



Homosexuality

- 1** Sexual orientation should have no bearing on a person's status as a citizen with civil rights in the political community. Civil rights include the right to life, property, religious freedom, free speech, freedom of association, access to a fair trial, participation in political and legal processes, and equal treatment under the law. When the civil rights of citizens are threatened because of their sexual orientation, it may be appropriate for government to provide special protection against such discriminatory treatment.
- 2** Human society includes various forms of friendship and relationships, some of which involve enduring commitments. There is no reason to single out homosexual relationships for extra public-legal recognition or benefit. The uniform protection of civil rights assures all citizens, regardless of their sexual orientation, of the right to form associations for legal, educational, financial, religious, and other purposes.
- 3** In addition to recognizing the civil rights of individuals, public law should also recognize the rights of certain institutions and organizations – such as marriage, family, church, university, and corporation. Only by doing this can government do justice to the diverse institutions of a complex society.
- 4** Marriage is one of the most important institutions of any society and should be recognized as a life-long covenant between a man and a woman that includes and legitimately bounds sexual intercourse (coitus). Sexual intercourse holds the potential for life-generation and should therefore be contained within marriage. From marriage may emerge children and the parental responsibility of spouses, who with their children constitute a nuclear family.
- 5** Homosexual relationships do not entail coitus and do not have the potential for life-generation. Consequently, such relationships neither constitute marriages nor, through procreative capability, can become families. The attempt to attain for a homosexual partnership the legal identification of marriage is thus a legal error based on an empirical mistake.
- 6** Public law does not create marriage or the family, which originate outside the political bond. But the law should *recognize* these two institutions and may, for purposes of public health and social wellbeing, support and regulate them. The primary aim of public recognition, support, and regulation should be to protect and encourage these institutions and the parental care of children. This is essential for a healthy and stable society.

Implications

1. If “domestic partnerships” are given legal recognition for the purpose of opening certain health care and death benefits to homosexual partners, the same privileges should be made available to non-homosexual non-marital partners and friendships. It would be discriminatory to single out one kind of non-marital relationship for a privilege usually granted to marriage partners while denying that privilege to other kinds of enduring partnerships and committed friends.

2. The freedom of homosexual persons to associate and form organizations should in no way be treated as the legal basis for requiring that every free association, church, and professional organization in society grant entrance to homosexuals. The very meaning of free association is that those who associate may set the criteria for entrance into their association, and in some cases groups may have religious, ethical, and philanthropic criteria that exclude those who do not share their reasons for associating.

3. Those who consider homosexuality an abnormal and unhealthy form of human relationship should, nonetheless, work to uphold the civil rights of all citizens, including those who practice homosexuality, just as they would uphold the civil rights of practicing heterosexuals who violate their marriage bonds or engage in premarital heterosexuality. Abnormal and immoral practices, whether by heterosexuals or homosexuals, do not present a reason for the denial of civil rights to those who act in those ways.

For Further Reading

Coolidge, David Orgon. "Same-Sex Marriage? *Baehr v. Miike* and the Meaning of Marriage," *South Texas Law Review*, 38:1-119. March 1997.

Gallagher, Maggie. "What Marriage Is For," *The Weekly Standard*. August 4, 2003.

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