

I am always nervous about speaking in a group like this. I admit that my own perspective is not shared by many or even most in my denomination and that some in that group would consider my position to be heretical, immoral, or worse. Yet, there is a place, a deep but historically significant place, where my concerns do come together with those of my denomination and many other Protestants: the secularization of marriage laws. This began with Martin Luther's denunciation of the blend of churchly admonition and secular laws that governed marriage in his time. As Luther saw it, those were tyranny, and many Protestants shared his views. After all, Luther observed, marriage also existed among the Turks and other non-Christians. The great John Milton expanded on Luther's views. Building on the early modern belief in companionate marriage—a belief shared by Luther, Zwingli, and others, he proposed that the state could not sustain a marriage where the spirit of companionship had departed. Divorce had to be a possibility, and it was so granted in that most Protestant of areas, the New England colonies and in heavily Presbyterian Scotland. It was a very significant step since the basis for the laws of divorce was, quite frankly, the laws of contract and consent. In theological terms, the Puritans moved marriage away from its natural law basis in the middle ages where marriage laws stressed the physical begetting of children and the blunting of lust to the relationship between the two parties. Where that relationship failed, the marriage failed.

Radical Protestantism did not always have its say in the American colonies or in 19th century America. In the Southern states, many dissenters, Baptists, Quakers, and Jews, found themselves living outside of the law because they refused to have their marriages sanctified by the established church, as law required, and insisted that their word was their bond. This was, of course, a risky position. Legal marriage often determined the transmission of property, especially apart from an explicit will, and other rites. Moreover, as America became more diverse, there were other voices demanding that religious sanctions be written into marriage law. The most notable of these was, of course, the Roman Catholic church which worked to limit divorce and which put considerable energy into laws prohibiting people, including married couples, from using or purchasing contraceptive devices. Some Protestants, particularly before the 1930s, were also strong advocates of laws restricting access to such devices or even knowledge of such devices. In 1965, *Griswold v. Connecticut*, struck down all such laws as a violation of the individual's right to privacy. Even one of the judges who dissented from the majority found such laws "uncommonly silly." (Justice Stewart). A rash of more liberal divorce laws found in almost every state, including Maine, which re-enforced the tendency towards seeing marriage as a secular matter. If a church or synagogue (which in orthodox Judaism to this day rules on divorces) did not agree with the state, the divorce was still legal, the property still divided.

The secularization of marriage laws does not deprive any religious group of the right to either proclaim its own doctrine or to enforce its own teachings on its own membership. Catholics can still be excommunicated for divorce, a rabbinic divorce or lack of it has considerable influence on Jews and the Jewish community, and conservative Protestant admonitions still have influence on their membership. The only difference is that the state does not add civil penalty to religious sanction. It is a matter of conscience.

It is hard not to see gay marriage in this same light. The interest of the state are secured in making the contract public and legally binding. Gay divorce will be as much a legal matter as heterosexual divorce

and perhaps as contentious. But the state's interest will be secured: people will live together in relative harmony, they will share expenses of common enterprises equally, and they will be bound to the terms of their contract by applicable law. The churches, even those who most oppose gay marriage, will also find their rights protected. They do not have to perform gay marriages—that goes almost without saying—any more than they are currently required to perform heterosexual marriages—nor do they have to admit those who have such marriages in their congregations or their ministry. Religious people have the right to march to their own drummer and to sanction styles of life radically opposed to secular norms. The law protects the Anabaptist, the Muslim, the Catholic who opposes Vatican II and even the followers of Scientology. No establishment of religion means just that and no restriction on religious practice means just that.