

**LIBERTY vs EQUALITY**  
**With Gay Rights Addendum**  
[c.1987-1995, 2012]  
by Richard Lee Abrams

**Why Plessy V Ferguson Denied Liberty to Blacks**

Justice Harlan's dissent in *Plessy Ferguson* [1896] 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256] argued that the 14th Amendment protection of "personal liberty" forbid the arbitrary separation of citizens on the basis of race.

The majority did not dispute Justice Harlan's Liberty argument. Instead, they rejected his conclusion by silence. Because there was no way to argue that preventing a man from riding in a particular railroad car because of his race did not deprive that man of some degree of personal liberty, the majority framed the issue so as to evade the question of Liberty.

The court phrased the issue as follows:

"So far, then, as a conflict with the fourteenth amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation."

The word "reasonable," however, does not appear in the amendment. The amendment made no allowance for a "reasonable" deprivation of Liberty of an entire class or race of people. Thus, by reading the word "reasonable" into the amendment, the court ignored the fact that Separate But Equal Doctrine constituted a deprivation of Liberty.

The Plessy court did address the question whether the statute violated the Equal Protection Clause of the 14<sup>th</sup> Amendment, because it was easy to overcome that obstacle. Both Whites and Blacks were subjected to the same law. Neither could ride in the railroad car designated for the other. Thus, both races were treated equally.

## **How the Warren Court Adopted The Majority View in Plessy**

When *Brown vs. the Board of Education* 347 U.S. 483 (1954) overruled *Plessy v Ferguson* in 1954, one would have expected Justice Harlan to have been vindicated, but instead the Warren Court seized the moral low ground and rejected Harlan's position for a second time. Although the high court overruled *Plessy*, it did not find the Separate But Equal Doctrine to be a violation of Liberty. Following the lead of the *Plessy* Court, the Warren Court likewise ignored the concept of Liberty. Justice Harlan's thesis that the 14th Amendment prohibited the States from depriving any person of liberty was again ignored.

While one understands why the *Plessy* court had to ignore the issue of Liberty in order to reach its conclusion, the Warren Court's similarly ignoring Liberty is seemingly inexplicable.

Most people do not realize that in deciding *Brown*, the Warren Court found nothing per se wrong with segregation. The Warren Court said:

"We must look instead to the effect of segregation itself on public education.

". . . Only in this way can it be determined if segregation in public schools deprives these plaintiffs of equal protection of the laws." [underscoring added]

Segregation by its very nature forbids a man from going where he would otherwise go, forbids a man from associating with people of his choice, forbids a man from holding a job he would otherwise hold, ad infinitum, and in this perfidious evil the Warren Court found nothing inherently wrong. In this, the Warren Court found no deprivation of Liberty.

By using the words, "**Only in this way** can it be determined . . . , the Warren Court precluded any consideration of segregation's conflict with Liberty.

Such an astounding blindness must have a cause. We know why the Plessy Court ignored Liberty, but why the Warren Court? By investigating the way in which the Warren Court structured its opinion, we can finally come to see the real thought constructs underlying its reasoning.

The Warren Court evaded the issue of Liberty by phrasing the factual issue in *Brown* only in terms of "equality," thereby avoiding any discussion of segregation's impact on Liberty.

"Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities?" [under-scoring added]

Then, the Warren Court decided that it did because current psychological research said it did. [see *Brown* footnote 11 citing K.B. Clark]. The court firmly placed its decision not upon law, nor upon any philosophical principles dating back to John Locke or the Declaration of Independence. Instead, the court said that segregation was unconstitutional because current psychological opinion said it hurt Black children. The court could not have been clearer.

"Whatever may have been the extent of psychological know-ledge at the time of *Plessy v Ferguson*, this finding is amply supported by modern authority."

Logic then tells us that if integration produces worse results than segregation, then segregation would again become the law of the land.

According to *Brown*, Segregation itself is not morally wrong; only segregation which impacts adversely on public education is unconstitutional.

Suppose researchers decide that Black children's school performance improves as the number of other Black children in the class increases and that the presence of white children diminishes the achievement of the Black students. Will a future court then mandate segregated schools saying, "What-ever may have been the extent of the psychological knowledge at the time of *Brown vs the Board of Education*, our new finding is amply supported by . . ." <sup>1</sup>

**How the Warren Court Could Have Based the Brown Decision  
on Liberty and Declared That Segregation Was Unconstitutional  
Because it Necessarily Violates Citizens' Right to Liberty**

What should the Warren Court have written?

This court has been asked to reconsider the issue of whether the Doctrine of Separate But Equal as set forth in *Plessy v Ferguson* is constitutional.

In *Plessy* the court based its decision on the fact that at that time in America, segregation of the races was "reasonable." Times have changed, and while there are still Americans who believe in segregation, it can no longer be said that the Doctrine of Separate But Equal is reasonable. Thus, by virtue of the rationale in *Plessy*, segregation is now unconstitutional.

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<sup>1</sup>

If current sociological research decides that women are deprived of an equal chance at becoming business and political leaders by co-educational public education, do the courts have to protect the special group of women by mandating same sex schools?

This finding alone does not dispose of the issue. We are asked to decide the fundamental issue whether segregation is per se unconstitutional. We find that the majority in *Plessy* ignored this issue, and thus, it is one of the first impression.

The 14th Amendment states in pertinent part, "nor shall any State deprive any person of life, **liberty**, or property, without due process of law."

Any law that forbids a child from attending the school to which he would go but for his race, deprives that child of Liberty. No deprivation of liberty [or life or property] based upon a person's race can ever be "with due process." Therefore, we hold that racial segregation is per se unconstitutional as an impermissible deprivation of Liberty under the 14th Amendment.

### **The Effect of Basing Brown on Liberty**

Would a decision based on Liberty have made any difference to the nation? Yes! The social philosophy and social programs which spring from Liberty differ from those based on Equality. People concerned with Liberty make very different choices than those who are concerned with Equality. Since the Warren Court based the Brown decision on Equality, we know the disastrous type social programs it spawned.

### **How Basing Brown on Liberty Would Have Altered History**

What would have been different if the Court had terminated segregation because it violated Liberty? Two great advantages for American society would have followed:

1. A consensus favoring the decision would have developed in the entire body politic.

Liberty merely says, "Let the Blacks fall where they may. If Blacks are inferior, then Liberty will keep them in their place." Equality, however, implied that Blacks were as good as Whites, and thus it stirred resistance in some sections of the country. Liberty holds that men have earned their station in life, while equality implies that it has been doled out to him at another's expense. A national consensus would have coalesced against laws or individuals who interfered with Blacks' exercising their Liberty.

2. The individual and not society would have been the focus of attention for social programs.

Equality is judged by the results and when the results are not equal, people do not look to the individual, but instead they blame society. The Warren Court thought this way:

"To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community . . ."

"Segregation with the sanction of law, therefore, has a tendency to retard the educational and mental development of Negro children ."

The important point to discern is the belief that the outside society causes the problem. When Equality is the principle, one does not focus on the individual. Instead failure to achieve statistical equality is blamed on the greater society. This belief leads to victimology and to resentment by those who are being blamed for the inequality.

But with Liberty, individual merit and achievement take precedence. Liberty embraces the notion that each individual is free to do what he wants. Because each of us is different, we expect different results. <sup>2</sup>

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Many Liberal Americans believed in social programs based on equality as they

In America of the 1950'S, it would have been possible to gain consensus that each man should be judged by his individual merit. In fact, most people already believed that every man, Black and White, should be judged by his merit. Many believed that Blacks as a group lacked merit. When a consensus has developed to treat each man according to his own individual merit, then it does not matter how stupid and backwards one believes his group may be. The group, class, or race of the individual becomes irrelevant by definition and only thing that is pertinent is this particular person's abilities.

Everyone is familiar with the grudging way qualified minority persons are granted acceptance; "Oh, but he's not like other (Blacks, Jews, Irish, Italians, whatever)." While such a statement evidences a stereotyping of the minority group, it also reveals that the speaker has a value system which places individual merit ahead of his personal prejudices. Whether the speaker's perception of the minority group is correct is not relevant as long as his group prejudices are not the basis of his action towards individuals.

Which is preferable? People who have false and negative views of minority groups but who judge each person by individual merit or people who ignore an individual's personal attributes and treat individuals according to their membership in a particular group?

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believed that Blacks were inferior, and if Blacks were permitted access to society on the same basis as other groups, they would fail. I once asked a Liberal Beverly Hills mother, who was complaining that South Central had too many racists teachers for Black students to do homework. When I asked if her children came home from school and related that the teacher was anti-Semitic, would her children have to do their homework? "Of course, they would," she hostilely retorted. Within the context of her family, prejudice was a reason to fight harder, but in her mind, prejudice was a reason for Blacks to give up.

## **Why People Prefer to Ignore Liberty And to Rally Around Equality**

There is a passion in democratic societies for Equality and at times "it swells to a height of fury. This occurs at the moment when the old social system, long menaced, is overthrown after a severe intestine struggle, and the barriers of rank are at length thrown down." [Alexis de Tocqueville, Democracy in America, The New American Library, New York, 1956 edited by Richard Heffner, p. 191]. What people fail to perceive in their passion for Equality is that segregation could have been ended by basing *Brown* on Liberty. To argue that Equality was a bad (perhaps an immoral) basis for the Brown Decision is not to argue for segregation. Far from it. When one argues from the position of Liberty, one is able to declare that segregation per se is unconstitutional.

### **LIBERTY!!! The Essence of Being an American**

Both Liberty and Equality are concepts deeply rooted in the consciousness of the nation. We seldom analyze what we mean by Liberty or Equality, but merely by virtue of living in a free society we incorporate some deep subconscious principles into our psyches. While we have a passion for Equality, Liberty forms the base of our group consciousness.

When Americans are threatened from the outside, do they ever speak of defending their Equality?

We speak of defending the free World?

If you ask an American why he would not want to live in the Soviet Union, he would say because he did not want to give up his American Liberty?

"My Country 'tis of thee, Sweet land of Liberty. . ."? [not Equality]

"O'er the land of the free and the home of the Brave"?

"One nation under God with Liberty and justice for all.

Liberty, and not Equality, is the value by which Americans define themselves.

### **Why the Warren Court Abandoned Liberty:**

In their deepest collective mind, Americans have established a national identity on the basis of Liberty. Why did the Warren Court abandon this quintessential American value when concerning itself with the plight of Blacks?

By not basing the Brown Decision on Liberty, the Warren Court perpetuated at a very deep level the false notion that Blacks are not really Americans. They may be legally equal to Americans, but that it not the same thing as being a real (white) Americans. Speaking to the subconscious of White America, the Warren Court said, "Blacks may want to be like 'us' and **have** the same things as 'us,' but they can never be 'us.'"

Equality divides society into a THEM = US situation. Inherent in the very name is a division; one entity is on one side of the equal sign and the other entity is on the other. Equality implies that someone is equal to someone else, and thus, the very notion of Equality stigmatizes the minorities as THEM. While two things may be equal to each other, that does not mean that they are the same thing. The area of a circle and the area of a triangle may be equal to each other, but that does not make a circle into a triangle. An ounce of gold equals the weight of an ounce of feathers.

The Brown Decision spoke to the darkest part of the American psyche and said, "**THEY are not US**, and they never will be us, but the Law has to treat them equally." <sup>3</sup>

Sounds racist? Yes, because it is. The deeply ingrained (and vigorously denied) racism of Liberal Americans persists to this day [1995] and infects most liberal social programs designed to "help" Blacks and Hispanics. Had the Warren Court based the Brown Decision on Liberty, it would have identified Blacks with the basic American value of Liberty. The Decision would have said, " **THEY are US!** THEY are not equal to US; THEY are US."

And thus, we have come to the fundamental reason, I believe, the Warren Court refused to go down the road of Liberty. Liberals in America do not accept Blacks and Hispanics as real Americans; they believe in the fundamental inferiority of the minorities. In their minds, if Blacks were left on their own in a free society, they would fail. Therefore, the Blacks were not permitted to live in a Free Society, instead they were given the Great (Equal) Society with Affirmative Action and Quotas.

### **Do Unalienable Rights Apply to Minorities?**

Are Blacks real Americans? Was the Warren Court correct in refusing to base the Brown Decision on the fundamental American value of Liberty? There is some historical precedent to argue that the unalienable rights of the Declaration apply only to Americans of European descent.

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This deep prejudice which is the basis of Brown v the Board of Education is also the psychological origin of the Birthers. That's why Sarah Palin and Donald Trump resonate when saying that Obama is not real American. He must have been born elsewhere.

During the Lincoln-Douglas Debates, Douglas tried to say that the Declaration of Independence and hence the American nation was only for people of English origin, then for people of English and German origin, and then of English, German, Scottish, and Scandinavian origin. Where do we draw the line on who is an American?

Shall we say only Whites are Americans? Is a naturalized person from England more American than a Black man whose family has lived here for ten generations and whose ancestors have fought in every war? By what test do we decide who is and who is not American?

This question coming in 1990 is scandalous, but it is still an unresolved issue in the minds of many Americans. Americans who accord Blacks Equality, but deny them Liberty, do not see Blacks as truly American.

### **Equality Provides No Firm Basis for Integration**

Integration cannot grow from the law of Equality. Equality as we have seen, forever keeps people apart. Only law based on Liberty permits each individual to go wherever he wants, do whatever he can, achieve whatever he will. Thus, only Liberty permits each individual to disappear into the greater American fabric. Only Liberty makes a person's group, class, race, religion, etc. totally irrelevant. Also the "freedom" granted by *Brown* is reversible as soon as the public climate changes or the social researchers justify segregation. When based on Liberty, however, the decision is immutable.

### **Where Equality and Group Rights Take Us As a Nation?**

There are countries that treat people not as individuals but as members of groups and certain rights attach to individuals by virtue of their group membership. Should America adopt such a system? The Affirmative

Action programs pointed in this direction. If this be the case, then it does not matter that Blacks are not true Americans. Neither will the Hispanics be true Americans, nor can the Chinese, the Japanese, Armenians [?], the Jews [?] be true Americans. Hence, many Fundamentalists honestly believe that America is a White Christian nation that tolerates others out of Christian charity.

Can we have a pluralistic society, similar to the former Soviet Union with the white Caucasian Russians at the center and the other "peoples" surrounding? Of course not, this is impossible in any country where Liberty is the core value. Bosnia showed us where the group rights eventual terminate. Politicians will continue to put to together winning strategies by pitting groups against each other, but basing judicial decisions on the concept of group rights makes the American psyche into a House Divided.

We have another kind of House Divided when the rights of Whites are based upon **unalienable rights** and the rights of Blacks are based on only the vague, undefined **constitutional right** of Equality, if Equality is even a constitutional right.

Whether American Liberals like it or not, the decision had been already made in 1776. The core concept by which we define ourselves as a nation is Liberty, and we cannot bar access to the "inner sanctum" to any citizen on the basis of his race, religion, ethnicity, sex, or sexual orientation. To deny access would be to transgress the concept of Liberty itself. When faced with the choice whether to *expand* the scope of who is included within the national identity or to *destroy* the national identity, we have to choose the former. How long it will take us to come to this realization is unknown. How difficult is known -- extremely, terribly, horribly, and excruciatingly difficult.

No group easily lets others merge into its identity. The value of Liberty on which this nation is founded and by which we as a people have come to identify ourselves has its roots in Europe, in John Locke, and

economical philosophy of Adam Smith. It does not have its roots in Africa, nor does it have its roots in the Orient. Stephen Douglas spoke a measure of truth when he tried to restrict the Declaration of Independence to northern Europeans, but it was a very small measure. He was correct only so far as he identified the source. The ideas which grew in northern Europe are not provincial ideals with no application outside some isolated tribe. They encompass all humanity. The Declaration of Independence begins, "When in the course of **human events**, . . ." It did not say, "When Englishmen find it necessary to dissolve the bonds . . ."

The fundamental concept, which identifies Americans as a people, did in fact derive from a part of the world and from a cultural context which is foreign to the origins of millions of people who hold American citizenship. These millions of people have contributed for hundreds of years to make this country great, but contributions alone do not make THEM into US.

By what route will Blacks be permitted to hold American *identity* as well as American *citizenship*?

Many Jews in pre-War II Germany believed that they were Germans first and Jews second. Few Germans agreed. The contributions of German Jews to Germany were great. Instead of gaining entrance and permitting Jews to merge into the German people, Jewish contributions became a rallying point of hatred. Germany's Jews learned that contributions will not gain access to a national identity. Have American Jews been any more successful?

It should be noted that the closer one comes to the old-line Scotch-Irish, English lineage, the fewer people who are seen as true Americans. Fundamentalist Christians, who tend to be from the Scotch-Irish-English backgrounds, often declare that America is a "Christian nation." The obvious implication is that Jews are therefore not true Americans. Thus, it is clear that for many Americans, Jews have not entered the inner-

sanctum of American identity. If millions of Americans still see Jews as not really American, is there any way for Blacks to gain such acceptance?

### **How Jews, Blacks, and Other Different People Can Be Admitted to the Inner Sanctum of American Identity**

One prerequisite for Blacks and others to become "true Americans" is to abandon the Law of Equality in favor of the Law of Liberty. Blacks have to abandon Equality and so does everyone else. This task is a nearly impossible as men "habitually prefer Equality to freedom." [de Tocqueville, *supra* p. 190] <sup>4</sup>

### **The Word "Equal" in the Declaration of Independence Does Not Make "Equality" an Inalienable Right**

There is confusion over the Declaration's use of the word "equal" and the Law of Equality as applied in the Brown Decision. The two notions are entirely separate. The first has no political significance divorced from the unalienable **rights to life, liberty and the pursuit of happiness**. The second, however, is the antithesis of Liberty.

The Declaration states:

"We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

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Many Gay organizations ignore Justice Kennedy in *Lawrence v Texas* and reject Liberty, but instead thirst for the slavery of Equality and all the social ills that arise from group rights.

Certain points should be noted:

1. Being equal is NOT an unalienable right; it is a "self-evident truth."

2. The self-evident truth of being created equal is the reason that the "consent of the governed" is necessary in order to institute governments. Because all men are created equal, no man has the right to impose his government on another.

3. The purpose of government is to "secure" the "unalienable rights."

Thus, governments are not instituted to secure equality. The self-evident truth of equality does, however, provide men with the basis to withhold their consent to a government's formation, and if they already find themselves subject to a government, they may depart from that government if it fails to secure their unalienable rights. [John Locke, *Treatises II*, secs. 89, 95-99, 132, 134, 136]

From this we see that the notion of equality set forth in the Declaration is of extreme importance to the legitimacy of the entire government, but it is likewise clear that men do not institute governments to secure equality. They institute governments to secure their inalienable rights of "life, liberty, and the pursuit of happiness."

Within this context, the rationale of the Brown Decision makes no legal sense. The purpose of our government is to secure blessing of the unalienable right of liberty, but the Warren Court continued to deny to Blacks the unalienable right of liberty, but in its stead the High Court acknowledged a secondary right called "equal protection of the laws guaranteed by the Fourteenth Amendment." [Brown at 924]

Thus, the Brown Decision by its refusal to recognize the unalienable rights of Blacks to Liberty denied the very premise on which Blacks have given their consent to this government. <sup>5</sup>

One does not have to discuss what the 14th Amendment means by equal protection of the laws. Whatever it means, as a part of the 14th Amendment, it is clearly a *constitutional right*, but being a constitutional right does not make it also an *unalienable right*. The issue that faces us as a nation is not whether Blacks have been guaranteed some constitutional right, but why they have been deprived of an unalienable right.

"The privileges of citizenship," [and constitutional rights are privileges of citizenship], "are not unalienable natural rights but civil rights to be determined by a civil process." [Harry Jaffa, Crisis of the House Divided, Doubleday & Company, Inc., Garden City, New York, 1959, page 378] <sup>6</sup>

Thus, the only rights which the Warren Court was willing to accord to Blacks were civil rights which were subject to the vicissitudes of the civil process.

"In that civil process the opinions of the members who constitute each civil society may rightfully legislate the terms and conditions by which those who are not members may be permitted to enjoy the advantages of this society." , Crisis of the House Divided, p.378

Thus, by refusing to recognize the unalienable right of the Blacks to Liberty, the Warren Court treated Blacks as if they were non-members of American society. The subconscious logic of the Warren Court was that

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<sup>5</sup>

The words "Freedom" and "Liberty" do not appear in the Warren Decision. The decision is based on some free floating sociological notion of equality.

<sup>6</sup> I shall pass over the later writings of Prof. Jaffa.

Blacks as non-members of this society have not banded together with other Americans in order to form a government to secure their unalienable rights.

### **Why Americans Prefer to Base Their Laws On Equality Rather than on Liberty <sup>7</sup>**

One might wonder why many Blacks and other Americans of good intentions fail to denounce the Brown Decision, but instead see such good in its affirmation of Equality. Men cling to Equality because, like liquor, its benefits are immediate and they think that its benefits will last forever. With time and experience, some come to see Equality's perils. After more and more imbibing, they see that Equality does not bring happiness, nor prosperity, nor integration. But like alcoholics, those on the Equality binge mandate bussing and institute quotas called guidelines. When the desired results fail to materialize, like alcoholics, they blame others: "Racism" . . . or its more moderate name, "insensitivity," but always Conservative racism and insensitivity. Liberals, by the accepted rules, are exempt from charges of being racist or insensitive. Like all addicts, however, the problem is not in the racism of others, but in the inherent racism of their own psyches.

Men fear Liberty because its dangers are immediate and "the advantages which freedom brings are only shown by the lapse of time." [de Tocqueville, *supra* p. 191] Following are a couple fears and the answers to those fears.

**FEAR #1:** Liberty is merely a ruse to argue that Blacks should use self-help. It's a device to dismantle the social programs.

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This paper was written prior to Justice Kennedy's opinion in Lawrence v Texas, 539 U.S. 558 (2003)

**ANSWER #1:** Yes, Liberty leads men to pay more attention to self-help, [but it is no ruse]. Yes, many programs should be dismantled.

**FEAR #2:** We know what to expect from the current state of affairs and the familiar is better than the unknown.

**ANSWER #2:** Yes and No. Yes, we know what to expect from the law of Equality. No, the familiar is not better than the unknown.

When the Israelites left Egypt, many wanted to turn back to the flesh pots and slavery. They feared the future as free men, but what Jew at Passover wishes that our ancestors had turned back? As disputatious a people as we Jews are, I have never heard a single Jew suggest that the Exodus was a mistake.

Blacks need no Exodus. That was a particular answer for the Jewish people at a particular time. While freedom is a universal concept, it does not play itself out in the same way for each man. Blacks cannot "exodize" because America is their home. In a basic sense, Blacks are more American than Whites are Americans.

Because of the systematic and largely successful attempts to eradicate the slaves' African cultures, contemporary Black culture, history, and identity are almost completely a response to the American experience. Furthermore, a look around will tell any observer that Blacks are not Africans, but Scot-Irish-English-Africans. They are our fore-fathers' children just as Scot-Irish-English-Italian American and just as Scot-Irish-English-Polish Americans are our fore-fathers' children. We are all living in one house more now than in 1860. By 2010, most Americans realize that mixed race is becoming the norm.

### **Summary & Conclusion**

Due to little perceived, but deeply held racial and ethnocentric

xenophobia, the 1954 Supreme Court could not admit that the unalienable rights of the Declaration of Independence extend to Blacks. Because the Supreme Court did not see Blacks are truly American, it accorded them only the secondary right of Constitutional Equality. As a result, it perpetuated the deep divide within the body politic. In 2011, we see the strength of this bigotry in the way it rocketed Donald Trump to the #1 contender for the GOP nomination.

We can start the un-doing of this evil by realizing that the Constitution exists in order to secure the unalienable rights of the Declaration of Independence for all Americans. The Preamble expressly states that one of the Constitution's purpose is to secure the Blessings of Liberty.

### **MAY 2012 ADDENDUM**

#### **How Marriage Equality Harms Gays**

Gay Rights should be a non-brainer. There are no Gay Rights, just as there are no White Rights, no Jewish Rights, no Hispanic Rights, etc. Our inalienable rights are individual rights which are inherent in our Being. Gay Rights are individual rights.

Each Gay person has his/her inalienable rights including the right to Liberty. The Constitution was written and ratified to "Secure the Blessing of Liberty" for Gays and for each and every individual without exception whatsoever. Inalienable rights are not limited to Americans.

No individual person may be classified into some Group due to someone else's bigotry, ignorance or greed. We may not legislate that "Blonds may not serve in the military." It does not matter that some believe that due to their fair skin, blonds are dumb or they are more likely to sun burn and have special needs which will harm military preparedness. No individual may be placed under some Group label and then legally subjected to discrimination without violating that's person's inalienable right to Liberty.

For this reason, Lawrence vs. Texas, 539 U.S. 558 (2003) based “Gay Rights” solely on Liberty. Just as Brown does not mention Liberty, Justice Kennedy did not mention Equality. Instead, Justice Kennedy wrote

**Liberty** protects the person from unwarranted government intrusions into a dwelling or other private places. In our tradition the State is not omnipresent in the home. And there are other spheres of our lives and existence, outside the home, where the State should not be a dominant presence. **Freedom** extends beyond spatial bounds. **Liberty** presumes an autonomy of self that includes **freedom** of thought, belief, expression, and certain intimate conduct. The instant case involves **liberty** of the person both in its spatial and more transcendent dimensions.

After Justice Kennedy firmly placed the individual rights of Gay persons upon the unalienable right of Liberty, the Gay Leadership in this country has worked steadfastly to erode the rights of Gays. The most famous Gay organization actually has an Equal Sign as its logo. (“Forgive them father for they know not what they do.”)

The Log Cabin Society, a group of Gay Republicans, was notable for its swimming against the trend and its adamantly fighting for the Liberty of individual Gay persons. The Log Cabin Society fought in the courts to end DADT as a violation of the fundamental right to Liberty.

The overwhelming majority of Gay leaders, however, rejected and fought against affirmation of the individual right to Liberty. They were having no part of Lawrence v Texas. Rather they wanted something far less for Gays. For the most part, the Gay Leadership wanted a completely reversible Congressional act.

Who complained when Obama killed the DADT Ninth Circuit Case where Gays’ individual right to Liberty was prevailing? All Obama had to

do was drop the challenge to the court's ruling and anti-Gay discrimination would have been an unconstitutional denial of Liberty – the very value which holds together our social compact as a nation. Rather Obama perpetuated the government's appeal until a Congressional act made it moot, leaving every Gay person vulnerable to right wing prejudice seizing control of Congress. Some have already claimed that they will overturn the repeal of DADT. (Politically, it is expedient to keep "The Gay" in a precarious situation with occasional words of support in order to fill campaign coffers.)

Now in 2012 we hear the wailing and moaning about Marriage Equality – an inherently absurd notion. Lawrence v Texas is being shoved into the judicial wastebasket in the push to revive Group Rights. Under the current Gay Leadership's philosophy, Gay individuals have no inalienable rights. A Gay person will have rights solely based upon his placement as a member of the Group called Gay or alternately labeled LGBT. (By keeping us Gays in legal limbo, these organizations guarantee that the Gay community will need their services forever.)

People espouse this ersatz right of Equality at the nation's peril. The Declaration states:

. . . [W]hensoever any form of government becomes destructive of these ends [i.e., life, liberty, and the pursuit of happiness], it is the right of the people to alter or abolish it, and to institute new government, laying its foundations on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

Thus, those who oppose two Gay individuals' marrying each other and those who base the right of two Gay people to marry on Equality are both pursuing a dangerous path which attacks the very basis of our society.

Under both the Declaration of Independence and the US Constitution, the legal issue of whether an individual may marry someone of the same sex is as easy as ending racial discrimination, but as we have seen, we flubbed that one also, bringing decades of trouble to not only the Black community but also to the overall society. Group rights blind us to the obvious – Obama is not Black and Melissa Harris Perry is even less Black. They are mixed race or multi-racial or most appropriately, they are merely American. That is no different than being of mixed English and Italian ancestry or Asian, Black, Irish ancestry, or Jewish Russian and Mexican Catholic, etc. *ad infinitum*. We all have our private ancestries, but publicly, each person is an individual American.<sup>8</sup>

All individuals have the inalienable right of Liberty, and thus, any person may marry any other person without regard to his/her classification into some group, be it racial, sexual, religious, etc.<sup>9</sup> That is the protection of the 14<sup>th</sup> Amendment, not to be separated out for special discrimination or for special rights, by placing individuals into some farkakte group.

Naturally, no person whom the state empowers to marry people in a religious ceremony may be compelled to marry two persons when it would be contrary to their religious beliefs. Allowing a few clergy members the power to not marry certain people does not deprive the couple of the right to be married. Anyone with secular authority to marry like a judge does not have such a choice as his role is governmental and not religious.

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8

Corporations are not persons; they are fictitious entities. They are not born with certain alienable rights among which is the right to accumulate all the nation's wealthy as Justices Roberts and Scalia would have us believe.

9

Liberty is not absolute. No one disputes that certain regulations are permissible, such as an age of consent to marry, but these rules do not deprive an individual of the right to marry whom he/she wishes.

## **Summary of Why Marriage Equality is Bad**

This entire issue of Marriage Equality is bad for Gays, bad for Americans, bad for the Constitution, and above all, it is bad for our understanding of Inalienable Rights.

Once we recognize that this dispute involves each person's inalienable **Liberty To Marry**, we realize that of course two men can marry each other – it's a complete no-brainer under the Declaration of Independence and the US Constitution.

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