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The nature of authority, law, and government took a notable turn in the modern and postmodern period of Philosophy, and that turn is reflected in the expressions of government and laws seen in the modern world. After Hobbes and the idea of government as a social contract were developed, government was no longer a natural good, but an evil to be endured. Positive law was no longer a reflection of the natural law, but a necessary and arbitrary limitation to which an individual concedes to preserve his own liberty and property. Underlying this transition is the rejection of the metaphysical realities that have shaped human experience and understanding throughout the Christian era in favor of the overly simplistic assertions of nominalism. From this point, Francis Cardinal George notes that, "In the Declaration of Independence, it is the right to life, liberty, and happiness that is affirmed; the form of that life, the purpose of that liberty, and the proper ground of that happiness are left completely unarticulated." In the present context of this country, the discussions revolving around the redefinition of marriage are an excellent example of the inevitable outcome of this approach. Not only is this redefinition the necessary outcome of a nominalist approach to metaphysics, but it is also merely the first step if an honest approach is taken and a set of arbitrary rules does not replace that set that the nominalist asserts has no necessary grounding in reality. This discussion will examine the underpinnings of how this point was

reached in our approach to law and governance. It will then identify the inadequacies of this current approach as it applies to the redefinition of marriage and the superiority of the traditional approach stemming from natural law. Finally the discussion will attempt to identify how a lasting solution can be implemented.

Firstly, it is important to see the origin of social contract theory and how it differs from the traditional position stemming from realist metaphysics. Hobbes was not acting in a vacuum when he introduced the idea of the social contract, but he was resolving an issue that had been created when the idea of a human nature that could be subject to a natural law was rejected. In the modern nominalist view, man no longer has an end that can be shared, happiness, so mankind must fight for temporal goods. Since, in Hobbes' words, "if any two men desire the same things, which nevertheless they cannot both enjoy, they become enemies."[1] In Hobbes view, the purpose of the authority is solely that which, in the perspective of the natural law, is substitutive rather than essential, that is it makes up for a defect between people that would otherwise lead to anarchy. Hobbes identifies the result of a lack of "common power to keep them in awe" as "that condition which is called war; and such a war as is of every man against every man."[2] In short, Hobbes outlook on the nature of man is radically individual; man no longer can be said to share a nature, so, "the life of man, solitary, poor, nasty, brutish, and short." This outlook was picked up by various thinkers, writers, and politicians, and, through Locke and Jefferson became a foundational principle to the American political and legislative system. In short, the idea became that, while all men are radically individual and free, they can

[1] Reader, 10.
[2] Reader, 10-11.

and must give up some of that autonomy in order to preserve his "life, liberty, and property" in the mind of Locke, a list which evolved into the Declaration of Independence's guarantee of "Life, Liberty, and the pursuit of Happiness."[3] This is an appealing approach since it highlights the individual's desire for liberty and to avoid having his individual rights diminished more than necessary. The only authority that a government has to diminish the rights of an individual is that point at which those rights impede the free and reasonable exercise of the rights of another. Since, with the rejection of realist metaphysics and a shared nature and *telos* for man, there is no longer a common goal that man can share, this is the greatest good that can be achieved, and government serves only to limit man's natural antagonism to other man. The traditional position that the social contract opposes, personalist common good arising from the natural law, asserts that man's common *telos* is happiness. This is a societal goal rather than a radically individual goal, and man shares his quest for that goal. That is to say, instead of fighting each other for a greater share, man does and must work together to achieve happiness to the greatest extent. In effect, the natural law approach sees persons as having a higher common cause, and the law, therefore exists essentially to guide us to that common good, whereas the modern nominalist approach exemplified in the social contract sees the law as a necessary evil to protect maximum individual liberty.

With the above distinction in mind, it is clear why the two approaches differ irreconcilably regarding the notion of marriage. Within the confines of the social contract, it is impossible for the law to limit the definition of marriage since limiting

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[3] Reader, 13-14.

the options of those who can enter into a marriage does not impinge on the liberty of anyone outside the arrangement. Furthermore, any law imposing some outside restriction on marriage would represent an act contrary to the spirit of the social contract since it would impinge on individual liberty without justification. On the contrary, since the common good approach built from the natural law sees laws as arising from an expression of reason applied to human nature and the common good, it is necessary to limit the definition of marriage to one man and one woman. This could be seen to fulfill both the substitutive and the essential character of law proposed by Yves Simon in *A General Theory of Authority*. The substitutive character refers to that part of law that is necessary to make up for some defect; that is to say, it codifies and forbids that which is opposed to the common good of the society and prepares the framework to punish those who engage in such actions. This is the only function of law that is recognized by the social contract theory, and, even there, its application is severely limited. More importantly is Simon's essential character of law. This character exists to guide members of a given society to work together toward perfection. The modern social contract rejects this character of law all together and confuses protection from the greatest evil, for example, loss of property or liberty, with achieving the greatest good, perfection and happiness. In short, from the perspective of the social contract, a limited definition of marriage is impossible; from the perspective of personalist common good and natural law, it is essential.

At this point, it is clear that it is impossible to reject the contemporary drives to redefine marriage to include homosexual couples without rejecting the social

contract underpinnings of the American legislative system. However, a further problem must be acknowledged that, if marriage is extended to include homosexual couples because that line defining the institution is moved from one position viewed as arbitrary to another, there is no longer any foundation to prevent that line being moved again. That is to say, since the definition of marriage has become merely positive and arbitrary defined by either a majority vote or judicial or legislative movement without foundation in any real principle, it can be redefined ad nauseam. It should be understood that there are some limitations that can be identified in this situation to avoid simply setting up a straw man; for example, it would be reasonable to assume that marriages would not be allowed involving adults and minors and other such situations, but the precise definitions of these individual situations would even be shifting and variable. The more concrete and predictable situation would be the rise of arguments for polygamous marriages since, like in the case of homosexual unions, no damage or limitation of liberty or loss of property can be readily discerned to give the authority the right to intervene. As with the redefinition to allow for homosexual unions, the absolute liberty and autonomy of the individuals entering into those unions would be impinged if any law were made to prevent these. In other words, unless a new arbitrary line were drawn, which would be repugnant to an honest approach to the social contract, the notion of marriage would continue to be diluted until it would become unrecognizable and of no further value to society. Conversely, since the natural law approach begins by assuming certain norms in human nature, it does not suffer from this weakness, so it is clearly a superior position.

The final goal this discussion has set forth to undertake is a reflection on how this situation could be resolved in the context of modern American society and potential pastoral approaches. There are two obstacles that must be overcome for the traditional approach to law and ethics to be restored to its rightful place. First of all, the structure of society must be restored. Second, an increasing understanding of humans as persons instead of individuals must be attained which will naturally lead to the adoption of positions flowing from the natural law. Unfortunately, neither of these can be used for immediate pastoral application. It would seem that the only direct pastoral approach that could be used in individual cases more builds on helping individuals see themselves as sharing in and fulfilling a human nature and, therefore, being subject to precepts of the natural law in order to help them more fully fulfill that nature. The immediate pastoral goal would need to be to draw individuals to an understanding that their individual liberty and autonomy is not absolute, but rather part of a larger social system. This is also the first step toward individuals seeing themselves and others as persons who are both subject to human nature and the natural law and radically individual in their own experience. This would seem to be the only way to repair the state of society: a grassroots movement that seeks to correct individuals' identification as having absolute liberties in a vacuum that could then naturally lead to a fuller understanding of the structure of society and a restoration of its hierarchy starting from the family.

In the end, it must be understood that the situation with the definition of marriage as understood by natural law and the American legislative system built on the social contract are irreconcilable without first returning the American system to

an understanding of laws and authority flowing from the natural law. In the current context of the social contract, laws have no basis beyond arbitrary custom rooted in the will. As long as that is the case, one arbitrary line cannot be viewed as superior to any other, so the definition of marriage must necessarily remain in flux with the whims of the masses. Since most who are seeking to change the commonly held definition of marriage do not want to introduce this constant change, but rather seek only to redefine the institution to their immediate desire and liking, it is clear that the nominalist approach of social contract must be rejected in this matter. A full understanding of this problem will pave the way for a change from the modern nominalist underpinnings of American law to a more sustainable approach based again on the natural law.