



marriage itself, as a single reality with two blessings (children and mutual affection).<sup>13</sup> Non-marital intercourse, especially but not only homosexual, has no such point and therefore is unacceptable.

**Why cannot non-marital friendship be promoted and expressed by sexual acts?**

Why is the attempt to express affection by orgasmic non-marital sex the pursuit of an illusion? Why did Plato and Socrates, Xenophon, Aristotle, Musonius Rufus, and Plutarch, right at the heart of their reflections on the homoerotic culture around them, make the very deliberate and careful judgment that homosexual conduct (and indeed all extra-marital sexual gratification) is radically incapable of participating in, actualising, the common good of friendship?

Implicit in the philosophical and common-sense rejection of extra-marital sex is the answer to these questions. **The union of the reproductive organs of husband and wife really unites them biologically (and their biological reality is part of, not merely an instrument of, their personal reality); reproduction is one function and so, in respect of that function, the spouses are indeed one reality. So their union in a sexual act of the reproductive kind (whether or not actually reproductive or even capable of resulting in generation in this instance) can actualise and allow them to experience their real common good. That common good is precisely their marriage with the two goods, parenthood and friendship, which are the parts of its wholeness as an intelligible common good even if, independently of what the spouses will, their capacity for biological parenthood will not be fulfilled by that act of genital union. **But the common good of friends who are not and cannot be married (for example, man and man, man and boy, woman and woman) has nothing to do with their having children by each other, and their reproductive organs cannot make them a biological (and therefore personal) unit.**<sup>14</sup> So**

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<sup>13</sup> The core of this argument can be clarified by comparing it with St. Augustine's treatment of marriage in his *De Bono Coniugali*. There the good of marital communion is presented primarily as an instrumental good, in the service of the procreation and education of children: see Finnis, 'Law, Morality, and "Sexual Orientation"' Notre Dame Law Review 69 (1994) 1049 at 1064-5.

<sup>14</sup> Steven Macedo, "The New Natural Lawyers", The Harvard Crimson, October 28, 1993, writes: "In effect, gays can have sex in a way that is open to procreation, and to new life. They can be, and many are, prepared to engage in the kind of loving relations that would result in procreation -- were conditions different. Like sterile married couples, many would like nothing better." Here fantasy has taken leave of reality. Anal or oral intercourse, whether between spouses or between males, is no more a

their sexual acts together cannot do what they may hope and imagine. Because their activation of one or even each of their reproductive organs cannot be an actualising and experiencing of the marital good--as marital intercourse (intercourse between spouses in a marital way) can, even between spouses who happen to be sterile--it can do no more than provide each partner with an individual gratification. For want of a common good that could be actualised and experienced by and in this bodily union, that conduct involves the partners in treating their bodies as instruments to be used in the service of their consciously experiencing selves; their choice to engage in such conduct thus dis-integrates each of them precisely as acting persons.<sup>15</sup>

Reality is known in judgment, not in emotion. In reality, whatever the generous hopes and dreams and thoughts of giving with which some same-sex partners may surround their 'sexual' acts, those acts cannot express or do more than is expressed or done if two strangers engage in such activity to give each other pleasure, or a prostitute pleases a client to give him pleasure in return for money, or (say) a man masturbates to give himself pleasure and a fantasy of more human relationships after a gruelling day on the assembly line. This is, I believe, the substance of Plato's judgment -- at that moment in the Gorgias 494-495 which is also decisive for the moral and political philosophical critique of hedonism<sup>16</sup> -- that there is no important distinction in essential moral worthlessness between solitary masturbation, being sodomized as a prostitute, and being sodomized for the pleasure of it. Sexual acts cannot not in reality be self-giving unless they are acts by which a man and a woman actualize and experience sexually the real giving of themselves to each other -- in biological, affective, and volitional union in mutual commitment, both open-ended and exclusive -- which like Plato and Aristotle and most peoples we call *marriage*.

In short, sexual acts are not unitive in their significance unless they are marital

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biological union "open to procreation" than is intercourse with a goat by a shepherd who fantasizes about breeding a faun; each "would" yield the desired mutant "were conditions different".

Biological union between humans is the *inseminatory* union of male genital organ with female genital organ; in most circumstances it does not result in generation, but it is the behaviour that unites biologically because it is the behaviour which, as behaviour, is suitable for generation. (See also fn. 32 below.)

<sup>15</sup>For the whole argument, see Grisez, *Living a Christian Life* 634-39, 648-54, 662-4

<sup>16</sup>*Gorgias* 494-5, especially 494e1-5, 495b3.

(actualizing the all-level unity of marriage) and (since the common good of marriage has two aspects) they are not marital unless they have not only the generosity of acts of friendship but also the procreative significance, not necessarily of being intended to generate or capable in the circumstances of generating but at least of being, as human conduct, acts of the reproductive kind -- actualizations, so far as the spouses then and there can, of the reproductive function in which they are biologically and thus personally one.

The ancient philosophers do not much discuss the case of sterile marriages, or the fact (well known to them) that for long periods of time (e.g. throughout pregnancy) the sexual acts of a married couple are naturally incapable of resulting in reproduction. They appear to take for granted what the subsequent Christian tradition certainly did, that such sterility does not render the conjugal sexual acts of the spouses non-marital. (Plutarch indicates that intercourse with a sterile spouse is a desirable mark of marital esteem and affection.)<sup>17</sup> For: a husband and wife who unite their reproductive organs in an act of sexual intercourse which, so far as they then can make it, is of a kind suitable for generation, do function as a biological (and thus personal) unit and thus can be actualising and experiencing the two-in-one-flesh common good and reality of marriage, even when some biological condition happens to prevent that unity resulting in generation of a child. Their conduct thus differs radically from the acts of a husband and wife whose intercourse is masturbatory, for example sodomitic or by fellatio or coitus

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<sup>17</sup>Plutarch, *Life of Solon* 20,3. The post-Christian moral philosophy of Kant identified the wrongfulness of masturbation and homosexual (and bestial) conduct as consisting in the instrumentalisation of one's body, and thus ("since a person is an absolute unity") the "wrong to humanity in our own person". But Kant, though he emphasises the equality of husband and wife (impossible in concubinage or more casual prostitution), did not integrate this insight with an understanding of marriage as a single two-part good involving, inseparably, friendship as well as procreation. Hence he was puzzled by the question why marital intercourse is right when the woman is pregnant or beyond the menopause. See Immanuel Kant, *The Metaphysics of Morals* 277-279, 220-222 ([1797] translated by Mary Gregor, Cambridge University Press, 1991, pages 96-98, 220-222).

(The deep source of his puzzlement is his refusal to allow intelligible goods any structural role in his ethics, a refusal which sets him against a classical moral philosophy such as Aristotle's, and indeed against any adequate theory of natural law, and in turn is connected with his dualistic separation of body from mind and body, a separation which conflicts with his own insight, just quoted, that the person is a real unity.)

interruptus.<sup>18</sup> In law such acts do not consummate a marriage, because in reality (whatever the couple's illusions of intimacy and self-giving in such acts) they do not actualise the one-flesh, two-part marital good.

Does this account seek to "make moral judgments based on natural facts"?<sup>19</sup> Yes and no. No, in the sense that it does not seek to infer normative conclusions or theses from only non-normative (natural-fact) premises. Nor does it appeal to any norm of the form "Respect natural facts or natural functions". But yes, it is to the realities of our constitution, intentions and circumstances that the argument applies the relevant practical reasons (especially that marriage and inner integrity are basic human goods) and moral principles (especially that one may never intend to destroy, damage, impede, or violate any basic human good, or prefer an illusory instantiation of a basic human good to a real instantiation of that or some other human good).

#### IV

Societies such as classical Athens and contemporary England (and virtually every other) draw a distinction between behaviour found merely (perhaps extremely) offensive (such as eating excrement), and behavior to be repudiated as destructive of human character and relationships. Copulation of humans with animals is repudiated because it treats human sexual activity and satisfaction as something appropriately sought in a manner as divorced from the expressing of an intelligible common good as is the instinctive coupling of beasts -- and so treats human bodily life, in one of its most intense activities, as appropriately lived as merely animal. The deliberate genital coupling of persons of the same sex is repudiated for a very similar reason. It is not simply that it is sterile and disposes the participants to an abdication of responsibility

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<sup>18</sup>Or deliberately contracepted, which I omit from the list in the text only because it would no doubt not now be accepted by secular civil law as preventing consummation -- a failure of understanding. See also footnote 35 above.

<sup>19</sup>Macedo, loc. cit., "All we can say is that conditions would have to be more radically different in the case of gay and lesbian couples than sterile married couples for new life to result from sex...but what is the moral force of that? The new natural law theory does not make moral judgments based on natural facts." Macedo's phrase "based on" equivocates between the first premises of normative arguments (which must be normative) and the other premise(s) (which can and normally should be factual and where appropriate can refer to natural facts such as that the human mouth is not a reproductive organ).

for the future of humankind. Nor is it simply that it cannot really actualise the mutual devotion which some homosexual persons hope to manifest and experience by it, and that it harms the personalities of its participants by its dis-integrative manipulation of different parts of their one personal reality. It is also that it treats human sexual capacities in a way which is deeply hostile to the self-understanding of those members of the community who are willing to commit themselves to real marriage in the understanding that its sexual joys are not mere instruments or accompaniments to, or mere compensations for, the accomplishment of marriage's responsibilities, but rather enable the spouses to actualise and experience their intelligent commitment to share in those responsibilities, in that genuine self-giving.

Now, as I noted in section I, "homosexual orientation", in one of the two main senses of that highly equivocal term, is precisely the deliberate willingness to promote and engage in homosexual acts -- the state of mind, will, and character whose self-interpretation came to be expressed in the deplorable but helpfully revealing name "gay". So this willingness, and the whole "gay" ideology, treats human sexual capacities in a way which is deeply hostile to the self-understanding of those members of the community who are willing to commit themselves to real marriage.

Homosexual orientation in this sense is, in fact, a standing denial of the intrinsic aptness of sexual intercourse to actualise and in that sense give expression to the exclusiveness and open-ended commitment of marriage as something good in itself. All who accept that homosexual acts can be a humanly appropriate use of sexual capacities must, if consistent, regard sexual capacities, organs and acts as instruments for gratifying the individual "self" who has them. Such an acceptance is commonly (and in my opinion rightly) judged to be an active threat to the stability of existing and future marriages; it makes nonsense, for example, of the view that adultery is inconsistent with conjugal love, in an important way and intrinsically—not merely because it may involve deception. A political community which judges that the stability and protective and educative generosity of family life are of fundamental importance to the whole community's present and future can rightly judge that it has compelling reasons for judging that homosexual conduct -- a "gay lifestyle" – is never a valid, humanly

acceptable choice and form of life, in denying that same-sex partners are capable of marrying, and in doing whatever it properly can, as a community with uniquely wide but still subsidiary functions (see section 1 above), to discourage such conduct.<sup>20</sup>

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<sup>20</sup> The criminal law upheld in *Bowers v Hardwick* seems to me unsound in principle. But there was a sound and important distinction of principle which the Supreme Court of the United States overlooked in moving from *Griswold v. Connecticut* 381 US 479 (1965) (*private use* of contraceptives by spouses) to *Eisenstadt v. Baird* 405US 438 (1970) (*public distribution* of contraceptives to unmarried people). (The law struck down in *Griswold* was the law forbidding use of contraceptives even by married persons; Griswold's conviction as an accessory to such use fell with the fall of the substantive law against the principals in such use. Very different, in principle, would have been a law directly forbidding Griswold's activities as a public promoter of contraceptive information and supplies.) The truth and relevance of that distinction, and its high importance for the common good, would be overlooked again if laws criminalising private acts of sodomy between adults were to be struck down by the Court on any ground which would also constitutionally require the law to tolerate the advertising or marketing of homosexual services, the maintenance of places of resort for homosexual activity, or the promotion of homosexualist "lifestyles" via education and public media of communication, or to recognise homosexual "marriages" or permit the adoption of children by homosexually active people, and so forth.