

# Weak Case: A Critical Review of Stacy Johnson’s “Law and Politics” Section in His Book *A Time to Embrace*

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In his 2006 book, *A Time to Embrace: Same-Gender Relationships in Religion, Law, and Politics*,<sup>1</sup> Johnson devotes Part Two to “Law and Politics.”<sup>2</sup> Here Johnson argues for various “gay rights” laws and nothing less than “gay marriage” for “committed same-gender couples.” He devotes two chapters to the subject: “Freedom and Equality under the Law” (ch. 4) and “Toward a Welcoming Democracy: Marriage Equality in the Civil Polity” (ch. 5). There is considerable overlap in argumentation between the two chapters. Basically ch. 4 treats in glowing terms four key court cases that have furthered the homosexualist agenda on principles of “equality” and “liberty.” These cases establish for Johnson that opponents of the homosexualist agenda are governed solely by irrational prejudice. Chapter 5 focuses on the political “backlash” by the reactionary forces of irrationality and prejudice and on how, through “deliberative democracy,” the homosexualist agenda may yet triumph.

Since Johnson is also an attorney one might expect that, having failed to shine in Part One of his book dealing with biblical and theological arguments,<sup>3</sup> Johnson would shine here. One does find here a lawyer’s ability to work with legal resources and a knowledge of court cases. Yet his interaction with views significantly different from his own is thin. Worse still, his legal arguments are surprisingly weak. Nearly every argument that he makes depends on the unfounded assumption that homosexual attraction and behavior are more akin to the benign conditions of race and gender than to other impulse-related, structurally discordant sexual practices such as loving polyamory and incest. Accordingly, before we discuss his “Law and Politics” section, it is necessary to say a few things about related arguments in Part One of his book.

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<sup>1</sup> Grand Rapids: Eerdmans. Johnson is an associate professor of theology at Princeton Theological Seminary.

<sup>2</sup> In length Part Two takes up the last third of the book.

<sup>3</sup> See my published critique of Part I of Johnson’s book: “A Book Not to Be Embraced: A Critical Appraisal of Stacy Johnson’s *A Time to Embrace*,” *Scottish Journal of Theology* 62:1 (Feb. 2009): 61-80 (my original is online at <http://www.robagnon.net/articles/homosexStacyJohnsonSJT2.pdf>); and two additional online critiques: “More Reasons Why Stacy Johnson’s *A Time to Embrace* Should Not Be Embraced: Part II: Sodom, Leviticus, and More on Jesus and Paul” (2008; 19 pgs.; <http://www.robagnon.net/articles/homosexStacyJohnsonMoreReasonsCritique.pdf>); “More Reasons Why Stacy Johnson’s *A Time to Embrace* Should Not Be Embraced: Part III: Science, Nature, History, and Logic” (2008; 16 pgs.; <http://www.robagnon.net/articles/homosexStacyJohnsonMoreReasons3.pdf>).

## I. Johnson's Rejection of Structural Prerequisites for Sexual Relations and Failed Attempt at Dismissing Analogies to Adult Incest and Polyamory

Although Johnson rejects analogies between adult-committed homosexual practice on the one hand and adult-committed incest and polyamory on the other, his own arguments pave the way for such an analogy by eliminating any consideration of prerequisites for sexual intercourse based on formal or structural bodily correspondences.

### *Johnson's truncated "Three C's" in Service of Incest and Polyamory*

A centerpiece of his argument for affirming committed homosexual bonds is his claim that "gay couples are just as capable as straight couples of embracing all three" of the "fundamental realities" that marriage is designed to promote: "companionship, commitment, and community" (110; cf. 111-13, 121-23, 136-37). Johnson obviously likes the repetition of three C's but unfortunately leaves out an essential "C" word: 'complementarity,' understood as formal compatibility or congruence in the embodied structures of the participants. Johnson's main problem lies in treating "companionship, commitment, and community" not only as *necessary* but also as *sufficient* for sexual relationships.

In doing so, he fails to see that faithful polyamorous sexual bonds and faithful adult incestuous bonds would also qualify under his truncated test for the validity of sexual relationships. Indeed, faithful polyamorous bonds provide a greater amount of companionship and bring the community into the covenanted relationship by virtue of a larger number of committed sexual partners, while incestuous bonds tie a double family knot, so to speak, by combining blood ties with sexual union.

Johnson even goes so far as to cite the covenant relationship between Ruth and Naomi as a paradigm for same-sex *sexual* bonds (143-47). What Johnson appears not to realize is that, at the key point of sexual relations, the parameters of what defines covenant loyalty differ as regards a parent-child or brother-sister covenant bond on the one hand and husband-wife covenant bond on the other. The introduction of sexual relations, even of an adult, committed sort into the former is a mark of covenant *disloyalty* (even though no procreative problems could have arisen from any incest between Ruth and Naomi). Homosexual relations similarly violate structural prerequisites for a complementary other. Two men or two women can enter into a covenant bond as siblings (in the case of David and Jonathan; cf. 2 Sam 1:26: "my brother Jonathan") or as parent-child (in the case of Naomi and Ruth) but not as sexual lovers in a covenant bond of marriage. Had Ruth and Naomi chosen a sexual relationship, it would have been a relationship that was adult, loving, committed, and without indication of measurable harm—in other words, the same kind of relationship between persons of the same sex that Johnson states society must accept but, presumably, not even Johnson could accept.

Many other arguments used by Johnson could easily be applied to acceptance of committed, adult polyamory and incest. According to Johnson: "To posit a single 'order [of creation]' that is supposed to hold true for all time ... is at best a quixotic dream" (50-51). "To reduce the relationship ... to the sexual intimacy they may (or may not) be sharing is just as offensive and wrong-headed as declaring that heterosexual marriage is all about sex and nothing else" (63). "[O]ne cannot learn about the meaning of sexuality merely from examining nature" or "merely from examining the sex act" (100). "Sin does

not reside in orientation or behavior per se but in whether one's life is rightly ordered" (108; cf. 101). "God defies our ordinary religious categories" and "acts contrary to what seems natural" to accept those who are "sexually unclean," asking them only to put aside "sexual hedonism" (98-99). "We know that Jesus' way of keeping the law defied convention" (105). One has "the right to marry the person one loves" (182). "Genuine family-values proponents ... should support all families, even those families that are nontraditional" (207)." Johnson complains about my work: "There is no moral distinction Gagnon's work is able to make between a Roman soldier taking his pleasure with a slave boy and two women who pledge to love each other forever as they care and raise a child" (Review, 392; an odd complaint for Johnson to make in view of the fact that he cites Jesus' encounter with the centurion in Mark 8:5-13 par. Luke 7:1-10 as proof of Jesus' support for homosexual unions). By this logic, "there is no moral distinction" that Johnson's "work is able to make between" a polyamorous union or incestuous union that is coercive, on the one hand, and three adults or two adult close-kin "who pledge to love each other forever as they care and raise a [non-biological] child," on the other hand.

It is important to note here that I am not making just a "slippery slope" argument (52), though Johnson is providing both the slope and the grease. The argument that I am making is that *if Johnson finds the acceptance of adult-committed polyamory and incest offensive, he should find adult-committed homosexual bonds even more offensive*. The twoness of the sexes ordained by God at creation was the foundation for Jesus' limitation of the number of persons in a sexual bond to two. The foundation is obviously more important than the structure built on it. Similarly, the prohibition of incest is analogically derived from the more foundational prohibition of same-sex intercourse. Incest involves an attempted sexual merger with someone who is already too much of a formal or structural same on a familial level. The degree of formal or structural sameness is felt even more keenly in the case of homosexual practice, only now on the level of sex or gender, because sex or gender is a more integral component of sexual relations, and more foundationally defines it, than is and does the degree of blood relatedness.

Johnson gives readers very little help in understanding why committed adult incest or polyamory do not deserve to be validated on the same grounds that he is validating homosexual unions. Counting endnotes he gives no more than three paragraphs to the question of incest (all endnotes) and two paragraphs to the question of polygamy (including one endnote).

### ***The Incest Analogy***

According to Johnson an analogy from homosexual practice to adult-consensual, committed incest is allegedly wrong because (1) "incestuous relations involve the taking advantage of the vulnerabilities of a person who is a near relative" (289 n. 69) and (2) lead to "birth defects" (258 n. 107). Neither argument is compelling. The fact that Johnson buries the whole issue in endnotes suggests that he knows his arguments are unconvincing.

The first argument has no relevance for *adult-consensual, committed incestuous bonds*, for example between a man and his mother or a woman and her adult brother. It addresses only relationships with the underage, in which case retaining a strict prohibition of adult-child sex would suffice. There can be as much "vulnerability"

between two unrelated persons who have grown up next door to each other and gone to the same schools as there often is between two blood-related adults. Yet we don't prohibit the former. Perhaps Johnson would have us prohibit childhood sweethearts?

The second argument has no bearing on incestuous couples where at least one of the partners is infertile or where both partners take appropriate birth-control precautions. Would Johnson, for example, care to approve of a committed, monogamous sexual relationship between a man and his widowed or divorced mother when the mother has gone through menopause? In fact, Johnson's argument has no impact on any adult, committed *same-sex* incestuous bonds.

The most that Johnson or anyone can do is point to an increased risk of measurable harm that attends approval of incestuous relationships. He can by no means demonstrate *intrinsic* measurable harm. It is the same with homosexual practice. Although no one can prove intrinsic measurable harm, there are well-documented instances of increased risk for measurable harm, owing in part to the absence of a sexual complement to offset the extremes and deficiencies in a given sex: significantly higher rates of sexual partners in the course of life and of sexually transmitted infections, especially for homosexually active males; and significantly lower rates of relational longevity and thus higher rates of mental health problems, especially for homosexually active females.<sup>4</sup> These two sets of problems accord with basic male-female differences.

What Johnson is unwilling to grapple with, but cannot reasonably escape doing so, is whether there isn't some formal or structural basis for prohibiting incest absolutely that transcends the kind of non-intrinsic arguments that he uses. Obviously Johnson is unwilling to go there inasmuch as such a structural argument would have negative ramifications for his own position on homosexual practice. Yet this is precisely what Leviticus 18 does when it provides as its heading or basic principle for a series of incest laws (18:6-18): “no man shall approach any flesh (אִשָּׁ, *šəēr*) of his flesh (בְּשָׂרוֹ, *běšārō*) to uncover nakedness” (18:6). Close blood relations are already of the same flesh or kin, non-complementary as regards sexual union with a *familial* other.<sup>5</sup> In the case of man-male intercourse, because the woman is the proper complement to a man, the male with whom a man has sex is put in the place of a woman, non-complementary as regards sexual union with a *sexual* other (18:22; 20:13). In both cases, one is having intercourse with someone who is too much of a structural or formal “same,” whether on kinship or gender/sex lines. Johnson partly ignores, partly attempts to circumvent this point that I have made often in my writings.

### ***The Polyamory Analogy***

Johnson fares little better in his attempts to explain why committed polyamory—sexual bonds involving more than two adults concurrently (or “polyfidelity”)—should be rejected categorically while committed homosexual unions should be permitted. Johnson gives three very brief arguments (169-70, 301 n. 51).

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<sup>4</sup> For studies and further explanation, see my work in both *The Bible and Homosexual Practice* (pp. 452-60, 471-85) and especially the online article ‘Immoralism, Homosexual Unhealth, and Scripture: Part II: Science’ (Aug. 2005; 40 pgs.; <http://robagnon.net/articles/homoHeterosexismRespPart2.pdf>).

<sup>5</sup> In-law or affine relations are forbidden by extension.

First, he claims: “Prohibiting polygamy has to do with the definition of marriage, which poses a different kind of legal question than discrimination against individuals because of their identity.”

This is false. If anything, “gay marriage” is an instance of an even greater overhauling of marriage than polygamy. In ancient Israel, men, though never women, were allowed a sexual bond with more than one person of the other sex currently. Same-sex sexual intercourse was never allowed under any circumstances. Jesus treated the twoness of the sexes as foundational for the limitation of sexual unions to two people.

How about “discrimination against individuals because of their identity”? Polysexuality is as much a sexual orientation as homosexuality, to say nothing of pedosexuality. There are many more people in the world who experience intense sexual urges for more than one person than there are people who experience near-exclusive same-sex attractions. (Only slightly facetiously might we designate the former group as all men.) They don’t necessarily want to give up one spouse to marry another. Limiting marriage to two persons concurrently is a discriminatory practice against consenting adults with a polysexual orientation. It is even more discriminatory to bisexual persons who experience strong sexual urges for both sexes and would be happy to enter into an egalitarian “threesome” (or more) where the parties all have sex with each other—in a committed relationship of course.

Second, Johnson claims: “Polygamy is a way of life that does demonstrable harm to women and children.” If by “demonstrable harm” Johnson means *intrinsic* demonstrable harm, then the statement is flatly false. Johnson cites a book that tells the story of *eighteen* women who “escaped” Mormon and “Christian fundamentalist” polygamy (301 n. 51). Eighteen dissatisfied women? Estimates of people in polygamous arrangements in the western United States hover around 20,000-50,000. One can probably get a much larger percentage of “ex-gays” testifying about the harm involved in homosexual relationships. Like many people, I have seen interviewed on television adult women in traditional polygamous relationships who heartily endorse the practice.

For example, a 2007 *Oprah* television show, “Polygamy in America: Lisa Ling Reports,” interviewed persons in both positive and negative polygamist arrangements.<sup>6</sup> It merits extensive quotation in order to counteract the one-sided argument used to reject an analogy between validation of homosexual practice and validation of polygamy. On the positive side,

Valerie considers herself a typical soccer mom—except her husband has two other wives and a total of 22 children in the house. She is her husband’s third wife and has eight children. By sharing her story, Valerie hopes to show a different side of the polygamist lifestyle. “My hope is to change some of those stereotypes, break the stereotypes that people have—that it’s oppressive and abusive to women and children, that we’re all living in these cults and being brainwashed—I don’t live like that. I live in just a little suburban neighborhood and my children go to public school. I feel like we have a very normal lifestyle.” ....

Ali and Vicki, the two other wives in Valerie’s family, stayed at home during *The Oprah Show* taping because Vicki was expecting her seventh baby, bringing the house total to 22 children. Ali is not only the first wife in the family—she is also Valerie’s twin sister.

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<sup>6</sup> Online: <http://www.oprah.com/relationships/Polygamy-in-America> (last retrieved 7/12/10). See also the videos of the show at video.aol.com under “Oprah Winfrey & Lisa Ling interview Mormon Polygamists.”

“We have a really good system where we work together with one another,” Valerie says.

With 22 children to look after, Valerie and the other wives rely on each other for support. “It’s a lot of managing and everything like that. All of our children are in sports or music, and so we get this big calendar and we say, ‘Okay, I’ve got music lessons this day’ and ‘Can you take the kids while I go to soccer this day,’ and it just kind of works.”

Valerie says she considers herself the third wife although she and her husband are not legally married. “I call myself his spouse but legally I am not. That’s just a label I put on myself.”

Although Valerie is open about her plural family, her husband would not appear on camera. “It’s too much of a risk for him,” Valerie says. “Utah law is really absurd, because if a man were to live with another woman besides his wife and then call her a wife and support her children, that’s criminal and they can get zero to five years for that. That’s considered a third-degree felony. But if they choose to have a mistress, then there’s a blind eye or a wink, and that’s really unfair in this society.”

Instead of hiding in fear, Valerie wishes she could live her life openly. “We really hope to see [polygamy] decriminalized. Not necessarily legalized because I don’t think necessarily that it should be for everyone. But I feel like I should have the right to live this way when this is a world of such alternative lifestyles,” Valerie says.

After two weeks of negotiating, Lisa Ling and *The Oprah Show* crew were granted entrance into one of the most exclusive polygamist communities in the country. Centennial Park, Arizona, is home to approximately 1,500 people. [Richard] ... has three wives. Ruth, another Centennial Park resident, takes Lisa on a tour inside a 30,000-square-foot mansion with three levels, three wings and 33 bedrooms....

[Lisa says:] “What’s also interesting about these very large plural families is that everybody contributes. So it’s not like the wives are all home taking care of the family. Some of them may be, but some of them may be contributing to the economy of the family—and the kids as well.”

It is very rare for a polygamist man to speak publicly about his relationships, but Richard, a successful businessman who lives in Centennial Park with his three wives, agrees to let Lisa visit his home because he says he wants to show the world another side to polygamy....

“Love plays a huge role, and it plays a role in each one of my marriages,” Richard says. “I love these ladies.” As far as sleeping arrangements go, Richard says he sleeps in his bedroom and his wives each have their own bedroom. “My options aren’t for gratification of my lusts,” he says. “The activities that we do together as a couple are private and we have those relationships.”

Richard met his first wife, Julena, in high school. Next came Tina, Julena’s sister. And finally Rebecca, Richard’s co-worker joined the family as the third wife. Now, the three women seem to be inseparable. Although they all love the same man, Julena says this doesn’t cause any conflict between them. “We’re fulfilled with other things,” Julena says. “We’re fulfilled with friendship.” They have become so close that if anything were to ever happen to Richard, Julena says that her decision to find a new husband would include Tina and Rebecca as well. “We’d probably stay together,” Julena says.

Rebecca says she thinks the three wives get spoiled more than Richard does. “There are times in our lives where we’re caring about each other so much, sometimes he gets forgotten. Sometimes he has to fend for himself,” she says.

Julena says there was no force involved in her plural marriage. “It’s our choice. We wanted to,” she says. And if it came to the point where they were unhappy and no longer wanted to be in a plural marriage, Julena says, “We would leave”—simple as that.

Richard says there is no force in the decision and his wives are intelligent women who expect Richard to be a good husband and father. “They know very much what they want, and so you’ve got to keep up with that,” he says.

Julena says she does not feel jealous when Richard picks to sleep with another wife instead of her. “I get plenty of time. I get whatever I want. My relationship with him is very special, and I get as much time as I want with him,” she says....

Richard, Tina, Julena and Rebecca all say they feel responsible for how their relationships are managed. “We take care of each other’s needs, it’s not *him* taking care of us,” Julena says. “We’re taking care of each other, the four of us.” ....

“Sometimes one of us can give somebody else a different perspective. It’s almost like a counselor,” Rebecca says. “You have two counselors there all the time, but someone who truly knows what you’re facing, what the situation is every day.” ....

While many people think plural marriage is synonymous with forced marriage, rape and child abuse, Richard says the reason he agreed to speak out—risking prosecution, since polygamy is illegal—is to open a dialogue. “This is a big step for people to look in and say, ‘You know what? Yes, [plural marriage] may not be my personal choice, but it is a choice,’” Richard says.

Richard says the goal he shares with his wives is to raise children with opportunities and values. They will not, he says, force them to have plural families of their own. “We are for choice, for what people want to do when it does not harm other people,” he says. “We hold our children and the raising of our children and our family very sacred.”

On the negative side, the show visited the polygamist community in Colorado City, Arizona, that had led by Warren Jeffs and still exists. Jeffs, leader of the Fundamentalist Church of Jesus Christ of Latter Day Saints (FLDS) was convicted in 2007 of being an accomplice to sex with a minor for arranging polygamist marriages for girls as young as 14. The show interviewed Carolyn Jessop who, at age 18, had been forced to enter a polygamous union with a 50-year-old FLDS leader. After bearing eight children, she escaped with her children from Colorado City. The show highlighted the contrast between the positive adult-consensual polygamist community in Centennial Park and the negative minor-forced one in Colorado City.

Carolyn says the polygamist community that she was in was very isolated—there was no television, Internet, radios or newspapers. “Warren Jeffs locked this community down,” she says. “They imposed, essentially, a morality police force that would rat on women if they weren’t adhering to the proper dress code and have their hair a certain way.”

Lisa says she observed stark differences between the two polygamist communities of Colorado City and Centennial Park. “Many of the people from Centennial Park are actually from Colorado City,” she says. “But when the FLDS evolved, the folks from Centennial Park broke off. And they’re actually a much more moderate and liberal people.”

While Centennial Park seemed like an open community, Lisa says Colorado City felt

very different. “We knew that we were being watched, obviously,” she says. “People’s houses had mirrored windows so people inside could see out, but you couldn’t see in. It was just so surreal that this exists in the United States.” . . . . Meanwhile in Centennial Park, Lisa says, “Richard has five flat screens in his house.”

Interestingly, despite her negative experience, Carolyn doesn’t recommend that law enforcement crack down on polygamy. Rather,

Carolyn says she thinks the best way to reduce the negative effects of polygamy is through decriminalizing it, because legalizing would be nearly impossible. “You’d have to rewrite every law that pertains to marriage, and there’s no way to do that without jeopardizing traditional marriage,” she says. “If there was a way to decriminalize it, people could live honestly and in the open and with dignity and their children could be more mainstreamed. Then the children would have more options.”

The arguments sound surprisingly familiar to those used to support decriminalization of homosexual practice. Lisa Ling interviewed some late-adolescent children in polygamist families. Ling asked: “What would you say is the biggest misconception about people who live in polygamous families?” One young man states: “That it is forced upon us. That’s not how it is at all. We all have a choice. We know what we are doing.” Ling then asked: “Do you ‘guys’ feel very persecuted for what you believe?” Another young man answers: “Yeah. I played high school basketball. Every time we went to another school we were always being called... ‘stupid retards.’ It was a lot worse than that but I don’t want to say it because this is on camera. I’ve gotten use to it.”

Oprah Winfrey, whose show has enormous cultural influence in America, concluded:

The best part of doing this job ... [is that] I come in with one idea and then I leave a little more open about the whole idea. And what I realize ... is that in every situation there are people who give things a bad name. There are difficulties and then there are people who handle those difficulties differently.... I thought Val and other women had something to say about choice, which is an interesting concept in the United States of America.

Give America more exposure to adult-committed polygamous bonds and America will learn to be more tolerant of such bonds, as Oprah has. Johnson and those like him who dismiss a polygamy analogy on the grounds that polygamy always produces “demonstrable harm” are simply responding out of their “polyphobia.”

I have no doubt that a higher risk of measurable harm is associated with adult-committed polygamy than with adult-committed monogamy. Nevertheless, this harm is far from intrinsic. Indeed, the harm associated with traditional heterosexual polygamy, both today and historically, is probably considerably less than the harm associated with homosexual practice: a lower rate of STIs and, ironically, fewer numbers of sex partners lifetime than male homosexuality; and longer-lasting relationships on average and fewer substance-abuse issues than female and male homosexuality. Johnson is extraordinarily gullible about the harm associated with homosexual practice while being hypercritical of the harm associated with polygamy.

Johnson contends: “No such similar harm has been demonstrated regarding relationships between gays.” This statement is false unless one wants to place all the stress on “similar.” Homosexual unions produce *different* kinds of disproportionate rates of measurable harm than polygamy. The harm associated with the latter tends to arise



from non-intrinsic corollaries such as polygamous bonds with young teens or overly heavy-handed authority-submission roles. Heterosexual women on average also experience more psychic discomfort from sharing a lover with others than do men in male homosexual relationships. Still the phenomenon is not so intense as to keep tens of thousands of women out of polygamous arrangements. If polyamorous bonds could receive the same kind of support from the media that homosexual bonds are now getting, there would doubtless be many more participants singing its praises.

Third, Johnson claims: “The right to marry the person you love is not the same as the right to marry as many persons as you love.” Well, everything is different at some level. One could just as well make the distinction that the right to marry a person of the other sex, who complements one’s sexuality, is not the same as the right to marry a person of the same sex, who is not one’s sexual complement. To override the former example while affirming the latter is arbitrary. One example makes a stand on a distinction in sexual complements, the other makes a stand on a distinction in number. Once someone like Johnson has eliminated arguments based on structural or embodied correspondences, there is no legitimate basis for ruling out absolutely all other rights where intrinsic harm cannot be demonstrated and especially where orientation is involved. The basic principle that a person has a right to marry consistent with one’s “orientation” is just as much applicable to a polysexually oriented person who wants to enter a multiple-partner heterosexual union as it is to a homosexually oriented person who wants to enter a single-partner homosexual bond. In fact, there is much more of a right since a heterosexual polygamous act does not have quite the same degree of unnaturalness as a homosexual bond, as has been generally recognized throughout history by most cultures.

Furthermore, as already shown, Jesus predicated his argument about marital “twoness” on the twoness of the sexes, male and female. If sexual dimorphism is no longer foundational, then there is no scriptural, logical, or nature-based reason by which one would proscribe all polyamorous unions. Why limit the arrangement to two persons if the self-contained wholeness of uniting the two primary sexes into one is no longer valued? At that point opposition to committed multiple-partner unions amounts to nothing less than residual prejudice. If someone argues that one cannot love more than one other person fully, the response is simple: What parent who has more than one child loves each individual child less? Or what person who has more than one sibling loves each sibling any less because of the increase beyond one? Or what child who has two parents living at home loves each parent less because there are two? People are capable of loving intensely and fully more than one person at the same time. There is no legitimate basis for restricting the right to marry whomever one loves to one person unless one comes to the realization that sexual love, unlike non-erotic love, must conform to certain criteria regarding structural complementarity; here, namely, that the limitation of a sexual bond to two persons naturally arises from the existence of two primary sexes.

Johnson hints at a monetary basis for declining marriage to multiple-partner sexual bonds, claiming that “there is a strong governmental interest in limiting [marital] benefits to one significant other and not more.” However, civil recognition of polygamy is not likely to increase the total number of persons receiving marital benefits. It will simply reconfigure the marital arrangements. Indeed, it might even result in fewer people being married. Every person who enters a polygamous bond will reduce the total pool of potential mates for persons inclined toward monogamy. Arguably, granting marital

benefits to homosexual relationships is more likely to increase total government expenditures than granting the same benefits to polysexual relationships.

Lest anyone get the notion that societal endorsement of polyamory and ultimately adult incest can never happen, it is important to bear in mind the inroads that have already been made in a very short time since the homosexualist agenda has taken hold. Many important groups and figures in homosexualist circles have entertained the idea of supporting faithful polyamorous unions, including: the Gay Men Issues in Religion group at the American Academy of Religion; Marvin Ellison, a homosexual PCUSA professor of Christian ethics at Bangor Theological Seminary; William Countryman, a homosexual Episcopal professor of New Testament at The Church Divinity School of the Pacific; presentations at the General Conference of the Metropolitan Community Churches; cohabitation contracts for multiple-partner bonds in the Netherlands; Unitarian Universalists for Polyamory Awareness, endorsed by the President of one of UU's two seminaries; Elizabeth Emens, a University of Chicago Law School professor; sympathetic treatments of polyamory in the *New York Times*, the *New York Post*, *Baltimore Sun*, *Newsweek*, and *USA Today*; television broadcast series such as *Three of Hearts* (Bravo) and *Big Love* (HBO).<sup>7</sup>

The case for state-endorsed polyamory is much further along than the case for adult incest—hey, one “breakthrough” at a time. Yet decriminalization of incest—the first step toward civil ceremonies—is already being widely debated, as *Time* magazine did in its Apr. 5, 2007 article, “Should Incest Be Legal?”<sup>8</sup> or the *Boston Globe* in a May 2, 2007 piece, “Lawful incest may be on its way,” which reports on decriminalization efforts in Europe.<sup>9</sup>

As Charles Krauthammer has written in the *Washington Post* about polygamy, “don’t tell me that we can make one radical change in the one-man, one-woman rule and not be open to the claim of others that their reformation be given equal respect.”<sup>10</sup>

### ***Why the Analogies to Women and Ethnic Minorities Don’t Work***

Johnson states: “Gagnon gives us no persuasive reason why we should break with tradition and ordain women but at the same time genuflect to tradition in being anti-gay” (294 n. 107; I prefer “anti-homosex” or “pro-complementarian” to “anti-gay”). Johnson simply omits telling readers the main arguments that I raise briefly in *The Bible and Homosexual Practice* (443) but expand on significantly elsewhere.<sup>11</sup> Simply put, affirmation of homosexual practice represents a radical break with Scripture whereas the ordination of women merely carries further a process already begun in Scripture. Already in the OT and especially in the NT there are a number of women-affirming texts.<sup>12</sup> We

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<sup>7</sup> Cf. my “Why the Disagreement over the Biblical Witness on Homosexual Practice? A Response to Myers and Scanzoni, *What God Has Joined Together?*” *Reformed Review* 59 (2005): 19-130, here 36-39, 42-44 (online: <http://www.westernsem.edu/wtseminary/assets/Gagnon%20Aut05.pdf>).

<sup>8</sup> Online: <http://www.time.com/time/nation/article/0,8599,1607322,00.html>.

<sup>9</sup> Online: [http://www.boston.com/news/globe/editorial\\_opinion/oped/articles/2007/05/02/lawful\\_incest\\_may\\_be\\_on\\_its\\_way/](http://www.boston.com/news/globe/editorial_opinion/oped/articles/2007/05/02/lawful_incest_may_be_on_its_way/).

<sup>10</sup> “Pandora and Polygamy,” Mar. 17, 2006 (p. A19; online: <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/16/AR2006031601312.html>).

<sup>11</sup> Cf. *Homosexuality and the Bible*, 46 with online “Notes,” 2-3; “Why the Disagreement,” 81-82, 93-94.

<sup>12</sup> Already in the OT there are a number of women-affirming texts. Genesis 1:26-28 stresses male-female compatibility, not male dominance, and Gen 3:16 relegates a husband’s rule over his wife to the Fall, not to

see nothing like this kind of openness in Scripture's stance toward homosexual practice; indeed, we see the opposite. Moreover, while OT writers and NT writers were generally *more* affirming of women than was the norm for the ancient Near East and Greco-Roman world, respectively, they were much *less* accommodating to homosexual practice (an argument based on a countercultural trajectory).<sup>13</sup> Finally, the attempt to equate sex or gender with a homosexual impulse seriously confuses categories. Being a woman, unlike a homosexual impulse, is 100% congenitally determined and essentially immutable.<sup>14</sup> Moreover, it is not a direct or primary desire for behavior that is incompatible with embodied structures and strongly prohibited in Scripture. Homosexual desire is.<sup>15</sup> Scripture rightly views sex or gender as closer to the condition of ethnicity than to persistent sexual desires (so Gal 3:28).

As regards ethnicity, my parents, both of full French (Canadian) ancestry joined together and, voilà, gave birth to six children, all of whom without exception were of full French (Canadian) ancestry.<sup>16</sup> Since my wife has no known French ancestry but is rather about 60% African (Jamaican) descent, a quarter Chinese, and a smattering of English and Irish, our children were, not surprisingly, a proportionate mixture of our respective ancestries (a veritable United Nations, I might add). That is how ethnicity works 100% of the time: it is transmitted entirely on a fixed congenital basis. The development of homosexuality, like the development of pedosexuality—a minority, impulse-related condition for discordant bodily attraction bearing some developmental similarities (and

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pre-Fall structures. Significant women figures surface, including Miriam, Tamar, Rahab, prophetess/judge Deborah, Jael, Ruth, the prophetess Huldah, and Esther. There are no positive figures engaging in same-sex intercourse. Occasionally an inequitable old law is revised to provide greater parity between men and women (cf. Exod 21:2-11 with Deut 15:12-18). Not a single law or moral exhortation anywhere in the Bible accommodates in the slightest to homosexual bonds. Whereas feminine metaphors are occasionally applied to Yahweh's actions toward his people (e.g., Num 11:12; Deut 32:11, 18; Ps 22:9-10; Isa 42:14; 49:14-15; 66:13), the relationship between God and his people is *never* imaged in Scripture as a same-sex union. Israel and the church are always portrayed as a woman despite the dissonance of such an image for a more or less androcentric society. The reason for this is Israel's abhorrence of same-sex sexual unions.

This affirmation of women is expanded in the New Testament. Jesus' ministry to women and affirmation of women as disciples or 'learners' (Luke 10:38-42) are well known. Less well known is the fact is that Jesus declared the taking of another wife to be an act of adultery, not just against another man but against his own first wife (i.e., fidelity in marriage as a two-way street; Mark 10:11). Paul also did much to undermine conventional, subordinate roles for women: laboring alongside numerous women co-workers (cf. Rom 16; Phil 4:2-3); insisting on the mutuality of conjugal rights (1 Cor 7:3-4); and affirming women's prophetic roles, but in such a way that women did not need to lose their femaleness in order to be spiritual beings (1 Cor 11:3-16). Even as he interpreted Gen 2-3 as establishing male headship, he could still add a "nevertheless" of interdependence (1 Cor 11:11-12).

<sup>13</sup> Johnson elsewhere belittles an appeal to a countercultural thrust despite using such an argument himself when it suits his purposes (289 n. 74). He misses the point, which is not to assert that revelation is "*always* being at odds with culture" but rather that, when a stance is at odds, there is much less likelihood that Scripture's authors were unthinkingly imbibing from the cultural well and much greater likelihood that they thought hard and felt strongly about the position. In short, we are more likely to have a core value.

<sup>14</sup> Even the Kinsey Institute has acknowledged that nine out of ten persons who have experienced same-sex attractions have experienced at least one shift on the Kinsey spectrum from 0 to 6 during their life; six out of ten experienced two or more shifts (see information in *The Bible and Homosexual Practice*, 419-20). There is nothing corresponding to this kind of fluctuation in the case of being a woman.

<sup>15</sup> Cf. my online article, "Jack Rogers's Flawed Use of Analogical Reasoning in *Jesus, the Bible, and Homosexuality*" (Nov. 2006; 12 pgs.; online: <http://robgagnon.net/articles/RogersUseAnalogies.pdf>).

<sup>16</sup> Both my maternal grandparents and my paternal great-grandparents were born in Quebec. Both my parents were born and raised in the United States.

differences) to homosexual development—does not operate in humans along the lines of such a congenitally deterministic model, whatever congenital influences may exist.<sup>17</sup>

## II. Johnson on “Freedom and Equality under the Law”

Johnson devotes his fourth chapter on “Freedom and Equality under the Law” (159-90, notes 295-310) to a discussion of four court cases: (1) the 1996 U.S. Supreme Court anti-“sexual orientation” case of *Romer v. Evans* (161-73); (2) the 2003 U.S. Supreme Court “sodomy” case of *Lawrence v. Texas* (173-77); (3) the 1999 Vermont Supreme Court “homosexual civil unions” case of *Baker v. State of Vermont* (178-82); and (4) the 2003 Massachusetts Supreme Court “gay marriage” case of *Goodridge v. Dept. of Public Health* (182-88). Johnson’s basic argument—though more a constantly repeated contention rather than a demonstrated argument—is that the debate over “gay rights” is a debate between rationality (Johnson’s position) and irrational, animus-based prejudice (everyone who disagrees with Johnson).

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<sup>17</sup> Here I am not arguing that homosexuality and pedosexuality are equally immoral but only comparing them at the level of orientation development. See my comments on pp. 5-7 in “Bearing False Witness: Balch’s Effort at Demonization and His Truncated Gospel” (2004; 23 pgs.; online: <http://robgagnon.net/articles/homoBalchFalseWitness.pdf>); also pp. 16-34 of my discussion of pedophilia and homosexuality in “Immoralism, Homosexual Unhealth, and Scripture: Part II: Science” (2005, 40 pgs.; online: <http://robgagnon.net/articles/homoHeterosexismRespPart2.pdf>).

In the latter I note that a study done by the renowned researcher of pedophiles, Kurt Freund, acknowledged that the “proportion of true pedophiles among persons with a homosexual erotic development is greater than that in persons who develop heterosexually”; otherwise stated, “a homosexual development notably often does not result in androphilia [sex between adult males] but in homosexual pedophilia” (“The proportions of heterosexual and homosexual pedophiles among sex offenders against children: an exploratory study,” *Journal of Sex and Marital Therapy* 18 [1992]: 34-43, quotes from the abstract and from p. 41 respectively). Similarly, R. Blanchard (et al.) has stated: “The best epidemiological evidence indicates that only 2 to 4 percent of men attracted to adults prefer men...; in contrast, around 25 to 40 percent of men attracted to children prefer boys.... Thus, the rate of homosexual attraction is 6 to 20 times higher among pedophiles” (“Fraternal Birth Order and Sexual Orientation in Pedophiles,” *Archives of Sexual Behavior* 29 [2000]: 464).

A 1987 study on “Feminine gender identity and physical aggressiveness in heterosexual and homosexual pedophiles” by Freund and Blanchard found that “male homosexuals in general” (i.e., those preferring prepubescent, pubescent, or adult sexual partners) “tend to be unaggressive in boyhood,” in contrast to male heterosexuals in general (*Journal of Sex and Marital Therapy* 13 [1987]: 25-34). A 2000 study of “Fraternal birth order and sexual orientation in pedophiles” by R. Blanchard et al. found that “fraternal birth order correlates with homosexuality in pedophiles, just as it does in men attracted to physically mature partners.... Results also argue against a previous explanation of the high prevalence of homosexuality in pedophiles (25% in this study), namely, that the factors that determine sexual preference in pedophiles are different from those that determine sexual preference in men attracted to adults” (*Archives of Sexual Behavior* 29: 463-78, here cited from the abstract). This study lent support for the conclusion of a 1998 study by R. Blanchard and A. F. Bogaert; namely, that “homosexuality in men attracted to immature males is etiologically related to homosexuality in men attracted to mature males” (“Birth order in homosexual versus heterosexual sex offenders against children, pubescents, and adults,” *Archives of Sexual Behavior* 27: 595-603; see also: Bogaert, Blanchard, et al., “Pedophilia, sexual orientation, and birth order,” *Journal of Abnormal Psychology* 106 [1997]: 331-5). Although there are some developmental differences between pedophilic homosexuals and teleiophilic homosexuals, significant continuity exists that justifies seeing a spectrum of developing homoerotic possibilities rather than a sharp line separating two polar extremes.

## 1. *Romer v. Evans*<sup>18</sup>

Johnson gives significant attention to the 1996 U.S. Supreme Court decision *Romer v. Evans* (161-73). This decision, by a 6-3 vote, overturned Colorado's 1992 Amendment 2, which had forbidden "any minority status, quota preferences, protected status or claim of discrimination" that was "based on homosexual, lesbian, or bisexual orientation." The citizens of Colorado had passed the amendment by a vote of 53.4% to 46.6%. (Johnson mistakenly records it as 54.6% to 47.4% [163], which adds up to 102%.)

Echoing Justice Kennedy's opinion, Johnson makes several bad arguments.

First, he makes the histrionic contention that had Colorado's Amendment 2 "been allowed to stand, ... then gays, lesbians, and their supporters would have been effectively barred even from advocating antidiscrimination legislation" (164). Yet nothing in the wording of Amendment 2 precludes *advocacy* of the homosexualist agenda. Obviously, the state legislature cannot pass legislation that conflicts with the state constitution. Yet there is always a legal process for overturning an amendment.

Second, Johnson contends falsely that "singling out one group for special legal disfavor is a violation of our deepest constitutional principles" (165). "Majorities are not entitled to turn a particular group of people into a pariah" (169). Johnson's description is inaccurate. The amendment did not so much "single out for special legal *disfavor*" homosexual orientation as prohibit any attempt to single out homosexual orientation for special legal *favor*, including attempts at granting "protected minority status," "quota preferences," and complete immunity from social fallout for engaging in what society perceives as grossly immoral conduct.<sup>19</sup>

In addition, Johnson knows that many other "groups," even by Johnson's own definition, are "*singled out* for legal disfavor," which (since there is more than one group) in effect means that none are "singled out." There are many formal or structural requirements for sexual unions—no sexual relations with near kin (even adult kin, no matter the degree of commitment or precautions against progeny), two and only two parties in a sexual bond at any one time (again, irrespective of commitment, an absence of intrinsic demonstrable harm, or the orientation of the participants), minimal age requirements (well into adolescence, irrespective of how emotionally and intellectually mature the child may be), and no sexual relations with animals (no matter how intelligent the animal).<sup>20</sup> It is thus absurd to argue that denying special protections to persons who engage in homosexual practice is "singling out one group."

Third, Johnson also claims that the U.S. Supreme Court's actions in striking down Colorado's Amendment 2, was "not squelching democracy" but protecting "the rights of

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<sup>18</sup> 517 U.S. 620 (1996).

<sup>19</sup> It is this last element that suggested to the Court (wrongly, I might add) *animus* (animosity) against homosexual persons, even though both the intention and function of Amendment 2 were directed at homosexual *practice* as *immoral*. If Colorado's Amendment 2 was evidence of *animus* against a group, then so is the Court's upholding of laws against polygamists. At any rate, as Johnson acknowledges sheepishly in an endnote, the Court later refused to hear a case against an amendment to the Cincinnati charter that forbade "minority or protected status" or "quota preference" based on sexual orientation, tacitly acknowledging that these phrases, nearly identical to those in the Colorado amendment, have to do with denying special legal *favor*, not affirming special legal disfavor (297 n. 24).

<sup>20</sup> Obviously pedophilia and bestiality are worse than homosexual practice. I cite them here simply to point out that participants in homosexual practice are not being "singled out." Adult-committed polyamory and incest, on the other hand, are arguably not as bad as homosexual practice inasmuch as they are not as severe a violation of natural/embodied complementarity.

minorities” and “assuring that the democratic process operates by rules that are fair” (165). However, the Court’s actions are entirely premised on the false assumption that homosexual attractions are more akin to the benign, 100% inheritable, absolutely culturally-immutable conditions of race and sex than to other non-benign, impulse-related condition of polysexuality (and pedosexuality) and to the structurally incongruous union of familial sames (incest).

Who told six of the justices this? What document fell from the sky and declared to them that maintenance of a male-female prerequisite for sexual bonds was akin to racism and sexism? Certainly the Judeo-Christian Scriptures, studied in their historical context, do not support such a view. Certainly none of the framers of the Constitution would have agreed that the Constitution supports such a view, nor any of the Constitution’s amenders up through the 1970s. Certainly there is no scientific evidence today that proves that homosexual orientation and behavior is closer to the 100% congenitally determined, benign conditions of race and sex than to various other structurally noncomplementary sexual attractions. Even Johnson has had to admit that “in no way do we have evidence that [biological] factors play the *only* role” in homosexual development, for “there are also developmental and psychological processes in early childhood, as well as culturally bound determinants throughout life, that contribute to the way each individual experiences sexual orientation” (27). So in making the determination that homosexuality is more like race and sex rather than like polysexuality and adult-committed incest—a determination that the justices of the U.S. Supreme Court were not competent to make—the justices short-circuited the democratic process.

Fourth, Johnson’s comparison with “the old South’s Jim Crow laws that implemented racial segregation” (166; cf. 182, 188) is thoroughly misplaced. (1) Persons who act out of homosexual attractions have had neither their right to vote abridged nor the historical experience of centuries of enslavement in America. (2) Homosexually active persons do not experience today anything like the degree of job discrimination experienced historically by African Americans. (3) Most importantly, though the rubric “sexual orientation” is used in legal documents, for all intents and purposes the legal issue is practice, not identity (contra Johnson, 170, 172, 188).<sup>21</sup> Homosexuality is not a visible, benign condition like being a person of African descent. Homosexual desire is an impulse to *do* something. Its existence is unknown to the public unless someone acts on it or at least declares its existence. The latter does not incur societal repugnance unless an individual affirms these impulses and declares an intention to act upon them. In effect, the whole *legal* category of “sexual orientation” is a false one. It is not the case that “gay people” are being “targeted” “for exclusion from participation in the civil polity simply

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<sup>21</sup> An example of how “sexual orientation” has become a cipher for “homosexual behavior” appeared in the news on the very day that I was writing this paragraph (of course, many other examples could be cited). On Apr. 1, the European Court of Justice, the highest court in the European Union, ruled in contravention of German law “that a refusal to grant a survivor’s pension to registered homosexual partners constitutes direct discrimination on grounds of sexual orientation” (“Highest European Court Mandates Survivor Pension Benefits to ‘Gay’ Partnerships,” LifeSiteNews.com, Apr. 2, 2008, <http://www.lifesitenews.com/ldn/2008/apr/08040108.html>). The male German plaintiff had not been denied a financial payout of his dead (male) civil partner’s pension on the grounds that he experienced same-sex attractions, for he could have experienced same-sex attractions and received survivor benefits if his deceased partner had been a wife. Rather, the denial was grounded on the fact that homosexual activity does not constitute a marriage.

because they are gay” (188). It is rather that homosexual behavior, like polyamorous or incestuous behavior of even an adult-committed sort, is being treated as structurally incongruous and dishonoring behavior that society continues to treat as immoral. Legal issues arise from engaging in homosexual practice, not from the mere experience of an impulse.<sup>22</sup> By way of contrast, being black is not in the first instance an impulse to do something that is immoral. It is not a willing participation in sexual acts that both are structurally discordant and implode any rational basis for denying government recognition and subsidy of adult-committed incestuous or polyamorous unions.

Fifth and finally, Johnson’s contention that laws such as Amendment 2 “are motivated only by irrational prejudice” is itself an irrational and prejudicial claim (167-68). As we show in Appendix 3, societal disapproval of homosexual practice is more rational than societal disapproval of adult-committed polyamory and even adult-committed incest. For the principles that lead to the disapproval of the latter two offenses are based on the rationale for a male-female prerequisite, or at least can be absolutely maintained only on such a basis. Johnson’s discrimination against persons who want to be in a sexual union of more than two persons or in a sexual union involving close kin (adults, of course) is far more “irrational and prejudicial,” given the principles by which he normalizes homosexual practice (“companionship, commitment, and community”; see sec. I above).

## 2. *Lawrence v. Texas*<sup>23</sup>

Johnson’s handling of the 2003 U.S. Supreme Court case *Lawrence v. Texas* fares as badly as his handling of the *Romer* case. In *Lawrence* the Court struck down, by a 6-3 vote, all laws that prohibit homosexual intercourse between consenting adults, thus overturning their 17-year-old verdict in *Bowers v. Hardwick*.<sup>24</sup>

According to Johnson, “the majority opinion made it clear that the ruling in *Lawrence* only applies [*sic*] to the liberty interests of consenting adults.”<sup>25</sup> It does not sweep away all so-called ‘morals legislation’” (176). He then quotes from the majority’s decision that “the present case does not involve minors.... persons who might be ... coerced.... [or] public conduct or prostitution.” One should note that the list here does not include adult-consensual incest or polyamory. It is easy to see why the Court did not address these examples. Johnson proudly cites the Court’s judgment: “The issue is whether the majority may use the power of the State to enforce [their moral] views on the whole society through operation of the criminal law” (173). However, the Court had no answer (nor Johnson any good answer) as to why the majority *may* use such power in the cases of adult-consensual incest and polyamory but not in the specific case of adult-consensual homosexual practice. Agreeing with the Court, Johnson contends: “The right of liberty is broad enough that ... it should certainly include one’s choice of a sexual partner, so long as both parties are consenting adults” (174-75). By that reasoning, then, adult-consensual

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<sup>22</sup> Arguments that it is wrong to discriminate against people because of their homosexual or bisexual orientation are always, in a functional sense, claims about sexual *behaviors*. If a person in management were denied promotion because he was known to be in a sexual relationship with a person of the same sex (or with a close blood relation, or with two other persons at the same time), Johnson would undoubtedly be the first to argue that this counted as discrimination against the person’s “sexual orientation.” In this he tacitly acknowledges that “sexual orientation” laws really are about sexual behaviors.

<sup>23</sup> 539 U.S. 558, 579.

<sup>24</sup> 478 U.S. 186 (1986).

<sup>25</sup> Grammatically speaking, the “only” should precede “of consenting adults.”

incest and polyamory (to say nothing of prostitution) must also be permitted under this “right of liberty.”

Like the value of anti-polygamy laws,<sup>26</sup> the value of “sodomy” laws as applied to same-sex sexual activity was not in prosecuting persons engaged in homosexual practice, for such laws have rarely been enforced. If the sexual act is done in the privacy of one’s own home and has to have a witness to be prosecuted, it will rarely be prosecuted. For example, there is no public record that the Texas sodomy law had ever been enforced for private adult-consensual sex in its entire 143-year-history. My point, then, is not that same-sex sodomy laws are good because they lead to effective prosecution of homosexual acts or even that consensual homosexual acts *should* be prosecuted. Rather such laws served the useful function of inhibiting the passage of tyrannical “sexual orientation” laws that end up stigmatizing and legally disadvantaging anyone who expresses opposition to homosexual practice.<sup>27</sup> The idea that sodomy laws were leading to rampant persecution of homosexual persons is a red herring. In fact, even the event that led to *Lawrence v. Texas*—a medical technologist by the name of John Geddes Lawrence “caught” having consensual anal sex with another man, Tyron Garner—*may* have been a setup to invalidate the Texas sodomy statute.<sup>28</sup>

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<sup>26</sup> Persecution of polygamists all but ceased when a national outcry occurred over a 1953 raid by the Arizona National Guard of a polygamist colony called Short Creek on the Utah/Arizona border. Cameras and video rolled as the husbands were thrown in jail and the children were taken away from their mothers. Polygamy is now prosecuted only when it involves underage wives, which in effect means the prosecution is for violation of marriage laws regarding age, not number of partners.

<sup>27</sup> Cf. Hadley Arkes, “Sodomy and the Law: The forgotten case for laws left unenforced,” *National Review Online* (July 2, 2003; online: <http://www.nationalreview.com/comment/comment-arkes070203.asp>).

<sup>28</sup> For the argument that the case was a setup, see the news articles “Judge calls Lawrence case setup” (10/27/2005; at [http://www.worldnetdaily.com/news/article.asp?ARTICLE\\_ID=47064](http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=47064)) and “How staged sex crime fooled Supreme Court” (10/24/05; [http://70.85.195.205/news/article.asp?ARTICLE\\_ID=46984](http://70.85.195.205/news/article.asp?ARTICLE_ID=46984)):

The landmark *Lawrence v. Texas* Supreme Court ruling ... was based on a pre-arranged “setup” of police, state judicial authorities and, ultimately, the highest court in the land, says the first Texas criminal courts judge to whom the case was assigned. Judge Janice Law, author of *Sex Appealed: Was the U.S. Supreme Court Fooled?* [Eakin Press, 2005], said “reverse entrapment” was a good term to describe the technique used by defendants to secure an arrest while committing homosexual sodomy in the ‘privacy’ of their bedroom.

The *Lawrence* case began Sept. 17, 1998, when Houston sheriff’s deputies got a call reporting shots being fired at an apartment complex. Deputies converged on the scene and were directed to the apartment of John Geddes Lawrence by Robert Eubanks, a petty criminal himself and a friend of Lawrence.... The only facts for the high court to review were Deputy Joseph Richard Quinn’s 69-word, handwritten, probable cause affidavits – written within hours of the arrests of the three principals.... It was Eubanks who... placed the call reporting a man firing a gun in an apartment building. When police officers responded to the felony call, Eubanks was outside Lawrence’s apartment directing police to the unit – still insisting a man with a gun was threatening neighbors.

When police approached Lawrence’s apartment, they found the front door open. When they entered the apartment, they found a man calmly talking on the telephone in the kitchen, also motioning to the officers to a bedroom in the rear. Despite repeated shouts by officers identifying themselves as of sheriff’s deputies from the moment they entered the Houston apartment, no one seemed surprised to see them – especially not Lawrence and Garner.... Quinn and his fellow officers, expecting to see an armed man, perhaps holding a hostage or in a prone position ready to fire at them, instead found Lawrence having anal sex with Garner. And they didn’t stop – despite repeated warnings from officers. “Lawrence and Garner did not seem at all surprised to see two uniformed sheriff’s deputies with drawn guns walk into their bedroom,” Quinn recalls. Quinn shouted to them to stop. They continued. “Most people, in situations like that, try to cover up, hide or look embarrassed,” explained Quinn. “Lawrence and Garner didn’t look at all surprised to see us. They just kept doing it.” Finally, Quinn took action. He told them: “I don’t believe this! What are you doing? Did you not hear us announce ourselves? Don’t you have the common decency to stop?” But still Lawrence and Garner did not stop until Quinn physically moved them apart. Lawrence and Garner would be booked that night for a class C misdemeanor punishable by only a fine. Eubanks was charged with filing a false police report because there were no guns found....



Johnson states in what has to be one of the more comic assertions of the book:

Even though the two men in the *Lawrence* case were not in a long-term, committed relationship, the Court still determined that *the integrity of their lifestyle decision* merited legal protection. To say that the issue ... was simply the right to engage in certain sexual conduct *demeans* the claim the individual put forward, just as it would demean a married couple were it to be said marriage is simply about the right to have sexual intercourse.... Where Scalia *focuses on sex acts*, Justice Kennedy and the majority *focus on the integrity of the relationship*. (175, 177; my emphases)

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Many news accounts ... suggested it was a neighbor who filed the false police report that night—one who had been harassing the pair. Indeed, it was the pair's close friend and lover. And it was that close friend and lover who was brutally beaten to death two years later—and three years before the case reached the Supreme Court. No one was ever charged with the crime. Eubanks' body was found in Garner's house. Garner made it clear that if he was called to testify about the death he would invoke his Fifth Amendment rights. Eubanks ... was beaten to death in October 2000 as the sodomy case pended a crucial ruling from a mid-level appeal court.

Most news accounts identify the informant as a certain Roger David Nance, a person who had harassed Lawrence and Garner previously. However, even the *New York Times* contradicts this identification in an news story reporting Garner's death (D. Martin, "Tyron Garner, 39, Plaintiff in Pivotal Sodomy Case, Dies," 9/14/06; <http://www.nytimes.com/2006/09/14/obituaries/14garner.html>):

The men pleaded not guilty at their arraignment but later changed the pleas to no contest at the urging of lawyers eager to challenge the constitutionality of the law, not the factual basis of the arrests.... [Tyron Garner] was unemployed at the time of his arrest and a year later sold barbecue at a street stand in Houston. His criminal record included two convictions for assault in 1995 and 2000. The Dallas Morning News reported in 2003. The men's lawyers consistently shielded them from scrutiny, denying requests for interviews. Their lawyer in Houston, Mitchell Kitrane, said in an interview with Dale Carpenter in *The Michigan Law Review* that they were "on the quiet side, passive type individuals." Neither had prior involvement with gay-rights groups. They were introduced to each other by Robert R. Eubanks, with whom Mr. Garner was romantically involved when he was arrested. Mr. Carpenter's interviews showed that Mr. Garner and Mr. Lawrence were occasional sexual partners, not in a committed relationship. On the day of the arrests, the three men drank margaritas and ate dinner at a Mexican restaurant. They had spent the afternoon moving Mr. Lawrence's new furniture into his apartment and planned to move the old furniture to Mr. Eubanks's place the next morning.

Shortly before 10:30, an unidentified man called the Harris County Sheriff's Department and told the dispatcher that "a black male was going crazy in the apartment and he was armed with a gun." The caller turned out to be Mr. Eubanks, who told deputies he was jealous of Mr. Garner, with whom he argued that evening and had fought physically in the past. Mr. Garner and Mr. Lawrence were then alone together in the apartment, fueling Mr. Eubanks's rage. Mr. Eubanks stood at the door when the police arrived and directed them to go inside, where, he said, a man was threatening neighbors with a gun. No gun was found, but the police entered with trepidation. Inside, a still-mysterious man on a telephone directed them to a bedroom in the back. They shouted out several times and entered the bedroom. They said Mr. Garner and Mr. Lawrence were engaged in sex. One deputy said they continued obliviously for as long as a minute. Another deputy said they stopped immediately.

Why the deputies enforced the sodomy law, a rarity, is unclear, wrote Mr. Carpenter, who said he doubted that the officers actually saw any sex. He dismissed widespread speculation that the event was staged as a vehicle to test the law, saying that among other reasons, the men were too inarticulate for appearances in the news media. Mr. Carpenter, a professor at the University of Minnesota Law School, does theorize that possibly homophobic deputies fabricated and lied about the evidence, confident that their version, and not the defendants', would be believed. Mr. Lawrence and Mr. Garner paid fines of \$125 for violating the sodomy law, a Class C misdemeanor, plus \$141.25 in court costs. Mr. Eubanks was convicted of making a false report and spent two weeks in jail. He was beaten to death in 2000 in a case that was never solved.

Cf. Dale Carpenter, "The Unknown Past of *Lawrence v. Texas*," *Michigan Law Review* 102:7 (June 1, 2004), 1464-1527 (the beginning part of the article can be viewed online at: [http://goliath.ecnext.com/coms2/gi\\_0199-3594799/The-unknown-past-of-Lawrence.html](http://goliath.ecnext.com/coms2/gi_0199-3594799/The-unknown-past-of-Lawrence.html)). So whether the whole event was a set-up remains unclear. At the very least, the whole incident occurred as a result of one homosexual man's report against his homosexual lover. Lambda lawyers encouraged the defendants to plead "no contest" so that this could be a test case. The Times article states that Garner died at age 39 of (according to his brother Darrell) "complications of meningitis."

“Integrity of their lifestyle decision”? “Demeaning” the character of their relationship by “focusing on sex acts”? Lawrence, a 55-year-old medical technologist, was “caught” having anal sex with an unemployed man with an extensive criminal record<sup>29</sup> nearly a quarter of a century his junior, Tyron Garner, the latter being (to put the best possible spin on the matter) “an occasional sex partner,” while Lawrence was at the same time in a “romantic” relationship with another man, Robert Eubanks, a relationship distinguished by its physical fights. Eubanks ends up beaten to death two years later, found in Garner’s house, while Garner himself dies of health complications at the age of 39 just six years after that.

Even regardless of the sordid and tragic details of this particular case, the Texas law focused not merely on specific sex acts but sex acts in connection with the structurally incongruous character of two persons of the same sex.<sup>30</sup> Since Johnson eschews arguments based on formal or structural considerations, Johnson’s argument here can just as easily be turned on his own opposition to adult incestuous or polyamorous bonds. In asserting that society should not approve of these bonds, Johnson demeans the quality of such relationships, which are, in the eyes of the participants, about more than “a right to have sexual intercourse” and “sex acts.” Shouldn’t we accord the participants in such bonds too the presumption of “integrity” in their “lifestyle decision”?

Johnson cites approvingly Justice Kennedy’s remarks (176), which we here adapt to our analogy to show the absurdity of the point:

When [adult-consensual polysexual or incestuous] conduct is made criminal by the law of the State, that declaration in and of itself is an invitation to subject [persons who engage in such conduct] to discrimination both in the public and in the private spheres.

Doesn’t this “demean the lives” of such persons, as much as Kennedy says the lives or “homosexual persons” are demeaned? Johnson further reminds us that criminal conviction—which, as we noted above, almost never occurred with sodomy laws—brings not only “social stigmatization” but also “a permanent criminal record, the possibility of being barred from certain professions, and the requirement in some states to register as a sex offender” (ibid.).

What about the case of Allen and Patricia Muth, brother and sister lovers from Wisconsin, who were imprisoned in 1997 (Allen was 45, Pat 30) for their adult-consensual relationship (Allen for eight years and Pat for five years)? Since Patricia was raised in foster homes since infancy, Allen did not meet her until she turned 18. Shall their four children, the product of their love, be deprived of their biological parents?<sup>31</sup> A

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<sup>29</sup> According to Carpenter, Garner had “arrests for possession of marijuana and aggravated assault on a police officer in 1986, driving while intoxicated in 1990, and assault involving bodily injury in 1995.” Lawrence had two previous drunk driving arrests.

<sup>30</sup> Justice Sandra Day O’Connor missed this point in viewing the Texas sodomy law as violating the right of Equal Protection because it proscribed oral and anal sex only when committed by same-sex persons (175). It is not just the acts per se but more particularly the acts committed in the context of a structurally incompatible sexual bond that makes them unacceptable. An unbending commitment to the principle of marital twoness is as much or as little an “inequitable” treatment of a “class” of persons (here those with an intense polysexual orientation and/or particular religious beliefs) as an unbending commitment to the principle of the twoness of the sexes in sexual bonds is an “inequitable” treatment of a “class” of persons.

<sup>31</sup> Jeff Jacoby, “Hypocrisy on adult consent,” *Boston Globe*, Aug. 28, 2005

similar situation developed in Germany between Patrick and Susan Stübing, who have four children of their own. Patrick was raised in a foster home; they met in the year 2000 when he was 23 and she was 16. Patrick has served more than two years in prison and may have to serve an additional year unless the German high court, which is now considering the case, overturns the verdict.<sup>32</sup>

What about the case of Judge Walter Steed, who served on the bench in the polygamous town of Hildale, [Utah,] for 25 years, is legally married to one woman but considers himself spiritually married to two others, and has 32 children, but was removed from the bench because of his polygamy with consenting adults?<sup>33</sup> What about the children and young adults of polygamist parents who showed up in a 2006 rally in Salt Lake City protesting the persecution, forced secrecy, and abridgement of basic rights that their families were forced to undergo?<sup>34</sup> What about the adult women in “plural marriages” who wholeheartedly endorse their lifestyle but have to live with the daily fear that the legal system will prosecute their husband, dissolve their union, and take their children away from them?<sup>35</sup>

If a sexual relationship of the sordid sort that Lawrence and Garner had could be tolerated, why not theirs? Hasn't the integrity of their lifestyles been demeaned? Hasn't the quality of their relationships been reduced in a crass manner to sexual acts? Haven't they been made to feel like criminals, outcasts, and second-rate citizens of the United

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(online: [http://www.boston.com/news/globe/editorial\\_opinion/oped/articles/2005/08/28/hypocrisy\\_on\\_adult\\_consent/](http://www.boston.com/news/globe/editorial_opinion/oped/articles/2005/08/28/hypocrisy_on_adult_consent/)). The convictions were appealed to the Seventh Circuit Court in Chicago precisely on the basis of the *Lawrence* ruling, which in June 2005 ruled against the Muths (<http://caselaw.lp.findlaw.com/data2/circs/7th/033984p.pdf>). Judge Daniel Manion produced an opinion that in the words of Matthew J. Franck, professor and chair of political science at Radford University, was “desperate to avoid the plain consequences of the Court’s recent precedents on sexual liberty.... for there is no form of legal reasoning that can distinguish a ‘right’ to commit homosexual sodomy from a ‘right’ to marry your sister and raise a family. Only political reasoning—moral reasoning of the sort the Court condemned as tyrannical in *Lawrence*—can accomplish such a distinction, if it is possible at all” (“Kissing Sibs: Could the Supreme Court embrace incest?” *National Review Online*, 8/4/05; online: <http://www.nationalreview.com/comment/franck200508040812.asp>).

Consider also the case of Paul D. Lowe, a former sheriff’s deputy who was sentenced in 2004 to 120 days in jail, three years of community control, and 250 hours of community service, and was designated a sex offender—remember that Lawrence and Garner received only a \$200 fine each—for sleeping with his 22-year-old stepdaughter (he was 41). (The county prosecutor contends that the sex was not consensual but this is irrelevant to the conviction since he did not charge Lowe with rape.) The Ohio Supreme Court in a 6-1 decision rejected the plaintiffs’ argument that *Lawrence* had established a fundamental right of privacy for sexual relationships between consenting adults. However, its rationale was flawed: “The state has a legitimate interest ... in protecting the family unit and family relationships.” What if consenting adults don’t want to be “protected” by the State? At least the Muths would argue that they are trying to build their family, not tear it down. Adultery, a much more obvious instance of a family-destroying act, is not a criminal offense (Michael Lindenberger, “Should Incest Be Legal?” *Time Magazine*, 4/5/07; online: <http://www.time.com/time/nation/article/0,8599,1607322,00.html>); Bob Driehaus, “Man Convicted in Incest Case Plans Appeal to Supreme Court,” *New York Times*, 3/25/07).

<sup>32</sup> Dietmar Hipp, “German High Court Takes a Look at Incest,” *Spiegel Online*, 3/11/08 (online: <http://www.spiegel.de/international/germany/0,1518,540831,00.html>); Tristana Moore, “Couple stand by forbidden love,” *BBC News*, 3/7/07 (online: <http://news.bbc.co.uk/2/hi/europe/6424937.stm>); Clare Murphy, “Incest: an age-old taboo,” *BBC News*, 3/12/07 (online: <http://news.bbc.co.uk/2/hi/europe/6424337.stm>).

<sup>33</sup> Linda Thomson and Ben Winslow, “Utah’s top court boots polygamist judge Steed,” *Deseret Morning News*, 2/24/06 (online: <http://deseretnews.com/dn/view/0,1249,635187385,00.html>).

<sup>34</sup> Jennifer Dobner, “Youths defend plural marriage,” *Deseret Morning News*, 8/19/06 (online: <http://deseretnews.com/dn/view/0,1249,645194667,00.html>).

<sup>35</sup> See the essays in the Principle Voices website at <http://www.principlevoices.org/index.php?topic=Essays>.

States? Can Johnson produce proof that all these relationships produce *intrinsic* measurable harm? (The answer to that question is clearly “No.”) Do they not, in their own way, produce the “companionship, commitment, and community” that Johnson extols? Must they conform to Johnson’s own particular views of what is right before they can receive society’s endorsement or at least toleration? Shouldn’t we now do in these areas what Johnson encourages us to do in the case of homosexual practice; that is, adopt an “evolving understanding of the Constitution,” where “the right of liberty” can be discovered “even in new circumstances not previously recognized” and where “persons in every generation can invoke [the Constitution’s] principles in their own search for greater freedom” (177)? However, if these arguments are not convincing for adult-consensual incest and polyamory, why should they be convincing for adult-consensual homosexual practice?<sup>36</sup>

### **3. *The 1999 Vermont Civil Unions Case and the 2003 Massachusetts “Gay Marriage” Case***<sup>37</sup>

The last two sections of Johnson’s chapter on “Freedom and Equality under the Law” are given over to discussing *Baker v. State of Vermont* (Vermont Supreme Court, 1999) and *Goodridge v. Dept. of Public Health* (Massachusetts Supreme Court, 2003). Since the arguments that Johnson cites for validating homosexual civil unions and homosexual marriage, respectively, differ little from the flawed arguments that he employed in discussing *Romer* and *Lawrence*, they do very little to bolster his case here.

The one thing that might be helpful from these last two sections is that they begin to show how the rationale (such as it is) for validating “sexual orientation” laws and invalidating “sodomy” laws becomes the basis for the inevitable establishment of full-blown “gay marriage.” Johnson acknowledges that Justice Anthony Scalia was probably right in concluding that the majority opinion rendered in the *Lawrence* case opened the door to validation of “gay marriage” (177). After all, Justice Kennedy had asserted that “persons in a homosexual relationship may seek autonomy for these purposes [i.e. marriage, child rearing, etc.], just as heterosexuals do.” Indeed, the Massachusetts *Goodridge* decision for “gay marriage” was based on the U.S. Supreme Court’s rationale in *Lawrence*. In a matter of months we went from a national ruling that homosexual sodomy laws were invalid to a particular state ruling that “gay marriage” had to be created, centered around claims to the freedom and equality of consenting adults and the pretense that opposition to societal validation of homosexual unions was without any rational basis.

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<sup>36</sup> Justice Kennedy’s argument, cited by Johnson, that “there is no long history in this country of laws directed at homosexual conduct as a distinct matter,” if true, is still beside the point. Even laws directed at nonprocreative sex generally came out of an American culture that would have treated same-sex intercourse as particularly vile. It is dishonest to pretend that homosexual practice in 18-19<sup>th</sup> century America was viewed as no worse than nonprocreative heterosexual intercourse. A side point is that Johnson claims: “The opinions of Chief Justice Burger and Justice White [in *Bowers v. Hardwick*, 1986, upholding sodomy laws] [were] badly ill-informed about the history of law. Burger claims, for example, that sodomy was a crime under Roman law; however, the laws he cites were enacted after the Roman Empire had come under Christian influence” (302 n. 55). Johnson himself is misinformed here. Roman law in the pre-Constantinian era (the *Lex Scantinia* of 149 B.C.E. and the Augustan *Lex Iulia*) forbade penetration of male Roman citizens (cf. the discussion in Winter, *After Paul Left Corinth*, 111-13).

<sup>37</sup> *Baker v. State of Vermont*, 170 Vt. 194, 744 A.2d 864 (1999); *Goodridge v. Department of Public Health*, 440 Mass. 309, 798 NE2d 941 (2003).

The Vermont civil unions decision (*Baker*) also built on previous concessions to “gay rights.” Johnson mentions only adoption rights for homosexual couples (179) but the groundwork also consisted in other incremental validations of “sexual orientation” in “hate crimes” legislation and “employment nondiscrimination” legislation. As one assessment notes:

In the case, the argument was made that the Court need not extend protection to same sex couples because the state had a long history of official intolerance of same sex relationships. *Id.* at 885. The Court found that argument to be unpersuasive. One of the reasons the Court found as it did was because the Court recognized that “Sexual orientation is among the categories specifically protected against hate-motivated crimes in Vermont”.... The Court further noted that Vermont had also enacted statewide legislation prohibiting discrimination on the basis of sexual orientation and have removed barriers to adoption by same-sex couples as well as extending legal rights and protections to couples who dissolve their “domestic relationship.” *Id.* At 885-86. This discourse clearly underscores and illustrates the incremental steps the State of Vermont took over the years that led the Vermont Supreme Court to conclude that Vermont had abandoned its longstanding disapproval of same sex relationships and therefore, there existed no barrier to the creation of a civil union that extended the benefits and protections of marriage to same sex couples.<sup>38</sup>

This should serve as a warning to any who, though affirming a male-female prerequisite for sexual relationships, might be tempted to support a “hate crimes” law or an “employment non-discrimination” act with regard to “sexual orientation.” Doing so will only lead inevitably to full-blown “gay marriage,” imposed by the courts, and the consequent political and social marginalization of any who think that a homosexual union is immoral.

As we have seen, affirming a male-female prerequisite for sexual relationships can be rightly called irrational only under the false assumption that there are no formal or structural prerequisites to sexual bonds that transcend the question of whether two or more people love each other. Moreover, the adoption of such an assumption leads *logically* to the elimination of all remaining vestiges of formal requirements, including a limitation on the number of partners in a sexual bond to two and the requirement of a certain degree of blood unrelatedness. For no consensual sexual relationship can be proven to produce harm that is both *intrinsic* and *scientifically measurable*—not even for adult-child sex.<sup>39</sup>

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<sup>38</sup> Erik W. Stanley and Mathew D. Staver, “The Impact of Hate Crimes Laws upon Religious Organizations,” Memo of Liberty Counsel (2007; 17 pgs.; <http://www.lc.org/attachments/hatecrimesmemo2005.pdf>), 11. The authors also cite a paper by Kees Waaldjik, a professor from the Netherlands who wrote the Netherlands’ same sex marriage statute, showing “how incremental steps led to the Dutch same-sex marriage bill.” Johnson cites: William N. Eskridge, Jr., *Equality Practice: Civil Unions and the Future of Gay Rights* (New York: Routledge, 2002), ch. 2.

<sup>39</sup> This point about adult-child sex was argued by B. Rind, et al., “A meta-analytic examination of assumed properties of child sexual abuse using college samples,” *Psychological Bulletin* 124 (1998): 22-53. The study was subsequently and extensively critiqued by S. J. Dallam et al., “The effects of child sexual abuse: comment on Rind, Tromovitch, and Bauserman (1998),” *Psychological Bulletin* 127 (2001): 715-33. However, although the second study presented evidence that the first study may have overstated its case and misread some data (though see the response by Rind et al. in the same issue: “The Validity and Appropriateness of Methods, Analyses, and Conclusion in Rind et al. (1998): A Rebuttal,” 734-58), even Dallam et al. begin their study with the following caveat: “Please note that the purpose of our article is not

To deny marriage to persons in an adult-committed polyamorous or incestuous union is even more of “an arbitrary violation of basic principles of human dignity,” done “for no rational reason,” than is a refusal by society to validate legally adult-committed homosexual unions (to borrow phrases from the *Goodridge* decision, cited in Johnson 185-86). This is particularly so since a man-woman prerequisite is the logical foundation for structural arguments against polyamory and against incest. For, on the one hand, the twoness of the sexes is the basis for limiting a sexual union to two persons concurrently; and, on the other hand, the principle of complementary structural difference is more keenly felt on the level of sex/gender than on the degree of blood relatedness. Certainly the prohibition of homosexual marriage is more firmly grounded in history (ancient and modern, tribal and industrial, first world and third world) than is the prohibition of polygamist or incestuous marriage.

Here again we can think especially of adult incestuous unions where procreation is either impossible (owing to the age or infertility of the participants) or unlikely given the birth-control precautions taken by the participants. Ironically, *homosexual adult-incest would easily satisfy Johnson’s objections to procreative problems*. Yet even when an incestuous bond is formed with both a capacity and intention to procreate, how can such a union be prohibited since birth defects are only an increased risk, not an inevitability, and we don’t prohibit those with hereditary diseases from reproducing?

As to polyamorous unions, Johnson and others might object to the traditional forms of polygyny (multiple wives but only one husband) on the grounds of their nonegalitarian character. However, this argument would not work since there are also nontraditional polyamorous relationships in existence that promote any number of mutually agreed-

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to argue that all types of sexual abuse do in fact cause pervasive and intense harm in all victims. Indeed, *it is well recognized in the empirical literature that the aftereffects of CSA [child sexual abuse] are extremely varied and that a significant percentage of abused children remain a-symptomatic*” (p. 716; emphasis added). Similar conclusions about the absence of intrinsic or inherent pathology to adult-child sex are stated in a book by David M. Fergusson and P. E. Mullen, entitled *Childhood Sexual Abuse: An Evidence-Based Perspective* (SAGE Publications, 1999). They note that as many as 40% of children who experience sex with an adult may grow up without any measurable, adverse symptoms. A 2004 study purported to show that 26 homosexual and bisexual men who “reported sexual experiences before age 17 with someone at least 5 years older” but “perceived their sexual experiences as non-negative, noncoercive, and nonabusive were similar . . . in their levels of adjustment” to a control group of 142 homosexual and bisexual men who reported no such sexual experiences (J. L. Stanley et al., “Gay and bisexual men’s age-discrepant childhood sexual experiences,” *Journal of Sex Research* 41:381-9).

Of course, the counterargument with regard to pedophilia (sex with prepubescents) and ephebophilia (sex with adolescents) is that children and adolescents cannot give “truly free” consent (Johnson, 258 n. 107). However, this claim is certainly not true for many (perhaps most) adolescents—in most states abortionists need only the pregnant young adolescent girl’s consent to perform an abortion, the killing of her unborn child. It may not be true even for some prepubescents, who are asked to give consent in all sorts of situations. Even prepubescent children are capable of giving consent to all sorts of daily concerns, as the burgeoning “rights of the child” movement has vociferously claimed. One may offer the additional counterargument that sexual relations offer a special exception. I would agree. Yet the very people pushing the homosexualist agenda have eroded the distinction between non-sexual love and sexual love. Johnson is constantly making the case, for example, that the nonsexual command to “love one’s neighbor” supports the acceptance of homosexual practice in the church. He uses the nonsexual covenantal relationship between Ruth and Naomi as an example justifying the committed sexual union of persons of the same sex. “Companionship, commitment, and community,” none of which are distinctly sexual elements, form the foundation for Johnson’s validation of homosexual practice. So if a child is able to make “truly free” decisions about non-sexual love, why not about sexual love too?

upon partners of either sex (whether in a strictly heterosexual format or in a homosexual/bisexual format) and since too there are no laws prohibiting marriages where a woman agrees to submit to her husband's ultimate authority. Certainly people are capable of intensely loving more than one person concurrently (ask any parent who has more than one child). The decision by the Massachusetts Supreme Court to limit the definition of marriage to "the voluntary union of *two* persons as spouses, *to the exclusion of all others*" (my emphases) is completely arbitrary and irrational *given the rationale for supporting homosexual unions*. Our society currently accepts legalized "serial polygamy" and tolerates sexual promiscuity to such a great degree that it arguably makes the limitation of sexual partners to two look a bit absurd. Which is worse? A man who unfaithfully dumps his wife to marry another woman or a man who, with his wife's consent, adds a second wife to the marital bond? And isn't it better that a man who is going to have two sexual partners concurrently anyway be committed to both partners lifelong and to have such a commitment reinforced by state support than that the man behave promiscuously? Of course, I am not arguing for state support of "plural marriage" but rather making the point that the case for state validation of plural marriage is much stronger than the case for validating homosexual practice.

How is it fair to withhold from adult-committed incestuous or polyamorous unions the "legal, financial, and social benefits" that "marriage holds," including "medical benefits, predictable rules of child support and property division, and the ability to visit one's sick child or partner in the hospital" (185)?<sup>40</sup> As the court concluded in the *Goodridge* decision, "the right to marry means little if it does not include the right to marry the person of one's choice" (cited by Johnson on p. 186). To be sure, the quotation continues: "... subject to appropriate government restrictions in the interests of public health, safety, and welfare." However, given the fact that no consensual sexual behavior produces intrinsic demonstrable harm, and given too that homosexual activity manifests its own disproportionately high rates of measurable harm owing to the absence of a true sexual complement, the government would have no logical, natural, or scientific basis in "health, safety, and welfare" for prohibiting polyamorous and incestuous marriages absolutely while simultaneously creating a right to enter into homosexual marriages.

In the "Summary" to his chapter 4, Johnson concludes:

The more one examines the legal arguments against expanding spousal rights to include gay couples, the more one watches them collapse like a house of cards. The truth is that there are no cogent legal arguments of a secular nature for refusing to grant some from of relationship rights to gay couples.

I find the reverse to be the case. "The more one examines the legal arguments" for redefining marriage to include homosexual unions, the more one sees how flimsy and

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<sup>40</sup> A person in an incestuous union would have family rights to visit a sick partner in the hospital but obviously not if the incestuous relationship were disclosed. According to the Wikipedia entry on "incest," "incest is a crime in every state [of the United States], with variations from state-to-state regarding which forms of sexual activities [and] what degree of family relationship fall under the state's definition of incest. In all states, close blood-relatives that fall under the incest statutes include father, mother, grandfather, grandmother, brother, sister, aunt, uncle, niece, nephew, and in some states, first cousins. Many states also apply incest laws to non-blood relations including step-parents, step-siblings, and inlaws."

poorly constructed such arguments are. “The truth is” that Johnson and other proponents of a homosexualist agenda have offered “no cogent legal arguments of a secular nature” for doing away with a male-female prerequisite for sexual relationships.

### III. Johnson on “Deliberative Democracy” and His Strategy for Obtaining “Gay Marriage”

In his last chapter (ch. 5), “Toward a Welcoming Democracy: Marriage Equality in the Civil Polity” (191-221, notes 310-19), Johnson outlines what he regards as the steps that have been taken, and must be taken, to achieve a “welcoming democracy” where homosexual persons are not treated as “second-class citizens.”<sup>41</sup>

The rhetoric of “welcoming democracy” and “second-class citizens” is window-dressing to cover up the lack of an effective case. Maintaining formal or structural prerequisites for societally validated sexual activity, irrespective of the profession of love by its participants, is not an “unwelcoming” gesture on the part of a democracy but rather a morally compassionate gesture that seeks the greatest good for the whole of society. “Welcoming” immorality is no virtue.

Nor are participants in immoral behavior made “second-class citizens” by a society that withholds legal validation of, and incentives for, immoral behavior. Are persons with polysexual, incestuous, or pedosexual attractions “second-class citizens” because society maintains, against their protests, sexual prerequisites regarding number, degree of blood relatedness, and age? Johnson’s entire case rests on the erroneous premise that there are no formal prerequisites for sexual bonds based on embodied complementarity, at least not apart from the demonstration of intrinsic, measurable harm. Johnson argues that “genuine family-values proponents should go beyond advocating family values for themselves alone; they should support *all families, even those families that are nontraditional*” (207; my emphases). Polyamorous families (including bisexual “threesomes”) and incestuous families (including same-sex adult-incestuous families) certainly qualify as “nontraditional families.” If we should support “all families,” then these must be supported too. Similarly, Johnson argues: “there is currently no moral screening for heterosexuals before they may procure a marriage license.... This makes the screening of gays appear quite arbitrary” (215). As arbitrary, one might add, as the screening of relationships involving more than two persons or close blood relations (for the latter, again, especially same-sex or infertile kin).

#### 1. *The 2000 Nebraska marriage amendment and Johnson’s incrementalism*

Johnson devotes considerable attention to his claim that supporters of a male-female requirement for sex are inhibiting the right of homosexualists to “even advocate for” homosexual marriage (201-6, 221), a claim that is not only false but also ironic in view of the penalties against free speech that have generally accompanied the passage of “sexual orientation” laws. He focuses on the 2000 Nebraska marriage amendment that added to the state constitution (art. I, sec. 29) the following words:

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<sup>41</sup> The claim that homosexual persons are being treated as “second-class citizens” or are being given “second-class status” appears like a mantra in this chapter (191, 194, 215, 218, 221, 319 n. 22; cf. 227); previously only 73-74, 187-88.



Only marriage between a man and a woman shall be valid or recognized in Nebraska.  
The uniting of two persons of the same sex in a civil union, domestic partnership, or other similar same-sex relationship shall not be valid or recognized in Nebraska.

The amendment, which was passed by a supermajority popular vote of 70.1%, was unconstitutionally struck down by liberal, Clinton-appointee Judge Joseph Bataillon of the Federal District Court in Nebraska on May 5, 2006. However, the amendment was reinstated by a three-judge panel of the Eighth Circuit Court of Appeals on July 14, 2006.<sup>42</sup> Johnson complains that the amendment prohibits not only “gay marriage” but also homosexual “civil unions and other marriage substitutes” (202) as well as “health insurance, adoption rights, [and] inheritance issues” granted to married couples.

This is a bizarre complaint coming from someone who argues that “our society’s act of embracing gay unions will ... take place ... through an incremental process” (227). It is Johnson who notes for his readers that

the earliest jurisdictions to decriminalize same-gender sexuality and to adopt nondiscriminatory legal policies have also been the first to grant *relationship* rights to gays and lesbians. For example, The Netherlands and the states of Vermont and Massachusetts were among the first jurisdictions to decriminalize gay sexuality; it is no surprise, then, that they were in the vanguard of supporting marriage equality. If this pattern holds, those states throughout the United States that are now decriminalizing and moving toward nondiscrimination will eventually come around on the issue of same-gender unions as well. It is not a matter of if, but when. (223-24)

According to Johnson, pushing for homosexual civil unions as a compromise to “gay marriage” “has greater promise of creating a pro-gay political majority in the short run” than holding out for nothing less than “gay marriage” (227; cf. 219-21). Given Johnson’s own arguments, those who oppose “gay marriage” would be foolish to settle for legislation that would allow civil unions or some other marriage substitute for homoerotic relationships if there were a realistic opportunity to eliminate also these marriage substitutes. Once homosexual civil unions are in place or even once any of the benefits otherwise reserved to married couples are extended to homoerotic bonds, Johnson has told us, the creation of “gay marriage” is “not a matter of if, but when.”

Although Johnson portrays his own views as “centrist” at the beginning of the chapter (191), Johnson’s wholehearted approval of Judge Bataillon’s rationale for striking down the Nebraska marriage amendment shows how extreme his own judicial philosophy on “gay rights” is.<sup>43</sup> Bataillon is the first and only federal judge to strike down a state marriage protection amendment. In a near hysterical moment, Johnson charges that the “broad and antidemocratic implications of such a prohibition”—remember that the amendment passed by a *democratic* supermajority of 70% of Nebraska voters—are that

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<sup>42</sup> In the main text Johnson wants readers to know that the chief judge of the three-judge panel was a “conservative Republican” (202; but what are the political leanings of the other two judges?). The reader has to go to endnotes to find out that Bataillon was a Clinton appointee (314 n. 33). Johnson does not use the marginalizing label “liberal Democrat” for Bataillon in the main text (or in the endnote, for that matter).

<sup>43</sup> Johnson is also extreme enough to think that a “gay marriage” contracted in one state, with all its attendant marital benefits, must be recognized as valid in all 50 states, irrespective of any laws and constitutional provisions a state may have against “gay marriage” and its marriage substitutes (199 n. 26).

homosexual persons are “permanently” “prohibited from even petitioning the legislature” “for *any* protections ... even *similar* to those provided to married couples” and are thus “excluded from the democratic process” and turned into a “group of noncitizens” (203-4; his emphases).

What does Johnson think the amendment process is? It is part of “the democratic process” engaged in by “citizens.” *Any* amendment to a state (or the federal) constitution makes it impossible for the legislature to pass laws conflicting with that amendment unless the constitution is re-amended. That is how a constitution functions in democratic society. However, nothing in the Nebraska amendment bars homosexualists from *advocating* a different position. There are no inhibitors of free speech in the amendment. And nothing in the amendment prevents homosexualists from working to overturn the amendment through constitutional means. As Eugene Volokh, professor of law at UCLA and someone who is sympathetic to arguments for “gay marriage,” has written about the Bataillon decision:<sup>44</sup>

The judge reasons that the amendment is unconstitutional because it interferes with people’s First Amendment rights to advocate, and to association in order to advocate, for legislation protecting same-sex relationships: “The knowledge that any such proposed legislation violates the Nebraska Constitution chills or inhibits advocacy of that legislation, as well as impinging on freedom to join together in pursuit of those ends.”

That, I think, can’t be right. Most state constitutional provisions make it harder for people to enact certain laws — a state constitutional right to privacy, for instance, “chills or inhibits advocacy of [privacy-restricting] legislation” in precisely the same way as the Nebraska same-sex amendment does: People become less willing to advocate the legislation since they know it will be futile, so long as the amendment remains on the book. Likewise, federal laws “chill or inhibit advocacy of [state] legislation” that would be preempted by those laws. State laws “chill or inhibit advocacy of [local] legislation” that would be preempted by those laws. (For instance, state marriage laws, which to my knowledge always set forth rules that apply throughout the state and leave no room for contrary local decisions, equally chill or inhibit advocacy of city- or county-level marriage laws.)

Of course, none of these laws or constitutional provisions violates the First Amendment; they don’t keep people from expressing their ideas — they just make it harder for people to turn those ideas into law. That is the very purpose of constitutional constraints on legislation, and the purpose doesn’t violate the First Amendment. But precisely the same is true about the Nebraska same-sex marriage amendment.

Johnson subsequently admits: “To be sure, gays and lesbians are not prohibited from seeking to undo the constitutional amendment itself; that is, the same process of amending the Nebraska constitution is open to gays and lesbians that was open to the

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<sup>44</sup> Appearing on his blog at [http://volokh.com/archives/archive\\_2005\\_05\\_08-2005\\_05\\_14.shtml#1115938636](http://volokh.com/archives/archive_2005_05_08-2005_05_14.shtml#1115938636). I was alerted to this entry by: Stanley Kurtz, “Courting FMA: A ruling in Nebraska demonstrates the need for a federal marriage amendment,” *National Review Online*, 5/13/05 (<http://www.nationalreview.com/kurtz/kurtz200505130807.asp>). Volokh’s faculty profile at UCLA Law describes him as an author of “over 45 law review articles and over 75 op-eds on constitutional law, cyberspace law, and other topics.... A 2002 survey by University of Texas law professor Brian Leiter listed him as the third most cited law professor among those who entered teaching after 1992.”

Mormons and the other religious advocates who zealously pushed for the amendment in the first place” (205).

The comment about “Mormons” is ironic. For it was the unanimous Supreme Court decision of *Reynolds v. United States* (1878) that declared that polygamy was not protected by the Constitution. This decision sustained the conviction of a certain George Reynolds, a member of the Mormon Church, for bigamy when he married Amelia Schofield while still married to Mary Tuddenham in the Utah Territory. Reynolds had been convicted under the Morrill Anti-Bigamy Law, signed into law in 1862 by Abraham Lincoln. The representative of the territory, George Cannon, complained about the Court’s decision: “Our crime has been: We married women instead of seducing them; we reared children instead of destroying them; we desired to exclude from the land prostitution, bastardy and infanticide.”<sup>45</sup> Later in 1890, under extreme pressure from the federal government, including imprisonment of its polygamist leaders and ongoing refusal of statehood for the Utah Territory, the Mormon Church banned polygamy and an anti-polygamy clause was written into the Utah Constitution stating “polygamous or plural marriages are forever prohibited.” By Johnson’s interpretation of the Nebraska marriage amendment, we should understand this constitutional provision as “antidemocratic” in “permanently” prohibiting supporters of committed polyamory “from even petitioning the legislature” “for *any* protections ... even *similar* to those provided to married couples,” thereby “excluding them from the democratic process” and turning them into a “group of noncitizens.” Moreover, in the last quarter of the nineteenth century until the 1950s, failure to protect polygamists meant active criminal prosecution.

Yet Johnson goes on to claim:

To argue that an amendment is fair simply because it might someday be changed misses the deeper constitutional point. The very purpose of a constitution is to craft provisions of government that are fundamentally fair to all, and Nebraska clearly failed to do that.  
(205-6)

This counterargument begs the question of whether having a male-female prerequisite to marriage is unfair in any meaningful constitutional or moral sense. Entrance into the state-sanctioned institution of marriage is not a right of all citizens irrespective of meeting qualifications. Having structural requirements for marriage or marriage equivalents that transcend claims to love and affection, even for adult-committed bonds related to an orientation, invariably disadvantages some group of people. The fact of such legal prerequisites does not necessarily render the provision in question as unfair, as the prohibition of polygamy clearly demonstrates.

The charge of unfairness necessarily applies only if the administration of the requirement is inequitable; that is, if the requirement is loosened for some groups but not for others. For example, were Mormon polygamists to be given a special dispensation to “plural marriage” but not other religious or secular groups, a requirement limiting marriage to two persons concurrently would be unfair. When it comes to polygamy Johnson dismisses (in an endnote) any claim that polygamists might make to receiving the benefits or status of marriage. He does so by making a distinction between state interference and state accommodation: “It could be responded ... that people should be at

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<sup>45</sup> Cited in Wikipedia entry, “Reynolds v. United States” ([http://en.wikipedia.org/wiki/Reynolds\\_v.\\_United\\_States](http://en.wikipedia.org/wiki/Reynolds_v._United_States)).

liberty to choose a polygamous lifestyle if they wish without state interference. This no doubt is true, but the state is not required to permit more than one marriage at a time” (301 n. 51). That is exactly the point with respect to homosexual unions, if Johnson can see his way to argue consistently. The state is not unfair when it maintains a definition of marriage that excludes same-sex unions, unions of more than two, unions involving close blood relations, and unions involving age requirements. Not even the *Romer* decision striking down the Colorado amendment, as bad as that decision was, specifies otherwise. Again, Professor Volkh:

The [Nebraska] amendment *does not prohibit any cohabitation relationships* — at most, it bars the government from giving them legal recognition as a “civil union,” “domestic partnership,” or “same-sex relationship.” The right to intimate association does not include the right to have the government specially subsidize or recognize your intimate association. That’s why, for instance, the law can give married people special benefits that single people lack.... There’s no violation of *intimate association rights* here.

I think *Romer* is wrong, badly reasoned, and vague in its implications; but, while it’s impossible to tell for sure given *Romer*’s vagueness, I think that Nebraska amendment is constitutional even under *Romer*.... [The Nebraska amendment] leaves state and local government free to enact bans on sexual orientation discrimination in lots of contexts. The government only mandates that marriage and similar institutions be reserved for opposite-sex couples ....

The Court’s stress in *Romer* was simply that the law was so overinclusive relative to the interest in protecting associational freedom that it was irrationally broad. Here, the law is a much better fit with the government interest.... [The Nebraska amendment] doesn’t go at all far beyond defining marriage; it clearly covers marriage and its modern equivalents and near-equivalents. It makes perfect sense that as new quasi-marriage statuses are set up to avoid the legal restrictions on marriage, voters would cover these quasi-marriages as well as traditional marriages.<sup>46</sup>

Another reason that Johnson gives for rejecting popular referenda on “gay marriage” is that “popular sentiment has been disproportionately influenced by the blitz of media campaigns and unduly affected by the funds raised by these political interest groups” (201). What he neglects to mention is that homosexualist groups typically outspend complementarian groups by vast margins. For example, in 2004 the former outspent the latter by 24 to 1 in an effort to block passage of a Missouri marriage amendment (\$450,000 to \$19,000). Moreover all the state’s major papers and the mayors of the two

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<sup>46</sup> Judge Bataillon’s contention that the Nebraska amendment constitutes an unlawful bill of attainder—defined by Johnson as “a law that targets an individual or a group for punishment without trial” (204)—is a real stretch. According to Volkh, “The prohibition on Bills of Attainder provision has never been read remotely as broadly as the court suggests; nor would it make any sense for it to be read this broadly.” “All state constitutional provisions, as well as federal laws that preempt state laws and state laws that preempt local laws, block some groups from enacting laws that they like. State constitutional bans on polygamy block polygamists from enacting laws that they like.... Moreover, it’s the nature of a democracy that the majority blocks ‘changes opposed by the majority.’ It may not block *advocacy* for such changes; but it can surely block such changes.... The whole point of state constitutions is for the statewide majority to prevent its representatives in the legislature (or voters or legislators in the state’s political subunits) from enacting changes opposed by that statewide majority.”

largest cities, St. Louis and Kansas City, opposed the amendment. Yet it still passed by a 71% margin.<sup>47</sup>

Johnson also argues that “the population at large” isn’t smart enough “to make informed, considered judgments” about such a “deeply divided issue,” which is “not an elitist claim” (202). However, that kind of reasoning doesn’t stop Johnson from expressing glee at his perception that opponents of homosexual unions “will eventually lose.” “Each passing year we will witness greater and greater acceptance of gay people” (223). He spends the first page of his review of my book in *Theology Today* declaring: “the time for accepting same-gender couples ... is here and here to stay.” “Everyone knows this, but not everyone is ready to join the celebration” (386). It appears that for Johnson appealing to popular sentiment is a great moral argument when popular sentiment supports his position but a bad way of deciding moral issues when it cuts against his homosexualist views.

## **2. Johnson’s manipulative idea of “deliberative democracy”**

Citing work by Amy Gutmann and Dennis Thompson, Johnson pushes for a “deliberative democracy” which (not surprisingly) rejects voter referenda on the homosexuality issue altogether (209).<sup>48</sup> Gutmann and Thompson are no dummies. They know that the route of referenda will not lead to success for their homosexualist views (cf. 218). For them “deliberative democracy” must focus on promoting “basic liberties,” “equality of opportunity,” and “fair opportunity” for all (209-10). Can you guess where this is heading in terms of the homosexualist agenda? There is no concern here for maintaining prerequisites for sexual activity based on embodied complementarity. Imagine how these same principles could one day be applied to bring about societal recognition of adult-committed polyamory and incest.

Even Johnson admits that this program appears “to favor the interests of gay and lesbians” (212). But Johnson claims that conservatives can be happy that at least they too will be welcomed “to the table.” Where is this “table”? I’m still looking for it. If it exists, it exists only for persons who concede some value to homosexual unions and, even then, exists only until such time as the homosexualist agenda can be coerced on society as a whole. Right now homosexualists are still working to win the necessary concessions that will give their position that kind of coercive power.

Johnson talks about the necessity for “give and take” (194, 198, 211, 227). A problem here is that he only takes and never really gives. He makes a strategic consideration based on a philosophy of incrementalism that it is better, while arguing for “gay marriage,” to be willing to accept a compromise of civil unions, confident that this is the shortest route to getting “gay marriage.” In so compromising, Johnson isn’t giving up anything. If he could get “gay marriage,” he would take it. The only reason that he settles for anything less is that he can’t yet get more.

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<sup>47</sup> Monica Davey, “Sharp Reactions to Missouri’s Decisive Vote against Gay Marriage,” *The New York Times*, 8/5/2004 (note the biased headline; the *Times* takes a 70% vote and stresses reactions against the vote); Kara Carlson and Elaine McGinnis, “Marriage Foes Outspend Marriage Defenders by 24 to 1 in Missouri,” Concerned Women of America, 8/11/2004 (<http://www.cwfa.org/articles/6137/CFI/family/index.htm>).

<sup>48</sup> *Why Deliberative Democracy?* (Princeton: Princeton University Press, 2004).

I do not want to be misunderstood.... I favor and support gay marriage, and I believe that we should continue to make arguments in favor of it. Nevertheless, civil unions have a greater chance of success for the time being. (219)

In the meantime he requires those who disagree with him to give up something that they already have (no government subsidy or recognition for the immorality of homoerotic unions), which will insure the ultimate defeat of their position. In short Johnson recommends that homosexuals *give up nothing that they could reasonably get but rather compromise only on what they cannot now have in order to get what otherwise they could never have*. Johnson gives all the *appearance* of compromising without any of the substance. On this deceptive ground Johnson attempts to coerce concessions from complementarians: “See, I have made a compromise! I have given up my demand for gay marriage. Now the least you could do is give some ground on same-sex civil unions or at least extend some marriage benefits.”

Sadly the ruse often works. Beaten down by years of being labeled “homophobic bigots” and uncaring legalists, grateful for any measure of acceptance by their tormentors, many complementarians feel obliged to make genuine concessions in the face of the false ones made by homosexuals. Now at least they will be called reasonable by homosexuals—not like those irrational and hateful “prohibitionists”—and made players in church and society. In reality, they have become nothing more than useful tools that will subsequently be discarded when their service is no longer needed.

This was precisely the procedure adopted by Johnson with the other members of the majority homosexualist faction within the Presbyterian Church (U.S.A.) Task Force on “Peace, Unity, and Purity” (2004-6). In effect, he and they argued: “If you allow local and regional ordaining bodies the right to decide whether ‘the [ordination] requirement to live either in fidelity within the covenant of marriage between a man and a woman ... or chastity in singleness’ (*The Book of Order*, G-6.0106b) is essential to ordination, then we will drop our demand for the next two years (i.e. until the next General Assembly) to introduce to the Assembly an overture to remove the ‘antigay’ provision in the *Book of Order*.” How reasonable. Never mind that, had such an overture passed the General Assembly, it would have gone down in flames when sent to the presbyteries for ratification.<sup>49</sup> Never mind that the “chastity” requirement of the *Book of Order* is explicitly singled out from amongst all the “historic confessional standards of the church” for the obvious purpose of stressing its status as an ordination essential. We can disregard all that. On this basis they convinced the three or four members of the Task Force who might have resisted the homosexualist agenda that this “compromise” “authoritative interpretation” of the Constitution would promote the “unity” of the church.<sup>50</sup>

Johnson criticizes “religious fundamentalists” who “refuse to deliberate with others because they believe they already have a monopoly on revealed truth” (212). Yet Johnson’s book and Review indicates that he thinks that, so far as accepting the validity

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<sup>49</sup> A majority of the presbyteries must approve any amendment to the Constitution. The last attempt at removing the “fidelity and chastity” provision of G-6.0106b was defeated by nearly three-quarters (72.7%) of the presbyteries (2001-2).

<sup>50</sup> An authoritative interpretation requires only approval of the General Assembly for passage. It does not get sent to the presbyteries for ratification. What Johnson and others were proposing was not really an “authoritative interpretation” but an amendment to the Constitution in the guise of an authoritative interpretation.

of committed homosexual unions is concerned, he and those who agree with him really do have “a monopoly on the revealed truth,” so much so that they can regularly characterize those who disagree as harboring the same sort of “prejudice” as racists and sexists. There is no hesitation anywhere in his book on this matter. Johnson is not “deliberating” with anyone in the expectation that he might change his view on what for him is now a core belief. He “deliberates” only to the extent that it wins him strategic concessions that he otherwise could not gain for his “true” position. And his position is every bit as much a “revealed truth” for Johnson as any belief based on Scripture. It’s just that his primary source of revelation is not Scripture but his personal experience with homosexual persons.

Johnson does briefly criticize also “secular fundamentalists” who “simply assert their positions without making an effort to respect or enter into the worldview of their religious opponents” (212). However, note that Johnson doesn’t include himself in either group: “religious fundamentalists” or “secular fundamentalists.” Note too that the “secular fundamentalists,” unlike “religious fundamentalists,” don’t need to change their cherished views. They only need to “respect” and “enter into the worldview of” their opponents.

Johnson does not achieve even this minimal standard for “deliberation” in his book and Review, since he is often dismissive of those with whom he disagrees—unless, of course, they are willing to concede that he has made a reasonably strong case for his position (even when he hasn’t). Johnson might be willing to concede that what he calls an “anti-gay” reading of Scripture at times makes a “not unreasonable” case, though I see little, if any, evidence of such a concession in his book or Review. He refers condescendingly to those who think that Scripture’s opposition to homosexual unions is absolute as mere “textualists” (rather than “contextualists”) who lack the necessary knowledge of the literary and historical contexts to realize that Scripture says not one word against non-exploitative, non-hedonistic forms of homosexual practice (56, 129). Even if Johnson were ever to concede that the case for Scripture’s absolute opposition to all forms of homosexual practice is at least “reasonable,” it would only be because the case for such a reading is so overwhelmingly superior to his own interpretation that he could hardly accord it anything less. It is certainly not incumbent on those who hold the scriptural view—for let’s be honest and call it what it is—to accord equal weight to a poorly argued interpretation of Scripture’s attitude to homosexual practice as nonabsolute.

Moreover, at no time does Johnson ever come close to conceding that regarding homosexual practice as immoral is “reasonable.” On the contrary, he repeatedly refers to this view as irrational prejudice (167-68, 186, 188; in agreement with some court decisions; cf. 210, 215). So if “deliberation” requires at least a slight willingness to think that one’s own central conviction about homosexual unions may be in serious error, then Johnson in his book or Review never engages in the deliberative process. Yet he is quite willing to charge those on the other side with an inability to enter into a “deliberative process” unless they are willing to entertain some doubt about their central conviction that homosexual practice per se is immoral.

What is necessary for “deliberation” is for people to hear clearly what others are saying and then to evaluate their arguments with honesty and rigor. On this score Johnson fails since he regularly misrepresents and/or ignores the key arguments of those with

whom he disagrees. Unlike what Johnson has done with my work, I have carefully read and examined every one of the arguments in his book and have made a strong case, I believe, for why these arguments are on the whole badly thought through.<sup>51</sup> I am sorry that I cannot accord Johnson's argumentation a higher rating but the blame for this verdict, if blame there is, lies squarely with the weakness of Johnson's arguments. It should be said that Johnson also shows little regard for my work.<sup>52</sup> The difference, however, is that he lacks the effective arguments and evidence to carry off his claims and misrepresents my positions. This certainly doesn't make his work any more "deliberative" than my own.

Some students at Johnson's seminary invited me to speak on the homosexuality issue in March 2008. They made every effort to construct a dialogue format to Johnson's liking, where he and I would be the principal speakers. Johnson would have none of it. It could not have been because I had already made up my mind on the subject and therefore could no longer "deliberate," for, as we noted above, Johnson has just as much made up his mind about his central convictions regarding affirmation of committed homosexual unions. Moreover, there is not a lot of "deliberation" going on in Johnson's book if by deliberation is meant "still working through, and somewhat undecided about, central issues." Nor could Johnson's avoidance of a presentation format with me as his prime dialogue partner have been because I don't do enough of the "giving" in a give-and-take process. As we have seen, Johnson doesn't "give" at all on his own central convictions;

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<sup>51</sup> Johnson also believes that he has made a strong biblical, theological, moral, and legal case for embracing committed homosexual unions, to the point (as we have noted) of repeatedly comparing those who disagree with racists and sexists.

<sup>52</sup> For example, in his review of my first book, Johnson made a single positive reference to my book; namely, that it "is the most thorough and exhaustively researched" book that expresses opposition to homosexual practice—a point that Johnson could hardly deny given the book's length and detailed footnotes. Otherwise, his review is entirely negative. "The basic thrust [of Gagnon's book] is profoundly mistaken.... Gagnon's argument may look cogent on the surface, but it operates by a certain slight of hand. He assumes that there is one monolithic thing called homosexuality, which is the same yesterday, today, and always [i.e., allegedly I am unaware of 'age-differentiated' and 'status-defined' types of homosexuality in the ancient world].... His sole evidence for [egalitarian forms of homosexual practice] is a pair of dubious references.... Gagnon misguides the reader not only by assuming that all homoeroticism is the same but also by wrongly conceiving the reason for the biblical prohibitions as 'gender complementarity'.... Gagnon mentions Galatians 3:28 three times, quoting it ... incorrectly once.... Gagnon gives us no persuasive reason why we should break with tradition and ordain women but genuflects to so-called tradition in being antigay.... Rogers's book ... helps us to see the *theological* deficiencies of an approach like Gagnon's. The claim is made by some antigay advocates that Gagnon's book is the definitive defense of the 'biblical position.' Rogers shows us that this is simply wrong.... Ironically, Gagnon works solely within the confines of a modernist hermeneutic.... There is nothing in Gagnon's work that helps us to explain why same-gender sexual orientation arises with a consistent statistical frequency in this world.... There is no moral distinction Gagnon's work is able to make between a Roman soldier taking his pleasure with a slave boy and two women who pledge to love each other forever as they care for and raise a child. There is nothing in Gagnon's approach to scripture, moreover, that requires the Incarnation or the work of the Spirit for its efficacy. At the end of the day, there is nothing in Gagnon's approach that even requires the Bible, since everything one needs to know about sexuality can be deduced from the functionality of body parts. With all these ways in which Gagnon's work departs from classical orthodoxy, why do many conservative evangelicals champion it so forcefully? ... By grace, the church must continue to embrace even those who have made rejection of gays and lesbians their fundamental article of faith." I would say that this qualifies as a fairly negative review—as I have shown, achieved through misrepresentation by Johnson.



he gives only on what he cannot reasonably hope to get. Nor could it have been because Johnson doesn't like my "tone," for Johnson has shown no compunction about saying some fairly rough things about me and my work, both in his book and in his *Theology Today* review of my first book. This is hardly what one would expect of someone who is supposed to be modeling "deliberative discourse" for us. Apparently Johnson only has a problem with an exchange of views when he knows that his arguments are going to be subjected to rigorous informed scrutiny and critique. In short, he is fearful that he might get his clock cleaned in a public exchange of views where there is ample opportunity to correct in reasoned tone his misrepresentations and to point out evidence that he has willfully ignored.

Johnson cites as an example of how "the ideal of deliberation is not always greeted warmly" an incident fifteen years prior when he was invited to speak at a "gay and lesbian issues forum" and his seminary received letters demanding his resignation (how many? one? two? Johnson doesn't say). Because the forum allegedly invited speakers "from across the spectrum" and because Johnson "had no idea what [he] planned to say" (why then was he invited?), Johnson concludes that those writing complaints to his seminary objected "to the fact that [he] had even agreed to discuss the issue" (212). That doesn't make sense to me. Had the letter writers had some indication that in discussing the issue he wouldn't "cave" into key elements of the homosexualist agenda, they obviously wouldn't have objected to the idea of his presenting at the forum. They objected because they sensed—surely rightly, in hindsight—that he was on the road to embracing that agenda.

I'm confident that any opposition that Johnson has received within the church for supporting the homosexualist agenda—which (as I have argued) is a strongly anti-Scripture view—is nothing compared to the opposition that I have received for supporting a male-female prerequisite—a position that, unlike Johnson's, is in agreement with Scripture and nearly two millennia of church tradition. During my tenure process my seminary received tremendous amounts of mail from people opposing my tenure, including from a former moderator of the PCUSA (and alum of my seminary) who told the President that if I received tenure the whole biblical studies department would "go to pot." The word that I later received was that this was part of an orchestrated letter-writing campaign by homosexualist organizations in the PCUSA.<sup>53</sup>

The virulent opposition did not arise from objections to my qualifications, for I had met and exceeded all the qualifications for tenure to associate professor rank. The opposition arose from the fact that I had the audacity to write and have published an effective 500-page book defending the historic position of the church on homosexual practice, looking at Scripture, theology, and science. If things are this bad at a time when the PCUSA is operating with a requirement for ordained officers "to live either in fidelity within the covenant of marriage between a man and a woman ... or chastity in singleness" (*The Book of Order*, G-6.0106b), how bad will the persecution be if this requirement is ever overturned?

Currently, anyone who publishes against homosexual practice will have a very hard time securing a teaching position at most, if not all, PCUSA seminaries and nearly every Episcopal, Lutheran, and Methodist seminary. The number of tenured professors at

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<sup>53</sup> Only after I received tenure did I discover that renewal organizations in the PCUSA got wind of this orchestrated effort to keep me from getting tenure and began their own letter-writing campaign.

mainline seminaries who regard homosexual practice per se as immoral is probably less than 15 percent, and nearly all of these know that they need to keep their mouth shut about it in the classroom if they want to have influence at their institution. Homosexualist professors have far more freedom to express openly and strongly their views on the subject both in the classroom and in special forums.

Johnson tries to sound magnanimous by stating that those who disagree with his view on homosexual practice should be permitted to express their views. However, he quickly adds: “it is another thing to allow one group to perpetuate a status hierarchy.... just as no one has the right to yell ‘fire’ in a crowded building when there is no fire and call that utterance free speech” (194-95). Readers will search in vain to find a single reference in Johnson’s work to attacks on so-called “hate speech” regarding homosexual practice in Canada, England, Scandinavian countries, and even parts of the United States. Apparently Johnson doesn’t want to say anything that might scare away any readers whom he might otherwise lull into complacency over the threat of “gay rights.”<sup>54</sup>

Johnson recommends that, in exchange for “religious communities” being allowed “to voice good-faith objections to gay marriage without fearing prosecution,” such communities “might ... endorse substitutes for marriage, such as domestic partnerships or civil unions” (208). Yet we have already seen from Johnson himself that endorsing marriage substitutes makes “gay marriage” a virtual *fait accompli*. So what kind of option is this for someone who believes homosexual practice is immoral? Even though “religious persons” do most of their living in a secular environment, Johnson thinks that they should abandon that environment to the homosexualist agenda in exchange for being left alone just in the specific context of worshipping in a church building a few hours each week (where, incidentally, the overarching denominational authority that has surrendered to the prevailing secular culture may harass them).<sup>55</sup> In addition, Johnson can make no guarantees to anyone that “sexual orientation” laws and civil recognition of homosexual unions will not lead to the persecution of those who verbalize disapproval of such unions. All the evidence to date indicates otherwise: free speech, employment, property, and educational opportunities are all at risk for those who express opposition to homosexual practice, no matter how loving.

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<sup>54</sup> Cf. Alan Sears and Craig Osten, *The Homosexual Agenda: Exposing the Principal Threat to Religious Freedom Today* (Nashville: Broadman & Holman, 2003); Erik W. Stanley and Mathew D. Staver, “The Impact of Hate Crimes Laws upon Religious Organizations,” Memo of Liberty Counsel (2007; 17 pgs.; <http://www.lc.org/attachments/hatecrimesmemo2005.pdf>); Mathew Staver, *Same-Sex Marriage: Putting Every Household at Risk* (Nashville: Broadman & Holman, 2004); Gagnon, “Bearing False Witness: Balch’s Effort at Demonization and His Truncated Gospel” (2004; 23 pgs.; online: <http://robgagnon.net/articles/homoBalchFalseWitness.pdf>), 10-18; idem, “Don’t ENDanger Your Liberties in the Workplace” (Oct. 2007; 8 pgs.; online: <http://robgagnon.net/articles/ENDA.pdf>); idem, “An Open Letter regarding the Current Hate Crimes Amendment” (Oct. 2005; online: <http://www.robgagnon.net/HateCrimesAmendment.htm>). For a nice summary of what has already happened in Canada go to <http://www.catholiceducation.org/articles/persecution/pch0080.html> (written by a persecuted Canadian teacher, Chris Kemppling; also: <http://www.narth.com/docs/current.html>). For a much more detailed presentation see Hans C. Clausen, “The ‘Privilege of Speech’ in a ‘Pleasantly Authoritarian Country’: How Canada’s Judiciary Allowed Laws Proscribing Discourse Critical of Homosexuality to Trump Free Speech and Religious Liberty,” *Vanderbilt Journal of Transnational Law* 38 (2005): 443-504 (<http://www.narth.com/docs/PrivilegeofSpeechClausen090.pdf>).

<sup>55</sup> Witness the current problems of the Episcopal Church and in the Anglican Church of Canada.

Johnson himself repeatedly compares such opposition to racism. For example: “Just as racial injustice could not sustain itself forever, neither will the exclusion of gay couples” (Review, 386). Just as “today racial discrimination is ruled out of bounds as *beyond rational argument*, as is discrimination on the basis of gender,” so too we will one day “reach a consensus” that discrimination on the basis of “gender orientation,” including the rejection of “gay marriage,” is beyond rational argument (210; my emphasis). Even in the very paragraph where Johnson says that liberals shouldn’t call traditionalists “bigots,” Johnson refers to the latter’s “prejudices” (215; and, on the previous page, “traditional prejudice”; also: 8, 74, 81, 166, 168, 182, 293 n. 107). So apparently the distinction for Johnson is, “Don’t call traditionalists ‘bigots’; just compare their views regularly to those of other bigots.” Johnson’s caution against directly calling them “bigots” seems to stem more from strategic considerations—don’t alienate the majority while they are the majority because you still need concessions from them—than from any charitable view on Johnson’s part.<sup>56</sup> Given such attitudes on the part of Johnson, it seems unlikely that Johnson will be in the vanguard of those fighting for these irrational and prejudiced bigots. Surely Johnson would insist on the firing of anyone, certainly any “white collar” employee, who repeatedly and unrepentantly uttered overtly racist comments. So why would he support the continued employment of someone who repeatedly expressed moral opposition to homosexual behavior—that is, once the homosexualist agenda has acquired the coercive power to effect such actions?

### **3. Johnson’s argument that the case for “gay marriage” is “conservative”**

Johnson uses a series of weak arguments to characterize consistent opposition to both civil unions and gay marriage as an untenable (“narrow”) option for conservatives (214).

First, he says: “it does more to conserve traditional prejudice than it does to preserve traditional morals.” As we noted earlier, this begs the question. It requires buying into Johnson’s skewed notion that opposition to homosexual practice is nothing more than irrational prejudice. Were someone to accept this view, there would be little basis for approving only civil unions and not “gay marriage”—or, for that matter, other adult-committed sexual behaviors like polyamory or incest. Yet a reasoned recognition of structural prerequisites to sexual unions, based on the embodied complementarity of the participants, hardly passes for irrational “prejudice.”

Second, “it ignores the possible moral value that could accrue from consecrating same-gender relationships.” We will come back to this point in a moment.

Third, “it depends on a quite specific vision of the moral good that not everyone in society shares.” Well, not everyone in society shares the view that gay marriage or even homosexual civil unions are a good idea. In many parts of the United States the vote is

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<sup>56</sup> Indeed, Johnson contends: In exchange for us not calling you “bigots,” you should stop calling gays “perverse” (215). If the point here is that those who oppose homosexual practice should not even call homosexual *behavior* per se “perverse”—that is, behavior “deviating from” or “directed away from” what is right or good (the underlying Latin word *perversus* means “turned about, turned the wrong way, reversing or inverting the [natural] order”)—then this would require a complete abandonment of the position against homosexual practice, which would be absurd. If all that Johnson is saying is that in the midst of dialogue of debate don’t be calling each other names (“you are perverse” or “you are a bigot”), then I agree. But again, given that Johnson repeatedly compares opposition to homosexual practice with racism and sexism, his call to not using the word “bigot” rings hollow. He is essentially saying the same thing in so many words.

strongly against even civil unions. Again, opting for homosexual civil unions is no “compromise.” It is a way station or transitional stage leading invariably to gay marriage. To support government recognition and subsidy of same-sex civil unions is saying, in effect: I don’t want “gay marriage” today but I want it in 2-5 years time.

Fourth, “even if the vast majority in a society were to agree with this particular vision of what constitutes morality, how are we to preserve the freedom of conscience of the minority that disagrees?” We would preserve it in the same way that it has been preserved over the past twenty-five years. In today’s society threats to freedom of conscience arise far more from the homosexualist side than from a consistent stance against homosexual practice, with matters certain to get much worse as the homosexualist lobby continues to grow in power. Developments in the last ten years in Canada, western Europe, and even parts of the United States demonstrate this. My own personal experience with committed homosexualists is that they tend to exhibit at a disproportionately high rate—not universally but at a disproportionately high rate—significant intolerance for those who disagree with their perspective, a disregard for accurate reporting in context, and a general mean-spiritedness.

The second argument cited above is the main focus for Johnson’s final argument in his section on “deliberative democracy and disputes over gay relationships.” Actually it is more of an assertion than an argument; namely, that

allowing gays to marry would promote the very sort of fidelity, commitment, and care for the other that traditionalists claim they want to see.... [M]aking marriage the norm for gays would actually strengthen marriage as an institution. (217; cf. 215)

There are three main reasons why this argument doesn’t work.<sup>57</sup>

First and most importantly, the argument takes no account of the fact that the immorality of same-sex intercourse does not consist merely in its disproportionately high rates of promiscuity (for men in particular). These are only the ancillary side effects or symptoms of the fundamental problem with homosexual practice; namely, the erotic attraction for, and the attempt to merge with, what one already is as a sexual being. This amounts to a dishonoring of the integrity of one’s maleness, if male, or femaleness, if female. One is not half one’s own sex but half of the full male-female sexual spectrum. The sexual complement to a man is not another man but a woman; and to a woman is not another woman but a man.

Johnson’s argument is akin to advocating as an alternative to promiscuity a reconfiguration of the institution of marriage to allow for more than one partner or a bond between close blood relations who will not, or cannot, produce children. When Paul dealt with a sexual relationship at Corinth between a man and his stepmother, he would not have considered that relationship to be morally improved by a lifelong commitment. That would only have regularized the immorality. The same is true of endorsing lifelong homosexual unions. Obviously issues of commitment, monogamy, love, and longevity only kick in after structural prerequisites for the sexual union are met.

Second, it is not likely that creating homosexual civil unions is going to result in radically different behaviors on the part of persons who live out of same-sex attractions. The kinds of disproportionately high rates of measurable harm that characterize

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<sup>57</sup> See further “Why the Disagreement,” 125-30, 35-36.

homosexual behavior are different for men and women and correlate with what we would expect from male-female differences: homosexual males exhibit much higher rates of sex partners and sexually-transmitted infections, while homosexual females experience higher rates of mental health issues and, on average, shorter relationship durations than even homosexual male relationships.<sup>58</sup> With regard to homosexual males, J. Michael Bailey, a strong advocate for “gay rights” and one of the most important researchers of homosexuality, makes the following point:

Regardless of marital laws and policies, there will always be fewer gay men who are romantically attached. Gay men will always have many more sex partners than straight people do. Those who are attached will be less sexually monogamous. And although some gay male relationships will be for life, these will be many fewer than among heterosexual couples.... I suspect that regardless of the progress of gay rights, gay men will continue to pursue happiness in ways that differ markedly from the ways that most straight people do. This will be true even as society becomes increasingly tolerant of them. Both heterosexual and homosexual people will need to be open-minded about social practices common to people of other orientations.<sup>59</sup>

To continuously call marriage what will rarely be both monogamous and of twenty-year duration or more (let alone lifelong), can only have a long-term cheapening effect on the institution of marriage.<sup>60</sup>

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<sup>58</sup> More sex partners and STIs among homosexual males is a no-brainer. Higher rates of mental health issues for lesbians correlate with higher rates for women generally; shorter-term unions on average likely arises from the high level of expectations, and thus pressure, that women put on sexual relationships.

<sup>59</sup> *The Man Who Would Be Queen: The Science of Gender-Bending and Transsexualism* (Washington, D.C.: Joseph Henry Press, 2003), 101-2.

<sup>60</sup> The counterargument is often made that heterosexual marriages are not doing well either. Even so, about three-quarters last 10 years or more, two-thirds last 15 years or longer, and slightly more than half last 25 years or more. See Justin Wolfers, “Misreporting on Divorce,” *New York Times*, 3/25/08 (<http://freakonomics.blogs.nytimes.com/2008/03/21/misreporting-on-divorce/>) and his articles cited therein. Cf. also the rebuttal of Johnson’s argument about Scandinavian divorce rates being higher for heterosexuals than homosexuals in sec. II.5.1 above: “divorce-risk levels are *considerably higher*” for same-sex registered partnerships: 50% higher for male partnerships and 150% higher for female partnerships in just the limited time interval of 0-8/9 years.

Terry Stein in the entry on homosexuality for *Kaplan and Sadock’s Comprehensive Textbook of Psychiatry* (7th ed.; Lippencott Williams & Wilkins, 2000) writes: “From 8 to 14% of lesbian couples and from 18 to 25% of gay male couples report that they have lived together for more than *10 years*” (p. 1624; my emphasis). Stein is a known homosexual activist for homosexual causes who has served as a Director of the AIDS Education Project at Michigan State University, Chair of the American Psychiatric Association’s Committee on Gay, Lesbian, and Bisexual Issues, Associate Editor of the *Journal of Gay and Lesbian Psychotherapy*, and President of the Association of Gay and Lesbian Psychiatrists. So his claims must be viewed as a “best case” scenario.

Consider also a 2003 study entitled “Relationship Innovation in Male Couples,” presented at the 2003 American Sociological Association conference by Dr. Barry Adam, a professor of sociology at the University of Windsor and homosexual activist. Adam interviewed 70 homosexual men in Ontario who were part of 60 couples and found that only 25% reported being monogamous; and most of the latter were in a relationship of less than three years duration (note that being in a relationship of at least a year was a qualification for being in the study). According to Adams, “One of the reasons I think younger men tend to start with the vision of monogamy is because they are coming with a heterosexual script in their head and are applying it to relationships with men. What they don’t see is that the gay community has their own order and own ways that seem to work better” (<http://www.washblade.com/2003/8-22/news/national/nonmonog.cfm>).

Interesting for their symbolic import are the following two cases. The first same-sex couple to be recognized as a civil union in Vermont (2000), Carolyn Conrad and Kathleen Peterson, ended their relationship just five years after being legally united. Conrad filed a relief-from-abuse order from Peterson. According to the news report, “Conrad stated that she feared physical harm from Peterson after she allegedly punched a hole in the wall during an argument in late August, and threatened to harm a female friend of Peterson’s [?] in early December.” Even Julie and Hillary “Goodridge,”<sup>61</sup> the primary plaintiffs in the Massachusetts Supreme Court “gay marriage case” (2004), split up just two years after getting officially married.<sup>62</sup> Marriage isn’t going to change radically the habits and lifestyles of male and female homosexuals.

At the same time the percentage of adult homosexual persons entering into marriage in places where it is offered constitute such a small part of the whole adult-homosexual population—for example, in the Netherlands only 3% in the first years that marriage was offered, 2001-2004—that granting “gay marriage” ends up being more about validating the homosexual life than about strengthening homosexual relationships.

Third, we can expect official societal recognition and subsidy of homosexual unions to have negative effects for the society as a whole. Four in particular come to mind.

(1) Official recognition of homosexual unions will erode resistance to other “adult-committed” sexually deviant behaviors—first as regards multiple-partner unions and second as regards incest. Somewhere down the road from that we can expect further lowering of age of consent laws. As we have noted all along, the case for “gay marriage” is a case against formal or structural prerequisites for sexual activity. Lacking the ability to prove intrinsic, scientifically measurable harm in the deviant behaviors cited above, the state will have to bow to the logic of its own arguments for “gay marriage” that what really matters is whether the participants involved “love” each other.<sup>63</sup>

(2) The decline of marriage as an institution will actually be accelerated since homosexualist rhetoric treats erotic desire as little more than an imperceptible extension of non-erotic desire. Since there are lots of nonerotic relational commitments that people don’t feel a need to formalize, why bother with formalizing a sexual commitment? Given, too, how poorly homosexual relationships fare on average in terms of monogamy and longevity, even in relation to heterosexual bonds, the extension of marriage rights to homosexual bonds virtually requires a further lowering of the esteem in which marriage as an institution is held. An embrace of homosexual marriage is also the final statement

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<sup>61</sup> They both changed their last names to “Goodridge,” which was Hillary’s grandmother’s maiden name.

<sup>62</sup> Daniel Barlow, “Vermont’s—and nation’s—first civil union breaking up,” *Rutland Herald*, 12/15/05 (online: <http://www.timesargus.com/apps/pbcs.dll/article?AID=/20051215/NEWS/512150369/1002>); Michael Levenson, “After 2 years, same-sex marriage icons split up,” *Boston Globe*, 7/21/06 (online: [http://www.boston.com/news/local/articles/2006/07/21/after\\_2\\_years\\_same\\_sex\\_marriage\\_icons\\_split\\_up/](http://www.boston.com/news/local/articles/2006/07/21/after_2_years_same_sex_marriage_icons_split_up/)). Conrad and Peterson had been together for 5 years before the civil union ceremony. The “Goodridge”’s had been together for 15 years before getting officially married. My point is only that, for all the fanfare, getting a marriage certificate didn’t have material positive impact on either relationship. And these are couples that earnestly sought societal validation.

<sup>63</sup> See Appendix 3 above for pro-polyamory trends; detail in “Why the Disagreement,” 36-39, 42-44. For movement toward official recognition of polyamory in the Netherlands and in Sweden see Stanley Kurtz, “Here Come the Brides: Plural marriage is waiting in the wings,” *The Weekly Standard* 11:15 (Dec. 26, 2005; online: <http://www.weeklystandard.com/Content/Public/Articles/000/000/006/494pqobc.asp?pg=1>); idem, “Fanatical Swedish Feminists,” *National Review Online*, 2/22/06 (online: <http://article.nationalreview.com/?q=MWI3ZWMYMRhN2Q3MjA2Y2U4YmU1MDI4YzZM3OGUyODM=>).

by society that children and marriage have no significant connection. Yes, it is true, we have accepted marriages between heterosexual couples where children do not result, either by intention or, more commonly, by “equipment failure.” However, in embracing “gay marriage” society embraces sexual unions where the participants don’t even have the necessary “equipment” for procreation.

Stanley Kurtz has shown that the introduction of official recognition of homosexual unions in Scandinavia and the European lowland countries has coincided with a sharp rise in out-of-wedlock births and general reduction in marriage rates. This is especially the case in the Netherlands, a country that has had the longest history of recognition of homosexual unions (“gay marriage” since 2001, same-sex registered partnerships since 1998, and various same-sex cohabitation laws since 1979), as well as the liberal, northern part of Norway.<sup>64</sup>

(3) A full-court societal press for the acceptability of homosexual unions and the unacceptability of “homophobia,” drilled into children as early as their kindergarten year, along with an increase in same-sex sexual experimentation, will probably over time lead to an increase in the incidence of homosexuality and bisexuality in the population.<sup>65</sup> This in turn will mean more people experiencing the disproportionately high rates of problems that attend homosexual behavior.

(4) “Gay marriage” will bring with it the zenith of civil and religious intolerance for any opposition to homosexual behavior. As we have already noted, although supporters of homosexual unions preach tolerance and diversity, the political and religious agenda of most in the movement suggests otherwise. Penalties for publicly expressing disapproval of homosexual practice in some Western countries already range from fines to loss of employment; even incarceration has been threatened. Christian colleges and seminaries that have policies against homosexual practice will risk losing their tax-exempt status, access to federal grants and student loans, and ultimately accreditation itself. Teachers whose teaching against homosexual practice puts such government benefits at risk will be told to shut up or leave. Public schools will intensify their indoctrination of children into the acceptability of homosexual unions from kindergarten on and single out for marginalization and ridicule any who question this agenda. Parents’ rights in instilling moral values in their children will be abridged. Indeed, the state could one day remove self-professed gay and lesbian children from parents who express moral disapproval of homosexual practice on the pretense of “child abuse.” Mainline denominations will comply with societal trends by refusing to ordain “heterosexist” candidates for ministry and even disciplining heterosexist clergy. Since approval of homosexual practice can only occur at the cost of marginalizing Scripture, the trend will be toward a hard-left radicalization of mainline denominations.

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<sup>64</sup> See the references to his articles in “Why the Disagreement,” 128-29. More recently see his following pieces in the archives of *National Review Online* (<http://author.nationalreview.com/?q=MjMxNA==&p=MjAwNg==>): “Avoidance Strategy: What about marriage in the Netherlands?” (10/30/06); “Why So Few?” Parts I and II (6/5-6/06); “Smoking Gun” (6/2/06), “Zombie Killers” (5/25/06), “No Nordic Bliss” (2/28/06), “Standing Out” (2/23/06), “Fanatical Swedish Feminists” (2/22/06). Cf. also his “Denmark, IVF, and Gay Marriage” at <http://corner.nationalreview.com/post/?q=ZjZkZDJhZmFiMWRhMTU2MWRkYTQyMmY2YTA0NDBmMzU=>). In an email communication dated 9/21/07 Kurtz remarked: “I find that the vast majority of what I’ve written in reply to Eskridge has simply been ignored. I take this as a sign that the critics haven’t got much in the way of a substantive response.”

<sup>65</sup> See the discussion in “Why the Disagreement,” 30-34, 120-25.

So, for all these reasons, there is no valid “conservative case” for “gay marriage.”

#### **IV. Homosexual Indoctrination in Public Schools**

Johnson actually feigns offense at what he considers the paranoid idea that “gays [are] bent on promoting ‘homosexual indoctrination in the schools’” (163). It is impossible that Johnson was not already aware of the push by homosexualist lobbies in a number of states to accomplish precisely that.

For example, in 2007 Governor Arnold Schwarzenegger signed into law SB 777 (he had vetoed a similar bill in 2006 and there were earlier efforts in the California legislature to pass similar bills). It states that “no teacher,” from kindergarten through twelfth grade in California public schools, “shall give instruction,” including from textbooks or classroom assignments, “nor shall a school district sponsor any activity that promotes a discriminatory bias because of” the characteristic of “sexual orientation,” defined as “heterosexuality, homosexuality, or bisexuality,” or “gender,” defined as “a person’s gender identity and ... appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth” (i.e., including transsexuality and cross-dressing). The latter replaced the old definition of “sex” or “gender” as “the biological condition or quality of being a male or female human being.”

Thus any questioning of homosexual activity per se, homosexual civil unions or marriage, transsexuality, or cross-dressing would subject a school teacher in California to termination and the district to lawsuits by the California Department of Education. In order to avoid such lawsuits, a school district would need to prove the absence of “discriminatory bias,” which for all practical purposes would require the positive portrayal of the “Gay-Lesbian-Bisexual-Transgender” agenda as a valued civil rights movement and lifting up homosexual figures in history as positive role models in “gay history month,” a well as criticizing as prejudiced, discriminatory, hateful, and “homophobic” any questioning of homosexual unions or sex-change operations and cross-dressing. *No* discussion of human sexuality issues could leave the impression that only forms of heterosexual practice were being condoned. Homosexual attraction will be allied with the condition of race such that anyone who questions of the acceptability and healthiness of homosexual practice will be likened to a member of the Klu Klux Klan or Nazi “skinhead,” and treated legally as such.

In the same year Schwarzenegger also signed into law AB 394, which requires public schools to distribute materials to teachers, students, and parents that promote homosexuality, bisexuality, and transsexuality under the pretense of “anti-harassment training.” This law provides for a more proactive implementation of AB 537, signed into law in 1999, which already forbade “discrimination” and “harassment” in the public schools based on “sexual orientation.”

Moreover, these homosexualist indoctrination education bills apply to “any program or activity conducted by an educational institution that receives, or benefits from, state



financial assistance or enrolls pupils who receive state student financial aid educational institution,” including private schools and colleges.<sup>66</sup>

What all this means is that young, impressionable children from kindergarten on up can and will be bombarded regularly with, and held hostage to, homosexualist ideology. They will be told repeatedly throughout their education that anyone who thinks differently is a hateful, ignorant, homophobic bigot whose views are now also illegal. All California public school students and most private school students can look forward to aggressive “GLBT” clubs that encourage them to experiment with nascent homosexual desires; regular convocations and forums that celebrate the value of “sexual diversity” with outside homosexualist speakers brought in to spout their propaganda; regular classroom instruction and mandatory assignments that will pound into them the homosexualist ideology and force them to adopt that ideology or face a poor grade; and classrooms decorated with posters that daily remind students not to be “homophobic” and “bigoted” in their views toward students who either are sexually attracted to fellow students of the same sex or understand their “gender identity” to be different from their biological sex. Children can and will be exhorted to identify with the sexual orientation and gender that they feel most comfortable with and to behave and dress accordingly. There will be no option for any student or parent to express an alternative viewpoint because any other viewpoint will be treated as legally discriminatory.

Out of all this will come one of three outcomes for your child, if you happen to have children in a school system where such “sexual orientation” and “perceived gender” laws operate: (1) Your child will remain faithful to the important teaching that sexual relations are designed for the pairing of a male and a female, in which case he or she will be subject to attacks and ostracism throughout his or her academic life and regularly made to feel that he or she is the moral equivalent of a virulent racist. (2) Your child will be brainwashed into accepting the homosexualist and transgendered agenda, lock, stock, and barrel, which means that your child will now regard you the parent, if you disagree with such an agenda, as a hateful, ignorant bigot. (3) At a vulnerable time of your child’s life, when issues of sexual orientation and gender identity may not be fully settled but subject to some normal doubt and questioning, your child will be encouraged into, and will finally succumb to, a homosexual, bisexual, or transsexual identity.

On the last outcome, one should be aware of a 1992 study of nearly 35,000 Minnesota junior and senior high school students, which concluded: “Responses to individual sexual orientation items varied with age, religiosity, ethnicity, and socioeconomic status.... The findings suggest an unfolding of sexual identity during adolescence, influenced by sexual experience and demographic factors.”<sup>67</sup> This study contradicts the assumption by many that sexual orientation is rigidly congenital and not subject in any way to cultural influence or individual experimentation. One might compare also the conclusions reached by psychiatrists Paul R. McHugh and Phillip R. Slavney in a standard textbook on psychiatry published by Johns Hopkins Press:

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<sup>66</sup> For homosexualist bills signed into law by the governor of California since 2004 see the Campaign for Children and Families website at <http://www.savecalifornia.com/getactive/arnoldsrecord.php>. Cf. also the analysis of SB777 by Roy Hanson of Private & Home Educators of California at <http://www.pheofca.org/SB777080124.pdf>.

<sup>67</sup> G. Remafedi, et al., “Demography of sexual orientation in adolescents,” *Pediatrics* 89:4 (Apr. 1992): 714-21 (quote from the abstract).

Genetic factors play some role in the production of homosexual behavior, but . . . sexual behavior is molded by many influences, including ‘acquired tastes’ (or learning) closely related to the culture in which the individual develops. . . . It is possible . . . to picture a future in which homosexual behavior will be so much in the cultural experience of every individual that the genetic contribution will become undetectable. . . . What may be inherited may not be a mechanism specific to a behavior but rather something related to qualities of that person that render him or her more vulnerable to social influences. . . . That genes have a role in behavior can be demonstrated; that behaviors are influenced by other forces is also certain, particularly learning through models, instructions, and rewards from the sociocultural environment.<sup>68</sup>

## V. “Employment Non-Discrimination” Laws

Johnson insists that ENDAs (employment non-discrimination laws) for homosexual and transsexual persons are necessary to prevent the rampant and unfair employment discrimination against homosexuals, bisexuals, and transsexuals. He contends, based on the work of M. V. Lee Badgett,<sup>69</sup> that homosexual men earn 15% percent less in wages than their male heterosexual counterparts. Yet even Johnson has to admit, based on the same work, that lesbian women earn slightly more than their female heterosexual counterparts (163).

Is the figure even as bad as 15% for homosexual males? Johnson fails to cite two other, better-done studies that did not confirm significant discrimination for homosexual males. A 2001 study by S. Allegretto and M. M. Arthur found that most of the alleged discrimination against homosexual males could be explained by the importance of “the marriage premium.” When compared with unmarried heterosexual men, homosexual men made only 2.4% less.<sup>70</sup> A 2004 study by C. Carpenter, using data from the 2001 California Health Interview Survey, found no statistically significant difference in wages correlating with sexual orientation.<sup>71</sup> A sophisticated study that came out after Johnson’s book was published, in 2007, by Bruce Elmslie and Edinaldo Tebaldi, found that after controlling for the marriage premium, hours worked, and individual characteristics, homosexual men earned 9% less than their heterosexual counterparts—a discrimination factor 40% less than the 15% figure cited by Johnson.<sup>72</sup> “Lesbians earn the same as

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<sup>68</sup> *The Perspectives of Psychiatry* (2d ed.; Baltimore, 1998), 184-86.

<sup>69</sup> *Money, Myths and Change: The Economic Lives of Lesbians and Gay Men* (Chicago: University of Chicago Press, 2001), ch. 2. Badgett relied primarily on her own 1995 study and a 1998 study by Klawitter and Flatt: M. V. Lee Badgett, “The wage effects of sexual orientation discrimination,” *Industrial and Labor Relations Review* 48: 726-39; Marieka M. Klawitter and Victor Flatt, “The effect of state and local antidiscrimination policies for sexual orientation,” *Journal of Policy Analysis and Management* 17:658-86. Badgett used the General Social Survey 1989-1991; Klawitter and Flatt used the 1990 U.S. Census. In her 2001 work Badgett updated her results to include the years through the year 1994 for the General Social Survey and added the results for the 1992 National Health and Social Life Survey.

<sup>70</sup> “An empirical analysis of homosexual/heterosexual male earnings differentials: unmarried and unequal?” *Industrial and Labor Relations Review* 54:631-46 (using the 1990 U.S. Census).

<sup>71</sup> “New evidence on gay and lesbian household incomes,” *Contemporary Economic Policy* 22:78-94.

<sup>72</sup> “Sexual Orientation and Labor Market Discrimination,” *Journal of Labor Research* 28:436-53 (using the 2004 Current Population Survey). The authors found wage discrimination in “management and traditionally blue-collar, male-dominated jobs” such as construction work and building and grounds maintenance. They did not find evidence of discrimination in the areas of education, healthcare, food services, sales, and office support. We could certainly add all sectors of the media and entertainment industries.

married women and either the same or slightly, but insignificantly more, than unmarried heterosexual women,” though when the data is not controlled for hours worked for the same occupations, “lesbians show 15% higher and unmarried heterosexual women 3% lower earnings compared to married women.”

So homosexual males and females, combined, receive on average wages at worst only 4% lower than their heterosexual counterparts. This figure is probably significantly less than any discrimination that arises from the inherently benign characteristics of height or weight. Elmslie and Tebaldi also did not factor in the arts, entertainment, or media industries where homosexual involvement and affirmation is widely recognized to be high. Had they done so, their overall lower-earnings rates would probably have been substantially reduced. In addition, homosexual households are far more likely to be “DINKs” (dual-income-no-kids) than their heterosexual counterparts, resulting in significantly higher disposable household income.<sup>73</sup> The fact that homosexual males are at least 34 times more likely to have HIV/AIDS,<sup>74</sup> to say nothing of non-HIV/AIDS sexually transmitted infections (STI),<sup>75</sup> would account for some of the extra discrimination experienced by homosexual males inasmuch as health issues affect job productivity.<sup>76</sup> In addition, significantly higher rates of high-risk and deviant sexual behaviors among homosexual males<sup>77</sup> may correlate with less responsible behavior in the workplace that affects job performance and evaluation. So when one considers any wage differences between homosexual and heterosexual persons from a full-orbed perspective, there appears to be very little *statistical* justification for inserting “sexual orientation” and “gender identity” (divorced from biological gender) into employment non-discrimination acts, all the more since homosexual acts raise moral issues.

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<sup>73</sup> The term “DINK” is used by homosexualist groups. Elmslie and Tebaldi found that only 4% of homosexual men and 18% of homosexual women have dependents as compared to 49% each of unmarried/married heterosexual men and heterosexual women (442-43). Compare the take on “gay affluence” by Robert Witeck and Wes Combs, homosexual authors of *Business Inside Out: Capturing Millions of Brand Loyal Gay Consumers* (Kaplan Publishing, 2006) whose DC-based firm, Witeck-Combs Communications, Inc., specializes in assessing LGBT marketing trends. “It [i.e. gay affluence] is definitely a myth and perhaps the most misunderstood fact about gays and lesbians. We are not wealthier. We make about the same amount of money as our non-gay counterparts. Because only about 20 percent of gay and lesbian households have children in them, we tend to have more discretionary income. What others spend on childcare related costs we often spend on ourselves (or save). In many cases we are also dual income households, which coupled with no children gives us more money to spend than the average consumer” (online: <http://www.queercents.com/2006/11/02/ten-money-questions-for-bob-witeck-wes-combs/>; retrieved 10/23/07).

<sup>74</sup> Cited by Elmslie and Tebaldi on the assumption that homosexual males account for 5% of the male population and 64% of cumulative HIV/AIDS cases. The latter statistic is based on a 2000 Centers for Disease Control statistic (442). According to an HIV/AIDS Fact Sheet for 2005, men who have sex with males accounted for 71% of men diagnosed with HIV/AIDS (“high-risk heterosexual contact” accounted for only 15%); so ‘HIV/AIDS among Men Who Have Sex with Men: CDC HIV/AIDS Fact Sheet,’ <http://www.cdc.gov/hiv/topics/msm/resources/factsheets/pdf/msm.pdf>. Moreover, the 5% estimate of homosexual males is overly high; the actual figure is closer to 3% (see sec. II.5.2 above). So the estimate of 34 times more likely to have HIV/AIDS is probably more accurately roughly 50 times.

<sup>75</sup> According to a CDC document, “in 2006 [MSM] accounted for 64% of P&S syphilis cases in the United States” (“Sexually Transmitted Diseases Surveillance, 2006,” 77-84 [“STDs in Men Who Have Sex with Men”]), online: <http://www.cdc.gov/std/stats/pdf/special-focus-profiles.pdf>.

<sup>76</sup> Elmslie and Tebaldi rule this factor out on the grounds that discrimination is greater in certain male-dominated, blue-collar occupations. However, HIV/AIDS incidence would still affect the overall figures as one among multiple factors.

<sup>77</sup> See the studies cited in *The Bible and Homosexual Practice*, 452-60, 473-77.

This last point raises the key problem with making “sexual orientation” and non-biological “gender” a specially protected classification for employment protection. It wrongly turns what is fundamentally an issue about sexual immorality into an issue about inclusiveness. Since the principles behind a male-female prerequisite constitute the only rational basis for rejecting absolutely adult-committed incestuous unions and unions involving more than two persons, a violation of this prerequisite must be worse than a violation of state-enforced laws against incest and polyamory (see sec. XII and Appendix 3 above). The argument can also be made that adultery, while severe, is less severe than homosexual practice, since one can’t cheat against a union that is structurally invalid, and thus already immoral, even before any adulterous act occurs. So it is fair to ask: Are there some secular white-collar positions that should be denied to employees who trumpet the fact of having ongoing sexual relations with an adult who is a close blood relation (a parent, sibling, or adult child), of having several common-law spouses, or of actively engaging in adulterous affairs? Or should a person who owns a small professional business have a right to terminate any employee who is discovered to be involved in any of these sexual relationships?

In other words, are there *any* secular employment situations where there ought to be a right to not hire, or a right to terminate, someone who actively engages in, and flaunts, egregious immoral (but not necessarily criminal) behavior? In responsible white-collar positions, morals are sometimes considered in the hiring and promotion process, at least as regards some particularly revolting behaviors that shock normal sensibilities. Homosexual activists and their allies who argue that “discriminatory” comments against the homosexual life should affect a person’s employment are also using a morals test, however misguided. The question is not whether to have a morals test, it seems to me, but where to draw the line.

If one has in mind someone who experiences same-sex attractions but who is quiet and doesn’t adopt a high-profile advocacy stance (like spearhead a corporate GLBT advocacy group) and who doesn’t insist that the company give at least implicit validation of his or her same-sex sexual relationship (say, at company gatherings where spouses are invited), then it is easier to be sympathetic to a non-discrimination policy. But if one has in mind the opposite of this—high-profile, abrasive persons determined to change the entire company ethos to cater to his or her immorality—then the whole matter becomes more problematic.<sup>78</sup>

In a piece that I wrote in Oct. 2007 when an ENDA was being considered in the U.S. Congress, I noted the following threat to liberty for those who think that homosexual practice is immoral:<sup>79</sup>

1. *A federal ENDA will virtually codify you as a bigot so far as the federal government is concerned if you oppose homosexual practice on moral grounds.*

The biggest fallout from a federal ENDA would be the establishment of “sexual orientation” (defined as “homosexuality, heterosexuality, or bisexuality”) as a specially protected category of *federal* law. As sure as night follows day, this will be the proverbial

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<sup>78</sup> So my “Letter to an Evangelical Leader on Exploring ‘Gay Rights’” (Aug. 2007; 8 pgs.; online: <http://robagnon.net/articles/homosexGayRights.pdf>).

<sup>79</sup> “Don’t ENDANGER Your Liberties in the Workplace” (Oct. 2007; 8 pgs.; <http://robagnon.net/articles/ENDA.pdf>); here slightly amended.

foot in the door by proponents of homosexual practice that will lead, eventually but irrevocably, to “gay marriage” (mandated by the U.S. Supreme Court), a nationally enforced indoctrination of children into the homosexualist agenda in schools, and the criminalizing of opposition to homosexual practice at the national level.

This is the way that such actions have been advanced on the state level. Courts use so-called anti-discrimination laws regarding “sexual orientation” as the legal foundation for pushing the homosexualist agenda to its logical conclusion. Even from the outset this bill will put the full weight of the federal government behind the heinous view that opposition to homosexual practice is the equivalent of virulent racism and sexism. You have been virtually codified in law as a bigot.

If you are not convinced that this will be the outcome, try including “pedosexuality” (i.e. pedophilia), a sexual orientation toward children, under the rubric “sexual orientation”; or “polysexuality” (i.e. polyamory), a sexual orientation toward multiple sexual partners concurrently that could justify polygamy or nontraditional “threesomes.” Then ask yourself whether inclusion of these under a sexual orientation “employment non-discrimination” bill would promote such behaviors and put on legal notice any opponents. The answer, of course, would be “yes.” Presumably framers of these bills do not make such an inclusion because they do want to promote pedophilia and polygamy. The inference is obvious. Inclusion of “homosexuality” and “bisexuality” under “sexual orientation” will lead to the promotion of such behavior in society and the attendant diminishment of the rights of those who oppose the behavior.

A federal ENDA could almost single-handedly end the cultural debate about homosexual practice. Through legal intimidation in a venue that most adults spend most of their awake-hours the society will be dragged into acceptance of the homosexual lifestyle.

*2. Exemptions put in a federal ENDA today will be removed tomorrow; omissions left out of a federal ENDA today will be instated tomorrow.*

Whether “gender identity” is included in an ENDA makes little difference in the long run. If a “sexual orientation” ENDA is passed at the federal level, it is only a hop, skip, and a jump for the U.S. Congress to amend the bill or for the courts to declare the inconsistency and “unconstitutionality” of excluding transsexuals from the same special protections accorded homosexual and bisexual persons. A Democrat-controlled Congress will continue to push for the passage of a “gender identity” clause. It will be a lot easier to pass such a bill when a “sexual orientation non-discrimination” act is already in place.

Similarly, any exemption for religious organizations would be used as part of a bait-and-switch tactic. Such an exemption is merely an accommodation made to insure initial passage of the bill. Once the bill is passed and the homosexualist agenda holds absolute sway in the public sector, Congress or the courts will revoke or so attenuate the exemption as to render it legally meaningless. For example, religious colleges and seminaries could be denied federal funding for research and student loans for “discriminating” against homosexually active persons, even as their “right” to “discriminate” against homosexual or bisexual persons is preserved (as Bob Jones University found out as regards its infringement of the civil rights of African Americans).

3. *Even while the exemptions are in place there will still be serious abridgement of liberties in the workplace.*

Even with a religious exemption in place religious rights may be abridged. First, it is often not clear that such an exemption would cover many staff members at a Christian college and seminary. Second, the exemption usually does not apply to secular businesses owned by Christians, even those shaped by Christian values. Social service organizations with Christian mission and ethics statements (children's homes, homeless shelters, soup kitchens, etc.) would be compelled to hire and retain workers whose behavior did not comport with the organization's values, including homosexually active workers. So too would any profit-making Christian businesses, such as religious bookstores, day care centers, and retirement homes. As the defendant in a lawsuit instigated by a homosexual or bisexual applicant, the burden of proof would be on the entity seeking exemption. This, in turn, means costly litigation with dubious prospects of success. Third, and most importantly, an exemption for religious organizations would not cover the religiosity of persons working in a *non-religious* organization, which is where the vast majority of religious persons work. And make no mistake about it: the bill isn't limited to decisions of hiring or firing. It pertains to any actions that "adversely affect the status of the individual as an employee." Picture the following scenarios:

- Suppose in the lunchroom or at the water cooler you engage in a conversation about sexual ethics. If a fellow employee extols homosexual bonds and you express your moral reservations about such bonds, you or the company could be liable for an anti-discrimination lawsuit for creating an intimidating atmosphere in the workplace that adversely affects the standing of a person who is vocal about his or her homosexual activity.
- Let's say that, in response to "diversity" posters, you post on your cubicle the text of Rom 1:24-27. Or in response to a corporate directive that you participate supportively in a "Coming Out Day" you respectfully decline because you find homosexual practice to be morally offensive. Or in an attempt to get exempted from the email list of the company's "GLBT" organization (gay, lesbian, bisexual, and transgender) you send an email requesting to be removed from the list because you think homosexual practice is immoral. In all these circumstances, you are far more likely to be disciplined or fired, and to have no legal redress, with an "ENDA" in place than without it.
- As a means of protecting the company against "discrimination" lawsuits, your employer may require you to attend indoctrination seminars that stress that homosexuality is as morally neutral as race or sex; and, moreover, to participate in "coming out" celebrations in the workplace that affirm "sexual diversity." Your employer may further prohibit, under penalty of termination, any conversation, written communication, or act that calls homosexual practice into question.
- While homosexual and bisexual persons will have their jobs protected under this act, your job status and advancement will have no such protections if you manifest "discriminatory" words against homosexual behavior. Indeed, not only will your religious convictions not be protected in a secular workplace, but also they will be treated as "bigotry" akin to racism and sexism. Corporations don't generally hire or promote bigots. It is not good for business.

- Monitoring of “discriminatory” beliefs toward homosexual and bisexual persons could even extend, at least in the case of white-collar employees, outside the workplace. For example, if a school teacher has published in a newspaper a letter that advocates that society not provide legal incentives for homosexual practice, or offers counseling for those seeking to come out of the homosexual life, the courts could rule (as the British Columbia Supreme Court ruled a couple of years ago) that the employer is entitled to take such discriminatory views into consideration in suspending or firing the employee.
- Although the bill currently does not “require or permit” quotas based on minority sexual orientation status, corporate executives know that it will serve their interest under such a bill to increase the number of employees who identify as homosexual or bisexual and to promote such employees as a safeguard against possible discrimination lawsuits. With the passage of this bill, *the burden of proof will shift decisively to the employer* to establish that no discrimination against homosexual or bisexual persons has taken place. Legal intimidation will exert a remarkable effect in making the workplace an advocacy center for the homosexual lifestyle. Eventually, too, we can expect even this language against quotas to be removed from the law.

In short, ENDA legislation *endangers* your right in the workplace not to be accosted on a regular basis by a homosexualist agenda. It becomes an “employment *discrimination* act” against any who rightly find the equation of homosexuality with ethnicity and gender to be deeply flawed. In today’s political climate, certainly in white-collar jobs, one is more likely suffer employment discrimination by expressing disagreement with homosexual practice than by engaging in such practice. This is certainly true of the entertainment industry, most media outlets, most educational institutions, most Fortune 500 companies, and so on. We should be pushing for an ENDA that protects the job security of those who believe in a male-female prerequisite for valid sexual relations, not signing off on a bill that will lead to codifying us as bigots to be oppressed.

[Note to readers: Although I have not made an effort to do much in the way of updating this treatment since 2008, it is surely ironic that on the day that I did a little tidying up of it for online posting I came across not one but two new instances where homosexualist advocates had denied freedoms to those with a dissenting view. In one case, Dr. Kenneth Howell, an adjunct associate professor of religion at the University of Illinois (Urbana-Champaign) who had been teaching a course on “Introduction to Catholicism and Modern Catholic Thought” for the past 12 years, was fired for a gentle email to a student suggesting that homosexual behavior did not fare well under natural law arguments. In essence, he was fired for teaching the official Catholic position on the issue in a introduction to Catholicism course.<sup>80</sup> Where is his ENDA? In the second case, “the

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<sup>80</sup> Kathleen Gilbert, “U. of Illinois Fires Catholic Prof for Explaining Church Teaching on Homosexuality,” LifeSiteNews (July 12, 2010), <http://www.lifesitenews.com/ldn/2010/jul/10071205.html>; Peter LaBarbera, “The E-Mail That Got Dr. Kenneth Howell Fired at U. of Illinois,” Americans for Truth (July 12, 2010), <http://americansfortruth.com/news/the-e-mail-that-got-dr-kenneth-howell-fired-at-u-of-illinois.html>;

British Medical Association (BMA) has passed a motion asserting that therapy meant to treat unwanted same-sex attraction is harmful, calling on the Royal College of Psychiatrists and other professional bodies to repudiate such treatments and *forbid them in their codes of practice*” (my emphasis).<sup>81</sup> For all the talk about pluralism, diversity, and tolerance done by homosexualist circles, the end game would appear to be the destruction of any pluralism, diversity, and tolerance so far as disagreeing with the homosexualist line is concerned.]

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Alliance Defense Fund, “Ill. prof. fired for teaching about Catholic beliefs in class on Catholicism” (July 12, 2010), <http://www.alliancedefensefund.org/news/story.aspx?cid=5339>.

<sup>81</sup> James Tillman, “BMA: Therapy to Treat Unwanted Same-Sex Attraction Should be Banned,” LifeSiteNews (July 9, 2010), <http://www.lifesitenews.com/ldn/2010/jul/10070905.html>.