As with no-fault divorce, so also with same-sex marriage: the lesson of experience may well be that neither liberty nor equality can long endure when the state hollows out its natural foundation, namely, the lifelong union of a man and a woman.

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*Those advocating the radical social innovation,* which they label “same-sex or gay marriage,” typically claim that they are fighting for freedom, championing a basic liberty. “Freedom to Marry” is indeed the name of a national organization devoted to the advocacy of same-sex marriage. Established in 2003 by civil-rights advocate Evan Wolfson and headquartered in New York City, this group takes “We All Deserve the Freedom to Marry” as its slogan. So effective has it promulgated this perspective that even former First Lady Laura Bush endorsed homosexuals’ right to marry as a matter of basic freedom when she appeared on the Larry King Show in May 2010.

But those who advocate homosexual marriage as a way of enlarging the American sphere of liberty are profoundly—and deceptively—misrepresenting their aims. Their real aim came to light in the public controversy over remarks attributed to Queen Sophia of Spain in criticizing her country’s invention in 2005 of a homosexual right to “marry.” “If those people [homosexuals] want to live together,” commented the Spanish monarch, “dress up as bride and groom and get married they can do so, but that should not be called marriage because it is not.” Widely reported by the media, the furor over these remarks forced representatives...
of the Queen to issue a statement claiming that the published remarks “do not exactly match the opinions expressed by Her Majesty the Queen” and apologizing for the “ill-feeling and upset” her comments had caused. The pressures compelling this semi-retraction and apology prompted one media commentator to ponder the “interesting question” of whether on the issue of homosexual marriage, the Queen still had “the right . . . to express her opinion like any other citizen.”

This commentator had glimpsed the fundamental aim of those advocating homosexual marriage: it is not at all about giving homosexuals a new freedom to participate in ceremonies that they regard as weddings. It is entirely about denying freedom of public speech to anyone who would criticize such ceremonies or the sexual behaviors such ceremonies legitimize. The muzzle that homosexual activists tried (largely successfully) to put on an outspoken monarch represents only the beginning. Homosexual activists in this country deeply desire to place first thousands, and then millions, of even tighter muzzles on all who disagree with them about the nature of homosexual behavior. They well understand that enactment of laws authorizing homosexual marriage will give them sweeping powers to bind those muzzles very tightly on their fellow citizens.

In this environment, attempts to legalize same-sex marriage are not chiefly about enlarging homosexual couples’ freedom: they are free now in every state of the union to say that they are married. They can claim anything they want about their “unions”: they can affirm that those relationships are life affirming and emancipatory; they can even assert that their partnerships are actually superior to natural sexual unions traditionally called marriages. In almost all states, Americans are also still perfectly free to reject such claims and to voice their rejection as forcefully as Queen Sofia did—before being cowed by activists and media commentators wielding Spain’s homosexual-marriage law as a cudgel.

Homosexual activists may plausibly assert that they were advancing the cause of freedom when opposing anti-sodomy laws, even if many Americans view the freedom advanced as morally and even medically problematic. However, when these same activists claim that they are still advancing the cause of freedom in advocating laws that grant same-sex unions the status of marriage, their arguments quickly lose all plausibility. For those trying to enshrine the notion of same-sex “marriage” in law are not primarily trying to enlarge the freedom of homosexuals; they are primarily striving to diminish the freedom of skeptics who would deny that the union of homosexuals is—or can ever be—a legitimate marriage. The aim of those trying to inscribe the novelty of homosexual marriage in law is actually that of making an outlaw out of anyone who would question the moral substance of this new social construct and the sexual behaviors it legitimates.

Americans with little invested in the issue may suppose that their freedom to oppose homosexuality is secure in the wake of the 2011 Supreme Court ruling in *Snyder v. Phelps* that opponents of homosexuality can legally express their views through funeral protests. But the freedom the Court upheld in the *Snyder* case is actually very marginal. It is the freedom of a self-discrediting sideshow, a freedom that matters only to a radical fringe.

More important, but now deeply imperiled, is precisely the kind of freedom that Queen Sophia briefly tried to exercise in publicly resisting the notion of homosexual marriage and the behaviors it represents. This is the freedom of individuals in positions of public trust to voice their opposition to homosexual behavior. It is this freedom that homosexual advocates hope to make disappear through enactment of homosexual marriage. Enshrining this radically innovative construct in law will not so much enlarge the sphere of freedom for homosexuals as it will shrink the sphere of freedom—in the workplace, legislative chamber, classroom, mainstream media, civic and student club, and marketplace—for those who in any way find homosexual behavior wanting.

**Anti-Anti-Homosexual Bullying**

The ex-nihilo creation of homosexual marriage as a legal notion serves, above all, to give coercive power to those Justice Antonin Scalia has identified as “homosexual activists . . . [intent on] eliminating the moral opprobrium that has traditionally attached to homosexual conduct.” The success of these activists, as Scalia notes, has helped foster an “anti-anti-homosexual culture.” Some Americans may wonder how a private sexual

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behavior became the basis for an unassailable public identity guaranteeing coercive state protection from critics. However, those who have created the “anti-anti-homosexual culture” understand well how they can use the notion of homosexual marriage to silence their opponents and to drive them from the public square. With good reason, syndicated columnist John Leo has complained that in recent homosexual activism, “a line is being crossed”: “The traditional civic virtue of tolerance (if gays want to live together, it’s their own business) has been replaced with a new ethic requiring approval and endorsement” (emphasis added).

Homosexual activists know that if they enshrine same-sex relationships in the legal category of marriage, they will find it far easier to impose this new requirement for approval and endorsement on other Americans. As homosexual activists and their allies press this new requirement, Americans who resist the normalizing of homosexuality are seeing their freedom shrink. Indeed, when homosexual activists claim the “freedom” of same-sex couples to marry, we see yet another instance of what cultural historian Robert Nisbet has labeled “the ingenious camouflaging of power with the rhetoric of freedom.”

Americans have seen more than a few instances in which anti-anti-homosexual power has flexed its muscles in suppressing the freedom of those who dare resist their agenda for normalizing homosexual behavior. That power was manifest in March 2011 when homosexual activists successfully pressured Apple to withdraw from its iTunes store an app developed by an evangelical Christian group that works with individuals trying to overcome homosexual impulses. That power was manifest again a month later when the prominent law firm King & Spalding announced that, despite its previous commitment to doing so, it would not defend the constitutionality of the federal Defense of Marriage Act, which acknowledges marriage as the union of a man and a woman. But Americans have perhaps seen homosexuals’ power most often and most nakedly in the one institution that is supposed to provide a free and open forum for all points of view: the university.

A prime case of how the university suppresses any resistance to homosexual behavior is that of University of Illinois professor Ken Howell. Howell was dismissed for informing students enrolled in a class on Modern Catholic Thought that “the Catholic Church holds that homosexual acts are immoral” and further suggesting that homosexual acts violate the natural moral law, though he freely allowed that there are other viewpoints. Though the outcry at the dismissal of this very popular professor ultimately proved sufficient to force the university to reverse itself, the university administration capitulated only reluctantly and without any public acknowledgement that it had violated Howells’ academic freedom.

In other episodes of anti-anti-homosexual zealotry, university officials show no signs of backing off. In 2008, a biology professor at San Jose City College was dismissed for indicating—in answer to a student’s question about how heredity affects sexual orientation—that environment might be a cause of homosexuality. In 2010, Hasting College of Law denied official recognition and funding to the Christian Legal Society as a student organization (the first time it had ever denied a student organization recognition) because the group required officers (not its members) to affirm Christian sexual ethics, including the scriptural proscription against homosexuality. In 2009, a student was expelled from a counseling program at Eastern Michigan State University for refusing to affirm that homosexual behavior is normal and acceptable. In 2005, a student in a counseling program at Missouri State University found that the university had filed a grievance against her for refusing to fulfill a class assignment requiring her to write a letter to the state legislature advocating the legalization of homosexual adoption. And in 2011, a counseling student who dared to voice her opinion in class that homosexual acts are immoral learned that Augusta State University would not let her continue her academic program unless she successfully completed diversity-sensitivity training. The list goes on, with reports of similar anti-anti-homosexual bullying at Washington State University, Georgia Tech University, and the Ohio State University.

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The Academy as Surrogate State Church

Perhaps no one should be surprised that university administrators and professors have increasingly become thought police on the issue of homosexuality. In a 2007 survey of professors at 927 American institutions of higher education, sociologists Neil Gross and Solon Simmons from Harvard and George Mason Universities, respectively, found that liberals dominate the campus world: 44.1 percent of survey respondents characterized themselves as either “liberal” or “very liberal,” compared to only 9.2 percent who described themselves as “conservative” or “very conservative.” Even these numbers fail to fully reflect the “very liberal attitudes toward sex” which pervade the university: the Harvard and George Mason scholars report that about 70 percent [68.7 percent of the professors surveyed] think that homosexuality “is not wrong at all.”

The freedom of students and professors who oppose homosexuality can survive in such an environment only if professors are deeply committed to maintaining a campus neutrality that fosters free exchange of all viewpoints. Unfortunately, when Harvard scholar Louis Menand analyzes the Gross and Solon data, he sees evidence that “neutrality, or disinterestedness,” is declining as a university standard because there is now apparently “less aversion to weighing political views in evaluating merit than would have been the case thirty or forty years ago.” In fact, though not a conservative, Menand concedes that the Gross and Solon study provides “data . . . useful to anyone claiming that colleges and universities discriminate against people with conservative views. ” Menand goes so far as to raise the question of whether “holding liberal views has become a tacit requirement for entry and promotion in the academic profession.”

In an academic world such as this, it is entirely predictable that top university professors of law openly argue—in direct riposte to Scalia’s complaint against judicial endorsement of the homosexual agenda—in favor of measures aimed at “eliminating the moral opprobrium that has traditionally attached to homosexual conduct.”

Only the complete hegemony of anti-anti-homosexual dogma within the university renders comprehensible the blog comment recently posted by Stanford student Gregory Hirshman. Hirshman asserts that in an academic world governed by a “strict, if informal, rule against speaking negatively of homosexuality,” it now requires “more strength and conviction on the Stanford campus to come out as an outspoken conservative than as a homosexual.” The strict enforcement of the academic orthodoxy on homosexuality also harmonizes with critic and former University of Maryland professor George A. Panichas, who reports that in the university world “opponents of liberal ideas are increasingly treated as outlaws.”

Just how much the outlaw status of those who oppose homosexuality on the university campus should matter to the broader American community is clarified by the prominent philosopher Richard Rorty’s assertion, “The university has replaced the church as the center of morality.” This assertion, of course, would strike millions of church-going Americans as patently untrue, even bizarre. However, for the cultural, political, and judicial elite who shape much of national life, it is all too true: the university has become the new surrogate church, laying down the moral imperatives guiding judges, policymakers, executives, and media moguls. The outlaws who oppose homosexuality will find no right of sanctuary in this church. Far otherwise. They will find that that new church regards them not only as outlaws but also as dangerous heretics.

Outlaw-heretics have reason to fear inquisitorial persecution from the priests in the surrogate church, one of whom has candidly admitted that he and his anti-anti-homosexual colleagues are “sometimes self-righteous . . . and sometimes too dismissive or snotty toward those who disagree with us.” At a minimum, outlaw-heretics have reason to fear that the new priests—for all their professed commitment to freedom for all—will

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actually lock them out of the democratic process. It is this real abridgment of political liberties that legal scholar Ronald J. Krotoszynski Jr. has in view in his analysis of how “religious minorities” face discrimination:

To the extent that religious minorities position themselves in opposition to progressive understandings on issues of race, gender and sexual orientation, they increasingly face the prospect of being silenced by government officials who have come to embrace the progressives’ value structure.9

Many of America’s religiously devout citizens would strenuously object to Krotoszynski’s characterization of them as “minorities,” pointing to survey data showing that most Americans profess a belief in Christianity (and the Bible, which condemns homosexual acts as incompatible with a knowledge of God [cf. Rom. 1:18-28]). According to the Pew Forum on Religion and Public Life, 78.4 percent of all adult Americans are Christian, with more than half of adult Americans affiliated with a Protestant denomination and almost one quarter of adult Americans belonging to the Roman Catholic Church.10 Those Americans can also point to election results on ballot initiatives in thirty-one states across the country defining marriage in ways consonant with religious belief, but not in alignment with the progressive homosexual-affirming agenda.

Diminishing Political and Religious Liberty

But the fact that silenced and marginalized church-goers actually constitute a majority only makes the process by which they are denied their full democratic liberties all the more insidious. For those in doubt as to how this process works, California has provided a prime illustration: through a costly and bruising electoral fight, defenders of natural marriage passed a measure (Proposition 8) acknowledging marriage as the union of man and woman—only to have a single unelected federal judge, Vaughan Walker, strike down the voter-approved measure because he, a “now-outed” homosexual, disapproved of the moral and religious impulses of those who championed it! In this fashion, a progressive anti-anti-homosexual elite dramatically diminishes the political liberties of those who wish to affirm an understanding of marriage consistent with reality as affirmed by nature, history, biology, reason, as well as religion. It is this kind of assault on religious liberty that legal scholar Matthew J. Franck has in view when he remarks, “The freedom to participate fully in civic life, to offer oneself to others in civil society, conscientiously on one’s own terms as a religious person professing one’s beliefs, may be jeopardized by this new dispensation.”11

It is precisely that liberty-denying process that elite activists are trying to advance through the legal notion of same-sex marriage. For outlaws, enforcement of the law can mean only punishment—usually loss of freedom. That contraction of freedom is exactly what those advocating same-sex marriage seek: they want to lock those who oppose homosexuality into as small a box as possible. Just how terribly small that box can be is illustrated by the case of the fertility specialist in California who in 2001 declined to artificially inseminate a lesbian, though he referred that woman to a colleague who would perform that service for her. When the doctor, who happened to also be a devout Christian, later lost a discrimination suit filed by the offended lesbian woman, he found no relief upon appeal to the California Supreme Court, which found—unanimously—that this doctor’s religious convictions did not afford him even the very, very minimal freedom of declining to perform a medical procedure that violated his convictions!

The same kind of liberty-abridging legal logic worked against the religious convictions of a New Mexico photographer who in 2006 declined to take pictures of a same-sex couple’s “commitment ceremony” because of her religious objections to homosexuality, only to find herself fined $6000 by the state Human Rights Commission for having discriminated against the couple. Predictably enough, this logic now works to constrain the consciences of chaplains in the new gay-friendly military that Obama and his

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allies have created: credible reports now indicate that military chaplains must "embrace the new openly homosexual military, resign from service, or face court-martial for their 'religious, conscience' objections."\textsuperscript{12} All these assaults on religious liberty have occurred in jurisdictions without the legal innovation of same-sex marriage. That the enactment of same-sex marriage multiplies such assaults is evident in the way that justices of the peace in Massachusetts have been forced to resign if they decline, on moral or religious grounds, to perform homosexual weddings. Similar legal coercion compelled Catholic Social Services to suspend its handling of adoptions in the Bay State because of its refusal to violate its religious principles by placing children with homosexual couples.

This disturbing pattern of hostility to religious freedom should leave little doubt as to the consequences of broader enactment of homosexual marriage: it can only mean fewer freedoms for men and women of religious conviction. "Both freedom and the desire for freedom," Nisbet sagely remarks, "are nourished within the realization of spiritual privacy and among privileges of personal decision."\textsuperscript{13} But it is precisely personal decision—in expression and in conduct—which homosexual activists wish to eradicate, whenever such decisions draw inspiration from religious or moral principles at odds with homosexual emancipation. In this context, Franck warns, "We are in danger of telling many millions of our fellow citizens that they may not act as their conscience guides them in exercising the fundamental right of self government."\textsuperscript{14} As the fertility specialist in California, the photographer in New Mexico, the justices of the peace in Massachusetts could all testify, when anti-anti-homosexual principles triumph, Americans asked to engage in acts that would violate their conscience by implying acceptance or endorsement of homosexual acts cannot even respond with that precious shred of self-preserving liberty that Herman Melville's Bartleby the Scrivener claims with the simple words, "I prefer not to."\textsuperscript{15}

Individual freedom seemed to be uppermost in the minds of the High Court justices who struck down Texas's anti-sodomy law. In justifying their decision, Anthony Kennedy invoked a concern for "the liberty of all," and then elaborated in elevated language: "Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct. The instant case involves liberty of the person both in its spatial and more transcendent dimensions."\textsuperscript{16} But Americans may increasingly wonder why this spatial and transcendent liberty and autonomy of self do not extend to those Americans who want to distance themselves from homosexual acts, to stand apart, as it were, from those who engage in such acts. Why is that autonomy of self, that transcendent dimension of liberty, not protected by law or court proceedings?

**Dubious Claims of Homosexual Activists**

Make no mistake: homosexual activists do, in fact, know that advancing their agenda means reducing the liberty of Americans. They hide that reality behind rhetoric of freedom, just as they hide their exclusion of religious Americans from the public square behind rhetoric of inclusion, and their extirpation of every deviation from the approved attitude toward homosexuality behind the rhetoric of diversity. But at bottom, these activists know that they are denying their fellow Americans a sizable measure of freedom. They justify this denial in two ways, both dubious.

First, advocates of gay rights—including the right to marry—manifest a surprising eagerness to believe a "genetic basis of homosexuality,"\textsuperscript{17} despite clear scientific refutation of the very notion of "a gay gene."\textsuperscript{18} Apparently, homosexual activists follow this line of logic: since genes have made homosexuals "what they are," they are not free to be otherwise. Since homosexuals are not free to be otherwise, the government...


\textsuperscript{13} Nisbet, *The Quest for Community*, p. 220.

\textsuperscript{14} Franck, "Religion, Reason, and Same-Sex Marriage," p. 50.


\textsuperscript{17} Cahn and Carbone, *Red Families v. Blue Families*, pp. 65 and 226, 22n.

is justified in denying liberty of those who would discriminate against them. This surrender to genetic determinism is stunning, especially coming from a segment of the political spectrum known for its resistance to genetic determinism in other contexts, such as those involving questions of racial or gender characteristics. Apparently, homosexual activists do not want anyone to notice that all the arguments that their political allies have made against the decidedly illiberal and dehumanizing logic of genetic determinism in other contexts tell against their reliance upon genetic determinism in advocating restrictions on the liberty of those who would criticize homosexual conduct.

The second justification for restricting the freedoms of those who oppose homosexuality is that of asserting that this freedom has no content except that of hatred and bigotry, or that this freedom amounts to nothing but the equivalent of racism. So those who deny this freedom are not denying a freedom that has any real substance anyway. This line of justification will not bear scrutiny. In the first place, surveys reveal that, as a group, African Americans—who should be the very first to recognize a fundamental kinship between racial bias and resistance to homosexuality—are actually more resistant to homosexuality than are whites, while polling data indicate that African Americans support measures such as California’s Proposition 8 significantly more than whites.

But further weaknesses emerge in the argument that opposition to homosexuality amounts to nothing but bigotry and hatred and that therefore denying Americans the freedom to oppose homosexuality does not constitute a serious infringement of their liberty. The long list of those who have expressed opposition to homosexuality has included some intelligent and gifted individuals. With his brilliant poetic masterpiece The Divine Comedy culminating in a vision of “the Love that moves the Sun and the other stars” (33. 146, Ciardi translation), Dante seems like something other than a hate-filled bigot. Yet he opposed homosexuality, placing homosexuals in the Seventh Circle of the Hell he depicts in his Inferno. As one of the architects of quantum physics, Edwin Schrödinger would seem to be more than a dull conformist. Yet he lamented the increasing ubiquity of homosexuality in higher education. As a brilliant opponent of “all the smelly little orthodoxies” of the twentieth century, George Orwell would not normally be classed as an unthinking exponent of bias. Yet he opposed homosexuality, and as a twenty-first-century critic has remarked, “Orwell's anti-homosexual position (definitely not ‘homophobia,’ which would suggest irrational fear) flowed naturally from beliefs and values about which he was quite forthcoming.”

Surprisingly, even the homosexual poet W. H. Auden—famous both for his insistent honesty and his astonishing prosodic talents—said some very negative things about homosexuality. “I’ve come to the conclusion that it’s wrong to be queer,” Auden said. “In the first place, all homosexual acts are acts of envy. In the second, the more you’re involved with someone, the more trouble arises, and affection shouldn’t result in that. It shows something’s wrong somewhere.” And then there is Stephen Spender, another great twentieth-century British poet who was homosexual as a young man, but who, after renouncing homosexuality went on to marry two women (not at the same time!). Spender said, “I find the actual sex act with women more satisfactory [than the sex act with men] . . . To me it is much more of an experience.”

Opposition to homosexuality took a more intriguing form in the life of the great German novelist Thomas Mann, who felt the pull of erotic impulses (as any reader of Death in Venice will recognize). For religious reasons, Mann chose not to act on those impulses and to live a life of abstinence. As Mann’s biographer explains, for Mann, “Homosexual courtship . . . is from the Devil,” while “His chastity is love for the purity

of God.”

**When Law and Morality Collide**

Americans have every reason to ask what is left of an intellectual freedom that does not include the freedom to examine and to affirm the views expressed by great poets and novelists. They may also wonder about the authenticity of an intellectual freedom that does not allow full and frank discussion of research limning a troubling pattern of co-morbidity linking homosexuality to a wide array of both psychological and physical illnesses. Nor would a genuine intellectual freedom prohibit candid public discussion of the remarkable promiscuity that researchers have documented within the homosexual population.

Of course, for most Americans opposed to homosexuality, the freedom that matters most is not the freedom to endorse the views of Dante or Auden, Orwell or Mann. Nor is it the freedom to probe the latest research in homosexual epidemiology or sexual conduct. The freedom that matters most—and the freedom most imperiled by the legal definition of a homosexual liaison as a marriage—is the freedom to affirm a religiously grounded sexual morality. Religiously committed Americans regard this as a very important freedom indeed. As Franck has explained, “For the religious person who holds a traditional view of sexual morality, the holding of that view is not accidentally related to his religious faith. It is inseparable from it.”

Consequently, it can only gall these Americans when homosexual activists use the law—particularly in the radical redefinition of the marital law—to deny them the freedom to express and to act on their convictions about sexual ethics. No doubt, homosexual activists expect everyone to accept the legal redefinition of marriage they are promoting. But they forget how many Americans recognize a divine law transcending and standing above merely human law. As Aquinas observed, “Human laws are either just or unjust. If they are just, they have the power to bind our conscience because of the eternal law from which they are derived.” But, quoting Augustine’s assertion that “an unjust law does not seem to be a law at all,” Aquinas reasons that unjust laws “do not bind the conscience.” In fact, Aquinas goes so far as to assert that if laws are unjust because they are “opposed to the divine good,” then “such laws must never be observed, because ‘one must obey God rather than men’ (Acts 5:29).”

Even Americans who do not draw their legal philosophy from Aquinas should recognize that when the law sets itself in opposition to the moral convictions held by a great many citizens, it puts those citizens in a difficult and painful circumstance. That circumstance is well described by legal theorist Frederick Bastiat: “When law and morality contradict each other, the citizen has the cruel alternative of either losing his moral sense or losing his respect for the law.” Disrespect for the law may become particularly intense among parents who see the law using tax revenues to pay for “gay-friendly curricular materials” in public schools increasingly hostile to the sexual ethics they want to instill in their children.

Since survey sociologists have recently established that America’s religiously devout citizens are the nation’s most generous, selfless, honest, civic-minded, and community-spirited, the nation’s cultural and legal elite may want to pause before using homosexual marriage as a legal weapon for limiting the religious freedoms of those citizens. Do they really want to undermine respect for the law among tens of millions

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28. Compared to men who do not, men who have sex with men are more than 46 times more likely to contract syphilis, and more than 44 times more likely to contract HIV. “Gay Men Still More Likely to Contract HIV,” *BC Medical Journal* 52.4 (May 2010): web.
of Americans? Do they really want to imbue in Americans who are, by nature, selfless, civic-minded and community-spirited a new feeling of alienation from and resentment toward their government?

Of course, millions of Americans who oppose homosexual acts for religious reasons will not want to simply wait while the elite decide what restrictions to impose on their liberties. They will want to vigorously protest every incursion upon those liberties, and they will want to lend their full support to lawmakers sympathetic to their concerns. Americans with a mature religious faith will understand the need to avoid hateful or spiteful references toward homosexuals. They will indeed recognize that their witness for truth will be most effective when it is expressed with empathy and compassion, including especially a merciful compassion for those who are suffering from AIDS or other diseases often found among homosexuals. But devout Americans can express genuine love for homosexuals without accepting or endorsing their sexual behavior. An authentic faith indeed requires both firm opposition to homosexual acts and unfailing love for those who commit such acts.35

Americans motivated by religious faith will be zealous to protect the liberty to express and to act on that faith. That will mean vigorously opposing same-sex marriage whenever possible. Where such opposition appears—at least in the short run—futile (as in Massachusetts, Iowa, New York, and Washington, D.C.), perhaps it is time for sympathetic lawmakers to start enacting “conscience clause” protections—comparable to those that protect medical professionals from being compelled to perform abortions—for justices of the peace, fertility doctors, wedding caterers and photographers, and others who will find themselves forced to choose between their careers and their convictions. If they cannot prevent the enactment (often by judicial fiat) of same-sex marriage laws, lawmakers should at least be able to give an opt-out to citizens who object to homosexuality for religious reasons. Bartleby would understand.

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