

THE GAY AGENDA

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In his dissent in the Texas sodomy ruling (*Lawrence v. Texas*), Justice Antonin Scalia informed us that the homosexual agenda is “directed at eliminating the moral opprobrium that has traditionally attached to homosexual conduct.”

Well, that should come as no surprise. I believe homosexuality is as morally neutral as heterosexuality and, moreover, I believe gay love embodies the same moral goods as heterosexual love. My agenda would be for the rest of the country to believe those things as well.

But Justice Scalia is wrong when he asserts the majority’s decision in *Lawrence* is not “mainstream” and is the product of a Court captivated by a “law-profession culture that has largely signed on to the so-called homosexual agenda.” To the contrary, if we are to believe Gallup poll results, the majority opinion in *Lawrence* reflects precisely the current moral assessments of the majority of the American public.

Whenever a court decides a “liberty” question under the federal constitution, it is forced to make a value judgment about the import and worth of a particular relationship or activity. That is because the constitution simply protects our liberty interests from being taken away without “due process” of law. In most cases, a hearing will suffice for that.

It is the Supreme Court that, many years ago, imbued the “due process clause” with additional power when the government tries to take away an interest that is “essential to the concept of ordered liberty” or “central to the dignity and autonomy” of an individual. Once the Court created this category of “substantive due process” rights, it was forced to make value judgments as to which relationships and activities would fall into this category.

In 1986, five Justices of the Supreme Court made a value judgment about the import and worth of gay sexual relationships. They decided such relationships had no connection to marriage, procreation and childrearing—the type of relationships and activities the Court had previously concluded were “central to the dignity and autonomy” of an individual. And they

concluded there was no way to distinguish gay sexual activity from other consensual sexual activity, such as incest, prostitution or adultery, and they did not want to “go down that road.”

In 2003, five Justices of the Supreme Court made different value judgments. They decided relationships experienced by gay couples (including the sex engaged in by such couples) shared many of the qualities experienced by heterosexual couples. They concluded such relationships involved intimate and personal choices that were “central to the personal dignity and autonomy” of such individuals. And given that understanding of gay sexual relationships, it was not hard for these five Justices to easily distinguish gay sexual relationships from bestiality or prostitution.

In making these value judgments, the *Lawrence* majority was neither ahead nor behind the public mainstream. And that is not because the mainstream is captivated by, what Justice Scalia calls, the “law profession’s anti-anti-homosexual culture.” Rather, it is simply because most people in America have gotten to know gay people and gay couples. When your child is in the same kindergarten class as the child with two moms or two dads, it is hard to maintain the belief that the sex between those moms and dads has more in common with prostitution or bestiality than it does with the sex you and most other couples are having.

The fact that the majority in *Lawrence* mirrors current public moral views is also why social conservatives have little to fear that lap dancing or bestiality will suddenly become immune to state regulation. It is quite unlikely that a majority of the Supreme Court would ever conclude that such activities are central to an individual’s “personal dignity and autonomy.” While States would probably not be permitted to throw its citizens in jail and subsequently deny them employment opportunities for engaging in masturbation or in sex before marriage, that would probably have been the result regardless of *Lawrence*.

But the fact that the majority in *Lawrence* mirrors current public moral views is also why gay advocates cannot be complacent that this decision will inevitably herald entry into marriage or the military. The Court took pains to note that gay personal relationships may not be “entitled to formal recognition in the law,” because a State may set boundaries in order to protect against “abuse of an institution.” How exactly does one *abuse* an institution? Obviously, the Court wants to leave itself the leeway to

announce, at some later date, that the institutions of marriage or the military could not withstand the influx of openly gay couples or individuals.

I believe the courts of this land, including the Supreme Court, will ultimately rule that marriage and the military cannot constitutionally be foreclosed to gay individuals and couples. But for that to happen, I believe the public moral assessment of gay people needs to change yet further. According to the latest Gallup poll, a bare majority (54%) of the population believes homosexuality is an “acceptable” lifestyle. That number needs to increase to equal the substantial majority (63%) that currently believes homosexual sex should not be criminalized.

Thankfully, Justice Scalia has pointed the way to this outcome by clearly articulating the gay agenda. And, unlike many agendas, this one requires no meetings or central coordination. All it requires is that those of us who are gay, lesbian, bisexual and transgendered continue to live lives of honesty, openness and integrity. The agenda would also receive a boost if we instituted a “Families Coming Out Day.” The day before Thanksgiving, every family that knows one of its members is gay should “come out” to another family about that fact. My guess is that the number of people who “know” a gay person would double each Thanksgiving.

Homosexual conduct never deserved the moral opprobrium that attached to it. The more we reduce it, the closer we will come to a point when the exclusion of gay people from the military and from marriage will seem truly ludicrous.

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