

## “Religious Freedom and the Criminalization of Gay Marriage.”

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My discussion this afternoon will focus on the criminalization of same-sex marriage and the nature of religious freedom. For illustrative purposes, I will begin by summarizing the current criminalization of same-sex marriage in the state of Indiana. Following this, I will indicate how this issue relates to the nature of religious freedom, and argue that the government of Indiana is exercising its freedom of religion in an impermissible manner. I will support this argument using John Rawls' theory of the principles of justice, as well as Peter Singer's principle of equal consideration of interests. To add to this, briefly, I'd like to note that Rawls' theory stems from a Deontological standpoint, Singer's from a utilitarian standpoint—two platforms which are typically in opposition to one another. That two disparate perspectives with two disparate foundations are both able to come to the same conclusion regarding religious freedom speaks, I believe, to the strength of the argument itself: That in criminalizing same-sex marriage, the government acts impermissibly against its citizenry and the church.

On January 29<sup>th</sup> of this year, the Indiana House of Representatives approved a constitutional amendment banning same-sex marriages within the confines of the state. Same-sex marriage has already been banned by statute; this ban further discourages the practice by direct alteration of the state constitution. Indiana's present description of marriage indicates that marriage is “between one man and one woman”, thereby eliminating the possibility of matrimony for same-sex couples. As a predominately conservative state, it is not difficult to believe that this description is influenced by Indiana lawmaker's conceptions, interpretations, and conceding values related to religious doctrine.

This legislation, scheduled to go into effect in July of this year, affects not only the state but also the countless self-acclaimed progressive Christian churches that choose to recognize and facilitate same-sex unions. In the past, religious institutions were permitted to recognize same-sex unions within the confines of their religious communities, even if the state did not recognize them legally. Thus, despite disagreement with the state's regulations, progressive churches were nonetheless able to fulfill their duties to those couples who wished to enter wedlock, in accordance with their interpretations of religious doctrine. Via the effects of this amendment, they are now unable to do so. In addition to revising the state constitution, Indiana's government has included a revision to the Indiana state criminal code, making the solemnization of a same-sex marriage punishable by law. Any member of clergy “who ‘knowingly solemnizes’ a same-sex marriage” will be charged with a Class B misdemeanor, the punishment of which is met by a sentence of 180 days spent in jail, and a fine not to exceed \$1000 (Ford, 2013).

The state believes that it is justified in pressing forward with these actions. If one believes that they are operating in accordance with religious freedom, it can be agreed that they are permitted to act as they wish. If “freedom of religion” can be defined as “the unchallenged ability for a person or institution

to behave in accordance with their upheld religious and/or spiritual doctrine and convictions”, the case can surely be made that the government is justified in prohibiting the legalization of same-sex marriage, as many conservative individuals who subscribe to Christianity hold the belief that same-sex unions are sinful in nature. However, the permissible nature of same-sex unions is not in question, at least not within the present argument. What *is* in question is whether or not it is ever permissible for a group of people, in exercising their religious freedom, to use that freedom to violate or negate the rights of another group. In this instance, as in many instances, this question must be answered in the negative. The actions of the Indiana state government are not morally permissible, in that they are punitive and contradictory to the rights of not only their homosexual citizenry, but to the members of their clergy. The following arguments, using the premises set down by John Rawls and Peter Singer, will indicate the reasons as to why this is the case.

John Rawls’ text *A Theory of Justice* makes several claims in order to develop a firm understanding of the concept of justice, and to indicate the relative significance and functions of the concept itself. He comes to the conclusion that justice as a theory is dualistic—that in order to come to a just decision in any given situation, one must first interpret the situation itself to fully understand it, and secondly to decide what action would be best undertaken in accordance with that situation. He further indicates that when justice is introduced into a social or communal situation, judicial principalities should “govern the assignment of rights and duties”, as well as “determine the appropriate . . . benefits and burdens of social life.” (Rawls, 47) In short, then, the basis for a just society should be the creation of a rule-based public system. Further, Rawls indicates that a just and “well-ordered society” is one in which all individuals acknowledge this rule-based system as pertaining to themselves and others. Ergo, they have equal rights, restrictions, and duties to perform in order to remain productive members of this just society.

These rights, restrictions, and duties are of paramount importance to the balanced social system; however, Rawls places specific emphasis on social duties as part of a just society. Each individual within a given society is socially obligated towards the other members of his community in two distinct ways, the first being the duty to ensure “equality in the assignment of basic rights” (Rawls, 13). If everyone in a given society is entitled to the same rights and duties, it follows that they would seek to retain this entitlement for all individuals, in order for that society to remain just. The second concerns the event of inequalities between persons. Any imbalances in a just society, states Rawls, are permissible only if “they result in compensating benefits for everyone, and in particular for the least advantaged members of society.” Rawls puts this argument into place to negate the idea that one person’s hardship may reduce another’s, or that an imbalance in part somehow benefits the whole (Rawls, 13). These duties regarding

the nature of just and equal treatment are set in place to prevent misconceptions or maltreatment between members of the same community.

Many individuals who become clergy have an innate desire to help others—to guide, protect, and facilitate their spiritual well-being. This is not only an obligation they have accepted as persons within a moral society, it is an obligation related to their chosen profession. In addition, they are not obligated to assist those individuals who are disadvantaged or in need, so much as they are *free* to do so, as is dictated by their right to practice their religion in an unmolested manner. As such, those members of clergy who seek to facilitate same-sex marriages are morally permitted to perform such actions as they see fit. They are, in fact, required to do so in accordance with Rawls' principles of justice. If they refused to seek equality for the disadvantaged members of their community, whose rights regarding marriage are neither equal nor upheld, they would be in violation of these principles they have sworn to protect.

What, then, does this say about Indiana's government? In passing this constitutional amendment preventing the church from exercising their religious right to defend and support others in accordance with their beliefs, they prevent the church from contributing to a just society. If the church does not perform its duties of justice because it chooses not to, that is the fault of the church. If the church *cannot* perform its duties of justice because it is not *allowed* to, the blame falls upon the subjugator of these duties—in this case, the government. Frankly, the government is in blatant violation of the equality they are obligated to engender in favor of their own beliefs, such as the belief that marriage is a union of one man and one woman, according to their conservative views. Does the government have the privilege of exercising their religious rights, while preventing the clergy from doing likewise? Are they exempt from assisting those less-fortunate individuals, simply because they feel they have the religious right to do so? They do not, and they are not. Their actions are in violation of these principles of justice, and are not only hypocritical, but wholly impermissible.

Such is the argument in relation to John Rawls and deontology. I turn now to the platform of utility, and to Peter Singer's work regarding the principle of equal consideration of interests. Singer, too, questions the nature of equality, and what it means to coexist with others in an equal society. His argument starts first with a focus on what makes persons within a society equal, rather than beginning with the society as an equal system. He defines a moral person as “hav[ing] a sense of justice . . . the kind of person to whom one can make moral appeals, with some prospect that the appeal will be heard” (Singer, 20). These moral appeals become moral deliberations in the minds of such individuals. If the individual proves to be a moral person, they are obligated to “give equal weight in [their] moral deliberations to the like interests of all those affected by [their] actions” (Singer, 20).

Moral persons, then, are entrusted with the responsibility of upholding each other's best interests; this is a basic tenant of Singer's theory, much as it is in Rawls'. Further, Singer indicates that while many

individuals may harbor many distinct interests, it is the interests themselves which must be the focus of moral deliberation. “All that counts are the interests themselves,” he states in chapter two of his text, *Practical Ethics*. Individual differences concerning the interested persons are irrelevant to the nature of their interests. As such, it is noted that when considering the rights and requests available to a person’s interests, their “other characteristics”, such as age, race, sex, et cetera, are not to be included in the moral deliberations of their interests (Singer, 22).

Equal consideration of individual’s interests is a tenant which must be held uniformly by each moral individual within a society. This is not to say, however, that equal *treatment* necessarily follows equal consideration. When a decision is reached following a proper equal consideration, the outcome should reflect the most advantageous or beneficial course of action for the individual in question. Unsurprisingly, beneficial and just courses of action should provide aid to those individuals who exhibit the greatest need, or those who are disadvantaged in some way. All parties may not be treated equally following an equal moral consideration, but it is imperative that all parties should be treated fairly, especially those with the greatest need to fulfill.

Once again, via the tenants of their faith, which they had been able to exercise to the best of their ability, the clergy is compelled to provide comfort and aid to those individuals whom the government casts aside. By recognizing their desire to unite with a partner, the church endeavors to treat homosexual persons with fairness, if not equality—two things the government does not try to fulfill, and has now crossed over to outrightly preventing. I will mention once more that the government believes it is within its rights to exercise its religious views (those being that homosexuals should not marry, and the church blasphemes itself by allowing them to do so) but not at the expense of the rights of the church. As in the previous argument, the government prevents the church from performing its moral obligations, an act which is clearly intolerable. Further, the religious views of Indiana state hinge entirely on the differences between themselves and the church, as they see the church as a harbinger of excessive tolerance, even immorality. It goes without saying they judge gay marriage based upon the differences between same-sex and opposite-sex unions, and thus they allow themselves to be deceived in thinking that their actions are permissible, or even justifiable. They are neither.

Yet, as a system, this impermissibility remains firmly in place, and even more so due to the passage of the Indiana marriage ban. How can we possibly view this as an acceptable use of the government’s freedom of religion? By subjugating the church, they make it impossible for the latter to perform their most basic moral obligations to their society, obligations which, as earlier stated, are based in not only justice and equality but in their belief that everyone is entitled to the opportunity of a religiously- and lawfully-binding union, a view the state clearly does not share. Can we allow ourselves to make excuses for the government by meekly admitting they have religious rights to uphold? Can we

truly be so blind to ignore the fact that the church, a religious institution, has had its religious freedom stripped away in favor of faulty reasoning and conservative power? Does the government have such a hold over all of us, that we have actually allowed such injustice to grow unchecked and unchallenged? And if we open our eyes and our minds to the possibility of the system as a broken one, can we, in good conscience, close them again?

These are not questions of permissibility, but of ability. Can we as a people, in the midst of an unjust system, rise to change it for the reasons I have stated above? Do we possess the stamina, the caliber, the principality, to do so? If nothing else, we possess the right. It remains to be seen if we will properly employ it.

Thank you.

#### References

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