

PREMARITAL SEX: THE THEOLOGICAL ARGUMENT FROM PETER LOMBARD TO DURAND

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THIS STUDY intends to supply a history of the theological thinking on simple fornication from Peter Lombard to Durand of St. Pourçain.¹ But, more than that, it intends to provide an accurate understanding of the reasons why the medieval theologians of this period almost unanimously taught that sexual intercourse between unmarried persons is always a mortal sin.² The common textbook explanation has been that

¹ There is no historical study on fornication comparable to John Noonan's study of contraception or John Connery's study of abortion. Though limited to the theologians writing between 1152 (when Peter Lombard completed his *Sentences*) and 1327 (when Durand finished the final redaction of his sentence commentary), the present investigation is nearly complete. It includes not only the published texts but also the unpublished literature preserved in manuscript form at the Vatican libraries and reproduced on microfilm by Lowrie J. Daly, S.J., for the Vatican Film library at St. Louis University. Many theologians of this period never discussed fornication. In addition to the authors considered in our text, we also read but found nothing on the subject in the following: Peter of Capua's *Summa* (*Cod. Vat. lat.* 4296, 4303, 4304), the anonymous *Codex Vaticanus latinus* 10754, Prevostin of Cremona's *Summa theologica* (*Cod. Vat. lat.* 1174), Richard Fishacre's *Commentarium in Sententias* (*Cod. Vat. Ottob. lat.* 294), Odo Rigaud's *Commentarium in Sententias* (*Cod. Vat. lat.* 5982), Robert Kilwardby's *Commentarium in Sententias* (*Cod. Vat. Ottob. lat.* 161), Romano of Rome's *Commentarium in Sententias* (*Cod. Vat. Palat. lat.* 331) and *Summa Sententiarum* (*Cod. Vat. Ottob. lat.* 1403), Henry of Ghent's *Quodlibeta seu Quaestiones disputatae in quatuor libros Sententiarum* (Louvain, 1961), John Quidort's *Commentarium in libros Sententiarum* (Rome, 1961), Giles of Rome's *In libros Sententiarum* (Venice, 1521) and *Quodlibeta* (Louvain, 1646), James of Viterbo's *Commentarium in Sententias* (*Cod. Vat. Barb. lat.* 682) and *Disputatio prima et secunda de quolibet* (Würzburg, 1968/9), James of Metz's *Commentarium in Sententias* (*Cod. Vat. Borgh. lat.* 122), Raymond Lull's *In 4 libros Sententiarum* (Lyons, 1491), Harvey of Nedellec's *In quatuor libros Sententiarum commentaria* (Paris, 1647) and *Quodlibeta* (Venice, 1513), Peter Auriol's *In quatuor libros Sententiarum* (Rome, 1594), John of Naples' *Quaestiones variae Parisiis disputatae* (Naples, 1618), Francis of Meyronnes' *Scripta in quatuor libros Sententiarum* (Venice, 1520) and *Quaestiones quodlibetales* (Venice, 1520), and William of Ockham's *Super quatuor libros Sententiarum* (Lyons, 1495) and *Quodlibeta septem* (Paris, 1487).

² Some later theologians, while not denying this conclusion, confessed that the natural-law arguments for it are not altogether clear; cf. T. Tamburini, *Explicatio decalogi* 1, 7, c. 1, n. 9; A. Ballerini, S.J., *Opus theologicum morale* 2, #77. What is more, a number of Scripture scholars today tell us that the biblical texts traditionally used to demonstrate the immorality of all premarital intercourse in fact yield no such conclusion; for a brief discussion of contemporary exegesis on this question, see J. Dedek, "Premarital Petting and Coitus," *Chicago Studies* 9 (1970) 227-42. Some contemporary theologians are expressing doubt about not only the premises but the conclusion as well; cf. A. Kosnik et al., *Human Sexuality* (New York: Paulist, 1977); P. Keane, S.S., *Sexual Morality* (New York:

fornication is always sinful because it is an intrinsically evil act, an act so deformed in itself that it never can be good in any circumstances.³ But the concept of an intrinsically evil act originated in the mind of Durand of St. Pourçain and was unknown to theologians before him.⁴ Hence there must be another reason for the medieval theologians' universal prohibition of fornication. It is this reason that we are seeking.

THE PREDECESSORS OF ST. THOMAS

The Texts

Peter Lombard sets the stage for the coming discussion by simply stating that the Sixth Commandment forbids more than adultery: it forbids all extramarital intercourse, all illicit copulation, and illicit use of the sex organs.⁵ Robert of Melun, commenting on 1 Cor 6:18, says that a fornicator sins against his own body, and his spiritual soul is almost changed into something material, since it is wholly given to the pleasures of the flesh.⁶ Robert Pullus says that the use of concubines was permitted before the Law but not afterwards: the Sixth Commandment prohibits all sexual intercourse outside of marriage.⁷ And Gandulf of Bologna simply repeats the statement of the Lombard.⁸

Simon of Tournai is the first theologian to raise a deeper question: Is sexual intercourse of a man and a woman in accord with natural law? Simon answers that sexual intercourse of a man and a woman, whether they are married to each other or are fornicators, is always in accord with natural law. But in marriage the intercourse is good; outside of marriage it is bad. The reason is that the sexual intercourse of fornicators lacks the due form of solemnity which is called marriage: it does not lack anything due necessarily, only the due ceremony.⁹ Peter of Poitiers does not pick up the new question; he merely repeats the earlier doctrine that the Sixth Commandment forbids all illicit use of the sex organs.¹⁰

William of Auxerre is the first to assert that fornication is against natural law. If it were not, he argues, the state would perish, since men

Paulist, 1977). Also see Richard McCormick's review of the contemporary periodical literature in "Notes on Moral Theology," *TS* 34 (1973) 77-92.

³ E.g., M. Zalba, S.J., *Theologiae moralis summa* 2, #327; S. Loiano, O.M.Cap., *Institutiones theologiae moralis* 5, #95.

⁴ J. Dedek, "Moral Absolutes in the Predecessors of St. Thomas," *TS* 38 (1977) 654-80; "Intrinsically Evil Acts: An Historical Study of the Mind of St. Thomas," *Thomist* 43 (1979) 385-413.

⁵ *Libri quatuor Sententiarum* (Quaracchi, 1916) 3, d. 37, c. 4.

⁶ *Questiones de epistolis Pauli* (Spicilegium sacrum Lovaniense 18; Louvain, 1938), In 1 Cor 6:18.

⁷ *Sententiarum libri octo* (PL 186) 7, c. 27.

⁸ *Sententiarum libri quinque* (Vienna and Breslau, 1924) 2, #134.

⁹ *Disputationes* (Spicilegium sacrum Lovaniense 12; Louvain, 1932) d. 98, q. 2.

¹⁰ *Sententiarum libri quinque* (PL 211) Lib. IV, c. 4.

would engage in mutual slaughter. But what harm is done by fornication, particularly if a man fornicates with a single woman in order to have a child? William responds that the fornicator does harm to God. He injures God by expelling Him from His temple, making his body a temple of the devil rather than a temple of God.¹¹

William of Paris, in a discussion of the sacrament of matrimony, makes a passing remark suggesting that there can be more harm from fornication than harm to God. He says that children of prostitutes have no known father to protect, educate, and provide for them.¹²

Philip the Chancellor says that fornication and adultery are against divine law and natural reason. Contrary to the doctrine of the Lombard, he says that fornication was not forbidden in the Old Law, but it is forbidden in the New Law because it is opposed to the sacrament of marriage. Also, he says, fornication and adultery are opposed to natural reason, which dictates what should and should not be done. But why or in what sense fornication is opposed to natural reason Philip does not tell us.¹³

Alexander of Hales admits that fornicators are united according to nature, desire, commingling, and sometimes a child. But married people have a greater unity, a unity of faith and sacrament. Also, he adds, there is another difference between marriage and fornication: in fornication a man is said to be wholly flesh, because his carnal appetite entirely conquers his reason, whereas in marriage the carnal appetite is still partly subject to the rational.¹⁴

Roland of Cremona never discusses the question of fornication. But in one place he tries to explain why lust is always a mortal sin, whereas gluttony is not: all movements of the sexual appetite are forbidden, but not all movements of the nutritive appetite.¹⁵

Hugh of St. Cher is the first author who treats the question of simple fornication at any length. He explicitly raises the question: Is simple fornication a mortal sin and in what way is it contrary to natural law? He responds that simple fornication is a mortal sin. He then develops his thought in response to several objections.

First, Hugh explains that Abraham did not sin by his concubinage, since he acted in accord with God's command. Next, he argues that fornication does harm. But, like William of Auxerre, he does not attempt to prove by reason that fornication is harmful. Rather, he assumes from

¹¹ *Summa aurea* (Paris, 1518) 3, c. 4, q. 3; 4, c. 3.

¹² *Opera omnia* (Paris, 1674) 2, c. 2.

¹³ *Summa de bono* (Cod. Vat. lat. 7669, f. 125^{va}).

¹⁴ *Glossa in quatuor libros Sententiarum* (Quaracchi, 1954) 4, d. 31 (#100). A search through Alexander's disputed questions reveals nothing more.

¹⁵ *Summa* (Cod. Vat. Barb. lat. 729, f. 464^{ra}).

divine revelation that fornication is a sin and therefore concludes that it is harmful to God and to man. As St. Paul says, a fornicator sins against his own body: he drives the Holy Spirit out of his body, making it a temple of the devil. Thus he injures himself and the Holy Spirit; he also injures the woman with whom he fornicates, since he is the occasion of her damnation.

Is fornication therefore bad only because it is forbidden, or is it forbidden because it is bad? Hugh responds that some theologians believe that nothing is bad unless it is forbidden. Other theologians, however, think that some actions, like Adam's eating the apple, are bad because they are forbidden, while other actions, like fornication and homicide, are forbidden because they are bad. Hugh prefers the second view. Every bad act, he explains, is against some law, but this law may be either the one revealed through Moses or the one inscribed in man's heart by God. Fornication is against the law inscribed in man's heart. It is contrary not merely to positive law but to nature; hence it is forbidden because it is bad, not bad because it is forbidden. This is as far as Hugh takes us; he makes no effort to explain why it is bad or contrary to nature.¹⁶

The *Summa fratris Alexandri* contains five articles on fornication. The first asks why fornication with an unmarried woman is a mortal sin. The author responds that the sexual faculty in man is so corrupted by original sin that its use can be justified only by the three goods of marriage (fidelity, children, and the sacrament). Man's sexual faculty is more corrupted than any other (for instance, the nutritive); therefore sexual intercourse is always bad in itself unless it is drawn to good by the added circumstance of marriage. Like swearing, it is forbidden by God outside of its due circumstance.¹⁷ Why is the added circumstance of marriage necessary to make sexual intercourse licit? The author explains in the next article.

He begins by saying that sexual intercourse outside of marriage is against human nature, which must be ruled by reason. But in his argument it becomes clear that the circumstance of marriage is required because of positive divine law.

Nature, he explains, can be understood in two ways. First, there is general nature, which is common to all animals. Sexual intercourse is not a sin if nature is understood in this sense. Second, there is nature as ordered by reason. If nature is understood in this sense, it is still in accord with nature to procreate a child who will worship God. Since this can be done outside of marriage, sexual intercourse of an unmarried couple does not yet seem to be against the law of nature. However, he adds, sexual

¹⁶ *Commentarium in Sententias* (Cod. Vat. lat. 1098, f. 183^{va}-184^{ra}) 3, d. 34, q. 1.

¹⁷ *Summa fratris Alexandri* (Quaracchi, 1924-48) 2-2, inq. 3, tr. 4, sect. 2, q. 1, tit. 7, c. 2, a. 1, ad 1 and ad 2 (#614).

intercourse has a congruity to matrimonial union, which has been divinely instituted. According to Augustine, there is a possibility in nature not only for what is natural but also for what can miraculously occur. Therefore extramarital intercourse is opposed to nature understood in this sense, that is, in so far as it has a congruity to marriage, which comes from divine institution.¹⁸

The author repeats the same doctrine in the next article. Is it contrary to the law of nature for a man to consent to take a woman for a time, propose to be faithful to her for a time, and have sexual intercourse with her in order to generate a child? The author says that copulation with more than one woman is against nature in some sense but not in another, as was explained in the previous article. The law of nature, at least in so far as it is ordered by congruity to marriage, which has been divinely instituted, requires not only intercourse for procreation and fidelity; it also requires that the union be sacramental, that is to say, inseparable.¹⁹

In the following chapter the author inquires whether all lust is a mortal sin. In his response he says that all fornication is a mortal sin, but he attempts no arguments from natural reason. All his arguments are from the Bible (Heb 13:4, 1 Cor 6:9, Eph 5:5, Exod 20:14) and from the teaching of Jerome and Chrysostom.²⁰

Another article in the *Summa* inquires whether sexual intercourse with an unmarried woman is a mortal sin if the act is natural. The author's direct answer to the question is affirmative, but his meaning is disclosed in his response to the objections.²¹

The first objection is that fornication is a natural act and therefore no sin. The author responds that although the act of fornication is natural, that is, not against nature, it is against nature in so far as it is a sin; for every sin is an aversion from what is according to nature to what is aside from nature. Fornication is not against nature in so far as it is the natural copulation of a man and a woman; but it is against nature in so far as it is against the natural relationship to the good of grace and virtue.²²

The second objection is that as eating is for the good of the individual, so coitus is for the good of the species; but as it is permitted to eat food which does not belong to another, so it is permitted to copulate with a woman who does not belong to another. In his response the author returns to the doctrine that sexual activity can be justified only by marriage: since the generative faculty is more corrupted than the others, all its acts are sinful unless they are excused by the good of matrimony.²³

A further objection is that there is no reason why fornication is a sin. It is not a sin because of any filthiness or inordination of the act itself,

¹⁸ *Ibid.*, a. 2, sol. (#615).

²⁰ *Ibid.*, c. 3 (#618).

²² *Ibid.*, ad 1 (#648).

¹⁹ *Ibid.*, a. 3, sol. and ad 1 (#616).

²¹ *Ibid.*, tr. 5, sect. 2, q. 1, tit. 1, c. 2, sol. (#648).

²³ *Ibid.*, ad 2 (#648).

since the same act is performed in marriage. It is not a sin because of any prohibition, since it is not forbidden in the Decalogue. And it is not a sin because it is against nature; rather, it is according to nature, since nature dictates that what belongs to no one may be seized by anyone, and nature also dictates that men copulate with women for the conservation of the race.

In his response the author does not say that fornication has any inordination, but he does say that it is contrary to a prohibition and to nature. Fornication is contrary to a prohibition found in Exod 20:14 and in St. Paul's Epistle to the Hebrews and elsewhere; and it is against nature in so far as every mortal sin is against nature, even though it is not against the law of nature in any other way.²⁴

Another objection is that fornication hurts no one; but if no one is injured, it is not a mortal sin. The author simply replies that God is injured, because according to Scripture the fornicator violates God's temple.²⁵

Finally, in the *Summa's* discussion of the Decalogue, two articles inquire whether the Sixth Commandment prohibits concubinage and simple fornication. The anonymous author of these articles takes a wholly different approach: he appeals to natural-law arguments rather than divine revelation to make his case. And, perhaps having taken a cue from a remark of William of Paris, he introduces the *bonum prolis* argument against fornication into medieval theological thought.

The author defines a concubine as a woman taken not permanently but for a time in order to generate a child, and he says that concubinage is against the law of nature for two reasons. First, without the inseparable union of both parents, it is impossible for children to get a proper education and their rightful inheritance. Second, natural law dictates that one do to another what he wants done to himself; but every man wants the permanent and inseparable affection of the woman with whom he has intercourse.²⁶ Hence copulation with an unmarried woman is *secundum se* evil and contrary to the rational nature of man.²⁷

Accordingly, he says, just as the Seventh Commandment against stealing also forbids robbery, so the Sixth Commandment against adultery also forbids simple fornication; for simple fornication is against the specific rational nature of man, which dictates that we do to others what we want them to do to us. The only natural use of sex, therefore, is by a man with his own wife.²⁸

The anonymous *Codex Vaticanus latinus* 782 contains two articles on simple fornication: one inquires whether simple fornication is forbidden

²⁴ Ibid., ad 4 (#648).

²⁵ Ibid., ad 6 (#648).

²⁶ Ibid. 3, par. 2, inq. 3, tr. 2, sect. 1, q. 2, tit. 4, c. 4, sol. (#365).

²⁷ Ibid., ad 8 (#365).

²⁸ Ibid., c. 5, sol. and ad 1 (#366).

by the Sixth Commandment; the other asks whether simple fornication is a mortal sin. The author keeps to the traditional approach, basing his argument on Scripture and tradition. Simple fornication, he says, is forbidden by the Sixth Commandment, as both Peter Lombard and St. Augustine teach. To the objection that the Bible does not set down any punishment for fornication as it does for adultery, he replies that a fornicator commits a mortal sin; therefore, even though he is not punished by temporal death, he is deserving of eternal death.²⁹

Since a woman is a rational creature, he argues, she is owned directly by God; hence no man may use her as his own unless she is given to him by God. Nor may a woman be divorced from a man except by God; it says in Matthew, what God has joined together man may not separate. But who is injured by simple fornication? The author answers that both God and the fornicators themselves are injured: man takes as his own what belongs to God, and the fornicators provide each other with an occasion of sin.³⁰

The anonymous *Codex Vaticanus latinus* 691 adds nothing new. It simply asserts that the Sixth Commandment forbids all illicit sexual intercourse and therefore forbids simple fornication.³¹

St. Albert the Great discusses at length the morality of fornication only in his *Summa*, which was written after St. Thomas' death or at least near the end of Thomas' life.³² In his *Sentence* commentary he merely repeats the customary view that the Sixth Commandment forbids simple fornication as well as adultery. But he does add that in his opinion fornication is not harmful to one's neighbor. The prohibitions of the second tablet of the Decalogue, he explains, order us to abstain from acts which are injurious to our neighbor. That is why adultery is named in the Sixth Commandment: it is the only sexual sin that injures our neighbor. Fornication and similar sins are implicitly condemned, because they have the same end, which is carnal pleasure.³³

St. Bonaventure gives the same explanation as St. Albert: the second tablet of the Decalogue forbids sins which injure our neighbor and hence the Sixth Commandment forbids adultery. However, all other sins of the flesh are understood to be forbidden here, either sins of fornication or sins against nature.³⁴

²⁹ *Cod. Vat. lat.* 782, f. 98^{ra}

³⁰ *Cod. Vat. lat.* 782, f. 98^{rb}

³¹ *Cod. Vat. lat.* 691, f. 117^{vb}. In 3, d. 37.

³² We will treat Albert's *Summa theologiae* in the section on Thomas' successors. We also read St. Albert's *De natura boni*, *De bono*, and *De sacramentis*, but found nothing on fornication.

³³ *Commentarium in Sententias* (Paris, 1893) 3, d. 37, a. 10, ad 1 and ad 4.

³⁴ *Commentarium in Sententias* (Quaracchi, 1934) 3, d. 37, dub. 4.

In his treatment of marriage, Bonaventure inquires about the kind of consent that is necessary to make a marriage. Is temporary consent sufficient for matrimony? Can a person say "I take you as my own for a period of ten years?" Bonaventure's response is negative, and his reason is that human consent effects a marriage only in accord with the way God instituted it. God instituted marriage to have a special meaning; it is a sign of an indivisible union. According to divine institution marriage is permanent, not temporary; human consent must be in accord with divine institution. Then Bonaventure adds, without any explanation or argument, that the dictate of natural law agrees with this.³⁵

Later, in a discussion of concubinage, Bonaventure explains his meaning. Here he distinguishes three senses in which natural law is understood. In the common sense, natural law is that which is contained in the Law and the Gospel. In this sense concubinage is against natural law, for it is condemned implicitly in Deuteronomy and explicitly in Paul's first Epistle to the Corinthians. The reason why concubinage is condemned in the New Testament is that God instituted the sacrament of matrimony as a sign of the union of Christ and his Church and as a corrective to the corrupted sexual appetite in man. The sexual acts of fallen man are sinful unless they are excused by matrimony.

In the proper sense, natural law is what right reason dictates. Concubinage is also against natural law in this sense; for right reason dictates that man and woman come together for the generation of a child who will succeed them, be governed by them and submit to them equally as father and mother, husband and wife.

In the most proper sense, natural law is what nature teaches all animals. In this sense concubinage is not against natural law, although it is not entirely in accord with it, since some animals, like turtles, are joined together permanently.³⁶

And what harm is done by fornication? Bonaventure says that harm is done to God, because the act is against His statute, and harm is done to the fornicators, because they commit sin.³⁷

Conclusions

Most of St. Thomas' immediate predecessors did not teach that fornication is contrary to natural law. Peter Lombard, Robert of Melun, Robert Pullus, Gandulf of Bologna, Simon of Tournai, Peter of Poitiers, Alexander of Hales, Roland of Cremona, the anonymous *Codex Vaticanus latinus* 782, the anonymous *Codex Vaticanus latinus* 691, and St. Albert the Great taught that fornication is sinful. But they neither said

³⁵ Ibid. 4, d. 27, a. un., q. 2.

³⁶ Ibid. 4, d. 33, a. 1, q. 1.

³⁷ Ibid., ad 2.

that fornication is opposed to natural law nor offered any arguments from natural reason to support their teaching. They simply argued from various texts in the Old and New Testaments that fornication is forbidden by God.

Some writers of this period did say that fornication is opposed to natural law. But their arguments against fornication were still in reality arguments from divine positive law. For instance, William of Auxerre, who was the first to say that fornication is opposed to natural law, argued that fornication is contrary to natural reason because it does harm to God. And why does it do harm to God? The reason is found in Scripture: fornication is a sin which expels God from His temple. In other words, fornication is contrary to natural reason because it is a sin, as Scripture tells us.

Philip the Chancellor also said that fornication is contrary to natural as well as positive law. But his reasoning also blurred the distinction between the two: fornication in New Testament times is opposed to the sacramentality of marriage; so it is opposed to natural reason, which dictates what should or should not be done.

Hugh of St. Cher pointed out that there were two opinions, one that fornication is bad because it is forbidden, the other that it is forbidden because it is bad. Hugh elected the second opinion and concluded that fornication is against not only positive but also natural law. But, like William of Auxerre, he argued from Scripture: fornication is against natural law because it does harm to God and the fornicators. Why does it do harm? It does harm because it is a sin, as St. Paul tells us.

Because of the multiple authorship of the *Summa fratris Alexandri*, its articles took several approaches to the question. One article took the most common approach of the time, simply saying that fornication is sinful because it is forbidden by God in the Bible. Other articles maintained no clear distinction between natural and positive law. For instance, one argued that fornication for the sake of a child is not opposed to natural law as such; but it is opposed to natural law in so far as nature is open to a supernatural elevation, for natural sexual union has a certain congruence to matrimonial union, which comes from divine institution. Another article argued that fornication is not against nature in itself, but it is against nature in so far as it is a sin, for every mortal sin is against nature. And that fornication is a mortal sin is clear in the Bible. What this comes to is that fornication is against natural law in the sense that it is against divine positive law as known from revelation.

St. Bonaventure likewise mentioned that natural law is in accord with the divine institution of marriage as a permanent union signifying the union of Christ with his Church, and in his discussion of concubinage he said that concubinage is against natural law. He then said that natural

law is commonly defined as that which is contained in the Law and the Gospel; concubinage is against natural law in this sense, since it is implicitly condemned in the Old Testament and explicitly in the New. He also argued that fornication is sinful because it does harm. But the harm it does is only the harm of sin: the fornicator violates God's statutes and sins with his neighbor.

The closest Bonaventure came to making a natural-law argument against fornication was in his statement that natural law defined in the proper sense of right reason dictates that a couple join together to have a child who will succeed them, be governed by them, and submit to them equally. Although this statement is suggestive, it is not developed in any way. It is more an assertion than a proof.

There are only three texts in this whole pre-Thomistic literature that offered reasons which can count as strictly natural-law arguments against fornication. One is William of Auxerre's rather questionable statement that if fornication were not forbidden, men would engage in such mutual slaughter that the state could not survive. Another is William of Paris' passing remark that public prostitution is detrimental to a child born from it, since there is no known father to care for the child. William was the first to introduce a consideration of the *bonum prolis* into the argument, and he did it in the limited context of public prostitution. This consideration was ignored by every theologian before St. Thomas, with the single exception of one anonymous writer whose manuscript found its way among others into the great Franciscan *Summa*. This author made two natural-law arguments against concubinage and fornication. One is that they deprive the child of his right to an education and to his inheritance; the other is that since every man wants the permanent affection of his sexual partner, fornication is opposed to the natural-law dictate to do to others what one wants done to himself.

This was the theological tradition St. Thomas stepped into. It was a tradition which agreed that fornication was sinful. But it cannot be described as a tradition of reason and natural-law argument; it was a tradition based almost wholly on divine revelation and positive law.

THOMAS AQUINAS

The Texts

In the third book of his *Sentence* commentary, St. Thomas simply asserts that by the prohibition of adultery in the Sixth Commandment the legislator also prohibits simple fornication.³⁸ But in the fourth book he introduces a consideration of the *bonum prolis*. In an effort to prove that marriage is natural, he considers this objection: natural law is what

³⁸ *Commentum in quatuor libros Sententiarum* (Parma, 1858) 3, d. 37, a. 2, ql. 1, ad 2.

nature teaches all animals; but other animals do not have marriage; therefore marriage is not of natural law. Thomas responds that even if nature is understood in this general sense, it at least inclines to marriage, although it does so differently in different animals. Some animals are self-sufficient at birth or need only the care of the mother to survive. Others, like certain birds, need the help of both parents for a short time. But a human child needs the care of both his parents for a long time.³⁹

Thomas develops this idea when he inquires whether it is against the law of nature to have a concubine. He defines a concubine as a woman who is not joined to a man by marriage, and says that sexual intercourse with her is against the law of nature. He argues from the *bonum prolis*: in sexual intercourse nature intends the procreation and education of children; but it is necessary that parents educate and instruct their children for a long time; therefore the law of nature demands that the father and mother live together for a long time.⁴⁰ Independently of any written law, fornication of itself is a mortal sin; for it breaks the due order of parent to child which nature intends in sexual intercourse and so is opposed to charity.⁴¹ Insofar as marriage is ordered to its principal end, which is the good of the child, a wife is joined to her husband by an indissoluble or at least a long-term bond.⁴²

When he discusses divorce, however, Thomas tries to conclude more from his argument. He says that the *bonum prolis* requires that the parents stay together not only for a long time but forever. Here he introduces into his argument a consideration which was part of the original formulation of the *bonum prolis* argument as it appeared in the Franciscan *Summa*, namely, the child's need for an inheritance. He constructs his argument in this way: by the intention of nature, marriage is ordered to the education of the child not merely for some time but for the whole life of the child; hence it is of the law of nature that parents save up for their children and that children are heirs of their parents. Therefore, Thomas concludes, since the child is the common good of husband and wife, it is necessary according to the dictate of the law of nature that their community remain undivided perpetually.⁴³

However, Thomas immediately admits that the indissolubility of marriage more directly depends on and is more easily understood in the *bonum sacramenti* and divine institution than in the *bonum prolis* and natural law.⁴⁴ In fact, he says, the principal end of marriage is the education and instruction of a child until he becomes an adult. That the

³⁹ Ibid. 4, d. 26, q. 1, a. 1, ad 1 (*Suppl.* q. 41, a. 2, ad 1).

⁴⁰ Ibid. 4, d. 33, q. 1, a. 3, ql. 1, sol. (*Suppl.* q. 65, a. 3, sol.).

⁴¹ Ibid. 4, d. 33, q. 1, a. 3, ql. 3, sol. (*Suppl.* q. 65, a. 4, sol.).

⁴² Ibid. 4, d. 33, q. 1, a. 3, ql. 3, sol. (*Suppl.* q. 65, a. 5, sol.).

⁴³ Ibid. 4, d. 33, q. 2, a. 1, sol. (*Suppl.* q. 67, a. 1, sol.).

⁴⁴ Ibid. 4, d. 33, q. 2, a. 1, ad 2 (*Suppl.* q. 67, a. 1, ad 2).

child also receive an inheritance is only a secondary intention of nature, as is the indissolubility of marriage itself.⁴⁵

In the *Summa contra gentiles* Thomas cites the usual texts from the Bible to confirm his conclusion. But his central argument against fornication is from natural law. He first rejects the traditional explanation that God is injured by the sin of fornication and the sexual partner is injured by scandal. Then he sets down the true reason why fornication is wrong. The true reason is that fornication is opposed to the purpose of sexual intercourse, which is the generation and education of a child. Among some animals, like dogs, the female is able to provide for the education of the offspring, and so the male does not stay with her for any time at all. Among other animals, like certain birds, both parents are needed for a time, and so both stay together as long as necessary for the education of the young. In the human species it is obvious that the woman alone is not able to provide for the child's education, and so it is in accord with human nature that a man live with a woman after intercourse and not immediately depart as fornicators do.

Thomas then faces the most obvious difficulty with his argument: it does not lead to a universal conclusion. Sometimes a woman is able to provide for the education of a child by herself: for instance, if she happens to be wealthy. Is fornication then licit? Thomas answers: "Natural rectitude in human acts is not according to those things which happen accidentally in one individual but according to those things which are consequent upon the whole species." If this principle is true, then of course the difficulty is solved. But Thomas neither explains nor defends it. He simply continues his central argument: the proper education of children takes a long time; therefore it is natural and necessary for a man to form with some particular woman a community of long duration. This community, Thomas says, is called marriage, and it is natural to man.⁴⁶

In the following chapter Thomas argues that this natural community of marriage is not only of long duration but lifelong. He complements his *bonum prolis* argument with two further considerations: the child's need for an inheritance and the dispositions of divine law.⁴⁷ A man stays with his wife, Thomas explains, because of his solicitude for his son. But it is natural that this solicitude last until the end of life. For a father's natural life is conserved in his son; but his possessions are for the conservation of

⁴⁵ Ibid. 4, d. 33, q. 2, a. 2, ql. 1, sol., ad 1, ad 2 (*Suppl.* q. 67, a. 2, sol., ad 1, ad 2).

⁴⁶ *Summa contra gentiles* (Turin, 1927) 3, c. 122.

⁴⁷ In this chapter Thomas also gives other arguments against divorce: the woman needs the man not only for procreation but for her own governance, since the man is more perfect in reason and virtue; a woman cannot leave her husband, because she is subject to his rule, and it would be unfair if he were allowed to leave her; and the dissolubility of marriage is inconsistent with the friendship that exists between husband and wife.

life; therefore it is natural and appropriate that his possessions go to his son. Thomas then appeals to divine positive law. Since generation is for the common good, it must be regulated by divine and human laws. Just as divine revelation goes beyond natural capacity, divine laws supply the defects in human instinct. Divine law requires that marriage be indissoluble so that it can be a sign of the union of Christ and his Church.⁴⁸

In the *De malo* Thomas makes the same argument against fornication: it is not properly related to the purpose of sexual intercourse and so is *secundum se* inordinate; for a child born of fornication has no certain father to educate and instruct him and to provide him with an inheritance.⁴⁹

Then Thomas faces again the obvious objection to his argument: sometimes fornication is properly ordered to the generation and education of a child; therefore sometimes fornication is not a mortal sin. Thomas responds again by invoking the principle of *per se*: the law is determined by what occurs *per se*, not by what happens *per accidens*. Here Thomas explains it in this way: "The act of generation is ordered to the good of the species, which is the common good. But the common good can be ordered by law, while the private good is subject to the regulation of the individual. Therefore, although in the act of the nutritive faculty, which is for the conservation of the individual, everyone can determine for himself the appropriate food for himself, it is not up to the individual but the legislator, whose task it is to regulate the propagation of children, to determine what the act of generation should be like. The law, however, does not consider what can happen in some case but what is accustomed to be conveniently. And therefore, although in some case the intention of nature regarding the generation and education of a child can be preserved in fornication, still the act is *secundum se* inordinate and a mortal sin."⁵⁰

The last text of Thomas on fornication is in the *Summa*, where he inquires whether fornication is a mortal sin. He responds that simple fornication is certainly a mortal sin, because it contains a deordination which inclines to harm to the life of the child who will be born from it, and every sin directly against the life of man is mortal. Thomas then restates the *bonum proliis* argument: promiscuous sexual intercourse is opposed to the proper education of a child. If the child's father is uncertain, he will not instruct, defend and provide for him. For the good of the child, a man must stay with a particular woman for a long time or even for life. This arrangement, Thomas says, is called matrimony, and it is of natural law. However, he adds, matrimony is determined by law;

⁴⁸ Ibid. 3, c. 123.

⁴⁹ *De malo* (Turin-Rome, 1931) q. 15, a. 1.

⁵⁰ Ibid., q. 15, a. 2, ad 12.

how it is determined among us will be discussed later under the sacrament of marriage.

Finally, Thomas addresses again the problem of the exceptional case. There are no exceptions, he says, to the law against fornication, even if the fornicators can provide sufficiently for the child. His reason is: "That which falls under the determination of law is judged according to what commonly happens, not according to what can happen in some case."⁵¹

Conclusions

Although St. Thomas still appealed to the biblical texts, his principal argument against fornication was from human reason. Even if there were no written law against it, fornication would still be forbidden by natural law.

Thomas rejected the earlier approach which located the harm of fornication merely in its sinfulness. Fornication, he said, does harm to a child: it deprives him of the kind of education he has a right to. In sexual intercourse nature intends not only the generation but also the education of a child; but if the father is unknown or uncertain, he will not give the child the education he needs.

That is the substance of Thomas' teaching on simple fornication. Out of all the theological literature he read he selected one argument suggested by William of Paris and used only once by some anonymous theologian before him, and he developed it into the principal natural-law argument against simple fornication that is still commonly used in the moral manuals of the present century.

The main problem with the *bonum prolis* argument against simple fornication is that it is not readily apparent how it leads to a universal conclusion; for although sexual intercourse without marriage frequently or usually is opposed to the *bonum prolis*, it is not always or necessarily so. It is possible for unmarried persons to provide for the education of a child: for instance, if the man stays with the woman to help her until the child is raised, or if the woman is able to educate the child just as well or better without him. What is more, in some cases fornication will never result in a child: for instance, if the woman is past menopause or one of the fornicators is sterile.⁵² St. Thomas was aware of this difficulty in his argument, and he dealt with it in both an oblique and a direct way.

Thomas avoided part of the difficulty by limiting the conclusion he drew. In his discussions of fornication he did not conclude from the

⁵¹ *Summa theologiae* (Turin-Rome, 1948) 2-2, q. 154, a. 2.

⁵² The fifteenth-century theologian Martin Le Maistre severely criticized St. Thomas' argument on this point: the argument may be valid in many cases, but in many cases it is not. Cf. Martin Le Maistre, *Quaestiones morales* 2 (Paris, 1490) f. 58^v-59^r. Le Maistre's arguments are also reported by Cajetan in his commentary on 2-2, q. 154, a. 2.

bonum proliis argument that a couple must stay together permanently; rather, he concluded that they must stay together at least for a long time, for the whole life of the child, or until the child is brought to a perfect age.

Only in his discussions of divorce and the permanence of marriage did he try to conclude more, and there he supplemented his argument with reasons based on positive law. For instance, in his *Sentence* commentary and *Summa contra gentiles* he added to his original argument a consideration of a child's need for an inheritance: according to St. Paul (2 Cor 12:14) and the law of nature, parents must save up for their children and leave them an inheritance. Here it seems that Thomas' argument becomes dependent on the human law and customs of his time, according to which illegitimate children were deprived of their right to a full inheritance. Also, Thomas shored up his argument for indissolubility by appealing to divine law. Marriage is not only natural; it is further determined by positive law. The main reason for indissolubility is not found in the *bonum proliis* but in the *bonum sacramenti*. Most theologians of Thomas' time agreed that full indissolubility of marriage is not demanded by natural law but rather by divine institution. In fact, by that time popes were already dissolving the natural marriages of infidels.

Thomas also faced the objection directly. Even if it can happen that the child's education is not harmed, every act of fornication is a mortal sin. Thomas defended the universality of his conclusion by the principle of perseity: the law is determined by what occurs *per se*, not by what happens *per accidens*. Thomas appealed to this principle three times. Here are his exact words. In the *Contra gentiles*: "Rectitudo naturalis in humanis actibus non est secundum ea quae per accidens contingunt in uno individuo, sed secundum ea quae totam speciem consequuntur." In the *De malo*: "Lex autem non considerat quid in aliquo casu accidere possit, sed quid convenienter esse consuevit." And in the *Summa*: "Id quod cadit sub legis determinatione, iudicatur secundum id quod communiter accidit, et non secundum id quod in aliquo casu potest accidere."

The critical question here is this: What law is Thomas now talking about? Is he talking about natural law, saying that natural law itself prohibits every act of fornication, even when no harm will come from it? Or is he talking about divine positive law, arguing that because fornication is normally so harmful to men, God has forbidden every act by positive precept?⁵³ The common interpretation of the manualists was that

⁵³ A. Ballerini raised this question: "Difficultas est, cum legem nominat, quam legem intelligat, naturalem ne an positivam, nempe Dei? . . . Verum ea demonstratio estne huiusmodi, ut demonstret iam lege naturae vetitum esse vagum concubitum, an solum ut demonstret eum non convenire humano generi ita, ut iusta lege positiva prohibendus fuerit?" (*Opus theologicum morale* 2, #77).

Thomas meant that natural law itself excludes every exception because fornication is intrinsically evil.⁵⁴ But Thomas himself never said this. In fact, such an interpretation can be sustained only by reading into Thomas' texts a concept which he himself never knew. The idea of an intrinsically evil act was first conceived long after Thomas' death by Durand of St. Pourçain.

St. Thomas never said that fornication is intrinsically evil; he said that it is *secundum se* evil. This implies that it is always evil precisely because it is an act done out of self-will, that is, on one's own authority contrary to law. For Thomas, therefore, fornication is always evil because it is *secundum se* evil; and it is *secundum se* evil not simply in so far as it is sexual intercourse outside of marriage, but in so far as it is sexual intercourse outside of marriage on one's own authority contrary to law.⁵⁵ The question we are now asking is what law it is contrary to, natural or divine.

Ballerini thinks that Thomas appealed finally to divine positive law to exclude the exceptional case. He argues that if Thomas is trying to demonstrate that all fornication is forbidden by natural law, why does he not exclude the exceptional case by appealing to natural law, which is universal, rather than have recourse to a principle used in positive law? But if he is trying to demonstrate only that fornication is so inconvenient to the human race that God has proscribed it by positive law, then natural law of itself does not fully exclude it. Ballerini says that this is in fact Thomas' meaning: because fornication is generally harmful to men, God has forbidden it in every instance. After all, Ballerini points out, the question Thomas proposed for himself to answer was not whether fornication is intrinsically evil but whether it is a mortal sin. And he resolved this question quite well, even though he finally had recourse to positive law.⁵⁶

⁵⁴ E.g., E. Genicot, S.J., *Theologiae moralis institutiones* 6, #391; L. Fanfani, O.P., *Manuale theoretico-practicum theologiae moralis ad mentem d. Thomae* 3, #268. How St. Thomas' great commentator Cardinal Cajetan interprets this text is not altogether clear. According to Ballerini (n. 53 above), Cajetan thought Thomas was speaking of positive law. According to John Noonan (*Contraception* [New York: New American Library, 1967] 425), Cajetan interpreted Thomas as speaking of an intrinsically evil act. Dennis Doherty (*The Sexual Doctrine of Cardinal Cajetan* [Regensburg: Pustet, 1966] 142) says: "Although Cajetan did not explicitly deny the thesis that the natural law is binding only according as it is given precision or positive determination through human and divine laws—which in consequence could be to grant that exceptions can positively be made—at the same time he does endeavor to show that fornication is prohibited by divine (positive) law because it is mortally sinful and not vice versa." My own reading of Cajetan is that although he does not say that fornication is intrinsically evil, he says what amounts to the same thing, namely, that fornication is an act so deformed in itself that not even God can allow it without changing the matter of the act.

⁵⁵ We have explained this in detail elsewhere; cf. n. 4 above.

⁵⁶ Ballerini, *Opus theologicum morale* 2, #77. J. Giles Milhaven also has suggested that "certain moral absolutes of sexual morality might be grounded by Thomas rather on

Ballerini's interpretation is a plausible one. In fact, two other arguments can be made in support of it. One is that the whole tradition that Thomas inherited relied almost entirely on positive law to prove that fornication is always sinful, and Thomas himself did not hesitate to complement many of his natural-law arguments with arguments based on positive law. Another is the fact that in two of the three places where Thomas enunciated his principle of perseity (the *De malo* and the *Summa theologiae*) he spoke in the immediate context of positive law. In the *De malo* he said that sexual intercourse is ordered to the common good and so can be ordered or determined by law, but this determination of law for the common good is not made by the individual but by the legislator. Then Thomas immediately added that the law considers what is usually convenient, not what can happen in some case. And in the *Summa* Thomas said that sexual intercourse is ordered to the common good of the race and so falls under the determination of law, namely, the law of matrimony which will be discussed later; but fornication lies outside of matrimony and the *bonum prolis*. Then he immediately added that fornication is a mortal sin even if it does no harm to the *bonum prolis*; for what falls under the determination of law is judged according to what commonly occurs, not what happens *per accidens*.

However, the text in the *Summa contra gentiles* does not lend itself easily to the same interpretation. Rather, it points in the opposite direction. In this context Thomas said nothing about positive law at all. Rather he said that natural rectitude (*rectitudo naturalis*) in human acts is not according to what happens *per accidens* in one individual but according to what follows upon the whole species.

This text gives us reason to think that Thomas' principle of perseity is a principle of natural, not merely positive, law. Because in all his writings on this subject Thomas was trying to move away from the earlier tradition to a rationale that excludes fornication by natural law and right reason, and because he explicitly said that natural rectitude is according to what occurs *per se* and not *per accidens*, there is good reason to believe that Thomas understood natural law itself as excluding all exceptions. A reading of all the texts indicates that St. Thomas understood the natural-law prohibition of fornication not as supplemented by, but as itself analogous to, a positive law *lata in presumptione communis periculi*. The prohibition of certain actions by natural law allows no exceptions on private authority, even if it is certain that the harm which the law seeks to prevent will not occur in an individual case. For the natural law itself is ordered to the common good and exists to prevent a common danger.

principles of positive law than on some intrinsic finality of nature" ("Moral Absolutes and Thomas Aquinas," in *Absolutes in Moral Theology?* ed. Charles E. Curran [Washington, D.C.: Corpus, 1968] 177).

Therefore an individual may never decide in any circumstances that he is exempt from it.⁵⁷

Accordingly, for St. Thomas the reason why every act of fornication is a mortal sin, even if no harm will come from it, is not that the act is intrinsically evil, and probably not merely that it is universally forbidden by divine positive law. The more likely interpretation is that fornication is universally forbidden by natural law itself, which in the case of fornication is directed toward the common good and seeks to avoid a common danger. The common good, not just positive law, requires that it be subject to no exceptions on private authority or individual discretion.⁵⁸

THE SUCCESSORS OF THOMAS

The Texts

Hanibald of Hanibaldus follows the course taken by St. Thomas. In sexual intercourse, he says, nature intends the generation and education of a child; but among humans the education of a child takes a long time; therefore indiscriminate sexual intercourse, without any bond of long-term cohabitation, is against the law of nature.⁵⁹

In his discussion of divorce he extends his conclusion: nature requires not only a long-term but a permanent union, because parents must save up for their children and leave them an inheritance.⁶⁰ Then Hanibald responds to the following objection: frequently the *bonum prolis* is impeded—for instance, if the woman is sterile; therefore the permanence of marriage does not derive from nature but from the sacrament. Hanibald replies that it does not matter if the *bonum prolis* is impeded in some

⁵⁷ John Connery, S.J., has pointed out that some later theologians, like Suarez, de Lugo, Viva, and Sporer, explicitly reasoned in this way against fornication, abortion, and expelling the seed. Even though they described certain actions as against nature and intrinsically evil, the natural-law prohibitions of them were in reality policy statements which were generally valid but universally applicable because of the common good. Cf. Connery's *Abortion: The Development of the Roman Catholic Perspective* (Chicago: Loyola University, 1977) 177, 193, 199. See also the remarks of Richard McCormick, S.J., "Notes on Moral Theology," *TS* 37 (1976) 86–87.

⁵⁸ Josef Fuchs, S.J., once made a comment that is at least suggestive of this interpretation: "It appears that the boundary between sexual norms of natural law and sexual norms of divine positive law is not precisely observed. In fact, one might ask whether the sexual norms of natural law are not simply placed here on the same level as positive law and treated as such: they are the law that serves the common good and therefore knows no exception" (*Die Sexualethik des heiligen Thomas von Aquin* [Cologne: Bachem, 1949] 175).

⁵⁹ *Scriptum super libris magistri Sententiarum* (published in the *Opera omnia* of St. Thomas in the Fretté edition at Paris in 1878, Vol. 30) 4, d. 33, q. un. a. 2.

⁶⁰ *Ibid.* 4, d. 33, q. un., a. 3.

cases; for in the laws of matrimony attention is paid to what is useful for men, not to what fits one person alone.⁶¹

Peter of Tarentaise says that God has permitted the use of sex for the sake of children; but fornicators go against this purpose, because they neglect the care of the child. God instituted the laws of matrimony, and according to these laws a woman may give herself to a man permanently, but not just for a time. Accordingly, Peter concludes, fornication is forbidden by the Sixth Commandment.⁶² In his discussion of concubinage he goes further, saying that fornication is against natural law, because it is opposed to what rational nature intends in the sexual act, namely, the education and care of a child until he reaches a perfect state.⁶³

Hugh Ripelin of Strasbourg, disciple of St. Albert, returns to the earlier tradition. He says that simple fornication is contrary to the specific nature of man because it is a mortal sin, and a mortal sin is always contrary to rational nature. Also, he argues that fornication harms God because it pollutes His temple; it harms the fornicator, as 1 Cor 6:18 tells us; and it is a scandal to neighbor.⁶⁴

Although St. Albert composed his *Summa theologiae* after St. Thomas finished writing, he does not follow here the new direction Thomas took. Albert says that it is certain according to the Catholic faith that fornication is a mortal sin. Paul expressly says this in Heb 13:4, and the Greeks were forced to revoke their contrary teaching at the Council of Lyons.⁶⁵ Then, in response to three objections, Albert develops his argument.

The first objection is that neither anger nor concupiscence is sinful, because they are inborn and natural in man. Albert responds that although they are inborn they can be ordered by law, and if this order is corrupted they are sinful. For, as Aristotle says, man is naturally a civil animal; and as he is the best of all animals when he is ordered by civil law, so he is the worst of all animals when he is not ordered by civil laws. Accordingly, matrimonial intercourse is good because of the order of law and discipline, and fornication is bad because of the corruption of this same order.⁶⁶

The second objection is that sexual intercourse which leads to the generation and education of children is according to natural law and therefore no sin. Albert simply replies that sin cannot be natural in a

⁶¹ Ibid., ad 2.

⁶² *In 4 libros Sententiarum* (Toulouse, 1652) 3, d. 37, q. 3, a. 1, sol. and ad 3. Cf. also 4, d. 28, q. 2, a. 1, ql. 1, ad 2.

⁶³ Ibid. 4, d. 33, q. 11, a. 11. Cf. also 4, d. 26, q. 1, a. 1.

⁶⁴ *Compendium theologiae veritatis* (published in the *Opera omnia* of St. Albert at Paris in 1895, Vol. 34) 3, c. 21.

⁶⁵ *Summa theologiae* (Paris, 1895) 2, tr. 18, q. 122, memb. 1, a. 2.

⁶⁶ Ibid., ad 1.

rational creature; rather, sin is unnatural.⁶⁷

The third objection is that just as giving an alms to someone who is needy is a good act because it is in proper matter, so sexual intercourse with a single woman is a good act because it too is in proper matter. Albert answers that an unmarried woman is not the proper matter for sexual intercourse. The reason for this has already been explained: man is naturally a civil animal, and sexual intercourse is an act which can be ordered by public law. Therefore its proper matter can only be a woman whom the law makes his own. But simple fornication is without the law or the order of discipline. Therefore it is always a mortal sin.⁶⁸

Richard of Middletown takes Thomas' natural-law argument and draws his conclusions with care. Natural reason, he says, dictates not only the generation but the education of children. This always takes a long time, and frequently it takes the whole life span of the parents. In fact, he says, although this is only a remote conclusion of natural law which needs positive institution and revelation, children cannot be conveniently educated unless their parents are obligated to each other by an indissoluble bond, since parents who are not bound to each other for life frequently do not care for their children as perfectly as married couples do.⁶⁹ For Richard, therefore, concubinage is against the law of nature because concubines frequently do not care for their children as well as married people do.⁷⁰

Richard is always careful to acknowledge that the problem with fornication is only a frequent one. Nonetheless, he does not hesitate to draw a universal conclusion against it. For at the end of his argument against concubinage he explains that natural law is adjusted to those things which frequently occur rather than to those things which rarely happen. Then, in response to the objection that sometimes concubines do not go against the *bonum prolis*, he repeats almost the very words of St. Thomas: that which falls under the determination of the law is judged according to that which frequently happens, not according to that which rarely and in some case is able to happen.⁷¹

John Duns Scotus holds that promiscuous coitus is sinful. He argues from Scripture (Gen 2; Mt 19; 1 Cor 7) and from the *bonum prolis*. If the father does not know who his child is, he will not be able to discipline him. Scotus admits, however, that a conclusion against the liceity of fornication does not necessarily follow from those principles of natural law which are *per se* known or which demonstrably follow from them. But the conclusion, he says, is at least consonant with such principles.

⁶⁷ Ibid., ad 2.

⁶⁸ Ibid., ad 3.

⁶⁹ *Quaestiones subtilissimae super quatuor libros Sententiarum* (Brescia, 1591) 4, d. 26, a. 1, q. 1, sol. and ad 2 and ad 1 in contrarium. Cf. also 4, d. 28, a. 1, q. 1.

⁷⁰ Ibid. 4, d. 33, a. 2, q. 1.

⁷¹ Ibid. and ad 2.

Also, the precept of indissolubility is consonant with natural law; it always binds unless there is a divine dispensation.⁷²

Peter of La Palu sets down two theses. The first is that fornication is a sin of itself; for even if fornication is performed in order to have a child, it is not conveniently ordered to that end. Parents must educate and provide for a child and so must stay together for a long time or for life. But fornicators have no such obligation to stay together; they can separate whenever they want. Hence fornication is condemned by every law, and a child born of fornication is considered illegitimate and deserving of vituperation.

Peter's second thesis is that fornication is a mortal sin, for fornication destroys the bond of charity that should exist between parents and child. This is true of both promiscuous prostitution and concubinage. In prostitution the child does not even know his father, and so the natural friendship of blood relatives is destroyed. In concubinage the child is deprived in whole or in part of his natural inheritance, for a child born of a concubine does not get the whole inheritance of a legitimate child.

Peter then considers two objections. One is that if fornication is a sin only because it is opposed to the *bonum proles*, then it is not always a sin; for sometimes a man is sterile or educates the illegitimate child better than a legitimate one. The other is that it is better for a child to exist without a proper education and inheritance than not to exist at all; that is why it is not a mortal sin to have intercourse with a wife who is a leper or menstruating, even though the child conceived is usually infected: it is better for him to be infected than not to be at all.

In response, Peter admits that it does happen that the good of the child does not suffer through fornication. But there is a natural tendency for harm to come from fornication, and so the act is wrong *per se*. Peter then explains that those things which are *per se* fall under a practice or way of acting (*sub arte*), not those things which are *per accidens*. Of its nature, fornication is an act of sexual intercourse without the obligation of lifelong cohabitation; otherwise it would be marriage. From such an act it is natural that a bad education for the child results.

For the same reason, Peter explains, pollution of itself is a mortal sin, because the natural consequence is that no child is born, even though *per accidens* a child may be born; for instance, if a man sleeping with his daughter has a nocturnal pollution and the matter finds its way into the daughter and she conceives. Similarly, sexual intercourse with one's wife of itself is ordered to the good of the child, even though it might happen because of leprosy or another disease that the child is harmed. A man who has intercourse with his wife uses his right and does not intend any

⁷² *Ordinatio* (Paris, 1891/95) 4, d. 26, q. un. We also read Scotus' *Reportata Parisiensis* and his *Quaestiones quodlibetales* in the Wadding edition but found nothing on fornication.

harm to the child, and so he does not sin. It is no sin to sow seed in one's own field, even if from this act harm will come to another. No one does injury by using his right.⁷³

John Baconthrop returns to the earlier tradition of arguing against fornication from Scripture only. Simple fornication, he says, is a mortal sin because it is forbidden in both the Old and the New Testaments.⁷⁴

John of Sterngassen argues from the *bonum prolis* to the necessity of long-term cohabitation of the parents. To the objection that matrimony is not natural because it is not the same among all people, John replies that the inclination of nature is the same but not the effects, which depend on free will.⁷⁵ In another place John says that concubinage even with children is against natural law, because it is opposed to the *bonum prolis*: the secondary end of sexual intercourse is the education of a child, and this requires the long-term cohabitation of the parents.⁷⁶

Durand of St. Pourçain says that marriage is licit because it has a good end, the generation and education of a child. Then he notes that in order to achieve this end parents must stay together for a long time; in fact, they must stay together for all of life, because they must save up to provide an inheritance for their child, for the children have nothing and it is not easy for them to acquire by themselves what is necessary.⁷⁷

Then he puts the question directly: Is simple fornication a mortal sin? He begins by defining the term. Fornication sometimes means sexual intercourse with a woman who is not one's lawful wife; in this sense it includes adultery. There is no doubt that adultery is a mortal sin, for it was forbidden in the Decalogue and punished by death in the Old Law. But fornication also can mean sexual intercourse between an unmarried man and an unmarried woman; this is called simple fornication. Here the question is more doubtful. Durand says that he will first prove that all simple fornication is a sin, and then he will inquire whether it is a mortal sin.

First, Durand says, every voluntary act which is not ordered to its due end or is not ordered to it conveniently is a sin; for the privation of due order in an act makes it sinful. But simple fornication is such an act, whether it is done for pleasure or for a child. If it is done for pleasure, it is not ordered to its due end; for an act is not for the sake of pleasure, but pleasure is for the sake of the act. If it is done for a child, it still is not ordered conveniently to its end; for parents owe the child education,

⁷³ *Commentarium in Sententias* (Paris, 1518). 4, d. 33, q. 1, a. 3.

⁷⁴ *Super quatuor libros Sententiarum* (Venice, 1526) 4, d. 27, a. 1. We also read his *Quaestiones quodlibetales*, published at Cremona in 1618, but found nothing on fornication.

⁷⁵ *Commentarium in Sententias* (Cod. Vat. lat. 1092) f. 88^{ra}.

⁷⁶ *Ibid.*, f. 90^{ra}.

⁷⁷ *In Petri Lombardi Sententias commentariorum libri 4* (Venice, 1586) 4, d. 26, q. 1.

instruction, and care for life, and therefore they are obliged to live together not only for an hour or a short interval but for a long time or for a lifetime. But fornicators have no such obligation to stay together; they can separate when they will. Therefore fornication is not an act which is conveniently ordered to a child; hence all fornication is a sin.

But is it a mortal sin? Durand says that simple fornication can be indiscriminate, as in prostitution, or determined, as in concubinage. If it is the first, it is forbidden by divine law in the Old and New Testaments (Deut 23; 1 Thess 4; Eph 5). If it is the second, the answer is not so clear. Durand says that he thinks that concubinage was forbidden by God in the Old Testament, but he admits that the question is arguable. In any event, he concludes that simple fornication is a mortal sin because it is forbidden by divine and human law.

But he says that he does not understand why some say that it is a mortal sin of itself, independently of all positive law. For mortal sin implies that it merits temporal or eternal death. But simple fornication does not merit temporal death according to natural law, for natural law says nothing about eternal death. Therefore, Durand concludes, simple fornication is a mortal sin because of divine positive law expressed in many places in the Bible.⁷⁸

Conclusions

Among the immediate disciples and successors of St. Thomas, only John Baconthrop kept to the earlier tradition of arguing against fornication merely from Scripture. St. Albert in his *Summa theologiae* and his disciple Hugh Ripelin also based their arguments on positive law, even though they said that fornication is against nature. Both argued, not that fornication is against nature and therefore sinful, but that it is sinful and therefore against natural reason. Albert also argued that fornication is always a mortal sin, because it is contrary to the order prescribed by the civil law and public discipline of marriage. And Scotus, while making the Thomistic argument from the *bonum prolis*, said that the conclusion against fornication does not follow necessarily from the principles of natural law; rather, it is consonant with natural law and supported by divine precept.

The rest of the theologians of this period adopted Thomas' natural-law argument against fornication: the *bonum prolis* intended by nature requires that parents stay together for a long time. And, like Thomas, in their efforts to defend the permanent bond of marriage they added considerations from divine and human positive law, the laws of marriage as instituted by God and the inheritance laws and customs of their time.

⁷⁸ Ibid. 4, d. 33, q. 2.

Of those who accepted Thomas' natural-law argument, Durand alone thought that it proved only that simple fornication is a venial sin, and that it is a mortal sin only because of positive law.

Three theologians of this period reflected on the principal problem in Thomas' argument: it does not seem to lead to a universal conclusion, because sometimes fornication will cause no harm to a child. They all responded to this objection with their own version of the principle of perseity: the law is in accord with what commonly occurs and not with what occasionally happens.

Hanibald put it this way: "In legibus matrimonii attenditur quid hominibus expediat, non quid competit uni tantum." Richard of Middletown said: "Ius naturale potius aptatur ad ea quae frequenter quam ad ea quae per raro eveniant;" and: "Quod cadit sub legis determinatione, iudicatur secundum illud quod in pluribus accidit, non secundum illud quod raro et in aliquo casu accidere potest." Peter of La Palu said: "Ea que sunt per se cadunt sub arte, non ea que sunt per accidens."

There is no evidence in any of these authors that the principle of perseity implies that there can be no exception to the natural law against fornication because the act of fornication is intrinsically evil.⁷⁹ But, as we saw in our analysis of St. Thomas, it does not necessarily follow that the exceptional cases are excluded only by positive law.

The fact is that there is further evidence in these authors to support the conclusion that the principle of perseity is a principle of natural, not positive, law. Hanibald invoked the principle precisely in an effort to refute an objection that the indissoluble nature of marriage does not come from natural law but from divine institution. And Richard of Middletown expressly said that it is *ius naturale* which is fashioned according to what usually occurs. Peter of La Palu is not as clear. The only difference in his articulation of the principle is that he used the word *arte* instead of *lege*. What this means is uncertain. But at least his understanding of law here as *ars*, a way of life or common practice, fits in well with our interpretation that the natural law against fornication was conceived by these authors as a general policy statement directed to the common good, which as such allows no exceptions on private authority.

GENERAL CONCLUSION

A survey of forty-four theologians writing between 1152 to 1327 reveals that most of those who wrote on fornication concluded that it is always

⁷⁹ As we noted before, it was Durand who invented the notion of an intrinsically evil act. In the context of his explanation of this concept (1, d. 47, q. 4) he uses fornication as an example of an act which is intrinsically evil, but in his discussion of fornication he does not introduce the category. Even if he is assuming in this context that fornication is intrinsically evil, he does not think that it is gravely so, since he says that it is a mortal sin only because of positive law.

a mortal sin and based their conclusion either entirely on positive law or on reasons finally dependent on positive law. Before St. Thomas, only one anonymous author, taking a cue from William of Paris, proposed a purely natural-law argument based on the *bonum prolis*. Thomas selected this one text out of the whole theological literature he inherited and developed what became the common Catholic argument against simple fornication: it is opposed to the natural purpose of sexual intercourse, which is the generation and education of a child. The direct conclusion which medieval authors drew from this argument was that human parents are obliged to stay together for a long time. To show more, namely, that marriage is an indissoluble union, they again became dependent on positive law.

The principal difficulty with the *bonum prolis* argument against fornication is that it is not clear how it yields a conclusion which is universal; for sometimes fornication will not injure the *bonum prolis*, either because there will be no child or because he will be properly educated without marriage of his parents. To meet this problem, St. Thomas formulated the principle of perseity, and in this he was followed by three of his disciples: Hanibald, Richard of Middletown, and Peter of La Palu. According to these theologians, the law against fornication is determined by what usually occurs *per se*, not by what sometimes happens *per accidens*.

There is no evidence in the texts to support the common textbook interpretation that certain acts like fornication are intrinsically evil, so deformed in themselves that they never can be good or licit in any circumstances. There is some textual evidence to support the interpretation that since fornication is usually harmful to men, God has forbidden every act by positive legislation. But the interpretation which seems to fit all the textual data best is that these theologians understood certain prohibitions of natural law as analogous to a positive law *lata in presumptione communis periculi*. Human reason shows that fornication is generally harmful to men; therefore natural law itself prohibits every act of fornication, for the law protects the common good and avoids a common danger. Hence there is no room for individual discretion or exception-making.