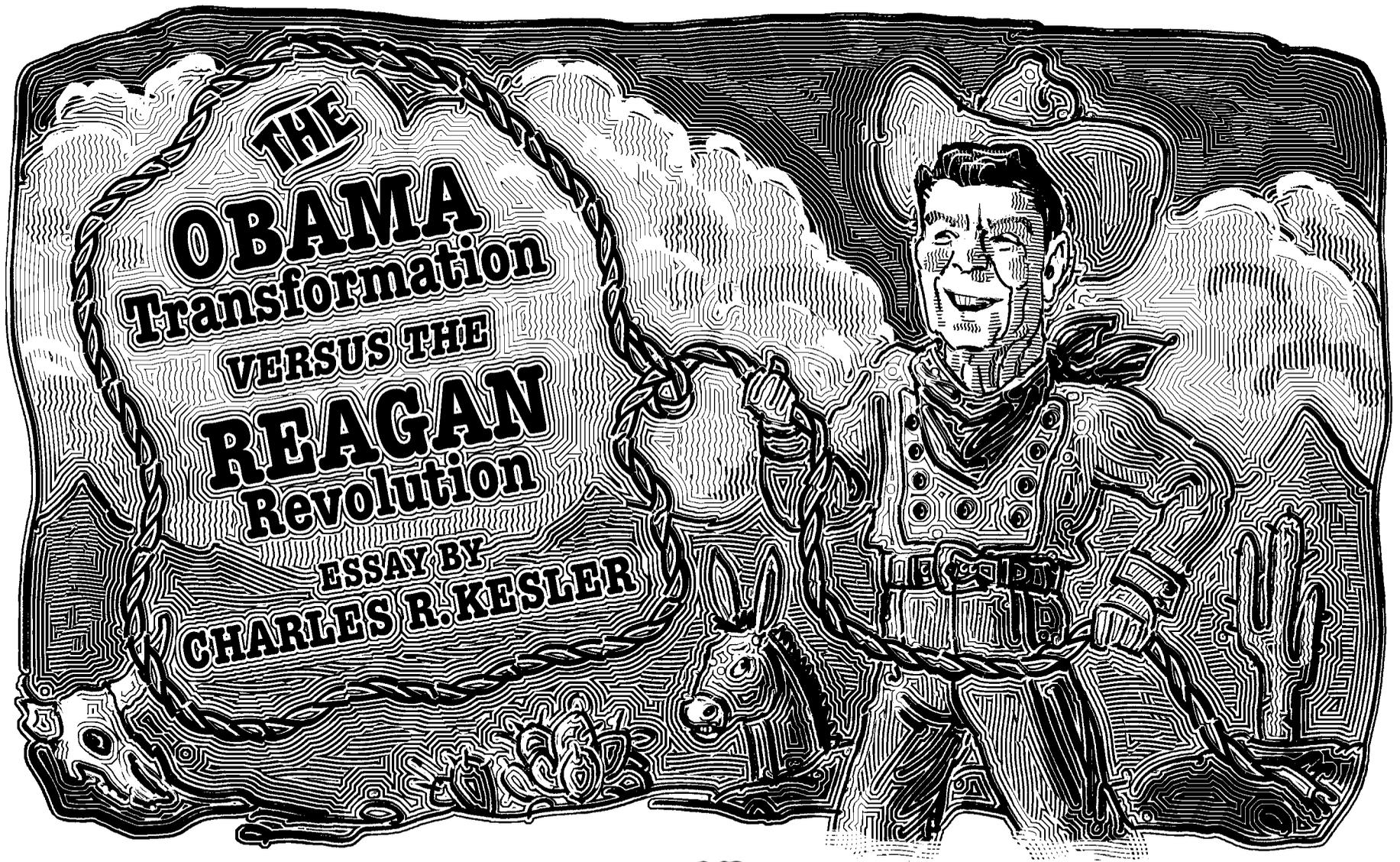


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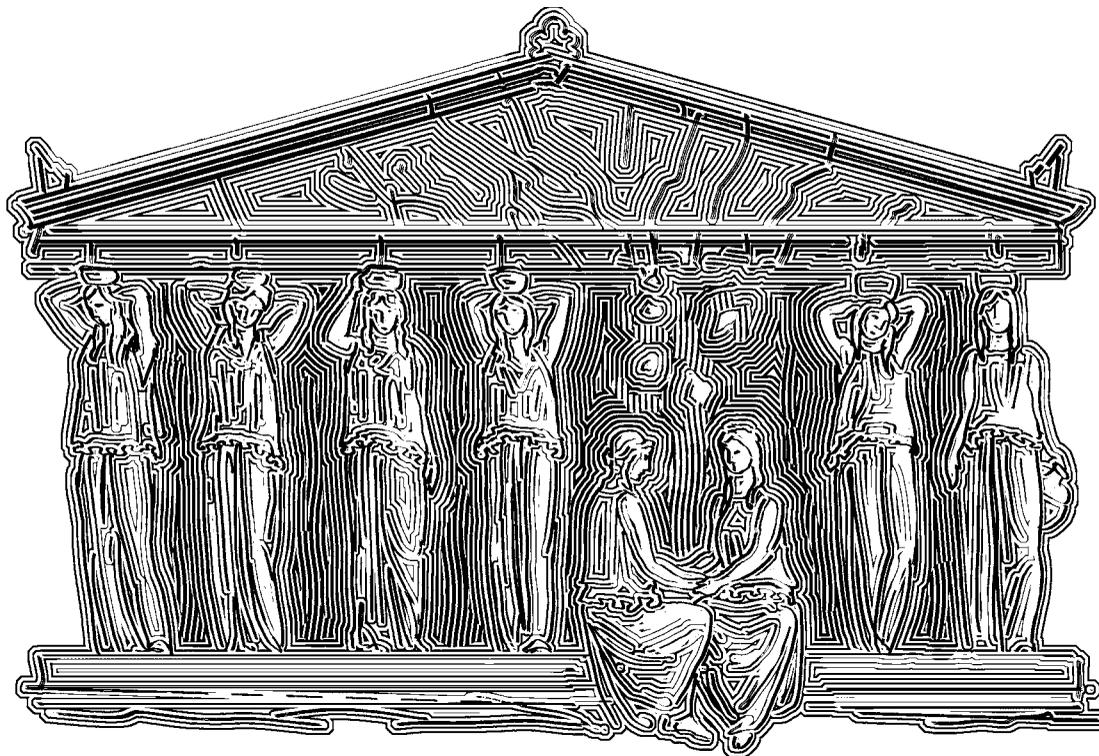
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Book Review by Justin Buckley Dyer

MARRIAGE LICENSE

What's Wrong with Homosexuality?, by John Corvino.
Oxford University Press, 192 pages, \$22.95

Making Gay Okay: How Rationalizing Homosexual Behavior Is Changing Everything, by Robert R. Reilly.
Ignatius Press, 250 pages, \$22.95



IN THE SECOND SEASON OF *Downton Abbey*, Matthew Crawley comes home from the Great War wounded by shrapnel and left paralyzed from the waist down. “The sexual reflex is controlled in the lower level of the spine,” Dr. Clarkson tells Lord Grantham in an awkward and frank moment shortly after Matthew’s medical examination. “Once the latter is cut off, so is the former.” The show’s writers include this surprising revelation to make sense of Matthew’s confession to his fiancée, Lavinia, moments later that he can “never be properly married.”

Matthew’s insistence that his injury prevents him from marrying captures an understanding of the connection between sex and marriage that was once an unquestioned part of the Anglo-American tradition, perhaps of every tradition. Coitus is often referred to as *the* marital act because it is bound up with what it means to be married in the fullest sense. The explicit claim of the tradition—that the purpose of sex is to unite a man and a woman in marriage—reflects a deeper understanding of the structure of reality and the purposes embedded in human nature.

This view of sex and marriage is increasingly seen as quaint and outmoded, if not irrational and bigoted. The standard contemporary position on sexual ethics, summarized in John Corvino’s concise book *What’s Wrong with Homosexuality?*, is that consensual sex between adults—whether heterosexual or homosexual, married or unmarried—contributes to human well-being and is therefore morally good and choiceworthy. For Corvino, who teaches philosophy at Wayne State University, procreation in marriage is only one among a variety of morally legitimate uses of the sexual powers, and there is no necessary connection, moral or theoretical, between sex and marriage. Reading Corvino’s book alongside Robert Reilly’s *Making Gay Okay: How Rationalizing Homosexual Behavior Is Changing Everything* puts in contrast two starkly opposed visions of reality. Reilly is adamant that our abandonment of traditional sexual ethics portends dire consequences for public policy, jurisprudence, family law, and, ultimately, the theoretical foundations of our political order.

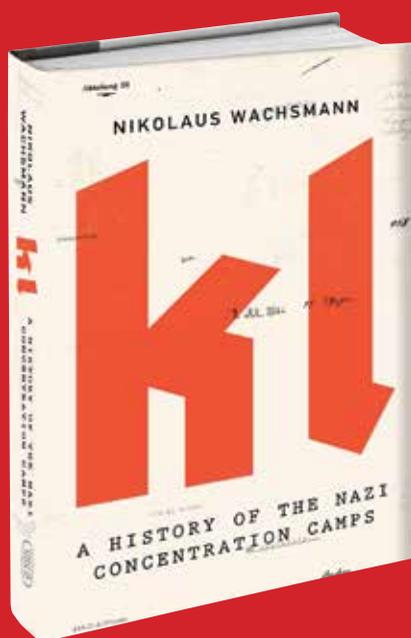
For many years, the contours of our marriage laws and the norms governing sexual

relationships were rooted in the idea that the twofold purpose of sex is to unite a man and woman together and promote the generation of new life. These purposes were linked: sex unites a man and woman (emotionally, biologically, spiritually) to ensure that any child born to the marital union has a better chance of knowing the love of a mother *and* a father. The law punished fornication and adultery precisely because each vice severed the connection between the unitive and procreative purposes of sex, making it likely that more children would grow up in broken or single-parent homes.

THE TRADITIONAL TEACHING ABOUT the dual purpose of sex—reflected in the marital norms of fidelity, monogamy, and permanence—relies on three basic claims about reality. The first claim is that human nature contains certain inbuilt purposes. At one level, this is obvious: the purpose of the lungs is to breathe, the purpose of the eyes is to see, and so on. Second, to say that something is good is to say that it fulfills its natural function well. Good eyes, for ex-

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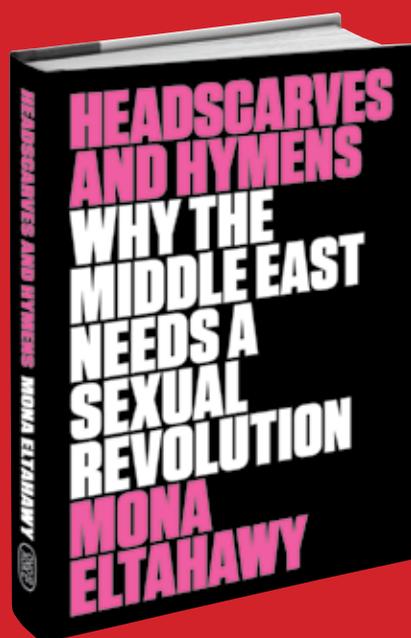
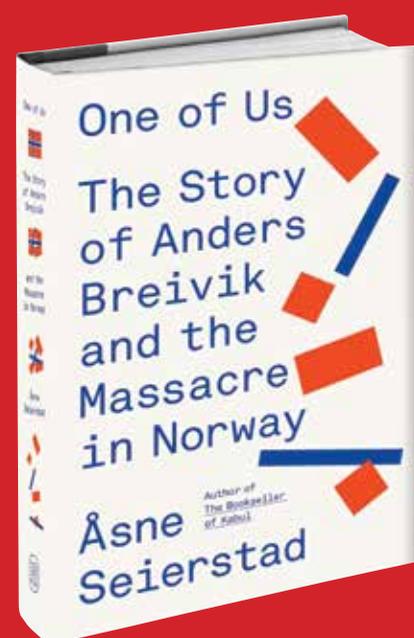
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ample, function well as eyes. So it is with the sexual organs: we must first know what they are for before we can know whether they are functioning well. Finally, we ought to avoid acts that work against or destroy something's ability to function well. This is not to say that we may not use things for various purposes. It would be absurd, Thomas Aquinas notes, to assert that an acrobat who walks on his hands has done something immoral just because the hands are not designed for walking. But it is fair to say that a masochist who puts his hands in a meat grinder is acting immorally, precisely because the act destroys his hands' ability to perform their proper function. Admitting that things may be used for different purposes is not to admit they may be used for *any* purpose.

If the purpose of sex is to create and maintain families, then the traditional norms follow as means to protect the goods associated with family life. The unitive purpose of sex exists *for* the procreative purpose; sex bonds people together for the larger end of creating stable families with mothers and fathers. Since the sexual revolution in the 1950s and '60s, much of the controversy over sexual morality has revolved around whether these two purposes of sex can be severed without doing damage to our individual and social well-being. Corvino—along with nearly every influential voice in our contemporary culture—argues that the traditional moralists got it wrong when they linked the purposes of sex, and that the unitive function of sex can stand on its own. Sex in homosexual relationships, as in heterosexual relationships, Corvino insists, “is a powerful and unique way of building, celebrating, and replenishing intimacy.” Sex bonds and unites people; non-coercive and non-abusive intimate sexual relationships in whatever form are therefore good and should be celebrated.

OPPONENTS OF THE TRADITIONAL position often point to actual social practices to belie the claim that the procreative and unitive aspects of sex are linked. The pursuit of mutual pleasure and intimacy, writes Corvino, is “one reason why heterosexual couples have sex even if they can't have children, don't want children, or don't want children now.” On this point, Corvino is arguing with the wind at his back. Many Americans have already adopted the premises of his argument, whether they realize it or not. Deliberately non-procreative heterosexual sex (inside and outside of marriage) is standard fare; what reason then is left to criticize homosexuality?

As Corvino notes, Aquinas's list of deliberately non-procreative sex acts includes “not

only homosexuality and bestiality but also masturbation and oral sex—in other words, acts that few people today would think twice about, let alone label unnatural.” Which of course does not make Aquinas's argument wrong, any more than the widespread agreement with Aquinas on that point a century ago made his argument right. But Corvino is correct that it makes little sense to permit any kind of heterosexual relationship that gives people pleasure or fosters an intense emotional bond, while cordoning off homosexual relationships as somehow morally out of bounds.

STILL, WE MIGHT ASK WHETHER THERE are good reasons for the traditional moral proscription of non-procreative sex. Corvino takes up the challenge in a chapter titled, “It's Not Natural.” His rejection of the classical natural law position on sexual morality hinges on two claims. First, he asserts that non-procreative sex can serve morally choice-worthy ends “including the expression of affection; the pursuit of mutual pleasure; and the building, replenishing, and celebrating of a special kind of intimacy.” Second, he argues that pursuing pleasure or intimacy through non-procreative sex does not actually undermine the natural purpose of procreation. There “are plenty of heterosexuals,” Corvino reminds us, “who procreate abundantly while also occasionally enjoying” non-procreative sex simply for the sake of pleasure or intimacy.

But Corvino misstates the classical natural law position, which neither denies that pleasure and affection are aspects of human well-being nor holds that engaging in non-procreative sex somehow renders one physically unable to procreate. The traditional claim is rather subtler: that the unitive and procreative purposes of sex are so tightly woven together by nature that splitting them apart comes at a high cost to individuals and society.

This traditional claim is in many respects a testable claim. The difficulty with trotting out empirical evidence to prove its validity, however, is that every generalization is subject to an anecdotal counter-example. Fatherlessness correlates strongly with a range of negative life outcomes—but single mothers often heroically raise children who go on to very successful lives. Adultery often leads to broken families—but some people are unfaithful yet stay married and raise children together. And, yes, many married heterosexual couples procreate abundantly and regularly engage in non-procreative sex.

The problem of having to contend with the anecdotal counter-example is not new. When Aquinas wrote that fornication is an act contrary to the good of any child who might be born as a result, he insisted that “a matter

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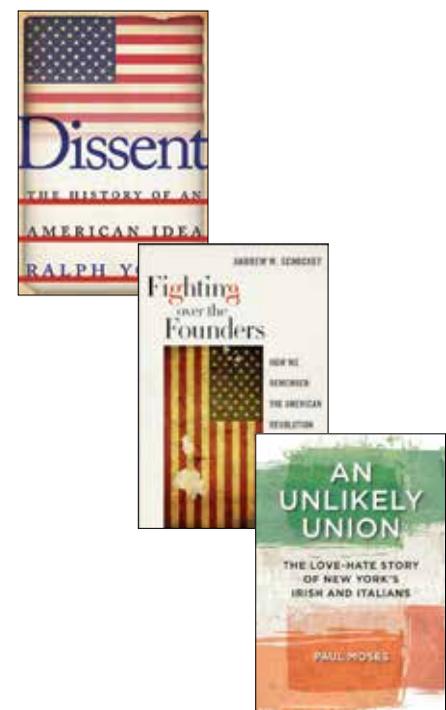
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that comes under the determination of the law is judged according to what happens in general, and not according to what may happen in a particular case." And the general consequences of our cultural acceptance of fornication have been disastrous. Recent census data show that only 65% of children live in households with their married biological mother and father at home. For black children, the figure is closer to 32%. A child living with his married biological parents enjoys a kind of privilege rarely spoken about today. Children brought up in intact families, even after controlling for things such as race and income, fare better than their peers on a range of well-being measurements, from academic performance and emotional health to juvenile delinquency and rates of substance abuse. The reason, traditionalists suggest, is that human beings are hardwired to thrive in an environment with both a mother and a father.

BUT IF TRADITIONAL SEXUAL NORMS DEVELOPED primarily to protect the good of children by connecting mothers and fathers together, then are those norms not simply inapplicable to sexual acts that cannot lead to procreation? Surely the mere fact that two men or two women cannot procreate is not a reason to mark off homosexual activities as immoral. If we insist that intimate homosexual acts are immoral, do we not also have to say it is immoral for sterile heterosexuals to have sex?

Traditionalists offer two responses to this challenge. The first is metaphysical: heterosexual unions are essentially procreative even when they are accidentally infertile, whereas homosexual unions are intrinsically and essentially non-procreative. The persuasiveness (and relevance) of this argument depends on a host of other metaphysical commitments, which is perhaps why it rarely gains traction with people who haven't already adopted a classical Aristotelian metaphysic. The second response is simply to point out that the law (encompassing natural law and positive law) is premised on generalizations and not particulars. If human beings as a species reproduced asexually, or if children did not generally need mothers and fathers to flourish, then human sexual ethics would be different and marriage (if such a thing existed) would not have the same purpose.

As it is, the purpose of human sexuality is given by human nature. To deny that purpose is to deny that we have a nature and to substitute will for reason as the governing principle in human affairs. This, at least, is the thesis of Reilly's *Making Gay Okay*. In a serious book with a silly title, Reilly, a senior fellow with the American Foreign Policy Council, associates traditional sexual morality with the concept of a rationally ordered universe. The

debate about sexual ethics is ultimately about whether or not we accept that "things have a Nature that is teleologically ordered to ends that inhere in their essence and make them what they are." Progenitors of the sexual revolution reject that teleological understanding while subordinating reason to passion. Their guiding principle can be summarized by Woody Allen's explanation, after leaving Mia Farrow for her daughter, that "the heart wants what it wants. There's no logic to those things." Yes, but what *should* the heart want? That is a question that these disciples of Jean-Jacques Rousseau do not and cannot answer.

Reilly fears that the ongoing project to split the purposes of sex—first with contraception, now with homosexuality—threatens the very foundations of America's political order. The movement to normalize homosexuality has already started to overturn many of our longstanding public principles, beginning with the very idea that there is a "Law of Nature and of Nature's God" which provides a normative standard for public and private life. Everything hangs in the balance, according to Reilly: jurisprudence, marriage, education, religion, psychiatry, and the great organizing principles of society.

IS REILLY CORRECT TO WARN THAT IF THIS issue is lost, all will be lost? Perhaps, but, if so, it will be lost gradually and not overnight. He is certainly correct that recovering a sensible understanding of the purpose and importance of sex "is not simply the agenda of the religious right, but a deeply political concern for the future of freedom." In practical terms, the breakdown of the family moves lockstep with the enlargement of the state, which grows to meet the challenges posed by fatherlessness, child poverty, crime, and other social pathologies that follow in the wake of the family's dissolution. Political freedom and strong families reinforce each other. But the collapse of the family predates the gay rights movement by decades. If anything, the rapidly successful movement to normalize homosexuality is a consequence, and not a cause, of a larger social trend rooted in disordered and selfish heterosexuality.

In our current cultural and political climate, candid and civil conversations about the public implications of sexual norms are important but rare. Reilly shows courage in boldly writing a book with an unpopular thesis, while Corvino demonstrates good will by taking his opponents seriously and engaging their arguments respectfully. Both books are commendable for their contribution to our public debate and for sharply clarifying the grounds of disagreement. On one point, at least, Corvino and Reilly agree: the legal

norms governing marriage and family life reflect a public judgment about the nature, purpose, and rightful use of the sexual powers. Each author focuses primarily on sexual ethics, rather than marriage, but the momentous question of marriage is always in the foreground. If homosexuality is rightful, Reilly insists, then it "should—in fact, *must*—serve as the basis for marriage, family (adoption), and community." "[A]t its core," Corvino similarly notes, "the marriage debate is a moral debate: It's about the kind of relationships society is willing to embrace—or short of that, to tolerate."

TOLERATION IS A TWO-WAY STREET, and it is a pressing question whether the Corvino and Reillys of the world can live together in civil peace. Neutrality between two opposed visions of reality is not possible; can we nonetheless arrive at a respectful and acceptable truce? The task requires good will from both sides and principled statesmanship. The Supreme Court's recent decision in *Obergefell v. Hodges*, however, has made that task more difficult. In a 5-4 opinion authored by Anthony Kennedy, the Court held that states must recognize and license as marriages the unions of same-sex couples, a decision built on the claim that the "nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality." What now of the citizens who persist in believing that marriage is—as every edition of *Black's Law Dictionary* put it until only recently—a "relation of one man and one woman united in law for life, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex"? Many prominent voices now openly suggest their businesses will have to be fined, their social service agencies shut down, their churches and schools taxed, and their speech curtailed. Toleration is no longer the word on everyone's lips; the situation for traditionalists is precarious. And even if we did manage, in the face of this challenge, to settle on a *modus vivendi*—say, by offering robust protections for conscience and religious liberty—we would still be left with these stubborn facts: sex (generally) leads to procreation, children (generally) need a mother and father, and yet long ago we stopped organizing our public and private lives in the light of that reality.

Justin Buckley Dyer is associate professor of political science at the University of Missouri and the author, most recently, of Slavery, Abortion, and the Politics of Constitutional Meaning (Cambridge University Press).

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