

Editorial: A conversation about “religious liberty” laws and freedom

April 12, 2016

[Last week’s editorial](#) focused on the tension created by how Americans use the terms “religious liberty” and “freedom.”



Marv Knox Specifically, both sides in the struggles over the Affordable Care Act (Obamacare), same-sex marriage, and lesbian, gay, bisexual and transgendered issues tout freedom and liberty as reasons for their cause.

Consequently, neither “freedom” nor “religious liberty” is being defined uniformly and clearly.

The editorial generated extensive correspondence with readers, as well as [letters to the editor](#). An exchange of emails with a thoughtful Texas Baptist pastor provided dialogue on this issue. In the interest of expanding the overall discussion, that exchange is reproduced here. Some questions and answers have been edited for clarity and (believe it or not) length.

Q. Should believers seek no legal protection against laws guaranteeing LGBT rights? If so, should this include the “bathroom laws”?

A. Word choice is crucial. As [I've written previously](#), we already have legal protection—the First Amendment to the U.S. Constitution and both the national and state Religious Freedom Restoration Acts. The U.S. and Texas RFRAs balance the no-establishment and free-exercise clauses of the First Amendment. They provide legal backbone to protect minorities, a main goal of the First Amendment. Many recent “religious liberty” laws seek legal advantage rather than legal protection. They would provide preferential treatment to one group’s rights over the other’s.

In general, the Constitution, including the Bill of Rights, differentiates between individuals and groups operating within the realm of religious activity and others operating in other realms. So, for example, no court ruling or law could compel a minister to officiate at a same-sex wedding in opposition to religious beliefs.

But those protections would not extend to people and organizations doing for-profit work in the public realm. Consider a florist who doesn’t want to sell flowers for a same-sex wedding. The Supreme Court has ruled similar behavior illegal for biracial weddings, which many people opposed on religious grounds not so long ago. People who open their businesses to make a profit must open them to all people.

Transgender laws are more difficult, of course. One option would be to provide single-occupant restrooms for transgendered people. Another option would be to adopt the practice common in some parts of Europe—public accommodations available to all people regardless of gender. Rip out the urinals and install only stalls with doors. Frankly, when my daughters were little, this option would have been preferred. I wouldn’t have had to wait outside, nervously, until they reappeared.

Q. I understand the First Amendment intends to provide protection, but as you noted with bakers and florists, it doesn’t. I am uncomfortable telling my members their protection should be less

than mine because they're not clergy, when their calling can be just as inspired as mine. Why should my services be more protected than theirs?

A. This is challenging, but the Constitution doesn't—and shouldn't—protect workers in secular jobs from doing everything they don't want to do or even dealing with people they don't like or with whom they disagree.

Ministers and laity are in different categories because the minister primarily conducts religious activity, while most laypeople have secular jobs. Their calling can, and should be, inspired. Work can be seen as a form of worship; it expresses gratitude to God for health, ability and opportunity.

But Christians in secular jobs should not be exempt from broadly applicable laws. We live in a public democracy, and we should expect laws adopted for the common good to apply to all citizens. For example, the Civil Rights Act of 1964 designated race as a category of protection, and I don't know many people, particularly Christians, who believe President Johnson and Congress made a mistake 52 years ago. Christians can't refuse service to a bi-racial couple because they believe interracial marriage is wrong. America is a nation of laws, and Christians have prided themselves on being good citizens, so that generally means obeying the laws.

Q. People are born into a race, but sexual preference is a choice. The court has recognized it as a protected right, but they also have recognized religion protection at some points. Equating race and sexual activity is a dangerous slope I cannot tread. I firmly believe all of us have temptations we battle and some battles are more difficult than others, but I cannot blame God for the choices I make. I understand allowing others to make their choices, but punishing people for not participating in other's choices is not palatable either.

A. You packed enough issues for a book into one paragraph. Several points:

1. Sexual preference is chosen: Homosexual friends all insist they did not choose their sexual orientation. In agony, gay friends have talked about how they never would choose this difficult path and how they have tried to change. They talk about shame and ostracism from the church they love. They talk about loneliness. They talk about being tired of being “different.” I believe them when they say they wouldn’t choose to be gay or lesbian.

2. That does not equate race and sexual activity, although it could equate race and sexual orientation. (I’m always careful not to equate homosexuality with homosexual activity. The first is a feeling; the second is an action.) I don’t know enough about biology or psychology to determine how finely we should compare sexual orientation to race.

3. Either way, consequences ensue.

For years, I used a personal analogy. My sister was born deaf. She did not choose to be born that way, but every day, the effects of her deafness affected her. Still, she lived a full and meaningful life, despite the condition that was hers at birth. Compare that to sexuality. If a person is born homosexual but believes the only biblical model for human sexuality is one man and one woman for life, then that person can remain faithful to the traditional biblical ideal but must live with the consequences of the orientation.

I’m not so quick to use that analogy anymore, particularly if it implies I can understand the feelings of a homosexual Christian. Gay friends who remain celibate have taught me how crushingly lonely they feel. They live busy, productive, outgoing lives, but they cannot fill the void created by being unable to share life with a constant partner. So, I pray I never sound glib, as if I understand their plight and diminish their pain.

4. I’m not sure doing business with the public is “punishing people for

participating in others' choices." If you bake cakes, arrange flowers, take pictures or sell gowns, you do that in the public square. You don't have to agree with or condone others' choices, but offering them the same services you offer everyone else is not "punishment."

A Christian who opposes same-sex marriage but runs a business related to weddings feels anxiety. But that doesn't mean the choices are (a) bless and condone the marriage or (b) go to jail/pay a fine.

The vendor could start with an honest discussion. Something like: "My faith leads me to believe same-sex marriage is wrong. I would prefer you find another vendor, and I'll even help you find the best one around. Would you please respect my faith enough to take your business elsewhere?" Perhaps, offered in kindness, the couple would accept that plea.

If not, the vendor can say something like: "Very well. I believe God loves all people, and so should I. Although my actions do not condone your marriage, they do respect our common humanity, and I will provide first-rate service."

Q. Our church supports giving free rides to college students during a music festival and Beach Reach. We understand the down-and-dirty parts of ministry. But we aren't there to "celebrate" poor choices. The line crossed with the florist/bakers/etc. is they are being asked to participate in the celebration of others' sinful choice. Would the carpenter Jesus have built the bed of a prostitute? Would he have prayed a blessing of prosperity over the finances of the rich young ruler? Some may say he would have; I wouldn't. He was a compassionate straight-shooter with the rich young ruler, the woman caught in adultery, the woman at the well, Judas, etc. But his compassion never was condoning.

A. Christians aren't asked to condone, and no one should violate conscience

by condoning. Who knows, but maybe Jesus would have built the bed. He also healed her (Can we do that? Do we have enough faith?) and said, “Daughter, go and sin no more.” Nobody is going to be forced to say a prayer to bless any kind of behavior he or she considers sinful. That’s not even on the table.

And as I said previously, a Christian in business can be a straight-shooter and still offer service that is provided to all other people. Both parts are crucial, with the added ingredient of kindness. A Christian can get on a religious high-horse and refuse to provide the service and probably guarantee that couple never will even consider the claims of Jesus. Or a Christian can talk honestly, but kindly, offer high-quality service and perhaps gain a hearing. It’s not guaranteed, of course, but it seems the best option.

One of the poignant, heart-breaking aspects of my job is hearing from people who have been hurt by the church or by people who proudly waved the Jesus flag. All they know of Jesus is what they’ve seen in the actions of people who claim to be Christian. And I must admit if that’s all I knew of Jesus, I wouldn’t want to have anything to do with him, either.

Q. Concerning transgender, I think less of the violence and more of the exposure. Consider a timid young girl in a public restroom. A transgender person may intend absolutely no physical harm, but exposure could be damaging.

A. That’s why perhaps we’ll see other options. More family restrooms. Maybe more restrooms for only one person at a time. This might be the hardest issue—from a practical, day-to-day standpoint—to handle. Many people would say the logical answer is to go to the restroom that accommodates the gender to which you were born. But it probably will not be resolved that way.

Same-gender restrooms alone are not sufficient protection. I was in the fourth or fifth grade, with a friend my age at a high school track meet. We went to the restroom by the football field, and a couple of high school boys came in behind us. One of them backed me against the wall, exposed himself and told me what he wanted me to do. Fortunately, his friend pulled him away. He never touched me, but he certainly sexually abused me. And that was abuse by a male in a male restroom.

Q. I have told my family I expect to face legal measures for my refusal to perform same-sex marriage ceremonies at some point. I may be mistaken, but I believe that will occur.

A. Don't worry about being compelled to perform same-sex weddings. Won't happen. You're protected three ways. [Here's an editorial](#) I wrote about it.

Q. I understand your points, but the First Amendment and RFRA have been ignored in recent decisions. Whether it is Little Sisters of the Poor and Obamacare, or florists/photographers/bakers, court rulings have shown protections are not solid. Regardless, my confidence and convictions do not lay at the feet of the justices. Honestly, another new law stating protection does not add any confidence either.

A. We're talking about a couple categories here. ...

1. Congregations: Again, in Texas, we've got triple protection. Those protections won't be breeched for congregations. And why dissipate energy worrying about something that's not even on the radar? The only people who have talked steadily about congregations and ministers losing their religious freedom are politicians and political groups who have much to gain by keeping people afraid. They don't disseminate accurate information, and we shouldn't reward their duplicity with our fear.

2. Affiliated Christian ministries, like the Little Sisters of the Poor, Christian universities and others: This would be simpler if the government would classify them in the same category as churches. That said, the government has bent over backward to accommodate them on Obamacare. They're not forced to provide contraception for their employees or to pay for their insurers to provide it. They're protesting the requirement that they notify the government they object to the coverage and will not provide it. As Brent Walker of the Baptist Joint Committee for Religious Liberty said, they won't take yes for an answer. ...

The Supreme Court is floating yet another option. The onus of communication could be upon the employees, or insurance companies or maybe the government itself, and the institutions would not be required to do anything. Early response indicates that plan might work.

A drama on two levels

This national drama will play out on two levels. Thanks to the First Amendment and the federal Religious Freedom Restoration Act, ministers and congregations already share a high level of protection. States, such as Texas, that pass fair and balanced state RFRA's and "pastor protection" acts can supplement that protection. But individuals and businesses face a more strenuous test. We live in a nation of laws, and the national law says same-sex couples have a right to get married. Once something is declared a right, then by definition, disregarding it is a violation of rights.

This issue illustrates why selection of the next Supreme Court justice will be an epochal event.