

## TRULY HUMAN SEXUAL ACTS: A RESPONSE TO PATRICK LEE AND ROBERT GEORGE

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*The authors argue that Lee and George (hereafter, L/G) use a reductionist anthropology and ethical method to defend a classicist approach to absolute sexual norms. After describing Lonergan's understanding of scotosis, which can distort one's insight into ethical theory and ethical issues, the article demonstrates this distortion in L/G's sexual anthropology. It further argues that, in formulating their sexual anthropology, L/G fail to address the significance of sexual orientation, and that their method inadequately integrates human experience and reason as sources of moral knowledge.*

IN THE CONCLUDING PARAGRAPH of the article discussed by Patrick Lee and Robert George (hereafter, L/G),<sup>1</sup> we cited the International Theological Commission's judgment that the theologian's task "brings with it a somewhat critical function which obviously should be exercised positively rather than destructively." Accordingly, we invited critique of our article

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<sup>1</sup> Todd A. Salzman and Michael G. Lawler, "Catholic Sexual Ethics: Complementarity and the Truly Human," *Theological Studies* 67 (2006) 625–652 (hereafter, CSE).

“in the same vein so that an important discussion may move forward.”<sup>2</sup> We are doubly delighted that a response has come from philosophers L/G: first, because they have taken up our invitation in the spirit in which it was extended; and second, because it provides an opportunity to clarify the lines of the debate among Catholic moral theologians about sexual morality in general and homosexual morality in particular. L/G claim allegiance to what is known as New Natural Law Theory (hereafter, NNLT),<sup>3</sup> a well-known *traditionalist school* of Catholic moral theology; we claim allegiance to what is generally known as the *revisionist school*.

The Catholic magisterium proclaims as *absolute* moral norms prohibiting certain types of sexual acts such as premarital, contraceptive marital, and homosexual sex. Traditionalist theologians support and defend these norms as *absolute*; revisionist theologians question the *absolute* status of these norms. Traditionalists tend toward the traditional rule-based, act-centered, authoritarian, nonhistorical approach, which parallels in general the juridical approach of Pope Paul VI’s *Humanae vitae*. Revisionists tend toward a renewed person-based, relation-centered, and historically conscious approach, which parallels in general the interpersonal approach reflected in Vatican II’s *Gaudium et spes*. The opening sentence of L/G’s essay illustrates the difference between the two schools: “Scripture, the popes, bishops, pastors, and authorized Catholic teachers have for centuries proclaimed as a significant part of Christian moral teaching that homosexual acts are intrinsically morally wrong.”<sup>4</sup> The implication is that moral teaching cannot be changed—a position that flies in the face of historical fact.

### EVOLUTION IN CATHOLIC TEACHING

Pope Benedict XVI, when he was still only Professor Joseph Ratzinger, articulated common Catholic theology. “Not every tradition that arises in the Church is a true celebration and keeping present of the mystery of Christ. There is a distorting, as well as legitimate, tradition. . . . Consequently tradition must not be considered only affirmatively but also critically.”<sup>5</sup> Scripture, the popes, bishops, and authorized Catholic teachers for centuries proclaimed all sorts of moral teaching—for instance, the mortal sinfulness of taking interest on money, the naturalness and nonsinfulness of the institution of slavery, the “insanity” of religious freedom,<sup>6</sup> the exclusive

<sup>2</sup> CSE 652.

<sup>3</sup> L/G, “Male-Female Complementarity” 652–53.

<sup>4</sup> *Ibid.* 641.

<sup>5</sup> Joseph Ratzinger, “The Transmission of Divine Revelation,” in *Commentary on the Documents of Vatican II*, 5 vols., ed. Herbert Vorgrimler (New York: Herder, 1969) 3:181–98, at 185.

<sup>6</sup> Pius IX, *Quanta cura*, in *The Papal Encyclicals*, 5 vols., ed. Claudia Carlen, I.H.M. (Raleigh: McGrath, 1981) 1:383.

Catholic membership in the Body of Christ, all of which beliefs the church has abandoned. All those theological developments are well known to Catholic theologians and need not be rehearsed here,<sup>7</sup> but we permit ourselves a brief commentary on one of them to make a theological point important in the present instance.

In 1964 a small group of Roman traditionalists argued, as do L/G with respect to the ethics of homosexual acts, that the traditional teaching on religious freedom could not be abandoned. Their argument did not convince the council fathers of Vatican II, nor did it deter the council from abandoning the traditional teaching and articulating an entirely new one. “This Vatican Synod declares that the human person has a right to religious freedom. . . . The Synod further declares that the right to religious freedom has its foundation in the very dignity of the human person, as this dignity is known through the revealed word of God and by reason itself”<sup>8</sup>—revealed in the word of God but not recognized by the Catholic Church until 1964; that constitutes a long history of moral misunderstanding. It is this documented history of development in Catholic moral teachings that makes the mainstream of Catholic moral theologians leery about unhistorical moral claims such as those made by L/G, and makes them even leerier about claims made for the creeping infallibility that L/G insinuate in their footnote 1. An understanding of theological history is “important for keeping the Church and her theologians truthful.”<sup>9</sup>

We are not arguing here that, because the Church’s teachings on certain moral questions have developed, its teachings on sexual ethics must, therefore, develop. That would be inane. We are, however, arguing, first, building on the scholastic opinion of Peter Cantor cited in CSE,<sup>10</sup> that a *relectio* of the doubtful scriptural data on homosexual acts (currently under serious exegetical rereading) and an honest *disputatio* of equally doubtful theological points is necessary today before the Church can present any secure and convincing *praedicatio* about both the heterosexual and homosexual human person. We are arguing, second, that such *relectio*, *disputatio*, and renewed *praedicatio* are not ruled out of court, as L/G imply, by centuries-old Catholic teaching.

<sup>7</sup> See, among many others, John T. Noonan Jr., *A Church That Can and Cannot Change: The Development of Catholic Moral Teaching* (Notre Dame, Ind.: University of Notre Dame, 2005); and Charles E. Curran, ed., *Change in Official Catholic Moral Teachings* (New York: Paulist, 2003).

<sup>8</sup> *Dignitatis humanae* no. 2. Unless otherwise indicated, all citations of church documents are to those found on the Vatican Web site, [www.vatican.va](http://www.vatican.va).

<sup>9</sup> James F. Keenan, “Crises and Other Developments,” *Theological Studies* 69 (2008) 125–43, at 143.

<sup>10</sup> CSE 627.

### SCOTOSIS AND MORAL THEOLOGY

We are astonished by two significant lacunae in L/G's essay. First, not once in their treatment of magisterial teaching do they offer any magisterial documentary support of their version of "Catholic teaching." Second, they demonstrate little engagement with the vast field of Catholic academic sexual ethics. They assume, without further discussion, both Catholic moral teaching and its classicist, unhistorical, and unchanging character. The same charge could be leveled against contemporary magisterial teaching itself, for which traditionalists like L/G serve as apologists.

In the 1960s, while directing the dissertation of Michael Lawler, Bernard Lonergan accused him of an aberration of understanding that Lonergan named *scotosis* (from the Greek *skotos*, darkness), which produces something he called *scotoma*, a blind spot. *Scotosis* results from bias, "the love of darkness." It is not a conscious act, but it arises "in the censorship that governs the emergence of psychic contents."<sup>11</sup> This censorship can be either positive or negative. Positively, "it selects and arranges materials that emerge in consciousness in a perspective that gives rise to an insight"; negatively, it prevents "the emergence into consciousness of perspectives that would give rise to unwanted insights."<sup>12</sup> To exclude an insight, of course, "is also to exclude the further questions that would arise from it and the complementary insights that would carry it towards a rounded and balanced viewpoint." The lack of that more balanced viewpoint "results in behavior that generates misunderstanding *both in ourselves and in others*."<sup>13</sup>

It would be invidious to suggest that only L/G are suffering from *scotosis* and we are not, but we will never know the extent to which either of us suffers from it without the sort of dialogue now under way. Genuine, level-playing-field dialogue, such as that lauded by John Paul II,<sup>14</sup> and which we welcome, might, of course, reveal in whose eye there is *scotoma*. Jon Nilson offers strong supporting evidence for the judgment that magisterial teaching is presently suffering from *scotosis* in homosexual ethics and is in cumulative moral decline as a result.<sup>15</sup> We believe that this conclusion is warranted by even a cursory perusal of magisterial documents and applies not only to the Roman magisterium but also to its uncritical

<sup>11</sup> Bernard J. F. Lonergan, *Insight: A Study of Human Understanding* (London: Longmans, 1957) 191.

<sup>12</sup> *Ibid.* 192.

<sup>13</sup> *Ibid.* 191, emphasis added.

<sup>14</sup> John Paul II, *Ut unum sint* nos. 28–41.

<sup>15</sup> Jon Nilson, "The Church and Homosexuality: A Lonerganian Approach," in *Sexual Diversity and Catholicism: Toward the Development of Moral Theology*, ed. Patricia Beattie Jung with Joseph A. Coray (Collegeville, Minn.: Liturgical, 2001) 60–75.

apologists. The root of this decline is evident in L/G's reductionist anthropology and ethical method, and is demonstrated in their analysis of infertile reproductive sexual acts. We consider each in turn.

### THEOLOGICAL ANTHROPOLOGY AND THE SEXUAL PERSON

In their critique of CSE, L/G espouse a traditional sexual anthropology that asserts heterosexuality as normatively human and, in light of that anthropology, argue that only reproductive sexual acts between a married man and woman are biologically unitive and, therefore, morally acceptable. They then critique our argument on the basis of this anthropology. Doing so, however, to use the words of L/G, "is a blatant instance of the classical fallacy *Ignoratio Elenchi*."<sup>16</sup> Evidence that L/G have committed this fallacy in their article here is clear from what they mistakenly claim is "our most central argument" against magisterial teaching on homosexual acts. We will first clarify our most central argument and then address L/G's claim.

First, L/G fail to acknowledge or even address the foundational theological anthropological claim in CSE, which expands our argument in an earlier article.<sup>17</sup> In CSE we discuss the "Metaphorical Openness to the Transmission of Life." Following David Matzko McCarthy, we argue that the hermeneutics of the body and the nuptial metaphor applied to heterosexual couples can be extended to homosexual couples as well, because in both homosexual and heterosexual relationships the partners, as sexual human beings,

give their bodies to one another and are "theologically communicative," that is, they are witnesses to the community of God's "constancy and steadfast fidelity." In their witness, homosexual couples have "iconic significance" in their sexuality through embodied interpersonal union, just as heterosexual couples, both fertile and infertile, have "iconic significance" in their sexuality in their embodied interpersonal union. Heterogenital complementarity is not a determining factor. Rather, two genitally embodied persons, heterosexual or homosexual, in permanent interpersonal union, who reflect God's constant love and steadfast fidelity, are the determining factor.<sup>18</sup>

<sup>16</sup> Robert P. George and Patrick Lee, *Science Gets Duped Again: Setting the Record Straight on Stem Cells*, [http://www.eppc.org/programs/bioethics/publications/programID.35,pubID.2665/pub\\_detail.asp](http://www.eppc.org/programs/bioethics/publications/programID.35,pubID.2665/pub_detail.asp) (accessed April 21, 2008).

<sup>17</sup> Todd A. Salzman and Michael G. Lawler, "New Natural Law Theory and Foundational Sexual Ethical Principles: A Critique and a Proposal," *Heythrop Journal* 47 (2006) 182–205.

<sup>18</sup> CSE 635. It is curious that L/G do not engage the theological anthropology at the root of our argument. This is not unique to their position against homosexual acts, however. See Christopher Chenault Roberts, *Creation and Covenant: The Significance of Sexual Difference in the Moral Theology of Marriage* (London: T. & T. Clark, 2007); Roberts cites McCarthy's essay but fails to engage his anthropological argument and further asserts that McCarthy "asks no questions about ontology or anthropology" (240). This is clearly false.

The recognition of homosexual orientation as an essential dimension of the sexual human person and, therefore, of the normatively human, distinguishes our anthropology from L/G's. L/G fail to address magisterial teaching on homosexual orientation, the development of that teaching,<sup>19</sup> and what the human and natural sciences contribute to our understanding of orientation and sexual anthropology. While L/G cite our definition of sexual orientation, which we adopt from Robert Nugent, they do not cite the magisterium's definition, which distinguishes between "a homosexual 'tendency,' which proves to be 'transitory,' and 'homosexuals who are definitively such because of some kind of innate instinct.'" The magisterium declares that "it seems appropriate to understand sexual orientation as a *deep-seated* dimension of one's personality and to recognize its *relative stability* in a person. A homosexual orientation produces a stronger emotional and sexual attraction toward individuals of the same sex, rather than toward those of the opposite sex."<sup>20</sup> Scientific studies overwhelmingly support the magisterium's definition of sexual orientation, homosexual or heterosexual, as an "innate instinct," that is, it is not chosen.<sup>21</sup> Scientific studies show that sexual orientation arises from a combination of biological and environmental factors.<sup>22</sup>

<sup>19</sup> The description of homosexual orientation has changed in magisterial teaching—see, e.g., Congregation for the Doctrine of the Faith (hereafter, CDF), *Persona humana* no. 8, "innate instinct" or "tendency"; U.S. Conference of Catholic Bishops (hereafter, USCCB), "Ministry to Persons with a Homosexual Inclination: Guidelines for Pastoral Care," emphasis added; *Catechism of the Catholic Church* no. 2358, "condition;" and *Catechism of the Catholic Church: Modifications from the Editio Typica* (Vatican: Libreria Editrice Vaticana, 1997) 21, "inclination."

<sup>20</sup> USCCB, *Always Our Children: A Pastoral Message to Parents of Homosexual Children and Suggestions for Pastoral Ministers* (1997), <http://www.nccbuscc.org/laity/always.shtml> (accessed April 22, 2008); CDF, *Persona humana* no. 8.

<sup>21</sup> *Catechism of the Catholic Church* no. 2358: Homosexuals "do not choose their homosexual condition; for most of them it is a trial." This was revised to read: "This inclination, which is objectively disordered, constitutes for most of them a trial" (*Catechism of the Catholic Church: Modifications* 21, no. 2358).

<sup>22</sup> See, for example, J. M. Bailey and R. C. Pillard, "A Genetic Study of Male Sexual Orientation," *Archives of General Psychiatry* 48 (1991) 1089–96; Bailey et al., "Heritable Factors Influence Sexual Orientation in Women," *Archives of General Psychiatry* 50 (1993) 217–23; B. A. Gladue, "The Biopsychology of Sexual Orientation," *Current Directions in Psychological Science* 3 (1994) 150–54; Dean Hamer and Peter Copeland, *Living with Our Genes: Why They Matter More Than You Think* (New York: Doubleday, 1998) 182–99; D. H. Hamer et al., "A Linkage between DNA Markers on the X-Chromosome and Male Sexual Orientation," *Science* 261 (1993) 321–27; Simon LeVay, "A Difference in Hypothalamic Structure between Heterosexual and Homosexual Men," *Science* 253 (1991) 1034–37; LeVay and Hamer, "Evidence for a Biological Influence in Male Homosexuality," *Scientific American* 270 (1994) 20–25; Matt Ridley, *Nature via Nurture: Genes,*

Since heterosexual orientation is normative for L/G and homosexual orientation is objectively disordered, all sexual acts that are an expression of that disorder are absolutely prohibited. However, our anthropology takes seriously what the U.S. bishops have noted: “the gift of human sexuality can be a great mystery at times.”<sup>23</sup> We extend this mystery to orientation as an essential dimension of human sexuality. With Nugent, then, we find it difficult to conclude that “what is ‘normative’ or ‘natural’ for humanity should be grounded . . . in a doctrine of unchangeable creation.”<sup>24</sup> The acknowledgment of mystery challenges theologians and the magisterium, in dialogue, with the ongoing task of discerning the nature, meaning, and morality of sexuality and sexual acts for human persons.

We believe our theological anthropology more accurately reflects the theological claim that human beings are created in the image and likeness of God and are theologically communicative in relationships, including sexual relationships that reflect God’s faithful and steadfast fidelity. We also believe that it more accurately reflects and incorporates what the human and social sciences tell us about the nature of sexual orientation, homosexual or heterosexual. Our most central argument, then, is grounded in a theological anthropology—an anthropology that L/G fail to acknowledge or address in their response.

Second, L/G claim that our most central argument is that “the magisterium has allegedly ignored the possibility that two people may in a sexual act exhibit a *personal* complementarity without exhibiting a [hetero]genital complementarity, or a personal complementarity that causes them to possess genital complementarity.” We see two claims being made here. The first claim we qualify: the magisterium has not “ignored the possibility”; it has denied the possibility. And it has done so, we argue, on the basis of an inadequate, traditionalist sexual anthropology. In addition to the arguments presented above and in CSE, even though NNLT denies it,<sup>25</sup> *Gaudium et spes* introduced a new sexual anthropology by removing the

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*Experience, and What Makes Us Human* (New York: HarperCollins, 2003) 158–63; Ray Blanchard and Richard A. Lippa, “Birth Order, Sibling Sex Ratio, Handedness, and Sexual Orientation of Male and Female Participants in a BBC Internet Research Project,” *Archives of Sexual Behavior* 36 (2007) 163–76; and Blanchard et al., “Interaction of Fraternal Birth Order and Handedness in the Development of Male Homosexuality,” *Hormones and Behavior* 49/3 (March 2006) 405–14.

<sup>23</sup> USCCB, *Always Our Children*.

<sup>24</sup> Robert Nugent, “Sexual Orientation in Vatican Thinking,” in *The Vatican and Homosexuality: Reactions to the “Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons,”* ed. Jeannine Gramick and Pat Furey (New York: Crossroad, 1988) 48–58, at 57.

<sup>25</sup> Germain Grisez, *The Way of the Lord Jesus*, vol. 2, *Living a Christian Life* (Quincy, Ill.: Franciscan Herald, 1993) 565 n. 35.

hierarchy of the ends of marriage, the procreative and the unitive. This anthropological development recognizes what married couples for centuries have known through experience, namely, that the unitive meaning of the truly human sexual act is at least as important as, if not more important than, the procreative meaning of the sexual act. A couple can morally justify a sexual act without the procreative meaning of the sexual act being present or even possible; the couple can never morally justify a sexual act if the unitive meaning is not present. Unfortunately, there was not a corresponding shift or development in the magisterium's sexual norms deduced from this anthropology; the anthropology changed but the norms remained the same. We argue that the shift in anthropology has normative implications for homosexual relationships as well as for heterosexual marriage. The unitive meaning of sexual acts can be realized by both homosexual and heterosexual couples.

L/G's second claim is the more troubling. It is not the case that our argument "relies implicitly on the assumption that one's *intention* or *emotion* can by themselves alter the *bodily* structure and reality of a *bodily* act (can make what is otherwise not a genital union into a genital union)." Such a claim is as ridiculous and "spectacularly false" for us as it is for L/G. Obviously, orientation complementarity does not make genital complementarity heterogenital complementarity; we explicitly say that it does not.<sup>26</sup> Nor do we claim that intention or emotion changes a reality already morally defined, that is, the morality of reproductive sexual acts by married, heterosexual couples. What we do claim in the quotation cited by L/G is that an adequate sexual anthropology must consider a person's sexual orientation as a starting point to determine the appropriate genitalia when engaging in a truly human sexual act. Once sexual orientation is determined, then "the reality of a bodily act" will be defined morally, in part, on the basis of whether or not it is an authentic expression of one's sexual orientation. We are arguing for expanding the definition of moral sexual acts beyond reproductive sexual acts on the basis of a fuller anthropology that recognizes sexual orientation as a God-given dimension of the sexual human person.

It is not the case, then, as L/G imply, that our argument poses a fundamental violation of nature. Rather, our understanding of nature evolves in light of a revised sexual anthropology. Just as the discovery of the ova in the 1850s displaced the homunculus theory of reproduction and had implications for natural law and sexual norms, so too a more profound understanding of the sexual person has implications for natural law and sex-

<sup>26</sup> CSE 635, 646.

ual norms. L/G's argument relies upon "biological [i.e., heterogenital] union" and a reductionist anthropology that posits reproductive sexual acts as the only morally legitimate sexual acts. Our argument relies upon holistic complementarity and a revised sexual anthropology that incorporates sexual orientation, homosexual or heterosexual, as an intrinsic dimension of that anthropology. Sexual orientation impacts the biological, relational, emotional, and spiritual dimensions of the human person—and norms do not precede, but follow from, that anthropology.

### ETHICAL METHOD: EXPERIENCE

As a reductionist anthropology causes *scotosis*, so too does a reductionist ethical method. Christian ethics, including Catholic natural law ethics, depend on four sources of moral knowledge for discerning moral truth and formulating norms of behavior: Scripture, tradition, experience, and reason.<sup>27</sup> What differentiates traditionalists and revisionists, and various perspectives within these two schools, is the recognition, hermeneutic, and prioritization of, and dialectic between, these sources. Though we touch upon the sources of moral knowledge in more detail elsewhere,<sup>28</sup> here we briefly address L/G's critique of our use of experience and reason in our method.

First, in the section titled "Appeal to Personal Testimony," L/G claim that our argument from experience (the testimonials of gay or lesbian couples on "the life-enhancing possibilities of same-sex relations") is "unsound." They explain: "One might claim that one simply *experiences* or *feels* that a particular act is morally right, but moral rightness is not a quality that can be apprehended by experience or feeling—rather, it is the conformity of the choice or human act with the moral criterion or standard."<sup>29</sup> In this explanation, they equate the terms "experiences" and "feels," as if these two terms are synonymous. We no more espouse emotivism as a metaethic than do L/G; feeling does not define moral rightness in either method, though it is relevant in our method and in magisterial

<sup>27</sup> Reason is also referred to as "normatively human" (James T. Bretzke, *A Morally Complex World: Engaging Contemporary Moral Theology* [Collegeville, Minn.: Liturgical, 2004] 27–29) or as "secular disciplines of knowledge" (Margaret Farley, *Just Love: A Framework for Christian Sexual Ethics* [New York: Continuum, 2006] 188–89).

<sup>28</sup> See Todd A. Salzman, *What Are They Saying about Catholic Ethical Method?* (New York: Paulist, 2003); and Todd Salzman and Michael G. Lawler, *The Sexual Person: Toward a Renewed Catholic Anthropology* (Washington: Georgetown University, 2008).

<sup>29</sup> L/G, "Male-Female Complementarity" 654, emphasis added.

teaching.<sup>30</sup> Overlooking this distortion, their statement begs the question: what is the moral criterion or standard and its relationship to experience?

On the one hand, and in the sense that L/G are using it, the moral criterion or standard must *judge* experience. Their standard is heterosexual marriage and reproductive sexual acts; all other sexual acts violate this standard. On the other hand, and in the sense we are using it, experience helps to *formulate* the criterion or standard. What the Catholic natural law tradition teaches,<sup>31</sup> and the late Pope John Paul II affirmed,<sup>32</sup> is the relevance of experience for formulating moral criteria or standards by which to judge the rightness or wrongness of an act. For example, how do we know that adultery is intrinsically wrong? Is it because God says so? Is it because the magisterium says so? Or is it because human experience has demonstrated that performing such an act damages one's relationship to one's self, one's own spouse and family, the spouse and family of another, the social or community fabric, and ultimately God? It is experience, not necessarily ours but our forebears', that serves to formulate the standard for judging experience. Experience is at the root of all moral norms.

Foundational for all Catholic moral teaching is human dignity. The criteria for determining the intrinsic wrongness of an act must establish that, by definition, certain acts assault, attack, or violate human dignity. The testimony of gay and lesbian couples, referred to by Margaret Farley and others,<sup>33</sup> affirms both the goodness of their sexual relationships and the judgment that their relationships draw them closer to God, neighbor, and self; and it challenges L/G's (and the magisterium's) claim that homosexual acts are intrinsically disordered. This testimony invites theologians to reflect critically on their use of experience as a source of moral knowledge in light of the other sources of moral knowledge. It is not clear how experience functions in L/G's ethical theory. Presumably, the experiences of married heterosexual couples are relevant for formulating criteria for judging the rightness or wrongness of acts in the marital relationship; these experiences are not reduced to feelings. If experience is relevant to defining the rightness or wrongness of sexual acts between heterosexual couples, why is it not relevant to defining the rightness or wrongness of sexual acts between homosexual couples?

<sup>30</sup> *Gaudium et spes* no. 10; and John Paul II, *Redemptor hominis* no. 14: "Thus, on the one hand, as a creature he *experiences* his limitations in a multitude of ways. On the other, he *feels* himself to be boundless in his *desires* and summoned to a higher life" (emphasis added).

<sup>31</sup> See *Gaudium et spes* nos. 13, 21, 33, 37, 44, 46, 52; and *Lumen gentium* no. 37.

<sup>32</sup> See, e.g., *Redemptor hominis* no. 17; *Familiaris consortio* nos. 32, 73; and *Veritatis splendor* nos. 53, 86, 98.

<sup>33</sup> See above, n. 27.

In L/G's critique of our use of experience we detect another methodological distinction. They rely on a deductive method to judge homosexuals' experiences; we rely on an inductive method to discern values in those experiences. L/G begin with marriage and reproductive sexual acts as an absolute norm and critique all sexual acts in light of that norm. As an incarnational theology, our method recognizes that values are known as experienced realities. Values may be defined in revelation, but they are defined also in dialogue with experience, culture, history, context, and linguistic and conceptual frameworks. Out of this dialogical process, criteria for judging the rightness or wrongness of an act must be discerned. We suspect that, in the case of homosexual experience, there is negative censorship causing *scotosis* for L/G's ethical method. Only the experiences of married, heterosexual couples, and that only narrowly defined, are a legitimate source of experience to affirm preestablished, classicist moral criteria. We allow for a broader hermeneutic of experience and concur with Rahner's methodological insight, "the house of Christian meaning lies in the experience of the Christian subject."<sup>34</sup>

Susan Secker highlights the importance of value-based, interpretive human experience, that is, reflections on the meaning of daily living, as a source of moral knowledge that serves as a "window onto the normative."<sup>35</sup> Such experiences are the type of "personal testimonies" that we discussed in CSE and that L/G discount out of hand as mere "feeling." This type of experience reveals "patterns of meanings" that are shaped by the values of a tradition but have not yet been fully integrated into that tradition.<sup>36</sup> The values of a tradition are reflected in the lived experiences of fully committed gay and lesbian couples that enable them to be "theologically communicative" in all their relationships. To deny the validity of such experiences and their moral relevance for formulating criteria by which to judge the rightness or wrongness of acts reflects a reductionist methodology where the only legitimate human experience is that which conforms to and confirms the established norm. It is this methodology, in large part, which allowed the denial of religious freedom to persist for nearly two thousand years. It is this methodology, we argue, that in large part allows the magisterium and philosophers like L/G to continue to condemn, contrary to the witness of human experience, all homosexual acts as intrinsically disordered.

Rather than allowing for a dialectic between the four traditional sources

<sup>34</sup> Roger Haight, "Lessons from an Extraordinary Era: Catholic Theology since Vatican II," *America* 198.9. (March 26, 2008) 11–16, at 12, emphasis deleted.

<sup>35</sup> Susan L. Secker, "Catholics and Their Church's Ethics: Whose Experience Is It? Which Church Do We Mean?" *New Theology Review* 6 (1993) 28–40, at 38.

<sup>36</sup> *Ibid.* 36–37.

of moral knowledge that could facilitate the adoption of a revised sexual anthropology and norms that facilitate authentically human gay or lesbian relationships, L/G continue to rely on a traditionalist sexual anthropology that ignores ongoing understanding of human sexuality and the evolving nature of moral knowledge informed by human experience.

### ETHICAL METHOD: REASON

The second source of moral knowledge that L/G critique is our use of reason or the social sciences and what they indicate about homosexual parenting. Though the question of homosexual parenting is at best secondary to the core of our essay, “an inquiry into the nature of the truly human sexual act,”<sup>37</sup> and though it was introduced merely as rebuttal to an undocumented claim from the CDF that “allowing children to be adopted by persons living in such [homosexual] unions would actually mean doing violence to these children,”<sup>38</sup> L/G devote much space to lesbian and gay parents and their children. We therefore must respond. First, a confession. We neglected to mention in CSE that the research we cited to counter the CDF’s claim about *violence* done by homosexual parents to their children was “still in its infancy” and had “certain methodological shortcomings.”<sup>39</sup> That was an oversight and, in hindsight, an error, but it was not done with the dark intention ascribed to us by L/G to represent these articles “as unquestioned scholarly consensus.”<sup>40</sup> In an earlier essay in another journal, we did, as L/G note, mention the research shortcomings. Since L/G clearly know our position about that research and actually draw attention to it, we are surprised to find them misrepresenting it.

Research on gay and lesbian parenting is still in its infancy, but now, in its later infancy than when we published our earlier essays, many more and methodologically sounder studies are available.<sup>41</sup> That does not mean they

<sup>37</sup> CSE 625, 651.

<sup>38</sup> CSE 640.

<sup>39</sup> Salzman and Lawler, “New Natural Law Theory” 191.

<sup>40</sup> L/G, “Male-Female Complementarity” 659.

<sup>41</sup> See, for example: Isiaah Crawford and Brian D. Zamboni, “Informing the Debate on Homosexuality: The Behavioral Sciences and the Church,” in *Sexual Diversity and Catholicism* 216–42; Norman Anderson, Christine Amlie, and Erling Andre Ytteroy, “Outcomes for Children with Lesbian or Gay Parents,” *Scandinavian Journal of Psychology* 43 (2002) 335–51; Jennifer L. Wainright, Stephen T. Russell, and Charlotte J. Patterson, “Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents,” *Child Development* 75 (2004) 1886–98; Damian McCann and Howard Delmonte, “Lesbian and Gay Parenting: Babes in Arms or Babes in the Woods,” Pace Publications (2005),

all yield the same data, or that they are all interpreted in the same direction (though they all most certainly are interpreted), or that they will all be satisfying to everybody. Bias and *scotosis* raise their heads in quantitative and qualitative research as much as in, for instance, biblical interpretation.<sup>42</sup> We expect the situation described by respected family sociologist David Popenoe, cited by Wardle and in turn cited approvingly by L/G: “Social science research is almost never conclusive.” Popenoe goes on to state what anyone familiar with the data will readily stipulate: “In three decades of work as a social scientist, I know of few other bodies of data in which the weight of the evidence is so decisively on one side of the issue: on the whole, for children, *two-parent families are preferable to single-parent and stepfamilies.*”<sup>43</sup>

We add the emphasis to highlight a situation of comparing apples to oranges. The research to which Popenoe refers studies two-parent families, single-parent families, and stepfamilies. The question of gay and lesbian parent families is not treated in the research reported. Wardle (even with access to the survey of 34,129 “children,” not “children of homosexual parents,” that so impresses L/G<sup>44</sup>) is careful to speak only of the *potential impact* of homosexual parenting, not of any *actual or scientifically demonstrated impact*, and on that basis to propose that “states should adopt a rebuttable presumption that ongoing homosexual relations by an adult seeking or exercising parental rights is not in the best interest of a child. The presumption should be rebuttable by a mere preponderance of the evidence.”<sup>45</sup> In the later infancy of research on gay and lesbian parenting, bolstered by more and sounder research, Isiaah Crawford and Brian Zamboni confirm the consensus we reported with reservations in its earlier infancy: “Empirical research indicates that children of gay and lesbian parents do not differ from children of heterosexual parents in psychosocial

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<http://www.pacehealth.org.uk/publications/> (accessed May 20, 2008); Serena Lambert, “Gay and Lesbian Families: What We Know and Where Do We Go from Here,” *Family Journal* 13 (2005) 43–51.

<sup>42</sup> But see Michael G. Lawler, *What Is and What Ought to Be: The Dialectic of Experience, Theology, and Church* (New York: Continuum, 2005).

<sup>43</sup> See Lynn D. Wardle, “The Potential Impact of Homosexual Parenting on Children,” *University of Illinois Law Review* (1997) 863, emphasis added.

<sup>44</sup> L/G, “Male-Female Complementarity” 659 n. 37.

<sup>45</sup> Wardle, “Potential Impact” 894. As proof that professors of law are as contentious as professors of theology (or philosophy) see Carlos A. Ball and Janice Farrell Pea, “Warring with Wardle: Morality, Social Science, and Gay and Lesbian Parents,” *University of Illinois Law Review* (1998) 253–339.

adjustment.”<sup>46</sup> We believe that interpretation of the available research is substantially correct and, with Crawford and Zamboni, invite the Catholic Church at least to reflect on it.

Even though magisterial teaching (and, one presumes, L/G) claims to rely on experience and data from the human sciences to formulate its sexual anthropology and norms,<sup>47</sup> it proceeds from its traditionally defined sexual anthropology and doctrinal statements on sexual ethics to judge the validity of what experience and science discover concerning human sexuality. In effect, the truth-claims (doctrinal statements on human sexuality) and the epistemology used to justify those claims are being used to judge the truth-claims and epistemologies of other types of discourse, experience, and the human sciences, without any attempt at dialogue with conclusions that challenge those statements. Such an approach risks committing the “fallacy of epistemological imperialism,” that is, “seeking to nullify another discourse from within one’s own.”<sup>48</sup> True development and insight into human understanding requires authentic dialogue between moral theology and the sciences.<sup>49</sup>

#### MARITAL ACTS OF INFERTILE COUPLES: MISPLACED EMPHASIS?

L/G’s section titled “Marital Acts of Infertile Couples” specifies a subject that occupies the bulk of their essay but a mere one and a half pages of CSE. L/G present such an idiosyncratic version of Catholic teaching (again without supplying any magisterial support for their claims) and so misrepresent our published position that it is difficult to know where to go within the space allowed us. We have decided to begin by setting out Catholic teaching on marriage and sexuality as it can be gleaned from magisterial teaching. That will demonstrate another difference between us and L/G.

First, we make a stipulation: in the contemporary Catholic moral tradition, moral sexual activity is institutionalized within the confines of marriage<sup>50</sup> and openness to procreation.<sup>51</sup> Feminist theologians complain about the unnecessarily patriarchal development of this tradition, particularly the biblical hermeneutics that have sustained it, and we will consider

<sup>46</sup> Isiaah Crawford and Brian D. Zamboni, “Informing the Debate on Homosexuality: The Behavioral Sciences and the Church,” in *Sexual Diversity and Catholicism* 237; also, Richard A. Lippa, *Gender, Nature, and Nurture*, 2nd ed. (Mahwah, N.J.: Lawrence Erlbaum 2005) 149–50.

<sup>47</sup> See John Paul II, *Familiaris consortio* no. 32.

<sup>48</sup> Luke Timothy Johnson, “Human and Divine: Did Jesus Have Faith?” *Commonweal* 135.2 (January 31, 2008) 10–16, at 15.

<sup>49</sup> Bernard J. F. Lonergan, “Moral Theology and the Human Sciences,” *Method: Journal of Lonergan Studies* 15 (1997) 5–18.

<sup>50</sup> CDF, *Persona humana* no. 7.

<sup>51</sup> Paul VI, *Humanae vitae* no. 11.

their legitimate objections. In his influential 1951 speech to Italian midwives, Pius XII settled one marital theological debate but thereby raised another. The question was, Is it moral for a couple intentionally to restrict their sexual intercourse to the monthly period of the wife's infertility? Pius ruled that such action was moral as long as there are "serious reasons" of a "medical, eugenic, or social kind," but he did not specify what such serious reasons might be.<sup>52</sup> The obligation to procreate, the pope argued, fell on the human race, not on each and every married couple, and for a serious reason an individual couple could be excused from the obligation, even for the lifetime of their marriage. Paul VI concurred that "for serious reasons and with due respect to moral precepts" couples could avoid procreation.<sup>53</sup> This ruling introduced a paradox into Catholic teaching about marital morality. On the one hand, it taught that God, the author of the natural law, determined that every act of sexual intercourse between spouses must be open to procreation; on the other hand, it taught that spouses may engage in acts of sexual intercourse and intentionally avoid this obligation if they have sufficient reason.

And so to the question of our inquiry, "the nature of the truly human *sexual act*." As noted, this inquiry was initiated not by us but by Pius XII's ruling that some essentially or accidentally nonreproductive marital acts are moral. The debate asks whether there is any difference *qua* act between reproductive and nonreproductive marital acts. Our position in the debate is that an act of vaginal intercourse known to be potentially reproductive and an act of vaginal intercourse known to be permanently or temporarily nonreproductive are different kinds of acts *qua* act, both physically and morally, and we cite Gareth Moore, among many others, as also taking this position. L/G agree: "No one denies that there is a difference (which can in some circumstances be morally significant) between vaginal intercourse known to be infertile and vaginal intercourse believed to be possibly fertile."<sup>54</sup> They proceed, however, to introduce a straw man: "But from the fact that this is *a* morally significant difference among sexual acts, it simply does not follow that there are no *other* morally significant differences between other types of sexual acts."<sup>55</sup> We did not suggest anything like that. In fact, in "New Natural Law Theory" we gave an extended list of other morally significant factors that must be met for any sexual act, heterosexual or homosexual, to be moral; we summarized these factors in the

<sup>52</sup> Pius XII, Address to Midwives on the Nature of Their Profession, October 29, 1951, *Acta apostolicae sedis* 43 (1951) 835–54; English version at <http://www.catholicculture.org/library/view.cfm?recnum=3462> (accessed April 23, 2008).

<sup>53</sup> Paul VI, *Humanae vitae* no. 10.

<sup>54</sup> L/G, "Male-Female Complementarity" 645.

<sup>55</sup> L/G, *ibid.*, emphasis original.

phrase “just and loving.”<sup>56</sup> In CSE we chose not to rehearse these factors because they were not in question. The question at hand was this: if acts of vaginal intercourse known to be infertile are held by the magisterium to be moral, is it possible that acts of homosexual intercourse known to be infertile *might, servatis servandis moralibus*, also be moral?

The magisterium’s answer to the question is straightforward: “Homosexual acts ‘close the sexual act to the gift of life. . . .’ Under no circumstances can they be approved.”<sup>57</sup> L/G’s answer is rather more convoluted and tortuous, and comes down to this. “In the former, what the husband and wife do is the same kind of behavior that, *given other conditions extrinsic to this behavior*, could result in procreation.”<sup>58</sup> John Finnis, another NNLT representative, echoes that judgment in different language. Acts of marital sexual intercourse have an intrinsic procreative meaning, but they need not be capable of generating offspring at any one particular time. All that is required is that they be “acts of the reproductive kind—actualizations, *so far as the spouses then and there [are capable]*, of the reproductive function in which they are biologically and thus personally one.”<sup>59</sup> Our critique of this position is that the obvious biological reality of the sexual intercourse of a married couple known to be infertile is that the “other conditions” L/G insinuate are manifestly not and never can be present, and that the insertion of the penis into the vagina of the other simply cannot ever be an act of “the reproductive kind.” Andrew Koppleman notes, and we agree, that it is too much of a conceptual stretch “that the sexual acts of the incurably infertile are of the same kind as the sexual acts of fertile organs that occasionally fail to deliver the goods.”<sup>60</sup>

Our position, articulated in the two essays that have been brought into discussion, is that acts of vaginal intercourse known to be infertile and acts

<sup>56</sup> S/L, “New Natural Law Theory” 199–200.

<sup>57</sup> CDF, “Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons” no. 4. See also *Catechism of the Catholic Church* no. 2357. This Catholic teaching is contrary to L/G’s claim that “the Church’s teaching is *not* ( and never has been) that sodomitical acts . . . are morally wrong *simply because they cannot result in reproduction*” (L/G, “Marriage” 8). It is also true, of course, as we stipulated at the opening of this section, that moral sexual activity is institutionalized within the confines of marriage.

<sup>58</sup> L/G, “Male-Female Complementarity” 650, emphasis added.

<sup>59</sup> John Finnis, “Law, Morality, and ‘Sexual Orientation,’” *Notre Dame Law Review* 69 (1994) 1049–76, at 1067 emphasis added. See also Robert P. George and Gerald V. Bradley, “Marriage and the Liberal Imagination,” *The Georgetown Law Journal* 84 (1995) 301.

<sup>60</sup> Andrew Koppleman, “Natural Law (New),” in *Sex from Plato to Paglia: A Philosophical Encyclopedia*, ed. Alan Soble, (Westport, Conn.: Greenwood, 2006) II: 708.

of homosexual intercourse known to be equally infertile are biologically the same kinds of nonreproductive acts and that both can be biologically complementary. The only question is whether they can be also personally complementary, and our answer is yes. They can be personally complementary when two conditions are simultaneously fulfilled. The first condition is that there is holistic complementarity between the partners. Holistic complementarity includes orientation, personal, and biological complementarities, and its successful integration in sexual acts, homosexual or heterosexual, facilitates and manifests both a personal ability and desire to love a partner/neighbor (and, therefore, also God). The second condition is that the sexual act must be just and loving<sup>61</sup> so that it can be “the locus of human flourishing.”<sup>62</sup>

We are fully aware that the magisterium, on the bases of the teaching of Scripture, “the constant teaching of the Magisterium,” and “the moral sense of the Christian people,”<sup>63</sup> teaches that homosexual acts are “intrinsically disordered”<sup>64</sup> and immoral. We are also aware, however, that the soundness of all three of these bases is being challenged by serious, contemporary Catholic scholars. Hence our offering not of a finished *praedicationis* but of a *quaestio disputata*, the inevitable, honest, and charitable dialectic that will lead either to a reaffirmation of the present teaching or a necessary change in a teaching deemed to be among all those other “distorting traditions”<sup>65</sup> alluded to earlier.

## CONCLUSION

We repeat what we stated at the beginning of this response: our gratitude to Professors Lee and George for responding critically to our essays and for providing us the opportunity to respond and illuminate the lines of the debate on sexual morality within the Catholic tradition. We underscore that our desire is not for *dispute*, in which someone is proven right and someone is proven wrong, but for *dialogue* in which the “schools” seriously reflect on sexual teachings in the light of a contemporary understanding of the Church’s traditional sources: Scripture, tradition, reason, and scientifically illuminated human experience. The outcome of this reflection would be either the reaffirmation of these teachings in their present form or their rereception in a revised form, as has happened with other ancient moral teachings. Moore’s judgment about the Church’s teaching on the morality

<sup>61</sup> S/L, “New Natural Law Theory” 199–200.

<sup>62</sup> Stephen J. Pope, “Scientific and Natural Law Analyses of Homosexuality: A Methodological Study,” *Journal of Religious Ethics* 25 (1997) 89–126, at 111.

<sup>63</sup> CDF, *Persona humana* no. 8.

<sup>64</sup> *Ibid.*

<sup>65</sup> Ratzinger, “The Transmission of Divine Revelation” 185.

of homosexual acts may be extended, revisionist theologians judge, to its teaching on sexual morality in general. It “is not a matter of dissent or materialism; it is simply that the Church produces no good arguments to assent to. Regrettably, in this area, the Church teaches badly.”<sup>66</sup> That poor teaching, in addition to the sexual abuse scandal that has rocked the Catholic Church worldwide, has caused the Church, in the eyes of many, to forfeit its authority as a teacher of sexual morality,<sup>67</sup> a situation we believe is a tragedy to be remedied.

<sup>66</sup> Gareth Moore, *A Question of Truth: Christianity and Homosexuality* (New York: Continuum, 2003) 282.

<sup>67</sup> See William V. D’Antonio et al., *American Catholics: Gender, Generation, and Commitment* (Lanham, Md.: Rowman & Littlefield, 2001) 69–86.