

**WHAT PART OF EQUALITY DON'T YOU UNDERSTAND?
It's Indivisible and Universal Anyway**

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I love liberty by taste, equality by instinct and reason
—Alexis de Tocqueville in a letter to John Stuart Mill

The motto of my birth state Nebraska is "Equality before the Law." The motto was adopted in 1867 at the instigation of Representative Isaac Wiles, who wanted his state to support the abolition of slavery.

It was a sad day in November, 2000, when 70 percent of Nebraska voters betrayed that motto by approving a constitutional amendment banning gay marriage. Equally distressing was the July, 2006 decision of the 8th U.S. Circuit Court of Appeals to overturn a lower court that had declared the amendment unconstitutional.

On the positive side, on Wednesday the New Jersey Supreme Court ruled that "the unequal dispensation of rights and benefits to committed same-sex partners can no longer be tolerated under our state Constitution," and it gave the New Jersey Legislature 180 days to come up with a remedy.

Critics will say that these activist judges were somehow pushing the "homosexual agenda," but don't we want our judges to do what we all learned in kindergarten: treat everyone equally and fairly?

Party affiliation does not seem to determine this alleged "activism," because two Democrats, one Independent, and one Republican were in the New Jersey majority, and two Democrats and one Republican were in the minority. Furthermore, six of the seven justices of the Massachusetts Supreme Judicial Court, a majority of whom ruled in favor of gay marriage in 2003, were appointed by a Republican governor.

Chief Justice Margaret Marshall, one of those Republicans, wrote the majority opinion. In it she concludes that the Massachusetts Constitution "forbids the creation of second class citizens," and "the right to marry means little if it does not include the right to marry and the person of one's choice."

Personal liberty and equality before the law were the two great pillars of the American and French Revolutions, historical watersheds that made people free from the

dictates of kings and bishops and allowed people to be judged by the content of their character rather than the color of their skin, their gender, or their sexual orientation.

In early America liberty and equality for all was of course a promissory note for women and former slaves, but arguments to deny them equal opportunity were as weak then as the arguments for excluding gays and lesbians are now.

Claims that Indians and Africans could be enslaved because they were not persons were outrageous, but it took years to win that argument. Equally absurd or irrelevant were arguments that women should not have equal opportunity because they were physically weak and emotionally unstable.

One of the arguments against gay marriage is that somehow only a man and a woman can raise children properly. But a 2001 study from the University of Southern California found that gay parenting "has no measurable effect . . . on children's mental health or social adjustment." This is also the position of the American Psychological Association, the American Academy of Child and Adolescent Psychiatry, the American Academy of Pediatrics, and the Evan B. Donaldson Adoption Institute.

Many say that we should limit the rights of gays and lesbians because they engage in immoral sexual activities. My favorite story about this irrelevant argument concerns a certain Boise pastor who told his debating partner that he loved him as a human being, but he hated what he did in his bedroom. The gay man's reply was perfect: "How do you know what I do in my bedroom."

People in liberal democracies don't lose their rights by being immoral or even by performing unnatural acts. If that were true, then millions of sexually active heterosexuals would suddenly not be able to make medical decisions for their spouses, receive Social Security after the spouse's death, or to adopt children.

If you believe surveys, there are millions more unnatural acts committed by heterosexuals than homosexuals. Unlike theocracies, liberal democracies make a distinction between so-called sins and crimes, and fortunately American sodomy laws have been declared unconstitutional.

Celebrating the end of Texas' sodomy law, Ellen Goodman said: "The statutes that made homosexuals outlaws had to end before they could become in-laws." But

wait a minute: even heterosexual criminals in prison are allowed to marry the heterosexual of their choice!

A deep confusion between church and state bedevils the gay marriage debate. Amending civil law to grant marriage rights to gays and lesbians does not in any way affect marriages that are performed in churches and constitutes no threat to them.

As conservative columnist Andrew Sullivan reminds: "No one is proposing that faith communities be required to change their definitions of marriage." Since the state does not decide what churches believe, then the churches should not dictate what civil marriage should be.

I designed my title to be catchy not logically coherent. Equality before the law, unlike economic equality, is indivisible. Equality does not have parts; you either have it or you don't. Equality is also universal: either every person has it or it does not have the value that it must have.