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[Home](#) > A Clash of Individual Liberty

# A Clash of Individual Liberty

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Drastic changes are taking place all around us in society today. Although the mainstream "Christian" churches in Western civilization departed from doctrinal orthodoxy generations ago, most of society still, until more recently, followed the outward practices of Judeo-Christian principles. For instance, stores and businesses were closed on Sundays. Adultery and homosexuality were looked down upon by the majority of society.

Society even incorporated these practices into its laws. Laws prohibited adultery and homosexuality and provided criminal sanctions for violations. State and municipal laws prohibited businesses from operating on Sunday. The killing of unborn children through "abortion" was prohibited by the laws of the state.

Over the last few decades, these laws have been repealed or struck down one at a time. Each time, the argument has been that these laws limited the freedoms of those with differing religious beliefs or viewpoints. Those advocating the repeal of these laws tout the change as an expansion of individual liberty.

We may be tempted to think that these changes in the law do not affect us. After all, we do not engage in those behaviors. We may view those behaviors as sins that are now allowed to be practiced openly, but do these changes really affect us? In this article, we will look at a couple of examples of how the changing nature of laws do affect us.

While many laws originally prohibited behavior we view as sin, the tide has now turned. Now our ability to hold to the values that were behind those laws is threatened by the laws of the state. The problem is that the behaviors that were once taboo often become protected rights, and those who oppose those sins now find themselves to be in violation of the law. All of this is done in the name of preserving "individual liberties," but as we will see, there is a point in every situation where the extension of one person's liberty comes at the expense of his neighbor's liberty.

Despite all the rhetoric we hear about individual liberties, the fact remains that at some point, all our rights and liberties are constrained by those of our neighbor. To illustrate the point, it has been said that "your right to swing your fist stops at the next guy's face." You have the right to swing your fist whichever way you want, but if it hits someone else, you have violated his right not to be struck. The right to swing one's fist is not absolute, but is limited by the rights of those around him. Individual rights under the laws of western civilization are not absolute, but must be balanced. This need to balance interests is often overlooked in the public debate about "individual liberties." We will now look at a couple of examples of how these changes in the law inhibit the liberty of believers to exercise their faith.

The recent expansion in rights of homosexuals has been the subject of several articles under this rubric. In years past, homosexual activity was outlawed by the laws of many jurisdictions. Homosexual activity could be punished as a crime until the United States Supreme Court ruled in 2003 that homosexual activity was a privacy issue in which the government had no right to intervene.<sup>1</sup> Meanwhile, some jurisdictions began granting rights to homosexuals as a class of people, such as the right to marry.<sup>2</sup> The argument is that the underlying reason for denying homosexuals rights such as marriage is a religious belief that homosexuality is wrong. To deny homosexuals their rights, it is argued, is to impose those religious beliefs on them, contrary to federal and state constitutions that prohibit the state from imposing a set of religious beliefs on any group or class of citizens.<sup>3</sup>

This shift in the law to recognize homosexual relationships as a legitimate institution in society presents problems for believers. Can a believer continue to act as a county recorder or registrar in a state where they may be required by law to issue a marriage license to a homosexual couple? The believer's right to hold his religious beliefs while continuing in this occupation is restricted by the homosexual's "right" to marry.

Believers with government jobs are not the only ones affected by changes in laws that protect sin as "individual rights." This is largely due to the laws against discrimination. In the context of the movement for homosexual rights, proponents of such rights argue that the changing of the law in regard to treatment of homosexuals is exactly like the changes that occurred as rights were recognized for black Americans. Many even point out that some claimed religious justification for discrimination against blacks, and draw the parallel to opposition against homosexuals. Just as an employer, landlord, or businessman could be sued for discriminating against someone based on race, they could also be sued for refusing to hire, rent to, or transact business with a homosexual. Already in 1996, the United States Supreme Court struck down a law that would have protected landlords who refused to rent to homosexuals on the basis that they found homosexuality morally offensive.<sup>4</sup> Many states have laws prohibiting discrimination in employment based on sexual orientation.

While the debate over homosexual rights encompasses many issues, other individual "rights" or "liberties" also interfere with our right to the free exercise of religion. Take, for example, the struggle over the "right of conscience" in the medical profession. In 1965, the United States Supreme Court ruled that a state could not ban the use of contraceptives.<sup>5</sup> In 1973, the Supreme Court ruled that a woman had the right to abort her unborn child.<sup>6</sup> In both cases, the Court stated that the state could not interfere because it was a privacy issue, just as the Court stated 30 years later regarding homosexuality. The issue then arose whether health care providers could refuse

to assist patients in exercising these "rights," or whether pharmacists could refuse to distribute birth control or abortion pills. The ability of health care providers to refuse to participate is known as the "right of conscience."

Many states enacted rules protecting the right of conscience after the 1973 *Roe v. Wade* decision. However, different state licensing boards have issued various rules, some protecting the right of conscience, while others have threatened the licensure of health professionals who do not offer "legal" medical services to their patients, even if it violates their religious beliefs. The American College of Obstetrics and Gynecology issued an ethics opinion in 2007 entitled "The Limits of Conscientious Refusal in Reproductive Medicine," which stated "...conscientious refusals should be limited if they constitute an imposition of religious or moral beliefs on patients...."<sup>7</sup> This same rule was again considered and reaffirmed in November of 2010. Violations of such ethics rules can result in a loss of board certification, which would mean that the doctor would be unable to maintain privileges to practice in most hospitals. If this is the situation already now, we can only imagine the effects of greater government intrusion into health care as the recent health care reform legislation is implemented.

As the law continues to move towards protecting "rights" that run contrary to our beliefs, it will become harder and harder to live in the world around us. It appears that this encroachment on our ability to live out our beliefs will continue to affect individual believers first, rather than the church institute. For instance, some states adopting homosexual marriage have specifically stated that churches may refuse to perform homosexual weddings.<sup>8</sup> Nevertheless, as these "rights" are expanded, the law will encroach more and more upon the liberty of the true church.

It is important from a legal standpoint that our beliefs are stated clearly. Obviously the primary reason for this is that the truth be maintained and the witness of the church not be diminished. But the unity and clarity of our beliefs also assists when relying on the Constitutional protections of the free exercise of religion. Our Lord has placed us in a country where the laws have allowed the truth to be faithfully proclaimed for many years, and those same laws may still afford protection for some time. Right of conscience-type claims are also much easier to defend if one can point to the clear teachings of his church. Ultimately, this same black-and-white clarity may gain us unwanted attention and persecution from those who preach "tolerance" for sin.

But even as we see the rights of those opposed to the truth encroaching further and further on our ability to exercise our faith, we know that we need not fear. We do not need to rely on the laws of our land to defend us. All things happen according to the will of our Lord, and the victory is His.

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<sup>1</sup> *Lawrence v. Texas*, 539 U.S. 558 (2003).

<sup>2</sup> *Massachusetts became the first state to recognize homosexual "marriage" on November 18, 2003.*

<sup>3</sup> *See, e.g., Varnum v. Brien*, 763 N.W. 2d 862 (Iowa 2009), in which the court noted that although religious reasons were not stated in support of opposition to gay marriage, they were the real reasons behind Iowa's prohibition on gay marriage.

4 **Romer v. Evans**, 517 U.S. 620 (1996).

5 **Griswold v. Connecticut**, 381 U.S. 479 (1965).

6 **Roe v. Wade**, 410 U.S. 113 (1973).

7 American College of Obstetrics and Gynecology, Committee Opinion number 385, **The Limits of Conscientious Refusal in Reproductive Medicine** (November 2007).

8 **Varnum v. Brien**, 763 N.W. 2d 862 (Iowa 2009).

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