

THE PROGRESS REPORT

The Natural Right to Sexual Orientation and Identity

By Fred E. Foldvary

Some people confuse what is natural with what is unusual or outside cultural customs. If we want to meaningfully distinguish what is natural from what is human-created, then nature is all that is apart from human action. Human action is any purposeful behavior and activity done consciously and deliberately by persons. Any human act is non-natural, neither natural nor unnatural.

From a universal moral perspective, independent of any culture, any peaceful and honest action should not be prohibited or restricted. This is the single moral imperative for humanity and the basis of universal human rights.

This universal ethic therefore prescribes that homosexuality is morally neutral, neither inherently good nor evil. There should be no legal restriction or penalty for homosexual acts, sexual acts involving people of the same sex.

Homosexuals, especially males, have adopted the designation "gay," while female homosexuals have been called "lesbians." Many governments have prohibited gay and lesbian sexual acts, as well as discriminating against them in employment and civil rights. The U.S. armed forces still do so today. All such prohibitions and discriminations are violations of gay and lesbian human rights.

Another category is transgendered or trans-sexual people, those who adopt the identity and appearance of the opposite sex. This can range from cosmetic changes, dressing and appearing as the other sex, or physically changing oneself to the other sex. Restrictions against transgendering too violate the human rights of such folks.

In English, the term "gender" has come to mean, besides the grammatical meaning, a social and cultural identity as male or female, in contrast to one's born genetic identity. Thus, adopting the female gender means becoming socially and culturally female, even if one is genetically a male.

Even when government does not prohibit the sexual expression and identities of homosexuals and trans-genders, they are economically discriminated against when the state grants privileges to married people and then denies same-sex people the right to marry. Whether homosexuals have a human right to marry is a borderline moral question hinging on the definition of "marriage."

If a government recognizes the very meaning of marriage as a union between a man and a woman, then to avoid arbitrary discrimination, homosexual couples should have the legal right to form a similar domestic partnership where the mates have the same legal rights regarding inheritance, property, and visitations as married folks.

Some gays and lesbians have gone further and demand laws banning discrimination in private employment. But the owners of private property also have natural rights. The basic natural law of property is "to the creator belongs the creation." A person has a natural right to his or her own labor and the creations of one's labor, including goods one has exchanged. The owner of an enterprise has a moral right to do with his produced property what he pleases so long as it is peaceful and honest.

So legal restrictions on whom the owner must hire violate his property rights. Gays and lesbians do not have a moral right to dictate to owners of private property that they must not avoid hiring them. Homosexuals should be free to start their own enterprises if many businesses discriminate against them. In a free market, discrimination tends to disappear, since those who choose the best qualified workers regardless of irrelevant characteristics will have a more profitable firm.

A government however, as the agent of all the people, must treat all people equally and should not discriminate in employment or treatment before the law. So anti-discrimination laws are proper and necessary in government employment, including in schools.

Governments should therefore also not prohibit homosexuals from joining the armed forces. The U.S. government's current "don't ask, don't tell" policy in which gays and lesbians may join but must hide their sexual orientation is an unworkable compromise. Let homosexuals join the military and be openly gay or lesbian. In some cases, the sensibilities of the affected soldiers may be taken into account regarding housing, but armies with homosexual soldiers have generally had few overall problems.

Some fundamentalist religions regard homosexuality as a sin, and their moral right to freedom of association permits them to be exclusive if they wish. But government policy in a free society should not be based on the doctrines of any religion.

Moreover, fundamentalist Christians are misreading the Bible regarding gay and lesbian practices. The Old-Testament sexual prohibitions applied only to people within the Covenant, the agreement between the Israelites and God. The prescriptions in Bible do not apply to those outside the covenant, and therefore even Biblically are not the proper basis for government policy.

Sexual identity goes to the core of one's personhood, and it is a deep and fundamental moral right to join with others in peaceful associations and unions without arbitrary restriction. That is the natural moral law, and what is truly natural and human is our equal personhoods and the freedom to be ourselves.