2003 Holman Lecture:

SEXUALITY AND LAW IN THE LUTHERAN CONFESSIONS: THE PROBLEM OF HOMOSEXUALITY

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I. Introduction

The inquiry preparatory for this Holman Lecture was guided by a quotation from Abraham Joshua Heschel that serves as a maxim for theological inquiry, especially for the interrelated disciplines of historical and systematic theology. The quotation is as follows: "In the realm of theology, shallowness is treason."[1]

The 2001 Churchwide Assembly has mandated that the ELCA actively engage in a study on homosexuality and a study on sexuality. The first is to deal with the blessing of same-gendered unions and the rostering of persons in committed gay or lesbian relationships. The second is to lead to the development of a social statement on human sexuality. These two studies are intertwined and interrelated. Yet, I would contend, the order of interrelation properly construed necessitates that the study of human sexuality has primacy vis-à-vis the study of homosexuality in relation to the questions of the possible blessing of same-gender unions and possible rostering of persons involved in gay or lesbian relationships. The controversies concerning such questions in relation to the phenomenon of same-gendered sexuality have been a principal cause in the movement and motivation towards the mandated action, yet the phenomenon of homosexuality in all of its complexity is only a part of the whole, that is, the multifaceted and polymorphic phenomenon of human sexuality. And, hence, the right order of inquiry requires the consideration of the whole, for parts are parts of the whole, not isolated pieces, and the whole is greater than the sum of its parts.

The theme of this convocation is "In Search of a Lutheran Lens." Superficially understood, the theme as worded suggests that we Lutherans might neither have had in the past nor are in possession of at present a Lutheran lens, but are in need of and in search for one. However, theological reflection is not free-floating. It is historically situated or, more specifically, interstitially located between past and present, already involved in the hermeneutic mediation between past and present, always already in conversation between the voices of the past and those in the present. The voices that have preceded us did possess particular lenses that enabled them to articulate a theological construal or understanding that found embodiment in texts, such as those of the Lutheran Confessions.

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[1] Abraham J. Heschel, *The Prophets* (New York/Evanston: Harper & Row, Publishers, 1962), 176.

This temporal mediation of theological reflection is the locus of the polarity of tradition and reformation. This polarity can be beset by two dangers: the demonic hubris of traditionalism and the emptying relativization of adaptation/reformation. The demonic hubris of traditionalism disrupts the polarity of the temporal mediation of theological reflection by absolutizing the past of tradition to the neglect of the questions arising in the present, while the emptying relativization of adaptation/reformation absolutizes the needs of the present to the neglect and inattentive suppression of the possible wisdom of tradition, thereby disrupting the temporal mediation between past and present. To embark on a theological study of human sexuality is a task that is confronted with immense challenges; let alone being able to comprehend the multifaceted and polymorphic phenomenon of human sexuality. In either situation "shallowness" can endanger that temporal mediation between past and present concerning theological reflection on the phenomenon of human sexuality. "Shallowness" can occur when one finds refuge in the past alone, avoiding the tension of the mediation between past and present. It can likewise occur when one disregards the heritage of the past and vaunts the superiority of the present. Tillich has aptly characterized the struggle that can arise in the polarity between tradition and reformation:

> The polarity of tradition and reformation leads to a struggle of the Spiritual Presence with the ambiguities of religion. The principle of reformation is the corrective against the demonic suppression of the freedom of the spirit by a tradition which is vested with absolute validity, in practice or by law; and since all churches have a tradition, this demonic temptation is actual and successful in all of them. Its success is caused by the taboo-producing anxiety about any deviation from that which is holy and has proven to have saving power. The anticipation that, under the principle of reformation, the churches will fall into a profanizing criticism is implied in this anxiety. Schleiermacher's often quoted words, "The reformation goes on," are certainly true; but they raise the anxious question: What is the limit beyond which critical disintegration begins?[2]

Yet theological reflection is always situated in the temporal mediation between past and present. It is a mediation between historical and systematic theology. That mediation involves the constant examination and assessment of those theological lenses that the theological traditions have utilized in order to articulate a theological construal or understanding. Let us now turn to examine one of those lenses as found in the texts of the *Augsburg Confession* and the *Apology* and its theological construal of human sexuality.

II. Augsburg Confession and Apology Arts. XXIII and XXVII

The first part of the *Augsburg Confession* (that presents "nearly a complete summary [*Summa*] of what is preached and taught in our churches for proper Christian instruction

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[2]Paul Tillich, *Systematic Theology*, Vol. III (Chicago: The University of Chicago Press, 1965) 185.

and the comfort of consciences" [BC 58:1]) offers few resources that provide explicit references to the topic of human sexuality. The two articles which most likely could have provided the occasion for possible systematic discussion of human sexuality are Articles II ["Concerning Original Sin"] and XVI ["Concerning Public Order, Secular Government, and Civil Affairs"]. Art. XVI affirms that all political authority, orderly government, marriage, and good order in the world are created and instituted by God, concerning which the Gospel "completely requires both their preservation as ordinances of God and the exercise of love in these ordinances" [AC 51:5 (Latin)]. This is a position fully consonant with the Catholic tradition as articulated, for example, in Augustine's critique of Manichaeism in *Contra Faustum Manichaeum:* "And the eternal law is the divine reason or will of God, which requires the preservation of natural order, and forbids the breach of it."[3]

Yet the affirmation of marriage and family as ordinances of God in the condemnations of "Anabaptist" and various interpretations of Christian perfection (such as in ascetic monasticism) does not involve elaboration concerning marriage and family as loci for a consideration of sexuality. Article II, however, possesses far greater potential for a discussion of sexuality in terms of its treatment of original/hereditary sin and concupiscence, latent with the legacy of the Augustinian tradition. This is especially apparent in the German version: "... it is taught among us that since the fall of Adam, all human beings who are born in the natural way [*von Mutterleib*] are conceived and born in sin. This means that from birth they are full of evil lust [*boser Lust*] and inclination and cannot by nature [*von Natur*] possess true fear of God and true faith in God" [AC 36/38:1]. Yet the explication and utilization of that potential does not immediately come to fruition, but is deferred.

The first explicit discussion of sexuality occurs in the second part of the *Augsburg Confession* pertaining to disputed articles on abuses, specifically Article XXIII ["Concerning Sacerdotal Marriage"] and the abuse of the prohibition against sacerdotal marriage. Both the German and Latin versions begin by decrying the "flagrant immorality and dissolute life of priests who were not able to remain chaste" [German AC 62:1] and "the bad examples of priests who have not been continent" [Latin AC 63:1]. Both versions invoke the Pauline admonition and counsel [1 Cor 7:2, 9b] regarding the avoidance of sexual immorality, though only the German version, apart from proof-texting, explicitly states that "Scripture clearly proclaims that the married state was instituted by God to avoid sexual immorality" [AC 62:3-4]. Both versions invoke the Matthean saying of Christ in relation to the issue of celibacy, "Not everyone can accept this teaching" [Matt 19:11] and make reference to creation in relation to Gen 1:28—though the German version refers in an abbreviated citation to Gen 1:27 ["God created humankind... male and female"], whereas only the Latin version explicitly states that "God created the human being for procreation" [AC 63:5] and then indicates a reference to Gen 1:28. And, finally, both versions utilize arguments from tradition

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[3]Augustine, *Contra Faustum Manichaeum* 22, 27: *"ratio divina vel voluntas dei ordinem naturalem conservari iubens, perturbari vetans."*

in favor of the legitimate practice of sacerdotal marriage and against its prohibition as contrary to the canons of the tradition of the church and all laws—though the Latin version says "contrary to all laws, divine and human" [AC 65:13], whereas the German version explicitly refers to natural laws in saying "contrary to all divine, natural, and civil laws [*wider alle gottliche, naturliche und weltliche Recht*]" [AC 64:13]. Particularly noteworthy is the order in which the reasons for the divine institution of marriage and the consequent power, authority, and right to marry are presented. First, the reference to the divinely sanctioned providential antidote to sexual immorality as the "negative" rationale, and then, secondly, the reference to procreation as the positive rationale.

This same order of presentation is followed in Article XXVII ["On Monastic Vows"] for those persons inclined to marry and not suited for celibacy: "For vows cannot annul God's order and command. Now God's command reads (1 Cor 7:2): "But because of cases of sexual immorality, each man should have his own wife and each woman her own husband." Not only God's command urges, compels, and insists upon this, but also God's creation and order direct all to the state of marriage who are not blessed with the gift of virginity by a special work of God, according to God's own Word (Gen 2:18): "It is not good that the man should be alone; I will make him a helper as his partner" [German AC 84:18-20].[4]

Parenthetically, it is worth noting that, apart from Luther's instruction for Gen 2:18 to be read by a pastor in front of the altar over the bride and the groom in his "A Marriage Booklet for Simple Pastors" (appended to most editions of the Small Catechism during Luther's lifetime), this is the only other citation and theologically substantive use of Gen 2:18 in *The Book of Concord.* Gen 2:18 becomes a far more important biblical citation in the writings of Thomas Becon and Martin Bucer, and in the articulation of the understanding of marriage as "commonwealth" in the Anglican theological tradition.[5]

But even more striking is the systematic ordering operative in this movement from the "negative" to the "positive," that can be schematized as (a) God's order [*Ordnung*] and command [*Gebot*], (b) God's creation [*Geschopf*] and order [*Ordnung*]. By inverting this schematized sequence, hence, putting it into proper theological order, we obtain the sequence "creation-

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[4]Gen 2:18 is also cited in a different context pertaining to a discussion of the precepts of natural law in the 1521 edition of Melanchthon's *Loci communes theologici* [*in Melanchthon and Bucer,* ed. by Wilhelm Pauck, Philadelphia: The Westminster Press (The Library of Christian Classics, Vol. XIX), 1969] 51: "Undoubtedly, the second law, which enjoins us to take care that no one be harmed, can be derived from the common necessity that all of us are born bound and joined to all other men. The Scripture indicates this when it says in Genesis 2:18: 'It is not good that man should be alone; I will make him a helper fit for him.' Accordingly, the law commands that no one be harmed, that is, that we should all earnestly love one another in order that all may experience our benevolence with zeal and kindness. This law therefore includes the divine commandments that we should not kill anyone, that we should not steal another's property, and similar laws."

[5]See the treatment of the "commonwealth" paradigm in the Anglican theological tradition in John Witte, Jr., *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition* (Louisville: Westminster John Knox [The Family, Religion, and Culture], 1997) 130-193.

order-command." Though slightly different in terms of wording, the same systematic ordering occurs in the Latin version: (a) institution and command of God [*ordinationem et mandatum Dei*], (b) God's creation and institution [*creatio et ordinatio Dei*]—which, when inverted, yields the sequence "creation-institution-command."

In light of the contextualization of the topic of human sexuality in Art. XXIII within the rubric of law (divine, natural, and civil [human]) and in Art. XXVII within the sequential order of creation-order [/institution]-command, the systematic question arises as to the nature and character of the interrelation between the rubric of law and the sequential order of creation-order-command. *The Augsburg Confession* itself, primarily because of its literary genre and specific occasional character, does not provide an explicit answer to this question. If Part I of the Augsburg Confession is "nearly a complete summary [*summa*] of what is preached and taught in our churches" [AC 58:1], and if the treatment of abuses in Part II presupposes Part I as its theological foundation, one would expect to find a potential answer there. Where then should one turn to find the resources for a possible answer?

The only textual resource I have been able to discern that is textually proximate and explicitly interrelates the rubric of law and the sequential ordering of creation/order/command is found in Melanchthon's response in the *Apology to the Augsburg Confession* to the *Confutatio*'s objections to Article XXIII. Melanchthon prefaces the presentation of counter-arguments to the objections of the *Confutatio* with the following statement:

> We cannot approve this law concerning celibacy which our opponents defend, because it conflicts with divine and natural law [*iure divino et naturali pugnat*] and because it conflicts with the very canons of the councils [BC AP 23:6].

For our purposes it is only the first three arguments that are important. The remaining arguments presented by Melanchthon are drawn from ecclesiastical tradition. These three arguments are as follows in the Kolb-Wengert edition:

> First, Genesis [1:28] teaches that human beings were created to be fruitful and that one sex should desire the other sex in a proper way [*sexus recta ratione sexum appetat*]. Now we are not speaking about the concupiscence which is sin, but about that desire which was to have been in our uncorrupted nature, which they call natural affection [*storgè physikè*] [Greek term used even by Cicero (*Attica* x,8,9)]. This love of one sex for the other [*sexus ad sexum*] is truly a divine ordinance [*ordinatio Dei*]. However, since this order of God cannot be suspended without an extraordinary act of God [*sine singulari opere Dei tolli non possit*], it follows that the right to contract marriage cannot be removed by statutes or vows.
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> Second, because this creation or divine ordinance in the human creature is a natural law [*creatio seu ordinatio divina in homine est ius naturale*], the jurists have accordingly spoken wisely and rightly that the union of male and female

is a matter of natural law [*coniuctionem maris et feminae esse iuris naturalis*]. However, since natural law is immutable [*ius naturale sit immutabile*], the right to contract marriages must always remain. For where nature is not changed [*natura non mutatur*], it is necessary for that order with which God has endowed nature to remain [*necesse est et illam ordinationem manere, quam Deus indidit naturae*]; it cannot be removed by human laws.

Therefore let this remain the case, both what Scripture teaches and what the jurists[6] wisely have said: the marriage of male and female is a matter of natural right [*iuris naturalis*].[5] Moreover, a natural right truly is a divine right [*ius naturale vere est ius divinum*], because it is an order divinely stamped upon nature [*est ordinatio divinitus impressa naturae*]. However, because this right cannot be changed without an extraordinary act of God [*sine singulari opere Dei*] the right to contract marriage must of necessity remain, for the natural desire [*naturalis appetitus*] of one sex for the other sex is an ordinance of God in nature [*ordinatio Dei in natura*]. For this reason it is right; otherwise why would both sexes have been created?

Third, Paul says [1 Cor 7:2], "But because of cases of sexual immorality [*propter fornicationem*], each man should have his own wife." Now this is an express command [*expressum mandatum*] pertaining to anyone who is not fit for celibacy.

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[6]The reference to "jurists" is most likely a reference to the Roman tradition of jurisprudence as found in *The Institutes of Justinian*, Book. I: Title II, "Concerning Natural Law, The Law of Nations, and the Civil Law," that "[N]atural law is that which nature has taught to all animals, for this law is not peculiar to the human race, but applies to all creatures which originate in the air, or the earth, and in the sea. Hence arises the union of the male and the female which we designate marriage, and hence are derived the procreation and the education of children, for we see that other animals also act as though endowed with knowledge of this law." Cf. also in "The Digests or Pandects" [*Digestorum seu Pandectarum*] Ulpian's famous dictum concerning natural law: "Natural law is that which nature teaches all animals, for this law is not peculiar to the human race, but affects all creatures which deduce their origin from the sea or the land, and it is also common to birds. From it proceeds the union of male and female which we designate as marriage, hence also arises the procreation of children and the bringing up of the same; for we see that all animals, and even wild beasts, appear to be acquainted with this law [[J]us naturale est, quod natura omnia animale docuit: nam ius istad non humani generis proprium, omnium animalium, quae in terra, quae in mari nascuntur, avium quoque commune est. Hinc descendit maris atque feminae coniunctio, quam nos matrimonium appellamus, hinc liberorum procreatio, hinc educatio: videmus etiam istius iuris peritia censeri]." See *The Civil Law, Including the Twelve Tablets, The Institutes of Gaius, The Rules of Ulpian, The Opinions of Paulus, The Enactments of Justinian, and the Constitutions of Leo*, trans. and ed. by S. P. Scott (Cincinnati: The Central Trust Company [Executor of the Estate Samuel P. Scott, Deceased] Publishers, 1932), 17 volumes. See also Susan M. Treggiari, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford: Oxford University Press, 1993).

For an excellent treatment of the history of effects of the understanding of natural law in Roman jurisprudence upon subsequent ecclesiastical canon law, one should consult the magisterial work by James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago/London: The University of Chicago Press, 1987).

The texts of the Lutheran Confessions can be read in a multitude of ways—and they can also be translated in different ways. A useful exercise in the practice of historical theology is the examination of various translations of texts. It was through this exercise that I noticed something in these texts that I had not noticed before. The passage in question is the first line of the first argument presented. Following the citation of Gen 1:28, the second half of the sentence in the Latin is *sexus recta ratione sexum appetat.* The crucial phrase is *recta ratione.* Most commentaries pass over this sentence and usually cite the sentence that follows two lines later: "This love of one sex for the other [*sexus ad sexum*] is truly a divine ordinance" [BC 249:7].[7] The earliest American English translation of *The Book of Concord,* the so-called Henkel edition, omits any reference to *recta ratione* and freely translates the second part of the sentence as "...and that the woman should have an affection towards the man, and the man in return, towards the woman."[8] The Jacobs edition reads as follows: "and that one sex in a proper way should desire the other."[9] The Tappert edition departs from the Jacobs edition and translates it as "and that one sex should have a proper desire for the other."[10] The new Kolb-Wengert edition translates *recta ratione* in the manner of the Jacobs edition. The new standard German translation[11] of the Lutheran Confessions translates *recta ratione* as *in rechter Ordnung* ["in the right order"].

Yet, while the translations in both the Jacobs and Kolb-Wengert editions are superior to the translation in the Tappert edition and are quite acceptable given the lexical possibilities associated with Latin, translations can be concealing as well as disclosive in terms of the historical specificity of meaning. What things in particular can be concealed by translating *recta ratione* as "in the proper way" rather than as "with right reason" or "in accordance with right reason"? First of all, the traditional translations fail to capture the force of what crite-

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[7] Another text usually cited is "...the natural desire of one sex for the other sex is an ordinance of God in nature [*ille naturalis appetitus est ordinatio Dei in natura sexus ad sexum*]" [BC 249:12].

[8] *The Christian Book of Concord, or Symbolical Books of the Evangelical Lutheran Church* (Newmarket: Solomon D. Henkel and Brs., 1851) 222.

[9] *The Book of Concord, or, The Symbolical Books of the Evangelical Lutheran Church,* with historical introduction, notes, appendices and indices by Henry E. Jacobs (Philadelphia: G.W. Frederick, 1893) 248.

[10] *The Book of Concord: The Confessions of the Evangelical Lutheran Church,* ed. by Theodore E. Tappert (Philadelphia: Fortress Press, 1959) 240.

[11] *Evangelische Bekenntnisse: Bekenntnisschriften der Reformation und neuere Theologische Erklärungen, Teilband I,* hrsg, von Rudolf Mau im Auftrag des Rates der Evangelischen Kirche der Union gemeinsam mit Irene Dingel, et al (Bielefeld: Luther-Verlag, 1997) 257: „Erstens. Das I. Buch Mose lehrt, daß die Menschen erschaffen wurden, damit sie fruchtbar sind und das eine Geschlecht in rechter Ordnung nach dem anderen verlangt (I. Mose 1, 28)."

Postscript: Subsequent to delivering the Holman Lecture in April, while checking footnote citations for accuracy in the bowels of Wentz Library, I happened upon an earlier modern German translation of the *Apology of the Augsburg Confession* by Horst Georg Pöhlmann [Philipp Melanchthon, *Apologia Confessionis Augustanae,* translated and edited by Horst Georg Pöhlmann (Gütersloh: Gütersloher Verlagshaus Gerd Mohn, 1967)]. Pöhlmann translates the sentence as follows: „Erstens: die Genesis lehrt, daß die Menschen geschaffen sind, damit sie fruchtbar sind und damit das eine Geschlecht mit rechter Vernunft ["with right reason"] das andere begehrt" (p. 197).

riologically constitutes the propriety of "in the proper way," thereby suggesting that it is self-evident as to what "in the proper way" means. Second, the failure to translate *recta ratione* as "with right reason" or "according to right reason" conceals its conceptual roots in the natural law tradition where the phrase *recta ratio* functions in a technical fashion. And, thirdly, the failure to translate *recta ratione* more properly promotes the view that the first argument presented is a purely biblical argument, a view that fails to recognize that the confessional utilization of Scripture is already being construed hermeneutically in a systematic theological fashion through the lens of a natural law position.

How is one to determine historically the meaning to be assigned the phrase *recta ratione*? The meaning and significance of the phrase in the *Apology* is not one that is immediately apparent. Its meaning is not self-evident in the text. The phrase is used in an "operative" fashion, but not one which receives a "thematic" explication in the text of the *Apology*.[12] Historical theology can and should proceed in two ways in order to attempt to give a thematic explication of *recta ratione*. Both ways of questioning require a similar hermeneutical move outside the framework of the texts of the Lutheran Confessions. Since the text does not provide a direct resource for determining the meaning and significance of the phrase in question, the historical theologian must proceed in an indirect fashion and seek additional resources elsewhere. One way is to delve into the past philosophical and theological traditions in Western thought and seek to reconstruct a history of the phrase or concept in question (*Begriffsgeschichte*) that provides or informs the operative background assumed in Melanchthon's *Apology*. The second way of proceeding would be to seek possible resources in other texts that would be roughly contemporaneous with the Augsburg Confession and the *Apology* and might provide the requisite thematic explication of the phrase in question. Knowing that Melanchthon was the principal author of the *Apology*, the second way of historical investigation would seek to elucidate the meaning of the phrase by investigating the text in which it occurs in relation to the corpus of other texts by the same author written roughly in the same period.[13] Methodologically, this is a complex historical-critical task and one which many students of the Lutheran Confessions unfortunately either rarely practice or lack the linguistic competence requisite for such an

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[12]For an explication of the distinction between "operative" and "thematic" concepts, see Eugen Fink's article "Operativ Begriffe in Husserls Phänomenologie," *Zeitschrift für philosophische Forschung* 11 (1957)321-337, [reprinted in Eugen Fink, *Nähe und Distanz: Phänomenologische Vorträge und Aufsätze* (Freiburg: Alber Verlag, 1976)].

[13]The Kolb-Wengert edition of the *Book of Concord* proceeds similarly in many instances in the critical apparatus provided in the footnotes, drawing upon Melanchthon's correspondence and material to be found in the edition of Melanchthon's texts in the *Corpus Reformatorum* [vols. 1-28; *Philippi Melqanchthonis Opera Quae Supersunt Omnia* (Halle/Brunswick: C. A. Schweschke, 1834-1860)]. For the *Apology*, references are made to Melanchthon's *Commentary on Romans* (1540), *Loci communes theologici (1521)*, *Elementorum rhetorices*, and *Scholia on Colossians* (1528). However, no use is made of Melanchthon's philosophical writings and his commentaries or annotations on Aristotle's *Nicomachean Ethics*.

undertaking![14] The text with the passage in question would be interpreted in relation to texts which preceded it and in relation to texts which followed at a later date, but also (and especially) in relation to those texts of the author which are more relatively contemporaneous or in gestation in the same period.

III. Natural Law and *Recta Ratio* in Cicero, Augustine, and Thomas Aquinas

The full execution of the historical-critical investigation in these directions is a daunting task, and the presentation of which far exceeds the framework of this Holman lecture.[15] But let us first examine some features of the history of the natural law tradition in the Western tradition, chiefly as represented in Cicero, Augustine, and Thomas Aquinas.

The roots of the natural law tradition may be said to lie in Aristotle's treatment of political justice in his *Nichomachean Ethics,* Bk. V, 7., that is part "natural" and part "legal."

> Now some think that all justice is [conventional], because that which is by nature is unchangeable and has everywhere the same force (as fire burns both here and in Persia), while they see change in the things recognized as just. This, however, is not true in this unqualified way, but is true in a sense; or rather, with the gods it is perhaps not true at all, while with us there is something that is just even by nature, yet all of it is changeable; but some still is by nature, some not by nature. It is evident which sort of thing, among things capable of being otherwise, is by nature; and which is not but is legal and conventional, assuming that both are equally changeable. And in all other things the same distinction will apply; by nature the right hand is stronger, yet it is possible that all men should come to be ambidextrous.[16]

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[14]Fortunately, the increasing translation into English of Melanchthon's writings [e.g., *A Melanchthon Reader,* trans. by Ralph Keen (New York/Bern/Frankfurt am Main/Paris: Peter Lang Publishing, Inc., [American University Studies, Series VII: Theology and Religion, Vol. 41], 1988) and Philip Melanchthon, *Orations on Philosophy and Education,* ed. by Sachiko Kusukawa and trans. by Christine F. Salazar (Cambridge: Cambridge University Press [Cambridge Texts in the History of Philosophy], 1999)] can provide aid to students in pursuing such an undertaking.

[15]For a helpful overview of the history of the natural law tradition in Western philosophy and theology, one can consult Jean Porter, *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics* (Grand Rapids, MI/Cambridge: William B. Eerdmans Publishing Company, 1999) and Ludger Honnefelder, "Naturrecht und Geschichte: Historisch-systematische Überlegungen zum mittelalterlichen Naturrechtsdenken," in *Naturrecht im ethischen Diskurs,* introduced and edited by Marianne Heimbach-Steins (Münster: Aschendorffsche Verlagsbuchhandlung GmbH & Co. [Schriften des Instituts für Christliche Sozialwissenschaften 21], 1990) 1-27. For a classic presentation of the developments in medieval discussions of natural law, one may profitably consult Martin Grabmann's essay, "Das Naturrecht der Scholastik von Gratian bis Thomas von Aquin," [in *Mittelalterliches Geistesleben: Abhandlungen zur Geschichte der Scholastik und Mystik,* Bd. I (München: Max Hueber Verlag, 1936) 65-103].

[16]Aristotle, "Nichomachean Ethics," in *The Basic Works of Aristotle,* ed. and with an Introduction by Richard McKeon (New York: Random House, 1941) 1014.

Yet, though Aristotle discusses natural justice, he does not equate the "natural" with the "unchangeable." For Aristotle, the "natural" as that which is mutable, subject to change, is contrasted with the "eternal," that which is immutable. It is with the Stoics, and especially with Cicero, that natural justice is identified with the eternal law of the cosmic order of nature.

For Cicero, natural justice is anchored in law as the divinely instituted order of nature and as that which is implanted in the nature of the human, namely, right reason.

> ...That law is not a product of human thought, nor is it any enactment of peoples, but something eternal which rules the whole universe by its wisdom in command and prohibition. Thus they have been accustomed to say that law is the primal and ultimate mind of God, whose reason directs all things either by compulsion or restraint [*De legibus [The Laws]* II.iv.8].[17]
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> True law is right reason in agreement with nature [*Est quidem ver alex recta ratio naturae congruens*]; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, though neither have any effect on the wicked. It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. And there will not be different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler, that is, God, over us all, for he is the author of this law, its promulgator, and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature, and by reason of this very fact he will suffer the worst penalties, even if he escapes what is commonly considered punishment... [*De re publica* III.xxii.33]
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> And in this whole discussion I want it understood that what I shall call Nature is [that which is implanted in us by Nature]; that, however, the corruption based by bad habits is so great that the sparks of fire, so to speak, which Nature had kindled in us are extinguished by this corruption, and the vices which are their opposites spring up and are established. But if the judgments of men were in agreement with nature, so that, as the poet says, they considered "nothing alien to them which concerns mankind," then justice would be equally observed by all. For those creatures who have received the gift of reason from nature have also received right reason [recta ratio], and therefore they have also received the gift of law, which is right reason [recta ratio]

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[17]Cicero, *De re publica - De legibus*, with English translation by Clinton Walker Keyes (Cambridge/London: Harvard University Press [The Loeb Classical Library: Cicero, Vol. XVI (LCL 213)], 1994). All other quotations from Cicero are taken from this edition.

> applied to command and prohibition. And if they have received law, they have received justice also. Now all men have received reason; therefore all men have received justice. [*De legibus [The Laws]* I.xi.33]

The foundation of justice is to be found in natural law, and law is grounded in reason both divine and human.

> ..., law is the highest reason, implanted in nature, which commands what ought to be done and forbids the opposite. This reason, when firmly fixed and fully developed in the human mind, is law. And so they believe that law is intelligence, whose natural function it is to command right conduct and forbid wrongdoing....Now if this is correct, as I think it to be in general, then the origin of justice is to be found in law, for law is a natural force; it is the mind and reason of the intelligent man, the standard by which justice and injustice are measured. [*De legibus [The Laws]* I.v.18-19]

> ...That animal which we call man, endowed with foresight and quick intelligence, complex, keen, possessing memory, full of reason and prudence, has been given a certain distinguished status by the supreme God who created him; for he is the only one among so many different kinds and varieties of living beings who has a share in reason and thought, while all the rest are deprived of it. But what is more divine, I will not say in man only, but in all heaven and earth, than reason? And reason, when it is full grown and perfected, is rightly called wisdom. Therefore, since there is nothing better than reason, and since it exists both in man and God, the first common possession of man and God is reason. But those who have reason in common must also have right reason in common. And since right reason is law, we must believe that men have law also in common with the gods. [*De legibus [The Laws]* I.viii.22-23]

Augustine appropriates these themes from Cicero and puts them in his dialogue, "On Free Will" [*De Libero Arbitrio*],[18] into a Christian theological framework. Specifically he equates, following Cicero, the eternal law (*lex aeterna*) with divine reason/will and relates it to an understanding of the human as created in the image of God and an understanding of sin. For Augustine, sin is

> any transgression in deed, or word, or desire, of the eternal law. And the eternal law is the divine order [*ratio divina*] or will of God, which requires the preservation of natural order, and forbids the breach of it. But what is this natural order in man? Man, we know, consists of soul and body; but so does a beast. Again, it is plain that in the order of nature the soul is superior to the

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[18]In *Augustine: Earlier Writings*, selected and trans. with Introductions by John H. S. Burleigh (Philadelphia: the Westminster Press [The Library of Christian Classics, Vol. VI], 1953).

> body. Moreover, in the soul of man there is reason, which is not in a beast. Therefore, as the soul is superior to the body, so in the soul itself the reason is superior by the law of nature to the other parts which are found also in beasts; and in reason itself, which is partly contemplation and partly action, contemplation is unquestionably the superior part. The object of contemplation is the image of God, by which we are renewed through faith to sight. Rational action ought therefore to be subject to the control of contemplation, which is exercised through faith while we are absent from the Lord, as it will be hereafter through sight, when we shall be like Him, for we shall see Him as He is.
>
> A man, therefore, who acts in obedience to the faith which obeys God, restrains all mortal affections, and keeps them within the natural limit, regulating his desires so as to put the higher before the lower. If there was no pleasure in what is unlawful, no one would sin. To sin is to indulge this pleasure instead of restraining it. And by unlawful is meant what is forbidden by the law in which the order of nature is preserved. [*Contra Faustum Manichaeum.* xxii, 27][19]

The natural order of the human is founded in the nature of the human as created in the image of God. For Augustine, the image of God is to be sought in the immutability of the rational soul:

> Therefore neither is that trinity an image of God, which is not now, nor is that other an image of God, which then will not be, but we must find in the soul of man, i.e., the rational or intellectual soul, that image of the Creator which is immortally implanted in its immortality. For as the immortality itself of the soul is spoken with a qualification; since the soul too has its proper death, when it lacks a blessed life, which is to be called the true life of the soul; but it is therefore called immortal, because it never ceases to live with some life or other, even when it is most miserable;—so, although reason or intellect is at one time torpid in it, at another appears small, and at another great, yet the human soul is never anything save rational or intellectual; and hence, if it is made after the image of God in respect to this, that it is able to use reason and intellect in order to understand and behold God, then from the moment when that nature so marvelous and so great began to be, whether this image be so worn out as to be almost none at all, or whether it be obscure and defaced, or bright and beautiful, certainly it always is. [*De Trinitate,* Bk. XIV, 4, 6][20]

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[19]Quotation from *St. Augustine: The Writings against the Manicheans and Against the Donatists* [A Select Library of the Nicene and Post-Nicene Fathers of the Christian Church, ed. by Philip Schaff, Series I, Vol. IV].

[20]Quotation from *St. Augustine: On the Holy Trinity, Doctrinal Treatises, Moral Treatises* [A Select Library of the Nicene and Post-Nicene Fathers of the Christian Church, ed. by Philip Schaff, Series I, Vol. III].

For Augustine, morality demands the conformity of the human will to the prescriptions of the immutable eternal law of God. The eternal law of God "is called supreme reason, which must always be obeyed, by which the evil deserve an unhappy life and the good a blessed life, by which the law we have agreed to call temporal is rightly laid down and rightly changed" ["On Free Will" [*De Libero Arbitrio*], Bk. I, vi, 14-15 (pp. 120-121)]. One becomes virtuous by conducting and regulating one's soul according to the rules and guiding lights of the virtues, in all of which "right reason prevails, without which there can be no virtues" ["On Free Will" [*De Libero Arbitrio*], Bk. II, 50 (p. 166)]

Thomas Aquinas presents a masterful synthesis of elements of Augustinian moral theology in conjunction with elements of Aristotle's moral philosophy and the traditions of Roman jurisprudence and canon law. We shall confine our presentation to his analysis of the essence of law and its various kinds. For Thomas, the essence of law is something pertaining to reason. More specifically, the law is "nothing else than an ordinance of reason [*rationis ordinatio*] for the common good, made by him who has care of the community, and promulgated" [*Summa Theologica* I^{a}-II^{ae} Q. 90, a. 4]. The eternal law is the ordinance of divine reason (*ratio divina*). Since the law is nothing else but a dictate of practical reason [*dictamen practicae rationis*] emanating from the ruler who governs a perfect community," Thomas contends that it is evident that,

> granted that the world is ruled by Divine Providence, as was stated in the I, 22, A1, 2, that the whole community of the universe is governed by Divine Reason [*divina ratio*]. Wherefore the very Idea of the government of things in God the Ruler of the universe has the nature of a law. And since the Divine Reason's conception of things is not subject to time but is eternal, according to Prov. 8:23, therefore it is that this kind of law must be called eternal [ST I^{a}-II^{ae} Q. 91, a. 1].

Furthermore, the eternal law is something known to all [ST I^{a}-II^{ae} Q. 93, a. 2] and is the foundation for all other laws.

> Since then the eternal law is the plan of government in the Chief Governor, all the plans of government in the inferior governors must be derived from the eternal law. But these plans of inferior governors are all other laws besides the eternal law. Therefore all laws, in so far as they partake of right reason [*participant de ratione recta*], are derived from the eternal law. Hence Augustine says (*De Lib. Arb.* i, 6) that "in temporal law there is nothing just and lawful, but what man has drawn from the eternal law." [ST I^{a}-II^{ae} Q. 93, a. 3]

Since all things in the created order are subject to the sovereignty of divine providence and are ruled and governed by the eternal law, it is likewise further evident that

> all things partake somewhat of the eternal law, in so far as, namely, from its being imprinted on them, they derive their respective inclinations to their proper acts and ends [*manifestum est quod omnia participant aliqualiter legem aeternam, inquantum scilicet ex impressione ejus habent inclinationes in proprios actus et fines*]. Now among all others, the rational creature [*rationalis creatura*] is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the natural law [*Unde et in ipsa participatur ratio aeterna, per quam habet naturalem inclinationnem ad debitum actum et finem. Et talis participatio legis aeternae in rationali creatura lex naturalis dicitur.*] [ST I^{a}-II^{ae} Q. 91, a. 2]

Natural law as the participation of the eternal law in the rational creature is promulgated "by the very fact that God instilled it into man's mind so as to be known by him naturally [*promulgatio legis naturae est ex hoc ipso quod Deus eam menntibus hominum inseruit naturaliter cognoscendam*]" [ST I^{a}-II^{ae} Q. 90, a. 4 ad 1]. For Thomas, this implies that

> the light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the Divine light [*quasi lumen rationis naturalis, quo discernimus quid sit bonum et malum, quod pertinet ad naturalem legem, nihil aliud sit quam impressio divini luminis in nobis.*]. It is therefore evident that the natural law is nothing else than the rational creature's participation of the eternal law [*lex naturalis nihil aliud est quam participatio legis aeternae in rationali creatura*]. [ST I^{a}-II^{ae} Q. 91, a. 2]

The precepts of natural law are the first principles of all human action, such that virtuous acts are a subject of natural law.

> Wherefore, since the rational soul is the proper form of man, there is in every man a natural inclination to act according to reason: and this is to act according to virtue [*Unde cum anima rationnalis sit propria forma hominis, naturalis inclinatio inest cuilibet homini ad hoc quod agat secundum rationem. Et hoc est agere secundum virtutem*]. Consequently, considered thus, all acts of virtue are prescribed by the natural law. [ST I^{a}-II^{ae} Q. 94, a. 3]

In a strict sense, moral virtues cannot exist apart from the intellectual virtues of reason, principally the virtue of prudence, which is "the right reason about things to be done (and this, not merely in general, but also in particular); about which things actions are" [ST I^{a}-II^{ae} Q. 58, a. 5]. Hence, according to Thomas, "although moral virtue be not right reason, as Socrates held, yet not only is it 'according to right reason,' in so far as it inclines man to that which is, according to right reason, as the Platonists maintained [Cf. Plato, Meno xli.]; but

also it needs to be 'joined with right reason,' as Aristotle declares (Ethic. vi, 13)" [ST I^a-II^{ae} Q. 58, a. 4 ad 3]. Vices as antithetical to the moral virtues are not "joined with right reason," being contrary to the dictates and commands of right reason and/or "immoderate" as in exceeding the bounds of right reason.

Yet Thomas also cites a text from Augustine's *De Libero Arbitrio* (*De Lib. Arb.* iii, 13) in which Augustine had maintained that "every vice, simply because it is a vice, is contrary to nature." And, in his treatment of the species of the sin of lust, he speaks of the "unnatural vice" (*vitio contra naturam*) which can occur in several ways:

> First, by procuring pollution, without any copulation, for the sake of venereal pleasure: this pertains to the sin of "uncleanness" which some call "effeminacy." Secondly, by copulation with a thing of undue species, and this is called "bestiality." Thirdly, by copulation with an undue sex, male with male, or female with female, as the Apostle states (Rm. 1:27): and this is called the "vice of sodomy [*sodomiticum vitium*]." Fourthly, by not observing the natural manner of copulation, either as to undue means, or as to other monstrous and bestial manners of copulation [*ad alios monstruosos et bestiales concumbendi modos*] [ST II^a-II^{ae} q. 154, a. 11].

Vices contrary to nature are also sins against God (ST II^a-II^{ae} q. 154, a. 12 ad 2). Vices against nature are sins against God the creator and author of nature:

> Just as the ordering of right reason proceeds from man, so the order of nature is from God Himself: wherefore in sins contrary to nature, whereby the very order of nature is violated, an injury is done to God, the Author of nature [*Ad primum ergo dicendum quod sicut ordo rationis rectae est ab homine ita ordo naturae est ab ipso Deo. Et ideo in peccatis contra naturam, in quibus ipse ordo naturae violatur, fit injuria ipsi Deo ordinatori naturae*].

Hence Augustine says (Confess. iii, 8):

> Those foul offenses that are against nature [*contra naturam*] should be everywhere and at all times detested and punished, such as were those of the people of Sodom, which should all nations commit, they should all stand guilty of the same crime, by the law of God which hath not so made men that they should so abuse one another. For even that very intercourse which should be between God and us is violated, when that same nature, of which He is the Author, is polluted by the perversity of lust. [ST II^a-II^{ae} q. 154, a. 12 ad 1]

What is the order of relation then between "contrary to right reason" and "contrary to nature"? Does not Thomas imply that "contrary to nature" is more radical than "contrary to reason" when he states that "the principles of reason are those things that are according to nature, because reason presupposes things as determined by nature, before disposing of other things according as it is fitting [*Principia autem rationis sunt ea quae sunt secundum*

naturam: nam ratio, praesuppositis his quae sunt a natura determinata, disponit alis secundum quod convenit]"?

The complex question of the order of relation between right reason and nature is related to the issue of the manifold senses of nature and the corresponding manifold senses of the good as the end to which nature tends.[21] For Thomas, since good is teleologically understood as having the nature of an end, "...all those things to which man has a natural inclination, are naturally apprehended by reason as being good, and consequently as objects of pursuit.... Wherefore according to the order of natural inclinations, is the order of the precepts of natural law" [ST I^a-II^{ae} q. 94]. The order of natural inclinations is threefold:

> Because in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances: inasmuch as every substance seeks the preservation of its own being, according to its nature: and by reason of this inclination, whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law. Secondly, there is in man an inclination to things that pertain to him more specially, according to that nature which he has in common with other animals: and in virtue of this inclination, those things are said to belong to natural law, "which nature has taught to all animals" [Pnadect. Just. Tit. I], such as sexual intercourse, education of offspring and so forth. Thirdly, there is in man an inclination to good, according to the nature of his reason, which nature is proper to him [*secundum naturam rationis, quae est sibi propira*]: thus man has a natural inclination to know the truth about God, and to live in society; and in this respect, whatever pertains to this inclination belongs to the natural law; .... [ST I^a-II^{ae} q. 94].

Furthermore, the threefold order of natural inclinations can be understood in terms of the order of priority and that of primacy. The order of priority is explicated in terms of the order of the apprehension of being, from the general to the specific, while the order of primacy is explicated in terms of that which has primacy or propriety.

For Thomas, the manifold senses of nature are linked with the fact that human nature can be understood in several senses in light of the hylomorphic character of the human.

> By human nature we may mean either that which is proper to man—and in this sense all sins, as being against reason, are also against nature [*quod natura hominis potest dici vel illa quae est propria homini : et secundum hoc, omnia peccata, inquantum sunt contra rationem, sunt etiam contra naturam*], as Damascene states (De Fide Orth. ii, 30): or we may mean that nature which

[21] On this complex matter, see Jean Porter, "Contested Categories: Reason, Nature, and Natural Order in Medieval Accounts of the Natural Law," *Journal of Religious Ethics* 24 (1996) 207-234.

> is common to man and other animals; and in this sense, certain special sins are said to be against nature [*contra naturam*]; thus contrary to sexual intercourse [*commixtionem maris et feminae*], which is natural to all animals, is unisexual lust, which has received the special name of the unnatural crime [*concubitus masculorum, quod specialiter dicitur vitium contra naturam*] [ST I^{a}-II^{ae} q. 94, a. 3, ad. 2]

For Thomas, the virtue of a thing consists in its being well disposed in a manner that befits its nature and the vice of something being disposed in a manner not befitting its nature. And, with respect to the question concerning whether vice is contrary to nature, he explicitly remarks:

> But it must be observed that the nature of a thing is chiefly the form from which that thing derives its species. Now man derives his species from his rational soul: and consequently whatever is contrary to the order of reason is, properly speaking, contrary to the nature of man, as man; while whatever is in accord with reason, is in accord with the nature of man, as man. Now "man's good is to be in accord with reason, and his evil is to be against reason," as Dionysius states (Div. Nom. iv). Therefore human virtue, which makes a man good, and his work good, is in accord with man's nature, for as much as it accords with his reason: while vice is contrary to man's nature, in so far as it is contrary to the order of reason. [ST I^{a}-II^{ae} q. 72]

Properly speaking, "contrary to right reason" has primacy in relation to "contrary to nature" in light of the hylomorphic constitution of the human being.

> There is a twofold nature in man, rational nature, and the sensitive nature. And since it is through the operation of his senses that man accomplishes acts of reason, hence there are more who follow the inclinations of the sensitive nature, than who follow the order of reason: because more reach the beginning of a business than achieve its completion. Now the presence of vices and sins in man is owing to the fact that he follows the inclination of his sensitive nature against the order of his reason. [ST I^{a}-II^{ae} q. 72, a. 2, ad. 3]

Hence, right reason, as that which properly distinguishes the human being as a rational creature from irrational creatures, is the key factor in the determination of that which is properly natural law in the strict sense. This is to be distinguished from that which could also be included in an analogically broad sense of natural law, which encompasses both rational and irrational creatures.

> Even irrational animals partake in their own way of the Eternal Reason, just as the rational creature does. But because the rational creature partakes thereof in an intellectual and rational manner, therefore the participation of the eternal law in the rational creature is properly called a law, since a law is something pertaining to reason [*Sed quia rationalis creatura participat eam*

> *intellectualiter et rationaliter, ideo participatio legis aeternae in creatura rationali proprie lex vocatur : nam lex est aliquid rationis*], as stated above (90, 1). Irrational creatures, however, do not partake thereof in a rational manner, wherefore there is no participation of the eternal law in them, except by way of similitude [ST I^{a}-II^{ae} Q. 91, a. 2 ad. 3].

In addition, both virtues and vices as habits are related to nature in the sense of connaturality. Citing Cicero, Thomas notes: "[f]or Cicero says (*De Inv. Rhet.* ii) that 'virtue is a habit in accord with reason, like a second nature': and it is in this sense that virtue is said to be in accord with nature, and on the other hand that vice is contrary to nature." [ST I^{a}-II^{ae} q. 72, a. 2, ad. 1]. Although virtues are not caused by nature in terms of the perfection of their being, virtues as "second nature"[22] are inclined to dispose us in accord with the order of right reason. Vices as habitual dispositions, on the other hand, are "second natures" not in accord with the order of right reason, and in this sense neither in accord with nature as given, namely, "first" nature.

IV. Natural Law and *Recta Ratio* in Melanchthon

An historical-critical description of the stages of Melanchthon's development of natural law over the course of his intellectual development shall not be attempted here.[23] We shall confine our attention to the critical period that is proximate to the diet of Augsburg. According to Bauer, it is in this period that the key development of his natural law theory emerges in the course of commentaries on and annotations made to Aristotle's *Nichomachean Ethics* and Cicero's *De officia*. Heinz Scheible notes that

> Beginning in 1527 Melanchthon lectured on the ethical and political writings of Aristotle. Deciphering the Greek original posed considerable difficulties given the compactness of his style. Melanchthon, however, never managed a complete translation. What he published as commentaries in rapid succession from 1529 were brief, interpretative summaries of the content that amounted to introductions to the proper use of these philosophical texts by Christians. This study of the sources resulted in the particular, systematic

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[22]For a fascinating survey of the utilization of the concept of "second nature" in the Greco-Roman period and in early Christian literature, see Jan Hendrik Waszink, "Die Vorstellungen von der •Ausdehnung der Natur• in der griechisch-römischen Antike und im frühen Christentum," in *Pietas: Festschrift für Bernhard Kötting*, edited by Ernst Dessmann and K. Suso Frank (Münster: Aschendorffische Verlagsbuchhandlung [Jahrbuch für Antike und Christentum Ergänzungsband 8] 1980), 30-38.

[23]For more extensive treatments of Melanchthon's natural law theory, one may profitably consult Clemens Bauer, "Melanchthons Naturrechtslehre," *Archiv für Reformationsgeschichte* 42 (1951) 64-100 and Günther Frank, *Die theologische Philosophie Philipp Melanchthons (1497-1560)*, (Leipzig: Benno Verlag [Erfurter Theologishce Studien 67], 1995) 140-158.

> delineation of a Christian philosophical ethic. It first appeared in 1538 under the title *Philosophiae moralis epitome* and, like all of Melanchthon's textbooks, underwent many revisions.[24]

His commentaries on Books I and II of Aristotle's *Nichomachean Ethics* were initially published in 1529 and his commentaries on Books III and V followed in 1532.[25] Both Bauer and Scheible cite the centrality of *Philosophiae moralis epitome* in Melanchthon's developing systematic treatment of natural law. Yet in the last decade of the nineteenth century, the manuscript of Melanchthon's *Epitome ethices* was discovered, which predates by six years the publication of *Philosophiae moralis epitome.*[26] I shall confine my remarks concerning the treatment of *recta ratio* and natural law to this text and his commentary on Book I of Aristotle's *Nichomachean Ethics,*[27] for these texts are proximate to the time of the *Apology* [1531]. A fuller treatment of the relation between recta ratio and natural law in Melanchthon's writings (e.g., biblical commentaries [especially his *Commentarii in Epistolam Pauli ad romanos, recens scripti a Philippo Melanthone* (1532.)], classical commentaries on Cicero and Aristotle, his physics and theological anthropology [*Liber de anima*], and the later editions of the *Loci*) will be deferred to a later time.

Both texts, his explanations of the first book of Aristotle's ethics and his *Epitome ethices,* are prefaced with a consideration of the utility of moral philosophy for Christian theology. Melanchthon is insistent that the utilization of moral philosophy must keep in mind the distinction between law and gospel. In his commentary, the ethical teaching of moral philosophy does not pertain to the gospel, but rather "it must be realized that ethical teaching is a part of the divine law of civil behavior..."[28] Ethical teaching is that part of the law of nature that concerns those perceptions born within us, those "moral perceptions, which

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[24]Heinz Scheible, "Melanchthon, Phillipp," *The Oxford Encyclopedia of the Reformation,* Vol. 3 (New York/Oxford: Oxford University Press, 1996), 43.

[25]Clemens Bauer ["Melanchthons Naturrechtslehre," *Archiv für Reformationsgeschichte* 42 (1951) 98] notes that it cannot be proved that Melanchthon had a knowledge of the treatments of natural law in scholastic theology and that at most he appears to be familiar with some aspects of Jean Gerson's ethics. It would not be surprising for a Renaissance humanist not to attend to scholastic treatments of Cicero and Aristotle. Despite many affinities with aspects of the treatment of natural law in Thomas Aquinas, Bauer contends that the affinities are most likely due to the influence of Aristotle. It would be fascinating to compare at length Melanchthon and Thomas' commentaries on Aristotle's ethics.

[26]See Philip Melanchthon, "Summary of Ethics [1532]," in Philip Melanchthon, *A Melanchthon Reader,* trans. by Ralph Keen (New York/Bern/Frankfurt am Main/Paris: Peter Lang Publishing, Inc., [American University Studies, Series VII: Theology and Religion, Vol. 41], 1988), 203-238. It was first published in Philip Melanchthon, "Epitome Ethices Auctore Phili. Melancht.," *Philosophische Monatshefte* 29 (1893) 129-177.

[27]A translation of Melanchthon's commentary of Book I can be found in Philip Melanchthon, "Commentary on Aristotle's *Ethics,* Bk. 1," in Philip Melanchthon, *A Melanchthon Reader,* pp. 179-202.

[28]"Commentary on Aristotle's *Ethics,* Bk. 1," 179.

reveal God and point out the difference between good and evil."[29] These moral perceptions are the law of nature in the human mind. "God has infused his image, that is, the awareness of God, and the distinction between good and evil in human minds, just as in a mirror, and these perceptions would shine much more clearly, and the will would burn with the love of God, and be adorned with all these virtues, if the nature of men had remained uncorrupted."[30] The moral perceptions are practical principles that govern actions whose end is the performance of virtue. "Practical principles are naturally given to control actions. Thus they must be obeyed. And from this it follows that ordained actions are more important than other actions which differ from these natural notions. Furthermore, when Aristotle speaks of action in accordance with virtue, he means action which is governed by right reason, ..."[31]

These brief annotations in his commentary are more systematically explicated in the *Epitome ethices.* Here moral philosophy is "the complete awareness of the precepts of the duties of all the virtues, which the reason understands agrees with man's nature [*quae ratio intelligit naturae hominis convenire*] and which are necessary for the conduct for this civil life."[32] Philosophy, Melanchthon contends, is "the law of nature itself divinely written in men's minds [*Est enim ipsa lex naturae scripta divinitus in mentibus hominum*], which is truly the law of God concerning those virtues which reason understands and which are necessary for civil life."[33] The first and chief law of nature is that virtue is the end of human nature and action, and the awareness of the law of nature as part of divine law is "the vestige and image of divinity in man, even if it is somewhat obscured by sin and the sickness of nature [*Nam haec notitia est vestigium et imago divinitatis in homine, etsi vitio ac morbo naturae aliquo modo obscurata est*]."[34]

It is with the clarification of virtue and its causes that the centrality of right reason is presented. What is virtue? For Melanchthon, in order "to define it most exactly and clearly," virtue would have to be understood as

> a habit that inclines to that which must be obeyed with right reason [*esse habitum qui inclinat ad obediendum rectae rationi*]. For this law in nature ought to be placed among the foremost: Right reason [*rectae rationi*] must be obeyed; and this highest law governs and rules almost all the virtues [*rectae rationi parendum est; atque haec summa lex paene et gubernat et regnat*

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[29]"Commentary on Aristotle's *Ethics,* Bk. 1," 179-180.

[30]"Commentary on Aristotle's *Ethics,* Bk. 1," 180-181.

[31]"Commentary on Aristotle's *Ethics,* Bk. 1," 193.

[32]Philip Melanchthon, "Summary of Ethics [1532]," in Philip Melanchthon, *A Melanchthon Reader,* p. 203.

[33]"Summary of Ethics," 204.

[34]"Summary of Ethics," 202.

> *omnes virtutes*]. For virtue is obedience on account of right reason [*Est enim virtus obedientia erga rectam rationi.*]. And this definition of ours further agrees in substance with the sense of Aristotle's definition. These are his words: Virtue is an elective habit consisting in moderation which the reason prescribes just as the wise man judges. And there are causal definitions. For what Aristotle calls elective reflects the efficient cause of virtue, that virtue is governed by the judgment of right reason [*virtus iudicio rectae rationis gubernetur*]. The final cause is to incline toward obedience of right reason [*ad obediendum rectae rationi*]. Aristotle feels the same way when he says that moderation is constituted by right reason [*recta ratione*]. Then he adds the effective cause, how virtue is brought about, namely moderation in the emotions or certainty among practical matters, since virtue moderates fear and boldness and calls us back into line.[35]

If virtue is achieved through the moderation of the emotions in accordance with right reason, are vices then occasioned through inordinate or immoderate emotions not in accordance with right reason? In a critique of the Stoic doctrine of apathy (which is interpreted as the rejection of emotions), he contends that there are two kinds of emotions. On the one hand, there are those which

> are rationally understandable, such as love of spouse, love for children, goodwill towards those who deserve it, pity for the unfortunate, and anger at those who bring injury upon us. These emotions are called natural love [Hie afffectus vocantur *storgai physikai.*]. And they would come about in human nature even if it were not flawed. For all emotions draw their movement and life from nature. For life is a constant agitation or movement, but emotion is also the image of this kind of agitation or movement. For just as hunger and thirst are certain natural movements without which nature could not exist, so the other emotions, in accord with reason, are good things and God's works in nature [*ita ceteri affectus cum ratione consentientes res bonae ac dei opera sunt in natura*],....[36]

These are "natural affections...to be retained, that is, emotions in harmony with reason; other emotions are those which fight with reason [*sed discrimen observandum est: storgai physikai retinendae sunt, hoc est affectus cum ratione consentientes; alii affectus sunt qui cum ratione pugnant*]."[37] The dissimilarity in these two groups of emotions or affects occurs in light of concupiscence as a consequence of the fall. "If human nature

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[35]"Summary of Ethics," 207-208.

[36]"Summary of Ethics," 216.

[37]"Summary of Ethics," 217.

were not sinful, all emotions would obey the law of God and the judgment of right reason [*Si natura hominis non esset vitiata, omnes affectus obedirent legi dei seu iudicio rectae rationis*]."[38]

This distinction between two types of affections in light of the centrality of right reason in Melanchthon's natural law theory and virtue ethics is indicative of the construal of natural law within the framework of salvation history. The main elements of salvation history as a comprehensive interpretative framework involve a sequence of a periodization of significant past and future events, whose significance is a result of the creative, providential-governing, and redemptive activity of God. Salvation history interprets the past, present, and future as a sequential narrative whose development and outcome is determined by God. The classical Augustinian salvation-history framework is divided into various periods associated with particular states, namely, the sequential ordering of the state of original righteousness or integrity, the state of sin [in light of the fall], the state of grace [in light of redemption], and the state of glory.[39] For both Thomas Aquinas and Melanchthon, the presentation of natural law theory within the context of a salvation-history framework provides the basis for the full import of the notion of right reason for the understanding of human sexuality and the normative valuation of homosexuality.

V. The Question of the Valuation of Sexuality and the Questioning of the Confessions

In light of the Augustinian salvation-history construal of natural law, right reason is central to the constitution of the state of original righteousness. Human sexuality in the state of original righteousness would be properly ordered and virtuous in accordance with the dictates and judgment of right reason, the immutability of which is founded in the immutability of the eternal law of the divine understanding. Any disruption of the proper ordering of human sexuality would only occur in the state of sin in light of the fall and as the consequential effect of concupiscence. In the classical conception evidenced in Melanchthon, if one were anachronistically to employ the concepts of heterosexuality and

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[38]"Summary of Ethics," 217. See also the treatment of affections in the discussion of concupiscence in "On the Soul" [in Philip Melanchthon, *A Melanchthon Reader*], 277: "God created appetitive abilities in humanity, which if human nature had remained pure would have had only ordered movements and there would have been the sweetest harmony of abilities agreeing with each other. When the rule is the one and eternal law of God in the mind, the movements of the will and heart, or the appetites of the senses, do not deviate from it. On the contrary God equally distributed light to the mind through his own son and movements agreeable with his wisdom and justice in the heart with his holy spirit. Thus there had been appetites, hunger, thirst, pleasure in seeing, hearing, taste, smell, touch, and sadness at any offense to the nerves. And then in the heart and the will were the love of God, devotion to children, parents, wife, siblings, goodwill to all men, hatred toward devils, joy in agreement with god, hope for eternal life. And these appetites and affects had all been ordered, agreeing with the law of the mind,...But this sweetest of harmonies was disrupted by the fall of our first parents."

[39]For a presentation of Augustine's understanding of human sexuality within such a comprehensive salvation-historical framework, see Paul Ramsey, "Human Sexuality in the History of Redemption," *Journal of Religious Ethics* 16 (1988) 56-86.

homosexuality, heterosexuality would essentially be the proper ordering of human sexuality in the state of original righteousness. In fact, human sexuality would be exclusively heterosexuality. Homosexuality as such, on the other hand, would be construed as utterly postlapsarian and, hence, an inordinate deviation that would be a species of the sin of lust. As an inordinate deviation from the norm of the original state of righteousness characterizing human nature, homosexuality as such is condemnatory.

This radical condemnation of homosexuality as intrinsically sinful by being contrary to right reason, however, rests upon a certain presupposition that is operative in the classical Augustinian salvation-history schema so influential upon subsequent Christian theology. It involves a presupposition that is regarded as so self-evident and widely shared before modernity that it does not need to be explicitly thematized. What is this presupposition? The presupposition that is operative is *monogenism*. In the strict theological sense, monogenism is the doctrine according to which all humanity finds its historical origin in a unique couple (Adam and Eve) created by God.[40] The doctrine of monogenism requires that the paradisiacal state of original righteousness must be understood as history. Thomas Aquinas is explicit concerning this in his answer to the question as to whether or not prelapsarian paradise was a corporeal state. Citing Augustine, he writes: "As Augustine says (De Civ. Dei xiii, 21): 'Nothing prevents us from holding, within proper limits, a spiritual paradise; so long as we believe in the truth of the events narrated as having there occurred.' For whatever Scripture tells us about paradise is set down as matter of history; and wherever Scripture makes use of this method, we must hold to the historical truth of the narrative as a foundation of whatever spiritual explanation we may offer" [ST Iª q. 103, a. 1].

The presupposition of the doctrine of monogenism and its stipulation of a historical understanding of the events narrated in the Genesis creation narratives is the Achilles' heel of the classical condemnation of homosexuality as such as being a sin (though most traditional positions focused their attention more on the condemnation of the acts of sodomy, which would be applicable to persons of either heterosexual or homosexual orientation). This stipulation of historicity concerning the prelapsarian state has been shattered in light of modern biblical studies. The quite problematic status of the operative presupposition of the "Augustinian" salvation-historical framework of natural law positions, such as presented by Augustine, Thomas Aquinas, and Melanchthon, in turn raises fundamental questions concerning the purported validity of claims based on such a presupposition. The calling into question of the operative presuppositions of traditional theological positions, such as that concerning homosexuality, does not automatically invalidate those claims as such, but it does render them problematic.

The sense of the problematic character of those positions also increases when the related Augustinian framework, within which natural law formulations have been located, is fundamentally called into question and critiqued as fantasy within the development of

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[40]Marc Leclerc, "Monogénisme/Polygénisme," in *Dictionnaire critique de théologie*, ed. by Jean-Yves Lacoste (Paris: Presses Universitaires de France [Quadrige], 2002), 759.

modern theology and philosophy.[41] It increases still further with the challenges raised by modern biology and psychology against the notion of a fixed, immutable orientation of sexual desire to definite fixed objects as a fundamental given. The biological presuppositions that inform positions such as Melanchthon's, with his intertwining of physics and ethics in such a way as to contend that there is a definite sexual object for sexual desire, have been challenged by the affirmation of the polymorphic character of sexual desire/instinct. So also certain conceptions of the relation between the 'normal' as natural and the pathological have been undercut.[42]

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[41]For example, recall Kierkegaard's critique of traditional theological accounts of the fall in his work that has so fundamentally influenced much of contemporary theology: "Is the concept of hereditary sin identical with the concept of the first sin, Adam's sin, the fall of man? At times it has been understood so, and then the task of explaining hereditary sin has become identical with explaining Adam's sin. When thought met with difficulties, an expedient was seized upon. In order to explain at least something, a fantastic presupposition was introduced, the loss of which constituted the fall as the consequence. The advantage gained thereby was that everyone willingly admitted that a condition such as the one described was not found anywhere in the world, but that they forgot that as a result the doubt became a different one, namely, whether such a condition ever had existed, something that was quite necessary in order to lose it. The history of the human race acquired a fantastic beginning. Adam was fantastically placed outside this history. Pious feeling and fantasy got what they demanded, a godly prelude, but thought got nothing. In a double sense, Adam was held fantastically outside. The presupposition was dialectical-fantastic, especially in Catholicism (Adam lost *donum divinitus datum supranaturale et admirabile* [a supernatural and wonderful gift bestowed by God]). It was historical-fantastic, especially in the federal theology, which lost itself dramatically in a fantasy view of Adam's appearance as a plenipotentiary for the whole race. Obviously neither explanation explains anything. The one merely explains away what it has fictitiously composed: the other merely composes fiction that explains nothing.

Does the concept of hereditary sin differ from the concept of the first sin in such a way that the particular individual participates in inherited sin only through his relation to Adam and not through his primitive relation to sin? In that case Adam is placed fantastically outside history. Adam's sin is then more that something past (*plus quam perfectum* [pluperfect]). Hereditary sin is something present; it is sinfulness, and Adam is the only one in whom it was not found, since it came into being through him. Hence one would not try to explain Adam's sin but instead would explain hereditary sin in terms of its consequences. However, the explanation is not suitable for thought" [Søren Kierkegaard, *The Concept of Anxiety: A simple Psychologically Orienting Deliberation on the Dogmatic Issue of Hereditary Sin*, ed. and trans. with Introduction and Notes by Reidar Thomte in collaboration with Albert B. Anderson (Princeton: Princeton University Press [Kierkegaard's Writings, VIII], 1980), 25-26].

Another example is Paul Ricoeur's summary of the Augustinian position on original sin as false gnosis: "The concept of original sin is false knowledge, and it must be broken as knowledge. It involves the quasi-juridical knowledge of the guilt of the newborn and the quasi-biological knowledge of the transmission of a hereditary taint. This false knowledge compresses in an inconsistent notion a juridical category of debt and a biological concept of inheritance" [Paul Ricoeur, "'Original Sin': A Study in Meaning," in *Conflict of Interpretations: Essays in Hermeneutics*, ed. by Don Ihde (Evanston: Northwestern University Press [Northwestern University Studies in Phenomenology & Existential Philosophy], 1974), 270]. One could add to his statement that the "inconsistent" notion also includes the historical concept of the prelapsarian state.

[42]Cf. Arnold Davidson, *The Emergence of Sexuality: Historical Epistemology and the Formation of Concepts* (Cambridge/London: Harvard University Press, 2001), 79: "by claiming, in effect, that there is no natural object of the sexual instinct, that the sexual object and sexual instinct are merely soldered together, Freud dealt a conceptually devastating blow to the structure of nineteenth-century theories of sexual psychopathology. In order to show that inversion was a real functional deviation and not merely a statistical abnormality without genuine pathological significance, one had to conceive of the "normal" object of the instinct as part of the very content of the

The recognition of the problematic character of the lens that informs the construal and normative evaluation of the phenomenon of human sexuality in Art. XXIII of the *Apology* in light of our examination and explication of the meaning of right reason has one definite result. It has been demonstrated that Melanchthon's first argument, which contains probably the most important text in all of the Confessions for deliberations concerning human sexuality, cannot be construed as a purely biblical argument, but rather must be seen as an argument already informed by and configured with particular systematic theological and philosophical construals. Hermeneutically there is most likely no such thing as a purely biblical argument. This suggests that systematic theology will possibly also be the determining locus for the possible resolution of the aporias concerning what should be the theological construal of human sexuality and, hence, that concerning homosexuality. And, even if it does not have the final say, it is most certainly true that systematic theology and the rigors of its questioning cannot be avoided, for the avoidance of systematics is shallowness, i.e., treason.

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instinct itself. If the object is not internal to the instinct, then there can be no intrinsic clinico-pathological meaning to the fact that the instinct can become attached to an inverted object. The distinction between normal and inverted object will not then coincide with the division between the natural and the unnatural, itself a division between the normal and the pathological."