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Homosexuality, the Constitution, and Gay Marriage

Mark Caleb Smith
Cedarville University, mcsmith@cedarville.edu

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Political issues do not appear in a vacuum. While it may seem the controversy swirling around gay rights is new, several decades of legal, political, and social trends have joined to create this quarrel. As evangelical Christians, we operate from a scriptural foundation in the hope of bending our culture toward the will of God. How we begin to accomplish this audacious agenda is a matter of discernment. Three questions must be addressed as we ponder the sources of, and our response to, gay rights in general, and gay marriage in particular.

Can We Legislate Morality?
There is no question we can use the law to enact our moral perspective. Even seemingly mundane policies, like government budgets, are full of moral decisions. The very act of choosing to fund one program (say environmental regulation), as opposed to thousands of others, reflects moral beliefs and a sense of priorities. To a degree, all legislation has a moral component, so our government is constantly “legislating morality.”

There are limits, though, to what legislation can accomplish. Laws and public policies will neither change hearts nor create revivals. Only God’s grace can transform societies and cultures, so to hope that a policy, however right, will make people more godly is misplaced. While law is limited in its effect, we are also constrained by what we can attempt to do through the law.

Can We Discriminate Against Those in a Homosexual Lifestyle?
The Constitution defines appropriate uses of government’s power. If you think of politics as a game, the Constitution is the rulebook, with the Supreme Court as the referee. Even though a majority of citizens and legislators might espouse strong beliefs, if the policies that flow from those beliefs are contrary to the Constitution, as interpreted by the Court, those policies and laws are null and void.

The Supreme Court, through a series of decisions, has
determined that the government has little power to regulate sexual behavior, or even the consequences of that behavior. In *Lawrence v. Texas* (2003), the Supreme Court determined that the Constitution forbids the regulation of private homosexual conduct. In *Romer v. Evans* (1996), the Court severely limited government’s ability to discriminate against the homosexually oriented in public settings. These decisions, in addition to the general right to privacy the Court has articulated since 1965 (*Griswold v. Connecticut*), largely remove sexual behavior and orientation issues from the reach of the law.

In America, marriage is a state, as opposed to a federal, issue. Under the U.S. Constitution, states may define marriage and its legal benefits (such as inheritance, medical visitation, and adoption). According to the Full Faith and Credit Clause (Article IV), contracts are transferable across state lines, so marriages that occur in one state are given legal status in others. This reality has created the pressing political issue of gay marriage.

As states, most notably in Massachusetts and Hawaii, began to ponder the possibility of gay marriage, there was the potential that other states would be forced to honor those contracts even though they did not define marriage in the same way. Congress, under the authority of the Constitution, may determine exceptions to the Full Faith and Credit Clause, and in 1996, it passed the Defense of Marriage Act (DOMA), which allows states to refuse same-sex marriages performed in other states.

*What About Gay Marriage?*

Marriage is a civil and a religious institution. Biblically, marriage is clearly defined as between a man and a woman. As we recognize this sacred bond within our churches, many of us forget that the government views marriage largely as a contract.

Throughout history, governments have defined marriage as between a man and a woman. By implication, governments have refused, until very recently, to recognize same-sex, incestuous, bigamous, polygamous, or adult–child marriages.

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As it became obvious that one state, either through legislation or a court ruling, would soon redefine marriage, Christians

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**Timeline of Related Events**

- **1965** *Griswold v. Connecticut*. The Supreme Court articulates a right to privacy, which is at the root of the right to an abortion and to personal, sexual conduct.
- **1986** *Bowers v. Hardwick*. The Court upholds Georgia’s anti-sodomy laws, which allow government to restrict some sexual conduct.
- **1996** *Romer v. Evans*. The Supreme Court strikes down a Colorado constitutional amendment that sought to remove any special, legal protections for the homosexually oriented.
- **1996** Congress passes the Defense of Marriage Act, which allows states to refuse same-sex marriages from other states.
- **2003** *Lawrence v. Texas*. The Supreme Court strikes down *Bowers* and disallows state regulation of sodomy between same-sex partners.
- **2003** The Massachusetts Supreme Judicial Court rules that the state constitution requires same-sex couples be given the right to marry. This eventually leads to a proposed state constitutional amendment that eliminates gay marriage. It will be voted on in 2008.
- **2004** President Bush, in his State of the Union Address, argues that the sanctity of marriage must be defended.
- **2004** San Francisco Mayor Gavin Newsome authorizes city officials to issue marriage licenses to same-sex couples even though state laws, and court decisions, forbid him from doing so.
- **2004–2006** Forty-three states pass constitutional amendments or laws that ban same-sex marriage.
- **2006** An effort to amend the U.S. Constitution to limit same-sex marriage fails in the House.
and others began to press for explicit, traditional definitions through state laws or constitutional amendments.

As of now, forty-three states have codified a traditional, male–female view of marriage. Massachusetts, through its Supreme Judicial Court, has imposed gay marriage based on its interpretation of its own constitution. Six other states have recognized civil unions between same-sex couples. These unions provide some of the legal benefits of marriage, but without the formal recognition of marriage.

Christians have played an important role in this political response to gay marriage, and I think our activism has been appropriate. Marriage is an institution founded by God, so it should not surprise us that the social science data overwhelmingly indicate that God’s definition of the institution — as between a man and a woman — is conducive to stable societies and healthy, productive children. Our actions have also been consistent with the Constitution. While we, as of now, may not discriminate against homosexual conduct, nor deprive those in a homosexual lifestyle of the equal protection of the law, we may define marriage traditionally, particularly at the state level.

The political success of protecting marriage, however, is not final for two reasons. First, there is the possibility that the Supreme Court, based on its recent precedents, will strike down those state laws and constitutional amendments. If this occurs, the only recourse will be to amend the federal constitution so that it defines marriage traditionally. This was attempted, and failed, in 2006.

Second, our defense of marriage, as Christians, has uncovered some of our collective hypocrisy. As agents of change, we ought to strive for laws that honor and glorify God. Our pursuit of those policies is public. As our arguments for traditional marriage are heard, our opponents drown in our cries for this sacred bond God has forged. Our actions, however, often fall short of our rhetoric. So long as divorce rates within Christendom correspond to those outside it, our words appear hollow, ungodly, and merely political. Our inability to practice privately what we rarely fail to

preach publicly undermines the Gospel, which alone has the power to transform hearts and minds. This recognition, that the Gospel drives us and that our political agenda is only a supplement, should foster both confidence and caution.

We can accomplish what God has set out for us, for He works through us. We must realize, with fear and trembling, that our public, political face ought to reflect God’s glory. If our words and actions correspond, even our opponents will recognize His authentic presence in us. If they do not, the world will see yet another political agenda and little else.

Dr. Mark Caleb Smith is assistant professor of political science at Cedarville University and director of the University's Center for Political Studies (www.cedarville.edu/cps). He holds degrees from Bryan College, Trinity Evangelical Divinity School, and the University of Georgia. His primary research interests are religion and American politics. Dr. Smith has provided commentary to various news outlets and organizations, such as Focus on the Family. He and his wife, Denise, have three children.

Politics takes center stage in 2008 as the presidential election approaches. This is a critical opportunity for Kingdom citizens to engage our culture with the heart and mind of Christ. The next issue of TORCH (spring-summer) will seek to make sense of the events, the issues, and the rhetoric and encourage each of us to align our thoughts, words, and actions with timeless biblical truth.