Liberty or License?
Bowers v. Hardwick & Ambivalent America at the Crossroads

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> "Claiming to be wise, they became fools... Therefore God gave them up in the lusts of their hearts to sexual impurity, to the dishonoring of their bodies among themselves, abandoning them to the degrading power of sin." Romans 1:22, 24.
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> "Homosexual acts by irreversible homosexuals in the context of a loving relationship striving for permanency can in a certain sense be objectively morally acceptable." U.S. News & World Report, Sept. 1, 1986, p. 10, quoting the Rev. Charles Curran of the Catholic University of America, Washington, D.C.

By its June 30, 1986 decision in *Bowers v. Hardwick*,[1] the Supreme Court of the United States rejected the demand for legal recognition of a fundamental, constitutional right of homosexuals to engage in sodomy. Justice White's majority opinion flatly refused to strike down Georgia's statute proscribing sodomy, even where the act is committed between consenting adults.[2] 5 majority opinion, characterized as "A Government in the Bedroom",[3] moves straight toe the heart of the issue. Though the opinion reflects an analysis of precedent dealing with the notorious constitutional right to privacy discovered in *Griswold v. Connecticut*[4] and its progeny, it more powerfully demonstrates the willingness of some members of the Court to deal with the practical realities of an inherently moral issue. Justice White's opinion forthrightly addresses the homosexual's contention that a moral basis for the anti-sodomy statute is inadequate. Justice White

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1 *Bowers v. Hardwick*, 478 U.S. 186, 106 S.Ct. 2841. 54 U.S.L.W. 4919 (U.S. June 30, 1986), rev'g 760 F.2d 1202 (11th Cir. 1985).

2 Ga. Code Ann. § 16-6-2 1984 states in pertinent part: (a) A person commits the offense of sodomy when he performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another....

(b) A person convicted of the offense of sodomy shall be punished by imprisonment for not less than one nor more than 20 years

3 *Newsweek*, July 14. 1986, p. 36.

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

answered, “The law...is constantly based on notions of morality, and if all laws representing essentially moral choices are to be invalidated under the Due Process Clause, the courts will be very busy indeed.”[5]

I will focus on the moral issue of the case and the current state of U.S. law on the right to privacy, particularly as it relates toe the quest of homosexuals for recognition of such a right where sexual perversion is concerned leaving aside the pragmatic question of the homosexual's impact on our nation and its health. While there are many excellent analyses of court pronouncements touching the right to privacy, due process and equal protection of the laws, and methods of constitutional adjudication,[6] there has been a dearth of discussion about the moral issue.

1. The Modern, Politically-Correct View

For over a quarter-century, there has been a concerted effort to decriminalize homosexuality and win for it official recognition.[7] Until 1961. all fifty states prohibited sodomy; when the *Bowers* decision was handed down in 1986, twenty-four states and the District of Columbia continued to carry legal sanctions against the practice.[8]

In contrast to a centuries-old characterization of the practice as an odious vice, of which modesty rejects the name, and nature abominates the idea,"[9] the modernists who advocate its legalization view homosexuality “in terms of an evolutionary framework,”[10] construing the practice as an immature aspect of human development,[11] and “a stage in the development of every human being.”[12] Although ideas about the cause of homosexuality vary, a cord of commonality is their evolutionary and environmental approach.[13]

A Swedish doctor has espoused perversion (which is a word he says should be discarded as insulting and superstitious) in all its forms. declaring it to be good and a giver of happiness to some.[14] While defending incest, exhibitionism, pedophilia, homosexuality,

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5 *Bowers*, 478 U.S. p. 196.

6 See. e.g., an article entitled 'Note: Survey on the Constitutional Right to Privacy in the Context of Homosexual Activity." 40 *U. Miami L. Rev.* 521 (1986)

7 See Britain 's Wolfenden Commission Report, *Report of Committee on Homosexual/ Offenses and Prostitution* (1963). [hereinafter cited as Wolfenden Report] stating that regulation of personal choices and behavioral patterns which are not harmful to society at large are not within the proper functions of the law; see also Model Penal Code § 213.2 (Proposed Official Draft 1962).

8 *Bowers*, 478 U.S. p. 193.

9 E. Gibbon. II *The Decline and Fall of the Roman Empire*, in 41 Great Books of the Western World 93 (1952).

10 Rousas John Rushdoony, *The Institutes of Biblical Law* (Presbyterian and Reformed Publishing Company, 1973) p. 419.

11 N. Blackman. M.D., "Genesis of Homosexuality", *Encyclopedia of Aberrations* (New York: Philosophical Library 1953) p. 271.

12 Frank S. Caprio M.D., *Female Homosexuality, A Psychodynamic Study of Lesbianism* (New York: Grove Press. 1954) p. 302. Cited by Rushdoony Rushdoony 419, n. 3.

13 Rushdoony, p. 419.

14 Lars Ullerstam, *The Erotic Minorities* (New York: Grove Press, 1966) p. 351. Cited by Rushdoony, p.

and necrophilia, Dr. Ullerstam regards heterosexual intercourse as most dangerous since only it can increase the world's overpopulation problem."[15]

2. The Christians' 'Polestar'

Judges often speak of (and lawyers look for) a “polestar” or “touchstone” case as precedent which will support their opinions and arguments. Christians are rightly exhorted to turn to Holy Scripture as the “only infallible rule of faith and practice”. In stark contrast to the politically-correct view identified above, the Judaeo-Christian ethic, which is at the heart of revulsion for homosexuality, is found in the Bible. It unequivocally states:

> You shall not lie with a man as with a woman; it is an abomination.
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> Neither shall you lie with any beast and defile yourself with it; neither shall any woman yield herself to a beast to lie with it; it is confusion, perversion and degradedly carnal. Leviticus 18:22, 23 (Ampl.)
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> If a man lies with a male as if he were a woman, both men have committed an offense perverse, unnatural, abhorrent and detestable; they shall surely be put to death; their blood shall be upon them. Leviticus 20:13 (Ampl.).

The Apostle Paul referred to homosexuality as a final evidence of man's condition when he has rejected God:

> For this reason God gave them over to degrading passions; for their women exchanged the natural function for that which is unnatural, and in the same way also the men abandoned the natural function of the woman and burned in their desire toward one another, men with men committing indecent acts and receiving in their own persons the due penalty of their error. Romans 1:26. 1:26, 27 (NAS).

As R.J. Rushdoony has written,

> The homosexual is at war with God and. in his every practice, is denying God's natural order and law.... In history, homosexuality becomes prominent in even,' area of apostasy and time of decline. It is an end of an age phenomenon.[16]

420, n. 10.

15 Ullerstam p. 163. (Rushdoony, p. 420, n.13)

16 Rushdoony. p. 423. See also E. Gibbon, p. 94, where in describing vice (and particularly homosexuality) as it appeared in the Roman Empire, Gibbon observed that Rome had been infected by the example of the Etruscans and Greeks. According to his account, pederasty (unnatural sex relations between males) first appeared in Greece after the time of Homer. Gibbon remarked that "in the mad abuse of prosperity and power every pleasure that is innocent was deemed insipid.... From Catullus to

3. Pre-Bowers Cases

The polestar of those who clamor for recognition and expansion of homosexual rights arises from the constitutional privacy right spawned in the U.S. Supreme Court's ! decision in *Griswold v. Connecticut* (1965),[17] although some allege its lineage extends back to *Meyer v. Nebraska* (1923) end *Pierce v. Society of Sisters* (1925).[18]

In *Griswold* Justice Douglas propounded a "penumbral" effect of the Bill of Rights' expressed guarantees, which radiate outward to "give them life and via rights not enumerated in the amendments themselves.[19] Such an interpretation of the Constitution is a convenient tool to use a non-elected office to press one's own predilections on the populace. and such has been the result.[20] Against that interpretation is one articulated by justice Frankfurter, who observed that "an amendment to the Constitution should be read in a sense most obvious to the common understanding at the time of its adoption.'... For it was for public adoption that it was proposed."[21]

Connecticut had sought to statutorily proscribe the use of contraceptives for any purpose, even in the marital context.[22] The the *Griswold* ruling is that marriage involves a right of privacy which predates the Bill of Rights and cannot be invaded by sweeping governmental control.[23] The opinion was summed up with eloquent acknowledgment that marriage is "an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an

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Juvenal, the poets accuse and celebrate the degeneracy of the times; and the reformation of manners was feebly attempted by the reason and authority of the civilians, till the most virtuous of the Caesars proscribed the sin against nature as a crime against society." Theodosius abolished the subterranean brothels in Rome, in which the prostitution of both sexes had been acted with impunity. Both adultery and homosexuality were punished by death, although adulterers were later spared out of sympathy. Homosexuals were either drowned, beheaded, or burned.

17 *Griswold*, 381 U.S. 479 (1965).

18 *Meyer v. Nebraska* 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510, (1925). See, e.g.. *Carey v. Population Services Int'l.*, 431 U.S. 678 (1977) where- J. Brennan made that debatable assertion. But that is a too-broad reading of *Meyer* which found a statute forbidding the teaching of foreign languages to students below the eighth grade an unconstitutional encroachment on the liberty interest protected by the 14th Amendment and, more specifically, the "natural duty" of the parent to direct his child's education. *Pierce* similarly affirmed the superior role of parental decisions regarding their children's education vis a vis the State's right to standardize students by forcing them into public education. This inalienable parental right certainly entails privacy. But its essence does not lie therein. Both *Meyer* and *Pierce* are more accurately depicted as Ninth and Tenth Amendment rights guarantees.

19 *Griswold*, 381 U.S. 484.

20 For example, the U.S. Supreme Court's modern interpretation of the First Amendment has reflected both positive and negative use of the penumbra theory. Since the 1940's the Court has used the penumbra effect (though not by name) to systematically pare the First Amendment guarantee to freely exercise one's religion while simultaneously radically expanding the State's freedom to abridge religious practices. See, e.g. *Everson v. Board of Education*, 330 U.S. 1 (1947); *Abington School Dist. v. Schempp* 374 U.S. 203 (1963); and *Wallace v. Jaffree*, 472 U.S. 38, 105 S.Ct. 2479 (1985).

21 *Adamson v. California*, 332 U.S. 46 (1947) (Frankfurter, J., concurring, citing *Eisner v. Macomber*, 252 U.S. 189, 220 (1920)(Holmes, J. dissenting).

22 Conn. Gen. Stat. §§ 53-32 and 564-196 (1958)

23 *Griswold* 381 U.S. 485

association for as noble a purpose an any involved in our prior decision."[24]

Scarcely any phrasing could better accord marriage a degree of privacy not allowed lesser relationships: it is the deep-rooted recognition in western culture that marriage is a unique arrangement to promote society's future through loyalty, mutual enjoyment, propagation of the species, and education of offspring for a better future.

Justice Goldberg's concurring opinion in *Griswold* expressed that judges are not free to exercise their own private notions in determining what rights are fundamental.[25] "Rather, they must look to the 'traditions and [collective] conscience of our people' to determine whether a principle is 'so rooted...as to be ranked as fundamental.'"[26] The key question is whether the right at issue is such that it cannot be withheld without usurping those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions. . ." [27] It is immediately obvious that the practice of homosexuality cannot truthfully be said to lie within the fabric of acceptable American traditions or at the base of our nation's civil or political institutions.

Justice Goldberg also referred to Justice Harlan's dissenting opinion in *Poe v. Ullman* (1961)[28] that the State properly may regulate sexual promiscuity or misconduct, including homosexuality.[29] Justice Harlan stated that constitutional due process is not capable of reduction to precise terms, but lay in the balance between "respect for the liberty of the individual" and "the demands of organized society."[30] Noting that morality alone is an insufficient basis for setting restrictions, he also affirmed, however, that morality is a proper area for public concern with which "every society in civilized times has found it necessary to deal."[31] Finally, he declared:

> The laws regarding marriage which provide both when the sexual powers may be used and the legal and societal context in which children are born and brought up, as well as laws forbidding adultery, fornication and homosexual practices.... confining sexuality to lawful marriage, form a pattern so deeply pressed into the substance of our social life that any constitutional doctrine in this area *must build upon that basis.*[32]

The State's authority to deal with inherently moral issues had much earlier been

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24 *Griswold*, 381 U.S. 486.
25 *Griswold*, p. 493.
26 *Griswold* quoting *Snyder v. Massachusetts* 291 U.S. 97 (1934).
27 *Griswold*, quoting *Powell v. Alabama*, 287 U.S. 45 (1932)
28 *Poe v. Ullman*, 367 U.S. 497 (1961)
29 *Griswold*. 381 U.S. 499.
30 *Poe*. 367, U.S. 543 (Harlan, J.. dissenting).
31 *Poe*, p. 545-546
32 *Poe*, (my emphasis). Significantly. this is not the view of a self-righteous moral majoritarian for Justice Harlan's majority opinion in *Cohen v. California* (overturning the appellant's conviction for breach of the peace when he appeared in a Los Angeles county courthouse wearing a jacket bearing the words "Fuck the Draft") stated that one man's vulgarity is another's lyric." *Cohen* 403, U.S. 15. 25 (1971).

promulgated in *Lochner v. New York* (1905),[33] where the Court permitted the use of police powers to protect the public's "safety. health, morals and general welfare".

Four years following the *Griswold* decision. *Stanley v. Georgia* (1969)[34] was decided. The appellant in Stanley had been convicted under a Georgia law which forbade the possession of obscene materials, after obscene films were discovered in a desk drawer in the appellant's bedroom during a search (under warrant) on investigation of alleged illegal bookmaking operations. The appellant argued that the privacy of his own home was immune from governmental interference. The U.S. Supreme Court held that, although the obscene films were not constitutionally protected, the First and Fourteenth Amendments foreclosed any State power to make private possession of obscene material a crime. Justice Marshall's majority opinion acknowledged the States' "broad power to regulate obscenity", but said "that power simply does not extend to mere possession by the individual in the privacy of his own home."[35] Proponents of homosexual rights have seized upon Marshall's "privacy of the home" statement as proof of their corresponding right to unrestrained sexual activity within the privacy of their own houses.

But no other Supreme Court decision before or since has justified such unbridled liberty. Furthermore, later decisions emphasized that such protection of the home is limited to traditional notions of personal freedoms involving family, marriage, procreation and motherhood,[36] even though some permitted, in the same breath, the simultaneous perversion of viewing pornography within the home, as in Stanley.

In *Eisenstadt* (1972) the U.S. Supreme Court extended the protection of use of contraceptives to unmarried persons as a fundamental right to privacy.[37] Justice Brennan, writing for the Court, concluded that "[i]f the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."[38]

The next step from *Eisenstadt* was taken a scant year later in the abortion decision of *Roe v. Wade* [39] and its companion piece, *Doe v. Bolton*.[40] The Roe Court found the right to privacy broad enough to encompass a woman's decision whether or not to terminate her

33 *Lochner v. New York* 198 U.S. 45 (1905). In *Lochner* the Court overturned a New York statute which regulated the number of hours a bakery employee could work in any given week. The majority found the regulation to be an unreasonable restriction of the individual's freedom to contract.

34 *Stanley v. Georgia*. 394 U.S. 557 (1969).

35 *Stanley* p. 568.

36 See, e.g., *Paris Adult Theater I v. Slaton*, 413 U.S. 49 (1973), which circumscribed the right to view pornography to the home's privacy.

37 *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

38 *Eisenstadt*, p. 453. It is important to note that although Justice Brennan here moved left of Judaeo-Christian moral ethics, he retained at least a shred of western morality via recognition that sexual privacy is properly confined within parameters of "natural" activity. Cf. *Bowers v. Hardwick*, supra note 1, p. 199 (Blackmun J., dissenting, joined by Brennan et. al.).

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

40 *Doe v. Bolton*, 410 U.S. 179 (1973).

pregnancy."[41] Readily admitting that the privacy right is not explicit in the constitutional text, various members of the tribunal perceived its presence in: (1) the due process protection of the Fourteenth Amendment, (2) the Ninth Amendment's rights retained by the people, or (3) the Bill of Right's penumbra of protection for personal, marital rights. “Justice Blackmun seemed to sense no incongruity in giving so basic a position to a demand which had, until his opinion, been consistently and unanimously rejected by the people" of all fifty states.[42] It is plain that Justice Blackmun ignored both social and jurisprudential history (and all their moral implications) in arriving at his conclusions. The decision “contains a copious gob" of history, “[b]ut it is a history that is undigested—better said, it is history that has been untasted. It has afforded no nourishment to the mind of the judge who set it out.”[43] As candidly observed, “The Fourteenth Amendment, made necessary by an earlier Supreme Court's attempt to make it legally impossible to protect the personal rights of a free black,[44] is here made the source of doctrines making it impossible to protect the personal rights of a fetus.”[45]

Another case, *Carey, v. Population Services International* (1976),[46] expanded to minors under sixteen the personal privacy interests recognized in Eisenstadt.[47] Justice White, who concurred in part and concurred in the result. disagreed with the view that a minor has the constitutional right to put contraceptives to their intended use in spite of state and parental objection. describing thee argument as frivolous.[48]

4. Bowers - The Turning Point?

The U.S. Supreme Court's grant of certiorari in *Bowers v. Hardwick* was a surprise to many court watchers,[49] who had assumed that the Eleventh Circuit's creation of the homosexual's constitutional right to privacy would be upheld by silence from the high court. In *Hardwick v. Bowers*[50] the Eleventh Circuit Court of Appeals had reversed the lower court's decision by ruling that the plaintiff homosexual had a cognizable right to

41 Roe. 410 U.S. p. 153.

42 J. Noonan, *Raw Judicial Power*, The Zero People 16 (1983). John T. Noonan, Jr., formerly professor of law at the University of California (Berkeley), is now a judge on the Ninth Circuit U.S. Court of Appeals.

43 Noonan, p. 19.

44 *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393 (1857).

45 Noonan, p. 24., Judge Noonan drew attention, also, to the irony of the Court's use of the Ninth Amendment as authority for the right to abort. The amendment reads: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” As Noonan pointed out, “The people had already spoken on abortion through the legislatures of fifty states.... How could the rights of the people be more effectively disparaged by an elite than for seven members of a court to pronounce their efforts at controlling assaults on life to be unconstitutional?”

46 *Carey v. Population Services International*, 431 U.S. 678 (1976).

47 405 U.S. 438 (1972).

48 431 U.S. p. 703 (White, J., concurring).

49 See, e.g., 40 *U. Miami L. Rev.*, p. 521.

50 760 F.2d 1202 (1985).

privacy which could not be abridged absent some compelling state interest.[51] The lower court had based its ruling on the U.S. Supreme Court's summary affirmance in *Doe v. Commonwealth's Attorney' for the City of Richmond*,[52] where a three-judge district court had affirmed Virginia's sodomy statute as constitutionally sound.[53]

In its reversal in *Hardwick*, the Court of Appeals majority felt the homosexual plaintiffs privacy interest to be "at lease as substantial as the one in *Stanley, v. Georgia*," and the fact that the activity was "carried out in seclusion" and lacked any "public ramifications" bolstered their determination.[54]

Down the proverbial slippery slope we go. From constitutional protection of sexual privacy within the marriage relationship, to similar sexual privacy outside the marital context where procreation is concerned. From there, the quantum leap (but politic conclusion) that equal protection of the laws requires that a homosexual's right to privacy must be guarded, too, where his perversion is performed in seclusion, seemed easy enough. By accepting the Court of Appeals majority opinion, one must conclude that illicit sexual acts are only harmful where minor children or coercion are involved.[55] Where does that place criminal statutes against adultery, fornication, prostitution and incest, none of which necessarily involve either minor children or coercion?

Noting that "[s]ome personal decisions affect an individual's life so keenly that the right to privacy prohibits state interference even though the decisions could have significant public consequences," the panel then embarked on a strained deception to analogize the homosexual's privacy right into legitimacy. First, Judge Johnson tabbed a parent's right to direct his child's education as indicative of an individual privacy interest which presumably could have dire public consequences. Next he moved to the public's concern for physical health which inheres in its regulation of medical procedures, then wrote it off as subservient to a woman's right to snuff out the life of her unborn child via abortion. His ultimate conclusion was that those rights are "beyond the legitimate reach of a civilized society."[56] One must find extremely suspect the thought processes of a federal judge who is willing to invoke 'civilized' society" and in the same breath severely limit its power to punish what has historically been construed as gross perversion (homosexuality) or murder (abortion). That he was willing to elevate homosexuality to co-equality with a parent's right to make educational choices for his child denotes a profligate mindset.

Fortunately, sanity prevailed (though not unanimously) on the U.S. Supreme Court. Justice White and the majority chose sensible substance and avoided the glib but

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51 760 F.2d 1211.
52 425 U.S. 901 (1976).
53 See 403 F. Supp. 1199 (E.D Va. 1975).
54 *Hardwick*, 760 F.2d p. 1212.
55 *Hardwick*, Judge Johnson concluded that the absence of either children or coercion in the deviate's sexual acts indicated a corresponding absence of "public ramifications".
56 *Hardwick*, p. 1211.

mindless erudition offered by the minority dissent. Justice White aptly stated the essence of the controversy:

> Even if the conduct at issue here is not a fundamental right, respondent [homosexual] asserts that there must be a rational basis for the law and that there is none in this case other than the presumed belief of a majority of the electorate in Georgia that homosexual sodomy is immoral and unacceptable. This is said to be an inadequate rationale to support the law. The law, however, is constantly based on notions of morality, and if all laws representing essentially moral choices are to be invalidated under the Due Process Clause, the courts will be very busy indeed. Even respondent makes no such claim, but insists that majority sentiments about the morality of homosexuality should be declared inadequate. We do not agree,....[57]

Justice White's statement is quite remarkable when one considers the disrepute into which "morality" has fallen in recent times within the judiciary.

5. The Case for Morality in Law

Has Justice White's majority acknowledgment of morality as a viable ingredient of jurisprudence evoked a headlong rush of the judiciary back into the “puritanical prudery” only recently thrown off? Not so far. Positive change seems painfully slow when our nation is so preoccupied with liberty at any cost.

But does morality really have a legitimate place in the legal system of a nation? According to an earlier jurist who is traditionally viewed as an American giant, it does. Explaining his contention that the strength of the law is based upon the parties' awareness of the sanctions to come against them if they break the law, Justice Oliver Wendell Holmes continued:

> I take it for granted that no hearer of mine will misinterpret what I have to say as the language of cynicism. The law is the witness and external deposit of our moral life. Its history is the history of the moral development of the race. The; practice of it, in spite of popular jests, tends to make good citizens and good men.[58]

While Holmes was not plugging a legal system based solely on morality, he had a healthy respect for the positive influence morality exerts on the law. as he noted a wider point of view from which the distinction between law and morals becomes of secondary or no importance. as all mathematical distinctions vanish in presence of the infinite.”[59] and stressed that its practice produces good citizens and good men.”[60]

57 *Bowers*, 478 U.S. p. 196.
58 O.W. Holmes, The Path of the Law, in *Collected Legal Papers* 170 (1920).
59 Holmes
60 See also *Noble State Bank v. Haskell*, 219 U.S. 104, 111 (1911), where Mr. Justice Holmes concluded,

We often hear that a nation should not legislate morality.[61] But many of our laws reflect a morality which no one can refute.[62] To refuse to legislate morality just because it is morality is *a fortiori* a choice to legislate immorality; there is no middle ground Even, human action reflects that person's values; in every one of man's endeavors there is a moral dimension. It may not be the impetus which propels the action, nonetheless the morality of each individual is inextricably woven within the fabric of his or her actions. The admonition that we should not legislate morality really says, "Don't make laws of your morality because I do not agree with it." Then at once that protector sets about the task of legislating his. A 1984 federal judicial opinion best demonstrates my point. Writing for the court, Judge Robert Bork stated:

> This theory that majority morality and majority choice is always made presumptively invalid by the Constitution attacks the very predicate of democratic government When the Constitution does not speak to the contrary, the choices of those put in authority by the electoral process, . . . some before us not as suspect because majoritarian but as conclusively valid for that very reason.[63]

In reality, the conflict over morality in law versus so-called moral neutrality is nothing more than

> an instance of moralities in conflict It is a conflict...in which one moral system calls itself secular and insists that the other do likewise as the price of admission to the public arena. That insistence is in fact a demand that the other side capitulate. By divesting ourselves of authoritative moral referents

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"[T]he police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or the strong and preponderant opinion to be greatly and immediately necessary to the public welfare." (Emphasis mine). In *Haskell* the police power was exerted to place Oklahoma banks under the State's legislative control for protection of the public.

61 See *Bowers v. Hardwick*, 478 U.S. p. 211 (Blackmun, J.. dissenting). Recall also declamations of such public figures as vice presidential hopeful Geraldine Ferraro and New York Governor Mario Cuomo that their personal moralities would not be forced on anyone else. Nonetheless, they both have occupied elective offices, where their tasks were to administrate to the public good. Why the public good? Because our unwritten national moral code dictates that elected officials are to serve the public by protecting its health, safety, morals, and general welfare. Blackmun's jaded "justice" somehow perceives this use of State power to protect the public as a "morally neutral exercise."

62 See. e.g., *Brown v. Board of Education*, 347 U.S. 483 (1954), a modern example of a clearly moral decision in which "separate but equal" schools were ruled unconstitutional as "inherently unequal". The decision was aimed at overcoming the historical racial prejudice in public school systems. Only a cursory review of much of American law will reveal a moral base, though other factors certainly play a substantial role. For example, the law of contracts is built on what we perceive to be just in a business sense: property law protects the owner's rights to his land only because society has concluded it is the "right" thing to do: criminal law is an even more obvious example. Consider also the Code of Professional Ethics: What are ethical values other than statements of permitted or proscribed behavior consistent with someone's concept of right and wrong - clearly a moral determination. Even courtroom etiquette is practiced by the bench and bar from some notion of propriety deeply rooted in the traditions of the profession.

63 *Dronenburg v. Zech*. 741 F.2d 1388. 1397, (1984) (Bork, J., for the court).

> that are external to ourselves,...we have acquiesced in the judgment that there is no moral appeal beyond the individualistic pursuit of interests.[64]

Perhaps the more appropriate caution is that a nation should not enact as law its particular religious doctrines - assuming, of course, that it has any at all. But even that postulate is nor without practical difficulties. The Declaration of Independence itself manifests accepted religious doctrine. Language there refers to “the laws of nature and of nature's God (now considered a laughingstock in legal doctrine), and that men "are endowed by their Creator with certain unalienable rights”; the last phrase is the wellspring from which the Bill of Rights itself emanates. Is the “Creator” of which the framers of our founding documents spoke an amoral Being? If the phrase “endowed by our Creator” is so much useless balderdash. then the entire basis of our institutionalized government is bankrupt and should be scrapped.

But contrary to what is true of most nations of the world, religious and moral beliefs were at the heart of the nation's founding, so much so that “Tocqueville could confidently assert that religion is America's ‘first political institution.’”[65] Other examples are numerous, such as the Northwest Ordinance of 1787: “Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”[66] Not only were religion and morality considered indispensable to proper governance, but they were also seen to be an essential element of education for succeeding generations.

Thomas Jefferson, the great paragon of classical liberalism, queried in 1780, “Can the liberties of a nation be thought secure, when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God?”?[67] If he was right then we must throw out the faulty notion that somehow morals are severable from governance. Far from impinging upon freedom. moral values and restrictions promote and preserve true individual liberty.

6. An Examination of Homosexuality

Before joining arguments about whether homosexual practice should be given legal ratification as a fundamental right, we must digest some of the current thinking about the cause of the problem. Despite the protestations of the homosexuals. their behavior is not nominal, but abnormal. Any behavior which exists despite the absence of societal approval and in spite of strong negative sanctions can hardly be termed “Normal.”[68] Abnormality refers to behavior which “springs from irrational sources, or...a displacement or mischanneling of emotions that generates a need that can be met only

64 R. Neuhaus, *The Naked Public Square* 125 - 126 (1984).
65 Neuhaus, p. 141.
66 The Northwest Ordinance. 1 Stat. 50, 52.
67 E. Calisch, “Jefferson's Religion.” 17 *The Writings Thomas Jefferson* vi (Definitive ed. 1905).
68 S. Goldberg, "Is Homosexuality Normal?", 21 *Policy Review* 119, 127 (Summer 1982).

through behavior that forces one to suffer the unnecessary pain of social ostracism."[69] A *public* poll of the American Psychiatric Association revealed that the majority of members felt that homosexuality is not an abnormal behavior pattern. But when polled *privately*, two thirds of the same psychiatrists defined homosexuality as a disorder.[70] In fact, many of the polled members confirmed that the difference in the polls is explained by the fact that the members voted one way in public, the opposite in private—political "correctness" at any cost."[71] It reminds me of a tart bit of wisdom from the irreverent pen of Mark Twain. Quoting "Jerry," the impudent, satirical and delightful black slave of Twain's childhood in Missouri, he wrote: "You tell me whar a man gits his corn pone, en I'll tell you what his 'pinions is." Explaining what he meant [that most uttered opinions are motivated by great fear of losing one's source of livelihood], Twain went on:

> A political emergency brings out the cornpone opinion in fine force in its two chief varieties...., and the bigger variety, the sentimental variety—....can't bear to be outside the pale; can't bear to be in disfavor...wants to stand well with his friends, wants to be smiled upon, wants to be welcome, wants to hear the precious words, "He's on the right track!" Uttered, perhaps by an ass, but still an ass of high degree, an ass whose approval is gold and diamonds to a smaller ass, and confers glory and honor and happiness, and membership in the herd. For these gauds many a man will dump his life-long principles into the street, and his conscience along with them. We have seen it happen....
>
> Men think they think upon great political questions, and they do; but they think with their party, not independently; they read its literature, but not that of the other side;... They swarm with their party, they feel with their party, they are happy in their party's approval; and where the party leads they will follow, whether for right and honor, or through blood and dirt and a mush of mutilated morals.
>
> .... We all do no end of feeling, and we mistake it for thinking. And out of it we get an aggregation which we consider a boon.[72]

Very little is known about the cause or causes of homosexuality. While some theorize that the causative factor may be a physiological abnormality, "virtually all of the evidence argues against there being such a determinative physiological causal factor...."[73] Medical science has not uncovered any evidence which demonstrates causal physiological distinctions between homosexuals and others, which may well explain why even the homosexuals themselves typically refer to their practice as an "alternate lifestyle."

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69 Goldberg, p. 122.
70 Goldberg, p. 121.
71 Goldberg, (citing A. Karlen. "Homosexuality: The Scene and Its Students", *The Sociology of Sex* (1978).
72 From Mark Twain's Corn-Pone Opinions", first published in 1923 in *Europe and Elsewhere*. edited by Albert Bigelow Paine.
73 S. Goldberg, p. 128.

Others have attempted to explain the perversion in environmental terms. which brings them roughly within the Freudian stream.[74] Some emphasize an early fear of competition which causes rejection of the male role, while others point to social ostracism of certain types of behavior. thereby forcing the individual to develop a self concept based on that ostracized behavior. Still others implicate adolescent homosexual encounters which apparently shape the participant.[75] But all those explanations "beg the central question of why those who become homosexual have such fears of competition, why those who become homosexual choose adolescent homosexual experiences, or why those whose homosexual propensities are labeled have homosexual propensities.... [T]hey leave unidentified the initial causal factor(s) . . . .."[76]

Freud hypothesized that homosexuality results "from a refusal of the boy to identify with his father" for any number of reasons.[77] While Freudian theory holds that most homosexuals grow up in the type of environment said to produce the disorder, "[h]e does not say that most people who grow up in such an environment become homosexual."[78] It is important to note that "[w]hile not denying that social attitudes exacerbate the homosexual's pain, [the Freudians] believe that eradication of the negative sanctions WOULD NOT eradicate the pain."[79] If that belief is true, one of the homosexual spokesman's most compelling arguments for legal acceptance is debunked. That the belief is true is further corroborated by a study done by two who are sympathetic with the homosexual's plight.[80]

The Weinberg/Williams report compares

> differences between homosexual and heterosexual reports of "unhappiness" and "lack of faith in others" in the United States (with its strongly intolerant attitudes towards homosexuality) with differences in reports in The Netherlands and Denmark (which have far more tolerant attitudes). The authors "do not find, as societal reaction theory implies, smaller differences

74 Goldberg.
75 Goldberg.
76 Goldberg, p. 131.
77 Goldberg, p. 132.
78 Goldberg, p. 133.
79 The hue and cry of many of the advocates of homosexuality is that legalizing the practice can bring self-fulfillment, life-meaning, and "terminal values ('an enduring belief that an end is socially or personally preferable to its converse)". See, e.g., 40 *U. Miami L. Rev.* p. 582 (citing Richards, Sexual Autonomy and the Constitutional Right to Privacy: A Case-Study in Human Rights and the Unwritten Constitution, 30 *Hastings L. J.* 957, (1979), where it is argued that "the right of privacy should not be defined in terms of rigid, marital procreative sex. Sexual intimacy and "mature love" are terminal values through which individuals add meaning to their lives."" See also *Bowers v. Hardwick*, 478 U.S. 186, 205, 106 S.Ct. 2841, 2851 (1986) (Blackmun,, J., dissenting) (stating, "The fact that individuals define themselves in a significant way through their intimate sexual relationships with others suggests, in a Nation as diverse as ours, that there may be many right ways of conducting those relationships, and that much of the richness of a relationship will come from the freedom an individual has to choose the form and nature of these intensely personal bonds."
80 Goldberg, (citing M. Weinberg & C. Williams, *Male Homosexuals* (1974)

> between the homosexual and general population samples in the more tolerant societies." In other words, *the distress does not decrease as tolerance is increased.*[81] (emphasis in original text).

Goldberg's analysis of the homosexual's claim for legal approval ends with a crucial commentary:

> My suspicion is that the homosexual does not want merely the rights that should always have been his. Nor does he want merely the empathy and openness we offer (or should offer) anyone with physical or psychological problems. *The homosexual wants social affirmation of the normality of his behavior.* [W]e cannot give this affirmation unless he can give us a causal factor for homosexuality that can be considered normal. If he cannot do this, he asks us to affirm as normal that which fails to meet the criteria for normality we invoke in all other cases. To do this we would have to deny truth and live a lie. Nothing can justify our doing that.[82] (emphasis mine).

Having disposed of the "normality" pretext advanced by those who espouse homosexual practice. Let us consider the most prominent reason given for granting them tolerance (actually, tolerance is granted them now; sodomy laws are rarely enforced in the states which retain them, as was true in the *Bowers* case). The right to engage in homosexual sodomy is said to be the quintessential personal choice entitled to recognition as a fundamental right (which gives the lie to the oft-heard excuse that homosexuals "can help the way they are." However, as earlier pointed out, the claimed fundamental right has never been given legitimacy by the U.S. Supreme Court, even before *Bowers v. Hardwick*. The zone of privacy created by the penumbra of the Bill of Rights was limited to the marital relationship in *Poe v. Ullman* and *Griswold v. Connecticut*.[83] Homosexuality clearly falls outside the fundamental rights recognized in the "traditions and collective conscience of our people,"[84] so that definition will be of no avail to the homosexual. Likewise, homosexuality has never been recognized as a "basic value implicit in the concept of ordered liberty."[85] Finally, homosexual sodomy is outside the safety net of the inner sanctum of the home, which is reserved to marriage, the traditional family, and procreation.[86]

True enough, almost all Americans would side with Justice Brennan's perception of privacy as the right to be free from unwarranted government intrusion into areas of fundamental rights. But if homosexuality failed to qualify as a fundamental right as late

81 Goldberg, p. 135-136.
82 Goldberg, p. 138.
83 *Poe*, 367, U.S. 497; *Griswold*, 381 U.S. 479.
84 *Griswold*, 381 U.S. p. 493 (Goldberg, J., concurring). See also *Hebert v, Louisiana*, 272 U.S. 312, 316 (1926) (fundamental rights defined to include those rights which cannot be denied without violating those "fundamental principles of liberty and justice which lie at the basis of all our civil and political institutions").
85 Poe, 367 U.S. 497. See also *Bowers*, 478 U.S. p. 192.
86 Poe, 367 U.S. 497.

as 1965 (*Griswold*), what marvelous transformation has since occurred which now gives it respectability in the eyes of some of the same Supreme Court justices who earlier voted against its validation? Nothing has changed the practice of the homosexual, except that it is now more open. The change is an obvious shift in the moral code of those justices who attempt to remain in the social or political *avant garde*.

Additionally. if the right to practice homosexuality is to be upheld as a fundamental personal choice between consenting adults, then what is to differentiate that right from the similar personal choice of adults to engage in incest, adultery, or fornication?[87] Although adultery and fornication statutes may be based in part on society's desire to avoid disruption of the family unit. Such compelling policy interests may not always be apparent where incest is involved. For example. a brother and sister, both of whom have reached majority and both of whom maintain homes apart from the rest of their family and are unmarried. may want to engage in sexual intercourse together. Arkansas's statutory provisions (and, I presume, most states') prohibit such relationships, but their choice is certainly that of *consenting adults on an inherently personal choice* which works no obvious harm to society. Are we to allow it? At present we do not. Fact is, the Bowers dissenters' argument is disingenuous: the harm of such perverted sexual relationships is often not manifest, but latent, and the disapprobation of society stems from moral values honored by western civilization for centuries, moral values which tend to make good citizens and good men."

In his *Bowers* dissent, Justice Blackmun ridiculed that moral heritage through his stated distrust for Biblical quotes and longstanding statutory proscriptions against the "private, consensual sexual activity" of homosexual sodomy.[88] Relegating heterosexual marriage to the ashheap of "stereotypical households,"[89] quoting the inimitable Justice Holmes, Blackmun called up the essence of a familiar old saw that says

> [i]t is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past.[90]

But Justice Blackmun assumed too much. The more egregious of his assumptions is that there was never a valid reason for the historic rule against sexual perversion, and that it

87 See, e.g., Ark. Code Ann. § 5-26-202 (1987), which prohibits incest. Adultery and fornication are statutory crimes in most jurisdictions; some hold the offenses to be felonies, others misdemeanors. The statutes "are designed to conserve public morass by prevention of indecent and evil examples tending to debase and demoralize society and degrade the institution of marriage." 2 Am. Jur. 2d Adultery & Fornication §§ 2, 9 (1962). Adultery and fornication statutes have been upheld as not being violative of the right to privacy protected by the Constitution. See, e.g., *State v. Lutz*, 57 NJ. 314 272 A.2d 753 (1971). Adultery is not an indictable offense at common law or by statute in Arkansas. *Cobb v. State*, 102 Ark. 363, 144 S.W. 221 (1912).

88 *Bowers*, 478 U.S. p. 210-212 (Blackmun, J., dissenting).

89 *Bowers*, p. 205.

90 *Bowers*, p. 199 (citing Holmes, The Path of the Law, 10 *Harv. L Rev.* 457, 469 (1897).

has been followed only out of thoughtless mimicry. With no citation of authority for his conclusion, it smacks of mere personal distaste for the judgments of society at large—elitism at its best—and a mind which, as Judge Noonan has suggested, has failed to ingest and digest the history underlying American jurisprudence in this area.[91]

Moreover, Justice Blackmun's quote demonstrates a deep misunderstanding of the whole of Holmes's point. A further look at Holmes's premise reveals the truth:

> The rational study of law is still to a large extent the study of history. History must be a part of the study, because without it we cannot know the precise scope of rules which it is our business to know. It is a part of the rational study, because it is the first step toward an enlightened skepticism, that is, towards a deliberate reconsideration of the worth of those rules.[92]

Justice Blackmun apparently hoped to do himself honor by equating his erroneous assumption of dead law to the enlightened skepticism honored by Holmes, assigning to his own conclusion the credibility of a rational study of history. "

7. The Harms of Homosexuality

Is there either individual or Corporate harm to others in homosexuality? Obviously so, and while some may point to such physical dangers as the current AIDS plague, the less obvious hut more pervasive detriment is that to which Montesquieu alluded: “People have it generally in their power to communicate their ideas to their children; but they are still better able to transfuse their passions.... It is not the young people that degenerate; *they are not spoiled till those of maturer age are already sunk into corruption.”* [93] The stunning truth of that realization is evidenced by recent statistics.

While there were very few open homosexuals a generation ago, by 1984 there were in the U.S. an estimated 16 million adults identified as such.[94] Homosexuals were routinely jailed for their illicit acts in the 50's and 60's, and as late as 1973 a prominent legal encyclopedia noticed that homosexual acts were capital offenses punishable by death under the common law.[95] However. the tide had reversed by the 1980's to the point that “a Los Angeles *Times* poll found that 44 percent of the people did not oppose the homosexual lifestyle....”[96] Coupled with the explicit approval of some of judges around the nation. it is not surprising that homosexuals would begin to proliferate.[97] While New

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91 See J. Noonan *Raw Judicial Power, The Zero People* (1983) (supra note 48).
92 Holmes, The Path of the law in *Collected Legal Papers*, p. 1#6-187 (1920).
93 C. Montesquieu. T*he Spirit of Laws,* 38 *Great Books of the Western World* 16 (1952) (emphasis mine).
94 *Los Angeles Times.* Jan. 1. 1984. Sec. 1 p. 1. col. 1).
95 70 Am. Jur. 2d Sodomy § 25 (1973).
96 *Los Angeles Times*.
97 See. e.g., *Acanfora v. Board Education*, 359 F. Supp. 843 (D.Md. (1973); *Commonwealth v. Bonadio.* 415 A.2d 4, (Pa. 1980). *People v. Onofre*, 51 N.Y.2d 476, 415 N.E.2d 936, 434 N.Y.S.2d 947 (1980), cert. denied, 451 U.S. 987 (1981).

York City and others have noisily adopted legislation which recognizes the civil rights of homosexuals, less noticeable events portend potentially worse consequences. “San Francisco has avowed homosexuals as [m]unicipal [J]udges and allows homosexuals to adopt children.”[98] A Riverside, California, homosexual adopted a son and plans to adopt more.[99] Is there much doubt about what a homosexual father would plan to teach or do with these sons? The individual and societal harm from pederasty should be plain. A perverted judge's likely use of his office to downgrade community moral standards is equally clear. As Judge Robert Bork, formerly of the D.C. Circuit Court of Appeals (and spurned by the U.S. Senate Judiciary Committee) so ably noted, we are “not required to produce social science data or the results of controlled experiments to prove what common sense and common experience demonstrate.”[100]

Along with these changes have come drastic results. AIDS is a horrible health problem which no one can deny. Statistical data are staggering, and I have not attempted to incorporate current statistics in this article. But as of 1981, over 95% of the world's reported cases were in the U.S., 52% in New York City alone.[101] Cost-wise, AIDS is equally catastrophic. The Centers for Disease Control put the total cost of the first ten thousand reported AIDS cases, in hospital costs and lost income, at $6 billion so far.[102] Thus we move beyond the moral argument decried by the advocates of homosexual rights and into the “real” world of life and death and economics.

Clearly AIDS is not confined to the homosexual community. Other classes absorbing its impact include drug addicts, hemophiliacs, and an increasing number of heterosexual people.[103] But the plague was first discovered in the U.S. in 1981 in homosexual men.[104]

> The typical AIDS victim had oral or anal sex with an average of 60 people a year, and the average number of estimated lifetime sexual partners was 1,160. Sociologists' investigation of these homosexual men found that it was not unusual to have sex with 5-10 people in a single night at the baths.[105]

Even if the behavior described is atypical of the average homosexual, the risk is graphic. The 1983 New York legislature decided that “AIDS may be the 20th century's most virulent epidemic”, with a mortality rate near 45% (meaning that 45% of the known

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98 *Los Angeles Times*.

99 *Los Angeles Times.*

100 *Dronenburg v. Zech*. 741 F.2d 1388. 1398 (1984) (upholding discharge of Navy personnel for homosexual acts).

101 B. Breen. AIDS - An Acquired Community Problem. *Medical Trial Technique Quarterly* 249 (winter 19W) (citing Masur. Michelis & Greene, An Outbreak of Community Acquired Pneumocystis Carinii Pneumonia: Initial Manifestation of Cellular Immune Dysfunction, *N. Eng. J. Med.* 1431 (1981)).

102 J. Sobran. The Politics of AIDS. *National Review* May 23, 1986. p. 22.

103 See. e.g., the notorious case of the LA. takers' Magic Johnson, sexathlete par excellence, widely acclaimed by the media as a “hero” for his courage in revealing his infection.

104 *Breen*, p. 250

105 *Breen*. p. 251.

infected have died so far).[106] The disease is presently incurable. Medical testing of blood supplies and “safe-sex” condoms notwithstanding, transmission to heterosexuals is thus inevitable as hemophiliacs, others in need of blood transfusions, and abusers of intravenous drugs receive contaminated blood donated by homosexuals and drug addicts, groups shown toe be frequent donors of blood.[107]

Surely such staggering possibilities warrant stringent protections for the public. While homosexuals are in need of compassion and purposeful help to overcome their perversion, that need should be constantly divorced from any tendency toward a mushy sentimentalism which would persuade us to condone their deviate behavior. Abstract reasoning about constitutional rights to privacy. intimate sexual choices, and the right to be let alone should not cloud the proportions of the predicament we face. The sacrifice of national physical and moral health is an enormous pace to pay for liberty. Liberty at any price is license.

Conclusion

The United States of America is truly at a crossroads. We struggle with ambivalence. One road calls to the "free life" where all admits of easy answers. But beyond the rhetoric lurks stark reality with its harsh lessons that civilization after civilization has failed to take to heart. Absolute freedom is mythological. No man on earth has it or ever will. It is without our grasp.

The second path—liberty within morality—has been the polestar of our nation for a century and a half; it is the glue which holds our republic together. Painfully but thankfully it led to the realization that all men truly “are endowed by their Creator with certain unalienable rights” which include “life, liberty, and the pursuit of happiness.” However, Liberty was, at the very outset, not absolute and unconstrained. That principle was recognized early in our nation's birth pangs. Alexander Hamilton wrote:

> [I]t will be equally forgotten that the vigour of government is essential to the security of liberty; that, in the contemplation of a sound and wellinformed judgment, their interest can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidding appearance of zeal for the firmness and efficiency of government. History will Beach us that the former has been found a much more certain road to the introduction of despotism than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people;

106 *Breen*, p. 263 (citing New York Public Health Law § 2775 (1983).

107 J. Williams Blood Transfusions and AIDS: A Legal Perspective, *Medical Trial Technique Quarterly* 267, 269 (winter 1986). On April 8, 1992, former U.S. tennis great Arthur Ashe, U.S. Open and Wimbledon champ confirmed in a public news conference on national television that he has AIDS as a result of a contaminated blood transfusion during his second open-heart surgery in 1983.

commencing demagogues, and ending tyrants.[108]

Of the two paths before our country, one leads to continued expansion of court-sanctioned privacy rights rooted in the neo-Renaissance notion that man is autonomous and perhaps owes little else to society than to avoid committing violent crimes. We have seen that what began as the acknowledgment of the right of marriage partners to choose whether to have children has truly resulted in the expansion of alleged individual rights which, until *Bowers v. Hardwick,* knew almost no bounds.

While we must have compassion for the individual who has fallen into moral depravity, our attempts to reclaim him should not condone a licentious lifestyle. Where he refuses to mend his ways in accord with the moral standards of the Judaeo-Christian ethic upon which our nation was established. he has no rightful claim to public protection and approval. His immorality is antithetical to the liberty interests of the public and must be punished. Fears of abuse of police power can adequately be assuaged by the protection available under the Fourth Amendment to the U.S. Constitution. which prohibits unreasonable searches and seizures.

Epilogue

I first wrote a much lengthier, law-review form of this article in 1986 within weeks after the S.C.'s opinion in Bowers v. Hardwick was published. That opinion provoked strong public response on both sides of the argument. The battle still rages and the liberals and heathens still beat their chests with fury. But I take courage at many hopeful signs in our nation which indicate that we sleepy, cowering Christians have had just about enough and have realized that the rapture ain't about to snatch us from the present sociological morass in which we find ourselves. I take courage at the efforts of some of our media who seem to have had enough. too, and are beginning to speak out for morality and "goodness."[109] And then I take a great deal of courage from the following words:

> Why do the nations assemble with commotion, and why do the people imagine an empty scheme?
>
> The kings of the earth take their places; the rulers take counsel together against the Lord and His Anointed One. They say,
>
> Let us break Their bands asunder, and cast Their cords from us.
>
> He Who sits in the heavens laughs; the Lord has them in derision.
>
> HE speaks to them in His deep anger, and troubles them in I His displeasure

108 *The Federalist* No. 1, p. 35 (A. Hamilton) (Rossiter ed. 1961).

109 See The Chastity Revolution, *Reader's Digest*. May 1992, p. 69-71, and Judgment Call. *The Wall Street Journal.*

and fury, saying,

Ask of Me, and I will give You the nations as Your inheritance, and the uttermost parts of the earth for Your possession.

You shall break them with a rod of iron; You shall dash them in pieces like potter's ware.

Now therefore, O you kings, act wisely, be instructed and warned, O you rulers of the earth.

Serve the Lord with reverent awe and worshipful fear; rejoice and he in high spirits, with trembling.

Kiss the Son lest He be angry, and you perish in the way, for soon shall His wrath be kindled. O blessed—happy, fortunate and to be envied are all those who seek refuge and put their trust in Him!
Ps.2:1-5,fs-12 (Ampl).

We have a mandate to Serve the Lord Jesus Christ until He comes again! Our Service will bring a measure of victory and righteousness to the earth despite all the scoffing of those who have become a law unto themselves under the guise of freedom.