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Natural Law

1 Case Studies

Read the two case studies below and make brief notes in answer to the questions that follow. You may wish to keep your notes as you will be invited to revisit them at the end of the chapter.

Homosexuality: The Civil Partnership Act[1]

In November 2004, the Civil Partnership Bill, giving legal recognition to same-sex couples in the UK, received Royal Assent and became law. The Act gives lesbian and gay couples the opportunity to go through a civil registration process similar to that of marriage and to make a formal lifelong commitment to one another. The partners in a civil partnership have a range of rights and responsibilities similar to those of partners in a marriage, covering such areas as property, finance, inheritance and child support. There is also provision for a dissolution process similar to divorce, to deal with cases where a civil partnership breaks down.

When the Bill was first proposed, the Roman Catholic Church in England and Wales opposed it on the grounds that the Government's proposals were not necessary to defend the fundamental human rights of gay and lesbian people and that they would undermine marriage and the family. The Church of England does not allow its buildings to be used for the registration of civil partnerships, but there are reports that Anglican priests, in common

with ministers of some other Christian denominations, frequently conduct unofficial blessing services for gay couples.

Early in 2005, it was reported that the Diocese of Lincoln had produced a draft service of thanksgiving for non-marriage relationships. While it might be used by same-sex couples, it could also be used by close friends who are not in a sexual relationship. Bishop John Saxbee said that the service would be consistent with Anglican guidelines because it would not be the blessing of a union, only a thanksgiving for a friendship. The service was welcomed by a spokesperson for the Lesbian and Gay Christian Movement, but greeted with suspicion by the chairman of the evangelical pressure group Reform.

Questions

- Should the traditional Christian prohibition of sexual activity between partners of the same sex be maintained, revised or jettisoned altogether?
- Should Christians support or oppose civil legal provisions for same-sex partnerships?
- Should Christian churches offer services for the blessing of same-sex partnerships?

The 'War on Terror'

September 11th, 2001, is a date that no reader of this book is likely to have forgotten. On that day, four airliners were hijacked over United States airspace by terrorists linked to the Al-Quaeda network. Two of them were flown into the twin towers of the World Trade Center in New York, one into part of the Pentagon and the fourth was diverted from its target by some passengers who resisted the hijackers. The crews, passengers, hijackers and thousands of people in the targeted buildings were killed in the attacks.

Since 2001, other high-profile terrorist attacks linked to Al-Quaeda have included the bombing of a nightclub in Bali, in which many Australian tourists were killed and injured, the coordinated bomb attacks on a number of commuter trains in Madrid and the attacks on London's transport system in July 2005.

Some commentators have argued that these attacks should be regarded as criminal acts and those responsible should be pursued through international criminal justice processes. However, the government of the United States quickly took the view that the September 11th attacks amounted to an act of war and that the USA and her allies were now engaged in a 'war on terror'. One of the first actions in this 'war' was the US-led military action in Afghanistan, which resulted in the Taliban regime being deposed and democratic elections being organized. Hundreds of prisoners, including nationals of many Western nations, were taken in Afghanistan and imprisoned by the US military at Guantanamo Bay in Cuba. Controversially, they were classified by the American authorities as 'enemy combatants', which meant that they were treated neither as civilian criminal suspects nor as prisoners of war under the terms of the Geneva Convention.

The action in Iraq in 2003, in which Saddam Hussein's Ba'athist regime was deposed, was presented as another part of the 'war on terror', although some critics argued that it was a distraction from the fight against Al-Quaeda as Saddam had no clear links with that network.

The 'war on terror' has also included stringent homeland security measures in some Western countries. In Britain, these have included a system of 'control orders' under which those suspected of supporting terrorism can be electronically tagged, banned from using the telephone or Internet and forced to remain in their homes under curfew.

Questions

- From a Christian ethical standpoint, is it ever justified to use violent force in defence of peace, security or justice? If so, under what circumstances should force be used and what restraints, if any, should be placed on its use?
- Is the 'war on terror' really a war? Does it matter whether we call it a war or not?
- Do you consider the various actions in the 'war on terror' to be morally justified?

A great deal of Christian teaching on questions of sexuality, war and many other ethical matters has its roots in the so-called *natural law* tradition. Natural law thinking has been very influential in Catholic theology

for many centuries and is the focus of lively contemporary discussion and debate.

It is a tradition that places a strong emphasis on the ability of human reason to discern the good and the right. For that reason, many Protestant theologians have been suspicious of it, arguing that reason, like other human faculties, is too radically distorted by sin to be a reliable guide as to what is good and right.

2 The Roots of the Natural Law Tradition

Part of the background to natural law thinking can be found in the Bible. In the Hebrew Scriptures, the Wisdom literature – especially the book of Proverbs – contains sayings, advice and instruction that do not appeal to Israel's distinctive traditions, such as the stories of the patriarchs, exodus and giving of the Law at Sinai. Instead, they have a markedly international flavour and there are close parallels between them and texts from other ancient Near Eastern nations. In other words, there is teaching and instruction within the canon of Scripture itself that does not seem to rely on any special revelation from Israel's God, but is accessible to human reason and experience. Also in the Hebrew Bible, parts of the prophetic tradition, such as Amos' oracles against the nations (Amos 1.3—2.8), seem to assume that Gentile nations as well as Israel are accountable to Israel's God for their behaviour and can be judged by the same standards as Israel. Some New Testament texts, too, seem to claim that all people, whether or not they have the Scriptures, can have some kind of natural knowledge of God's law. For example, Paul famously writes, 'When Gentiles, who do not possess the law, do instinctively what the law requires, these, though not having the law, are a law to themselves' (Romans 2.14).

Another part of the background to natural law theory can be found in various strands of ancient Greek philosophy. For the Stoics, the good life was one that was lived in submission to the divine ordering of the world – as it were, living with the grain of the way the world was made. Stoic philosophy had a significant influence on early Christianity, which can be seen, for

example, in Paul's speech at the Areopagus in Athens (Acts 17.22–31) and in the moral teaching in many of the New Testament epistles.

The philosophy of Aristotle and his followers was another important influence, particularly on Western Christianity in the Middle Ages, when many Aristotelian texts were rediscovered and had a profound influence on Christian philosophy and theology. An Aristotelian theme that became important in natural law thought was the notion that the good life is one that conforms to the proper 'ends' – goals or purposes – of human beings and these ends can be discovered by rational reflection on human nature. (The idea that the good consists in living according to our proper ends is sometimes referred to as a *teleological* view of ethics, from the Greek word *telos*, meaning 'end' or 'goal'. There are close links here with *virtue theory*, which we explore in Chapter 6. It, too, has some of its roots in Aristotelian thought and was developed by medieval Christian theologians.)

3 Thomas Aquinas and Natural Law[2]

Probably the greatest medieval Christian thinker in the West was Thomas Aquinas (*c.* 1225–74), whose massive final work the *Summa Theologiae* brings together Aristotelian philosophy and a Christian theological tradition shaped by the Bible, the Church Fathers and earlier medieval theologians.

Navigating around the *Summa Theologiae*

The *Summa Theologiae* or *Summa Theologica* – sometimes just referred to as the *Summa* or abbreviated as *ST* – is divided into three parts, which are traditionally numbered in Latin. These are the *prima pars*, or first part (1a), the *secunda pars*, or second part (2a), and the *tertia pars*, or third part (3a), which was unfinished at Thomas' death in 1274.

The *secunda pars* is subdivided into the *prima secundae*, or 'first of the second' (1a2ae), and the *secunda secundae*, or 'second of the second' (2a2ae). Thus, the numbering of the parts, in order, is *prima pars* (1a), *prima secundae* (1a2ae), *secunda secundae* (2a2ae), *tertia pars* (3a).

Various different conventions are used for the numbering – some

using Roman numerals, some Arabic, some following the Latin order for numbering the subdivisions of the *secunda pars* (1a2ae; 2a2ae), some numbering the subdivisions in a way that would be more natural in English (2-1; 2-2). In this book I shall follow the convention I have already introduced – that is, 1a, 1a2ae; 2a2ae; 3a.

The structure of the book is shaped by the conventions of teaching and debate in medieval universities. Each part is divided into many *quaestiones*, which means questions (q.), and each question is subdivided into articles (art.). The structure of each article is the same. It begins with a set of objections to a traditional position, then the traditional position is stated in a section known as the *sed contra* ('on the other hand'). Next comes the 'reply', which sets out Thomas' own assessment of the debate, and finally a series of answers to the objections.

The standard English translation, made in the 1960s, runs to 60 volumes.[3] There is a user-friendly abridged edition in one volume, translated by Timothy McDermott, which converts the medieval format of the *Summa* into continuous prose and avoids technical language as far as possible.[4] Quotations from the *Summa* here and elsewhere in this book are from McDermott's translation. Confusingly for the purposes of this chapter, though, one of the technical terms McDermott avoids using is 'natural law', which he prefers to translate as 'the law we have in us by nature'.

Thomas' discussion of law is in *ST* 1a2ae, qq. 90–108 (pp. 280–307 in McDermott's translation). He identifies four kinds of law, generally known as eternal law, natural law, positive divine law and positive human law.

The *eternal law* is 'the plan by which God, as ruler of the universe, governs all things' (p. 281). Thomas says that all created things follow God's eternal law, in that they have 'a natural tendency to pursue whatever behaviour and goals are appropriate to [them]' (p. 281). However, humans, being rational creatures, 'follow God's plan in a more profound way' (p. 281). This is because we have some (partial) understanding of the eternal law and this enables us to reason about the goals or ends that are appropriate for us and other creatures to pursue. In other words, we can make plans both for ourselves and other creatures, and Thomas describes this rational planning as a way of

sharing in God's eternal reasoning and planning for the creation. This participation in the eternal law is what Thomas means by *natural law*.

How do we go about this process of practical reasoning (or 'reason planning action' as McDermott translates it)? We have to start somewhere, so we need a first principle that is self-evident, not needing to be proved first before we can begin building arguments on it. Thomas says that all practical reasoning depends on a notion of the *good*. Thus, the self-evident starting point for practical reasoning is that 'good is to be done and pursued and evil to be avoided' (p. 287). By 'good' he means 'whatever man naturally seeks as a goal' (p. 287) – whatever is in accordance with our natural ends or purposes. He identifies three groups of natural ends or purposes and, from each group, general moral principles can be worked out. These are often known as the *primary precepts* or *first premises* of natural law.

First of all, there are the ends that we share with all beings. Anything that exists, including us, has a natural tendency to go on existing, so natural law commands 'whatever conserves human life and opposes death' (p. 287). Second, there are the ends that we share with all animals. All animals, says Thomas, have a natural tendency to mate and bring up their young, so natural law commands us to act in line with this natural tendency. Third, there are ends that are distinctively human, not shared with other animals or other beings. These ends have to do with our rational nature, which inclines us, for example, to know the truth about God and live in an ordered social structure. So, natural law commands 'whatever is relevant to these inclinations, like avoiding ignorance and not offending those we live with' (p. 287). These first premises all follow from Thomas' starting point – that good is to be done and pursued and evil avoided – but he says we know the truth of the first premises intuitively: we do not have to work them out by deductive reasoning.

From these first premises follow *secondary precepts* or *injunctions*. These are more detailed rules about the kinds of behaviour that conform to the three groups of ends. They can be deduced from the first premises and are less general in their application. From the first group of ends, which have to do with preserving our existence, we can derive secondary injunctions that, for example, forbid the taking of innocent human life. From the second group, that have to do with mating and parenting, we can derive rules about

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sex and family life, such as that extramarital sex and adultery are forbidden. From the third group, rules governing social life can be derived. For example, Thomas says that secondary injunctions about property, such as the rule that goods held in trust should be returned to their owner when required, follow from the premise that we should act according to reason. Although the first premises of the natural law are self-evident, the secondary injunctions are not, so there are rules required by the natural law that are not recognized by everyone. Thomas gives the example of theft. It is contrary to the natural law, but, at one time, according to Julius Caesar, it was not thought wrong by some German tribes.

Can the natural law ever change? Positive divine law (for example, the commands of God given in the Scriptures) and human law can and do *add* 'many things helpful for human living' to the natural law (p. 288). This is particularly important as Thomas does not think that the natural law alone can teach us everything we need to know about our moral obligations. It can show us 'the acts to which nature immediately inclines us' (p. 287), but there are other good acts that we can only learn about by a process of rational investigation. Human laws can develop the natural law by spelling out the conclusions that follow from its premises or specifying in more detail what the natural law requires in particular circumstances. Human law must be in accordance with the natural law, otherwise it is not really law and we are not bound to obey it.

Can anything be *subtracted* from the natural law? Thomas believes that the first premises are absolute – they apply to everybody and can never change. However, the secondary injunctions are not absolute in the same sense. As they are more specific, they do not apply in all situations and, of course, the more specific they become, the more situations will arise to which they do not apply. For example, as we have seen, Thomas thinks that the premise 'act according to reason' gives rise to the injunction 'goods held in trust ought to be returned', but there will be occasions when returning someone's goods would be *un*reasonable. Suppose a friend lends me his car keys and then has too much to drink. I would be wrong to give the keys back if he demands them. In this case, the secondary injunction that normally follows from the premise does not apply. Furthermore, Thomas thinks that the command of God can make a difference to secondary injunctions. He

refers to examples from the Hebrew Bible where God appears to command things that are contrary to the natural law, such as Abraham's sacrifice of Isaac (Genesis 22.2), Hosea's relationship with 'a woman who has a lover and is an adulteress' (Hosea 3.1) and the plundering of the Egyptians by the Israelites (Exodus 12.35–6). Such acts would normally be examples of murder, adultery and theft, but they are not if God, who is the creator and owner of the world and all living things, commands them.

Though Thomas' examples might seem difficult and perplexing to modern readers, the main point is that there is some flexibility in his system. The most general moral principles that we learn from the natural law are absolute and unchangeable, but when we try to work out how the general principles apply in particular situations, the answer is bound to depend on the many factors that shape the situation.

4 Natural Law Since Thomas Aquinas[5]

According to Ian Fairweather and James McDonald, Thomas' doctrine of natural law became distorted and was misused in various ways by some strands of Catholic thought in the later Middle Ages and after. Thomas' distinction between primary and secondary precepts and his emphasis on self-determination were sometimes lost sight of. Natural law also became increasingly tied to the Magisterium (teaching authority) of the Church. The result, at times, was that quite specific rules and prohibitions were enforced by Church authority and were claimed to be universally and eternally valid.[6]

However, this was by no means the whole story. Natural law thinking has had a varied and creative history since the Middle Ages. Although it is mostly associated with Catholic thought, it entered Anglican moral theology through the work of Richard Hooker,[7] who was greatly influenced by Thomas. In the early modern period, natural law theory also gave rise to the beginnings of international law and the development of modern theories of rights. Some of these developments came from a group of highly influential Catholic philosophers, theologians and legal theorists in sixteenth-century Spain, including Francisco de Vitoria and Francisco Suárez.

One important effect of this thinking was seen in the work of Bartolomé

de las Casas. He argued powerfully on natural law grounds against the forced conversion, enslavement and exploitation of native South Americans by Spanish colonial forces. As a result, he is still something of a hero to some Latin American liberation theologians (see Chapter 7).

Another important figure in international law was the Dutch Protestant Hugo Grotius. He attempted to use natural law thinking to overcome some of the religious divisions and conflicts of seventeenth-century Europe. He gave the first systematic account of how international conflict should be regulated and laid the foundations for the modern notion of individual rights. Ironically, given his own Christian faith, he is also credited with the secularization of natural law thinking, since he argued that the natural law would be obligatory for us even if there were no God. This move had the effect of cutting natural law theory loose from the theological framework in which it had been firmly located by earlier thinkers such as Thomas Aquinas and paved the way for later philosophers such as Thomas Hobbes to produce more openly secular versions.

The twentieth century saw a great revival of interest in the work of Thomas Aquinas. This has led, among other things, to a wide variety of natural law theorizing in Roman Catholicism and a vigorous argument within Catholic moral theology about the way in which Thomas' thinking should be understood and used. In official Church teaching, natural law arguments have been used to ground specific rules and precepts. One well-known example is the prohibition of artificial contraception on the grounds that sex is for procreation and contraception frustrates this God-given purpose. However, natural law arguments have also influenced a range of social teachings on matters such as workers' rights, political subsidiarity and international development.[8]

Among professional theologians, one school of Catholic thought, described as 'revisionist' or 'proportionalist', thinks about right and wrong in terms of what leads to the human good and human flourishing. In that respect, it takes its cue from Thomas and, like him, also holds that anyone who will use their reason rightly can gain moral understanding. We do not depend on divine revelation for what we need to know about the good. Revisionists, though, resist the idea that natural law generates universal, exceptionless moral rules. For example, even if artificial birth control is usually wrong, there might be circumstances in which it is justified.

A contrasting approach to natural law is associated with Germain Grisez, John Finnis and others. Finnis claims that there are certain basic goods or values that are self-evident – life, knowledge, marriage, aesthetic experience, friendship, practical reasonableness and religion.[9] From these basic goods we can deduce moral obligations, including some absolute rules and prohibitions.

As well as its role in official Church teaching and academic theology, natural law thinking continues to have a wider influence in international law and politics. For instance, the language of 'crimes against humanity', used in the Nuremberg trials after World War II and more recent genocide trials, has roots in natural law ideas. The notion of universal natural human rights also owes much to this way of thinking. However, these modern uses of natural law and natural rights language seem to have much more in common with Grotius than Thomas. (For more on rights in general and natural rights in particular, see the Appendix at the end of this chapter.)

5 The Case Studies Revisited

Homosexuality

Official Roman Catholic teaching on questions of sexual ethics, including homosexuality, has deep roots in natural law thought. The argument is that our sexual organs and sexual drives are naturally directed towards the goal of procreation, and that this is part of the order built into creation by God. As we saw earlier, this argument supports the prohibition of contraception in *Humanae Vitae*. Same-sex intercourse cannot possibly have procreation as a goal and, for this reason, it is contrary to the natural law.

This line of argument goes a long way back in the natural law tradition. Thomas followed earlier writers in describing homosexual acts as 'unnatural' because they 'run counter to the natural mode of intercourse between male and female'.[10] Recent Vatican documents echo this view, describing homosexual acts as 'intrinsically disordered'.[11] It should be stressed that this natural law argument does not require the view that procreation is the *only*

proper purpose of sex, though at various times in history some Christian thinkers have come close to claiming this. It is perfectly possible to argue that sex is naturally ordered towards loving relationships *and* procreation and these two goals are both so important that sex excluding one or the other is 'intrinsically disordered'.

Critics sometimes reply that it is unnecessarily 'biologistic' to insist that procreation is the primary purpose, or an essential purpose, of sex. Sex can have many purposes, they argue, including pleasure and the expression of love as well as procreation; and it is not necessarily the case that procreation *has* to be one of the goals of each act or even of each relationship. Other critics question the natural law approach to sexual ethics more generally. They accuse natural law thinkers of simplistic attempts to read off divinely established laws from observations of nature. For example, Thomas thought (mistakenly) that there was no 'homosexual' behaviour in the animal world and concluded from this that homosexual acts were against the natural law. However, say his critics, concepts of what is 'natural' or 'unnatural' are socially constructed by humans. We observe the world, classify it and invest our classifications with meaning. So when Thomas concluded that the only kind of sex permitted by the natural law is between male and female for the purpose of procreation he was reading this conclusion *into* his observation of nature rather than finding it there.[12]

This may not be entirely fair to Thomas as his natural law theory is firmly set in a sophisticated theological framework and he is not doing anything as naive as reading moral prescriptions straight from the natural world. As Stephen Pope acknowledges, however, natural law thinking has sometimes assumed too easily that there is something fixed and universal called 'human nature', which can be the subject of timeless, exceptionless moral rules. He believes, though, that it is possible to develop a natural law theory that avoids such pitfalls.[13]

Another major source of Christian teaching about homosexuality is the biblical texts that appear to refer to it.[14] These texts have been influential on Catholic as well as Protestant teaching. The biblical writers do not seem to be highly preoccupied with homosexuality as only around half a dozen texts refer directly to it. Those texts, though, do seem to disapprove unequivocally of same-sex sexual acts.

First, there is the story of Sodom and Gomorrah (Genesis 18.16—19.29), in which the men of Sodom are punished for attempting to gang-rape Lot's angelic visitors. It is widely agreed that this story is irrelevant to the debate about homosexuality as, elsewhere in the Bible, Sodom is a byword for inhospitality and indifference to the needs of others, not sexual misconduct (Ezekiel 16.49, for example).

Next, two texts in Leviticus (18.22; 20.13) forbid men from '[lying] with a male as with a woman', which is described as 'an abomination'. Some writers argue that Leviticus uses the same language for regulations about diet and ritual purity. Christians have almost always disregarded the dietary laws, so it is inconsistent to insist that the prohibition of homosexuality must still be obeyed. Others argue that the laws governing sexual conduct *were* retained by the early Church (for example, at the Council of Jerusalem, Acts 15.20) and should remain binding on Christians.

In the New Testament, the Greek words *malakoi* and *arsenokoitai* appear in lists of 'wrongdoers' whose lives are contrary to the gospel and who 'will not inherit the kingdom of God' (1 Corinthians 6.9–11; 1 Timothy 1.10). The meaning of these words is not entirely clear, but they seem to refer to the partners in sexual intercourse between males.

The most influential text is Romans 1.18–32. (It is also the only biblical text to refer to female same-sex intercourse.) These verses obviously do not state a simple rule against homosexual acts. Instead, as Hays puts it, they function in the mode of the 'symbolic world'. Paul is attempting to show that humanity as a whole is sinful and 'fallen', that we have turned away from the true God and preferred idols. This rejection of God results in all kinds of disordered behaviour, including homosexual acts. Paul presents homosexual behaviour as a consequence and a symptom of humanity's alienation from God. It is a *result* of God's wrath, not the *cause* of it: he writes that 'God gave them up to degrading passions' (1.26). As he writes of people 'exchanging' natural for unnatural desires, some writers believe that this text must be referring to heterosexual people who perversely engage in same-sex intercourse contrary to their natural orientation. From this point of view, it is irrelevant to gay and lesbian people, who experience same-sex desire as natural. Others, including Hays, argue that Paul does not make this distinction. For one thing, the notion of sexual orientation is a modern

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one that probably would not have been understood in the ancient world. For another, Paul is offering a diagnosis of the condition of sinful humanity as a whole – the text does not operate at the level of individuals' stories and experiences.

Many writers set these texts in the wider context of biblical teaching about male–female *complementarity*. In the creation stories, God made humans male and female (Genesis 1.27) and when the man in the second creation story needed a companion, God created a woman, not another man. Neither a being identical to the man, nor one who is wholly different from him, would allow for true companionship. As Karl Barth puts it, 'What is sought is a being resembling man but different from him.'[15] Heterosexual marriage reflects this complementarity, as Jesus seems to suggest by quoting the creation stories in his own teaching on marriage (see Chapter 2). Barth thinks homosexual relationships reject this complementarity and are therefore 'sexual [unions] which [are] not and cannot be genuine'.[16] Others, though, question the importance of male–female complementarity. For example, they point to the close bonds of single-sex companionship that are also portrayed in the Scriptures, notably within Jesus' inner group of 12 disciples.

It is often said (for example, by Hays) that whenever the Bible mentions homosexuality, it disapproves of it, but others argue that some biblical texts at least hint at homosexual relationships in more approving ways. For example, the story of David and Jonathan depicts powerful, covenanted love between two men (1 Samuel 18.1–5). Again, in the story where Jesus heals a centurion's servant (Matthew 8.5–13; Luke 7.1–10), it is sometimes suggested that the 'servant' (*pais* in Greek) is in fact the centurion's male slave lover and that Jesus tacitly approves of this relationship.[17]

More generally, the Gentile crisis in the early Church is sometimes seen as a precedent for changing attitudes to homosexuality in the Church today. The first followers of Jesus had to go through a massive shift of attitudes in order to allow Gentiles to enter the Church without first converting to Judaism. Traces of this upheaval can be seen in many parts of the New Testament, particularly in the story of Peter and Cornelius (Acts 10.1—11.18) and the Council of Jerusalem (Acts 15.1–35). As it is presented in the New Testament, this was not an arbitrary decision by the early Church, but a considered response to the experience of God's Spirit at work among

Gentiles. Some would say that the Church today is called to make a similar imaginative leap in its attitude to Christians who are in same-sex relationships.

So far, I have discussed natural law arguments and biblically based arguments about homosexuality. However, in this, more than in most ethical debates, *experience* is appealed to as a source of authority. Many gay and lesbian people experience same-sex desire as a deeply rooted part of their identity, something that they did not choose, but that seems to be part of the way they are made. This is by no means a universal experience, however. Some (perhaps more often lesbians than gay men) believe their relationships to be consciously chosen, sometimes as a form of opposition to patriarchal marriage.

Some ethicists also point to the experience of committed gay or lesbian relationships. Such relationships, they say, can and do manifest the Christlike qualities of self-giving love and faithfulness at least as powerfully as most heterosexual marriages. Just as the early Church responded to the experience of the Spirit among Gentile Christians, as I noted above, so the Church today might be called to respond in a similarly open way to the experience of the Spirit among gay and lesbian Christians. More negatively, the experience of being oppressed and marginalized by the mainstream Churches leads many lesbian and gay Christians to challenge established Christian views. Somewhat like liberationist and feminist theologians (see Chapters 7 and 8), they choose to read the Bible and interpret Christian tradition 'through the spectacles' of their own experience. This leads them to be highly critical of the Church's traditional negative view of homosexuality. It may also lead them to put forward the kinds of arguments about the Bible summarized above, playing down the texts condemning homosexual behaviour and arguing that, properly understood, the Bible challenges the Church to become far more accepting of same-sex unions.

It is time to return to the Civil Partnership Act. In relation to the question of same-sex relationships in general, a range of Christian views has been expressed by the Churches.[18] At one end of the spectrum is the view that such relationships are '*intrinsically disordered*' and can never be a morally or pastorally acceptable option. This is the view expressed, for example, in official Roman Catholic teaching. Then there is the view that same-sex

unions *fall short of the ideal*, which is lifelong heterosexual marriage, but that they may be the best that some people can attain in an imperfect world and are certainly better than some of the alternatives, such as promiscuous and casual sex. Something like this view is found in the Church of England report, *Issues in Human Sexuality*. This report argues that committed homosexual relationships may be an acceptable pastoral option for lay people in the church, but not for clergy. A third view is that the mere fact that a relationship is homosexual is *morally irrelevant*, that both homosexual and heterosexual relationships are to be judged by the qualities they display. Good relationships, for example, might be characterized by faithfulness, stability and self-giving love; bad ones by exploitation or abuse. An early expression of this position in a Church document was the *Quaker Report on Sex*, published in Britain in 1963.

These different positions could be related in complex ways to questions about civil partnerships and church blessings of gay and lesbian unions. If homosexual relationships are always destructive of proper human flourishing, then presumably it would be pastorally as well as theologically irresponsible for churches to bless such relationships. The Church might also be required to oppose civil legislation allowing for same-sex partnerships, as Vatican documents argue. Presumably, though, there could be situations in which Churches, while refusing to bless or sanction same-sex unions, might nevertheless support civil legislation on the grounds that it would help protect gay and lesbian people from discrimination and financial hardship. A Church that believed homosexual unions fall short of the ideal, but can still be pastorally justified, might be more ready to support civil legislation. It might or might not believe that church blessings of those unions are pastorally appropriate. That decision would require the weighing up of many different considerations, some of which are in the background of the case study. Churches that took the third view, represented by the Quaker report, would presumably not object either to civil partnership laws or church blessings of same-sex partnerships.

Questions

• Which of the various positions outlined in this section do you find most persuasive and why?

- Return to your answers to the case study questions at the beginning of the chapter. How, if at all, would you change or add to them in the light of your reading in this chapter?

War[19]

In a classic study from 1960, the historian Roland Bainton classified Christ-ian attitudes to war into three types: pacifist, just war and crusading.[20] The last of these can be fairly swiftly disposed of. It is the view that a military action can be a holy war, commanded by God and fought against God's enemies. Although there have been all too many examples of this attitude in Christian history – such as the medieval Crusades and the wars fought by New England Puritans against Native Americans – few serious Christian thinkers would now defend a crusading view of war.

Just War Theory

In one form or another, just war theory is the majority Christian view today. Its roots predate Christianity, with versions of it being found in the work of Greek philosophers such as Plato and Aristotle and in Roman legal codes. The Christian Church, which appears to have been largely pacifist at its beginnings (but see below), began taking a serious interest in just war theory in the fourth century. The conversion of the emperor Constantine in 312 was the culmination of a process by which Christians had moved from being a tiny, persecuted minority to having great political power and influence. In this new situation, Christian thinkers such as Ambrose of Milan and Augustine of Hippo drew on pre-Christian just war traditions in order to address moral questions about war and military service. Christian just war thought was developed and elaborated during the Middle Ages by canon (Church) lawyers such as Gratian and theologians such as Thomas Aquinas.[21] It was further developed in the early modern period by natural law theorists – Vitoria and Grotius, for example – in response to new challenges such as

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colonial expansion and the European religious wars of the sixteenth and seventeenth centuries.

For much of its history, just war theory has been set within a natural law framework – the natural law precept that I should defend both my own and others' lives could, under some circumstances, require a community to go to war. In this tradition, the term 'just war' is somewhat misleading. War, as it causes terrible destruction and suffering, is never a *good* thing – at best, it might be a tragic necessity to prevent a worse evil. 'Justifiable war' might be a better term than 'just'. From this point of view, just war theory is an attempt to limit the physical and moral damage of war: it provides rules for judging when it is right to go to war and sets limits on what may be done in war. These two sets of rules are often referred to as conditions for *jus ad bellum* (justice in going to war) and *jus in bello* (justice in [the conduct of] war). A standard list of just war conditions is given in the box.

Just War Conditions

Jus ad bellum

1 It must be waged by a lawful authority.
2 It must be for a just cause (to put right an undoubted wrong).
3 It must be a last resort – all peaceful means of resolving the conflict must have been exhausted.
4 The harm likely to be done by the war must be proportionate to the good that is aimed for.
5 It must be waged with a right intention.
6 There must be a reasonable hope of success (otherwise it is likely that great harm will be done for no benefit).
7 The war should contribute to a new state of peace.

Jus in bello

1 Non-combatants must not be directly attacked (the principle of *discrimination*).
2 The means used in fighting the war should be proportionate to the goals.

These criteria are still widely accepted by Christian thinkers and have

been used to assess many recent conflicts. For example, during World War II, George Bell, the Bishop of Chichester, protested in the House of Lords against the bombing of German cities because it breached the principle of discrimination. More recently, Christian thinkers have criticized the policy of nuclear deterrence on the grounds that tactical nuclear weapons are neither proportionate nor discriminate.[22] Just war arguments have been used in debates about the NATO action in Kosovo in 1999 and, in 2003, the Bishop of Oxford argued against war in Iraq on just war grounds.[23] Some thinkers, however, argue that traditional just war theory no longer works as the criteria were developed in premodern times, usually to regulate conflicts between paid volunteer armies, using relatively low-tech military hardware, under conditions where combatants and non-combatants could be easily distinguished. The same criteria may simply not apply under conditions of modern warfare, particularly if the major threats to peace and security are no longer from aggression by nation states, but from civil wars (as in the Balkans and Rwanda) or international terrorism (as on September 11th and afterwards). Defenders of the theory reply that it is needed more than ever in the unstable conditions of the twenty-first century.[24]

Just war theory has often been criticized (for example, by Richard Hays) as a theory, developed independently of the New Testament, that cannot be justified by reference to it. One notable exception to this criticism (as Hays acknowledges) is the account given by Protestant theologian Paul Ramsey.[25] His starting point is the fundamental principle of love of neighbour, which is said by Jesus in the Gospels to be one of the two greatest commandments (Mark 12.28–34 and parallels). Ramsey argues that the shift from pacifism to just war theory in the early centuries of the Church was not a change of principles, but only (as it were) of moral tactics. When Christians were a powerless and marginalized group, love of neighbour prohibited them from retaliating for the violence done to them. When they came to hold political power, however, that brought with it the responsibility to defend their people. Ramsey's argument can be understood in this way. If I am attacked, my attacker is still my neighbour, and love of neighbour probably forbids me from injuring or killing that neighbour even in defence of my own life. (He does not absolutely rule out self-defence, but is highly suspicious of it as a motive for the use of force.) In contrast, if I see someone else being attacked,

love of my neighbour who is under attack demands that I defend him or her and, if the only way to defend the victim's life is to use lethal force against the attacker, love requires me to do so. Now, if I am a political leader and my people are under attack, love of my neighbours – the population of my country – could require me to use force to defend them.

Pacifism

Though the majority Christian tradition for most of the Church's history has almost certainly been some form of just war theory, there has been a strong and persistent 'minority report' in favour of pacifism. This 'minority report' is rooted firmly in the New Testament. Richard Hays argues persuasively that the consistent witness of the New Testament is that the followers of Jesus should not use violence, even in defence of justice.[26]

There are *rules* and *principles* forbidding violence, notably in the Sermon on the Mount, where Jesus tells his followers not to resist evildoers, to turn the other cheek when they are struck in the face, give more than is demanded of them and love their enemies (Matthew 5.38–48).

The supreme *paradigm* for Christians is Jesus Christ himself. According to Paul, God in Christ responds to human enmity not by retaliating, but by being on the receiving end of human violence. The followers of Jesus are to live according to this pattern, not repaying evil with evil, but overcoming evil with good (Romans 12.14–21). In the *symbolic world* of the New Testament, says Hays (alluding to Ephesians 6.10–17), 'the real struggle is not against flesh and blood, [and] the only weapons that the church wields are faith and the Word of God'. Hays argues that this powerful witness of the New Testament should 'trump' the Hebrew Bible texts that advocate violence and the majority Christian tradition of the just war.

In response to this New Testament witness, pacifism has re-emerged at many points in Christian history, notably in the Radical Reformation traditions of the sixteenth century. The Churches rooted in those traditions, such as Anabaptists, Mennonites and Quakers, are today among the most active Christian groups in promoting non-violent means of resolving conflicts. Some of the most powerful theological advocates of pacifism in recent years

have either come from those traditions, such as John Howard Yoder, or been strongly influenced by them, such as Stanley Hauerwas.[27]

Hauerwas' pacifism is related to his ethic of virtue and character, which we explore further in Chapter 6. He argues that the Church is called to be a distinctive community, its character and way of life shaped by the story of Jesus Christ. Central to that story, and equally central to the identity of the Christian community, is an uncompromising commitment to non-violence. Hauerwas, Hays and others argue that, in order to be faithful to this Christian calling, Christians may well have to withdraw from positions of political power and influence, living instead as a counter-cultural community – a 'city built on a hill' (Matthew 5.14) – that practises the new way of life made possible by Jesus. Such a non-violent counter-cultural community will very likely suffer ridicule, marginalization and violence. However, this is the cost of Christian discipleship and the community's willingness to suffer these things without retaliating will be a powerful part of its witness.

Theological ethics in recent decades has seen something of a stand-off between just war theorists and pacifists. In the past few years, there have been attempts to bridge the divide. For example, Glen Stassen and others have produced an account of what they call 'just peacemaking'.[28] They argue that Christians, whether pacifists or just war theorists, should be more committed to developing strategies for peacemaking, and they propose a number of practical approaches. Such a commitment to peacemaking obviously goes with the grain of pacifism. The just war tradition may not always have shown such a commitment in the past – indeed, one of the common criticisms of just war theory is that it can easily become a way of giving a blessing to militarism and violence – but if just war theorists took seriously the 'last resort' criterion, they would be just as energetically committed to peacemaking as their pacifist colleagues.

Questions

- If the New Testament is, as Hays says, unequivocally pacifist in its witness, does this commit the Church to pacifism today or is Ramsey right to think that a different context calls for a different response?
- If there is a conflict between the New Testament and Christian tradition over the question of war, how should the conflict be settled?

- Return to your answers to the case study questions about the 'war on terror'. What, if anything, would you add or change in the light of this chapter?

Suggestions for Further Reading

Natural Law

Nigel Biggar and Rufus Black (eds), *The Revival of Natural Law: Philosophical, Theological and Ethical Responses to the Finnis-Grisez School*, Aldershot: Ashgate, 2000.

Stephen Buckle, 'Natural Law', in Peter Singer (ed.), *A Companion to Ethics*, Oxford: Blackwell, 1991, pp. 161–74.

Stephen J. Pope, 'Natural Law and Christian Ethics', in Robin Gill (ed.), *The Cambridge Companion to Christian Ethics*, Cambridge: Cambridge University Press, 2001, pp. 77–95.

Homosexuality

There are few topics more written about, and talked about, in contemporary Christian ethics. The books edited by Bradshaw and Siker are helpful guides to the debate as they include contributions from both sides of the question. The book by Jordan offers a recent and original approach to a variety of issues in sexual ethics.

Timothy Bradshaw (ed.), *The Way Forward?: Christian Voices on Homosexuality and the Church*, 2nd edn, London: SCM Press, 2003.

Mark D. Jordan, *The Ethics of Sex*, Oxford: Blackwell, 2001.

Jeffrey S. Siker (ed.), *Homosexuality in the Church: Both Sides of the Debate*, Louisville, KY: Westminster John Knox, 1994.

War

Again, there is a big body of literature on this topic. The following sources set out the various positions particularly clearly.

R. John Elford, 'Christianity and War', in Gill, *The Cambridge Companion to Christian Ethics*, pp. 171–82.

Robin Gill, 'The Arms Trade and Christian Ethics', in Gill, *The Cambridge Companion to Christian Ethics*, pp. 183–94.

Richard B. Hays, *The Moral Vision of the New Testament*, Edinburgh: T & T Clark, 1997, Chapter 14.

Appendix: Rights

Rights are often defined as *justified claims* that entitle one individual or group to require certain kinds of behaviour from others. Rights could be *negative* – for example, a right not to be tortured – or *positive* – for example, a right to basic healthcare. They correspond in some way to *duties* (see Chapter 4).

For negative rights, this is fairly simple. If I have a right not to be tortured, then anyone who might be in a position to torture me has a duty not to do so. For positive rights, though, it is more complicated. Even if I have a right to basic healthcare, it might not be clear who has a corresponding duty to provide me with that care. For example, there might be nobody who has the resources (skill, money, time and so on) to provide the basic care to which I am entitled. There are ways round these difficulties, but they illustrate that the relationship between rights and duties is not entirely straightforward.

What is the *basis* for rights? Many theories have been suggested to justify the notion of rights. According to some accounts, rights only exist when they are granted by a political authority (such as a monarch) to that authority's subjects. Most theories, however, hold that rights are prior to political authority and exist whether or not that authority acknowledges them. If I have a right not to be tortured, the government of my country may deny the existence of that right and order the police to torture me, but the right still exists and those responsible for torturing me are doing wrong, whether they acknowledge it or not.

This claim may be justified in various ways. It might be justified *theologically,* on the grounds that all humans have been endowed with certain inalienable rights by God, their creator. Alternatively, it might be justified by a theory of *natural rights*, which says that humans, simply by virtue of their human nature, have certain inviolable rights. The first thinker to set this out systematically was Hugo Grotius, whom we encountered in section 4 of

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this chapter. He argued that humans are born free and equal, with the right to exercise control over property and the use of force, and governments and legal systems are devices to ensure that these rights are honoured. As we saw in section 4, Grotius took the decisive step of arguing that the natural law and natural rights could be known by human reason independently of belief in God. Theories rooted in his work, therefore, are decisively different from the natural law theory of Thomas Aquinas, which is inseparable from belief in God as creator and lawgiver. The notion of universal, inviolable human rights – now enshrined in many international treaties, declarations and legal frameworks – owes much to the kind of natural rights theory that stems from Grotius.

Rights can also be justified by *social contract* theories, which propose that, in order to create and maintain peaceful and stable societies, humans must enter, explicitly or implicitly, into some sort of agreement about the terms on which they will live together. This is likely to involve accepting some limits to individual freedom (I am not free to take my neighbour's car without his permission when I need transport to work) and some obligations to one another.

Thomas Hobbes was one early social contract theorist. One very influential recent social contract theory is John Rawls' theory of 'justice as fairness'. In order to work out what a just society would look like, Rawls invites us to imagine ourselves behind a 'veil of ignorance', where we do not know our own race, sex, class, religion, natural abilities and so on. If we now try to work out what social arrangements would best enable us to pursue our aims and interests, whatever our race, sex, class and so on turned out to be, this should yield a set of social arrangements that are fair to everyone of any race, sex, class and so on. Rawls argues that, in these circumstances, we would choose a system in which '[a]ll social primary goods – liberty and opportunity, income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of these goods is to the advantage of the least favored'.[29]

Rights talk in general, as well as particular theories such as Rawls', has been criticized on a number of grounds. One important criticism, from the philosopher Alasdair MacIntyre and others, is that the modern concept of

rights is part of the failed 'Enlightenment project', which is the attempt to base ethics solely on human reason in isolation from any tradition.[30] We return to MacIntyre's critique of the Enlightenment project in Chapter 6.