Was the Obergefell decision a refutation or an extension of Lockean political thought? I summarize three perspectives on Locke and show how these interpretations can elucidate the Obergefell opinions. I then argue that the dissenters have the better Lockean argument. I conclude by explaining why Catholics should view Obergefell through Lockean lenses. Locke shows us how Obergefell will lead to a direct attack on familial moral education. However, Locke can also give us tools to fight in the public square for familial moral education.

The Obergefell v. Hodges ruling did not come as a shock to Catholic lawyers and political scientists. (The majority opinion’s poetic flights of fancy, on the other hand, took many of us by surprise.) As expected, Supreme Court Justice Anthony Kennedy’s majority opinion argued that the U.S. Constitution “promises liberty all . . . to define and express their identity.” Kennedy explicitly relied upon the 14th Amendment to ground this right.

The 14th Amendment itself specifically protects the Lockean rights of “life, liberty, or property,” and thereby reminds us that Locke’s political thought has been influential throughout American history. For this article, I assume that Locke has a continuing influence on American legal thought. I ask whether the influence is positive or negative. Was the Obergefell decision an extension of Lockean thought or a refutation of it?

I will begin by presenting three different interpretations of Locke’s view of the family. Next, I will ask how the Obergefell opinions match with these interpretations. I will conclude by showing how Locke’s writings on politics and the family can both help Catholic families forecast the actions of progressive Supreme Court justices and preserve parental moral authority.

LOCKE ON MARRIAGE

Making sense of Locke’s thought has never been an easy job. For example, his Essay Concerning Human Understanding seems to present a nominalistic perspective, whereas his Two Treatises on Government apparently present an ontologically realistic perspective. Locke famously argued that
one should be careful to avoid shocking the opinions of others.\textsuperscript{3} Were his contradictions an attempt to do this? In light of Locke’s apparent contradictions, it is not surprising that there are five to ten new books on Locke every year, on top of the more than 9000 articles that have been published about his work.\textsuperscript{4}

For the purposes of this presentation, I will only present three approaches to Locke’s views on marriage. Some believe that Locke’s thought naturally leads to a redefinition of marriage. Authors from this perspective see the Obergefell decision as rooted in Lockean principles. Others argue that Locke theoretically supported the nuclear family. Authors from this perspective see Kennedy as violating Locke’s thoughts on politics and the family. Betwixt these two approaches lies Michael Zuckert, who interprets Locke as rooting rights in self-ownership. Zuckert’s interpretation creates ambiguity regarding how Locke would understand Obergefell.

The first interpretation of Locke sees Locke as a modern relativist. For example, Leo Strauss argued that Locke was an esoteric writer who sought to hide his true beliefs under a veneer of contradictory arguments. In Natural Right and History, Strauss famously argued that Locke was practically just a stepping stone to a modern, historically defined understanding of human nature. Therefore, Locke’s arguments referencing God and natural law should be interpreted in light of his other arguments which apparently undermine his more traditional arguments.\textsuperscript{5}

Locke’s radical changes specifically included the family. “The categorical imperative ‘Honour thy father and thy mother’ becomes the hypothetical imperative ‘Honour thy father and thy mother if they have deserved it of you.’”\textsuperscript{6} Strauss portrays Locke’s commitment to a life of acquisition, so as to avoid the pains of pursuing ultimate truth. Strauss’s depressing conclusion summarizes Locke thusly: “Life is the joyless quest for joy.”\textsuperscript{7}

Peter Lawler, building on the thought of Strauss and Pierre Manent, has argued that Locke’s liberty is defined less by nature than it is by an assault on nature. Lawler argues that Locke’s focus on individual pursuit of pleasure leaves him exposed to a changing understanding of marriage and family. Locke simply has no response to individuals choosing to live without children in order to pursue individual pleasure.\textsuperscript{8} As Lawler has put it, “Our problem is the erosion of limits to Lockean thought.”\textsuperscript{9} America’s increasingly willful individualism is simply Locke let loose. Same-sex advocates are simply the latest expression of this attack on natural limits.

Patrick McKinley Brennan has similarly argued that Locke’s political thought naturally leads to the redefinition of marriage as including same-sex unions. Brennan argues that one “need not be a Straussian to acknowl-
edge that Locke is a slippery soul. Locke’s (partial) defense of marriage certainly masks the implications of his novel account of happiness.”

Brennan argues that Locke’s “novel account” flows from Locke’s apparent argument against a highest good. Brennan’s Locke argues that each individual can effectively create or define happiness for himself. Similarly, John Perry has noted that Locke refers to “relish” forty times in his work, typically in the same manner. “Hence it was, I think, that the philosophers of old did in vain enquire whether the *summum bonum* consisted in riches, or bodily delights, or virtue, or contemplation. They might have as well disputed whether the best relish were to be found in apples, plums, or nuts, and have divided themselves into sects upon it.”

This turn away from an objective highest good is also seen in Locke’s defense of marriage. Since Locke understands that marriage is fundamentally rooted in the dependency of human children, marriage need not be life-long. In fact, Locke argues that once the children are independent, there is no need for the marriage to continue. Similarly, barren women may be divorced at will. By the same token, however, fathers have a responsibility to protect their children.

By interpreting Locke as primarily an historical relativist, these scholars can present a very contemporary Locke. However, this approach can also undermine Locke’s arguments for the social contract. Since Locke based his social contract on natural rights, interpreting these rights as historically contingent can easily change the nature of democratic, constitutional government.

The second approach to Locke sees Locke as more rooted in the classical tradition. John Witte, for example, has gone so far as to argue that “Locke was a man of pious Puritan stock who remained firmly devoted to biblical teachings throughout his life. What he gave with his political hand, he took back with his theological hand.”

A more cautious, but still supportive interpretation is given by Thomas West. West argues that Locke’s law of nature is more fundamental than Locke’s self-ownership doctrine. However, West also admits that Locke’s famous workmanship argument is a self-consciously weak argument. Locke applies his workmanship argument when explaining the duties parents have towards their children. “We are told that beyond this general obligation to preserve all others, parents have a particular obligation to their own children as God’s workmanship, an obligation that includes not only their mere preservation, but also their nourishment and education.”

If Locke at least suspects the weakness of the workmanship argument for establishing familial obligations, then does Locke give a more substantial ground?
At a deeper level, Locke intimately connects duties with rights. “What is a right from one point of view . . . is an obligation from another. . . . Locke derives an apparently unselfish duty (to care for one’s child) from a selfish passion (to perpetuate oneself through one’s offspring). Both are equally grounded in strong passions of the individual, ultimately rooted in the desire for self-preservation.” Although the right of procreation and duty of parental care is rooted in the strength of strong passions, Locke believes that passions do not necessarily legitimize actions. “Locke evidently means that if the desire is to be the foundation of a right and an obligation, reason must evaluate the desire and pronounce it to be good.”

Here West relies on “Locke’s only extended consideration of human happiness,” which is found in book 2, chapter 21, of *Essay Concerning Human Understanding*. As West notes, Locke writes that “the highest perfection of intellectual nature lies in a careful and constant pursuit of true and solid happiness, so the care of ourselves, that we mistake not imaginary for real happiness, is the necessary foundation of our liberty.” We must ensure that reason change the biases of our passions, so as to allow us to pursue intrinsically good things. “A man who by a ‘too hasty choice’ does something that will likely lead to misery ‘has imposed on himself wrong measures of good and evil. . . . The eternal law and nature of things must not be altered to comply with his ill-ordered choice.’ This allows West to stress one of Locke’s “relish” statements, one that normatively connects subjective preferences with the objective truth of things: “In this we should take pains to suit the relish of our minds to the true intrinsic good or ill that is in things.”

On West’s view, therefore, Locke’s social contract—which is intended to protect individual rights to life, liberty, and property—does not presuppose moral subjectivism. There are different good things which individuals might pursue, and so it is foolishness to demand that all equally appreciate the same goods. Some individuals hunt for the truth and others simply take what is most easily obtained. One may choose the life of a celibate philosopher without denying the intrinsic good of family life. Similarly, one may choose the life of a married farmer without denying the intrinsic good of the philosophical or theological life. The natural rights secured by the social contract protect a philosopher’s pursuit of wisdom, just as they protect a parent’s familial rights. The social contract ensures the protection of the natural right to pursue (naturally bounded) happiness.

For this reason, West concludes that “The entire argument of the *Two Treatises* rests on the authority of the law of nature, a moral law prescribing rights as well as duties.” West argues that Locke believes that the pursuit of happiness, as described in the *Essay*, is the ultimate ground for
reason, which is in turn the law of nature. The focus on self-preservation, as found in *The Two Treatises*, is the means to the ultimate end of pursuing happiness.

West claims that Lawler is wrong in arguing that Locke would not have objections to same-sex marriage. In fact, Locke specifically claims that the chief end of marriage is procreation and criticizes “sodomy” as crossing the main intention of nature. This also helps explain why Locke wrote on the education of children. Children are governed by parents because parents have reason and can introduce children to the proper pursuit of happiness.

Michael Zuckert presents a third interpretation of Lockean political philosophy. In many ways, Zuckert moderates the two approaches just given. Zuckert argues that Locke roots rights in self-ownership. However, Zuckert’s close analysis of Locke’s thought points to an obvious corollary to what comes with these rights: “[Locke] thereby signals the difference between his notion of natural right and Hobbes’s: The rights that human beings have by nature are not pure liberties as they are for Hobbes, but moral entities of the sort that imply limitations or obligations on all. For Locke, the other side of one person’s right is an obligation in another. . . . Locke in practice then finds himself much closer to the traditional views of nature and justice that Hobbes had rejected and is thus able to join hands with more traditional thinkers like Hooker against Hobbes.”

On the other hand, Zuckert also argues that “Locke engaged in quasi-systematic critique of the world construed by the premodern consciousness, presenting (unsystematically, to be sure) a version of what Hegel later accomplished in his *Phenomenology of Spirit*, a historical account of the significant forms of consciousness, together with a critique of those forms.” How to resolve this conflict?

Zuckert argues that Locke “affirms much more of the precedent moral, political, and religious traditions” than more modern thinkers like Spinoza and Hobbes did. This explains why his politics remains close to medieval constitutionalism; “his understanding of morality echoes any number of earlier positions, including Stoicism, [and] his understanding of religion shares much with Protestantism contemporary with him. . . . The difficult task in understanding Locke is to give both faces their due weight.” Our difficult task is now to match the Lockean interpretations with the relevant *Obergefell* opinions.

**THE OBERGEFELL OPINIONS**

Kennedy’s majority opinion argued that the 14th Amendment requires states to license same-sex marriages, regardless of whether the same-sex
marriage occurred in that state. Despite the Lockean phrasing of the 14th amendment, Kennedy apparently decided that including Locke in his majority opinion was a stretch too far. As the dissenting opinions argue, such a wildly undemocratic majority opinion would contradict Locke’s theory of the social contract. However, Michael Zuckert has noticed that “one of the most striking features of the absorption of Locke’s thinking was the tendency to incorporate him into some broader system of thought. He seemed remarkably absorbable into highly syncretistic and often quite original amalgams.”

Given the arguments proposed by Strauss and Lawler, is it possible to read Obergefell as fitting with Lockean theory?

At first glance, Kennedy’s argument looks similar to Michael Zuckert’s portrayal of Lockean political philosophy as rooting rights in self-ownership. Kennedy’s opinion can be seen as Lockean only insofar as “one face” of Locke is presented. If one interprets Locke as simply a stepping stone to an historically determined view of human nature, Kennedy’s thought can be seen as quasi-Lockean in several ways.

First, Kennedy prioritizes historical consciousness over constitutional structure. Kennedy obviously understands that his opinion conflicts with Locke’s understanding of the social contract. He begins by half-heartedly arguing that the authors of the 14th Amendment “did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning.” Without bothering to prove this remarkable claim, he then quickly adds, “When new insight reveals discord between the Constitution’s central protections and a received legal stricture, a claim to liberty must be addressed.” The never-ending historical discovery of liberty, as defined by a majority of the Supreme Court justices, should take priority over the “received legal stricture” of the separation of powers.

Second, Kennedy argues that government defines marriage. Locke famously argued that marriage was prior to government. Government was established in order to protect this preexisting association, not in order to create it. Kennedy, to the contrary, approvingly describes Obergefell’s worry that “Ohio can erase his marriage to John Arthur for all time.” If marriage is created by the government, the government can apparently “erase” marriage based on government’s will.

Third, Kennedy presents a radically modern understanding of liberty. He does this in several ways. First, he argues that liberty is only grounded in personal will. Indeed, the right to marry is “inherent in the concept of individual autonomy.” Kennedy approvingly quotes the Massachusetts Supreme Court’s claim that marriage is “among life’s momentous acts of self-definition.” Liberty is found in one’s self-creation, and marriage must
be legally understood to be nothing more than individuals’ willful act of self-definition.

Kennedy also legally relies on the emotional state of same sex individuals. This is really quite remarkable. Kennedy worries that same sex individuals’ rights are undermined because of how they feel about others’ opinions. He worries that the traditional definition of marriage “demeans gays and lesbians . . . impose[s] stigma and injury . . . and serves to disrespect and subordinate them.” Bowers, a previous Supreme Court decision which allowed states to uphold traditional definitions of marriage, “caused them pain and humiliation.”

Perhaps Kennedy’s new understanding of liberty can best be appreciated by noticing his use of the words “duty” and “responsibility.” Kennedy uses “duty” three times. In each case, duty refers to the Supreme Court’s duty to interpret the Constitution. He argues that the Court has a duty to base its decisions on principled reasons, to answer petitioners’ claims, and to protect fundamental rights. He also refers to state officials who are “responsible” for enforcing marriage laws, the judicial “responsibility” to protect fundamental rights, a governmental list of “responsibilities,” and the judicial responsibility to protect fundamental rights. He also (once) refers to the “responsibilities” intertwined with marriage and the petitioners’ desire to obtain the “responsibilities” of marriage.

Kennedy once refers to the responsibilities of marriage, but he notably leaves those responsibilities completely undefined. Kennedy must leave these responsibilities undefined, because describing those responsibilities is part of each individual’s self-definition. Instead of describing marital responsibilities, Kennedy describes governmental responsibilities. The relevant governmental responsibility entails redefining marriage so as to allow for individual self-definition through same-sex marriage. To summarize, Kennedy’s argument best fits with Lawler’s interpretation of Locke. This is not true for the dissenting opinions.

Locke notably makes an appearance in the Obergefell opinions, but not in the majority opinion. Whereas Kennedy did not once refer to Locke, the dissenting opinions refer to him repeatedly in five distinct paragraphs. Chief Justice Roberts (with Justices Scalia and Thomas joining) quotes Locke, “who described marriage as ‘a voluntary compact between man and woman’ centered on ‘its chief end, procreation’ and the ‘nourishment and support’ of children. . . . To those who drafted and ratified the Constitution, this conception of marriage and family ‘was a given: its structure, its stability, roles, and values accepted by all.’”

The other four paragraphs describe Locke’s understanding of the social contract and liberty. Justice Thomas (with Scalia joining) writes sever-
al paragraphs describing Locke’s understanding of natural rights, the state of nature, and the social contract. As Thomas noted, “This philosophy permeated the 18th-century political scene in America. . . . The founding-era idea of civil liberty as natural liberty constrained by human law necessarily involved only those freedoms that existed outside of government.”

This implies negative freedoms, not positive freedoms. As Thomas noticed, Locke argued that the “first society was between man and wife, which gave beginning to that between parents and children.” The right to marriage predates government. This explains why “Petitioners’ misconception of liberty carries over into their discussion of our precedents identifying a right to marry, not one of which has expanded the concept of ‘liberty’ beyond the concept of negative liberty.”

Similarly, “duty” is used once by Justice Alito (Scalia and Thomas joining). Alito stated that if the Constitution granted a right to same-sex marriage, it would be the Court’s duty to enforce that right. Roberts argued that there are few guideposts for “responsible” decision-making in this area of law, and Roberts complained that the majority claims that the courts instead of the people are “responsible” for making new dimensions of freedom. Justice Thomas argued that the members of the court have the “responsibility” to apply a Constitution which “does not speak to the issue of same-sex marriage.”

Much in the dissenting opinions argues that the Court has simply imposed its will and disregarded basic principles of separation of powers. Roberts humorously quoted Kennedy’s speech at Stanford University, where Kennedy warned of the dangers of using the Due Process Clause to enforce all “essential rights.” As Roberts noted, “Neither petitioners nor the majority cites a single case or other legal sources providing any basis for such a constitutional right. None exists, and that is enough to foreclose their claim.”

Roberts also noted that society has used marriage to restrain individual activity, not remove barriers to individual activity. “As one prominent scholar [J. Q. Wilson] put it, ‘Marriage is a socially arranged solution for the problem of getting people to stay together and care for children that the mere desire for children, and the sex that makes children possible, does not solve.’”

Reflecting his Lockean analysis, Roberts noted that this case does not properly fit into the realm of the right to privacy, for it is not about privacy. This case regards a positive entitlement to government recognition, not a negative right to be free from government intrusion. Furthermore, the Court has written its majority opinion so as to almost require the legalization of plural marriages.
Justice Scalia (with Thomas) discussed how the majority ruling undermines basic democratic theory. He also points to the incoherence within Kennedy’s description of marriage. “‘The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality.’ (Really? Who ever thought that intimacy and spirituality [whatever that means] were freedoms? And if intimacy is, one would think Freedom of Intimacy is abridged rather than expanded by marriage. Ask the nearest hippie. Expression, sure enough, is a freedom, but anyone in a long-lasting marriage will attest that that happy state constrains, rather than expands, what one can prudently say.)”

Scalia is, of course, known for his withering asides. Therefore, I must quote what is perhaps the best of his lines. “The Supreme Court of the United States has descended from the disciplined legal reasoning of John Marshall and Joseph Story to the mystical aphorisms of the fortune cookie.”

Justice Thomas’s opinion builds upon his strongly Lockean concern with natural rights. The majority opinion “rejects the idea—captured in our Declaration of Independence—that human dignity is innate and suggests instead that it comes from the Government.” Petitioners mistake government entitlements for natural rights. “As Locke had explained it many years earlier, ‘The first Society was between man and wife, which gave beginning to that between parents and children. . . . (concluding ‘that to the institution of marriage the true origin of society must be traced).’” Thomas suggests that the majority knows that these cases do not relate to liberty, which is why the majority “goes to great lengths to assert that its decision will advance the ‘dignity’ of same-sex couples.” The Constitution does not contain a dignity clause. Roberts, Scalia, and Thomas explicitly rely on Locke. Interestingly, one dissenter did not rely on Locke.

Alito argued that the majority opinion uses a postmodern definition of liberty. Interestingly, Alito did not sign the other dissenting opinions. Perhaps this is because Alito holds Lawler’s interpretation of Locke. This might also explain why his opinion goes beyond Locke, but is not contrary to Locke. The majority’s “understanding of marriage, which focuses almost entirely on the happiness of persons who choose to marry, is shared by many people today, but it is not the traditional one. For millennia, marriage was inextricably linked to the one thing that only an opposite-sex couple can do: procreate.” Of course, Aquinas made this argument long before Locke made it. This might explain why Scalia and Thomas joined Alito’s opinion, but Alito did not join their opinions. Scalia and Thomas could accept Alito’s opinion, but Alito might prefer to rely on Aquinas rather than on Locke.
Alito also noted that the majority opinion seems framed to undermine the right of religious exercise. “I assume that those who cling to old beliefs will be able to whisper their thoughts in the recesses of their homes, but if they repeat those views in public, they will risk being labeled as bigots and treated as such by governments, employers, and schools.”

**LOCKE AND BEYOND**

Lawler’s perspective interprets Locke in light of an historical continuum. Locke’s arguments are primarily viewed as a minimization of the natural-law tradition, and therefore are seen as just a stepping stone towards the historical relativism represented by Hegel. Augustine “described marriage as a natural God-given institution that served the goods of children, fidelity, and sacramental stability.” Locke stripped the legal nature of marriage to include only the first of these. For Locke, marriage is intended to protect children. Lifelong fidelity and sacramental stability are nothing more than values added by the individuals themselves. From this perspective, Kennedy simply eliminates the last remaining item on this list, thereby completing Locke’s turn from traditional sexual morality.

Furthermore, Locke was famously tricky regarding whether marriage needed to be monogamous. If one assumes that polygamy is as good for children as monogamy is, Locke would seem to allow for polygamous marriages. Particularly if one believes that childhood moral education must primarily teach children to avoid absolute moral claims, one could argue that the good of the children will require a positive right to state legitimation of one’s sexual experimentation. As a Seattle activist has argued, the state needs to define marriage in “monogamish” terms that allow for the sexual experimentation which is truly natural to humans.

However, the dissenting opinions crafted by Roberts, Scalia, and Thomas better reflect Locke’s thought, America’s traditional interpretation of Locke’s thought, and America’s traditional understanding of the Constitution. Given the content of the opinions, it is not surprising that these dissenters rather than Kennedy specifically referred to Locke. The dissenting opinions discuss Locke’s understanding of marriage as existing prior to government, marriage as defined by procreation, and government as the result of a social contract for the purpose of protecting natural rights. Also, if one assumes that monogamy is better for childhood development, Locke’s ambiguity regarding monogamy also disappears.

But where will Kennedy’s opinion lead? Peter Lawler has suggested that the modern redefinition of marriage will eventually result in the disappearance of marriage as a legal construct. The Obergefell dissenters argue that a consistent Court will eventually legalize plural marriage. Recent
articles have gone further in arguing that we should allow for the marriage of robots and humans.\textsuperscript{35} It is difficult to see how an individual who defines himself in terms of his love of an artificially intelligent robot could be denied marriage, given Kennedy’s ruling. At that point, it is also difficult to see how the legal institution of marriage is culturally relevant.

More importantly, Kennedy’s ruling will also negatively impact America’s understanding of parental authority. Kennedy’s undermining of political self-government will inevitably undermine parental government. Locke famously wrote regarding parental authority as well as regarding the governmental social contract. Locke believed that paternalistic authority should be replaced with parental authority. He also argued that parents do not rule their children. Instead, parents guide their children until those children are capable of rational thought. This explains why Locke shifts the responsibility for children from the state back to the parents.

“Locke not only appealed to parents rather than to government; he appealed to parents to educate their children at home rather than at schools.”\textsuperscript{36} In 1984 Nathan Tarcov noted that America largely followed Locke’s educational advice. Even for those who used traditional public or private schools, moral education was expected to be taught in the homes and churches.

Locke presented an educational model for parents to follow. Tarcov’s summary description is worth quoting at length:

He may offend our moral taste by seeming to slight imagination, passion, and sexuality in favor of reason, self-expression in favor of self-denial, beauty in favor of utility. Our egalitarian but affluent society seems to yearn for some of the aristocratic ethos Locke had to criticize to make us possible. . . . Locke saw that we have to be willing to deny our desires, face our fears, endure our pains, and take pains in labor in order to preserve our equal liberty and avoid being either tyrants or slaves. Lack of that self-mastery makes us prone to prey on the rights of others and willing to surrender our own. For Locke, passion and imagination make us subject to the authority of others, exploited by their ambition and covetousness.\textsuperscript{37}

Kennedy’s opinion undermines Locke’s argument for parental authority. Locke argues against unlimited paternal power over children and wives. In its place, Locke presents parental authority over children until those children reach the age of reason. With the right of marital sexuality comes the duty of helping your children obtain the ability to make reasonable decisions in their lives. Kennedy’s majority opinion forces us to ask this question: On what basis do parents now exercise authority over their children? Now that Kennedy defines liberty in terms of will rather than
in terms of reason, how do parents exercise rightful authority over their children in contravention of their children’s willful desires? To be more specific, how will Kennedy respond when parents establish familial rules based on their (and Locke’s) understanding of reason? What happens when the parental desire to teach children self-mastery and long-term (reasonable) decision-making contradicts the children’s desire to create their own identity? What happens when a parent refuses a teenager’s request for gender reassignment surgery or greater freedom for sexual experimentation? How does Kennedy not define this as a parental abuse of authority which prohibits the child’s desire for self-definition?

In American society, moral education is increasingly expected to occur in the schools rather than in homes and churches. This, at least partially, explains Kennedy’s use of stigmatizing language. Kennedy intends his opinion to be an educational opinion which explains to Americans what is no longer open to moral debate. Kennedy has historically been a proponent of strong free-speech protections, but this opinion explicitly discourages public discussion of traditional sexual morality.38

America’s public schools have traditionally had a minimal moral-educational component, but Tarcov’s comment above still held true for public schools in his day. Schools of the past typically reflected the moral consensus of the community and most moral education occurred in the home and churches. This is no longer true for increasing numbers of public schools. As R. R. Reno has recently noted, “Parents today receive helpful memos from the local school board informing them that any behavior or statement suggesting less than full affirmation of homosexuality will not be tolerated.”39

As public schools more aggressively promote progressive ethical standards, parents will inevitably find themselves under attack. What happens when parental ethical standards conflict with the school’s ethical standards? This is no longer a purely theoretical question.

Christian families are increasingly relying on parish and home schools to protect their familial moral-educational responsibility. Unfortunately, this is only a short-term solution. The recent attack by accreditation agencies on Gordon College was just a preliminary shot across the bow. Gordon College’s accreditation agency, sponsored by the Department of Education, threatened to remove Gordon’s accreditation unless Gordon removed traditional sexual ethics from its employment standards.40 Gordon College successfully fought back, but it is now clear that accreditation and tax agencies are setting their sights on recalcitrant schools. The Supreme Court is now the postmodern moral educator for the country, and Christian schools and families are already targeted.
Catholics will need to publicly discuss the reasoning behind Christian moral education. This explains the existence of organizations such as the Society of Catholic Social Scientists. In a postmodern world that strives to understand sexual ethics solely in terms of individual will and self-creation, Catholics must explain the natural and divine foundation of human sexuality. “It is not a healthy attitude which would seek ‘to cancel out sexual difference because it no longer knows how to confront it.’”41 There will always be an important place for Aquinas and John Paul II. However, a prudential Catholic response to the progressive assault on traditional ethics should also include appropriating the Lockean principles upon which the Declaration of Independence and Constitution were constructed.

American Catholics must fight for a limited government which, by protecting negative rights, allows Catholic families to pursue the positive freedoms God intended for Christian families. Locke gives Catholic thinkers the tools to explain the importance of negative rights, limited republican government, and separation of powers. The Supreme Court will increasingly seek to establish new positive freedoms which will be intended to supplant the old negative freedoms. Catholics can use Locke to explain these dangers to Americans who may not self-consciously think in purely Thomistic terms.

In an increasingly pluralistic world, Catholics should not expect today’s democratic majority to immediately agree with Catholic moral principles. Catholics can, however, expect a democratic majority to believe in traditional families, parental moral authority, limited government, and republican rule. American Catholics must prudentially use every tool at their disposal. Interpreting Locke in terms closer to natural-law teaching gives Catholics a distinctly American tool for participating in American political conversations. American parents need not be completely Thomistic to appreciate the fundamental importance of parental moral authority and self-rule.

Progressives are consistent in seeking to undermine self-rule in both the political and familial spheres. This is why Locke’s protection of parental moral education from government control is under attack. If Catholics refuse to fight this argument in the public square, they will lose their ability to educate children in the private arena. Locke, properly understood, can help us.

Notes


5. It goes without saying that there is controversy regarding how Strauss understood Locke. Thomas West has argued that Strauss’s extreme argument in Natural Right and History (Chicago: University of Chicago Press, 1971) was rhetorical and that Strauss gives a more nuanced perspective on Locke in other works. See Thomas G. West, “Locke’s Neglected Teaching on Morality and the Family,” Society 50(5) (October 2013): 472–76.


7. Ibid., 251.


15. The workmanship argument states that our duties to God flow from his having created us. See The Second Treatise of Government, chapter 2, section 6.


17. Ibid., 17.

18. Ibid., 18.

19. Ibid., 30.


Obergefell, Locke, and the Changing Definition of Marriage

heart of the dispute over how Locke should be interpreted. Peter Myers has suggested that we should take Locke at his word when Locke writes, “There is no occasion to oppose the ancients and the moderns to one another or to be squeamish on either side. He that wisely conducts his mind in the pursuit of knowledge will gather what lights and get what helps he can from either of them, from whom they are best to be had, without adoring the errors or rejecting the truths which he may find mingled in them.” Peter C. Myers, Our Only Star and Compass: Locke and the Struggle for Political Rationality (Lanham, Md.: Rowman & Littlefield Publishers Inc., 1998), quoting John Locke, Of the Conduct of the Understanding (New York: Teachers’ College, 1966), 24.

26. Ibid., 16.
27. Ibid., 16, 17.
28. Ibid., 17.
29. All parenthetical comments are Scalia’s.
30. Witte, From Sacrament to Contract, 4.
31. Famously, Locke wrote, “He that is already married may marry another woman with his left hand” (Political Writings, 256). However, Locke then deleted this passage.
34. Increasingly, one cannot simply assume such an argument. Christopher Kacecor summarizes some of the arguments against polygamy’s familial results in “The Perils of Polygamy,” http://www.thepublicdiscourse.com/2012/05/5338/, accessed December 18, 2015. This field of sociological research will undoubtedly be a growing field. Locke would obviously be skeptical that the Supreme Court would be better able to apply this research than parents caring for their own children.
37. Ibid., 210, 211.
