



Cutting holes in the law

By Richard J. Rosendall

December 17, 2014

“I’m sorry, but we don’t serve your kind here.”

This overt discrimination is something that leading gay libertarians, who otherwise support marriage equality, [think should be legal](#) for wedding photographers, bakers, and other business owners to say to gay couples. ([The libertarians’ side lost](#) when the U.S. Supreme Court declined to hear the *Elane Photography* case.) They believe that government, as much as possible, should leave people alone.

It is true that government regulation can go too far, hampering businesses and treating adults like children who need constant supervision. One can easily compile horror stories portraying an out-of-control “nanny government.” I would say that generally, government should protect us not from ourselves but from one another. When your cigarette smoke invades my airspace, or your gun obsession endangers schoolchildren, or you try to impose your faith’s “thou shalt nots” in the public marketplace, then we are headed for trouble.

An upstate New York couple that rents facilities on their farm for weddings [was fined \\$13,000](#) under the state’s Human Rights Law in August for turning away a lesbian couple. David Boaz of the Cato Institute [tweeted sarcastically](#) on Dec. 9, “Let’s go around fining everyone \$13,000 to show the need for tolerance.” Stephen H. Miller of *IGF CultureWatch* [criticized it as “payback.”](#)

Pardon me, but discriminators are not the aggrieved party. This is not about provoking discrimination to seek punishment for homophobes. Most gay people simply want to go about their business without being degraded and denied service. But fines are a means of enforcement. A prohibition without penalties is merely a suggestion.

[The Michigan House of Representatives](#) recently passed a bill modeled on the 1993 federal Religious Freedom and Restoration Act, which featured in the *Hobby Lobby* case. The Michigan measure may allow emergency medical technicians to invoke sincerely held religious beliefs in refusing to serve LGBT people.

Where will religious demands in daily commerce end? If you view conscience clauses only in terms of gay families, the problem might seem limited. But what about people who object to

interracial marriage or to second or third marriages after divorce? Assuming that gay conservatives are motivated by more than axe grinding against gay liberals, why does their solicitude for the religious right appear reserved for gay-related cases?

If an anti-gay Christian receives legal exemptions, why should a Christian Scientist parent opposed to modern medicine not [be exempt from child welfare laws](#)? Why should a Muslim devoted to the subordination of women (which, to be fair, is disputed within Islam) not [invoke Sharia Law](#)? Satanists, amusingly, have already responded to a Ten Commandments monument at the Oklahoma state capitol by demanding equal placement of [a monument to the demon Baphomet](#).

Whether you are an EMT who deplors gender nonconformity, a pharmacist who anathematizes birth control, a county clerk who opposes gay marriage, or a police officer whose faith forbids interracial marriage, you should separate your beliefs from your duties or find other work. To call this intolerance on my part is to turn the truth on its head. None of those prospective customers is trying to change your beliefs; they just want to be treated the same as others. (I should note that libertarians do not object to non-discrimination laws as applied to government; they object to imposing them on private businesses.)

To keep from swirling into chaos, we must resist letting individuals cut holes in the law to reflect their personal list of abominations. Unacknowledged privilege lurks at the heart of the demand for faith-based exemptions. Put the shoe on the other foot, and it may dawn on people that their intolerance can come back to bite them.

Living in a diverse society obliges us to put up with one another's differences. Getting clever and insisting that your difference requires intolerance of mine will not do. I will not be a second-class citizen, wondering in this shop whether my marriage will be recognized and in that drugstore whether my prescription will meet with the pharmacist's approval.

America is fractious and fragmented enough in the ordinary course of things. To preserve civil society, we cannot permit *ad hoc* exclusions from equal protection.