The Historical impact of 'Liberty of Conscience' in the West *and* That it is this Principle that Sustains a free society's Constitutional Right to Express Itself without "lawful" interference, Even in matters of alternative theologies in the area of Human Sexuality

or

Religious Fundamentalism Married to Nationalism: Who's in Africa, Roger Williams or John Cotton?

By Rev. Stephen R. Parelli - Executive Director, Other Sheep
sparelli2002@yahoo.com www.othersheep.org June 27, 2012

THE FIRST SECTION

The Historical Impact of Religious Freedom and Liberty of Conscience in the West

Part I. Roger Williams (Baptist) and Liberty of Conscience

Civil Government Established on the Doctrine of Liberty of Conscience

"The first person in modern Christendom to establish civil government on the doctrine of liberty of conscience," was Roger Williams (1635). So wrote Harvard graduate George Bancroft in 1834 in the first volume of his "monumental" work, History of the United States [Guastad 1999:212].

In 1860, Francis Wayland, the President of Brown University, "praised Williams for his 'stern love of individual liberty,' " that his " 'monuments are everywhere . . . as wide as civilization' " [Guastad 1999: 213]. "The Pilgrims in America, Wayland added, sought liberty for themselves; Roger Williams in America sought 'liberty for humanity' " [Guastad 1999:213].

In the same year (1860), Henry Clay Fish wrote: "The Pilgrims and Puritans . . . came here to worship God, themselves, unmolested; but they had not the remotest idea of establishing liberty of conscience for any except those of their own way of thinking. They would not even tolerate those of an opposite faith, much less concede this liberty to differ as their right" [Fisher 1860: 55].

How Religious Liberty differs from Toleration

In 1853, Pastor John Quincy Adams of the Baptist Church of Caldwell, New Jersey, published several lectures. In his sixth lecture, "The Propagation of Religious Liberty and the Rights of Conscience," Adams wrote:

"Many consider toleration as synonymous with religious liberty, but . . . toleration is the allowance of that which is not wholly approved. As applied to religion, the term is objectionable because it presupposes the existence of some mere human authority which has power to grant to, or withhold from man, the exercise of freedom in matters of religion. . . . On the contrary . . . by the very nature of the soul of man . . . it is his inalienable right to exercise his judgment without restraint in religious matters, and [to] give expression, freely and fully, to his religious convictions, without human dictation

or interference. . . . [I]f the right to tolerate exists in man, the right to prohibit, and to dictate to the conscience, must also exist with it; and thus toleration becomes merely another name for oppression. Toleration, therefore, is not religious liberty. Religious freedom recognizes in no human organization the right or the power to tolerate. . . . Baptists have always strenuously contended for the acknowledgment of this principle, and have labored to propagate it" [Adams 1876:87, 89-90].

Two Hundred Years After Roger Williams: Protestant Popedom No Longer Disgraces America

In 1818 (almost 200 years after Roger Williams), the state of Connecticut voted for the disestablishment of its official state church. Of this disestablishment, Thomas Jefferson, in a letter to John Adams, wrote, "this den of priesthood is at length broken up, protestant popedom is no longer to disgrace American history and character" [Guastad 1999:210].

Religious Persecution Under Queen Elizabeth and King James of England

It was under the "protestant popedom" of Queen Elizabeth of England, "in the two decades before [King] James' [1603] ascension to the throne [- the same year as the birth year of Roger Williams it is believed -], that over one hundred Catholic priests had been put to death, sometimes along with the lay men or women accused of assisting or hiding them" [Guastad 1999:9].

During the adolescent years of Roger Williams, with King James now 10 years on the throne, religion in England (still no better) could be described as "that bloody gladiatorial arena." "Heresy could be more fearful than treason" [Guastad 1999:8)]. And so it was for Thomas Helwys who (having learned nothing from John the Baptist) dared to pen a letter to King James in 1612 in which he articulated his damnable Baptist "heresy" of liberty of conscience. "[The king]," Helwys wrote, "[is] a mere mortal who ha[s] no power over the immortal souls of his subjects, nor the power to 'set spiritual Lords over them' " [Guastad 1999:16]. His professed doctrine cost him imprisonment where he died two or three years later.

The Baptist leader John Murton who followed Helwys, immediately took up the cause for liberty of conscience in England. In 1615, he wrote "it is the foulest of crimes to force people's 'bodies to a worship whereunto they cannot bring their spirits' " [Guastad 1999:16].

17th Century Baptists on 'The Chief Duty of Magistrates: To Tender the Liberty of Men's Consciences;' and Why the Reformation Leaders Failed Miserably on this Principle

In 1644, seven dissenting churches in England, all Baptist and Calvinistic, wrote a Confession of Faith in which they said "the magistrate's chief duty with respect to religion [is] 'to tender the liberty of men's consciences.' " "Without that liberty, these Baptists declared, no other liberty was worth mentioning" [Guastad 1999:17].

This was in sharp contrast to the Westminster Assembly of 1647, just three years later. "[Religious dissenters]," the Assembly wrote, "[should be] lawfully called to account, and proceeded against by the censures of the Church, and by the power of the Civil Magistrate" (R. Carter's preface to Fish, 1983 reprint, p viii). According to Rembert Carter, Professor of Church History of Baptist Bible College of Pennsylvania, "Many of the Presbyterian members of the Westminster Assembly published books against religious liberty. Ephraim Pagitt, Richard Byfield, Adam Stewart, and Samuel Rutherford were

only a few of the many" [Carter in Fish 1983:viii)]. These were in step with the common ecclesiastical wisdom of their day.

Carter remarks on Luther and Calvin and names other Reformers. More than a century earlier, Luther had said "[The magistrate] should order to be silent whatever does not consist with the Scriptures;" and Calvin had said "Godly princes may issue edicts for compelling obstinate and religious persons to worship the true God and to maintain the unity of the faith" [Carter in Fish 1983:xiii]. Zwingli in Zurich, John Knox in Scotland, Thomas Cranmer in England, and John Cotton in New England all failed at the doctrine of the liberty of conscience. Why? As Carter recounts, they all believed as St. Augustine did "that God has two hands by which He administers the affairs of this world:" the church and the magistrate so that "the church and the state must help each other as God performs His task in human history" [Carter in Fish 1983:vii]. Carter remarks: "In 1520, Martin Luther had written his famous tract entitled Liberty of the Christian Man, but within a very few years he was urging the nobility of the land to use force against the Baptists" [Carter in Fish 1983:xiii].

Roger Williams' Banishment from Massachusetts; "The Devil hath Deceived Thee," said Cotton

Roger Williams, arrived in the New World in 1631. His openly avowed ideas of individual soul liberty clashed with the church and civil leaders in Boston. "The requirement to love God, to eschew idolatry, to keep the Sabbath, to avoid blasphemy (all from the first table of the 10 commandments) – these were matters for the individual conscience, not for the sheriff, whether in Old England or New England. So argued Williams. Boston disagreed" [Guastad 1999:26].

"Mr. Roger Williams," declared the Court that tried him, "[hath] broached and divulged diverse new and dangerous opinions" [Guastad 1999:38].

In the words of John Cotton, the leading minister of Boston, Roger Williams was in fact "disputing against the light" of God's truth [Guastad 1999:40]; it was Williams' own "schism, heresy, obstinacy" that was responsible: "the Devil hath deceived thee," wrote Rev. John Cotton to Roger Williams [Guastad 1999:40].

Governor "Winthrop and company maintained that [the] teachings [of Roger Williams] were precisely the kind . . . that would destroy the enterprise in which they were engaged" [Guastad 1999:27].

"Politics and Religion Have Become One in Massachusetts"

In 1635 Roger Williams was banished from Massachusetts. In a letter to Williams, Rev. John Cotton "spoke of the civil banishment as though it were the equivalent of an expulsion from the church" [Guastad 1999:40]. In response, Roger Williams wrote, "You've made my point, Mr. Cotton, and I thank you: politics and religion have become one in Massachusetts, as Christendom takes the place of Christianity. Otherwise, [I] might have been excommunicated from the Salem church yet still have been permitted to live in Massachusetts Bay. But no: 'the Commonwealth and Church is yet but one, and he that is banished from the one, must necessarily be banished from the other also' " [Guastad 1999:40].

Upon his banishment, Roger Williams became "a byword and a sign, warning the unsuspecting traveler of the path that led to sure destruction" [Guastad 1999:44]. The idea of individual soul liberty was "the great and lamentable Apostasy of Mr. Williams" [Guastad 1999:44].

The 1640 Providence, Rhode Island, Second Article of Agreement: The Liberty of Conscience

In 1640, four years after the founding of Providence, Rhode Island, "twelve articles of agreement were drawn up, the second one reading (in part), 'We agree, As formerly hath been the liberties of the Town, so Still to hold forth Liberty of Conscience' " [Guastad 1999: 49].

The 1644 Massachusetts infamous Law Against Religious Dissent

In 1644, nine years after Williams' banishment from Massachusetts, the Bay Colony adopted "a famous law against religious dissent" [Carter in Fish 1983: viii] and banished all Baptists from the colony: "Ordered and agreed, that if any person or persons within this jurisdiction shall either openly condemn or oppose the baptism of infants, or seduce others to do so, or leave the congregation during the administration of the rite, he shall be sentenced to banishment" [Adam 1982:98].

Rev. John Cotton claimed: "toleration made the world anti-Christian" [Carter in Fish 1983:iiix].

In 1663, King Charles II grants the Rhode Island Charter with the Provision for Liberty of Conscience

In 1663, King Charles II granted, at last, the Rhode Island charter long sought after by Roger Williams which promised that "no person, within the said colony, at any time hereafter, shall be any wise molested, punished, disquieted, or called in question, for difference in opinion in matters of religion. . . . [that] all … may … freely and fully have and enjoy his and their own judgments and consciences in matters of religious concernments."

Subsequent American Charters and Documents with the Provision for Liberty of Conscience

In 1665, New Jersey adopted Rhode Island's charter as its own with this addition: one was free, not just in the expression of his opinion, but free also to "practice" his opinion in all matters of religious concernments.

In 1665, King Charles II granted the "whole of Carolina" freedom of religious opinion and practice. West New Jersey followed in 1677; and Pennsylvania in 1682.

According to Feldman, professor of law at New York University, it would be the "ideal of liberty of conscience" that would "[drive] the argument for institutional separation [of the church and state] in precursor states like Virginia, in the Federal Constitution, and eventually in the hold-out New England states" [Feldman 2005:12].

Late 17th Century Religious Leaders' Condemnation of Liberty of Conscience

While these "lively experiments" [Guastad 1999:193) of individual soul liberty were yet barely in progress in colonial Rhode Island, on-going condemnations could still be heard coming from the Bay Colony:

" 'Tis Satan's policy to plead for an indefinite and boundless toleration;" Shepherd's Election Sermon, 1672. ("This same year the General Court revised and reprinted the laws banishing Baptists from the colony") [Fish 1983: 58].

President Oakes of Harvard College, in his Election Sermon of 1673, said "I look upon toleration as the first-born of all abominations" [Fish 1983: 59].

And Increase Mather, Election Sermon, 1677, said, "I believe that Antichrist hath not, at this day, a more probable way to advance his kingdom of darkness than by a toleration of all religions and persuasions" [Fish 1983: 57].

The Historical Impact of Religious Freedom and Liberty of Conscience in the West

Part II How American Evangelicals, like their 17th century John Cotton and New England church-state counterparts, tend to be theocratic, intolerant, and doomsayers with regards to the matter of Marriage Equality

The Use of Magisterial Force in America to Accomplish Spiritual Ends: Evangelical Americans in Denial of their Heritage of Liberty of Conscience when it comes to Same-sex Marriage

In 1983, in the early days of the Religious Right's Moral Majority movement, Dr. Rembert Carter, then Professor of Church History at Baptist Bible College of Pennsylvania, observed, "Many modern fundamentalist leaders have continued to drink at the theocratic well [of] John Cotton [of Massachusetts Bay] who equated the American experiment with the Old Testament economy of Israel in order to erect a modern counterpart of Manifest Destiny."

Carter further remarks, "Our [nation's] founding fathers separated church and state. [Since then], ideas of civil religion have persisted. [Today, evangelicals and fundamentalists] are caught in the theocratic web of modern Christian political activism."

Contrasting Baptists of old with today's theocratic Baptists, Carter notes, "Although Baptists were condemned by Protestants [during the Reformation], yet today, [Baptists] are behaving like the Reformers in many current church-state activities. The Baptist denomination has been the only denomination in all of church history to have consistently denied the use of magisterial force to accomplish spiritual ends. Only in modern times has this principle been called into question" [Carter in Fish 1983: ix-x].

In 1982, Fred Leuck, a Michigan Baptist Pastor and a graduate of Westminster Theological Seminary, wrote: "More than a few Baptists [in America today] are enamored, though at a loss as to how to achieve it, with the idea of establishing a state religion, a society in which the government becomes 'Christian' and thus the protector and defender of the Church. . . . [These Baptists] have not distinguished between religious toleration and true religious freedom" [Adams 1982: iv].

Old Talk, New Voices: How Evangelicals Against Same-sex Marriage Sound Like New England Puritan Theologians Against Liberty of Conscience

Mel White, Founder of Soulforce and one time professor at Fuller Theological Seminary, in his recent book *Religion Gone Bad*, documents a May 1994 secret meeting of "fifty-five fundamentalist [evangelical] Christian leaders" at the Glen Eyrie conference center near Colorado Springs, Colorado [White 2006:123). They met for the expressed purpose of "end[ing] homosexuality in America" [White

2006:125] by "recruiting and equipping [individuals] locally to fight the war more effectively at the grassroots level in towns and cities across America" [White 2006:126]. According to Mel White, the Glen Eyrie conference was a "turning point" for fundamentalists on two fronts. First, in their "war . . . against gay and lesbian Americans" and secondly, in their "attempt to exercise absolute power over our nation – church and state alike – the ultimate sign of religion gone bad" [White 2006:125].

The first speaker at the 1994 Glen Eyrie conference, John Eldredge, then staff member of Focus on the Family [White 2006:132], told the attendees that "tolerance" as an "American value" is "the explanation of why the homosexual movement has been able to make the ground it has" [White 2006:156]. "If we want to pursue life, liberty and happiness, we've got to have [God's] absolute values" [White 2006:156]. A second speaker, Will Perkins, said "If we lose this battle [against gay civil rights] there are no moral absolutes left for this nation" [White 2006:160]. A third speaker, Robert Skolrood, said: "homosexuality denies . . . the fundamental values of Christianity." A fourth speaker, Dr. Paul Cameron, told conference attendees that the "new religion of equality" is "satanic," "describing egalitarianism as . . . opposed to Christianity" [White 2006:164, 165].

<u>43 States Ban Same-Sex Marriage</u>

By 2006, twenty states already had constitutional language defining marriage as a man and a woman, in effect banning gay marriage (Alabama, Alaska, Arkansas, Georgia, Hawaii, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, Texas, and Utah).

In the 2006 mid-term elections, state constitutional amendments to ban gay marriage were approved by voters in seven additional states (Colorado, Idaho, South Carolina, South Dakota, Tennessee, Virginia and Wisconsin).

Since 2006, four additional states followed suite by amending their state constitution to prohibit same-sex marriage: Arizona (2008), California (2008) Florida (2008), and North Carolina (2012)

All in total, as of May 2012, thirty-one states have amended their state constitution to prohibit same-sex marriage. Of these thirty-one states, twenty included the prohibition of same-sex civil unions in their amendment. An additional twelve states, by legislative law, have prohibited same-sex marriage. In all, forty-tree states have disallowed for same-sex marriage. Six states and the District of Columbia allow same-sex marriage.

<u>A Renowned Evangelical Scholar calls Evangelical Christianity an Intolerant Religion</u>

John W. Dean, one time White House legal counsel to President Nixon (for 1,000 days) and present day columnist for Findlaw.com, says in his 2006 book *Conservatives Without Conscience*, "Christian conservatives have a virtual lock on state and local Republican politics, and have totally outmaneuvered their opposition" [Dean 2006: 96].

While state-wide, theocratic political gains may seem impressive, the image clearly is not. Theocratic evangelicals, by any standard, are intolerant. In a 2004 "two-day seminar for leading journalists sponsored by the Pew Trust," Mark Noll, long time professor at Wheaton College, currently professor of history at the University of Notre Dame and noted historian of evangelicalism spoke of "Evangelical Christianity [as] an intolerant religion, [that evangelicals are] unable to say, 'your religion is fine with

you; my religion is fine with me' " [Dean 2006:96]. Mark Noll also said "he wants evangelicals to learn 'new ways of being present in the public space without believing that [they] have to *dominate* [emphasis in original transcript] the public space' " [as cited in Dean 2006:96].

Part III The American theocratic evangelicals' strategy of ballot initiatives and "the will of the people" is misguided because the American system will not endure, at any real length, the legislation of discriminatory, sectarian ideologies.

Maggie Gallagher, a conservative writer for the New York Post, in her Nov. 1, 2006, column, writes "gay groups … believe they have a civil right to impose gay marriage against the will of the people." Maggie Gallagher is mistaken. Gay marriage imposes nothing (neither to marry or not to marry) on any one (gay or straight).

In fact, just the opposite is true. So says David Moats in his book on the legal proceedings in the Vermont case for gay marriage: "The plaintiffs in the case," he said, "had no interest in telling heterosexuals what they ought to do or whom they ought to marry. It was the state that was seeking to define how homosexuals ought, or ought not, to live" [Moats 2005:129].

According to Marvin M. Ellison, Professor of Christian Ethics at Bangor Theological Seminary in Maine: That "the will of the people" could "deny marriage rights to an entire class of persons is morally suspect, especially because the primary obstacles … are social discrimination and negative stereotyping" [Ellison 2004: 82].

Sean Cahill, Director of the National Gay and Lesbian Task Force Policy Institute, agrees with Ellison: "Anti-gay groups appeal to populist sentiment when they say that the people should be able to decide whether or not to grant gay people rights through an up or down vote on a ballot question. However, it runs counter to America's founding principles to suggest that majorities should be able to mete out or withhold rights to members of a stigmatized minority through a secret ballot vote. Founding father James Madison warned that 'measures are too often decided, not according to the rules of justice and the rights of the minority party, but by the superior force of an interested and overbearing majority' " [Cahill 2004: 92].

Part IV Same-sex civil unions in the place of same-sex marriage, is intolerant, discriminatory and oppressive

As for "civil unions" instead of "marriage," Ellison notes: "The discriminatory character [of civil unions] is especially noticeable when same-sex couples are granted the same legal access to all the options as heterosexual couples except marriage" [Ellison 2004:91].

For Roger Williams, says Edwin Guastad, "liberty was more than toleration, freedom more than a concession." Same-sex civil union is toleration, a concession. Same-sex marriage is true liberty and

freedom. In the words of the 19th century Baptist preacher, John Quincy Adams, "toleration becomes merely another name for oppression." Inherent in the term "marriage" is a sociological and psychological currency that doesn't come with the term "civil union." Civil union is the old failed attempt of "separate but equal," a mask for discrimination.

The Historical Impact of Religious Freedom and Liberty of Conscience in the West

Part V Two present-day illustrious American individuals:
One, an evangelical of the John Cotton, theocratic mold; The other, President Obama whose book supports the views of Roger Williams as the American way in deciding for Marriage Equality

Ted Haggard Tells All: "Desires contrary to everything I believe and teach"

In a written statement to his congregation on Sunday, Nov. 5, 2006, Ted Haggard, who recently resigned as president of the National Association of Evangelicals, said of his same-sex relations with a gay escort, "I am guilty of sexual immorality."

"There is a part of my life," he says, "that is so repulsive and dark that I've been warring against it all my adult life. … From time to time, the dirt that I thought was gone would resurface, and I would find myself thinking thoughts and experiencing desires that were contrary to everything I believe and teach. . . . the darkness increased and finally dominated me. As a result, I did things that were contrary to everything I believe. … the deception and sensuality that was in my life . . . need to be dealt with harshly" (New Life Church, Colorado Springs, Colorado, website).

What this paper is about: Can Ted Haggard vote his Conscience in a Ballot Initiative to Ban Gay Marriage without Wrongly Violating the Conscience and Liberties of Others?

Ted Haggard's remarks are timely and relevant. First, he tells us that his same-sex attraction existed for the duration of his adult life, increasing more and more and finally dominating. Secondly, he tells us, twice, that his homosexual desires and acts are contrary to everything he believes and teaches, and that – on the basis of his belief system – his homosexuality is repulsive, dark and dirty. Thus, his views on homosexuality are sectarian and his sectarian views must trump his own personal life-long homosexual experiences. While this may be true for Ted Haggard and the evangelical Religious Right he represents, this does not hold true for other gays and lesbians (whether evangelical or not) who have reexamined the church's teachings in light of their life-long adult homosexual experiences and have, in contrast to Ted Haggard's faith and practice, submitted scripture to reason, experience and re-interpretation.

The question this paper addresses is this: can Ted Haggard vote his conscience in a ballot initiative to ban gay marriage without wrongly violating the conscience and liberties of others who according to the dictates of their conscience do not find homosexual love repulsive, nor dark, and neither contrary to or dependent upon scripture. Ted Haggard can judge himself according to the dictates of his conscience. But, can he impose the same standard upon the conscience of others through the use of civil law? The 17th century Boston Puritan, Rev. John Cotton would answer, "Yes." Roger Williams, his contemporary and theological opponent would answer, "No."

Ted Haggard and Colorado's Amendment 43 Ballot Initiative: Like John Cotton who Insisted "False Beliefs and Opinions…Be Regulated by the State"

Ted Haggard was one of the architects of Colorado's Amendment 43 ballot initiative to constitutionally ban gay marriage in the state of Colorado which ban voters approved in the Nov. 7, 2006, elections. As an architect of Amendment 43, Ted Haggard is like John Cotton who, according to Noah Feldman, professor in law at New York University, "insist[ed] that false beliefs and opinions … be regulated by the state to avoid the spread of sinful error;" that "an erroneous conscience needed to be corrected, by force if necessary, and it would be truly dangerous to allow people who suffered from an erroneous conscience to propagate their sinful views among the innocent and unsuspecting public" [Feldman 2006:29].

Barack Obama: The US Senator who Called for Individual Soul Liberty in Addressing the Issue of Gay Marriage

While democratic Senator of Illinois, Barack Obama, in his 2006 book *The Audacity of Hope*, correctly distinguishes between theocracy and democracy when he says, "Our argument is less about what is right, [and more] about who makes the final determination – whether we need the coercive arm of the state to enforce our values, or whether the subject is one best left to individual conscience and evolving norms" [Obama 2006:221].

Barack Obama: Over the Matter of Gay Marriage, Evangelicals Are Divorced from their Own Heritage

Obama continues, "Contrary to the claims of many on the Christian right who rail against the separation of church and state, their argument is not with a handful of liberal sixties judges. [Their argument] is with the drafters of the Bill of Rights and the forebears of today's evangelical church" [Obama 2006: 216-217].

Barack Obama: When in Doubt, Love Your Neighbor

So, while Ted Haggard said he found himself thinking thoughts and experiencing desires that were contrary to everything he believed and taught, from a completely different point of view, Barack Obama says, "I am [not] willing to accept a reading of the Bible that considers an obscure line in Romans to be more defining of Christianity than the Sermon on the Mount" [Obama 2006:222].

The Law Knows no Heresy, and is Committed to the Support of no Dogma, the Establishment of no Sect

The question to ask is whose belief should be enshrined in civil law. Ted Haggard's or Barack Obama's? The answer is simple. Neither. Why? Because "the law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." Justice Samuel Miller, 1872, Watson v Jones [Guastad 1999:44].

THE SECOND SECTION

That it is this Principle (Liberty of Conscience) that Sustains a free society's Constitutional Right to Express Itself without "lawful" interference,
Even in matters of alternative theologies in the area of Human Sexuality

Part I Principles to Glean from the Foregoing First Section

Our Argument is Less About what is Right [and more] About who Makes the Final Determination *(Barak Obama, 2006)*

In the matter of gay marriage, the question, for a democracy, is not "What is right?" but rather, "Who should determine what is right: the church, the state, or the individual?"

Today's evangelicals are bringing the wrong question to the public square. Evangelicals are addressing the question, "What is right?" When Robert Gagnon says "for any given homosexual person hope exists for forming a heterosexual union" – that directive addresses the question "What is right?" and belongs in the pulpit not in the capital [Myers & Scanzoni 2005:126.]

The Chief Duty of Magistrates is to Tender the Liberty of Men's Consciences; Without that Liberty no other Liberty is Worth Mentioning *(1644 London Baptist Confession of Faith)*

It is the Baptists who have historically brought the right question to the public square. And so it must be now. In the matter of gay marriage, the question is, "Who should determine what is right: the church, the state, or the individual?" The historical, Baptist answer is the individual and therefore the state must defend liberty of conscience.

Gay Marriage Does not Interfere with the Rights of Conscience, Whereas a Ban On Gay Marriage Does

Why the individual? Because gay marriage "does not interfere with the rights of conscience." That means, my right to a gay marriage does not interfere with your right to refrain from a gay marriage. So then, gay marriage compels no individual, whereas a ban on gay marriage is "compulsory heterosexuality" [Eskridge 1996:143], and in the words of 17th century English Baptist John Murton: "The foulest of crimes is to force people's bodies to a worship whereunto they cannot bring their spirits."

Civil Union (equal to marriage but separate from marriage) is an Expression of Intolerance, a form of Oppression

Finally, gay marriage "does not violate the [civil] laws of morality and property" (Justice Samuel Miller) [Guastad 1999:44]. Same-sex civil union in place of gay marriage is an expression of intolerance, discrimination and oppression.

The Church "Married" to the State (in Amending State Constitutions to Legislate Church Dogma) is a Violation of the First Commandment, "Thou Shalt Have No Other Gods before Me"

And according to Ted Jelen, professor of political science at the University of Nevada at Las Vegas, "Identification of religious principles with political values can be considered a violation of the First Commandment as well as the First Amendment" [Jelen 2000: 94].

That it is this Principle (Liberty of Conscience) that Sustains a free society's Constitutional Right to Express Itself without "lawful" interference,
Even in matters of alternative theologies in the area of Human Sexuality

Part II Bible-Based Oppression in Uganda:
The Need for "Magistrates" to Understand that without Individual Soul Liberty (Liberty of Conscience), Religious Freedom and Human Rights are Unsustainable

Religious Fundamentalism Married to Nationalism – Who's in Africa: Roger Williams or John Cotton?

Stephen O. Murray and Will Roscoe conclude their *Studies in African Homosexualities* with a final section headed "The Future of African Homosexualities" in which they observe that the "real possibility" that a scenario opposite that of South Africa where legal protection has been achieved for lesbian and gays could occur "elsewhere: religious fundamentalism married to nationalism, wielding the apparatus of the modern state to persecute (and murder) homosexuals" [Murray 1998:278].

Mary Nyangweso Wangila, in her book *Female Circumcision: The Interplay of Religion, Culture, and Gender in Kenya*, shows how "moral precepts in religions…can be used to justify inequality and deny fundamental human rights" and warns that "belief systems can be misused to justify social practices that are contrary to transcultural norms of morality" [Wangila 2007: 68-69].

Dr. Sylvia Tamale, "a woman born and bred in Uganda" who has, as a women, "encountered many instances of discrimination and oppression both in" Uganda and other countries [Tamale 2007:106] says religion, historically, "has been manipulated and misinterpreted to oppose the rights of various groups – slaves, women, colonials, blacks and other colored people, etc." [Tamale 2007:108]. Tamale made her statement on religion-based oppression in her article "These are my Reasons for Supporting Gays" which appeared in the February 17, 2003, issue of the *Daily Monitor* [Tamale 2007:106].

Noll: The social and Cultural Weaknesses of the East Africa Revival made Evident in the Rwandan Genocide

The 1994 Rwandan genocide made evident the "social and cultural weaknesses of the [1920's East Africa] revival. A narrow use of Scripture and a conception of piety limited to personal holiness did not do much to check the upsurge of tribal strife that led to hundreds of thousands of deaths" [Noll 2009:182].

Wangila: Religion is both the Problem and the Answer to Social Justice

Wangila sees religion as both the problem *and the answer* to the issue of female circumcision [Wangila 2007:10, 15, 17, 18]. "Religious ideals promoting female circumcision can be countered only by the use

of religious ideals that demystify any religious links associated with this practice" [Wangila 2007:75]. And so, she tells us, "It is the role of religion which is central in this book" (*Female Circumcision: The Interplay of Religion, Culture, and Gender in Kenya*) [Wangila 2007:9, 10]. "Religion is fundamental to the practice and persistence of female circumcision." And it is religion, too, that "has the potential to transform attitudes toward female circumcisions' [Wangila 2007:9-10].

Wangila: It is important to distinguish culture from religion in order for social change to occur

Wangila says John Mbiti "describes Africans as notoriously religious" and quotes him as saying, "Wherever the African is there is his religion: he carries it to the fields... to the beer party …to the examination room at school or in the university… ; if he is a politician, he takes it to the house of parliament" [Wangila 2007:35].

She takes issue with Mbiti on the idea that "Africans cannot distinguish religion from daily lifestyles." To think so, she says, "makes it difficult for social change to be promoted in African communities, especially when patterns of lifestyle are always interpreted in terms of the divine." Therefore, to be a force for change, it is important to opinion that "religion is not really intertwined with culture, as Mbiti claims. It is and should be possible to distinguish the two" [Wangila 2007:170].

Noll: The East African Revival

Mark A. Noll, in his book *The New Shape of World Christianity: How American Experience Reflects Global Faith* has a chapter on the 1920's "The East African Revival" that began in Kabale, Uganda, and "expand[ed] geographically and socially…through the five-country area of Uganda, Rwanda, Burundi, Kenya and Tanzania [Noll, 2009:170].

Noll: Almost all the churches in East Africa have a "distinctly evangelical flavor"

Noll, professor of history at the University of Notre Dame, writes "The [East Africa] revival's permanent legacy is the distinctly evangelical flavor that continues to mark the schools, mission agencies and almost all the churches of these countries [Uganda, Rwanda, Burundi, Kenya and Tanzania]" [Noll, 2009:170]. "[I]ts best-known current representatives align closely with Western moral and religious conservatives; and its practices, attitudes and doctrines seem to mirror common features of an American style of religious life" [Noll 2009:172]. The "revival produced a passionate evangelical religion that stayed within mainline denominations" [Noll 2009:186]. "Even the current Ugandan president Yoweri Museveni was deeply touched as a young man by the East African revival, and his wife, Janet, remains identified with evangelical causes" [Noll 2009:182]. On any given Sunday, more Anglicans will attend church in each of Uganda, Kenya and Tanzania than will all the Episcopalians in the United States and all the Anglicans in Britain and Canada combined [Noll 2009:20].

Ugandans with Different Theologies: Without 'Liberty of Conscience' the question becomes "Whose Theology and Ethics ("God has decreed that homosexuals be stoned to death") Should Prevail?

Not all Christians in Uganda agree on the meaning and import of Bible texts. Take the Genesis creation account for example. Bishop Christopher Senyonjo says "marriage according to Gen. 2:18 is 'companionship.' It is no good for Adam (a human being) to be alone" [Tamale 2007:16]. Taking a different view, the President of Uganda, in his condemnation of the gay wedding in Wandegeya in 1999, says "the Holy Bible spells it out clearly" – men do not marry "fellow men" [Tamale 2007:25, 26].

What is clearly spelled out for President Museveni, is not so clearly spelled out for the Bishop. In 1999, Minister of State for Security, Muruli Mukasa, is reported to have said "homosexuality can lead to the downfall of great civilizations" and that "God has decreed that homosexuals be stoned to death" [Tamale 2007:29], a theology and ethics of homosexuality in complete opposition to what other Christian Ugandans believe about homosexuality. For Dr. Tamale, "Jesus Christ embraced and tolerated all those that were considered outsiders," [Tamale 2007:108]. For Bishop Senyonjo, "we should not nurse any feelings of harming homosexuals" [Tamale 2007:15].

Ugandan Priest: Jesus Used Scripture to Expose Lazy Thinking

An unnamed Ugandan priest, on interpreting Bible texts, says "there are difficulties with [using] arguments from scripture, mainly ones to do with interpretations and methods of interpretation" [Tamale 2007:18]. On the use of the Bible, the same priest said Jesus used scripture to expose lazy thinking [Tamale 2007:18].

H. Nkalubo, Ugandan, says "The Bible is subject to interpretation… In Romans 1:26-27…homosexual acts are called 'against nature.' ... If some people's only natural sexual inclination is to those of their own sex, what kind of sex are they supposed to engage in?" [Tamale 2007:22-23]. Some scholars in the West have offered the same interpretation, that homosexuality is not "against nature" for homosexuals.

There is the question of selectivity: why do we uphold some Bible texts as relevant for today, but not other texts? H. Nkalubo shows that: "In Leviticus 25:44-46, slavery is explicitly endorsed. [Yet] no reasonable person endorses slavery anymore and even the Ugandan Constitution expressly forbids it (Article 25 (1)). If society has come to a collective agreement that enslaving anyone is unacceptable, why is the same society tied in knots over letting adults exercise freedom to love whoever they please? [Two consenting same-gender adults.]" [Tamale 2007:21].

"Matters of Faith" and Governmental Interference

James Buturo, Minister for Ethics and Integrity (2006 –2011), in a question and answer interview he gave in 2007, was asked the question "What do you say about accountability in Pentecostal churches?" He laughed and answered, "These are matters of faith. If you belong to a religious group, it is really a choice. That is not an area the Government can enter." But when asked in the same interview about the "fundamental rights" of homosexuals, Buturo said, "Human rights must have a limit and it is part of society to decide what its values are and sticking to those values strictly" [Tamale 2007:35-38]. That the Minister for Ethics and Integrity can, on some level, limit the interference of the state in the practical affairs of the church, but cannot discern when the state has wrongly infringed upon the individual soul liberty of its citizens (liberty of conscience, crucial to human rights), especially its marginalized sexual minorities, begs the question how individual soul liberty (liberty of conscience) is not "matters of faith" with which the Government, therefore, cannot interfere.

Tamale: Culture and Morality are Useful tools for men to Use in Dominating Women. Men in Uganda Tend to Have a Very Selective Idea of Culture

There is another issue with the Minister's statement "human rights must have a limit and it is part of society to decide what its values are and sticking to those values strictly." Dr. Sylvia Tamale, in her book *When Hens Begin to Crow: Gender and Parliamentary Politics in Uganda* says "Culture and morality are

useful tools for men to use in dominating women. Men in Uganda tend to have a very selective idea of culture. When it suits them to do so, they will invoke custom and traditional values. … But the same men will hasten to strike down custom as outmoded and archaic if it stands in their way to power and privilege." [Tamale 1999:196]. In a sexist society, two gay men or two lesbians in an equalitarian domestic relationship poses a threat to dominating, patriarchal, heterosexual men and to women as well who "have internalized traditional concepts and stereotypical images about women." They fear same-sex relations will undermine the cultural norms of the superiority of men over women, the masculine over the feminine, and male roles over female roles. "Throughout history systems of oppression have always had within them mechanisms of ideological legitimization" [Tamale 1999:135]. For the Christians of Uganda, the selective use of the Bible is one of the "mechanisms of ideological legitimization."

That it is this Principle (Liberty of Conscience) that Sustains a free society's Constitutional Right to Express Itself without "lawful" interference,
Even in matters of alternative theologies in the area of Human Sexuality

Part III A Case Study: *"Civil Marriage must be Judged under our Constitutional Standards of Equal Protection and not under Religious Doctrines or the Religious Views of Individuals,"* The Iowa Supreme Court Decision on the Unconstitutionality of Limiting Civil Marriage to a Union between a Man and a Woman, April 3, 2009.

On April 3, 2009, the Iowa Supreme Court ruled that the state statute limiting civil marriage to a union between a man and a woman [is] unconstitutional. The State Supreme Court, by its ruling, upheld the decision of the lower, district court.

The Five Arguments Advanced before the Courts of Iowa to Justify Banning Same-sex Marriage

The County, in support of the state statute limiting civil marriage to a union between a man and a woman, proffered five arguments: The ban on same-sex marriage (1) promotes the "integrity of traditional marriage" by "maintaining the historical and traditional marriage norm ([as] one between a man and a woman);" (2) provides "child rearing by a father and a mother in a marital relationship which social scientists say with confidence is the optimal milieu for child rearing;" (3) promotes procreation; (4) promotes stability in opposite-sex relationships; and (5) conserves state resources.

The Supreme Court concluded that none of the objectives asserted by the County "are furthered in a substantial way by the exclusion of same-sex couples from civil marriage."

The Iowa Supreme Court: Religious opposition to same-sex marriage is the Real Reason for the Expulsion of Gay and Lesbian Couples from Civil Marriage

At this point, the Supreme Court added:

> *(The following is an abridgement of what the Supreme Court wrote; the headings have been added; see pages 63-67 at the following link http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20090403/07-1499.pdf)*

The Religious Undercurrent Propelling the Debate

Now that we have addressed and rejected each specific interest advanced by the County to justify the classification drawn under the statute, we consider the reason for the expulsion of gay and lesbian couples from civil marriage left unspoken by the County: religious opposition to same-sex marriage. The County's silence reflects, we believe, its understanding this reason cannot, under our Iowa Constitution, be used to justify a ban on same-sex marriage. [p 63]

We address the religious undercurrent propelling the same-sex marriage debate as a means to fully explain our rational for rejecting the dual-gender requirement of the marriage statute. [p. 63]

Whether expressly or impliedly, much of society rejects same-sex marriage due to sincere, deeply ingrained – even fundamental – religious belief. [p. 63]

Individual Soul Liberty (Liberty of Conscience)

Yet, such views are not the only religious views of marriage. [O]ther equally sincere groups and people in Iowa and around the nation have strong religious views that yield the opposite conclusion. [p. 64]

Separation of Church and State

Our constitution does not permit any branch of government to resolve these types of religious debates and entrusts to courts the task of ensuring government *avoids* them. In pursuing our task in this case, we proceed as civil judges, far removed from the theological debate of religious clerics, and focus only on the concept of civil marriage. State government can have no religious views, either directly or indirectly, expressed through its legislation. [p. 65]

Equal Protection the Criteria, Not Religious Doctrines

Civil marriage must be judged under our constitutional standards of equal protection and not under religious doctrines or the religious views of individuals. The only legitimate inquiry we can make is whether [the statute] is constitutional. If it is not, its virtues . . . cannot save it; if it is, its faults cannot be invoked to accomplish its destruction. If the provisions of the Constitution be not upheld when they pinch as well as when they comfort, they may as well be abandoned. [p. 66]

Individual Soul Liberty (Liberty of Conscience)

Religious doctrine and views contrary to this principle of law are unaffected, and people can continue to associate with the religion that best reflects their views. The only difference is civil marriage will now take on a new meaning that reflects a more complete understanding of equal protection of the law. This result is what our constitution requires. A religious denomination can still define marriage as a union between a man and a woman. [p. 67]

Conclusion

In matters of belief and practice with respect to religion, the individual is at liberty to believe and act in accord to the dictates of his own conscience, without the interference of the state or church, his conscience being subject only to God. This is what Baptists and others have called individual soul liberty or liberty of conscience.

President Obama understands this principle. When writing on the question of same-sex marriage in 2006 as US Senator, he said, "Our argument is less about what is right, [and more] about who makes the final determination – whether we need the coercive arm of the state to enforce our values, or whether the subject is one best left to individual conscience and evolving norms" [Obama 2006:221].

Religious freedom and human rights are unsustainable apart from the government's commitment to maintain and defend liberty of conscience of all. The 1644 London Baptist Confession said government's chief duty with respect to religion is to protect each person's right to liberty of conscience.

The Supreme Court of Iowa, in its April 3, 2009, decision, expressed itself with words that show the Court's agreement with the 1644 London Baptist Confession: "Our constitution does not permit any branch of government to resolve these types of religious debates and entrusts to courts the task of ensuring government *avoids* them. In pursuing our task in this case, we proceed as civil judges, far removed from the theological debate of religious clerics, and focus only on the concept of civil marriage. State government can have no religious views, either directly or indirectly, expressed through its legislation."

More than four-hundred years ago, Europe was having the debate that Africa should be (and in some places I hope is) having now: Can government legislate in matters of religious belief, and (since one of the international social justice issue of the day is homosexuality, the application that follows is) is not homosexuality really (as the Iowa Supreme Court said) foremost a question of what one's religion teaches, and substantially nothing more, and therefore to be left to the individual to decide, with the state protecting that right of the individual to decide?

Roger Williams and John Cotton, in a little known place called New England, had the same debate in the 1630s, almost 400 years ago. Roger Williams was for liberty of conscience, John Cotton against. Roger Williams was banished but not defeated and liberty of conscience, in my estimation, became the greatest human rights achievement of the 17th century. Subsequent generations have cherished it and their governments have made it a constitutional right.

Murray and Roscoe make the observation that if religious fundamentalism is married to nationalism in Africa over the issue of homosexuality, then oppression by the state can only follow [Murray, 1998:278]. For past decades now, we have seen that, whatever the content of the religious dispute, and wherever it may occur in the world, if liberty of conscience is not a grounding principle for social interdependency, social justice is tenuous and intolerance and oppression are inevitable on some level.

Cool heads must prevail in Africa, and can and will when *liberty of conscience* is part of the heart and soul of Africa. *I will give you a new heart and put a new spirit in you; I will remove from you your heart of stone and give you a heart of flesh* [New International Version, 1984]. Religious freedom and human rights are not sustainable where liberty of conscience, or individual soul liberty, is not cherished by the people and its "magistrates."

Bibliography

Adams, John Quincy Adams. (1982). *Baptists: Thorough Reformers.* Rochester, New York: Backus Book Publishers.

Backus, Isaac. (1894). *A History of the Baptists in New England.* American Baptist Publication Society.

Bates, Stephen. (2004). *A Church At War: Anglicans and Homosexuality.* New York: I.B. Tauris & Co. Ltd.

Boswell, John (1994). *Same-Sex Unions in Premodern Europe.* New York: Villard.

Cahill, Sean. (2004). *Post-2004 Election Edition: Same-Sex Marriage in the United States Focus on The Facts.* Lanham, Maryland: Lexington Books (The Rowman & Littlefield Publishing Group).

Carr, David M. (2003). *The Erotic Word: Sexuality, Spirituality, and the Bible.* New York: Oxford University Press.

Cathcart, William. (1976). *Baptist Patriots and the American Revolution.* Grand Rapids, Michigan: Guardian Press.

Chauncey, George. (2004). *Why Marriage? The History Shaping today's Debate Over Gay Equality.* New York: Basic Books (Perseus Books Group).

Bates, Stephen. (2004). *A Church At War: Anglicans and Homosexuality.* New York: I. B. Tauris & Co. Ltd.

Danforth, John. (2006). *Faith and Politics: How the "Moral Values" Debate Divides America and How to Move Forward Together.* New York: Penguin Group.

Dean, John W. (2006). Conservatives without Conscience. New York: Penguin Group.

Ellison, Marvin M. (2004). *A Christian Ethical Analysis.* Cleveland, Ohio: The Pilgrim Press.

Eskridge, William N., Jr. (1996). *The Case for Same-Sex Marriage.* New York: The Free Press.

Feldman, Noah. (2005). *Divided By God: America's Church-State Problem – And What We Should Do About It.* New York: Farrar, Straus and Giroux.

Fickett, Harold L., Jr. (1968). *A Layman's Guide to Baptist Beliefs.* Grand Rapids, Michigan: Zondervan Publishing House.

Fish, Henry C. (1983). *The Price of Soul-Liberty and Who Paid It.* Rochester, New York: Backus Book Publishers.

Guastad, Edwin S. (2005). *Roger Williams.* New York: Oxford Press.

Guastad, Edwin S. (1999). *Proclaim Liberty Throughout All The Land: A History of Church and State in America.* New York: Oxford University Press.

Haas, Carol. (1994). *Engel v. Vitale: Separation of Church and State.* Hillside, NJ: Enslow Publishers, Inc.

Hunter, George, III. (2006). *Christian, Evangelical, and … Democrat?* Nashville, Tennessee: Abington Press.

Jelen, Ted G. (2000). *To Serve God and Mammon: Church-State Relations in American Politics.* Boulder, Colorado: Westview Press.

Jordan, Mark D. (2005). *Blessing Same-Sex Unions: The Perils of Queer Romance and the Confusions of Christian Marriage.* Chicago: University of Chicago.

Layman, Geoffrey. (2006) *The Great Divide: Religious and Cultural Conflict in American Party Politics.* New York: Columbia University Press.

Lynn, Barry. (2006). *Piety and Politics: The Right-Wing Assault on Religious Freedom.* New York: Harmony Books.

Meyers, Robin. (2006). *Why the Christian Right is Wrong.* San Francisco, California.

Moats, David. (2004). *Civil Wars: A Battle for Gay Marriage.* New York: Harcourt, Inc.

Moon, Dawne (2004). *God, Sex & Politics: Homosexuality and Everyday Theologies.* Chicago: The University of Chicago Press.

Morgan, Edmund. S. (1967). *Roger and Williams: The Church and the State.* New York: W. W. Norton & Company.

Murray, Stephen O., and Will Roscoe, editors. (1998). *Boy-Wives and Female Husbands: Studies in African Homosexualities.* New York: PALGRAVE

Myers, David G. and Letha Dawson Scanzoni. (2005). *What God Has Joined Together: The Case for Gay Marriage.* New York: HarperCollins Publishers.

Noll, Mark. (2009). *The New Shape of World Christianity: How American Experience Reflects Global Faith.* Downers Grove, Illinois: InterVarsity Press.

Obama, Barack. (2006) *The Audacity of Hope.* New York: Crown Publishing Group.

Rogers, Jack. (2006). *Jesus, The Bible and Homosexuality: Explode the Myths, Heal the Church.* Louisville, Kentucky: Westminster John Knox Press.

Sullivan, Andrew. (1998). *Love Undetectable: Notes on Friendship, Sex, and Survival.* New York: Knopf.

Tamale, Sylvia. (1999). *When Hens Begin to Crow: Gender and Parliamentary Politics in Uganda.* Colorado: Westview Press.

Tamale, Sylvia, editor. (2007). *Homosexuality - Perspectives from Uganda*. Kampala, Uganda: Sexual Minorities Uganda (SMUG).

Wangila, Mary Nyangweso. (2007). *Female Circumcision: The Interplay of Religion, Culture, and Gender in Kenya*. New York: Orbis Books, Maryknool.

White, Mel. (2006). *Religion Gone Bad: The Hidden Dangers of the Christian Right.* New York: Jeremy P. Tarcher/Penguin (The Penguin Group).

Williams, Roger. (1963). *The Complete Writings of Roger Williams.* Reuben Aldridge Guild, ed. New York: Russell & Russell.

Wolfson, Evan. (2004). *Why Marriage Matters: America, Equality, and Gay People's Right to Marry.* New York: Simon & Schuster.