

The Straightening out of Homosexuals: Natural Law, and Marriage Equality

Some twenty-two years ago I argued that the constant struggle by many oppressed people to redefine normality was poison bait.

This perpetuation and intensification of the discourse of sexuality is often conflated with the continuing need to fight against oppression. It is thought that continued involvement in the discourse of sexuality is necessary if an opposition is to be mounted and sustained to the oppression of women, of lesbians, or of gay men. It is often thought that because the social status of the oppressed derives from their relative positions within the discourse of sexuality it is imperative to change its meaning. Hence the ensuing struggle to redefine normality, to refurbish the idea of family, to reorganize the meaning of 'woman'. However the prospect of redefining reality offered to us by the theory of social construction turns out to be poison bait. The realization of the ideal eludes us, but we continue to slide towards the creation of an ideal type of sexuality or range of types of sexuality. We are drawn towards considerations of relationship and kinds of relationships that entangle us in the web of the discourse of sexuality.¹

Indeed, this is exactly what has happened; normality has been redefined to include homosexuality, and even to involve the induction of homosexuals, legitimately and publically, into the toils and joys of marriage and childrearing.

This is indeed not what those of us who were gay radicals in the late sixties and seventies fought for, or even conceived of happening. The scale and extent of the process of our

¹ Don Milligan, *Sex-Life: A Critical Commentary on the History of Sexuality*, London: Pluto Press, 1993, p 110-11.

normalization has been truly astonishing to anybody of my generation (I was born in 1945). These developments have dismayed some gay and lesbian people who hanker after the days when we were edgy, alternative, and where-it-was at. It was not to be. Mainstream opinion swung our way and absorbed and recuperated us in the manner that advanced capitalism has a habit of doing. In a recent article I refer to it as 'high camp capitalism'.²

These changes have profoundly altered the circumstances of homosexuals in this country, removing by 2003, all discriminatory criminal sanctions from the statute books. Subsequently, the struggle was continued by mainstream lobby groups, Stonewall and others, to complete the process of reassuring the capitalist class that homosexuality is in no sense deleterious to the process of capital accumulation. This is rather like the astonishing social processes that have resulted in many former revolutionary communists transforming themselves into conservative-libertarians who write articles for the *Spectator*, the *Daily Telegraph* and *The Times*.

So, yes, with the disintegration of the Soviet Union, and the full-blooded onset of globalization, the floor has tilted under many of us, as previous assumptions and certainties have been ground to dust by the actual trajectory of social development. This has meant that lots of homosexual campaigners and activists have, like some of those who were Revolutionary Communists prior to 1996 or thereabouts, become fully paid up members of the chattering classes.³

This development has led in recent years to the strenuous insistence in some quarters that the state, the political class, and something called the 'liberal elite', is redefining everything and telling us all what to think. It's a kind of

² See Don Milligan, 'Capitalism, High Camp . . . and the straightening out of homosexuals', *The Project*, January 2015, <http://www.socialistproject.org/womens-liberation/capitalism-high-camp-and-the-straightening-out-of-homosexuals/>

³ See Don Milligan, 'Radical Amnesia and the Revolutionary Communist Party', January 8, 2008, http://www.donmilligan.net/DM_Articles_files/RadicalAmnesiaAndTheRevolutionaryCommunistPartyA.pdf

“political correctness gone mad” trope, in which ordinary right-thinking people are being put upon for continuing to think things that in days of yore were uncontested and uncontroversial. The state is apparently telling us all what to think. Consequently, the gays “who have won a lot more acceptance of their sexuality” should stop asking for more, and what’s more they should stop using the state to impose themselves, their sexuality, and their ideas on the rest of us.

Perhaps most surprising is the manner in which such irritation has led some conservative-libertarians to campaign in defence of heterosexual marriage by calling upon the British state in 2012 and 2013 to continue the exclusion of homosexuals from the institution. This issue re-emerged recently in the context of the marriage equality referendum in the Irish Republic, with renewed conservative-libertarian insistence that marriage must and could only ever be between a man and a woman, regardless of what the state or the law has to say about it.

Consequently, “marriage is a heterosexual institution” and that “most people get married to start a family.” I’ve no idea really whether most people get married to start a family or not – I suspect that nowadays that this is probably not the case – but even if it were – it would not amount to a compelling argument for preventing homosexual couples from marrying. Just over half of married couples have children, and just under half do not, and heterosexuals who are incapable of having children for whatever reason get married all the time.

Determined efforts are now being made to diminish the result of the Irish referendum in which more than a million people, rural and urban, young and old, voted for marriage equality. In fact there was a majority in every county and voting district, except one. Some in the anti-equality camp are even arguing that homosexual couples should not be allowed to marry, because they suspect, that most people still think of marriage in heterosexual terms. Why this is a sufficient objection is unclear, precisely because nobody is asking straight people to have same-sex weddings. It is also an odd point of view, because I imagine that large numbers

of people who agree with allowing homosexuals to marry probably still do think of marriage in pretty conventional heterosexual terms. Homosexuals are a relatively small minority, and most marriages will continue to be heterosexual; indeed the minority status of homosexuals is even being used to say that because there will be very few same-sex marriages, they will amount to no more than a “legal fiction”. If this is the case, one can only wonder why conservative-libertarians bother to oppose marriage equality quite so strenuously.

This strand of opinion, led by Brendan O’Neil of the website *Spiked*, and promoted in *The Spectator* and elsewhere in the conservative press, although broadly secular, deploys natural law arguments regarding heterosexual unions, and the reproduction of children within those unions, as a reason for opposing the right of homosexuals to marry. So I think it is important to look briefly at natural law and then to review the pickle that conservative-libertarians have fallen into on the issue of marriage equality

Natural Law

The natural law is that which has been bequeathed to human beings by God from which we, by the use of reason, shall know how to act in relation to our natural disposition and our destination within God’s creation. Unlike inanimate objects or lower animals, human beings, because endowed with free will and reason, are able to know the good from the bad and are consequently able to shape their conduct in a manner consonant with their intrinsic natures and the architecture of God’s plan.⁴

This is a very brief outline of what Thomas Aquinas and the modern Roman Catholic Church thinks about natural law.⁵ It does not provide a fixed

⁴ This does not apply of course to children or to adults whose capacity for reasoning is restricted or impaired in any way.

⁵ See the articles on natural law in *New Advent: The Catholic Encyclopedia* <http://www.newadvent.org/cathen/>; and the articles on natural law in the *Stanford Encyclopedia of Philosophy* <http://plato.stanford.edu>.

template for determining the good and bad in every situation, but it does provide means whereby, with the employment of reason, we can determine the moral from the immoral and the natural from the unnatural in every set of circumstances. Therefore the natural law forms the principles of practical rationality and provides us with a means to know whether a human action may be judged reasonable or unreasonable.

This deployment of reason leads Roman Catholic thinkers to the conclusion that adultery, lying, blasphemy, and sodomy among many others forms of conduct, are intrinsically wrong, or disordered, because they violate the natural law.

It is clear that Roman Catholic thinking on sexuality is imbued with a deep respect for this conception of the natural law. The Church's thinking is rooted in the idea that human sexuality is intrinsically related to the reproductive aspect of our biology, and to the 'working of that which is natural' as a part of God's creation. What they mean by this thought is that the undeniable necessity of human reproduction, imposed upon us by our nature, is the right and principal purpose of the impulse to sexual pleasure.

This does not mean, however, that modern Roman Catholic clergy think that coitus can only be justified by an intention or potential to reproduce. Priests have recommended *coitus interruptus* in times past, and certainly, the idea of the 'rhythm' or 'calendar method' of calculating the best periods in which to avoid conception, has met with the approval of the Church. As long ago as 1931 Pope Pius XI in the encyclical, *Casti Connubii*, argued:

Nor are those considered as acting against nature who in the married state use their right in the proper manner, although on account of natural reasons either of time or of certain defects, new life cannot be brought forth. For in matrimony as

well as in the use of the matrimonial rights there are secondary ends, such as mutual aid, the cultivating of mutual love, and the quieting of concupiscence [strong sexual desire] which husband and wife are not forbidden to consider so long as they are subordinated to the primary end and so long as the intrinsic nature of the act is preserved.⁶

The mind boggles here about what the old Pope might have meant by “the proper manner”, although it is pretty clear what is meant when he concludes “so long as the intrinsic nature of the act is preserved.” It means that the ‘the sexual act’ must take place within guidelines or context created by God, which we can see by the use of our reason, is that right and proper sexual congress must take place between men and women. Because, it is only opposite-sex relations, that accord with our intrinsic nature and the biological necessity to reproduce.

This means that the superfluity of human sexuality creates, and always has created, a problem for natural law theory. Because, it is evident that the pleasure derived from cunnilingus, fellatio, buggery, and the entire range of erotic touching, has no necessary relationship with heterosexual coitus at all. As with many things in nature a superfluity or abundance has been created, whether by God or evolutionary pressures, we cannot know for a certainty.

What we can be certain about though is that same-sexuality and the pleasure derived from it has always been with us because of the superfluous and plastic (or flexible) nature of human sexuality. We can, with the use of our reason determine that same-sex relationships are undoubtedly natural. The problem for the modern Church is not really whether such relationships can be

⁶ Pius XI, *Casti Conubii: Encyclical Letter of His Holiness Pope Pius XI*, Sheed & Ward, 1933.

said to be natural, but whether they can be said to be moral.

The Roman Catholic Laity

There is little disagreement within the Curia and the hierarchy of the Catholic Church. Homosexual acts and homosexual conduct remains sinful because same-sexuality violates the principles of natural law and God's plan for humanity. Evidently, large numbers of ordinary Roman Catholics do not believe this, however it remains the position of the Church to "love the homosexual, but hate the sin", i.e. the fact that homosexuals actually do have sex with people of their own gender remains an unacceptable sin.

This is where most of the Catholic clergy has come adrift from great masses of their own laity. Roman Catholic's on the whole are in favour of using artificial contraception, and do not believe that homosexuality should be condemned out-of-hand. Whatever else they think, they do not believe in the shibboleths of natural law theory. They know from their own concrete experience that the superfluity of human sexuality cannot possibly be contained within traditional Christian teaching of what is natural for men and women engaged in erotic play with each other. Similarly, most heterosexuals can, through the employment of their reason, see that such conduct between people of the same gender, while mystifying, or even repulsive, cannot in all conscience be said to be unnatural, and cannot therefore be said to be sinful.

In this way, natural law arguments regarding sexuality have collapsed within their own terms because modern material and social circumstances have facilitated a public reflection and discussion of these matters that would have been unthinkable in times past. It is through this public discourse that the taboos about acknowledging what Freud might have

called the extension of the sexual object, that it has become plain to many people just how widespread and natural a whole repertoire of sexual actions and pleasures are above and beyond heterosexual coitus.

Marriage

The old style disdain, dismissal, denunciation, and revulsion, regarding homosexuality, has gradually ebbed away. Straight people have come to the realisation that they're not so straight after all.

Something similar has happened regarding marriage. In the quite recent past, marriage was still regarded as a coming together of two families through the exchange of a boy and girl. Although most people in society never had any significant property, the central virtue of marriage was that it would help to moderate promiscuity and philandering, and provide a secure environment for the raising of children.

In the distant past neither the church nor the state was involved in the recording or registering of partnerships. Legitimate marriages could be contracted between couples simply by them exchanging vows to the effect that they'd chosen to marry each other to the exclusion of all others and had pledged to stay together forever. In case of dispute it always helped to have had a witness to these vows, but even that was not essential. However, where substantial property was involved it was always likely that the respective families would want the vows exchanged in church witnessed by the entire community.

The church, of course, played a vital role in recording births, deaths, and marriages in England for many centuries. However, with the emergence of non-conformity – Methodist, Baptist, and Roman Catholic churches – outside the parochial structures of the Anglican Church, a large number of births, deaths, and marriages were going unrecorded. Consequently, from

1837, the state instituted an official procedure for the registration of these events regardless of religious affiliation.

Since then, of course, marriage has undergone, like industry, technology, and social life, considerable changes. It is now a much more private event in which the couple involved choose which friends or family members may attend. Whether in a Church, a Register Office, an hotel, or on a beach in Thailand – it is a decision of the couple who they will invite – because marriage is now simply a declaration before the selected guests that the bride and groom will love and cherish each other, and that come what may will look after each other through thick and thin.

Such marriages are dissolvable at the will of either party, although the stated intention of those who marry is, at the time of their wedding, to stay together for life. Interestingly, nowadays most people who marry in the UK will have been living together for some years, and may even have had children with each other (or another person or persons), a shared mortgage, and many other commitments in common. Their decision to marry is informed by the desire to reaffirm the permanence of their relationship in front of their friends and relatives, and to have a grand occasion, a large expensive ceremony, and party, which will in the most memorable way reaffirm their love and commitment to each other.

These new manners and attitudes concerning marriage have also destroyed the notion of illegitimacy. Children born out of wedlock are no longer ostracised for being bastards. Indeed, the word “bastard” has simply been demoted to a handy epithet for those we may disapprove of – the word has certainly lost the terrible connotation of indelible stain that it carried two or three generations ago. Bastards no longer exist – what a marvellous turnaround wrought by modern heterosexual conduct and marriage practice. People really don't care whether or not you've been

born in wedlock, Christened, or whether your ‘father’ is your biological father or not. Although much of the stigma has disappeared, these confusions often lead to much heartache and confusion, but it was ever thus. The biological relationships continue to be viscerally felt by the individuals they directly concern, but ‘irregularity’ no longer carries with it the shame, secrecy, or disapproval that it once did in the wider community.

So it is that marriage and childrearing has now become habitable for homosexuals.⁷ There is no longer any reason why homosexuals should not marry, or have children, adopt children, or care for kids they have decided to call their own.

The Three Objections to Marriage Equality

It is the internal collapse of natural law, and the moral strictures that flowed from it, that has revealed the significance of the changes in heterosexual erotic conduct and social arrangements, which now permit the inclusion of homosexuals into the institution of marriage.

The arguments recently deployed by the Roman Catholic Church and other religious and secular conservative-libertarians that marriage must only be conducted between a man and a woman depend upon three principal pillars:

1. That children both need and deserve a Mother and Father;
2. That the inclusion of homosexuals within the institution of marriage will demote the value of the marriage, rendering it shallow and meaningless;

⁷ Same-sex marriages became lawful in England and Wales on March 13, 2014 and in Scotland between those in Civil Partnerships on December 16, 2014, and those without Civil Partnerships on December 31, 2014. Northern Ireland does not have same-sex marriage, but those registered in other jurisdictions are treated in law within Northern Ireland as Civil Partnerships.

3. That the redefinition of marriage to include homosexuals is a “top down” and unwelcome imposition upon the mass of the population by the liberal elite.

Now, it's a moot point whether children need to live with their biological Fathers and Mothers in what once was a conventional household – large numbers of children have strong relationships with biological parents with whom they do not live. While 63 per cent of all children live with married heterosexual couples, 37 per cent live in other types of family. What is certain is that kids need stability and good relationships with a small number of adults, adults that are good providers, and can be relied upon to love them and take an active interest in their welfare and development. So, no, children do not ‘need’ or ‘deserve’ parents or guardians in the form specified by the church and conservative opinion.

Concerning whether marriage equality will result in demoting the value of heterosexual marriage, I simply cannot see the force of this argument – it only works if you think that homosexual relationships are intrinsically unnatural and disordered. Indeed, this is why it works for the Roman Catholic Church, because they do actually think that homosexuality is unnatural and disordered. So it is difficult to understand the reasoning of those who oppose marriage equality, but would not go so far as to claim that homosexuality violates natural law. It's a mystery.

On the third and final point, concerning the prejudices of the ‘liberal elite’, I would agree that there is indeed a layer of well-to-do liberal intellectuals who often despise and ridicule common or popular opinions, more or less, because they are popular and common or garden opinions. However, it is difficult to see the changes which have been wrought in society over the last forty or fifty years regarding the loosening purchase of natural law arguments, and the profound

changes in sexual conduct and attitudes, changes in the circumstances of women and the arrangement of family life, the disappearance of bastardy, the legal emancipation of homosexuals, and so on, as a transient product of the chattering classes. These are enormous changes shaped to some degree by direct political intervention and campaigning, but more fundamentally by the reorganisation of the workplace, changes in the manner in which class relations are experienced and depicted, by technology, and the role and nature of the neighbourhoods and networks to which people belong.

So I think that the whole question of marriage equality needs to be seen from the perspective of the changes that have taken place within heterosexual marriage and relationships, and the manner in which natural law conventions and arguments have gradually decayed, steadily losing force and authority since the mid-fifties of the last century. Certainly, popular attitudes towards homosexuality, and the equal marriage referendum in the Irish Republic have made it abundantly clear that conservative-libertarians who blame the 'liberal elite' for transforming marriage and sexual conduct have lost the plot.