

The sexual agenda and religious freedom

Challenges in the Western world

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Abstract

The sexual agenda is today's greatest threat to religious freedom in the developed world. Campaigns for women's and homosexual rights, same-sex marriage, public education, and other issues related to family and sexuality have provoked the preponderance of cases, and proponents have described Christian and other religious principles as direct impediments to their agenda. But what has precipitated most cases is the increasing role of the state in previously private areas of life, leading to claims that freedom must be curtailed when it involves government officials providing public services. This too proceeds from the sexual agenda, because such state services arise from the breakdown of family life, where they were previously performed. Critical here is the state's claim to redefine marriage, less through same-sex marriage than divorce, which itself represents a long-standing threat to religious freedom. Growing state power over family life and sexuality has also been transferred to supranational organizations, where many clashes between sexual militants and religious believers now arise.

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The greatest threat to religious freedom – and therefore to freedom generally – in the Western world today is the sexual agenda. It may eventually prove to be the greatest in the world, though this remains to be seen.

Most serious cases of curtailing religious expression and practice in the West today involve sexual and family matters: women's rights, homosexuality, marriage, education, plus others that the media and even religious freedom advocates ignore.²

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² See cases in *Marginalising Christians* (Newcastle: Christian Institute, 2009), <http://tinyurl.com/754k8qa>, and *Shadow Report, 2005-2010* (Vienna: Observatory on Intolerance and Discrimination Against Christians in Europe, 2010), <http://tinyurl.com/2wvteq5>.

Even conflicts that appear to be between religions or cultures, such as religiously mandated clothing in Western countries, usually involve components of sexual and family life, such as the role of women or of public education.

Even the United Nations Economic and Social Council, observing that “Christianity is . . . under pressure from a form of secularism, particularly in Europe,” attests that, “This form of prejudice against Christians or ideas based on religion, which exists both in Europe and in the United States, mainly concerns questions relating to sex, marriage, and the family, on which the Catholic, Muslim, and Orthodox churches have taken stands.”³

Yet it is striking how difficult it seems for this obvious truth to be stated, even by religious freedom advocates. It is not difficult to see why. Sexual issues are the third rail of today’s politics.

Indeed, it is clear that we are now arriving at that point where an unstoppable force meets an immovable object. Sexual militants with expansive definitions of “discrimination,” “inequality,” and even “violence” have arrived at a direct confrontation with – and even claim the authority to silence – Christians and others whose consciences will not permit them to implement, participate in, endorse, or acquiesce in government policy concerning family life: state employees, contractors, entrepreneurs, parents, and ordinary citizens. Something must “give.”

The general assumption is that one or the other of the two groups must give way, since it is increasingly apparent that no accommodation is possible. The often unspoken inference is that what must yield is religious belief and practice. Another UN body makes clear its view that no middle ground is possible and that religious freedom is simply incompatible with sexual liberation. “In all countries, the most significant factors inhibiting women’s ability to participate in public life have been the cultural framework of values and religious beliefs,” insists a UN committee. “True gender equality [does] not allow for varying interpretations of obligations under international legal norms depending on internal religious rules, traditions, and customs.”⁴ The conclusion is that those whose religious rules, traditions, and customs conflict with the UN committee’s view of women’s rights, must find new religious rules, traditions, and customs.

But there is another dimension to the problem which those on both sides prefer to ignore. This is the role of the state, whose expansion into new areas of life has largely precipitated this confrontation. It has also precipitated others, and what we

³ Quoted in *Shadow Report*, 11.

⁴ United Nations Division for the Advancement of Women, General Recommendations made by the Committee on the Elimination of Discrimination Against Women. No. 19, 11th session (1992), <http://tinyurl.com/sputw>; Report of the Committee on the Elimination of Discrimination Against Women. 13th sess. (A/49/38), 39 (New York: UN Women, 1994), 39.

are seeing here is only one facet of a larger crisis of the modern state. The clash between sexual militants and religious believers therefore presents an opportunity for Western civilization to come to terms with its larger problems.

Moreover, it is clearly in the interests of believers to do so. The erosion of religious freedom in the West is gradual, like the proverbial frog in the kettle. Without a decided response, Christians will not only be “marginalized,” as many already complain; they will lose their most basic freedoms, as will others. Only by raising the stakes and confronting the expanding scope of government power can Christians and others provoke the needed public debate on the erosion of freedom.

1. The role of the state

Most (though not all) high-profile cases are precipitated because of involvement by the state. Lillian Ladele was a registrar dismissed for refusing to officiate civil partnerships for homosexual couples. Theresa Davies was likewise demoted from registrar to receptionist for the same reason. Eunice and Owen Johns were rejected as foster parents, though they had already served repeatedly and without incident, solely because their faith would not permit them to inculcate homosexuality in children. Catholic adoption agencies have been denied government funding in Britain (on the basis of a single complaint) and the United States because of their refusal to place children with homosexual couples.⁵

In each case, the role of government funding is invoked as justification. Britain’s Employment Appeal Tribunal, referencing an earlier decision by the European Court, held in Mrs. Ladele’s case that the local authority could require all registrars to perform all services without accommodating religious objections, suggesting that employees who objected were free to “resign and take up other employment.” The Tribunal also ruled that “the limitations imposed on freedom of religion are particularly strong where a person has to carry out state functions.”⁶

Likewise in the United States, New York Governor Andrew Cuomo, who pushed through the state’s same-sex marriage law, has said that “those who cannot follow the new law should not hold the position of town clerk.” The state Department of Health said it is a misdemeanor for a clerk to refuse to provide a marriage license to eligible applicants.⁷ In the context of Catholic adoption agencies, Illinois Deputy Communications Director Kendall Marlowe argued that,

⁵ Nicholas Kerton-Johnson, “Governing the faithful,” *IJRF* 4(2011)2. I am grateful to Professor Kerton-Johnson for advance access to his manuscript.

⁶ *Ibid.*, citing R. Trigg, “Free to believe? Religious freedom in a liberal society,” London: *Theos*, 2010, 11.

⁷ Kevin Jones, “Observers see gay agenda threatening religious freedom,” *Catholic News Agency*, 29 September 2011 (<http://tinyurl.com/3vcz7u2>).

Every faith-based organization in the state of Illinois has the full capacity and the full right to pursue their religious freedom. The question is what happens when you are paid with taxpayers' money, state money, to provide state services? And in those cases we have to insist that those agencies comply with Illinois law.⁸

The principle operates toward anyone enjoying the enforced generosity of one's fellow citizens as channeled through the state machinery, which can use funding as leverage to punish failure to follow ideologically approved orders. In 2007, Brighton Council demanded that a home for elderly Christians "question elderly residents every three months about their sexual orientation, use images of LGBT [Lesbian, Gay, Bisexual, and Transgender] couples in its promotional literature, publicize LGBT events to elderly residents, and force staff to attend a [homosexual lobby's] presentation on LGBT issues." Pilgrim Homes refused "because to do so would unduly distress the elderly residents and undermine the home's religious ethos." The Council withdrew a £13,000 grant and accused the home of "institutionalized homophobia."⁹ "Today, there is growing pressure to marginalize Christian groups which receive public funding," according to the Christian Institute.

...projects in receipt of public funds have been pressurized to lay aside aspects of their religious ethos or risk losing Government finance. Government ministers have told Christian groups that they are welcome to apply for grants as long as they don't try to promote their faith.¹⁰

One response is for religious groups simply to forego government funding. One might admire the response of one Catholic charity, which indeed may be the most constructive course in the long run: "We have to do it in honoring our own tenets and our faith that call us to do this," said their spokesman. "If we can't do it in a faith-filled mission, then we can't do it using public money. We'll do it on our own terms."¹¹ Yet this raises problems to which we will return.

When faced with this principle, the most venerated historical and constitutional protections quickly wilt. One can argue that Britain is still an explicitly Christian country, with an established church and a royal governorship. Alternatively, a non-denominational state with a seemingly unequivocal protection like the American First Amendment should guarantee not only belief, but the "free exercise" of that belief. Article 9 of the European Convention on Human Rights provides that: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom...to mani-

⁸ Stephanie Samuel, "Judge allows state to break contracts with Catholic charities," *Christian Post*, 30 September 2011, <http://tinyurl.com/74xzh3v>.

⁹ *Marginalising Christians*, 62

¹⁰ *Ibid.*, 61.

¹¹ Samuel, "Judge allows State."

fest his religion or belief, in worship, teaching, practice, and observance.” Yet such provisions are quickly sidelined when state functions and state funding are invoked.

Though liberal democracies generally recognize some obligation to accommodate the religious practices of their citizens insofar as this can be done consistent with the legitimate requirements of public order, there is no guarantee that they will allow practice that is inconsistent with secular law. Ultimately of course, it is the state that decides, acting, as it effectively always does, as judge in its own case. Moreover, the extensive literature on this subject may be of only marginal relevance here. In practice, there appears to be a difference between tolerating religious practices that contravene the letter of some laws – sacramental drug use, for example, or exemption from some medical statutes – which a liberal and stable state can do without serious loss to its authority, and permitting religious principles to challenge and limit the exercise of power by the state itself.

Attempts to accommodate consciences of state employees do not appear promising in the face of a determined alliance of government officials and sexual militants. Registrar Lillian Ladele offered to delegate marriage registrations to other registrars, and apparently this has proved workable in some jurisdictions. A lower court had ruled that Mrs. Ladele’s faith should be accommodated and that she was “less favorably treated on the grounds of her orthodox Christian religion.”¹² And indeed, there can be little doubt that officials have gone out of their way to marginalize Christians. As Kerton-Johnson explains in another case:

In addition, the Catholic agencies were refused a right of discrimination which is given to same-sex groups. Regulation 18 of the SOR (Sexual Orientation Regulations) allows for discrimination on the basis of sexual orientation. This regulation was drafted in order to empower homosexual groups, although not specifically limited in the regulations. Catholic adoption agencies seeking permission to discriminate on sexual grounds rather than religious were refused in what can only be deemed a double standard – in other words one can discriminate on a sexual basis if one is a sexual group, but not if one is a religious group!¹³

Kerton-Johnson’s conclusion that “the state is essentially empowering a system of conflict” is true on more levels than one.

Government sponsored healthcare has extended this principle to medical practitioners. Under Britain’s National Health Service and similar systems, medical practitioners may still opt out of performing abortions, though efforts are continually underway to limit or remove this protection.¹⁴ One commentator, quoting Gover-

¹² Kerton-Johnson, “Governing the faithful,” (citing Trigg, “Free to believe”).

¹³ Kerton-Johnson, “Governing the faithful.”

¹⁴ “Pas d’objection de conscience pour les médecins espagnols,” <http://tinyurl.com/7runy8g>.

nor Cuomo, apparently believes that receiving “state-issued licenses” makes all pharmacists “public health workers” with an attendant obligation to repress any scruples about issuing abortion-inducing drugs.¹⁵ Given that pharmacists may not operate without licenses, by this principle all licensed merchants become government officials by virtue of the state permitting them to operate.

This question has come to a head in the case of Rose Marie Belforti, a New York town clerk and “one of several town clerks who have said the state’s Marriage Equality Act, the measure. . . that legalized same-sex marriage in New York, violates their religious beliefs.”¹⁶ Accordingly, she delegated the task to a deputy. Homosexual militants immediately challenged the action. “To suggest that service providers might pick and choose their clients upon the basis of personal prejudice would also set a dangerous precedent for the delivery of public services across the board,” they asserted. “Such a precedent could have significant deleterious and unintended consequences for future public service delivery.”¹⁷ Governor Cuomo had likewise stated, “When you enforce the laws of the state, you don’t get to pick and choose.”

The key phrase is “delivery of public services.” By delegating to the state the provisions of our private lives that we once provided for ourselves as individuals, or families, or private charities, we have handed to the state the power to control, if not our actual consciences, then any meaningful public exercise of them. The state directs the practical manifestation of our consciences less by fiat (at least initially) than because it has enticed, or otherwise, absorbed increasing numbers of us onto its payroll. When the state is the boss, the state also becomes the conscience.

Liberal Democrat MP Lynne Featherstone in the UK has likewise stated in the House of Commons that “carrying out public services cannot be a matter of conscience” and that people with strong faith convictions “might ultimately make different choices about their careers.” On her blog she writes, “In the delivery of public services you have to do the job, and if there are elements of the job that you cannot do in all conscience then it isn’t the job for you.”¹⁸

2. Disturbing ethical implications

It might be replied that any task, especially one in the public service, must be performed as “a matter of conscience” and that demanding that civil servants perform

¹⁵ Linda Greenhouse, “Refused and confused”, *New York Times*, 5 October 2011, <http://tinyurl.com/73q6w6x>.

¹⁶ Thomas Kaplan, “Rights collide as town clerk sidesteps role in gay marriages,” *New York Times*, 27 September 2011, <http://tinyurl.com/3u3xh2g>.

¹⁷ Quoted in Jessica Satherley, “Marriage counselor who was sacked by state for refusing to give sex therapy to gay couples takes case to European court,” *Daily Mail*, 26 September 2011, <http://tinyurl.com/768b2dy>.

¹⁸ *Marginalising Christians*, 46.

their duties contrary to their consciences is unhealthy in any society. The conscientious objections of public servants serve as a valuable form of “civil disobedience” serving to prick the public conscience about morally questionable government actions. (At least two other clerks in New York resigned rather than implement the new policies.)¹⁹ Still, one must then be prepared to accept the consequences of disobedience, which is to suffer the penalty which in this case means job loss. It is naïve to believe that any state will indefinitely tolerate accusatory fingers being pointed from among its own functionaries, even (or especially) when they are valid. This is all the more so when the actions to which they object rationalize a huge increase in government power, as the sexual agenda does.

Yet the argument that scrupulous consciences may resign and seek employment elsewhere ignores several considerations. The fact that there is only so much other employment people trained in one profession can take up is not in itself the most serious. Suffering for one’s conscience is something believers must expect. More serious is that the state is changing the rules after the employment agreement. Ms. Featherstone’s assertion that “it isn’t the job for you” disregards the fact that it was the job to which both parties agreed in the employment contract and that the state has rewritten the job description after the fact. Of course governments routinely implement policy innovations, but to insist that they may do so with no regard for the ethical implications as reflected by the consciences of those who must implement them – to the point where civil servants may be discarded for acting upon moral scruples widely shared by their society – is to exorcise ethics from public policy altogether and reduce government officials to amoral robots. The world’s most sophisticated and admired systems of civil administration all rigorously inculcate an ethic of moral rectitude and conscientious public service. Yet Ms. Featherstone is advocating just the opposite. This pushes not only Christians and believers out of public policy, but ethics itself.

Also noteworthy is that sexual agendas are altering job descriptions to depart from the ideological neutrality with which civil servants are normally expected to perform their duties and which is being invoked here to rationalize ignoring their moral objections. In 2006, firemen in Glasgow “were punished by their state employers for refusing to march in a ‘gay pride’ rally.” Previous rallies had apparently mocked the Catholic Church to which some firemen belonged. “Instead of participating in the event, the firemen handed out fire safety leaflets to members of the public on a nearby street.” Consequently, they were issued written warnings and ordered by the Strathclyde Fire Board to undergo “diversity” training. They were

¹⁹ Efreem Graham, “Town clerks bullied over NY gay marriage law,” *CBN News*, 7 November 2011, <http://tinyurl.com/7j5rtg9>.

also told explicitly that the refusal would damage their careers.²⁰ Pressuring civil servants to support ideological causes is normally considered a breach of administrative neutrality.

More serious perhaps is that police too are now finding their duties redefined in ideological terms, as they are required to endorse the agendas of sexual pressure groups and apply such agendas when enforcing the law. North Wales Police have announced plans to display rainbow stickers (a symbol of gay liberation) in all police stations indicating “commitment to the LGBT (lesbian, gay, bisexual and transgender) community.”²¹ Ideology is also replacing standard codes of police professionalism. In Britain in 2010 street preacher Dale McAlpine was arrested for his words by a policeman who identified himself as the “liaison officer for the bisexual-lesbian-gay-transsexual community” and who admitted taking the action because of his own feelings. “I am a homosexual, I find that offensive,” officer Sam Adams apparently told McAlpine before arresting him. The power to arrest and incarcerate people with whose opinions they disagree is not one that free societies normally leave to individual policemen. Nor do they normally create special police units with mandates to protect only certain members of society or obliterate the distinction between hurt feelings and crime.²² Only those classed in sexual categories enjoy these privileges.

But perhaps most serious in the long run is that the expansion of state proprietorship into new functions and new areas of life is itself continually narrowing alternative employment opportunities and with them alternative moral voices. As the state turns entire spheres of economic and personal life into state monopolies, it restricts the range of other options, both for employees and consumers. After all, if the state claims a monopoly or near-monopoly over the availability of newly “public” services such as education, medicine, eldercare, foster care, adoption, and (most problematic of all) marriage, then it is not clear what alternative employment is or ever will be possible.

Significantly, this trend is itself attributable largely to the sexual revolution, since many such functions were at one time performed privately in the home, mostly by women, or by the local community, private charities and churches, and the private market. Demand for services like adoption and foster care has also exploded with the increase in single motherhood encouraged by feminism. With the expansion of the welfare state (which itself further encourages family dissolution and single motherhood), these services have been taken over by the state, whose function-

²⁰ *Marginalising Christians*, 47.

²¹ “Police force displays rainbow stickers at front desks to promote diversity,” Christian Concern website:<http://tinyurl.com/7mn3r5p>.

²² James Tozer, “Christian preacher vows to fight after he’s arrested for ‘Public Order’ offences after saying homosexuality is a sin”, *Daily Mail*, 3 May 2010, <http://tinyurl.com/7ymxvjw>.

aries (still mostly women) can be pressured more easily to accommodate their consciences to the official morality. If ideologically motivated political innovations are driving people out of work for the sake of their consciences, this should be raising concerns about the propriety of not only the policy innovation itself, but also the expansion of government power into previously private realms (as well as the innovative sexual morality that rationalizes both). When this is accompanied by requirements that the tasks of government functionaries “cannot be a matter of conscience” we can see the danger of nationalizing the care and upbringing of our citizens. When the state becomes a monopolist, alternative employment – and the moral diversity that goes with it – disappears.

A similar trend operates for consumers in areas like education. Clashes with school authorities – likewise occasioned mostly by the sexual agenda like sex education or beliefs about homosexuality – arise only (or at least initially) in government schools, where in countries like Germany and Sweden parents are prevented from removing their children from the state system, or teachers are squeezed out of alternative employment opportunities by the taxpayer-funded near-monopoly of public education.²³

3. Expanding state power

All this renders religious freedom highly insecure. Nor does it stop there. Having acquired this leverage, which increases its scope and power with each new function it takes on, the state extends its reach to those who have nothing to do with its services except as objects of their purview.

Thus even private schools, especially in continental Europe, find the content of their instruction dictated by the state – and again, most likely when it involves sexual matters.²⁴ Other examples include bed-and-breakfast owners Peter and Hazelmary Bull, who currently face heavy fines for “discriminating” against two homosexuals by refusing to allow them to cohabit in their Cornwall home, or the proprietor of a café in England threatened by police for displaying allegedly “homophobic” biblical verses.²⁵ These illustrate how the state now claims the power to regulate private transactions, even when no state support is involved.

These are purely private transactions in which the state has no role; yet it claims the power to interfere nonetheless. It is perhaps a measure of the impoverishment of our political culture as we abdicate moral decisions to the state that this distinc-

²³ Mike Donnelly, “Religious freedom in education,” *IJRF* 4(2011)2; “Student punished for Christian beliefs about homosexuality pushes back,” Liberty Counsel website: <http://tinyurl.com/7c82yc6>.

²⁴ Observatory on Intolerance and Discrimination Against Christians website: <http://tinyurl.com/7egpjn8>; <http://tinyurl.com/7399v3z>.

²⁵ Christian Concern website: <http://tinyurl.com/7zmm74>.

tion is now lost on many people, who accept government control without questioning its legitimacy. Arguably, this in turn results from the erosion of religious values, which require that we at least try to distinguish what is legitimately Caesar's and what is God's (Mark 12:17).

Openly criminal actions are the logical next step and are now taken against, for example, street preachers like McAlpine in Britain, who have been arrested and fined for expressing views about homosexuality. In continental Europe, criminal punishments such as incarceration, are also meted out against parents for educating their children at home themselves instead of in school.²⁶ This of course represents the most direct threat of all to freedom at the hands of an expanding state sector. While this trend needs further exploration elsewhere, it is worth suggesting here that even this may proceed in part from both the sexual revolution and an expanding social services sector, which together have contributed to the increasingly "gendered" and bureaucratic quality of policing, the creation of new plainclothes quasi-police functionaries such as social workers and child protective services who are largely unrestrained by due process protections, the staffing of these functions largely by ideologically trained and ideologically driven feminists, and consequent pressures to justify those functions by creating new categories of crime that can only be committed by non-violent, politically defined criminals such as heterosexual males, married heterosexual parents, and religious believers.²⁷

This erosion of religious freedom and other freedoms, in short, results largely from our failure to consider the enormous implications of politicizing sexuality and of transferring significant areas of our private and family lives to an expansive state sector. Space does not permit exploration of the different facets, each of which could serve as the focus for in-depth research. But the most prominent example in today's politics is also the most fundamental for standing at the fault line of church-state jurisdiction and for its critical role in mediating the complex interaction of public and private life: marriage. It is also the most poorly understood.

4. Marriage as religious freedom

While homosexuality and same-sex marriage have sparked the most controversial cases today, the sexual revolution's confrontation with religious belief did not begin

²⁶ Donnelly, "Religious freedom"; "Mother jailed upon taking son out of sex ed," Observatory on Intolerance website: <http://tinyurl.com/716f9f7>.

²⁷ The politicization and feminization of policing and criminal justice have been explored in some areas, most notably child protection and domestic violence, but not others. See Susan Orr, *Child protection at the crossroads: Child abuse, child protection, and recommendations for Reform* (Los Angeles: Reason Public Policy Institute, 1999); Donald Dutton, *Rethinking domestic violence* (Vancouver: UBC Press, 2007); Marie Gottschalk, *The prison and the gallows: The politics of mass incarceration in America* (Cambridge: Cambridge University Press, 2006).

with the newly politicized homosexual agenda. The erosion of marriage over decades (and even centuries) has significantly weakened both families and churches vis-à-vis the state and with it their leverage to protect themselves from government domination. Strikingly, this has occurred with hardly a word of opposition or protest from the churches themselves.²⁸

Family decline has been continuous since the beginning of modern history and has progressed in inverse relation to rising power of the modern state.²⁹ Yet the full social and political consequences of the state's increasing control over marriage and the family became evident not when the state took on the role of officiating marriages, but only when it began claiming the power to dissolve them, and above all since the 1970's with the advent of "no-fault" divorce, which may yet prove to be the greatest legislative corrosive to religious freedom enacted in the Western democracies. For it allowed the state, unilaterally and without cause, to abrogate the marriage covenant and thus nullify the ministry in a realm of fundamental social importance. Under no-fault provisions, divorce is decreed automatically and physically enforced by the state with no say whatever to either a guiltless spouse or to the church that consecrated the supposedly sacred bond.³⁰

The state had been acquiring an increasing role in marriage since at least the Reformation, and even today the respective roles of church and state in marriage are poorly understood. This reflects the larger problem that marriage's role in mediating the relationship between public and private life has been entirely taken over by the state. Despite the especially acute crisis of marriage over at least two decades, and extensive public discussion about it, there has been virtually no systematic effort by political theorists, philosophers, ethicists, social scientists, or theologians to delineate the precise social role of marriage in the relationship between the individual, family, and church, on the one hand, and the state.

Even more striking is the almost complete lack of protest or opposition from pastors and churches, as one of their most important offices was simply countermanded and eliminated in what Maggie Gallagher describes as "the abolition of marriage."³¹ A parishioner facing unilateral divorce today who approaches a priest

²⁸ Mark H. Smith, "Religion, divorce, and the missing culture war in America," *Political Science Quarterly*, vol. 125, no. 1 (Spring 2010). And since the Reformation, Protestant churches themselves have shifted marriage from a religious sacrament to a civil ordinance, not without occasional misgivings.

²⁹ This is the theme of Carle Zimmerman's classic study, *Family and civilization* (repr. Wilmington: Intercollegiate Studies Institute, 2008).

³⁰ Maggie Gallagher, *The abolition of marriage* (Washington: Regnery, 1996); Stephen Baskerville, *Taken into custody: The war against fathers, marriage, and the family* (Nashville: Cumberland House, 2007), ch. 1; Judy Parejko, *Stolen vows: The illusion of no-fault divorce and the rise of the American divorce industry* (Collierville, Tennessee: Instant Publisher, 2002).

³¹ Gallagher, *Abolition of marriage*.

or pastor may receive an offer of prayer and advice on finding a lawyer, but he will certainly find no objection or resistance from the church as state officials abrogate his marriage covenant, evict him from his home, separate him from his children, confiscate his property, and even incarcerate him without trial.³²

Presaging the larger implications, involuntarily divorced parents have for years faced almost complete abrogation of their religious freedom over their children, whose religious upbringing passes into the hands of government officials. Even when the divorce is involuntary and literally “no fault” of the parent, that parent loses all say in the religious upbringing of his children, including what religious worship they may or must attend and even how he or she may instruct them in private. This has met no challenge by churches or religious advocacy groups. An exception that proved the rule was a 1997 ruling of the Massachusetts Supreme Court prohibiting a father from taking his children to Christian services. The ruling received some media attention but no opposition from either churches or civil libertarians.³³ “This willingness of courts to disfavor a broad range of parental ideologies – . . . atheist or fundamentalist, racist or pro-polygamist, pro-homosexual or anti-homosexual – should lead us to take a hard look at the doctrine that allows such results,” writes Eugene Volokh.³⁴ Volokh documents how routine practices and rulings in American courts directly violate First Amendment protections and control intimate details of innocent citizens’ private lives: “Courts have . . . ordered parents to reveal their homosexuality to their children, or to conceal it. They have ordered parents not to swear in front of their children, and to install internet filters.” One parent was ordered to “make sure that there is nothing in the religious upbringing or teaching that the minor child is exposed to that can be considered homophobic.” Significantly, most cases Volokh cites involve beliefs about gender relations.³⁵

Parents’ attempts to educate their children in their own beliefs and instill in them religious or civic values are prohibited by family court judges. “Courts have restricted a parent’s religious speech when such speech was seen as inconsistent with the religious education that the custodial parent was providing.” This is based on “the theory . . . that the children will be made confused and unhappy by the con-

³² Baskerville, *Taken into custody*, chs. 2-4; David Heleniak, “The new star chamber,” *Rutgers Law Review*, vol. 57, no. 3 (Spring 2005).

³³ “Custody wars: SJC sets dangerous precedent,” *Boston Globe*, 15 December 1997; “In divorce, court can have say in child’s faith,” *Boston Globe*, 10 December 1997, A1.

³⁴ Eugene Volokh, “Parent-Child speech and child custody speech restrictions,” *New York Law Review* 81 (May 2006), 643.

³⁵ *Ibid.*, 640-641. As with no-fault divorce itself, Anglo-American (including Canadian) family law and its practitioners, especially involving divorce and custody of children, create the major innovations that are subsequently adopted elsewhere, including in international conventions. See Stephen Baskerville, “Globalizing the Family,” *Touchstone* (January-February 2011).

tradictory teachings.” One court ordered that “each party will impress upon the children the need for religious tolerance and not permit any third party to attempt to teach them otherwise.” Involuntary divorce thus empowers officials to prohibit parents from confusing their children with religion.³⁶

While parents arguably surrender certain freedoms over their children when they agree to divorce, the point here is that a parent who has neither agreed to a divorce nor given grounds for one can still be summarily stripped of these protections. “No-fault” divorce thus becomes a backdoor method of restricting the religious freedom of legally unimpeachable parents. “Child custody speech restrictions may be imposed on a parent even when the family’s unity was abrogated by the other parent,” Volokh observes. “The law here doesn’t distinguish the leaving parent from the one who gets left.” Thus a law-abiding citizen minding his own business loses his First Amendment protections the moment his spouse files for divorce, without any grounds, and transfers the children to government control.

This also provides a wedge for restricting the freedom of all parents. “The law almost never restricts parental speech in intact families,” Volokh notes. “You are free to teach your child racism, communism, or the propriety of adultery or promiscuity. Judges won’t decide whether your teachings confuse the child, cause him nightmares, or risk molding him into an immoral person.” Yet this will not last indefinitely even for married parents. “It’s not clear that ideological restrictions limited to child custody disputes will stay limited,” Volokh adds. “The government sometimes wants to interfere with parents’ teaching their children even when there is no dispute between parents. . . . Many of the arguments supporting child custody speech restrictions . . . would also apply to restrictions imposed on intact families.”³⁷

5. Weakening of the churches

Even more striking, none of the advocacy organizations claiming to promote a “pro-family” agenda, and who vigorously oppose same-sex marriage, has ever contested involuntary divorce as a political issue.³⁸ Yet it is by far the most serious and direct cause of family disintegration. It is also clear that the state’s abrogation of the marriage covenant through involuntary divorce preceded and opened the way for same-sex marriage and made it more attractive to homosexuals.³⁹

Arguably this failure, more than any other, has weakened the churches’ moral authority. More than any other ecclesiastical ordinance, marriage exerts a direct

³⁶ *Ibid.*, 642-643.

³⁷ *Ibid.*, 673, 707-708.

³⁸ Smith, “Religion, divorce, and the missing culture.”

³⁹ Stephen Baskerville, “The dangerous rise of sexual politics,” *The Family in America*, vol. 22, no. 2 (2008).

impact on people's daily lives. The failure to defend it has certainly weakened the churches in relation to the state, which has unequivocally declared its supremacy over marriage and reduced the churches to the role of ornament. By refusing to defend their marriage ministry from this massive aggrandizement of state power, the churches deprived themselves of any institutional defense for themselves or their flock, as the state redefined marriage out of existence and then assumed as bureaucratic "public services" the tasks once performed within the married household.

If the churches could not, or would not, defend their authority over marriage from nationalization, it is not likely that they can now defend their or their parishioners' authority over education, adoption, foster care, or the rest – services which have themselves expanded largely because of the sexual revolution and consequent breakdown of marriage and the family. In the most critical contest between church and state begun four decades ago with no-fault divorce in the United States, the churches surrendered without a fight.

6. Internationalizing the sexual agenda

Perhaps ironically, as it consolidates its power vis-à-vis citizens, families, and churches, the state in turn transfers power upward to authorities that are even more remote from these institutions: supranational organizations. Here too the cutting edge is the sexual agenda. This process is still in its early stages, but sexual issues are already a major focus of global governance. Indeed, sexual liberation has replaced Marxism as the dominant ideology in fields like economic development and stands at the vanguard of human rights innovations and international criminal jurisdiction. While the aspirations of transnational organizations like the UN and the European Union to exert influence in the realm of high politics encounter strong resistance from nation-states guarding their sovereignty, little such resistance is offered against sexual activism, which now constitutes a huge proportion of UN and global governance activities. Noting "CEDAW (the UN women's rights treaty) articles that oblige the state to correct any inconsistency between international human rights laws and the religious and customary laws operating within its territory," a feminist advocate describes how sexual liberation stands at the vanguard of a trend to tailor human rights law to ideological agendas:

While international human rights law moves forward to meet the demands of the international women's movement (*sic!*) . . . women's rights are under challenge from alternative cultural expressions. . . . The movement is not only generating new interpretations of existing human rights doctrine. . . . but it is also generating new rights. The most controversial is the issue of sexual rights.⁴⁰

⁴⁰ Quoted in Stephen Baskerville, "Sex and the problem of human rights," *Independent Review*, vol. 16,

The challenge to religious freedom is thus very direct. “Cultural and religious values cannot be allowed to undermine the universality of women’s rights,” insists a UN committee. Because Ireland’s Catholic voters have voted down several referenda to legalize abortion, the UN committee suggests restricting how the Irish may vote. “The influence of the Church is strongly felt not only in attitudes and stereotypes, but also in official State policy. In particular, women’s right to health, including reproductive health, is compromised by this influence.” Because Norway’s protection for religious minorities leaves them free to disagree with feminist doctrine concerning “family and personal affairs,” the Norwegian government is instructed to regulate the religious freedom – and apparently the private lives – of its citizens:

The Committee is especially concerned with provisions in the Norwegian legislation to exempt certain religious communities from compliance with the equal rights law. Since women often face greater discrimination in family and personal affairs in certain communities and in religion, they asked the Government to amend the Norwegian Equal Status Act to eliminate exceptions based on religion.⁴¹

7. Conclusion

The world’s major religions all now stand in direct conflict with the sexual agenda. In the West, it has largely neutered the willingness to defend freedom. Sexual liberation and government centralization are mutually augmenting and have the potential to spiral out of control. The result is not simply the marginalizing but the criminalization of Christianity and elimination of its attendant values of sexual discipline, family integrity, and limited government.

Sexual agendas now pervade virtually all social institutions: schools, universities, charities, medicine, the judiciary, corporations, foundations, churches, governments, international organizations – all have become thoroughly saturated with the politics of sex, with hardly a challenge. If scholars hope to understand this trend – and if Christians and other believers wish to redeem any of these institutions – they must directly confront the sexual agenda. So far, when confronted with the politics of sex, many scholars and Christians simply avert their eyes.

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⁴¹ Patrick Fagan, William Saunders, and Michael Fragoso, *How UN conventions on women’s and children’s rights undermine family, religion, and sovereignty* (Washington: Family Research Council, 2009), 24-25.