

Benevolence and Conjugal Union: Luther's Views on the Moral Context of Marriage, Natural Right and the Moral Limits of Marital Union

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Samevatting

Welwillendheid en huwelikseenheid: Luther se standpunte oor die morele konteks van die huwelik, natuurlike reg en die morele grense van huwelikseenheid

God se roeping om welwillendheid toe te pas en te manifesteer regdeur die wêreld, behels in die praktyk dat reg en die liefde onskeibaar is: die liefde verskaf aan die reg sy morele inhoud en die reg verleen aan die liefde sy sosiale vorm. Alle sosiale vorme is daarom onderworpe aan die liefde en die eise van die Morele Wet. Die huweliksinstelling en die huweliksband wat daaruit voortspruit, is ook onderworpe aan God se Morele Wet en die tipiese vorm van welwillende liefde wat die huweliksinstelling vergesel. Die sosiale vorm van die huweliksliefde is, daarom, nie 'n aangeleentheid wat afhanklik is van die willekeur van mense nie, maar van God se voorsienige bestuur van die wêreld. As sodanig maak die morele konteks van die huwelik as 'n natuurlike reg en die morele perke van die huweliksinstelling nie voorsiening vir 'n reg tot sogenaamde selfde geslag huweliksinstellings buite die morele perke van die verbintenis van een man en een vrou vir die duur van hul lewe nie. Deurdat menseregte na vore tree in die sfeer van morele vryheid, kan daar nie ware regte wees wat deur die Morele Wet verbied word nie – 'n reg is méér as regmatigheid vir sover dit 'n sekere kompetensie om te handel in verhouding tot ander mense aandui, welke vryheid deur die morele wet self verleen word en andere verbied om met sodanige vryheid in te meng. Daarom is daar geen basiese mensereg om 'n "huwelik" met 'n persoon van dieselfde geslag te sluit nie; voorts is daar geen morele (of juridiese) regverdiging daarvoor om sodanige

verbintenisse te erken en sodanige verbintenisse as legitiem (of regmatig) te aanvaar nie.

Introduction

To Luther, all moral judgements are somehow related to the divine moral law and to the acts of will of those performing such acts. Moral law and the human will, therefore, are the major composite elements of all morally-related human acts. Whilst the moral law provides man with the direct knowledge of things or ideas, the human will steers man's actions either to that which is morally good or to that which is morally bad. All evil acts contain the violation of both the *Moral Law* and the *will of man* violating the moral imperative of benevolence. This view comes close to Thomas Aquinas's consideration that the notion of sin consists in rejecting the law. Such action will also contain fault if the human will freely turns from the law, thereby imputing the immoral action to that particular author, acting with fault. St. Thomas writes: "Just as evil is more comprehensive than sin, so sin is more comprehensive than guilt [*culpa*]. An act is said to deserve praise or blame [*culpabilis*] from its being imputed to the agent, since to praise or to blame means nothing else than to impute to someone the malice or goodness of his act. Now an act is imputed to an agent when it is in his power, so that he has dominion over it; and this is the case in all voluntary acts because it is through his will that man has dominion over his acts, as was made clear above. Hence it follows that, in voluntary acts alone, good and evil constitute the nature of praise or blame; and in such acts, evil, sin and guilt are one and the same thing."¹

Luther's position on virtue, moral evil and guilt comes close to that of Thomas Aquinas. In Lutheran ethics every moral action has a double relationship: to the moral law and to the human will performing the moral act. The essence of the law in relation to man's actions towards his fellow-men is summarised in the precept to love thy neighbour as thyself. This duty flows from the moral law, because the force of law imposes a duty on me to love my neighbour.² My *duty* to love, however, is not the *right* of my neighbour but flows solely from the moral law. The duties towards my neighbour are contained in the *duty* not to harm my fellow human being.

1 *Basic Writings of Saint Thomas Aquinas*, Volume 2. (Ed. Anton C. Pegis). New York: Random House.

2 For Luther's views on natural law, moral duty and jural right, see Raath, 2007: 415-442, at 438-440.

Therefore, human beings have a *right* only in relation to what belongs to them. The duties I owe to fellow human beings have their origin in law, not in human rights. In this sense *duties* towards human beings in which there are corresponding *rights* are called duties of *justice*; other duties are merely duties of *charity*. Luther's perspectives on moral and jural rights and duties, and the moral context pertaining to human actions, are particularly enlightening with regard to issues related to the nature of marriage and the moral bond of conjugal union. Also fruitful in this regard is the analysis and application of Luther's perspectives on justice and natural law.

In a recent publication on developing Luther's theological and ethical views in the sphere of human rights discourse, the author¹ remarked on the lack of "traditionalist" interpretations of Luther's social, political and legal ethics to appreciate the depth and internal dynamics of his theological and spiritual thought and the possibilities of conceptual development and application of the original ideas posited by the Lutheran Reformation beyond the boundaries of ecclesiastical reform (Raath, 2006: 335-354). In this respect it is Luther's perspectives on benevolence that need consideration for developing a Reformation-based approach to human rights and justice, with particular emphasis on the nature of marriage and the moral context of the right to conclude conjugal union. The moral context of marriage is largely dependent on the moral duty of benevolence.

The duty of benevolence is contained in the Biblical precept to love your neighbour as yourself.³ The word "neighbour" dictates the execution of the universal law in conformity with the will of God. The moral law requires of us to desire all possible good for human beings, these requirements constituting moral obligations to be fulfilled towards our fellow men. The duty to love our fellow men requires the obedience of divine Providence in respecting human nature and desiring its good. It is important to bear in mind that the existence of the moral law is not the product of human ingenuity or wisdom. Cicero remarked: "Wise men taught that the moral law does not originate with the learned, nor with a decree of the peoples.

3 Matthew 22: 37-40: "You will love the Lord your God with your whole heart, your whole soul, and all your mind; this is the first and greatest commandment. The second is like to this: and you will love your neighbour as yourself. On these two commandments depend the whole law and the prophets." Whereas the law contains the duty to love, the reference to "yourself" expresses the standard to which the human will should aspire.

It is something eternal, a wisdom with authority to command and forbid, governing the whole world.”⁴

From the preceding context, questions pertaining to the transformation of sexual rights to include sexual unions between consenting same sex partners, the transformation of the right to equality to include same sex unions in the definition of marriage, and the redefinition of the rights pertaining to sexual desire, sexual behaviour and sexual identity arise. This articleessay addresses some of these issues within the context of the views on natural law, moral being and the dignity of marriage developed within the Evangelical-Lutheran fold.

An approach to the issues above needs to take note of the close relationship between morals and law in the court of social relationships. In developing Luther's thought on issues related to rights, a discourse on the legal implications of moral decisions necessarily draws in its wake considerations of civil morals and the connecting point of rights and duties at the front of ethical problems. So, for example, reflections in the sphere of sexual ethics and marriage rights would necessarily have to address the moral grounds of the obligations in civil government in its endeavours to further justice in civil society; the notion that men are rational, moral and responsible creatures, with righteousness as a proper law; the theistic perspective of God being not only the first, but the essential and most natural of all factors in every question of natural right; in constituting a theory of civic obligations, man is part of a moral order related to God (or Being) as Creator and moral Ruler of the universe – as Stahl observed, namely that every philosophical science must begin with the first principle of all things, namely the Absolute (Stahl, 1963 (1878): XIV-XV)⁵; no goodness and obligation to goodness are possible without God (the

4 *De legibus*, II: “Hanc igitur video sapientissimorum fuisse sententiam, legem neque hominum ingenii excogitatam, nec scitum aliquod esse populorum, sed aeternum quiddam, quod universum mundum regeret, imperandi, prohibendique sapeintia.” C.W. Keyes (Cicero, 1948: 379, 380) translates this as follows: “Well, then, I find that it has been the opinion of the wisest men 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.”

5 “(W)enn nicht etwa mitunter gleichnisweise dem Absoluten de Philosophie diese Bezeichnung des weiland herrn der Welt gegeben wurde” and (at 7): “Jede philosophische Wissenschaft muss mit dem ersten Princip der Dinge, dem ‘Absoluten’, beginnen. Sie muss sich daher über den Gegensatz, der hierin in unsrer Zeit zum deutlichen Bewusstseyn gekommen ist, entscheiden, ob diess oberste Princip der personliche, überweltliche, offenbarungsfähige Gott sey, oder aber eine unpersonliche, nur der Welt selbts innewohnenede Macht-Pantheismus.”

Supreme Being); no virtue and obligation to virtue are possible without moral obligations to Being, also no civil government and civic obligations because these are as natural to the moral order as man. The relations of marriage, the family, ecclesiastical society and civil society are as natural as our own person; although human beings are all equal in being imbued with human nature, they are not mechanically equal because of differences in essential qualities of sex, bodily organs, health, stature of natural facilities and moral dispositions. The extreme claim of equality is false and iniquitous, for out of the wide natural diversities of sex, powers, character, must arise a wide difference of natural relations between individuals and the state. It is equally futile to boast that we lift all human beings to the same identical relations, when their natural differences have imposed on them other relations, for example, of what use would it be to declare that all women have the same natural right as myself to wear a beard and to sing bass, when it is a natural fact that they shall not?; or that I am able to bear children, whilst I am not sexually equipped for giving birth?

2. Marriage as right and the moral duty of benevolent love

2.1 Marriage is an estate necessary for the perfect organisation of mankind

When the supernatural tie that binds all human beings effectively to God is excluded, the only remaining bond is that of natural society, which, due to its weaknesses, causes harshness and inhumanity – this is Luther’s basic message regarding all natural bonds in human society, in rejecting sensism, which tends to destroy “natural” theocratic society by removing from humanity the common possession of truth and moral virtue. Whereas the union of one human being with another is the foundation and object of every friendship, even between persons of the same sex, a fuller and altogether special union is possible only between human persons of different sex, based on love and the end of conjugal union which results from it. The special nature of conjugal union according to Luther is reflected in marriage as the divinely instituted and lawful union of a man and a woman in the hope of offspring or at least for the sake of avoiding fornication and sin, to the Glory of God.

The first consequence of this definition is that marriage is the conjugal union of one man and one woman. Because of temptation in the world, each man should have his own wife and each wife her own husband (BK, XXIII (CELC (AAC, 1531: 1, XI, 33)); LW, 3: LG (Genesis 16: 3)).⁶

6 Also note WA, 43. See 1 Corinthians 7: 2: “Because of the temptation to immorality, each man should have his own wife and each woman her husband.” Luther proceeds: “Learned men say that a vow made contrary to papal Canons is not binding. How much less must be their obligation, lawfulness, and power when they are contrary to God’s

Luther cites numerous examples to state this foundational principle of marriage: Adam was joined in marriage to Eve by God's ordinance (LW, 3: LG (Genesis 17: 1)), marriage is reflective of conjugal union as the inseparable union of male and female (LW, 3: LG (Genesis 16: 4));⁷ the Canonists' definition of wedlock is the union of male and female in accordance with the law of nature (LW, 4: LG (Genesis 24: 4));⁸ theological definitions state that marriage is the inseparable union of one man and one woman not only according to the law of nature but also according to God's will and pleasure (LW, 4: LG (Genesis 24: 4)); the definition of conjugal union in civil law reads: marriage is the union of one man and one woman which maintains inseparable companionship (LW, 4: LG (Genesis 24: 5));⁹ God not only joined together man and wife in conjugal union, He also adorned marriage with a spiritual crown (LW, 4: LG (Genesis 21: 4)). In Aristotelian terms, Luther distinguishes between the final and the efficient causes of conjugal union: although some authors define marriage as the union or companionship of man and woman, and the maintaining of inseparable companionship for life, this is not the whole definition, for the final cause is lacking – it is taken from the material cause, for the union of man and woman is material (LW, 5: LG (Genesis 28: 2)). Therefore, the following definition is more complete: "Marriage is the lawful and divine union of one man and one woman. It has been ordained for the purpose of calling upon God, for the preservation and education of offspring, and for the administration of the church and the state. Marriage is the first and chief thing; for it is the beginning and origin of the whole life." (LW 5: LG (Genesis 28: 2)). In

command." Unless otherwise indicated, references to *LW* are to *Luther's Works* (Luther, 1958-1967). The specific work of Luther referred to, is noted, e.g. *Lectures on Genesis* (*LG*), and the relevant scriptural citation given where applicable. Abbreviations for specific works by Luther are used – these are explained in the bibliography. References to *WA* are to the standard edition of Luther's *Werke* (Kritische Gesamtausgabe – Weimar, 1883), *OCE* refers to the Otto Clemens edition of *Luther's Works*.

7 Luther is citing the legal definition of marriage: "coniugium esse individuum coniunctionem maris et foeminae." Luther adds: "So savage and corrupt is human nature. Marriage is necessary as a remedy for lust, and through marriage God permits sexual intercourse. Not only does He cover the sin from which we are unable to abstain, but He also blesses the union of male and female. And yet the whole world shuns this legitimate, divinely instituted union and prefers to indulge in promiscuous relations, which are harmful in more than one way. Property is squandered, bodies are damaged by serious diseases, God is provoked to inflict horrible punishments ..."

8 See also LW, 3: 48, note 7.

9 Luther adds: "Here the true differences and duties have not been mentioned, for those people have no understanding of the matter. How, then, could they give a correct definition? Their definition is purely material."

this definition the final cause is to serve God (LW, 5: LG (Genesis 28: 2)).¹⁰ Because God created man and woman, marriage is a weighty matter in the sight of God; God created Eve as a special kind of wife out of Adam's flesh to be his helpmeet, particularly to bear children ((LW, 44: 7 (CIS (I) (SEM, 1519): 3-15)). Different from false love and natural love, married love is reflected in the coming together of man and wife to multiply (LW, 44: 17 (CS (I) (SEM, 1519): 3-15); LW, 44: 7 (CS (I) SEM, 1519: 3-15)).¹¹

2.2 Marriage is based on the union of a man and a woman

The natural love of one sex for the other is a divine ordinance and this cannot be suspended without an extraordinary work of God (BK, XXIII, 1-13 (CELC, CF (1530): 1, XII)). God created man and woman differently to be true to each other, to be fruitful, to beget children, and to support them and bring them up in the glory of God (BK (CELC, LC: 1, 198 (The Sixth Commandment))). Marriage is the remedy instituted by God for lust: therefore God permits sexual intercourse, and He blesses the union of male and female (LW 3: LG (Genesis 16: 5)). In the eyes of God, marriage is the inseparable union of male and female (LW 3: LG (Genesis 16: 5)).

The sexual basis for marriage is described by Luther in terms of God's creational activity in bringing mankind into existence: "God created man ... male and female he created them" (Genesis 2: 17). From this passage we may be assured that God divided mankind into two classes, namely male and female, or a he and a she. This was so pleasing to him that he

10 Also note LW, 4: LG (Genesis): "Marriage is the divinely instituted and lawful union of a man and a woman in the hope of offspring, or at least for the sake of avoiding fornication and sin, to the glory of God. Its ultimate purpose is to obey God and to be a remedy for sin; to call upon God; to desire, love and bring up children to the glory of God; to live with one's wife in the fear of the Lord, and to bear one's cross. But if no children result, you should nevertheless live content with your wife and avoid promiscuity."

11 Note Luther's comments on the "natural" roots of marriage in the German text of his *Vom ehelichen Leben* (1522), in the Otto Clements edition (OCE) of Luther's Works, Band 2:337, 13-24: "Zum andern / Sda er man und weyb gemacht hatte / segenet er sie / unt sprach zu uyn / Wachset und mehret euch / Ausz dem spruch / sind myr gewisz / das man und weyb sollen und müssen zusammen / das sie nicht mehren. Und disz ia szo hart / als das erste / und weniger tzerachten noch zu lachen denn das erste / syntemal hietzu gott seyn segnen gibt / und etwas uber die schepffung thut. Darumb altoz wenig als ynn meyner macht steht / das ich keyn mantz bild sey / also wenig stehet es auch / also myr / das ich on weyb sey. Widderumb auch / alsoz wenig stehet es auch bey dyr / das du on man seyest. Denn es ist nitt eyn frey wikdre odder radt / szondern eyn nöttig natürluch ding / das alles was eyn man ist / musz eyn weyb haben / und was eyn weyb ist / musz eyn man haben."

himself called it a good creation (Genesis 1: 31). Therefore, each one of us must have the kind of body God has created for us. I cannot make myself a woman, nor can you make yourself a man; we do not have that power (LW 45: 17 (CS (II) (1522): 11-49)).

2.3 Marriage is conjugal union directed at the final cause

Marriage is a lawful and civil institution by God to avoid infirmity and immorality (BC (CELC, CF, 1530: XXIII, 15)); BC (CELC, AAC (1531): XI, 1-3, XXXIII, AAC, (1531): 1, XI, 6, XVI, 4-6)). Due to the fact that marriage is a divine ordinance based on love, only God can suspend it (BK (CELC, AAC (1531): 1, VIII, 26)) because it was instituted for good order, and has to “be kept as a true order of God” (BK (CELC, XVI, 5-6)). 15). Elsewhere Luther calls marriage “an office and a union” instituted by God, for God created man and woman and joined them together. (LW, 7: LG (Genesis 41: 17)). To Luther, God instituted marriage in the Fourth Commandment when He said in Exodus 20 verse 22: “Honour your father and your mother.” (LW, 8: LG (Genesis 46: 15)). Therefore fatherhood and all obedience, together with all domestic tasks, have been sanctified, adorned, and instituted by God. (LW, 8: LG (Genesis 45: 9)). The final cause of conjugal union is procreation to promote the church to the honour of God: “Even if all other causes are sinful and flawed, the final cause should be tolerated because it is the most admirable and beautiful work of God. (LW, 12: SP (I) (Psalm 51: 6)).¹² Marriage is a lawful civil ordinance, a good creature and a divine ordinance in which duties may safely be performed (BK (CELC, CF (1530): 3, II, 1)). Although instituted by God, the effective cause, the Holy Spirit, has no misgivings about referring to the copulation or sexual union of husband and wife (LW, 1: LG (Genesis 4: 2)). Although marriage of man and woman is divinely ordained and now deformed by sin, it may not be taken apart (LW, 1: LG (Genesis 2: 23 & 3: 2)). Conjugal union was instituted by God with three benefits, viz. the procreation of children, the manifestation of traits and a sacramental character (LW, 2: LG (Genesis 12: 14)). Not only was marriage instituted by God, but He also commanded men to love their wives (LW, 2: LG (Genesis 6: 4)). Not only has conjugal union been instituted as an aid for our weak nature, but also for begetting children (LW 2: LG (Genesis 11: 31, 9: 1, 6: 13)).

12 In LW, 3: LG (Genesis 18: 9), Luther states: “But if you consider the final cause, namely, that through marriage a church is brought into existence for God and that hideous disease of the flesh is healed and the road is blocked to sin, lest it ensnare us, surely these facts also do bestow grand praise on marriage.”

The divine institution of marriage is praised in the Holy Scriptures, says Luther, because it was invented by God, and it is protected by God under the sixth commandment (LW 2: LG (Genesis 9:1, 6: 11, 20: 6)). Marriage has been instituted and enjoined by God, so that every man may have his own wife in order to avoid fornication ((LW, 3: LG (Genesis)). (88 & 100). As such, conjugal union is a creature of God, “a blessing,” and for chastity in lust (LW, 4: LG (Genesis 24: 5)). Because God ordained and enjoined marriage, conjugal union should be entered into in accordance with the institution of God (LW, 4: LG (Genesis 20: 4)). This is contra the views of the papists who do not take into consideration the material, efficient, or the final cause of marriage, “but regards it as a kind of copulation” (LW, 4: LG (Genesis 24: 5)).

2.4 Marriage is a divine and human right

Because of the sinful onslaught on conjugal union, the mutual duties imposed by divine and human right have almost been done away with (LW 4: LG (Genesis 24: 4)). Because marriage is based on divine right, countless good purposes flow from conjugal union (LW 4: LG (Genesis 24: 5, 24: 62)). The importance of marriage and the household virtues flowing from it, are described by Luther as being fundamentally a divine institution: “(T)he three celestial hierarchies about which the asinine sophists prattle so much are nothing else than the life in the household, the state, and in the church. Those who live outside these three orders live in a self-elected kind of life which, throughout the prophets, God rejects and condemns” (LW 4: LG (Genesis 21: 13)). The benefits and rights of conjugal union stretch much further than copulation only: “Oppose those ‘swines’ who seek only the pleasure of the flesh; oppose the enemies of marriage.” (LW 5: LG (Genesis 26: 9)). Elsewhere Luther writes: “The purpose of marriage is not to have pleasure and to be idle but to procreate and bring up children, to support a household – Those who have no love for children are swine, stocks, and logs unworthy of being called men or women; for they despise the blessing of God, the Creator and author of marriage” (LW 5: LG (Genesis 30: 25)).

Sexual unions other than the institution of marriage are not sanctioned by divine and human right: “Marriage has been instituted by God, it pleases God, the angels, all creatures; that I am courteous to my wife. But peevishness and harshness displease Him. Much less those who forbid and condemn marriage please Him. And that prohibition was horribly punished when the devil introduced promiscuity and the unspeakable crimes of Sodom in place of the divine institution. This happened through God’s just judgement” (LW 5: LG

(Genesis 26: 9)).¹³ The implications of marriage practices in conflict with the constituent elements of marriage, for example sodomy, Luther says, ultimately destroy the bonds of society: “Therefore if the Lord had not brought on the punishment they deserved, the government would gradually have collapsed and they could not have continued to exist. For if you do away with the marriage bond and permit promiscuous passions, the laws and all decency go to ruin together with discipline. But when these are destroyed, no government remains; only beastliness and savagery is left” (LW 3: LG (Genesis 19: 6)). Elsewhere Luther adds the perspective that the “heinous conduct of the people of Sodom is extraordinary, inasmuch as they departed from the natural passion and longing of the male for the female, which was implanted into nature by God, and desired what is altogether contrary to nature. Whence comes this perversity? Undoubtedly from Satan, who, after people have once turned away from the fear of God, so powerfully suppresses nature that he blots out the natural desire and stirs up a desire that is contrary to nature” (LW 5: LG (Genesis 26: 9)).¹⁴ Also people who have an aversion for a woman’s fertility and regard it as a special blessing act contrary to nature, “for this affection has been implanted by God in man’s nature, so that it desires its increase and multiplication” (LW 5: LG (Genesis 30: 2)). Contempt for marriage is to be censured, especially if the pollution of promiscuity is added: “Boundless license is raging throughout the whole world and it is deforming human nature with horrible offences. Men are devoted to pleasures; they shrink from the toils and troubles of marriage; or, if they enter upon that kind of life, they give thought to a remedy against lust rather than to offspring ...” (LW 7: LG (Genesis 38: 19)).

Just as divine rights and human rights pertain to the social institutions of the state and the church, marriage is also an institution from God, “and whatever good is done in these stations is divine and has been obtained from God by the prayers of the godly” (LW 7: LG (Genesis 41: 17)).

Because of the nature of marriage as a divine institution and the virtuous end for which conjugal union has been instituted, each of the spouses

13 See LW 3: LG (Genesis 19: 5). Therefore if the Lord had not brought on the punishment which they deserved, the government would gradually degenerate.

14 WA 43: 57 (Genesisvorlesung (cap. 8-30) 1538/42): “Sodomitarum singularis enormitas est, discedentium a naturali adore et desyderio, quod divinitus implantatum est in naturam, ut masculus ardeat in foeminam, et appetentium, quod contra naturam poenitus est, unde haec est perversitas? sine dubio ex Satana, qui postquam a timore Dei semel deflexum est, tam premit naturam valide, ut extinguat naturalem concupiscentiam, et excitet eam, quae contra naturam est.”

should regard one another as a means to honour God and not as a means for self-gratification: if a young fellow were to take a fine young maiden in marriage to use for his pleasure, “such dissatisfaction would follow that they would never have a pleasant day together ... God cannot tolerate it when someone without His consent sits down to pleasure ... What we do not begin with God must collapse and will not succeed” (LW 13: LG (Psalm 101: 3)).

Conjugal union based on divine right is not open to human caprice, and man may not do with this institution as he pleases or divert as he desires: “We have no right to make marriage a free thing; as though it were in our power to do with as we pleased, changing and exchanging. But the rule is the one Christ pronounces (Matthew 19: 6): ‘What God has joined together, let no man put asunder.’ The only source of trouble here is the fact that marriage is not thought of on the basis of the Word of God. To them it seems to be nothing more than a purely human and secular state, with which God has nothing to do” (LW 21: SMM (Matthew 5: 33)).

Because marriage is a divine institution, it is constantly under attack by evil: “A wife who is pious and faithful in her marriage can claim and boast that her station is commanded by God ... When the devil sees God commanding obedience and mutual love and creating a fine spiritual people of His own, he cannot let it go at that. He just has to build his chapel or tavern next to the church” (LW 21: SMM (Matthew 7: 21)).

Natural rights are unchangeable, therefore the right to contract marriage will always remain and human regulations cannot abolish it; natural law cannot be circumvented because the sexual union of man and woman is an ordinance stamped on nature and only God can change it (BC, XXIII (CELC (AACA (1531): 1, XI)).¹⁵ (6). Elsewhere Luther states that marriage is a creational or divine ordinance, and as such a natural right (BK, XXIII (CELC, CF (1531): 3, II). Because marriage is a law of nature, in man it cannot be repealed by laws and vows (BK, XXVII (CELC, AAC (1531): 1, XIII, 48)). Because it is natural right, non-Christians have also realised that there is nothing more proper and advantageous than this close

15 “Therefore, each one of us must have the kind of body God has created for us. I cannot make myself a woman, nor can you make yourself a man; we do not have the power. But we are exactly as He created us: I am a man and you a woman. Moreover, He wills to have his excellent handiwork honored as his divine creation, and not despised. The man is not to despise or scoff at the woman or her body, nor the woman the man. But each should know the other’s image and body as a divine and good creation that is well-pleasing unto God himself.”

relationship of married people, hence they declare that according to natural law a wife is necessary and should maintain her inseparable association until death (LW 1: LG (Genesis 2: 24)).¹⁶

Conjugal union expresses God's natural ordering of society by being right by nature: the divine status and orders have been established by God that in the world there may be a stable, orderly, and peaceful life, and that justice may be preserved – "God's righteousness" is called "natural law by the jurists – if God had not instituted these stations and did not daily preserve these as His work, no particle of light will last even a moment." (LW 13: SP (II) (Psalm 112: 1)).

Legislation and laws for governing the family are taken care of by the natural law and human reason, "this is the source, the criterion, and the end of all laws" (LW 15 (ESL&S, 2 Samuel 23: 1-7)).

Not only is marriage by nature right, but the Holy Scriptures also teach the natural rights and duties in conjugal union. St. Paul, speaking of "conjugal rights", instructs married people in their conduct towards one another with respect to marital duty. It is a right, yet it should occur voluntarily. This right

16 In BK, The Confessions of the Evangelical Lutheran Church, XXIII, 7, Luther interprets and applies the text of Genesis 1: 28, which teaches that human beings were created to be fruitful and that one sex should have a proper desire for the other: "We are not talking about sinful lust but about so-called 'natural love', the desire which was meant to be in uncorrupted nature. This love of one sex for the other is truly a divine ordinance. Since this ordinance of God cannot be suspended without an extraordinary work of God, it follows that neither regulations nor vows can abolish the right to contract marriage." Elaborating on marriage given the nature of man, Luther adds that "because this creation or divine ordinance in man is a natural right, the jurists have said wisely and correctly that the union of man and woman is by natural right. Now, since natural right is unchangeable, the right to contract marriage must always remain. Where nature does not change, there must remain that ordinance which God has built into nature, and human regulations cannot abolish it. So it is ridiculous for our opponents to say that originally marriage was commanded but that it is no longer commanded. This is the same as saying that formerly men were born with a sex and now they are not, or that originally they were born with a natural right and now they are not. No one could fabricate anything more crafty than this foolishness, thought up in order to circumvent the natural law. Let us therefore keep this fact in mind, taught by Scripture and wisely put by the jurists: The union of man and woman is by natural right. Natural right is really divine right, because it is an ordinance divinely stamped on nature. Since only an extraordinary act of God can change this right, the right to contract marriage necessarily remains. For the natural desire of one sex for the other is an ordinance of God, and therefore it is right; otherwise, why would both sexes have been created? As we said, we are not talking about sinful lust but about the desire which is called "natural love", which lust did not remove from nature but only inflamed. Now it needs a remedy even more, and marriage is necessary for a remedy as well as for procreation. This is so clear and firm as to be irrefutable."

arises out of God's permission of the marriage state and his forgiveness of what otherwise He punishes and condemns; "for thus the state of matrimony is constituted in the law of love so that no one rules over his own body but must serve his partner, as is the way of love" (LW 28: C&T (Corinthians 7: 3)). All the laws in the book of Moses were given until Christ should come; He was to teach faith and love. Where these are there all the commandments are fulfilled and annulled and set free, so that after the coming of Christ no more commandments are needed, except those of faith and love. What love is and how it gives attention only to the desire and need of the neighbour, and what faith is, are described by Luther in referring to the institution of marriage: "Just as a marriage partner is to conduct himself towards his mate, to whom he is bound in body ..." (LW 28: C&T (1 Corinthians 7: 20)).

In another passage Luther states a close relationship between marital duty and conjugal rights. Conjugal right arises out of God's permission of the marriage state: "For thus the state of matrimony is constituted in the law of love so that no one rules over his own body but must serve his partner as is the way of love. Such is not the way of fornication, where none rules over the other or owes his partner anything, rather each seeks only his own in the other. Therefore it is against the law of love and also against God. Truly it is a profound saying that no one may rule over his own body, that where fornication tempts, one should be subservient to the other and can give himself to no other. Thus we see that adultery is the greatest thievery and robbery on earth, for it gives away the living body, which is not ours, and takes another living body, which is also not ours ..."

"The bride is the bridegroom's and not the ruler over her own body, and furthermore one shall let the matter rest there and not try to do everything better" (LW 28: C&T (1 Corinthians 7: 4)).

From the context of natural rights rooted in the duty to obey the moral law, and the root of conjugal union anchored in the law of love, it is clear that the rights of marriage were given by God and cannot be usurped by man. (LW 28: C&T (1 Corinthians 7: 5)). From the context of the divine moral law of love, important consequences follow for purposes of marriage in general and marriage partners in particular: Firstly, benevolent love has an important regulative role to fulfil in man's ongoing quest for justice in the world, because the divine order of marriage, together with the earthly domains of the state and the church, are all integrated within the earthly kingdom of man as the Creator's divinely ordained bulwark in his ongoing struggle against Satan. The "natural order" of marriage is one of the means by which the Creator graciously preserves his fallen world from even greater chaos, injustice and suffering. The order of marriage enjoys a relative (never absolute) autonomy

of its own under the sovereign law of the Creator; hence is regulative for the temporal realm of life. At the same time it should be borne in mind that faith can illuminate reason and love can temper justice whenever Christians meet their civil responsibilities as part of their religious discipleship.

Secondly, when our occupations in the world are faithfully acknowledged to be part of our religious vocation under God, then love provides law with its ethical content and law provides love with its social form. Marriage belongs to the realm of creation and not redemption. It is, therefore, ruled by God's law and not his gospel, and, as such, is one of God's temporal remedies against sin and not a sanctifying means of grace. Marriage is firmly rooted in the creative will of God as one of the divine ordinances, and there is no higher calling in which Christians can exercise their faith in deeds of serving love for their family and neighbours.

2.5 The dignity of marriage

2.5.1 Moral being and the dignity of conjugal union

According to the Lutheran theory of morals, God has clothed conjugal union with a distinct dignity; God not only instituted matrimony but he also commanded that marriage be held in honour (BC, (CELC, CF (1530): XXIII, 19-20) (1)). "Because it is a calling of God (BC (CELC, AAC (1531): 1, XI, 33)), matrimony must be held in honour; it should be respectfully spoken of; marriage should be treated with honour, from it we all originate, because it is a nursery, not only for the state but also for the church and the kingdom of Christ until the end of the world", marriage has its own glory (LW 1: LG (Genesis 4: 1)) and LW, 21: 91 (SMM): note 68). This glory and dignity of marriage is also reflected in the marriage partners: some may find fault with the opposite sex and have nothing to do with marriage ... Through their baseness and wickedness these people lay waste God's building "and they are really abominable monsters of nature". Therefore, let us obey the Word of God and recognise our wives as a building of God. (LW 1: Lectures on Genesis 2: 23).

In light of the fact that matrimony is clothed in a distinct dignity, Luther identifies a number of aspects attached to the dignity of marital union: marriage is honourable, because it is the source of both the family and the state; it is the nursery of the church, because God wanted to leave a nursery of the human race (LW 2: LG (Genesis 12: 14)); the final cause of marriage is to bring the church into existence and to sing the glory of God (LW 3: LG (Genesis 18: 9)); the dignity of marriage is situated in recognising the glory of God (LW 4: LG (Genesis 24: 45)); Scripture praises the dignity of marriage at great length and therefore it has to be held in high esteem, because it is the source and origin of the household

and the church which derive their origin and growth from it so far as their substance is concerned. In the church one seeks the glory of God; in the state peace; and in the household, the rearing of children (BC, XXIII (CELC, CF (1530): 3, II)). In the Fourth Commandment God Himself bestows praise and honour on marriage (LW 4: LG (Genesis 24: 45)).

God is the Fountain and Origin of the dignity of marriage and it consists, in the final instance, in the fact that it is pleasing to God, and because the glory of God can be detected in conjugal union (LW 4: LG (Genesis 24: 45)). This glory shines through in the ways in which God has provided for the needs of mankind through the institution of matrimony: “God wants the foetus to be born in the womb and to be suckled and kept warm by the earnest care of mothers that it may be nourished and grow, and so He has placed milk in the breasts ... The Lord of the greatest and least, of kings and slaves, of men and women, etc., is the same. We all have one and the same God, and we are all one in the unified worship of God, even if our works and vocations are different. But each one should do his duty in his station” (LW 6: LG (Genesis 37: 15)).

Holy Scriptures reflect God’s anger at sexual vices impacting negatively on the dignity of marriage. The destruction of the flood and of Sodom and Gomorrah reveal God’s wrath at human vice, therefore marriage has to be protected (BC, XXIII (CELC, AAC (1531): 1, XI, 6)). The Sodomites and their neighbours were very wicked men, therefore God visited them with war, and the wrath of God rested heavily on them. Essentially the sins of the Sodomites reflected their contempt of God and his Word. Such contempt leads to injustice, tyranny, and lusts – every sort of trouble has its origin in lust; where the Word is not present or is disregarded, men cannot avoid falling into lusts. Lust brings with it countless other evils: injustice, perjury. These can only be cured by the First Table of the Moral Law, when men begin to fear God and put their trust in Him (LW 2: LG (Genesis 6: 13)). Sexual sins involve forsaking God – it is not in the first place the integrity of sex and its dignity which are involved, but the absence of the love of God (LW 2: LG (Genesis 6: 4)). The worldly shunning of marriage as the legitimate, divinely instituted union of the male and the female, with its accompanying indulgence in promiscuous relations, property squandered, bodies damaged by serious diseases, provokes the wrath of God to inflict horrible punishments (LW 3: LG (Genesis 16: 5)).¹⁷ Luther addresses a serious warning to practitioners of

17 In his commentary on Genesis 19:5, Luther states: “It is the men of the city who do this, not the unimportant people of the populace – hirelings, slaves, and sojourners – but the foremost citizens, whose obligation it is to protect others and to punish similar crimes in the case of others.”

sexual lewdness and fornication: “If you do away with the marriage-bond and permit promiscuous passions, the laws and all decency go to ruin with discipline. But when these are destroyed, no government remains; only beastliness and savagery are left. (LW 3: LG (Genesis 19: 6)). Elsewhere Luther admonishes sodomites: those who have committed themselves to fornication and not tying themselves to the labour of married life. Daniel 11, verse 37 prophesied of them when he said: “They will neither regard nor desire women.” Yet on the other hand the Spirit says: “He is wise who takes a wife.” This leads to the conclusion that he is a wise man who takes a wife (LW 28: C&T (1 Corinthians 7: 1)). In its root the dignity of marriage is destroyed when man’s love for his own lusts leads him to fornication and lewdness: false love is that which seeks its own, as man loves money, possessing honour and partners taken outside of marriage and against God’s commandments. (LW 44: 8 (CS (I) (SEM (1519): 3-15)). Once again returning to the divine wrath over Sodom and Gomorrah, Luther spells out the wider social implications of uncontrolled transgressions of the moral law of love: the estate of marriage redounds to the benefit not alone of the body, property, honour, and soul of an individual, but also to the benefit of whole cities and countries, in that they remain exempt from the plagues imposed by God. The most terrible plagues have befallen lands and people because of fornication. This was the sin cited as the reason why the world was drowned in the deluge (Genesis 6: 10-13), and Sodom and Gomorrah were buried in flames (Genesis 19:1-24). Scripture also cites many other plagues even in the case of holy men such as David (2 Samuel 11-12), Solomon (1 Kings 11:1-13), and Samson (Judges 16: 1-2). We see before our very eyes that God even now sends more new plagues (LW 45: 42, CS(II) (EM (1522): 11-49)). The close relatedness of the dignity of marriage and the freedom of the marital union, says Luther, brings to light that freedom is not given to anyone to be used for his own pleasure and caprice and to the harm, injury and vexation of others, but only for the need and danger of the conscience, so that each may serve the other and benefit him (LW 46: 309 (CS (III) (OMM (1530): 257-320)).

2.5.2 Reason and the dignity of marriage

Because marriage is a natural institution of divine nature, man is able to discern with his reason the dignity bestowed by God on this institution. Reason is aware of the respectability which exists in the beautiful union of man and woman; it also considers the enormous advantages for it sees from this some households which would necessarily collapse and perish if

there were no lawful and secure marriages. (LW 3: LG (Genesis 16: 3)).¹⁸ To Luther it is a logical thing both to the believer and the unbeliever – God is not only the God of the Jews but also of the Gentiles, and therefore the Gentiles who treat marriage as a divinely instituted union, are just as pleasing and acceptable to God as the Jews who would be obedient to the moral law of love (LW 6: LG (Genesis); LW 6: LG (Genesis 34: 12 & 35: 3)).

2.6 Marriage and the order of love

Luther emphasises that marriage is God’s gracious gift to men and women; it is a covenant of physical and spiritual fidelity, its main purpose being to bear and rear children (LW 44: 3 (CS (I) (SEM (1519): 3-15))). The estate of marriage is God’s good will and work; what God wills and creates is bound to be a laughing stock to the unbelievers, but the faithful will firmly believe that God himself instituted it. (LW 45: 32 (CS (II) (EM (1522): 11-49))). The essence of this conjugal union is love between husband and wife, because God has instituted it (LW 45: 37 (CS (II) (EM (1522): 11-49); (LW, 45: 390 (PCM (1524): 379-393))). The pure love that should be the hallmark of conjugal union is attacked by the “prince of the world” – the devil, who sets himself against it in so many ways to resist it with hand and foot and all his strength; indeed “that fornication is not diminishing but on the increase” (LW 45: 382 (CS (II) (PCM (1524): 379-393))). The holy love that should be reflected in marriage has been trampled underfoot by those who serve the prince of the world: the people have not looked upon it as a work or state which God has compounded and placed under worldly authority; everyone has treated it as a free man does his own property, with which he can do as he wishes, without any qualms of conscience (LW 46: 314 (CS (III) OMM, 257-320)). Marriage as a manifestation of God’s love is a holy estate and a divine ordinance for it is the oldest of all the estates in the world – all others are derived from that estate (LW 51: S (I): Sermon at the marriage of Sigismund von Lindenau (1545) in Merseburg, on Hebrews 13: 4 (4 August 1545)). The love reflected in this conjugal union should also be reflected to the outside world, in such a way that those who do not marry live chastely. God created man (male and female) in his own image and God wants the

18 See WA 42:579 (Genesisvorlesung (cap. 1-17) 1535/38): “Ac primum ratio hoestatem intelligit, quae in hac coniunctione legitima maris et foeminae erit. Deinde ducitur etiam ingentibus commodis, videtenim ex hoc fonte manare politias et Oeconomias, quas ruere et perire necesse esset, si nulla legitima et certa connubia essent.”

creation and ordinance, the holy estate of matrimony, to be maintained. God created man and woman for this estate: those who are not fit for marriage should so live that they walk chastely and honourably and give offence to no one (LW 51: 358, S (I): Sermon preached at the marriage of Sigismund von Lindenau in Merseburg on Hebrews 13:4 (4 August 1545)). The commitment of the faithful shall remain and endure despite efforts to upset the holy institution of matrimony and the love between lawfully married husband and wife: “The marriage estate is God’s ordinance and we shall stick to this no matter whether they hate and persecute us ... the holy estate of matrimony in accord with God’s ordinance ... It is the creation and ordinance of God, and what is essential to it”, namely, the conjugal love between a man and a wife (LW 51: 338, S (I): Sermon preached at the marriage of Sigismund von Lindenau in Merseburg, on Hebrews 13: 4 (4 August 1545)). It is the greatest blessing of God when love continues to flower in marriage (LW 54: 222, TT, No. 3528: In praise of woman and marriage, between January 14 and 31, 1537)). By his grace and through his Word, God has restored marriage, magistracy and the church in order that we may see that these are divine ordinances and the manifestation of God’s love for fallen mankind (LW 54: 176 TT, Talk collected by Arnold Cordatus, No. 28676: Annoyances and blessings in marriage, January 2, 1533)).

2.7 Marriage and the reality of sin

Marriage is ordained and instituted by God; it is God’s ordinance that husband and wife live together and beget children. The estates of society themselves are good, but they are still stained and marred by human sinfulness. Although mankind might find fault with these estates, this does not detract from their intrinsic value (LW 22 (SJ (I) (John 1: 18)). In spite of the Fall, God still upholds the position of parent and child; He does not permit the estate of marriage or any other estate to cease, because conjugal union was instituted and ordered by God for the propagation of the human race (LW 22 (SJ (I) (John 1: 14)). In spite of sin, everyone must perform his duty in his station and vocation in life (Genesis 1:28).

Because of sin we should differentiate sharply between the original creation and regeneration (LW 22 (SJ (I) (John 1:14)). God has ordained the various estates of parents, governments, and so forth, and He adorned each one, each in its proper order (LW 22 (SJ (I) (John 1:15)). Although uncleanness, or effeminacy abound in various ways, the man’s duties remain: “Therefore, all the duties of Christians – such as loving one’s wife, rearing one’s children, governing one’s family, honouring one’s parents, ... are fruits of the Spirit. The blind men do not distinguish between

vices and the things that are good creatures of God ...” (LW 26: LGS (1535) (Galatians 3:5)). Also in spite of man’s fall, God commands those married to maintain the conjugal rights (LW 28: C&T (1 Corinthians 7:8)).

Such rights are also divine gifts, because St. Paul praises matrimony so highly, calling it a divine gift – matrimony is the most religious state of all, and it is unjust and wrong to refer to certain others as “religious” orders while calling marriage a “secular order” – marriage is the “real religious order” (LW 28 (C&T (1 Corinthians 7:8)). Outside marriage, there is no grace, it is impossible, says Luther, to have good will toward chastity and live happily in it (LW 28 (C&T (1 Corinthians 7:12)). Marriage by nature is of such a kind that it drives, impels, and forces men to the most inward, highest spiritual state, to faith. And there is no higher or more inward state than faith, for it depends solely on God’s Word. The order of marriage is a heavenly, spiritual, and godly order, comparable with the religious orders (LW 28 (C&T (1 Corinthians 7:8)).

2.9 Moral being, true virtue and the natural rights of man

2.9.1 Conjugal union and the moral imperative of benevolent love

Luther’s marital ethics converge in the duty to benevolence in conjugal union as a divine institution (or estate) of God. To Luther marriage is fundamentally a matter of morals, because marriage has a distinct dignity (LW 5 (LG (Genesis 28:2)), together with the fact that the cry of the heart in a moral sense is an intense longing for righteousness, truth and salvation (LW 11 (FLP (II) Psalm 119:145)). The aim of Antichrist is to destroy this longing and to undermine the pure conjugal love between man and woman. Because all laws aim at faith and love, none of them is valid, if it conflicts with love (LW 35: 138 (W&S (I) ADM, 125-153)). It is the work of the Holy Spirit to promote good works and chastity (LW 41: 122 (C&M (III) (CC, 3-177)) and God will not allow marriage to be despised, ridiculed and condemned (LW 43: 207 (DW (II), SWP (1535), 185-211)).¹⁹

Eminence of the marriage union appears from the fact that the benevolent love of marriage is the purest (LW 44: 8 (CS (I) (SEM (1519): 3-15)).

19 See William H. Lazareth, *Luther on the Christian Home*, 137-188, for God’s bulwarks in the struggle against Satan. For Luther’s social ethic, all offices and stations in life – ecclesiastical, domestic, economic, political – embody in institutional form a particular command of God’s law. They are all integrated within the earthly kingdom of men as the Creator’s divinely-ordained bulwarks in his ongoing struggles against Satan. Though corrupted by sin themselves, the natural “orders” are still the means by which the Creator graciously preserves his fallen world from even greater chaos, injustice and suffering.”

However, after the Fall, marriage has become a hospital for incurables – marriage has lost its noble and benevolent aims in the eyes of the world (LW 44: 7, CIS (SEM (1519): 3-15)). The aim of marriage, apart from producing offspring, namely to honour God, has been contaminated by the aims of sinful men and women (see LW 44: 10, CIS (I) (SEM (1519): 3-15)).²⁰ Because marriage belongs essentially to the realm of creation and not that of redemption, it is firmly rooted in the creative will of God as one of the divine ordinances. There is no higher social calling in which a Christian can experience his faith in deeds of serving love for his family and his neighbours (LW 44: Introduction, CIS (I))²¹, therefore the estate of marriage is rich in good works; no estate is better in the sight of God than the state of marriage (LW 45: 46 (CIS (II) (EM (1522): 11-49))²²: “No one can have real happiness in marriage who does not recognise in firm faith that this estate together with all its works, however insignificant, is pleasing to God and precious in his sight” (LW 45: 41 (CIS (II) (EM (1522): 11-49))).

The fear and trust of God is of directive importance to marriage partners. Therefore, we are to live chastely in marriage, in body, words, gestures and heart. That is why God gave to each his wife – this is the best and highest estate. Each one should look to his own house and neither permit nor counsel fornication, but rather prevent it, because God's Word commands it in 1 Corinthians 7:2; mankind should be chaste in words and deeds and keep his marriage partner in love and honour, “fear and trust God” (LW 51: 154 (S (I) (The Fourth, Fifth and Sixth Commandments))).²³ Over and against the pure aims and love of marriage,

20 *A Sermon on the Estate of Marriage* (1519), preached on John 2:1-11, the wedding at Kana. Luther discusses the problem of lust and the desire for self-gratification which has contaminated human nature since the Fall and is present even within the marital estate. Luther describes marriage as a covenant of physical and spiritual fidelity. This covenant of fidelity consists of a man and a woman giving and surrendering themselves to each other not for their own desire or gratification, but for each other's need and welfare. This, Luther says, is the right kind of love.

21 It was not until 1523 that Luther complemented his view of marriage as a “remedy against sin” with that of marriage as an “estate of faith” (see Lazareth, *Luther on the Christian Home*, 233-234).

22 In this same volume appear three early and extensive works on marriage: *Ein Sermon von dem ehelichen Stand* (1519) WA 2, 166-171; *The Babylonian Captivity of the Church* (1520) LW 36, 92-106 and *The Estate of Marriage* (1522). All three works are also contained in this volume.

23 This sermon formed part of Luther's Ten Sermons on the Catechism (1528), the last of the three series of sermons on the Catechism before the publication of the Large and Small Catechisms, November 30 to December 18, 1528.

Luther cites two distinct examples: firstly, not to think lightly of marriage, for example the practices of sodomy in Turkey; and secondly, the practices of some who only get married in the name and under the appearance of marriage (LW 46: 300 (CIS (III) OMM (1530): 257-320)).²⁴ To Luther the end for which God created the world must be the end of a truly virtuous and holy life. A truly virtuous and holy life is the objective moral end for which God created mankind. There is no true virtue without supreme love to God and making God our supreme end. All the virtues man is capable of are only possible through unfeigned benevolent love. The fruit of the Spirit is love; it is the very foundation of the Christian character. The Christian love to both God and men is wrought in the heart by the same work of the Holy Spirit. Among the virtues produced by pure benevolence, there may be found virtuous pity, virtuous love of justice, a virtuous sense of desert, virtuous love of parents and children, and virtuous love between the sexes. All these virtues are derived from pure benevolent love. A universal and eradicable will and love of happiness permeate the world. The question now arises as to how this universal love of happiness can be transposed into the happiness of others. The answer is, through the love of God: through the supreme love of God, the human being loving his own happiness, compounds his happiness with a principle of truly virtuous benevolence and unalloyed goodwill toward others. Divine love in the human heart also extends to our fellow creatures: "Do unto others as you would that others do to you, if you were in their circumstances and they in yours." Therefore there can be no virtuous love of the neighbour without divine love in the heart. Loving your neighbour in effect means swapping places with him or her; virtuous love is love in and through others. Put in other terms: true virtue most essentially consists firstly and primarily in benevolence to Being in general, from which flows benevolence to others; then there will be an assumption of the happiness of others into the will and love of our own happiness as Christ assumed our own nature with his.

The effects of the two love commandments for philosophy and jurisprudence are far-reaching: a truly virtuous mind under the sovereign dominion of love to God, seeks the glory of God, and makes it his supreme, governing, and ultimate end. And as far as a virtuous mind exercises true virtue as benevolence to

24 At 46 Luther writes: "I hear one horrible thing after another about what an open and glorious Sodom Turkey is, and everybody who has looked around a little in Rome and Italy knows very well how God revenges and punishes the forbidden marriage (homosexuality), so that Sodom and Gommorah, which God overwhelmed in days of old with fire and brimstone (Genesis 19: 24), must seem a mere jest and prelude compared with these abominations."

created being, it chiefly seeks the good of the creature, consisting in its knowledge or view of God's glory and beauty, its union with God, and conformity to Him, love to Him, and joy in Him. That temper or disposition of heart, that consent, union, or propensity of mind to Being in general, is virtue, truly so called. True virtue, therefore, is the consent, propensity and union of heart proportionate to the degree of greatness of the being loved.

The principles planted in our natures from creation are God's laws or his moral constitutions, providing mankind with common standards of morality; this is the ethics of creation, the law of nature as God's governance of the creation, dependant on the divine will and the divine wisdom. The duties flowing from the divine moral constitution of the world, are the duties incumbent upon us: justice, the duties of friendship and good neighbourhood, and all duties considered as required by God, and as branches of our duty to him. Through God's moral constitution the purely private personal self-love is sustained and developed to extend into larger communities of common interest.

Man's natural conscience, properly enlightened by the Law and Spirit of God, sees true justice in yielding to God, as we receive all from God, and also the justice there is in supreme love to God, flowing from his goodness, and teaching man that the more excellent should be more regarded than the less excellent. Two important matters flow from this: firstly, respect for God's Being is the first and most general kind of justice, which will produce all subordinate kinds of justice; and secondly, divine love penetrates and elevates natural morality to produce true virtue and charity, the mother of all other virtues.

All the fruit of the Spirit is summed up in charity or Christian love, because this is the sum of all grace. Charity going out to others is called benevolence, and the love of benevolence is the most fundamental kind of love – that which we find in true conjugal love. Benevolence is only one “denomination” of several “exercises” of charity; from true love to God comes the love to men, who have the image of God. From man's sinful existence in the world, he should aspire to the utmost example of love in Heaven – this is a world of love that does not require egalitarianism as the precondition of its peace. Furthermore, nature is perfected in heaven – love there always meets with answerable returns of love; love is always mutual, and the returns are in due proportion. In heaven divine love is the mother of all virtues in that she conceives within herself the acts of them all, as Aquinas said. To Augustine the inhabitants in heaven enjoy each other's love – divine love is the *summum bonum et immutabile et commune*; in philosophical terms: divine love is the *ens realissimum et bonorum et perfectum*.

3. Conclusion

In Luther's system of legal thought, a number of important elements appear to have a bearing on the notion of right and its relationship with duty: firstly, the notion of *duty* precedes that of *right*. In this sense, right is moral governance enabling us to do what is not forbidden but protected by law. This means that the notion of duty necessarily precedes and is independent of right. Whilst duty is imposed by the object, right springs from the subject. Just as the object has an existence independent of the human subject, so duty has an existence independent of right. Secondly, right is generated by duty in a twofold sense – one relative to the person who acquires a right, the other relative to the other persons who must respect this right. To know therefore the sphere of rights of a person, we must first consider his duties. Moral duty renders right upright by restricting it negatively; that is by prescribing its limits. Moral duty also renders right inviolable, by acting positively, that is, by obliging others to respect right within those limits. Thirdly, the obligatory part of actions pertains to duty, the lawful part to right. This means that justice precedes and generates right, right precedes and generates goodness, which consists in using our own right to do good to others. On the other hand, jural obligation is that moral duty which obliges one person to leave intact and free some activity proper to another person. Fourthly, all jural duties are moral, but not all moral duties are jural. Moral-jural duties have as their object the need to respect, that is, not to remove or harm, some activity proper to another person. Fifthly, there is no true, complete right, whatever its source, which can be immoral. Immorality, by adhering to right, destroys it; if human rights were to come into collision with divine rights, the former would cease to be rights because they would *ipso facto* be rendered immoral. Human rights, which are of a lower order than divine rights, are conditioned by and subordinate to divine rights.

From the preceding it appears that no human being has a right to act immorally, or contrary to divine law. All natural rights that human beings have are subject to divine right. From divine and natural right, man has a right (and a duty) to marry, to conclude and consummate marriage relations; to form conjugal union between persons of different sexes and rear children to the glory of God. At the same time, persons do not have the natural right to engage in sexual relations with people of the same sex or to conclude sexual relations under the disguise of marriage. In the light of the nature of the Moral Law, moral duties and jural rights flowing from upright moral actions, no marriage between persons of the same sex is possible or allowed by divine law. Furthermore, third parties have no jural duties towards such unions.

In conjunction with Luther's remarks on law and the moral context of marriage, his observations regarding law and justice, very closely attached to the moral context of marriage, following the lines of thought by St. Augustine and St. Thomas Aquinas, demand a response: justice is the essence of all laws so that nothing can be a law if it lacks justice. St. Augustine in his *De Gratia et Libero Arbitrio* (1, 5), and *De Civitate Dei* (19, 21), observed that where there is no justice no valid law can exist: "Where, therefore, there is no true justice there can be no right. For that which is done by right is justly done, and what is unjustly done cannot be done by right. For even they themselves say that right is that which flows from the fountain of justice, and deny the definition which is commonly given by those who misconceive the matter, that right is that which is useful to the stronger party. Thus where there is no true justice there can be no assemblage of people associated by a common knowledge of right" (*De civitate Dei*, 19, 21). St. Augustine proceeds: "Further, justice is that virtue which gives everyone his due. Where, then, is the justice of human beings when they desert the true God ... " (*De civitate Dei*, 19, 21). Luther is no exception to this line of thought, and he follows St. Thomas's remarks in his *Summa Theologica* (I-II, Q 96, Art. 4), that when laws are not conducive to the common good, these are acts of violence rather than laws.

Bibliography

- AQUINAS, T. *Summa Theologica*. [S.T]. Vol. 2. The Master Christian Library version 5: Books for the Ages. Ages Software. Albany, OR, USA, version 1.0.
- CICERO, M. 1948. *De Re Publica & De Legibus*. Transl. by C.W. Keyes. London: William Heinemann Ltd.
- LUNDEEN, J.W. 1999 (c1986). *Vol. 55: Luther's Works, vol. 55: Index*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis.
- LUTHER, M. 1967. [OCE] *Luthers Werke herausgegeben von Otto Clemen*. Studienausgabe. 2. Band. Schriften von 1520-1524. Berlin: Walter de Gruyter & Co.
- LUTHER, M. 1999 (c1958). [LG] *Vol. 1: Lectures on Genesis: Chapters 1-5*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Concordia Publishing House.
- LUTHER, M. 1999 (c1960). [LG] *Vol. 2: Luther's Works, vol. 2: Lectures on Genesis: Chapters 6-14 (1535/6)*. J.J. Pelikan, H.C. Oswald & H.J. Lehmann (Eds). Luther's Works. Saint Louis: Concordia Publishing House. (WA 42, 264-549, SL 1, 486-921).²⁵
- LUTHER, M. 1999 (c1961). [LG] *Vol. 3: Luther's Works, vol. 3: Lectures on Genesis: Chapters 15-20 (c. 1539)*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds).

25 Corresponding references to the standard edition of Weimar (WA) (1883-1987) are provided after the bibliographical information of specific volumes of Luther's Works where applicable. In some instances the corresponding references to the St. Louise edition (SE) of Luther's Works are also given.

- Luther's Works. Saint Louis: Concordia Publishing House. (*WA* 42, 550-43, 137; *SL* 1, 920-1369).
- LUTHER, M. 1999 (c1964). [LG] *Vol. 4: Luther's Works, vol. 4: Lectures on Genesis: Chapters 21-25* (1539). J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Concordia Publishing House. (*WA* 43, 137-430; *SL* 1, 1368-1765).
- LUTHER, M. 1999 (c1968). [LG] *Vol. 5: Luther's Works, vol. 5: Lectures on Genesis: Chapters 26-30* (1541). J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Concordia Publishing House. (*WA* 43, 431-695; *SL* 2, 122-609).
- LUTHER, M. 1999 (c1970). [LG] *Vol. 6: Luther's Works, vol. 6: Lectures on Genesis: Chapters 31-37 (1542 et. seq.)*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Concordia Publishing House. (*WA* 44, 1-304, *SL* 2, 608-1159).
- LUTHER, M. 1999 (c1965). [LG] *Vol. 7: Luther's Works, vol. 7: Lectures on Genesis: Chapters 38-44* (c. 1543). J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Concordia Publishing House. (*WA* 44, 304-581; *SL* 2, 1158-1655).
- LUTHER, M. 1999 (c1966). [LG] *Vol. 8: Luther's Works, vol. 8: Lectures on Genesis: Chapters 45-50* (1545). J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Concordia Publishing House.
- LUTHER, M. 1999 (c1976). [FLP (II)] *Vol. 11: Luther's Works, vol. 11: First Lectures on the Psalms II: Psalms 76-126* (c. 1515). J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Concordia Publishing House. (Psalm 119 (c. 1515).
- LUTHER, M. 1999 (c1955). [SP (I)] *Vol. 12: Luther's Works, vol. 12: Selected Psalms I* (1532). J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Concordia Publishing House. (Psalm 2: *WA* 40, 193-312, *SL* 5, 74-189; Psalm 45: *WA* 40, 472-610, *SL* 5, 340-471; Psalm 51: *WA* 55, 204-250, *SL* 5, 188-237; Psalm 26: *WA* 17(I), 228-243, *SL* 5, 292-307; Psalm 19: *WA* 31(I), 580-586, *SL* 5, 1332-1339; Psalm 23: *WA* 51, 267-295, *SL* 5, 1332-1339).
- LUTHER, M. 1999 (c1956). [SP (II)] *Vol. 13: Luther's Works, vol. 13: Selected Psalms II*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Concordia Publishing House. (Psalm 68 (1521): *WA* 8, 4-35, *SL* 5, 656-659; Psalm 82 (c. 1530): *WA* 31(I), 189-218, *SL* 5, 696-731, *HE* 4, 287-323; Psalm 101 (1534): *WA* 51, 200-264, *SL* 5, 800-887⁶; Psalm 112 (1526): *WA* 19, 297-336, *SL* 5, 1098-1131; Psalm 90 (1534-1535): *WA* 40-3, 476-594, *SL* 5, 732-799; Psalm 110 (1535): *WA* 41, 79-239, *SL* 5, 922-1055; Psalm 111 (1530): *WA* 31, 393-426, *SL* 5, 1056-1097).
- LUTHER, M. 1999 (c1972). [ESL&S] *Vol. 15: Luther's Works, vol. 15: Ecclesiastes, Song of Solomon, Last Words of David, 2 Samuel 23:1-7*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Concordia Publishing House. (Notes on Ecclesiastes (1526): *WA* 20, 7-203, *SL* 5, 1372-1579; Lectures on the Song of Solomon (1530-1531): *WA* 31-2, 586-769, *SL* 5, 1580-1659); Treatise on the Last Words of David (1543): *WA* 54, 28-100, *SL* 3, 1880-1973).
- LUTHER, M. 1999 (c1956). [SMM] *Vol. 21: Luther's Works, vol. 21: The Sermon on the Mount and the Magnificat*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Concordia Publishing House. (Sermon on the Mount

26 Also note *WA* 53, 659-678.

- (1532): *WA* 32, 299-544, *SL* 7, 346-677; Magnificat (1521): *WA* 7, 538-604, *SL* 7, 1372-1445, *HE* 3, 119-200).
- LUTHER, M. 1999 (c1957). [SJ (I)] *Vol. 22: Luther's Works, vol. 22: Sermons on the Gospel of St. John: Chapters 1-4 (1514 et seq.)*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Concordia Publishing House. (Chapters 1 & 2: *WA* 46, 538-789, *SL* 7, 1538-1849; Chapters 3 & 4: *WA* 47, 1-231, *SL* 7, 1848-2147).
- LUTHER, M. 1999 (c1963). [LGS (I)] *Vol. 26: Luther's Works, vol. 26: Lectures on Galatians, 1535, Chapters 1-4*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Concordia Publishing House.
- LUTHER, M. 1999 (c1973). [C&T] *Vol. 28: Luther's Works, vol. 28: 1 Corinthians 15, Lectures on 1 Timothy*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Concordia Publishing House. (1 Corinthians 7 (1523), 1 Corinthians 15 (1534); Lectures on Timothy (1527-1528). 1 Corinthians 7 (1523); 1 Corinthians 15 (1534); Lectures on Timothy (1527-1528)).
- LUTHER, M. 1999 (c1960). [W&S(I)] *Vol. 35: Luther's Works, vol. 35: Word and Sacrament I*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Fortress Press. {[ADM] Avoiding the Doctrines of Men and a Reply to the Texts Cited in Defence of the Doctrines of Men (1522), 125-153 (*WA* 10-2, 72-92); [PBB] Prefaces to the Books of the Bible (1522-1546), 223-411}.
- LUTHER, M. 1999 (c1966). [C&M(III)] *Vol. 41: Luther's Works, vol. 41: Church and Ministry III*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Fortress Press. {[CC] On the Councils of the Church (1538), 3-177 (*WA* 50, 509-653)}.
- LUTHER, M. 1999 (c1968). [DR(II)] *Vol. 43: Luther's Works, vol. 43: Devotional Writings II*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Fortress Press. {[SWP] A Simple Way to Pray (1535), 185-211; [PAT] Appeal for Prayer Against the Turks (1541), 211-241; [CWM] Comfort for Women Who Have had a Miscarriage (1542), 241-250; [TSP] To the Saxon Princes (1545), 250-288}.
- LUTHER, M. 1999 (c1966). [CS (I)] *Vol. 44: Luther's Works, vol. 44: The Christian in Society I*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Fortress Press. {[SEM] A Sermon on the Estate of Marriage (1519), 3-15 (*WA* 2, (162) 166-171)}.
- LUTHER, M. 1999 (c1962). [CS (II)] *Vol. 45: Luther's Works, vol. 45: The Christian in Society II*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Fortress Press. {[PRC] The Persons Related by Consanguinity and Affinity Who are Forbidden to Marry According to the Scriptures, Leviticus 18 (1522), 3-11; [EM] The Estate of Marriage (1522), 11-49 (*WA* 10(2), 275-304)}.
- LUTHER, M. 1999 (c1967). [CS (III)] *Vol. 46: Luther's Works, vol. 46: The Christian in Society III*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Fortress Press. {[OMM] On Marriage Matters (1530), 257-320 (*WA* 30-3, (198), 205-248)}.
- LUTHER, M. 1999 (c1959). [S (I)] *Vol. 51: Luther's Works, vol. 51: Sermons I*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Fortress Press. {(Sermon On the Marriage of Sigismund von Lindenau (1545): *WA* 49, 797-805) ; Sermon on the Fourth and Fifth Commandments (1528): *WA* 30-1, 1-122)}.

27 This sermon alludes to Hebrews 14:4: "Let marriage be held in honour among all, and let the marriage bed be undefiled; for God will judge the immoral and adulterous."

- LUTHER, M. 1999 (c1967). [TT] *Vol. 54: Luther's Works, vol. 54: Table Talk*. J.J. Pelikan, H.C. Oswald & H.T. Lehmann (Eds). Luther's Works. Saint Louis: Fortress Press. {(Table Talk collected by Anthony Lauterbach and Jerome Weller: In Praise of Women (1537) (*selections from WA, TT & WA 48, 365-719* & Table Talk collected by Arnold Cordatus: No. 2867b: Annoyances and Blessings in Marriage, January 2, 1533)}.
- RAATH, A.W.G. 2006. The justness of love: The essence and status of justice in Luther's theology. *Studia Historiae Ecclesiasticae*, May, vol. XXXII, No. 1, 335-354.
- RAATH, A.W.G. 2007. Providence, conscience of liberty and benevolence – the implications of Luther's and Calvin's views on natural law for fundamental rights. *In die Skriflig*, 41(3), 415-442.
- STAHL, F.J. 1963. *Die Philosophie des Rechts. Zweiter Band. Rechts- und Staatslehre auf die Grundlage Christlicher Weltanschauung. Erste Abteilung – Erstes bis Drittes Buch*. Hildesheim: Georg Olms Verlagsbuchhandlung.
- TAPPERT, T.G. (Ed). 2000 (c1959). [AC] *The Augsburg Confession*. Transl. from the Latin. (Luther's Works). Philadelphia: Fortress Press.
- TAPPERT, T.G. (Ed). 2000I (c1959). *The Book of Concord: The Confessions of the Evangelical Lutheran Church*. Philadelphia: Fortress Press. {[PBC] Preface to the Book of Concord (1580); [TCS] The Three Chief Symbols (The Three Universal Ecumenical Creeds) (I-III); [CF] Augsburg Confession (1530); [AAC] Apology of the Augsburg Confession (1-1, XIV) (1531)²⁸; [SA] The Smalcald Articles (1537); [TPP] Treatise on the Power and Primacy of the Pope (1537); [SC] The Small Catechism (1529) (I-VIII, 15); [LC] The Large Catechism (1529) (1-6, 35); [FC] Formula of Concord (1, I-2, XII, 40)}.

28 At first regarded as a private publication of Melanchthon, it became the official confession of faith when it was signed, along with the Augsburg Confession in Smalcald in 1537.