THE HUFFINGTON POST
THE INTERNET NEWSPAPER: NEWS BLOGS VIDEO COMMUNITY

When Rights Collide

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June 24, 2014

Call this the year of clashing rights.

On April 7, the Supreme Court of the United States (SCOTUS) declined to hear the *Elane Photography* case, in which an Albuquerque studio refused to take commitment ceremony photos of Vanessa Willock and her same-sex partner, Misti Collinsworth. This left in place the New Mexico Supreme Court ruling that Elane Photography's claimed free speech right "directly conflicts with Willock's right ... to obtain goods and services from a public accommodation."

If you think this pleased all gay rights advocates, you are wrong. An amicus brief supporting the photographer was filed on behalf of the Cato Institute, Eugene Volokh, and Dale Carpenter, all marriage equality supporters. Volokh explained that "wedding photographers ... have a First Amendment right to choose what expression they create, including by choosing not to photograph same-sex commitment ceremonies."

SCOTUS will rule this month in the *Hobby Lobby* case, concerning a company's right to deny employees contraceptive coverage based on the owners' religious objections. In contrasting briefs, Cato defended Hobby Lobby's free exercise rights, while Lambda Legal wrote that ruling for Hobby Lobby "would transform our equal opportunity marketplace into segregated dominions within which each business owner with religious convictions 'becomes a law unto himself.'"

Meanwhile, LGBT groups differ over the religious exemption in the Employment Non-Discrimination Act. DC's Gay and Lesbian Activists Alliance, which I lead, is among those that support ENDA but favor a narrower exemption. Religious groups are protected in their core religious function; outside it is another matter. Why should anti-LGBT discrimination enjoy exemptions beyond those applying to discrimination under Title VII?

LGBT people are not the only historically oppressed group asked to subordinate their interests. In a 2011 discussion of the 1994 book *The Bell Curve*, on alleged racial differences in intelligence, Andrew Sullivan defended freedom of inquiry. He also called affirmative action an injustice. Regarding injustice, I submit the summary of Ta-Nehisi Coates' "The Case for Reparations" on the June cover of *The Atlantic*: "Two hundred fifty years of slavery. Ninety years of Jim Crow. Sixty years of separate but equal. Thirty-five years of racist housing policy."

How can we object to a modest corrective like affirmative action, yet ignore our massive, malignant legacy against African Americans? Coates compares the aversion to studying reparations to a man who stops using his credit card and is surprised that his accumulated debt does not instantly disappear. I'm sorry, this makes you uncomfortable; so can we not discuss it?

Free inquiry works both ways. A 1994 article by Charles Lane in *The New York Review of Books* critiqued the many white supremacist and eugenicist sources cited by *Bell Curve* authors Richard J. Herrnstein and Charles Murray. Their book was no mere academic work but served a public policy aim of blaming the underclass for its own plight.

When the rights of groups conflict, it makes little sense that the historically privileged should be deemed the aggrieved party. But courtrooms and legislatures are not our only ground. We must reach in honesty and clarity across the social divide. Jonathan Rauch and David Blankenhorn recently launched the Marriage Opportunity Project, a liberal-conservative coalition to support all families, including gay ones. This is admirable; but why was Murray on the host committee? It turns out that he, like Blankenhorn, now supports marriage equality. That is a tribute to Rauch's efforts; but Murray's notorious racial writings make him a counterintuitive choice for a reconciling enterprise.

Appearing on June 12 at DC's Sixth & I Synagogue, Coates was asked his feelings about the country that had so wronged his people. He said, "We're here. We're part of this. I don't know how we get out of that." In this plain observation lurks a seed of hope.