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# Review of Stacey Johnson, *A Time To Embrace: Same Gender Relationships in Religion, Law, and Politics* (2007)

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## Abstract

*This essay reviews the constructive biblical, historical, pastoral and legal argument for accepted same-sex marriage in churches, states, and liberal societies offered by a leading Protestant theologian and jurist.*

**Keywords:** William Stacey Johnson, same sex marriage, religious liberty, sexual liberty, Bible, pastoral care, constitutional rights

William Stacey Johnson, *Time to Embrace: Same-Gender Relationships in Religion, Law and Politics* (Grand Rapids: Wm. B. Eerdmans, 2007), 340 pages, $25.00

In this important new volume, William Stacey Johnson, a lawyer and a chaired theology professor at Princeton Theological Seminary, provides a detailed and helpful typology of seven positions on same-sex relationships at work in American churches. These range from the "non-affirming" positions of (1) prohibition, (2) toleration, and (3) accommodation, to the "affirming" positions of (4) legitimation, (5) celebration, (6) liberation, and (7) consecration.

Johnson is evidently a new and fervent "affirmationist," and he wants fellow Christians and citizens to join him in the ascent to position number seven – where churches "consecrate" same-sex relationships just as states legalize them. Believing that he has stood too long on the legal and theological sidelines of the same-sex debate, Johnson has entered the fray with this substantial new book, swinging deftly with his left: "I believe the time has come to offer my strongest support to gay and lesbian couples who are seeking to make a life together," he writes. "A welcoming and affirming stance, I believe, is vital to the integrity of our religious communities, imperative for the self-consistency of our legal system, and necessary to the long-term well-being of our democratic culture."(3)

Johnson knows he's fighting majority opinion in American churches and states. The numbers in the churches are stacking up against him even more than at the time his book was written. According to a detailed August 2007 study by the Pew Forum on

Religion and Public Life, 73% of Americans with high religious commitments oppose same-sex marriage and marriage-like arrangements – and within this group, 81% of white Evangelicals, 78% of all Catholics, and 64% of African-Americans of all denominations are opposed. The numbers are a bit better among the states. Massachusetts offers traditional marriage and same-sex marriage to their citizens. Five states offer straight couples marriage and gay couples civil union. Six states, including California, offer domestic partner registration status, providing straight and gay couples with some of the same benefits and protections of marriage. The remaining 38 states are opposed to legalizing same-sex relationships, and most of these have recently passed constitutional amendments or statutes restricting marriage to heterosexual monogamous unions between fit adults.

Johnson wants to make a case for consecration of same-sex unions in the church parallel to the case for legalization that has been made successfully in Massachusetts and in countries like Canada, Denmark, and the Netherlands. As a good lawyer, he does some "law office history." He weaves together a strand of selected anecdotes of past same sex unions and practices, aiming to cast reasonable doubt on the reality that the Western tradition has been normatively opposed to same-sex unions and practices for nearly two millennia. Johnson's attempt to rewrite history by anecdote is no more convincing than the effort twenty years ago by John Boswell, on whom he heavily relies. The canon law, civil law, and common law alike condemned same sex unions and practices for many centuries. While individual officials of church and state sometimes tolerated rather than prosecuted these practices, the normative position of the Western church and state did not change much from the fourth to the twentieth centuries. Johnson's case cannot get much traction by reinventing tradition or trying to claim a new law out of the equitable exceptions to the old law.

Also as a good lawyer, Johnson paints his opposition in unflattering colors. Here his case gains more traction. Those who stand in the way of legal affirmation and theological consecration of same-sex unions are like the slaveholders and Catholic bashers of the mid-nineteenth century, and the chauvinists and racists of the mid-twentieth century, Johnson argues. Our predecessors just could not see past their prejudices to embrace equal treatment and constitutional freedoms for all regardless of race, religion, or sex. This blindness is especially shameful for the Christian church which has the ringing egalitarian admonition of St. Paul that there shall be neither Jew nor Greek, male nor female, slave nor free, for we are all one in Christ Jesus (Galatians 3:28; Colossians 3:10-11; Ephesians 2:14-15).

The same prejudice is at work in the current same-sex debates in American churches, Johnson contends. The homophobia of today is no different from the racism, sexism, and denominational snobbery of yesterday, and churches need to get over it or risk hypocrisy. "The intensity of the fears and the way they manifest themselves tells us something important about ourselves."(7) "Why are certain people in American churches more upset about gays than they are about unjust war or torture? What does it tell us about our own preoccupations that this and not others can motivate busloads of people to mount protests and spring into political action?" (16)

Just as in prior campaigns for the equality and enfranchisement of once marginalized groups, the state and its law today seem to be taking the lead in bringing justice and equity to same-sex parties -- with a few of the churches catalyzing the changes, but more of them opposing. Though this goes beyond Johnson's brief, it is worth noting that in American history the state and its law sometimes has led the church and its Gospel in the causes of social justice. It took the Thirteenth Amendment in 1865 to eradicate slavery formally, and it took *Brown v. Board of Education* (1954) and the Civil Rights Act (1964) to move the nation toward real racial equality, a cause still not yet won, Obama notwithstanding. It took the Nineteenth Amendment (1920) to give American women the franchise, but only with the Civil Rights Act (1964), Title IX and their progeny have women finally began to realize true gender equality, though glaring prejudices remain. It took *Pierce v. Society of Sisters* (1925) and a series of later First Amendment cases to protect the religious freedom of Catholics and other religious minorities, a struggle that still continues today for Scientologists, Muslims, Native Americans, and others. In these successive campaigns of racial, gender, and religious liberty and equality, a number of Christian abolitionists, suffragists, and civil rights advocates did take the lead. But in every case, it was the racism, chauvinism, and bigotry of the churches that were among the hardest obstacles to overcome. The same is true in the same-sex debate today, Johnson intimates. The state is leading the cause more than churches. If only church members could all see past their prejudices.

Though Johnson's book spans the disciplines of both law and religion, the heart of his argument, and two thirds of his text, focus on the religious dimensions of his argument. The chapters on law and democracy are primers for the non-lawyers in the pews and pulpits but not much more. Johnson rehearses the familiar same-sex marriage decisions -- *Baehr* in Hawaii, *Baker* in Vermont, *Lawrence* in Texas, and *Goodridge* in Massachusetts -- and samples a bit here and there with comparative law examples. Johnson's summary of these cases and developments is adequate to the educational task, but there's nothing new here. Perhaps his next book will do more.

The heart of this book, and the more novel part, is the seven-position typology from prohibition to consecration of same-sex unions within the church. Prohibitionists are the sternest opponents against same-sex relationships and against homosexuality itself. They ground their views in biblical texts prohibiting men from lying with men (Lev. 18:22, 20:18; Rom. 1:26-27). Like other proponents of same-sex relationships, Johnson seeks to deconstruct such texts and offers instead a reconstructive scriptural interpretation of the norms of companionship, commitment, and community applicable to both heterosexual and same-sex relationships. Johnson also critiques the strong linkage of the prohibitionist view to the order of creation arguments about the "one-flesh" union of male and female (Gen. 2:24; Matt. 19:5).

While prohibitionists condemn same-sex relationships and practices, tolerationists put up with them grudgingly. Tolerationists do not want church or state to prosecute voluntary sodomy and private same-sex relationships. But they also do not want the church or state to grant these parties a status which would deprecate the good of marriage. Tolerationists give no "affirmation of same-gender love itself." (28) Their

focus is on reconciliation, mostly in terms of gays and lesbians coming "to accept their sexual orientation as a tragic burden and live life in a sort of Stoic abstinence." (57-58) Gays and lesbians, in this picture, should practice celibacy, and if they aspire to church leadership they must. A gay man who aspires to church leadership "must sacrifice his identity, his integrity, or his calling--and probably at some level all three." (61)

Accommodationists go further in making room for private same sex parties in church and state. They generally favor civil union and comparable status, and don't see same-sex desire as necessarily inconsistent with ministry. Accommodationists move from reconciliation to redemption "not only of gay people, but ... of the church's own integrity." (66) But accommodationists fall short, in Johnson's view, because they "refuse to affirm same-gender relationships officially," while making "exceptions for them in private." (67) Such exceptions avoid the harsher effects of the tolerationist position, but they are not good enough.

Legitimationists ground their arguments in legal concerns for "fundamental justice and fairness." (72) Much as the law can serve as a vehicle for reconciling us to each other in society, the legitimationist position emphasizes the order of reconciliation, both of self to gay or lesbian identity and of gay or lesbian selves to church communities, based on the conviction that "God wants more for people than a lonely life of unhappiness." (77) Celebrationists add to this argument concepts resonant in postmodern discussions of gender and sexuality, which affirm a variety of sexualities and sexual orientations as part of the good of creation. Johnson recognizes that the celebrationist position tends to "glorify sexuality inappropriately," (86) and he counsels against reducing same-sex relationships to mere sexuality when so many other goods are at stake. Liberationists use the arguments of liberation theology and emphasize the social construction of sexuality, rather than the more naturalist and essentialist dimensions that are the focus of the celebrationists. Johnson notes affinities between celebrationists and liberationists in the work of Michel Foucault and Judith Butler, who have influenced academic discussions of same-sex relationships, despite their reduction of sexuality to power and performance and their deprecation of the covenant and community themes that Johnson condones.

The seventh and final position--consecration--is the one in which Johnson has the greatest stake and investment. Drawing on Archbishop Rowan Williams' essay "The Body's Grace," Johnson calls churches to direct their attention to the fundamental purposes of sexual desire, which are not only transient sexual acts, but committed relationships of joy over time. "[F]or one person's body to experience sexual joy," he writes, "it must be open to becoming the occasion of joy for another. It requires more than sexual performance for this to happen; it requires that the couple be willing to give time to one another in a 'commitment without limits.' Only with the gift of time does the gift of sexuality blossom into all that God intends it to be." (96) It is this temporal requirement of committed relationships that Johnson finds most compelling as an argument for their consecration and as the best response to the insistence of the non-affirming positions that "human sexuality needs to be ordered in a covenantal context with the intention of it being exclusive and lifelong." (97) It is the power of consecration

and commitment to give this particular shape to sexual relationship that leads Johnson to label the consecrationist position a "welcoming, affirming, and ordering" position. (97)

Johnson's book is stimulating, well written, thickly documented, passionate and compassionate at once. I don't know the vast LGBT or theological literature on sexuality well enough to know what in this book is novel or controversial. Certainly for this outsider, the seven-position typology is helpful and is itself worth the price of admission. I doubt that too many readers will immediately want to move up a position or two on Johnson's seven-position scale in light of what he argues. But he does help clarify the comparative stakes involved in each position.

I come to the modern controversy over same sex relationships as a legal historian, who believes both in liberty and tradition. I have long found myself quite comfortably in Johnson's "accommodationist" camp. I am all for covenant and for the support of trusting, loving, consensual relationships among adults, and I'm all for finding ways to encourage same-sex parties to remain faithful to each other and to their dependents. But, in my view, this good can be achieved by accommodating same-sex couples in a state-sanctioned status of civil union or domestic partnership; it does not require changing the traditional definition of marriage.

Johnson accuses me of wanting to have it "both ways" (274). In my 1997 title, *From Sacrament to Contract* (1997), which he quotes, and in a more recent title, *The Reformation of Rights* (2007), I applaud the modern rights movement that brought greater liberty and equality, inter alia, to husbands and wives and removed some of the patriarchy, paternalism, and prudishness of the past. Why not go all the way, Johnson says, and affirm and celebrate the same for same-sex couples who just want the same liberty and equality enjoyed by straights? It's the same constitutional logic of liberty and equality at work and the same privacy concerns at stake. To deny same-sex parties today is as prejudicial and discriminatory as it was to deny women and African-Americans yesterday. So why stop at this step?

The short answer for me is that Scripture and tradition don't condone this next step. There are plenty of grounds in Scripture to embrace full racial and gender equality, contrary to the racism and chauvinism of the tradition. The most obvious are St. Paul's words that there shall be neither Jew nor Greek, male nor female, slave nor free, for we are all one in Christ Jesus (Galatians 3:28; Colossians 3:10-11; Ephesians 2:14-15). But there is nothing comparable in Scripture either to condone same-sex practices or to condone marriage for those same-sex couples. The weight of Scripture is against both moves, Johnson's inventive arguments about companionship notwithstanding.

The weight of tradition is against both moves, too, and this gives me pause as a lawyer interested in the doctrine of precedent that is at the heart of our concept of rule of law. For nearly two millennia, the Western legal tradition defined marriage as a heterosexual, monogamous union, designed for the procreation and nurture of children, the mutual help and companionship of husband and wife, and the mutual protection of

both parties from sexual sin. This definition of marriage has been woven deeply into the fabric of Western law, and is still reflected today in thousands of discrete American laws. To be sure, the Western legal tradition has radically transformed many aspects of marriage in the course of the past two millennia. But, for all this radical change, the Western legal tradition has not extended the legal category of marriage to include same-sex unions. Indeed, until recently, the Western tradition criminalized the acts of sodomy and buggery that are endemic to such unions.

The Western tradition has long taught that heterosexual monogamous marriage is good, does good, and has goods both for the couple and for their children. Hebrew, Greek, Roman, Catholic, Protestant, and Enlightenment writers alike have recognized the "natural" character of marriage: (1) the natural drive on the part of most adults toward the institution of marriage because of the inherent goods of individual survival, flourishing, happiness, and even perfectibility that it provides; and (2) the natural capacity on the part of most adults to engage in the expected performance of marriage—the unique combination of sexual, physical, economical, emotional, charitable, moral, and spiritual performances that become marriage.

The Western tradition has also long taught that stable marriages are good for the broader society. The ancient Greek and Roman Stoics called marriage "the private font of public virtue." The early Church Fathers called marital love "the seedbed of the city." Catholics called the family a "domestic church, "a kind of school of deeper humanity." Protestants called the household a "little church," a "little state," and a "little seminary" in which one learned the norms and habits of proper citizenship. American jurists and theologians taught that marriage is both public and private, individual and social, temporal and transcendent in quality--a natural if not a spiritual estate, a useful if not an essential association, a pillar if not the foundation of civil society. At the core of all these metaphors is the enduring conviction that stable marriages and families are essential to the survival and happiness of the greater commonwealth.

History alone, of course, is not reason enough to maintain traditional marriage. But history must be an essential part of any serious arguments for the maintenance of traditional marriage. And the enduring traditional arguments about the origin, nature, and purpose of marriage must be the starting point for any serious debate about the propriety of legalizing same-sex relationships. Law is, after all, both a steward of our traditions and a totem of our ideals. Especially when it touches on so tender and vital a topic as marriage, we should amend and emend traditional legal teachings only with ample trepidation, only with long explanation, and only with full ventilation of what is at stake on both sides of the debate.

We would be wise to exercise some humility and patience before rushing to radical legal and theological change. Same-sex couples have already gained much freedom and acceptance in recent decades through the abolition of traditional fornication and sodomy laws and the formulation of new rights of association and sexual privacy. With patient and persistent argumentation and experimentation more salutary legal changes will come. But we have just begun the serious discussion and the

cultural experimentation that is needed. Many families and communities have just begun their experiences with gay and lesbian life. Many scholars have just begun to tackle the essential policy questions--whether homosexuality is an immutable norm, habit, and character, whether children raised in gay and lesbian households are indeed as well or better off, whether alternative forms of conception (artificial insemination, surrogacy, cloning, and others) will ultimately make the procreative potential and capacity of same-sex and heterosexual coupling any different. Many religious communities have just begun to rethink seriously whether biblical teachings against same-sex activities can be reinterpreted, whether the traditional goods and goals of marriage need necessarily be restricted to heterosexual couples, whether the church's strong support for individual liberty can be extended. Many states have just begun serious debates about alternative forms and forums of domestic association. *Roe v. Wade* taught us that on vital social issues a rush to legal change without ample democratic ventilation will bring savage cultural and legal backlash. It is far too early in the debate to resort to constitutional brinkmanship to force change on a reluctant majority or to close doors to a resilient minority.