

## A RESPONSE TO LAW AND MCBRAYER ON HOMOSEXUAL ACTIVITY

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In this short paper I argue that two attempts in this journal to argue for the moral permissibility of homosexual activity do not succeed. Justin McBrayer's article, 'Christianity, Homosexual Behavior, and Sexism' (*THINK* Summer 2012) is an explicitly Christian attempt to show that homosexual activity should not be regarded as objectionable within Christianity, and that it should be regarded as permissible at least sometimes. His case has three prongs, namely, to show that homosexual activity seems permissible because (1) neither Christian tradition nor (2) Christian Scripture establish that it is impermissible, and (3) reason gives evidence that it is permissible. I will note a brief concern about McBrayer's method, and then discuss Stephen Law's article 'What's Wrong with Gay Sex?' (*THINK* Autumn 2003) next. Law's argument against the unnaturalness of homosexual activity leaves a gap that can be taken up by Catholic sexual morality. After this I will return to McBrayer's claim that reason gives evidence that homosexual activity is permissible and argue that there is a relevant reason to distinguish heterosexual activity from homosexual activity that he does not discuss, and that is not clearly sexist on his definition.

Let us first consider McBrayer's methodological approach to the idea that homosexuality activity is sometimes permissible according to a Christian framework. As a point of terminology, I will capitalize 'Tradition' and enclose it in quotes

when using it in tandem with 'Scripture' in a Catholic sense. This is a different sense from the 'Catholic theological tradition' in which sense we might also talk about the 'Muslim theological tradition'. McBrayer treats 'Tradition' and then Scripture in separate sections. This has the (no doubt unintended) effect of suggesting that 'Tradition' and Scripture are different sorts of entities, but within the Catholic theological tradition, the 'Tradition' that carries forward the apostolic faith and the written rule of faith (Scripture) that it is charged with carrying on are inextricably bound to one another. This is why the Second Vatican Council claimed that Scripture and 'Tradition' form 'one sacred deposit' of the word of God.<sup>1</sup> This has implications for McBrayer's argument because if the 'Tradition' just is a reasoned theological approach to the testimony of Scripture and the apostolic faith down through the ages, then reason is itself employed in the interpretation of the Scripture and even in the writing of it. Further, if there is an organ tasked with interpreting revelation in Scripture and 'Tradition' through the ages (as in the case of the Catholic magisterium) then some moments in Christian history will fall outside the 'Tradition' even if this ultimately owes to a later understanding that develops over time. Thus, when the Christian world was troubled by the Arian heresy (prior to the Council of Nicea in 325) this was an instance of clergy heading down the wrong doctrinal path even though it had not been authoritatively established until later that in doing so they represented a doctrine that parted ways with the 'Tradition', understood as the apostolic faith as it came to be discerned.

Reason is also employed when one considers the writings of Scripture. Scripture is not tasked with being a theological encyclopedia, much to the chagrin of many fundamentalists. What it does is instantiate a worldview that needs theological unpacking. Thus, in the Catholic community, an authoritative 'Tradition' is seen as a real need.<sup>2</sup> When it comes to McBrayer's reservations concerning the episode at Sodom and Gomorrah, I quite agree with him

that whether the homosexual nature of the activity suggested in Genesis 18:20–19:29 is part of what is objectionable or not, there would be plenty of objectionableness in the unprincipled nature of the suggested sexual activity even if the sexual activity suggested were heterosexual. But that is because Scripture also puts forward (at times explicitly and at times implicitly) a *positive* view of sexual activity of which some activities (heterosexual and homosexual) are going to fall afoul. Thus, when St. Paul writes to the Corinthians in the horror that Christians had been frequenting prostitutes (1 Corinthians 6:15–20) he notes that visiting a prostitute involves becoming ‘one flesh’ or ‘one body’ with her, the very thing that one is only supposed to become with one’s spouse. Here Paul himself invokes Genesis 2:24 where the biblical writer claims that a man leaves his father and mother and clings to his wife and the two become one body. Jesus also highlights this text at length in Matthew 19:1–12. The context is heterosexual and seems to have everything to do with the creation of male and female and their uniting in marriage. For reasons I cannot fully understand, these passages are seldom invoked by those who defend the biblical legitimacy of homosexual activity, despite their profound importance for understanding what traditionalists see as the positive view of sexuality articulated in Scripture. For what Paul is invoking here is a physical reality that exists when a man visits a prostitute quite apart from any emotional intimacy that may be involved. What is that physical reality?

Alexander Pruss develops a view of this reality by discussing what it might mean to become one body (‘Christian Sexual Ethics and Teleological Organicity’, *The Thomist*, vol. 64, (2000), 71–100). He argues that this unity is forged in a biological sense when two people, quite apart from their intention (thus the man and the prostitute), engage in ‘an integrated action of itself directed at an end, a *telos*’ (76). Now this unity is forged by virtue of the biological cooperation of man and woman. Pruss notes ‘It is not necessary for the action to be successful, nor even for

it to have a realistic chance at succeeding – it is the *striving* in the direction of the reproductive end that makes the organism an organism, a striving that is itself an ontological reality' (77). Thus, a stone is not an organism because it is not directed at an end, nor are two cats tied together by their tails, nor even is a surgically reattached finger one organism with the rest of the body from which it was separated *if* it does not function together with the body to which it is attached in achieving the end of that body (78).

The sexual unity in heterosexual coitus is, on this view, established by virtue of biological cooperation. Certainly it is also desirable that a man and a woman share their whole lives together, and if the sexual act is to be an unre-served unity of two people's lives (which is what it would take to be 'principled' sexual activity on this view) then it will require that the two take each other not in lust as for objects, but in respect for each other as persons (see Tobit 8:7, though significantly this is not part of many Protestant canons). Certainly there are emotional conditions for uniting whole persons rather than just bodies, but part of what Paul seems to be pointing out, and what a long biblical tradition, and extra-biblical theological tradition seem to echo him in pointing out, is that there are physical conditions for this unity as well. This is why, in the Roman Catholic tradition, marriages are only consummated 'if the spouses have performed between themselves in a human fashion a conjugal act which is suitable in itself for the pro-creation of offspring, to which marriage is ordered by its nature and by which the spouses become one flesh'.<sup>3</sup> It is also worth noting that the donning of a condom is seen as an impediment to this unity, as additionally any act would be that sought complete sexual satisfaction apart from the overall context of heterosexual coitus.

In this journal, Stephen Law constructs a biting satirical dialogue between the (fictional) recently deceased Jarvis and the 'God' he meets in the hereafter. Before engaging with this piece I want to note that, while I personally find no difficulty whatsoever in believing that many excellent

individuals whose sexual orientation differs from mine will very probably enter the bliss of heaven a good deal prior to me (God willing I should enter at all), this cannot prevent a careful moral discussion of the status of homosexual acts. So, while in Law's scenario, the impetus for the discussion between God and Jarvis is the entry of homosexual individuals into the bliss of heaven concerning which Jarvis is surprised, for me the issues of salvation and morality are distinct.

Nevertheless, Jarvis begins discussing reasons for why he thinks homosexuality is morally wrong. We will bypass some of his reasons (and in many cases I agree with Law that the proffered reasons are lousy) and move directly to Law's discussion of the idea that homosexual activity is 'unnatural'. Here Jarvis suggests that homosexuality is a minority orientation and so is an 'aberration from the norm' (55). God quickly dispenses with this argument since there's nothing unnatural about red hair, and indeed nothing morally impermissible about it, either. God then points out that 'much that comes naturally to man is immoral', suggesting that greed is perfectly natural (56). Jarvis then suggests that naturalness might have to do with things' functions, suggesting that reproductive organs have a specific function that should not be thwarted, namely procreation. God then notes that masturbation, oral sex, and contraception would then be sinful. Jarvis suggests that this might still be tenable since many Catholics hold this view. God suggests that earrings are using ears in ways other than their natural function (to hear), so why is it not permissible to use other things (such as reproductive organs) in ways contrary to their 'natural' function?

At this point, Jarvis attempts to clarify by saying that earrings don't thwart the hearing function. God then suggests that earmuffs might thwart this function. Here it's worth pointing out that traditional Catholic thinkers will suggest that the argument won't work, because one wears earmuffs to protect one's ears from the cold and the earmuffs don't totally destroy (or even cancel) the hearing function.

Similarly, even traditional Catholic theologians will allow one to use what is sometimes called a perforated condom so that when one needs to collect a sperm sample for infertility testing one can have intercourse that does not nullify the procreative function entirely while at the same time collecting the sample for a good purpose.<sup>4</sup> But a final reason exists to view Law's (or 'God's') argument here with some skepticism. Earmuffs don't make us not hear at all. They just make us hear something else (namely what movement exists inside what the earmuffs cover, namely, the inner ear). The analogy with ejaculation, whose purpose is thwarted by the use of standard-issue condoms, is, at best, incomplete.

Finally, we return to McBrayer's argument, again beginning with his arguments from reason (beginning on 55). Now McBrayer argues that 'a person's gender is not, per se, a morally relevant feature of any action, and in at least some cases, the only difference between a permissible act of heterosexual sex and an act of homosexual sex is the gender of the actor' (55). 'Sexism', McBrayer claims, holds that 'the actor's gender is a morally relevant feature of an action' (56). McBrayer then asks us to 'imagine a case of heterosexual sex that you think is morally permissible (e.g. one that occurs within a stable, committed relationship, etc.). Now make only one change to this hypothetical situation: change the gender of one of the partners. If sexism is false and if the initial sexual act was morally permissible, then, so, too, is the latter instance. Thus at least some homosexual behavior is morally permissible' (56). McBrayer then claims that 'to challenge this line of thinking, we need to identify a morally relevant difference between all homosexual behavior and all heterosexual behavior. If we can do so, then the argument from sexism fails' (56–57). McBrayer then considers three putative characteristics of homosexual sex that, he argues (supposing they are genuine characteristics for the sake of argument) do not disqualify homosexual sex from being morally permissible, namely, that such activity is 'repugnant', 'non-reproductive', and 'unnatural' (59–62).

All I want to do here, by way of response, is to suggest one path that McBrayer is overlooking. McBrayer takes a hypothetical sexual act (say consensual marital heterosexual coitus) and tells us to merely change the gender of one of the actors involved in it. The trouble is that McBrayer assumes that this is still the same act. But it is precisely that assumption that the traditionalist would and should find inadmissible. We can see this by recalling Pruss's discussion of the sexual act. On his view, the sexual act is by its very nature a union of 'one flesh' or 'one body' and actions that lack this feature do not just lack some feature that 'good sex' must have, in contradistinction to 'bad sex'. Rather, the claim that McBrayer is overlooking is that homosexual activity cannot be 'sex' (in a strict sense) at all. Thus, Robert P. George and Patrick Lee, in their article 'What Sex Can Be: Self-Alienation, Illusion, or One-Flesh Union' (*The American Journal of Jurisprudence*, vol. 41 (1997), 135–157), claim 'In sexual intercourse, the husband and the wife become one organism, but they do so precisely as man and woman, precisely as potential father and mother' (144).

Now to many this claim will be unsettling, but of course one can't very well ignore the perspective on that account. Nor does this claim mean that, for instance, anal intercourse or oral intercourse cannot be sexual by analogy, and thus such things might fall under the 'sexual' heading for purposes of law and prosecution. That is to say, anal intercourse could still constitute rape if non-consensual. But what is claimed here is that 'sex', if it is a term reserved for heterosexual coitus, marks out physical conditions that are not met by what McBrayer never bats an eye at calling 'homosexual sex'. Now, it would take a full phenomenology of the sexual urge (such as Karol Wojtyła famously undertook before he became Pope John Paul II in his book *Love and Responsibility* and other Catholic thinkers have advanced in his stead)<sup>5</sup> to explain in what precise sense anal or oral intercourse could be analogically connected to heterosexual coitus. But the idea that some serious

philosophical proponents of the view McBrayer and Law reject will come to its defense is enough to move the debate. Nor is this perspective a radically new development that can be said to have nothing to do with the biblical perspective on sex, even if the positive view of sexuality that could be glimpsed in the pages of the Bible rarely deigns to mention a term that would answer to 'homosexuality'.

I wish to conclude by noting that this debate is especially thorny and I do not take myself to have achieved anything more than pointing out that these two articles, while excellent in many ways, do not achieve the full purpose for which they were written. Many of the perspectives Law and McBrayer argue against are exactly as shallow as they take them to be, and a useful philosophical and moral purpose is achieved by showing this. However, I do not think that they succeed in their final aims, and to do this they will need a more adequate consideration of the perspective of their chief philosophical rivals, namely, the 'new natural lawyers' and those who undertake to defend Catholic sexual morality.

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### Notes

<sup>1</sup> *Dei Verbum*, 10. See [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_const\\_19651118\\_dei-verbum\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651118_dei-verbum_en.html).

<sup>2</sup> See Avery Cardinal Dulles, *Magisterium: Teacher and Guardian of the Faith* (Naples, FL: Ave Maria University Press, 2007), 4.

<sup>3</sup> See canon 1061.1 of the *Code of Canon Law* at: [http://www.vatican.va/archive/ENG1104/\\_P3V.HTM](http://www.vatican.va/archive/ENG1104/_P3V.HTM).

<sup>4</sup> See <http://www.usccb.org/issues-and-action/human-life-and-dignity/reproductive-technology/upload/Reproductive-Technology-Evaluation-Treatment-of-Infertility-Guidelines.pdf>.

<sup>5</sup> See Wojtyła, *Love and Responsibility*, trans. H.T. Willetts (San Francisco: Ignatius Press, 1993).