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Child-rearing, natural law and same-sex marriage at the Supreme Court

Chase Nordengren | Apr. 11, 2013 Young Voices

Natural law philosophy brings together two topics often kept far apart: the limits of the state and the intentions of God. Thomas Aquinas and his intellectual descendants have sought to characterize the limits of the state, understand God's will as expressed in creation and create a framework that bridges the two. For natural lawyers, the state can violate the right of the individual to discern God's will in their lives. But it requires a very compelling reason.

Natural law took center stage at the Supreme Court last month in oral arguments on *Hollingsworth [1]*v. [1] *Perry [1]*, the suit challenging California's Proposition 8, which bans same-sex marriage. Briefs in the case [2] from the U.S. Conference of Catholic Bishops and the Marriage Law Project at The Catholic University of America, among others, argue that the state's interest in regulating marriage stems from an interest in regulating procreation and child-rearing.

"Given," the bishops write [3], "the procreative capacity of different-sex couples, the basic right of a child to be raised by his or her father and mother together, and the interest in encouraging homes with a mother and father, marriage, as the union of one man and one woman, has a societal value that is absent from other interpersonal relationships."

If a state interest in regulating marriage exists, it seems embedded in these three ideas. However, natural law necessarily requires the evaluation of the practical validity of these claims prior to making moral claims from them. It is here that arguments by proponents of Prop 8 become circular, convoluted, or out of keeping with the findings of social science.

First, procreative ability has, in practice, extended far beyond different-sex couples. More than 37,000 children in the United States will be conceived this year by in vitro fertilization while more than 50,000 children will be given for adoption by biological parents who, whether coupled or uncoupled, did not feel prepared to accept a child into their lives. For children in these situations, perhaps finding themselves outside male-female coupled families, the alternative suggested as ideal by the natural lawyers is not only completely outside their experience, it's a nonexistent option. For them, the choice is much simpler: either parents of some type or no parents at all.

Further, our laws recognize that the treatment of a child is far more crucial to its rights than being raised by biological parents. When we remove a child from a home because of abuse or neglect, we recognize the central nature of love as expressed, not as intended through a particular form of relationship. As well we should, we consider the rights of children best defended in homes where they are provided love, material support and compassionate care.

One wonders on what basis, then, families that include gay parents are said by the bishops to lack "social value." A brief [4] submitted to the court emphasizing no significant differences in fitness between gay and

straight parents is signed by myriad scientific and social scientific organizations, including the American Medical Association, the American Academy of Pediatrics, and the American Psychological Association.

Ironically, children suffer not because they are raised by gay parents but instead because the relationship of their parents has been denied social value by those of us who cannot see it. We commit both an error in judgment and an error in compassion when we assume God has ordained only one kind of relatedness between parents and children, one that requires specific forms of gender expression (fathers acting like fathers, mothers acting like mothers) in order to prevent children from being deprived.

It is disappointing that procreation and child-rearing have become so inextricably linked in the current debate about the definition of marriage. An all-or-nothing approach may cause us to lose a valuable opportunity to shed light on the real values of stability and sacrifice that characterize family. Worse, it risks disrespecting the millions of gay parents raising children, many of them out of suffering and hardship, as something other than pillars of love.

[Chase Nordengren is a graduate student at the University of Washington in Seattle, where he studies education policy.]

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