996), ch. 10, and Adrian J. Walker, “Personal Singularity and the *Communio Personarum*: A Creative Development of Thomas Aquinas’ Doctrine of *Esse Commune*,” *Communio: International Catholic Review* 31 (Fall 2004): 457–79, for truly quintessential discussions of personal relation as prior to conscious choice or acts of love.

32. ST II–II, q. 183, a. 4.

vine essence, the Father and the Son are distinct precisely in not being reducible to each other; the Father is the Father because he is not the Son, and the Son is the Son because he is not the Father, and so on with the other trinitarian relations: in fact we could say that the persons of the Trinity *are* their non-interchangeability. In creation there are *kinds* of things. Here, it is the multiplicity in the kinds of things that allows the whole to be an *integrated* whole, that is to say, that allows the whole to be a whole in the proper sense. In a real way it is the integrated fitting together of these things that allows the whole to be a whole and that allows it to reflect the splendor of God. Indeed, it is the fitting together of different kinds of things that allows the whole to be, in fact, a whole, rather than simply a collection of random and indifferently related parallel things. But this also implies that each of the parts allows the other parts to be parts of the whole. The good that is the community itself is therefore an ordered and integral good, what we might call a “fitting-togetherness.” So the reciprocity mentioned above in relation to the parts-whole relation requires not only that the whole allows the parts to be parts and that the parts allow the whole to be an integrated whole, but also that the parts each allow the other parts to be parts and indeed the *kinds* of parts that they are. The parts truly “fit” each other and are not simply thrown together. This is the difference between a heap and a whole.

In reality, as an “extrinsic” common good of a community, God is the good that allows the community to really be integral; God is in fact the radical source of the commonness of the common good.<sup>33</sup> The common good, as the whole and therefore as actual in relation to the parts, must therefore, as D.C. Schindler says, be *given* or *received*.<sup>34</sup> It must bear within it the structure of a *gift*. A correlative point is important here. An intrinsic sense of common good, common good that is the community itself, must be *natural*, because it must be a *something*, since it relates to the parts as form to matter. A heap is not a nature, but a whole is. Because it is a nature, because it is the formal cause of something, it is also a given.

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33. Cf. Walker, “Personal Singularity and the *Communio Personarum*,” for a discussion of the way “personal singularity” is “constituted communioally.”

34. D.C. Schindler, “Liberalism, Religious Freedom, and the Common Good,” 593.

3. It is true that Thomas makes the important distinction that familial and political societies are wholes in terms of their order and relations, whereas the individual members are wholes as substantial beings.<sup>35</sup> So the comparison of the whole, especially an organic or natural whole, to its parts is an analogous usage. Are human communities then more like a heap or more like a whole? Analogy is a true or real form of predication. The infinite difference simultaneous with similitude in Thomas' qualification means to show that the persons who are members of a community are not *simply* parts, which is also to say that the whole that is the community is not *simply* a whole.<sup>36</sup> Or another way to put it is this: the parts are never simply lost or subsumed in the whole, but as persons, the parts are both wholes in themselves and distinctly and essentially members of the whole. As wholes in themselves, persons are not lost in the common good but are goods in themselves. This is the important insight of the first two senses of "common good."

Indeed, precisely because we are dealing here with persons, and therefore personal communion, the reciprocity between the whole of the community and the person is heightened in significance, and the common good that is the community is not simply different from the perfections of its members. Hence this third sense of common good as the good that is the community itself encompasses the truth of both the first member-directed sense of common good and the second member-as-goodness sense. Again, that the common good is higher does not imply that the parts are simply submerged in the whole, as personal identity is lost in the sea of being in certain Eastern religions. The relationship is also not *simply* parallel to the way that, say, the parts of an organism may be said to be submerged in the living being that is the whole, so that, for example, a part may simply be sacrificed for the good of the whole, as a lizard may sacrifice its tail to escape a predator. If the part must love the whole more than itself, the whole in another way must also love the integrity of the part, even at times to its own detriment, if it is to remain the right kind of whole. Presumably, when we think

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35. Aquinas, *Commentary on Ethics*, bk. 1, c. 1.

36. Cf. ST I-II, q. 21, a. 4, ad 3.

about it however, some communities may be more organism-like than others: in the modern context of state-based political organization, with all of its abstractions from local community and experienced human being, the familial common good and the ecclesial common good would seem to be more like organic wholenesses than the political common good.

The image becomes more difficult at this point. Thomas uses this very analogy to justify the execution of criminals, who are compared to gangrenous body parts.<sup>37</sup> Nevertheless, he is perhaps hesitant to apply the analogy too strictly to at least political society. As parts whose “partness” requires also their wholeness, individual human beings partly transcend familial and civil society. These common goods cannot capture all that is common in the good. That the individual is not simply submerged in familial or civil life, then, is because the higher common good is God. The citizen for example is more than a citizen, he is also a member of a family, of the Church, of the Body of Christ, of a universe that possesses its own common good, and so forth. And yet, the person is not simply submerged even in God, but is given “space” to be a whole. Human being and freedom, while participating in God’s sheer being and infinite freedom, are nevertheless, for all that, still created and participated being and freedom. Mary’s “yes” is simultaneously given her and yet truly her own.

On the other hand, it is presumably only because the community *is* in another sense a higher good that the analogy makes any sense at all. So even here we find the inescapable logic of the personal love of the community as a whole more than the love of the person for himself. Perhaps the only way to make sense of this is to understand that the parts are not simply personal-parts-simultaneous-with-being-personal-wholes, but that the whole also, as being a human communion and a communion with God, which is to say a communion of persons, is itself a personal whole.

Thomas often uses the analogy of part to whole to explain the rational basis for a citizen’s sacrifice of his property or his life for the sake of the common good. Hence, the one who willingly lays down his own life for the whole is either a martyr or a hero, rather than an irrational kook. The charity exhibited

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37. ST II-II, q. 64, a. 2.

in the one who lays down his life for another is a testament to the common good they share, precisely as a communion of persons.<sup>38</sup>

If we hear of a mother who sacrifices her life for her infant, we would probably think the action had been badly misunderstood if it were described as an “irrational gesture of love.” To the contrary, we might respond that such an action is supremely rational. If the comment were, on the other hand, that the action must have been due to the mother’s desire to self-realize, we would again likely think the action had been badly misunderstood, even if we would not want to deny that such a woman was not only salvaging the good of her infant but acting in a way that realized her own good as well. If the mother and the child are taken only as parallel wholes, then the sacrifice of one for the other does not yet arrive at the rational core of the mother’s love. In fact, hidden just below the surface is a good that is not simply reducible to either the infant taken simply as such or the mother taken simply as such. Without in the least diminishing the love the mother has specifically for her infant, in fact confirming it, her love is also and simultaneously directed to the good that is the communion she and the child share, what she and the infant have together. In so acting, she is in fact perfecting that community. What this suggests is that there always is a “more” in personal communities and that this “more” is always set within a hierarchy that is part of the structure of creation. One’s preference for one’s own family, city, nation, or culture is only well

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38. From a specifically Christian perspective, when Jesus challenges us with the seemingly extreme example of laying down one’s life even for an enemy or persecutor, the teaching is presumably best justified because of the common good represented in the underlying shared humanity. The gesture of martyrdom is not directed toward a common good of civil or ecclesial friendship with the persecutor, for those communities would seem to be broken. Rather, it points to the radically more fundamental one, of which these others are developments, that is to say, to their shared creatureliness and destiny. The martyr does not love the persecutor more than himself; it would be unreasonable to do so if there is any truth at all in the Psalmist’s *abyssus abyssum invocat* or the idea that the human *capax Dei* is paradoxically the infinite capacity of a finite being (cf. Henri de Lubac, *The Mystery of the Supernatural* [New York: Herder & Herder, 1998]). But he does love their shared common good more than himself. The idea of a “shared humanity” seems like the most fraudulent of abstractions until the saint’s blood makes it very concrete. The problem for the rest of us non-saints is that what is real simply does not seem so to us. Here is the truth in Plato’s understanding of vice as ignorance (*Meno*, 77b–78b).

ordered if all of these loves are set within and ordered by the love of the whole of created reality and finally God.

Indeed, it is a basic precondition of participation in a truly common good in the integral sense that it must be the common good of a community that is worth dying for; if it is not, then it is also not really a *common* good, and therefore it is not really a community in the strictest sense, because it is not capable of being loved more than oneself. The reverse is also true: *only* a common good in the integral sense is worth dying for because it is only an authentic common good that allows us to desire and love a perfection that is both ours and beyond us.

The foregoing indicates why the sense of “higher” in common good cannot be additive or arithmetic in nature; if persons are in some sense “infinite” on the basis of their being *capax Dei*,<sup>39</sup> the addition of however many “infinite” cannot in principle equal more than one infinite. So the sense of “higher” must be truly transcending, but it is also simultaneously absolutely immanent in the members of the community. Hence, all “collectivist” interpretations are precluded, since these always err on one side or the other (or both simultaneously). They either simply lose the sense of the person or they lose the sense of community, but they treat the relation of part to whole in a merely quantitative manner.<sup>40</sup> Hence, for example, both communism and *laissez-faire* individualism share the fact of being “collectivisms.”

The reciprocity of whole and part also holds for the relations between more and less universal communities. Hence, if in one order civil community is more universal and complete than the familial community, the latter is nevertheless more fundamental or “primordial” and therefore in its own way takes a certain priority. Civil society is for the sake of families, even if families are also for the sake of civil society. Marriage is for the

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39. See previous note.

40. Hence, this sense of community is not open, for example, to the problematic features of utilitarianism, which cannot in principle say why a member or members cannot be sacrificed for the sake of the greater quotient of pleasure, happiness, or well-being of another member or group of members. Indeed, the “whole,” at the center of utilitarian attention, turns out to be less a whole and more a quantitatively understood collectivity of *individual* pleasure-seekers. Likewise, the Hobbesian “whole” is not a community in this sense, but merely the conditions for the suspension of hostilities.

sake of family, even if family is the fruit of marriage and in that way completes it and allows it to be itself. Nevertheless, this neat hierarchical structure is in part perspectival, according to intrinsically related but not identical orders. Hence, Thomas tells us that the wife of a criminal rightly hopes for his escape, even if the judge rightly seeks his punishment.<sup>41</sup> Each seeks a common good, but they are distinct common goods. Because, like the person, the family is not *only* a civil reality, it is also not simply submerged into the civil common good.

This brings us at long last to the questions raised by the definition of common good given in Vatican II and elsewhere. While it speaks of the common good in relation to the individual, it also links that good to the idea of vocation, bringing out the sense of its rootedness in man's creatureliness. "Vocation" implies the idea of a primordial and essential call and therefore the claim of others (and finally of the Others of the Trinity) that is rooted in, and indeed constitutive of, man's very being. It implies, in other words, the underlying common good of the community in which the vocation is rooted. What is necessary for an authentic sense of "common good" is the recognition of the human person's being, in the words of Ratzinger, both "from" and "for" (or "for" because "from"). In this way, then, Vatican II's definition of common good in fact is the embodiment of the integral common good as the good that is the whole.

4. A few summary points can be made at this point. First, and most globally, this third, integral sense of common good is not simply one of the various species of good; it is not a *kind* of good. If the reasoning up to now holds, then, at the end of the day, it is in its most complete sense an instantiation of *the* human

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41. See discussion of the *ordo amoris*, which very often seems to reverse the ascension towards greater universalization, in Spaemann, *Happiness and Benevolence*, ch. 10. Even if, as a general matter, it is natural to love the whole more than oneself, it is also natural to love the levels of community (the wholes) that are closest to us more than those that are more distant. Because family is a common good that in a real way possesses us to our roots, it is also not irrational or evil for a father to rescue his own child before others. But it is disordered to love what is closest more than the whole of shared human communion or the whole of creation itself or God, because we wholly belong (even as civil beings) to these orders, just as it is disordered to love oneself more than one's marriage or one's family.

good. In fact, in its most complete sense it is a way of seeing the good that is God.

This correlates with another point. Common goods in the sense in which we have been speaking are necessarily natural to human beings. If they are not natural, then they are really not common goods, and therefore communities, at all. Hence, of their very nature, they cannot be simply constructed. If the whole is the perfection of the part, if it is as act is to potency, then the whole must be ontologically prior, even if in the order of execution the part may be first. It is true that a group might form on the basis of an agreement a club or an association of some sort for the purpose of doing x, y, or z. We might call this group “constructed” in the sense that it results from the definite choices and actions of its members. But insofar as it is truly a “community” as we have understood that word here, and insofar as being in that community really is perfecting, it must precede the members in principle. Otherwise it is not really a community in the full sense, but more like a band of individuals seeking parallel interests.<sup>42</sup> And in fact, if the only reason a group comes together is for the sake of x, y, or z, such that the group does not simultaneously form a kind of fellowship, such that x, y, and z are perfecting of only the members and not the group itself, then it is to that extent really not a community at all.

There is another implication. If genuine common good and community are not the sort of things that can be constructed, but are in that sense natural and “precede” their members, then the “choice” to enter into a community is always a choice within an order that is given, “built into things,” as it were. To enter into community is to enter into the order that is built into human beings in a way that allows that order to be perfected or brought to fruition. Again, the common good in the fullest sense always has to precede in part the free acts of the members; the members’ acts must be free within an order that is already in some way inscribed in reality.

Next, our third, integral sense of common good has the virtue of encompassing both the worth and welfare of the individual and the virtuous ordering principles of community, while

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42. D.C. Schindler, “Liberalism, Religious Freedom, and the Common Good,” 592.

making both more concrete. Without at least the tacit presence and priority of this integral sense, the others discussed above tend to move in the direction of reductively individual goods. Where this happens, the first sense of common good tends to take on the color of an instrumental understanding of societies both great and small, viewing communities only in terms of what they produce as various sorts of ultimately individual goods. Even the common good as the goodness of the members of the community can then be reduced to an instrumental meaning: one wants, for example, to be able to trust one's business partners if one is to maximize profit.

Important for our purposes then is a further point. Insofar as the human person is abstracted from genuine and integral common goods, the human person tends in fact to disappear, just as does a one-sided view that saw the community as a "whole" submerging its "parts." In order to see why this is so, why a one-sided emphasis on individuality and autonomy in fact (paradoxically) loses the person, can be seen more readily if we consider the consequences of the instrumental tendency just noted.

First, instrumental goods are important for what they produce, not for the instrument itself. But this also means that such goods are in principle *exchangeable* with anything else that can produce the good to which the instrumental good is instrumental. Hence, insofar as an instrumental good is viewed as instrumental, its own goodness does not matter. Instrumentalism therefore *takes our focus off the thing itself*, except insofar as the thing might or might not be a good instrument, that is to say, working well. So insofar as we can get the same or similar results from another instrument, we will be indifferent as to which one is used. Insofar as someone cares that *this* instrumental good be used, rather than a genuine equivalent, he is precisely to that extent not treating that good as purely instrumental. He is rather caring about the good that the thing itself is.

Second, this "exchangeability" logically extends to the parts of instrumental goods. Insofar as a part is taken simply as a part of an instrumental good, and not as also important for other reasons, that part is also in principle *exchangeable* with something else that can similarly serve the whole instrumental good. In other words, if another part could be found to perform approximately as well as the existing part, the latter might very

well be swapped out for the former. If a business is viewed only as a means to profit, and if an employee is viewed only as an employee, then that employee is exchangeable as a “part” with another potential employee (or indeed with a machine) with an equal or better capability. The parts of an instrumental whole, therefore, are themselves, insofar as they *are* viewed as parts of the instrumental whole, necessarily reduced to being instrumental and exchangeable goods. Of course, this same logic naturally extends to the “parts” of the “parts,” *ad infinitum*.

This lack of reciprocity in the parts-whole relationship in the logic of instrumentalism also extends to the parts-to-parts relation. If the parts or members of a community are considered only as instrumentally good, then each will view his companions (and himself) in this way: as means to arrive at the community’s production of benefits. Hence, such a “community” can only be understood as a parallel pursuit of private or individual goods, and the relation with others in the enterprise—the sense of “community” they possess with each other—will necessarily be viewed instrumentally. To continue our example, each employee will consider his coworkers’ pursuit of their individual goods only as an aid to his pursuit of his individual good. Hence, without the integral sense of common good, we lose not only the element of “commonness” in the idea of common good, we also, as noted earlier, begin to see “commonness” as competitive with “goodness.”

Of course it is also true that a part, say an employee, is typically *not* considered as only a part, but as himself a whole or as part of another common good. It is probably almost impossible to reduce members of a group to purely instrumental goods. People are naturally better than that. But that this is the case means that we cannot sustainably reside within the logic of instrumental goods. If Thomas is right, it is natural for us to seek genuine common goods, that is a common good that is the community itself, however much we might twist and distort this primordial human truth.

Where these distortions occur, however, the good of the whole, as the integral “fitting together” or order of the parts, is understood as a fitting together of potentially or in principle exchangeable parts. Hence the fitting together is not in principle the fitting together of only certain kinds of things with an

interior ordination to each other. The reciprocity of whole-to-parts and parts-to-parts then becomes a mechanistic one. If an iron makes at least as good a doorstep as something that is made to be a doorstep, then the iron can just as easily *be* a doorstep. The door and the iron in this sense possess a merely *mechanistically* or *functionally* integral relation or “fitting together.” In this case, doorstops and irons are simply exchangeable. Likewise, the fitting-togetherness of the parts of a business constituted solely for profit is a purely functional one.<sup>43</sup>

When we apply this principle of exchangeability to human communities, we can see that, to the extent a “community” or “common good” is conceived *purely* in this manner, insofar as it is conceived only instrumentally, it cannot be considered “natural.” This is because it is not being conceived according to its *form* as a whole, but rather in terms of its functionality and exchangeability with other equivalents, both at the level of the whole and at the level of the parts. But this sort of fitting together is that of an artifact, not of a nature.<sup>44</sup>

5. While Christianity thinks that persons cannot be reduced to their role in the civil order (since their origin and destiny is in a greater common good), insofar as a local community, or a city, or a nation, or a state, or a culture, or the whole of humanity is a community of persons, however loosely or rigidly defined, it must also therefore constitute a good in itself.<sup>45</sup> Indeed, if it does not, then it cannot really be thought of as a community in the proper sense at all.<sup>46</sup> Hence, in principle, even civil society,

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43. Needless to say, the sense of “function” indicated in this essay is quite different from Aristotle’s use of *ergon*, often translated as “function.” The Aristotelian concept has to do with the activity characteristic of a certain kind of a thing, showing its place in an order. Aristotle’s sense of the wholeness of things as not reducible to their parts differentiates his *ergon* from the sense of “function” or “functionalism” I am getting at here. The sense of function here is understood in a mechanistic sense. What makes something functional is its usefulness for some purpose outside of itself without regard to genuine wholes and, finally, without regard to the kind of thing it is.

44. See Michael Hanby, *No God, No Science: Theology, Cosmology, Biology* (Oxford: Wiley-Blackwell, 2013), e.g. 196–97.

45. Cf. *Commentary on Politics*, bk. 1, c. 1, nn. 24, 31.

46. Cf. D.C. Schindler, “Liberalism, Religious Freedom, and the Common

insofar as it is a community, represents a common good in this most complete sense. Our ultimate focus is nevertheless on the common good of marital and familial communities.

When we think about the notion of common good sketched up to this point, we can see right away that it is visible nowhere so clearly as in the Christianly inspired idea of marriage and the family. I say “Christianly inspired” because, as noted above, in delimiting the familial monopoly on personal identity that has sometimes existed in different societies, Christianity also radically deepens familial foundations. As the original human community and the smallest cell of civil society, marriage and its extension in the family are the primordial instances in the created order of a common good.<sup>47</sup> That marriage and family are paradigms for the common good of all created communities is true because they are so fundamentally human: spouses and family members can only participate in their common good because its order is also the order of their beings. Now this order as an order of being is made visible in the human body, not only in its sexual dimorphism but also in its zygotic beginnings and the entire arc toward old age. The fact that family members share mannerisms, personalities, and physical appearance is highly significant here. Male and female correlate to each other and to the infant life this correlation promises. Age, as manifesting our place in the coming and going of the generations, visibly places us in relation to the whole. When a woman sees her husband and parents-in-law melded seamlessly with herself and her own parents in her children, she understands very concretely the Biblical idea of man and woman becoming “one-flesh.” When a man looks in the mirror and sees his father and mother, the simple existential experience helps him to remember who he is, his limitations, his weaknesses, his strengths. Most of all, it helps him see his destiny and the gravity and significance of life.

Hence marriage and the family are the kind of fitting-togetherness that makes a common good in the most integral sense. They are good for what they are, that is to say, as a form, a *something*, a nature. The relations are prime examples of non-

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Good,” 592.

47. Cf. *Letter to Families*, 10.

instrumentality, non-exchangeability. This is also therefore the sort of whole whose good both transcends and is immanent in the members.

Perhaps it would be helpful at this point to offer an example of the way this “cashes out” in an important cultural issue. What has been said up to now gives us a glimpse of why “artificial reproductive techniques” (“ARTs”) are such a violation of the common good, and on that basis, of what it is to be a person. ARTs communicate to the parents, the child, and the whole community that the child owes his or her existence to a choice that is in principle detached from the act of love that is proper to the order inscribed in the mother’s and father’s bodies, an order that precedes any act of freedom on their part. ARTs therefore suggest that the child’s beginning is rooted in technique and choice. But this is to subject the child’s existence to the parents’ free acts, according to the logic of production. This is a very different sort of “logic” than that of a common good as we have described it. In normal conception the child is not reducible in his or her beginning to an act of choice. While parents certainly can and do choose to have children when they conceive in the normal way, in the sense that the conception of a child occurs in the context of a series of free acts, they do so from within the order given and inscribed in their bodies. Hence, the free acts, without in the least losing their character as free, are acts whose *Gestalt* or “form” is already in part given. This point tends to be lost in overly “intentionalist” forms of action theory.

In this sense, then, the child conceived naturally is already implicit in the act of love that is proper to marriage. The order of the family precedes the child, and indeed it even precedes the parents. In fact the parents’ “choice” can only occur in the form of a “yes” to what is already implicit within them. The child’s source is therefore already contained within, and in a real way prior to, the parents’ beings as mother and father. The child is therefore the fruit of the union of the mother and father, a union that already is a form into which they are drawn in their free acts. This means that even in their “choosing” to have a child—say, because they are now in a better position to have a child, or even because they only have boys and they would like a girl—they are always in the position of receiving the child that is given within this order in which their free acts take their shape

and constitute a “yes.” If they want a girl, but they get another boy, they might be disappointed, but being disappointed is not identical with the idea that a mistake has occurred. It does not logically lead for example to the conclusion that their “methods” need improvement. The givenness of the form of their acts, as the union of the order of their bodies together, means that they can only understand the child as a gift, that is to say, as a fruit and not as a “product” of their love. They cannot in the least reject the child without simultaneously rejecting the order that offers the form to the acts that express and concretize their love. They cannot, in other words, reject the child without simultaneously also rejecting themselves, their love, and their marriage. In a way, they have to think that this was *always* the child of their love, even before the free act that allowed the conception to occur. Because of this, if the child turns out to be a boy rather than a girl, or an unhealthy baby instead of a healthy one, they are already related to and part of a whole—that is to say a common good—with that child because in this sense they always have been. And as such, because this child was “always” their child, they must receive the child on those terms, just as they would continue to love and care for—that is they would continue to participate in the common good they share with—a child who later contracts leukemia. The common good of the family then is “built into” the order that precedes the free acts of the spouses and is the basis for their love and its proper acts. The fitting-togetherness of spouses is also and already (implicitly) a fitting-togetherness of mother-father-child. It is a fitting-togetherness that is inherently non-exchangeable, non-instrumental. It is a common good that precedes (implicitly) any act of freedom, but which of course requires acts of freedom for its full realization (in the order of execution).

ARTs follow an entirely different “logic,” that of production rather than reception. The logic of production suggests that the child is in fact reducible to the parents’ choice. It is true that even here the action must take place within a given order: ARTs typically use the couple’s gametic cells to “conceive” a baby “biologically related,” as it is put, to both parents; the equipment and techniques of the clinic or laboratory cannot be any set of random items, and so forth. This only proves however that human beings cannot create *ex nihilo*. They always must start with something given. In fact, what it proves is that it is impos-

sible for us ever to step entirely outside the order of the common good in the fullest sense. But ARTs are effectively the choice to take a crucial “piece” of or step in the conception of a child outside of the order of the given as it naturally pertains to the conceiving of a child. To do so is to express that the child does not begin within it, which is to express the in-principle separable relation between the coming to be of the child and the order proper to marital love. Even if the parents do in fact use IVF with loving motivations, their act—and those of the various doctors and technicians involved—is in principle a separate sort of action from the order of love that is already given expression in their bodies and the acts proper to them. Hence, the child cannot be traced back to the order that gives rise to the acts of love proper to marriage. The child cannot therefore be thought of as already implicit within those acts of love even prior to the free choice of the parents. Hence also the child is traced back to the choice to exchange a piece of that order for what they believe is an equivalent. But the choice to use ARTs and the acts that ensue are only good or worthwhile as productive acts—as *poiesis* rather than *praxis*. ARTs are the sort of act that is only engaged in for the product, not because the act is in itself a good on its own terms. This is why, when it is not possible for one reason or another to use both or even either of the gametic cells of the couple, heterologous ARTs are a natural further step or concession. The path of exchangeability is a difficult one to leave. In any case, the particular piece that is removed is the order or fitting-togetherness of the spouses, the order that is inscribed in their bodies and the acts of love proper to their bodies specifically as husband and wife. The child is therefore not received; rather “raw materials” (the inescapable givens) are used in a process of production.<sup>48</sup>

The implications of this “logic” are much larger than is often appreciated. First there is the exchangeability of the body and its natural acts with technical acts and methods. But if the body and its acts can be replaced by the techniques and instruments of the laboratory, then the laboratory has been conceived

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48. It might be said in response that a couple might engage in a conjugal act only for the sake of having a child. But in this case, insofar as they view their act as good only for the sake of having the child, they are, while still operating in the ambit of the order of the body, nevertheless treating that order—and therefore each other—instrumentally.

as an equivalent to the body and its acts. To put it more graphically, not only does this express the idea that the laboratory can serve as, because it is on some level equivalent to, a womb, it also says the womb is in principle reducible to a kind of mechanism, albeit less precise and more fallible than those tools we might develop by the use of technological rationality.

Second, there is the essential exchangeability of the child with a set of possible other “kinds” of child, as envisioned in the processes implied by production. When we take a piece or pieces out of their proper order inscribed in the body and the acts proper to it we turn that piece into an object, which can now be manipulated. If we are going to use materials to produce a child with the equipment of the laboratory or the clinic, therefore, we can easily begin to think of the sort of child we might like to have. It is not surprising then that ARTs so easily slip into a further implication of productive activity: viz. “quality control.” It is an inherent character of technical or productive activity that its being done well or badly is a question of the quality of the product. Insofar as we are considering the act precisely as a productive sort of act, and not simply as an instance of *praxis*, what concerns us most—by definition—is arriving, as efficiently as possible, at a result with sufficient quality. This focus on outcome therefore invites, not simply wanting the child that comes, but wanting a child that is a certain way, a child with certain qualities. But this amounts to appropriating to oneself absolute dominion over another’s nature and existence, as is implicit in the idea of production. Again this result correlates with an understanding of the family’s fitting-togetherness as one of mechanistic utility, rather than of an integral whole.

In a similar way, marriage *in fieri* can only be understood as an act of freedom within the givenness of the order of the body, an order that therefore affords the spouses the ability to “choose” to say yes. The integral fitting-togetherness of marriage and the family as common goods can only be given then as an order that precedes and enables the act of love. Certainly benefits and fulfillments come to the individual members of the family, by virtue of being part of it, and to civil and ecclesial society as a whole: children are born, nurtured, and educated; husbands and wives give mutual support; the elderly are protected and cared for. Certainly also these relations are given order by

love, justice, and so forth. Without these, a marriage or a family would not amount to much, but would instead be *disordered*, and to that extent *failing* as a community. But it is the intrinsic goodness of the community itself that causes these other senses of the common good to flow from them and to avoid a descent into instrumentalism, just as it is only the whole that allows its parts to be what they are.

### III. THE COMMON GOOD, LIBERAL PUBLIC REASON, AND “GAY MARRIAGE”

1. In modern thought we tend to approach these considerations from the other direction, at least with respect to the political whole. If classical and Christian thought had characterized the relation of individuals and the city as analogous to that of parts to the whole, with the whole serving as the actualizing principle of the parts, moderns tend to turn the model upside down, giving predominance to the parts, the individuals who are its members or citizens along with their acts of freedom, and then seek to build wholes from these. Because modern thought begins in this way, it does not view the political whole as a given, but rather as a construction for the sake of human needs and wants. If in classical liberalism we see this in the characterization of civil society as a contract,<sup>49</sup> in the contemporary American liberalism of Rawls, it is confirmed by the heuristically intended “original position” and “veil of ignorance”<sup>50</sup> or in his tendency to treat natural communities as constituted by free and equal individuals who enter into community on the model of a voluntary association. An analogous primacy of the individual is implicit in H.L.A. Hart’s rejection of natural law in favor of positive law’s “minimal content”<sup>51</sup> which must be “minimal” given the basi-

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49. Whether classical liberals such as Locke envision the pre-political state of nature as already naturally social will be discussed below, starting on page 425.

50. John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Belknap Press, 1999).

51. H.L.A. Hart, “Positivism and the Separation of Law and Morals,” in *The Philosophy of Law* (Oxford Readings in Law), ed. Ronald M. Dworkin (Oxford: Oxford University Press, 1977), 17–37, at 36.; idem, *The Concept of Law*, 2nd ed. (Oxford: Oxford University Press, 1994), 185.

cally individualistic purposes men have for living socially, as it is in Dworkin's concept of "freedom as independence,"<sup>52</sup> which is essentially a version of Mill's harm principle.<sup>53</sup> And so on.

Needless to say, much good has been brought about by this focus on the individual and his freedom. Legal protection of the individual as a free and rational actor and the respect accorded personal conscience are in fact signal accomplishments of liberal democracies. Indeed, as we have seen, the individual person must be protected in his or her integrity for a common good even to be truly a common good. In this way, modern liberal democratic thought moves in the direction of protecting precisely this individual good, which has certainly not always and everywhere received the respect it crucially deserves. As well, liberalism's distinction between state and society is crucially important,<sup>54</sup> as is the state's

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52. Ronald M. Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978).

53. J. S. Mill, *On Liberty*, in "On Liberty" and Other Writings (Cambridge: Cambridge University Press, 1989).

54. Indeed, as indicated in the previous section, the familial and civil common goods differ as *orders*. I emphasize this because our modern and liberal conception of their distinction often takes the shape of "domains." Take for instance the question of "privacy." According to the Thomistic view, human law aims at preserving and promoting the "common good" (*bonum commune*), and therefore does not directly enter into the "private good" (*bonum privatum*), where the particularities of the individual and personal relations need to be taken into account. Nevertheless, law does take into its scope the *whole* of the human person *in relation* to the common good. Thomas tells us that while it is true that law does not prescribe *all the acts of all the virtues*, nevertheless it prescribes *some acts of all the virtues* (ST I-II, q. 96, aa. 2-3), because all of the virtues are relevant to justice (ST I-II, q. 100, a. 2). Hence, as orders, the civil and the private mutually indwell, without for all of that collapsing into each other. By comparison, in American law for example, the idea of a "right to privacy" derives from the concept of property and contract rights. See the famous and seminal article by Samuel Warren and Louis Brandeis, "The Right to Privacy," *Harvard Law Review*, vol. 4, no. 5 (15 December 1890): 193-220. The "right to privacy" as envisioned in the article then emerges as a constitutional principle, beginning in Supreme Court Justice Brandeis's dissent in *Olmstead v. United States*, 277 U.S. 438 (1928) and developed in such later cases as *Griswold v. Connecticut*, 381 U.S. 479 (1965) (contraception), *Roe v. Wade*, 410 U.S. 113 (1973) (abortion), and ultimately those involving "gay marriage" (e.g. *Goodridge*). As rooted in property and contract law, the right conceives privacy as a right to keep others away. As the original article said, it is a right "to be let alone." Hence, it conceives privacy as a kind of blank space or domain for self-actualization. The concept does not allow for the integration or mutual indwelling of the public and private. A different but analogous point could be

essential secularity. As already noted, the civil and familial orders are not identical or different only by degree or magnitude. Insofar as the modern state and the civil society within which it resides are common goods and therefore communities in the fullest sense, the “fitting-togetherness” is certainly not that which is proper to marriage or the family. Indeed there is reasonable doubt that the modern state is or should be considered or turned into the sort of common good I have discussed in the preceding pages.<sup>55</sup> Clearly also, we would not want to disparage the social and cultural values of liberal society, or to deny the goodness and fullness of natural communities within civil society as it exists in modern constitutional democracies.

The only point I wish to argue has to do with the ability of liberal public reason, as it has developed within theory and practice from within modernity’s characteristic sense of the common good, *to see what is* regarding the human person, and in particular, regarding the question of man, woman, and child. As already noted, this question has become crucial in the face of the now well-advanced development of the “gay marriage” movement. Indeed, my point is that—perhaps paradoxically—public reason as it is currently understood and practiced ultimately imposes precisely the very sort of monistic view of reality as a whole that it ostensibly excludes from political and legal discourse for the sake of “private” and free development within society. This

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made about Mill’s harm principle and the right to privacy as developed in the famous Wolfenden Report (1957) and the subsequent debate between H.L.A. Hart and Lord Patrick Devlin.

55. I think there is much to be said for the argument that the modern state is not really capable of being the sort of community that we would call a common good in the fullest sense. For one thing, it is perhaps too large a community, and it is too distant from individual persons’ fully active participation, although the modern technocratic incarnation of the state enters seen and unseen into just about every aspect of every person’s life. In this sense it is simultaneously abstractly distant and frighteningly close. Because the modern state is such an abstraction, it does present a problem for modern people, even as the scale of modern technological life requires something like a modern state. Hence, the notion of common good discussed in these pages would presumably require something like a *polis* for its political instantiation. Presumably, as many have already said, this is only possible in modern variations, such as local communities, towns, and other such political forms of community. Needless to say, it is also possible in its non-political forms, such as churches or other religious groups and especially in families.

point will become clearer as we proceed.

It is often said that liberal thought begins with a basic problem: that modern society comprises a pluralism of competing notions of the good. The institutions it establishes seek to defuse the conflictive potential of this reality by removing as far as possible these competing notions as principles of political and juridical discourse. It is thought that liberal institutions are necessary to avoid the sort of conflict experienced in the religious wars of the sixteenth and seventeenth centuries. Also, liberalism in its Whig form was set against monarchical and especially Catholic absolutism. Important ingredients are both the desire to accommodate differing views of the good to avoid conflict and to allow space for individuals and communities to participate politically and to be free of totalitarian or absolutist regimes. To avoid these dual evils, modern liberalism limits the purpose of government to such ends as the maintenance of peace and security; the mediation between factions and individuals; the securing of rights; maintenance of a generally moral environment for citizens to realize their goods; and the provision of other goods such as national and domestic security, basic social stability and services, economic prosperity, and so on; all of them for the sake of public, that is to say *common*, good. Certainly these are goods, and they have been provided in greater abundance than ever before. The conception however suggests that, if the conflictive possibilities of pluralism and the oppressive possibilities of totalitarianism are to be held at bay, the idea of common good needs to be dramatically tilted in the direction of our first sense discussed above, the one prioritizing the directedness of goods to individuals and groups rather than the sense of the community as good in itself.

Often the logic takes another step. If we see liberalism *only* as a response to de facto pluralism, this would imply that its value is contingent on that fact, that, in other words, in a society that is not pluralistic liberalism's fundamental role of mediating between pluralisms would be unnecessary. Of course there is more to liberalism than simply its responsiveness to pluralism, but at least to the extent that it is a response, this view would relativize it as a normative standard. In fact, however, liberalism tends to see itself *and pluralism* precisely as such an absolute standard. As Rawls puts it, pluralism is not simply a de facto problem to which liberalism is the de facto answer; rather pluralism is the

product of individual reason working under free, that is to say liberal, institutions. Indeed, Rawls suggests, increasing pluralism is therefore a social good, producing a variety of viewpoints and encouraging tolerance. Hence, tolerance is not simply a matter of getting along, a mere *modus vivendi*, but a normative goal.<sup>56</sup> But as a normative goal, it also tends to take on the form of an interior disposition that in fact relativizes the good. In any case, if liberal institutions result in increasingly diverse notions of the good, there would seem to be no principled limit to this process, except perhaps the arithmetic one of the number of individuals in society. Even here the individual's life itself might be a type of pluralism. As Rawls tells us in *A Theory of Justice*, "Human good is heterogeneous because the aims of the self are heterogeneous. Although to subordinate all our aims to one end does not strictly speaking violate the principles of rational choice . . . it still strikes us as irrational or more likely as mad. The self is disfigured. . . ."<sup>57</sup> According to this view, a primary purpose of the state is therefore to guarantee as far as possible the individual's liberty to define and redefine his own notion of the good. Logically, the citizen is one whose only "given" vocation is to choose a vocation, subject to possible revision.

Given this particularly corrosive version of liberalism, policing the interactions of freedoms becomes a crucial state role. This policing therefore requires not only protection against predatory or parasitic behaviors, but also mediation between legitimate but competing interests, rights, and conceptions of the good. But if the state is to act as a neutral arbiter, it must itself seek to determine those freedoms as little as possible.<sup>58</sup> Now,

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56. Hence, insofar as liberal principles seem to be needed to deal with actual pluralism, these same principles magnify their own necessity over time. As Rawls puts it: "pluralism is not to be seen as a disaster but rather the natural outcome of the activities of human reason under enduring free institutions. To see reasonable pluralism as a disaster is to see the exercise of reason under the conditions of freedom itself as a disaster" (*Political Liberalism*, 2<sup>nd</sup> ed. [New York: Columbia University Press, 2005], xxiv).

57. Rawls, *A Theory of Justice*, 554.

58. One of the most iconic statements of this principle is that of the U.S. Supreme Court, in *Planned Parenthood v. Casey*, 112 S.Ct. 2803, 2807 (1992): "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed

if increasing pluralism is the result of freedom operating under liberal institutions, then these multiplying pluralisms will clearly come at the expense of so-called “intermediate communities.” The state is a constant, as is the freely choosing individual. But intermediate communities can only be considered realizations of particular chosen interests, wants, conceptions of the good, and vocations. Since it is the individual who is the subject of rights—who is the one who chooses his vocation and therefore his notion of the good—in significant part these rights must be protected precisely from such communities, which have the potential of concentrating the social influence of their individual members over others.

Because these communities are conceived as “intermediate” between state and individual as constants, they also in fact tend to possess a rather insubstantial juridical status. We can see this tendency *in concreto* when we consider that rights regarding these communities are essentially the rights of individuals *in relation* to those communities. Hence, “religious liberty” in the United States is in fact the liberty of individuals over and against the state, rather than a recognition of the Church or churches as having any genuinely ontic status of their own. The so-called “fundamental right to marriage” is the right of individuals in the context of marital choices, rather than a genuine recognition of a pre-legal and natural community to be buttressed, stabilized, and promoted by civil codification.<sup>59</sup> It is true of course that the state offers civil marriage as an institution and that it regulates and defines that institution, but this is because of the perennial wants and needs of individuals and the needs and good of civil society, and not because there is really a *something*, preexisting in nature, that is marriage. This fact is certainly reflected in contemporary developments such as “no fault divorce” and the “best interests of the child standard” in law; each of these supposes that the “institution,” marriage or family relations, is the individuals

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under compulsion of the state.” While Casey concerned abortion, the passage has been cited and quoted endlessly by court decisions concerning the creation of the legal category “gay marriage.”

59. See the U.S. Supreme Court’s discussion in *Maynard v. Hill*, 125 U.S. 190, 8 S. Ct. 723, 31 L. Ed. 654 (1888); see also the statement of the Massachusetts Supreme Court in relation to “gay marriage” in *Goodridge*.

involved over against the legal structures provided by the state. It is also reflected, as we shall see, in the increasingly frequent legal recognition of homosexual relationships as civil marriage.

The effect then is to understand these “intermediate” relations or communities in the image of modern, liberal thought generally; that is to say, the effect is to envision not only civil society and the political order as constructions based on individuals as the “pieces” or parts that make them up, but also churches, families, and marriages in precisely the same way. In other words, political discourse and reason, given these starting points, can only conceive of communities in terms of the free individuals who constitute them.

Of course, this is to conceive the common goods of the married and familial communities in abstraction from the good that is the community itself. It is not that such communities cannot *be* common goods in the integral sense; it is rather that they cannot be *conceived* as such by properly political and juridical reason. Of course, this does not preclude private individuals, whether alone or in groups, from believing that the communities to which they belong are metaphysically weighty, perhaps in a manner similar to that outlined in the preceding pages. Nor does it even mean that such an understanding could not be proposed as a public way of understanding communities such as the family. But to do so in the form of public reason, one would eventually have to express the argument in non-comprehensive terms.<sup>60</sup> That is to say, one would have to make the case in liberal terms, which is to say, one would have to make the case in the form of reasoning that takes its starting point in the assumption that the primary or most concrete social reality is the individual pursuing his interests and that this is the basis for civil community.

This leads to a bit of a paradox. Even a group of people—say the Church—that believes that the community it constitutes is more than simply the collectivity of its members will nevertheless be treated by public reason as just such a collectivity. Indeed even the basic rational categories available for them to make such an argument would require that they treat themselves as just such a collectivity in order to argue the point that they are not. It

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60. Rawls, “The Idea of Public Reason Revisited,” *The University of Chicago Law Review*, vol. 64, no. 3 (Summer 1997): 765–807.

is fine, in other words, to conceive of one's community as not strictly speaking voluntary, so long as the membership is, strictly speaking, voluntary. For example, it is fine to think of one's marriage as indissoluble (that is to say, beyond our freedom), so long as its continuing indissolubility is voluntary (that is to say, within our freedom). Of course, arguments could be posed that would limit freedom in relation to, say, marriage; laws could be enacted and political discourse could take its form based on such arguments. But the arguments would have to be those rooted on considerations of justice to those parties involved, such as the other spouse, the children, members of the larger family community, or civil society as a whole. But these would all be arguments that ultimately trace back to interactions of free individuals and the necessity for the external limits to freedom these interactions imply. In other words, they would trace back to the role of the state in policing the interaction of individual freedoms. None of them would have anything to do with the idea that marriage is something prior to its being either a right or a juridically defined institution.

As we saw, to speak of a common good that is the good of a community as such is to speak of a good that precedes the state and positive law and transcends the individual members and their freedom. Indeed, it is to speak of a good that the members love more than themselves. Of course, people do in fact love their families, and communities, and even civil society as a whole, more than themselves. As we saw, it is natural to do so. Certainly, patriotism is a prized virtue in liberal societies, and many are certainly willing to sacrifice their lives to preserve that community, typically expressed in America as preserving our freedoms. We rightly laud people who sacrifice their lives for their families or others as well. On the other hand, it would seem to be difficult *from within* what is considered legitimate public reason to say precisely why it would be a rational action for an individual to do so.<sup>61</sup> For public and properly political and juridical

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61. Here one thinks of MacIntyre's famous *bon mot* that asking someone to die for the liberal state would be like asking him to die for the telephone company, cited in V. Bradley Lewis "The Common Good Against the Modern State? On MacIntyre's Political Philosophy," *Josephinum Journal of Theology* 16 (2009): 357–78, and D.C. Schindler, "Liberalism, Religious Freedom, and the Common Good," 586n16.

reason, in saving each one of us from the incursion of our neighbor's conception of ultimates, must itself not impose ultimates. But as we have seen, the integral sense of common good implies just such an ultimate (or set of ultimates), and one to which individuals are *naturally ordered*. That is to say, the concept of common good singles out an idea of the "whole truth" about man, what is proper and fit for human beings, what human destiny in society is, or what constitute proper human ends. But these all fall under the ban of public reason concerning ultimates. Hence, the common good understood as the good that is a community itself is denied any explicit role in public reason.

Of course, this is not to say that public reason cannot be coaxed into saying that marriage and the family are common goods. In fact we hear various versions of that formulation very often. But in doing so, public reason will always mean common good in a reduced sense. If marriage or the family or churches are to be thought of as common goods, they must be thought of as common goods in terms of what they offer their members or the members of society as a whole or some variant of these.

2. Another point is crucial. If public reason cannot see goods in their full metaphysical weight, then not only can it not see marriage as a natural common good in the full sense, it also cannot see natures at all. More particularly, it cannot see what a human being is. This implication is not surprising, because the good and nature are correlative terms.

It is true that public reason so conceived can see parts of nature. It can see for example that men and women aspire to marriage. It can see that marriage provides services to the members of the family and to civil society as a whole. It can see that these facts are part of a pattern of social living. But in explaining or treating these realities, it will not treat them as the fruit or sign of the deeper realities which are the goods that are the communities of marriage and the family themselves. While it must prescind from ultimates, weighty metaphysical claims, and therefore natures, it nevertheless must have a way to talk about and deal with things in the world. It therefore must replace the idea of nature, that is to say, categories such as form, finality, and essence, with something else. This something tends to be categories of the physical sciences or categories from their deriva-

tives, which ultimately break down to questions of matter, force, function, quantity, and the like.<sup>62</sup> It is these sciences that then serve as a concrete bare minimum on which it is supposed all, from within their varying view of ultimates, can or should find common ground. In other words, public reason swaps philosophy for the sciences. In this way, public reason and the sciences form a tight bond as twin forms of rationality and discourse for understanding and dealing with society and the world generally.

Given this bond, then, natural communities such as marriage and the family are also understood according to this view of reality. But if communities, such as marriage and family, are most politically and juridically cognizable when viewed in terms of the parts and dynamics that compose them, what they *are* must also be viewed in terms of the functional relationships of those parts and dynamics. Seeing the functional relations of communities and their members, of course, is not by its nature bad. However, when these are abstracted from a healthy sense of nature, when they are made to fit into the procrustean bed of the natural sciences and their derivatives, these functional relations tend to become mechanistic relations. They follow the model outlined earlier, in which parts of wholes are viewed only in terms of their instrumental qualities. To reduce natures to matter, force, and quantity is in effect to have reduced them to mechanistic and instrumental properties; it is in effect to have reduced them to what is in principle exchangeable.

This is a result of the partial view of the common good to which public reason confines itself. Clearly the common good understood as the good effects of marriage and the family is evident within this sort of technical-political form of rationality. But just as clearly it is extremely vulnerable. If we do not see these as the fruit and sign of the common good, as the good that is the community in itself, and therefore of a nature, then marital and familial community are highly exposed to instrumentalism and the logic of exchangeability. This means that the continued

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62. As Hans Jonas puts it, modernity replaces “the aristocracy of form” with “the democracy of matter. If, according to this ‘democracy,’ wholes are mere sums, then their seemingly genuine qualities are due to the quantitatively more or less involved combination of some simple substrata and their dynamics” (*The Phenomenon of Life: Toward a Philosophical Biology* [Evanston, IL: Northwestern University Press, 1966], 201).

health of marriage and family as natural communities hoped for by Catholics and others will depend more on benign neglect, coupled with the lingering effects of Christian culture, than state policies rooted in the logic of liberal public reason. But when this traditional legacy is challenged and therefore must justify itself on publicly rational grounds, as it has had to do throughout the Western (or Westernized) world of late, then there will be no publicly coherent basis to defend it, because its naturalness depends on a metaphysics to which liberal public reason has no access. Hence, the logic that dictates that the political order begins in the individual and his interests and rights tends also toward the further idea that *natural* communities begin in the individual and his interests and rights. These natural communities therefore become human works or artifices, creatures of positive law.

The difficulty this presents for arguments against the civil recognition of gay relationships as marriage is evident. Public reason cannot conceptualize marriage as possessing a nature, in fact as even being a pre-legal *something*, or as a common good in itself; hence it can only be a creature of positive law and a common good in what it yields to its members and society. Reasoning about policy and constitutional parameters therefore can only be carried on within the language of individual rights vis-à-vis the authority of the state to establish and regulate civil institutions. And this means that it can only take its bearings from a view of common good in terms of functions and outcomes, that is to say, on the “fact” that the male-female couple generally or often results in children and that this fact is functionally important for society as a whole and matters for the children themselves.

3. Now, as noted above, where wholes are understood in purely instrumental terms, insofar as the parts are viewed precisely as the parts of that instrumental good, they too must be thought of instrumentally. And as we also saw, this logic would have to extend to the parts of the parts, etc. Because public reason cannot think or speak of the common good of natural relations or communities, but only of the common good as empirical outcomes and mechanical functions, it also cannot think of the person as an integrated and embodied whole. I say “because” because (1) the body and its sexual order, precisely as a marital and familial order, constitutes an expression of a whole that is more

than its parts, that is to say, is a nature, and (2) the bond between modern scientific and political-juridical discourse in relation to wholes and natures therefore operates in precisely the same way with respect to the meaning of the body in its sexual dimorphism as it does with respect to natural communities. The sexually differentiated body and the familial relations to which they point therefore become only the materially necessary context in which sexuality and desire can be exercised according to preferences that are entirely abstract from their now only mechanistically significant ordination to procreation. In short, the body therefore cannot really offer a starting point for social and personal identity any longer.

To see this last point, consider the primary terms of the debate over “gay marriage”: “orientation,” “homosexual,” and “heterosexual.” These express the natureless character of sexuality and marriage as conceived by public reason. The argument for gay marriage depends on the basic claim that in all pertinent ways “same-sex” and “opposite-sex” or “heterosexual” and “homosexual” couples are essentially interchangeable. They are therefore, for all civilly relevant purposes, equivalent human communities. It is only because of this basic claim that courts are able to argue that the availability of gay marriage presents no truly substantial change to the essential meaning of civil marriage; that “same-sex” and “opposite-sex” couples are “similarly situated,” and therefore should be treated equally in relation to marriage and adoption; that the advent of gay marriage is merely an extension of an existing right, rather than the creation of a new one; that gay marriage does not represent a truly significant change or challenge for society as a whole. Yet, while the purpose of this line of argument is to show that “gay marriage” is or should be considered no different from the marriages between men and women, its larger implication is closer to the reverse: marriages between men and women are or should be considered no different from gay relationships.

The significance of an obvious point is often overlooked in this context: concepts such as “orientation,” “homosexuality,” and “heterosexuality” give expression to the idea that a person’s sexual desire and love can just as reasonably be ordered to either sex (or in fact to both), based on an individual’s consciously experienced inclinations. Whatever else may be said about the con-

cept of “orientation,” it very clearly entails a decisive step—it is a way of seeing the body in its sexual structures as non-determinative as a source of truth for the meaning of sexual desire and love. This first obvious point is related to another: the male and female bodies bear a “natural” relation to each other, viz. they are correlative or complementary, precisely in their sexual difference (as we noted in the earlier discussion of the very closely related issue of ARTs). The question then is how to understand this correlativity or complementarity—is it merely biological/material, an artifact of evolution, personally defining? Because public reason has replaced nature with technical-scientific modes of thought, it can only consider the male and female bodies materially and functionally correlative. Implicitly, then, the natural correlation of the male and female bodies must be thought to possess only a biological and sub-personal meaning for the individual person. It is therefore only through the concept of “orientation”—that is to say, by being determined to either “heterosexuality” or “homosexuality”—that the sexually differentiated body is brought into the personal realm of desire, freedom and love.

To resist this line of thought would be to enter into philosophical debate relying on principles beyond the ken of public reason; it would be to argue, for example, about the relation of body and person, the implication this might entail for the person and his destiny in civil society and beyond, the consequent meaning of sexuality, the non-exchangeability of the sexes as sources of personal identity, and so forth. But these sorts of discourse would certainly have to appeal to questions of anthropology, which would need to be rooted in a discussion of metaphysics, which is to say, the good and ultimates. In a word, they would finally entail a “perfectionist” account of the human person. It would be, in other words, to argue that the community of male and female in marriage forms an integral whole, uniquely good in itself as a nature, defying instrumental and mechanistic exchangeability.

From here another point comes into view. The debate over “gay marriage” is not about—in fact *cannot possibly be about*—the narrow question of the extension of neutral rights to a newly categorized albeit small minority.<sup>63</sup> Rather, the debate and its

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63. A recent survey (National Health Interview Survey, reported by the Centers for Disease Control and Prevention [15 July 2014]), widely reported,

central concepts—“orientation,” “homosexuality,” and “heterosexuality”—seek to explain not just the sexuality of a minority, but sexuality *tout court*. If an individual happens to be attracted to someone of the opposite sex, according to the concept’s logic, it is not because of the natural correlation of man and woman and the natural ordination of their union to the child, but because he or she happens to be “heterosexual” rather than “homosexual.” Similarly, if being a man or a woman is only biologically subpersonal, then having a mother and a father amounts to no more than having two parents whose body types happen to differ. To conceive sexuality, and consequently marriage and family, according to the logic of “orientation,” in other words, is already to have conceived of them in gay terms, it is to have grafted their meaning onto the underlying and controlling concept of the gay movement. They become, in a word, only a variant within the logic of “orientation.” But the logic of “orientation” is precisely the logic of exchangeability—indeed it is its very purpose to explain sexuality in that manner. In effect, then, the concept means that *all* marriage is conceived according to the logic of “gay marriage.” Gayness, in fact, becomes the more fundamental and defining basis for understanding not only sexuality as a whole, but more profoundly what it is to be a person. In short, the concept of “heterosexuality” is in fact already a category of “gay.”

Indeed, these points indicate the radical difference between the “pluralisms” of liberal society and the “multiplicity” composing a whole spoken of earlier. First, as we have just seen, and as will be touched upon again in a moment, there is legitimate doubt about the extent to which the logic of modern liberal societies really is pluralistic. Indeed, the concepts of “orientation,” “homosexuality,” and “heterosexuality” conceal a monistic way of understanding the human person, in stark contrast to the implication of marriage understood as the union of one man and one woman. For the latter, rightly understood, conceives of men and women as sharing equally in the dignity of their common human nature and yet sees their specifically sexual dimorphism as a sign or symbol of an irreducible difference, that is to say, of their two ways of personally instantiating the one human

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corroborated earlier studies that have placed the number of homosexuals at around 2%.

nature. To put this back into terms of the common good, their sexual union is capable of being a community of the sort that is good in itself, because it possesses the fitting-togetherness that is proper to a sexual relationship, given the order of the body and insofar as that order is not reductively biological/functional, but is truly a human order. It goes without saying that in a world with only men or only women there in fact could be neither, that the two sexes can only *be* insofar as each points to the other. This latter, non-monistic way of understanding human *being* is ontological, and not based on the limited “pluralisms” of chosen lifestyles and aims, as envisioned by liberal public reason. Merely chosen pluralism always reduces back, at the end of the day, to a pure ontological monism. If the pluralism of liberalism is a pluralism of wants and choices, the multiplicity implied in the order of sexual dimorphism is a multiplicity of kinds of beings. This latter also avoids the finally androgynous ontological monism implicit in the idea of a soul or consciousness that is in fact, generically speaking, indifferent to its body’s sexual complementarity. As we saw, the multiplicity within a community conceived as a genuine whole is an integral fitting together of parts that gain their full meaning only in view of the whole and in relation to each other, rather than a parallel set of interchangeable parts. But the concept of orientation trades precisely on the logic of this latter sort of functional interchangeability.

We might have thought that the debate over gay marriage is precisely a place where a *lack* of exchangeability is most obvious, since only the man-woman couple can have children by natural acts. Nevertheless, but paradoxically perhaps, this is precisely a central point at which the logic of exchangeability becomes most controlling. Indeed the courts, legislatures, and (increasingly) the proverbial man on the Clapham omnibus have repeatedly rejected the arguments for the non-exchangeability of “orientations.” Where the body is viewed in terms of functionality and exchange, that is to say as a machine that offers only the context for sexual acts, it becomes possible to ask, as multiple courts have, why a gay couple is any different from a sterile man-woman couple, or why a gay couple who choose to use ARTs is any different from a fertile man-woman couple, or, if procreation is the purpose of marriage, why we let sterile man-woman couples marry but not gay couples? In effect, it seems to

be increasingly difficult to say why marriage ought to be only between a man and a woman on purely functional grounds. That more, even substantially more, “opposite-sex” couples do in fact have children than “same-sex” couples becomes only a contingent and statistical matter, inviting the very understandable response of the District Court in San Francisco, which asked why “[heterosexual] orientation” should serve as a “proxy” for fertility.<sup>64</sup> Moreover, under the technical-scientific logic of public reason, that has effectively reduced the body to only the biological and material context in which an orientation can be lived out, it is hard to express in legitimate political or juridical discourse why same-sex inclinations are “objectively disordered”<sup>65</sup> at all.

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64. *Perry v. Schwarzenegger*, 721 F. Supp. 2d 921 (2010), invalidating the referendum vote in favor of Proposition 8, which had defined marriage as between a man and a woman.

65. *Catechism*, no. 2358. Homosexuality is an “objective disorder” in the sense that it is a condition of the soul and the mind—whether its source is genetic, congenital, or the product of formation or early experiences—that causes someone to have a sexual attraction to people of the same sex. Of course, every human being must be valued and respected precisely as such. As Karol Wojtyła put it, the only response adequate to the person is love (see *Love and Responsibility*, trans. Grzegorz Ignatik [Boston: Pauline Books and Media, 2013], 25). But particularly given that homosexuality is primarily non-voluntary and that any voluntariness is certainly socially shaped, those who possess it should be respected and treated with the utmost compassion. Our goal, then, is not to condemn anyone; I take it as a given that every single one of us has his own “objective disorders.” The goal then is to characterize the meaning of “objectivity” and “disorder” in the case of homosexuality, which is a “disorder” precisely in the sense I have been developing throughout this essay: it is an inclination toward free actions that stand outside the order inscribed in the body, which is the basis for marital and familial communities and their integral common good as well as the free acts to which these give rise. In taking this stand outside that order, homosexuality must implicitly reduce the body to possessing a purely external, mechanical, instrumental—and on that basis—sub-personal, meaning. While acting outside or indeed against the order represented in the body, it can of course only do so by making *use* of it. This means that it must establish a personal and social identity—that is to say an “orientation”—on the basis of a sexualized body from which personal and social meaning has been drained. In this sense, homosexuality as an ideology, employing the language of “orientation,” and so forth, is a false *spiritualism*, what some call an *angelic* anthropology. The paradox, of course, is that the body is only sexualized insofar as it correlates to the opposite sex. Hence, the “disorder” is precisely the attempt to take one’s actions outside of the meaning of the body’s dimorphic order, while all the time having to rely *de facto* on that order. As well it means to build a personal identity on what it implicitly conceives as sub- or non-personal. These paradoxes show the sense

Of course, most of us do not want to be put into the position of having to express in a public way that it is. It makes us seem mean-spirited and intolerant. But at the end of the day, it will likely be hard to express in public reason why some of the “exchangeable equivalents” that have just been mentioned are not in fact exchangeable equivalents if we cannot make reference to an objective order of the body<sup>66</sup> and all that it implies. If we cannot make a case for homosexuality’s lack of objective order, we are unlikely to be able to state very decisively in politically and juridically relevant and objective terms for example what might be wrong with “gay adoption.” And if we cannot say in legitimately public discourse why homosexuals should not adopt children, it seems very unlikely that we will be able to say why they ought not to be entitled to the benefits and rights of civil marriage.

By now the basis for my “provocative” opening claim—that “gay marriage” is more or less the perfect iconic expression of our notions of the common good and public reason—should be clear. Importantly, the point is not simply that the “marriages” of gay couples express this form of common good and public reason, but rather it is that public reason as it is currently configured in numerous court decisions, acts of legislation, and in political debate generally, in its blindness to communities as natural and integral wholes, effectively conceives *all* marriages as essentially “gay.”

The foregoing narrative cannot of course claim to constitute a full and complete description of liberalism. But I do think it represents a more or less accurate description of how things have in fact developed of late in most Western or Westernized countries, especially in the Anglo-American world.

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of “disorder” in homosexual desire and action. In view of the previous discussion of ARTs, we can see how closely related the problems of ARTs and “gay marriage” are in relation to the common good and its expression in the body’s sexual order. Each must necessarily be parasitic on an order from which it has attempted to liberate itself. For further discussion of these paradoxes, see my “Liberal Androgyny: ‘Gay Marriage’ and the Meaning of Sexuality in Our Time,” *Communio: International Catholic Review* 33 (Summer 2006): 239–65.

66. For discussion of sexual difference as an order of the body and its consequent significance for the person, see David L. Schindler, *Ordering Love: Liberal Societies and the Memory of God* (Grand Rapids, MI: Wm. B. Eerdmans, 2013), 219–74.

4. Many will of course reject the suggestion that these results follow from a logic internal to liberal understandings of the common good and public reason. Those who fall generally within the orbit of liberal theory, but who are nevertheless quite critical of neutralist or ideological forms of liberalism, will respond that my critique misses the point of the liberal political order at its best. As a general matter they would agree that liberalism begins at least partly in some of the starting points outlined above, that for example a key element of liberal public reason consists in its sharp distinction between the state and civil society as a whole, a distinction that, as noted earlier, cannot be gainsaid. Also they will agree that properly political and juridical discourse will not be able to base its arguments and understanding of things on metaphysical views, perfectionist morality, or the good or ultimates generally.

But within these limits the best sense of liberalism will see the political order's role as including the safeguarding of society itself, including its constitutive social elements. When it does not become an ideological reduction of society to the individual and his freedom, it will be argued, then liberal democratic constitutionalism can give an account of natural communities, such as marriage and the family. Hence, this view claims that the political order can recognize and respect the fact that human beings are naturally social. Moderate liberals therefore argue that it is precisely within civil society that communities such as the family or the Church can present themselves in service to the common good and live their lives as communities in this fullest sense, that is to say, within a pluralism of competing comprehensive views, which together, through compromise and consensus (what Rawls calls an "overlapping consensus"), give society its shape and ethos.

Locke is often offered as an example proving that this more moderate view reflects that of the best versions of classical liberalism, as represented in the Anglo-American tradition.<sup>67</sup> Ac-

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67. Of course, whether Locke in fact represents such a moderate view is precisely the source of debate between Leo Strauss and his followers, for example, and others who understand Locke as more continuous with the natural law tradition of Aquinas. On the one hand, see Strauss, *Natural Right and History* (Chicago: University Of Chicago Press, 1999); Pierre Manent, *An Intellectual History of Liberalism* (Princeton: Princeton University Press, 1996); Ernest L.

According to this view, a more ideological liberalism is seen as having betrayed its original meaning and purpose. In this context it is pointed out that Locke's pre-contractual state of nature presupposes the natural sociality, for example, in the form of the family. It could be argued, however, that the use of Locke in this way misses the point. The real question however concerns how Locke understands natural sociality, rather than whether he thinks sociality "precedes" the social contract. When it comes time for Locke to offer an extended consideration of marriage and family, we see that in fact Locke's view of these communities is strongly colored with contractual themes.<sup>68</sup> Indeed, one realizes quickly that the idea of the social contract colors Locke's idea of sociality generally, even prior to the civil contract itself.

In fact, Locke is not very interested in marriage or family as natural forms of sociality. His primary purpose in discussing the parent-child relation, for example, would seem to be to distance it from the properly political order as he conceives it. In part he seeks to undercut Filmer's patriarchal absolutism by pointing out that, unlike a true sovereign, the father does not have the power of life and death over his children or his wife, but also by pointing out that the mother has an equal share in the parental role. As part of this argument, he emphasizes the counterbalancing obligations of parent and child in terms of care and honor. But he is also clear that what is owed on each side is governed by the extent of the other's having fulfilled his or her obligations. When he considers the natural society of marriage and the man-woman couple who join together in a contract primarily for children, he carefully suggests that when the contract has fulfilled its purpose there is no real reason why it must continue. In other words, he treats these relationships as essentially ones of exchange, insofar as the relationship *can* practicably and plausibly *be* conceived that way. To this extent in any case, the

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Fortin "On the Presumed Medieval Origin of Individual Rights," *Communio: International Catholic Review* 26 (Spring 1999): 55–79; on the other, see e.g., Paul E. Sigmund, *Natural Law in Political Thought* (Lanham, MD: University Press of America, 1971).

68. John Locke, *Second Treatise of Government*, chs. 6–7, in *Two Treatises of Government and A Letter Concerning Toleration*, ed. Ian Shapiro (New Haven, CT: Yale University Press, 2003), 122–41, esp. 128n67–131n73, 134n80–135n81.

common good of these “natural” forms of sociality is conceived precisely in the reductive sense I have been discussing.

My point then is not that marriage and the family are not conceived as “natural” communities, but that the idea of societies as a kind of contract has already shaped the idea of what such communities and their “nature” are. Marriage and the family are effectively conceived, then, according to the form of society to which they are preliminary. His view of the origins of civil society therefore reveals his basic anthropological outlook. If these considerations are accurate, then Locke offers a prime example of the tendency of liberal thought to remake natural communities according to its own conception of the person in relation to the state.

Be that as it may, such considerations certainly do not justify a blanket judgment concerning all liberal thought. Perhaps it is more fruitful to take a brief look at the thought of Fr. Martin Rhonheimer, one of the best and subtlest contemporary thinkers in this general mold. Rhonheimer is an especially good example because he is clearly concerned about the implications of the “gay marriage” movement. In depicting and advocating a moderated form of liberal thought (which he calls Constitutional Democracy, understandably manifesting a certain ambivalence concerning the term “liberalism”), Rhonheimer carefully distinguishes between what is possible as political forms of discourse and what is possible at the level of civil society. One of his clearest expositions comes in relation to the role and place of Christian thought and action in the modern secular world.<sup>69</sup> One of his points is that since Vatican II, the Catholic Church has accepted the concept and reality of the secular state, religious freedom, and the human rights that correlate with these. Following the pattern I have described, he distinguishes between “exclusively political” and “religious and metaphysical” support for rights. Borrowing the Rawlsian term, he speaks of Christians entering into “an ‘overlapping consensus’ which may be epistemologically supported and nourished by one’s proper religious

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69. For an excellent discussion of the implications for the meaning of freedom of the following passages from Rhonheimer’s discussion of “Christian secularity,” see Schindler, *Ordering Love*, 55ff., including discussions of Murray and Rawls.

and moral convictions as a Christian, but is neither identical with them nor derived from them.” He acknowledges the importance of the Church’s rooting of rights and freedoms, such as religious freedom, in metaphysical soil. Nevertheless, such foundations “would provide a very weak *political* basis for human rights”:

If their effective *political* recognition and *juridical* validity needed to depend on shared metaphysical assumptions about the nature of man or on a shared acknowledgment of the theological truth of his being created in the image of God, the political standing of human rights would be rather uncertain and fragile.<sup>70</sup>

In order to arrive at consensus, we need to offer limited philosophical or religious foundations for rights. He therefore argues that while we may not be able to agree on the reasons or foundations for rights, we nevertheless can agree that we need them and we can agree about what they provide us. As he concisely says, “secular modernity . . . is in need of a minimal foundation in order to achieve a maximum consensus.” So Catholics certainly play a vital role in civil society by offering a reasoned basis for human rights in the Church’s rich anthropology and metaphysics. And this is a richness that Christians can and should offer to society as a whole. But, given the reality of differing metaphysical assumptions about ultimates, such a foundation cannot serve as a basis for properly or “exclusively political” reason and action.

This distinction correlates with his depiction of the common good. He makes a similar distinction between what he calls “integral common good” and “political common good.”<sup>71</sup> The first is the common good to be achieved in society. It includes strictly personal good, the good of the family, and other social communities and associations with both material and spiritual aspects. “It in fact includes the ultimate realization of every good, as well as the conditions facilitating such a realization.” Assuming my earlier argument about the good that is the community itself is correct, this is where it would fit. Rhonheimer observes that, understood in this way however, “the concept of

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<sup>70</sup> Martin Rhonheimer, *The Common Good of Constitutional Democracy* (Washington, DC: The Catholic University of America Press, 2013), 310.

<sup>71</sup> *Ibid.*, 134–35.

common good is not [politically] useful. It would remain a moral and metaphysical category without political relevance, unless we were to claim that human and political society is a complete unity of life, perfect, whole, with political responsibility for everything.<sup>72</sup> As he puts it:

The realization of the common good in an integral sense is an aim not of political action but of the freedom of the individual persons living in society: through their actions as free citizens, as members of various social groups, as believers, members of churches, parents, businesspeople, and so on. The state, politics, public authorities must not try to usurp the place of society.<sup>73</sup>

So the sense of the common good that is the good of the community itself could be realized in the form of marriages, families, churches and other religious communities, local communities, and even perhaps the whole of civil society understood precisely as such. The *political* sense of common good, on the other hand, must confine itself to strictly and properly political questions, such as the state's constitutional structure and practice, properly political values and goods, the institutional and legal processes and practices of government, and their presuppositions.<sup>74</sup> Its aims include:

peace; the freedom of individuals with respect to the coercive and pacifying power of the state, but also with respect to certain social forces or the power of third parties; justice, including the public organization of the demands of solidarity according to the principle of subsidiarity; the promotion of the social conditions and institutions necessary for the realization of the good life, so that citizens may reach their morally valid goals as beings living in society.<sup>75</sup>

The last part of this description points to Rhonheimer's particular insistence that the political and juridical orders and public rea-

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72. Ibid., 135.

73. Ibid.

74. Ibid., 134.

75. Ibid., 134–35.

son must accommodate and support social communities, such as marriage and the family. In this, he is quite critical of prominent liberals, whose neutralist position would offer no genuine recognition or basis for the natural role of marriage and the family in social life, but would essentially reduce society to the individual and his freedom (basing whatever political morality they offer on that dynamic). He therefore speaks of what he calls “categorical foundations”<sup>76</sup> as necessary in avoiding neutralist or highly individualistic forms of liberalism.

Rhonheimer has repeatedly offered the question of the civil recognition of gay relationships as “marriage” as a primary case in point. He rightly points out that the traditional legal codification of the marital relationship as well as the bestowal of both benefits and duties on that relationship were due to its more than private character, the fact that children are born from the union of man and woman, that the child needs extended nurture and educational formation, and that these correlate with “specific social functions and effects—such as the creation of wealth and of distributive structures through inheritance—which must in some way be regulated by law in the interest of all.”<sup>77</sup> As he puts it, the conclusion that “homosexual unions and marriage should not be considered equal” is not due to a moral condemnation of homosexual practices. It does not rely on a “judgment concerning the perversity” of homosexual practices.<sup>78</sup>

Rather, it is based on reasoning belonging to an exclusively public morality or moral reasoning: the exclusive privileging of heterosexual unions—traditional marriage—follows from a moral judgment based on the interest and usefulness both public and common, that is, protecting the union between man and woman that serves the transmission of life. Conversely, the affective life and union of homosexual couples pertain to the sphere of merely private life.<sup>79</sup>

Because homosexual relationships have only private relevance, “the state makes no moral qualification of the homosexual way

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76. *Ibid.*, 311.

77. *Ibid.*, 127.

78. *Ibid.*, 128.

79. *Ibid.*

of life”; “the state does not discriminate against them; rather it remains entirely indifferent in their regard.”<sup>80</sup> He grants, however, that such a privileging of the marital union of a man and a woman will have broader moral implications for society and will indicate a special moral dignity of marriage within society.<sup>81</sup> Because this dignity will be accorded to the married state, but not to homosexual relationships, he concedes it will effectively offer a kind of publicly moral qualification of the latter. He makes all of these points in a number of places and in a number of ways.

But is it not precisely this sort of claim that is under siege? Rhonheimer has a response to this:

I think it is not saying too much if one asserts that the existence of human society over time depends on the reproductive community between male and female, that heterosexual unions are therefore a political good. . . . Even if some of these topics today are, for ideological reasons, controversially debated, and even if some might advocate the substitution of “natural” forms of reproduction by reproductive technologies, this does not alter the fact that these “empirical truths” about reproductive heterosexual unions do not constitute a controversial comprehensive religious or philosophical doctrine, and that they are truths “widely accepted” and “available to citizens generally.”<sup>82</sup>

Because Rhonheimer’s critique is aimed at neutralist and individualist forms of liberalism and their unwillingness to look at these human and social facts, he presumably would agree that the rapid expansion of “gay marriage” in Western liberal states

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80. *Ibid.*, 127.

81. *Ibid.*, 128–29.

82. *Ibid.*, 279. This quotation is taken from an article written in response to an earlier (similar, but not identical) criticism of mine. My original article and Rhonheimer’s response were published in *Communio* (David S. Crawford, “Recognizing the Roots of Society in the Family, Foundations of Justice,” *Communio: International Catholic Review* 34 [Fall 2007]: 379–412; Martin Rhonheimer, “Rawlsian Public Reason, Natural Law, and the Foundation of Justice: A Response to David Crawford,” *Communio: International Catholic Review* 36 [Spring 2009]: 138–67). Although I have not yet offered a response to Rhonheimer’s response, its republication in his recent book *The Common Good of Constitutional Democracy* (2013) offers a timely opportunity for me to do so, which I intend to do in an upcoming publication. The present essay should not be considered a direct response to the previous debate.

is due, at least in part, to the prevalence of just those forms of liberalism, causing judges, legislatures and others to conceptualize civil society wrongly. Presumably he also blames deteriorating conditions in civil society and therefore, for example, the voting public.

I think there are two crucial observations to be made here. The first is very mundane, even banal. Rhonheimer's position assumes that the issue of "gay marriage" is not an inherently metaphysical one or, if it is, that it can be clearly engaged and defeated without having to raise and refute its metaphysical presuppositions. Otherwise he cannot say both that rights as a whole—and therefore particular rights—cannot and do not need to be based on "shared metaphysical assumptions"—and also that the arguments in favor of preserving the traditional idea of marriage can be pursued on the basis of "an exclusively public morality or moral reasoning." Something similar would presumably have to be said about other crucial and politically relevant questions related to "gay marriage," such as the growing issue of ARTs and how they should be understood for public purposes. As a practical matter, Rhonheimer may be correct in claiming that metaphysical foundations do not have to be directly engaged, so long as it is in fact true that the idea of the body and its sexuality has not become one characterized by the dualistic and mechanistic understanding outlined above. To state it the other way around, he may be correct so long as all of the parties involved (judges, legislators, citizens) "presuppose" the right anthropological givens, and the metaphysical assumptions that support them continue to be "widely accepted" and "available to citizens generally" and are therefore tacitly accepted in public policy. Unfortunately this no longer appears to be the case.

Even at this purely practical level, however, there is a problem. So long as we think that public policy and law should be based on reason, and that these should therefore always be open to criticism in the form of rational argument, then when there *is* a challenge to what everyone had previously assumed about the nature of marriage, as there has now been, the question will have to be addressed by judges, legislators, voters, media, and so forth, in a rational way. But in a political and juridical order founded in part on the idea of individual rights, where the "widely accepted" position is rejected by some, and a rational basis is given for

this rejection, then the debate would presumably have to take the issue to a deeper level. Otherwise, the response will amount to little more than a reassertion of the already-challenged position and its premises. Regarding “gay marriage” and related issues, this deeper level would seem to be that of philosophical anthropology, which itself would seem to need support in metaphysical truth. But this brings us precisely to the question of *order* as I have used that term here in the context of the body and its meaning for the person and in the correlative ideas of community and an adequate sense of the common good. To really be able to address the question of “gay marriage” in all of its subtlety and nuance, which I think is far deeper and more complex than Fr. Rhonheimer appears to believe, one has to arrive at the question of what a proper or true, that is to say “objective,” order is within the human person and within a natural community. This implies also being able to distinguish a properly human order from an “objective disorder.”<sup>83</sup> But these are precisely the sorts of points that public reason simply will not allow to be made publicly.

Otherwise, where the previous “widely accepted” position is simply reasserted, it is likely to be considered, by judges and others assuming a different anthropological starting point, simply “incoherent.” And this is precisely what has happened, as exhibited by one court’s rather easy dismissal of what it called the “marriage is procreation argument.”<sup>84</sup> Again, it is precisely Rhonheimer’s bright line that has been rejected.

This raises the second observation, which is more fundamental and revealing. Why would these supposedly “widely accepted” truths *become* so invisible to judges, legislatures, media, and by now much of the voting public in the first place? Do our assumptions about the common good itself and the form of pub-

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83. Note that this does not imply another position, which is that private sexual acts must therefore be regulated. Hence, it also does not imply, for example, disagreement with Rhonheimer’s position in opposition to anti-sodomy laws; such private actions pertaining to private goods (see n. 54, *supra*) may simply lie beyond civil law’s purview.

84. *Goodridge*, at 962. The court went on to argue that the “‘marriage is procreation’ argument singles out the one unbridgeable difference between same-sex and opposite-sex couples, and transforms that difference into the essence of legal marriage.” However, the rest of the argument of the court supposes that this is not, in fact, an “unbridgeable difference.”

lic reason to which it correlates in fact bring about their invisibility? Of course the causes of social and cultural developments are complex. Nevertheless, could liberal public reason in fact bring about an idea of reality that forms minds and hearts in a way that distances them from fundamental aspects of human reality? This brings us back to my earlier critique of liberal public reason and its fragmenting implications for the embodied person. Insofar as public reason cannot look to metaphysical truth, it cannot look to things as they really are in their wholeness. I mentioned that public reason can at least see parts of nature. In fact however, to see only parts without seeing the whole is not really to see the parts either, at least as they really are. It is only their integrated and non-exchangeable fitting-togetherness that allows parts to be actualized and transcend themselves in the whole. But this certainly requires a “perfectionist” view of human reality. Otherwise, the whole or the common good would be conceived as alien to its personal “parts.” The form of public reason that reduces communities and their members to interchangeable parts and pieces is also the form of reason that sees that same interchangeability in terms of only matter, force, function, quantity, and the like. It thereby converts what is naturally non-exchangeable into a medium that is *infinitely* exchangeable. In other words, liberal public reason has the inbuilt tendency of remaking the human person according to its own implicit view of reality.

This leads to yet another small observation. A relatively sharp distinction between public and private reason tends to be sustainable as a formal proposition, but not as a lived reality. While of course law and morality are not coextensive, the law tends to shape our moral judgments. If separation of church and state means that public reason may not base itself on purely religious premises, for example, this principle has tended to extend itself to the way people view their technically “private” interactions. We see this for example in the conversion of “Christmas tree” into “holiday tree.” Whether we like it or not, Aristotle is inevitably right: law invariably mediates standards for living according to some (however tacit) truth claim about what a human being is and, therefore, what is his perfection. And this is partly why, if my earlier assessment is correct regarding public reason’s reduction of wholes to parts, and parts to parts of parts, and its relation of these to each other mechanistically, that we who are members of the

more fully human societies over which that public reason presides increasingly begin to see them and ourselves in this light.

#### IV. CONCLUSION

A couple of closing thoughts are in order. First, some have argued that “civil unions” might serve as a compromise in the face of an ostensibly pluralist society, so that the Church might be able to “move on” from the issue of “gay marriage.” One question to ask is whether the concept of the civil union really does offer a compromise and whether it avoids the reductive implications of the common good, public reason, and gay marriage as those have been outlined above. Typically, a civil union is a legal institution that offers all of the rights and duties of marriage, but without the name. To say that gay couples are entitled to enter into civil unions but not marriage implies an acknowledgement that they are entitled to enter into the substance of civil marriage, i.e. to receive all of its rights and benefits and to live by its duties and responsibilities. But the position is unsustainable. If we say that gay couples are entitled to an essential equivalent of civil marriage, then on what principle do we deny them the name? The concept of civil union therefore only strengthens the claim for recognition of the relationship as marriage.

Finally, and more importantly, it would seem that the beauty of the liberal state is that even if members of society disagree on questions such as “gay marriage,” their freedom of conscience will be respected. Indeed, the ostensible logic of liberal public reason is that it will in fact protect religious, philosophical, and moral principles lying at the root of “private” rationality, that is to say, reason that draws on resources unavailable to public reason’s narrower non-metaphysical view. That public reason cannot take them into account does not *ex hypothesi* indicate its hostility toward them. Indeed, some of the rhetoric surrounding the gay marriage debate would seem to reflect just this position.<sup>85</sup> The ac-

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85. For example, see *Goodridge*, in which the Massachusetts Supreme Court begins by telling us “Many people hold deep-seated religious, moral, and ethical convictions that marriage should be limited to the union of one man and one woman, and that homosexual conduct is immoral. Many hold equally strong religious, moral, and ethical convictions that same-sex couples are entitled to be married, and that homosexual persons should be treated no differently than their heterosexual neighbors. Neither view answers the question before us. Our concern is with the Massachusetts Constitution as a charter of

tual logic of the situation, however, suggests a different outcome.

As we have seen, if public reason cannot account for principles underlying a more metaphysically-committed private and comprehensive reason, it can only see those principles as standing outside itself, that is to say, as essentially non-rational from the standpoint of public debate.<sup>86</sup> As we have seen, this is precisely the problem confronting arguments opposing civil recognition of gay relationships as “marriage.” As has already been noted, the courts have said that such arguments do not rise even to the most basic level of juridical cogency, and they have based their holdings precisely on the logic of exchangeability outlined above. But if arguments against gay marriage are publicly irrational, then they must also be insupportable from the viewpoint of public morality. While individuals may choose to live “pri-

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governance for every person properly within its reach. ‘Our obligation is to define the liberty of all, not to mandate our own moral code’” (at 941, citations omitted). This reassurance suggests that “tolerance” means living together in society with others of fundamentally differing comprehensive views. This would also for example seem to be the suggestion of the Deputy Prime Minister of Spain, who proclaimed in 2005 that the new marriage law allowing “gay marriage” “does not oblige anyone to do anything they do not want to do” (quoted in “Gay Marriage Bill Draws Madrid Protest,” *The Washington Post* [Saturday, 18 June 2005], reported by Ciaran Giles). Of course, the statement focuses on non-coercion regarding action, but of course the problem runs deeper than that: it is a question of what we will be permitted to think. We find a similar statement from Congressman Barney Frank in a response to Congressman Henry Hyde: “How does [same-sex marriage] demean your marriage? If other people are immoral, how does it demean your marriage?” (quoted in Michael Warner, *The Trouble with Normal: Sex, Politics, and the Ethics of Queer Life* [Cambridge, MA: Harvard University Press, 1999], 81). Here the argument seems simply to take the form of calling attention to the difference between law and morality. It is therefore interesting to compare such early statements in the development of the debate with a recent one from the mouth of Vice President Joe Biden, who proclaimed regarding the global push for gay rights, “I don’t care what your culture is,” and then cogently observed, “Inhumanity is inhumanity is inhumanity. Prejudice is prejudice is prejudice.” The shift marked by Biden’s tautologies is from a position of “mere” tolerance for those with whom we disagree—a “mere” *modus vivendi*, as the passage from *Goodridge* would seem to suggest—to tolerance as a normative demand that “homosexuality” generally and “gay marriage” in particular be understood as moral equivalents to the man-woman couple and their marital communion (as other passages in *Goodridge* already suggest).

86. As noted at the beginning of this essay, this is precisely the position adopted by any number of courts at this point, e.g. *Goodridge* and *Perry*. See n. 6, *supra*.

vately” according to publicly non-rational standards, where their rights to do so come into conflict with other rights that *can* be articulated in terms of the dominant form of public reason, that is to say in terms of choice and self-determination, it seems clear which set of rights will typically prevail.<sup>87</sup> The rationality of the first sort of claim will always be invisible to public reason, while the latter will be its very instantiation.

It is therefore quite doubtful that even the ability to hold such a “private” position will be considered socially or culturally legitimate in the long run, if it is even now. A position that is publicly irrational must also be *ipso facto* publicly uncivil and immoral, that is to say, a form of unreasonableness or bigotry. From a purely formal point of view, the result would therefore be that one may legitimately hold a position that is privately moral (because rationally based on comprehensive principles) yet publicly immoral (because publicly irrational for the same reason). But such a tension is clearly and essentially unsustainable. It would suggest that such a belief may be held, but only insofar as it does not in fact really make a genuine difference in public life. But there is no such thing as purely private thoughts, words, or actions. Hence, the private position, even on the terms of this formal “settlement,” will be treated as illegitimate even as privately held, and, at the end of the day, opposition to the publicly rational position will have to be systematically rooted out, in the name of equality and tolerance, especially through the laws, institutions and bureaucracies that generate much of the social and cultural environment.<sup>88</sup> □

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87. See my “Is Religious Liberty Possible in a Liberal Culture?” *Communio: International Catholic Review* 40 (Summer–Fall 2013): 422–37, for a discussion of this problem in the context of the HHS “contraceptive mandate.”

88. That this process is well under way can be seen in a series of successful prosecutions and lawsuits in the U.S. involving Christian-owned businesses who refused on religious grounds to service “gay weddings.” See also, for example, the statements of Vice President Biden, quoted above, n. 85, *supra*.