

THE EQUALITY ACT WITHOUT EQUALITY AND AMERICA'S CONSCIENCE CRISIS

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Abstract: The promulgation of the Equality Act has created a conscience crisis in America. It has revealed a failure a failure to fulfill the promise of ensuring equal protection of rights and freedoms of all Americans. This study discusses the failure to provide equal protection to LGBTQ rights and religious freedom. Equal protection is the fundamental principle of American civilization. A failure to realize this principle poses an existential threat to the survival of American civilization. This is what constitutes the conscience crisis that we face today. The study explores the reasons for the failure. Following a brief overview of the history of the Equality Act the study provides a critical examination of the Equality Act. The angle that the examination takes focuses on the conflation of human rights and civil rights. The examination shows that the inadequate differentiation of human rights and civil rights has created confusion that led to tensions and conflicts. The study uses two documents to substantiate its analysis: the American Declaration of Independence and the Universal Declaration of Human Rights adopted in 1948 by the United Nations. The conflation of human rights and civil rights is the main source of the current conscience crisis. The study also outlines a possible path toward the resolution of the conscience crisis.

Key words: Conscience crisis, the Equality Act, LGBTQ rights, freedom of religion, gender identity, the American Declaration of Independence, and the Universal Declaration of Human Rights.

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Introduction

Equality has been and continues to be one of the most important goals of human civilization. It has been a battle call in numerous revolutions and popular rebellions that sought to transform society. It has inspired thinkers, political and religious leaders, martyrs, and ordinary people. Since the Enlightenment the pursuit of freedom and equality has become a self-conscious drive of our civilization that we call the liberation project, or the Enlightenment project. Liberalism has made this project the centerpiece of its theory and practice. The idea of equality and liberation has spread throughout to world and has had a profound influence on many countries. It has in many ways shaped the course of our civilization.

One of the fiercest battles that are raging in America today is about the Equality Act. It has created a deep divide between liberal and conservatives. The Democratic Party has pursued the adoption of this act for well over a decade. It has staked its future on making this Act a law of the land. The Democrats have built the Equality Act on the 1964 Civil Rights Act. They have extended the provisions of CRA in several new

directions. The Equality Act seeks to end the discrimination against sexual minorities and gender non-conformists by offering equal protections for LGBTQ rights.

In 2019 the Democrats scored the first major victory in the war for the Equality Act when the Democratically controlled U.S. House of Representatives approved the Equality Act. Despite this success, however, the Democrats failed to make the bill a law of the land. The Act bogged down in the Senate where it did not attract enough votes to be approved. The setback has not discouraged the Democrats who vow to continue the fight. They have reintroduced the bill into the newly elected Congress where it now awaits its full discussion and vote.

While waiting for Congress to act, liberals are not wasting their time. They are aggressively promoting protections for LGBTQ rights at the local, state, and federal level. They also try to gain more support among the American public. They have the ear of President Biden who is forcefully advocating the adoption of the Act. At the beginning of his current term President Biden vowed that enacting the Equality Act would be a top priority in his first one hundred days in the White House.¹ He has instructed and used government agencies to promote LGBTQ rights and has promised to sign the Act as soon as it reaches his desk.

There is no question that the Equality Act is one of the most controversial pieces of legislation that has ever been attempted in America. It has provoked a huge and fierce opposition that includes clerics, religious leaders, politicians, activists, and ordinary Americans. Critical voices come from churches, parental organizations, conservative media and think tanks, and numerous other venues. They all resolutely oppose the adoption of the Equality Act.

The Equality Act has polarized American society that is increasingly and sharply divided between proponents and opponents of the Equality Act, with very little in the middle. The two sides are currently engaged in bitter infighting, trading accusations and insinuations. The Act has certainly widened the gap separating the Democrats and the Republicans. Both parties are consolidating their battle lines in anticipation of future clashes over the bill in Congress, the Supreme Court, and especially in the court of public opinion. Indeed, the Equality Act has in many ways created a real crisis situation in America—the crisis of conscience.

To say that the current debates over LGBTQ rights are acrimonious would be an understatement. Partisan passions and opinions are raging on both sides and have reached a critical level. The forceful arguments often leave non-partisan observers befuddle. Contradictions and biases make difficult to form an objective view of the issue. The need for an objective assessment is enormous. This article seeks to make a contribution to providing such objective view of the problem that may help to find a resolution of this crisis.

After a brief overview of the history of the Equality Act, the study will offer a critical analysis of the Act with the focus on its most controversial aspects. One of the primary focuses will be on the general approach used in formulating the Equality Act. The study will examine the main principles that serve as the foundation of the Act. The discussion will pay particular attention to those aspects of the Act that generate the most controversy—namely, the criticism that the Act is exclusive and has a clear anti-Christian bias. Ancillary relevant topics under consideration will include human and civil rights and the separation of church and state.

This study seeks to be a step in the right direction and contribute to a resolution of the conscience crisis. With this in mind, the study will try to get away as much as possible from partisan bickering and avoid taking sides. Its last section will outline some ways to solve specific problems related to LGBTQ rights. The Conclusion will summarize the main arguments and offer some final thoughts.

The Making of the Conscience Crisis

As has already been mentioned, the liberals base their Equality Act on the 1964 Civil Rights Act. The Equality Act extends CRA protections to cover “sexual orientation and gender identity.” Initially, the movement for LGBTQ rights used the coming out strategy to stimulate interest in this issue. The strategy attracted attention of scientists, journalists, politicians, and entertainers who opened a broad discussion of homosexuality and gender identity in the media.² Proponents of LGBTQ rights often made one point that the word “sex” that is used in CRA should include “sexual orientation and gender identity.”

The initial drafts of the Equality Act focused particularly on gender issues and transgender rights. According to the Act’s provisions, those born as males but identifying as women should have the right to participate in women’s sports teams and other female-only spaces.³ The sponsors of the Equality Act have also tried to retool the Pregnancy Discrimination Act that was added to the Civil Rights Act in 1978. The purpose of this addition was to ensure that the health care system provided services to sexual minorities and gender non-conformists.⁴ There have been many other individual pieces of legislation proposed on the local and state level that sought to end discrimination on the basis of sexual orientation and gender identity. None of these early efforts actually made it to the federal level.

The Equality Act reached the federal level for the first time during the 114th Congress. However, it did not collect enough votes in the House.⁵ The setback, however, did not discourage the proponents of the bill. On the contrary, they doubled down in promoting their cause. The pursuit followed several tracks. First of all, they continued to put the Equality Act up for discussion and approval in Congress; they also promoted it on various local and state levels. In advancing their cause proponents of the Equality Act have also tried to use courts, particularly the Supreme Court, to argue in support of protections for the LGBTQ community. Activists engaged in vigorous media and public relations campaigns focused on winning over the public opinion and use public pressure for advance their cause. They organized mass demonstrations, parades, and various pride events. Hoisting LGBTQ flags in public spaces, for example, was one way of drawing attention to the cause. Activists targeted a variety of audiences. They engaged various national organizations, state agencies, churches, faith leaders, and the business community and business organizations. They also took advantage of many other venues to benefit their cause.⁶ Finally, proponents of the Equality Act took full advantage of social media to spread their message among next generation leaders. Many pop stars—the likes of Cindy Lauper, Taylor Swift, and others—got into the act. Swift, for example, used her Video of the Year acceptance speech at the 2019 MTV Video

Music Awards to call out the Trump administration for not responding to an Equality Act petition she sponsored.⁷

These efforts have paid off and the movement for LGBTQ rights has gained momentum. For example, according to the Human Rights Campaign, the corporate entities supporting the legislation have “combined operation in all 50 states, headquarters in 26 states, more than \$3.7 trillion in revenue, and more than 8.5 million employees across the United States.” The business giants behind the movement included Amazon, Google, Twitter, Facebook, Microsoft, General Electric, and many other top U.S. companies.⁸

The momentum brought the first legislative success in 2019. That year marked an important step in securing LGBTQ rights. During the 116th Congress the U.S. House of Representatives passed by a majority of bi-partisan votes (236 to 173) the Equality Act (H.R. 5). The adoption was a landmark decision to secure protections for the LGBTQ community from discrimination in such key areas as employment, housing, public accommodations, public education, federal funding, credit and financing, and jury service.⁹ However, the U.S. Senate did not act on the bill; later then-President Donald Trump also signaled that he would veto the bill even if it succeeded to pass both chambers.

The election of Joe Biden as President of the United States gave a boost to the LGBTQ rights movement. On the campaign trail Biden repeatedly stated that the Equality Act would be one of his top legislative priorities during the first one hundred days in office.¹⁰ According to human rights organizations, nearly 4 in 10 (37%) of general election voters in the 2020 presidential elections prioritized LGBTQ issues at the ballot box; the majority (60%) of those voters were women.¹¹ After the election President Biden used numerous occasions to reiterate his support. He repeatedly urged Congress to pass swiftly what he called “this historic legislation.” “Every person,” Biden stressed, “should be treated with dignity and respect, and this bill represents a critical step toward ensuring that America lives up to our foundational values of equality and freedom for all.”¹² The White House publicity machine worked around the clock to bring attention to the President’s full-out support for the Equality Act. Many prominent political figures and cultural icons followed the President in backing the bill.

In June of 2020, the LGBTQ rights movement scored another major success when the Supreme Court ruled in *Bostock v. Clayton County* case. It was in many respects a landmark decision. In its opinion the Court said that the protections guaranteed by the 1964 Civil Rights Act should also extend to discrimination against lesbian, gay, and transgender Americans.¹³ The decision repudiated the discrimination against gay and transgender people in matters of employment (albeit not in all respects). The Court also extended its ruling to several other cases before it at that time.¹⁴ The left celebrated the decisions but also pointed to the fact that the protection this decision offered was not definitive. Only the passing of the Equality Act by Congress, they argued, could ensure that protections for LGBTQ rights were entrenched.¹⁵

President Biden welcomed the Supreme Court’s decision in a special ceremony on South Lawn attended by many prominent American political figures and cultural icons. The likes of Cyndi Lauper entertained the crowd. “Today’s a good day,” President Biden said in his remarks at the event, “Today, America takes a vital step towards equality.” “The road to this moment has been long,” Biden continued to harangue the

crowd, “But those who believe in equality and justice never gave up . . . Marriage is a simple proposition—whom do you love, and will you be loyal to that person you love? It's not more complicated than that . . . Everyone should have the right to answer that question for themselves without the government interference.”¹⁶ He certainly did not miss an opportunity to urge Congress once again to swiftly pass the “historic legislation.”¹⁷

Following the election of Joe Biden, progressives introduced the Equality Act during 117th Congress and again the House passed the bill that again bogged down in the Senate.¹⁸ In the mid-term election of 2022 the Democrats lost majority in the House and the prospects for adopting the Act began to look increasingly uncertain. The Equality Act is now waiting for a full discussion in Congress that has been scheduled for after the recess.

Facing the resistance in the House, the supporters of the Act have redoubled their efforts by heightening pressure through media, courts, and social networks. LGBTQ advocates argue that since they cannot expect support in the legislature, they have no choice but to use all other means available to them that to create safe places for members of the LGBTQ community without the help of lawmakers.¹⁹ The goal is to build momentum by introducing various anti-discrimination acts at the state level, by increasing public support, and by maximizing the movement’s chances to win major anti-discrimination cases in courts.²⁰

Through community mobilizing and political organizing, LGBTQ advocates try to make public spaces, schools and federally funded programs, such as day care, safer and more accessible for members of the LGBTQ community, including the growing number of members who are transgender or non-binary.²¹ Their campaigns designed to win the support of the public and voters have been massive and largely successful.²² For example, in its report the organization Freedom for All Americans (FFAA)—a major force behind the Equality Act—states that supporters of LGBTQ rights have expanded the number of states with protections for members of the LGBTQ community by over 25%. Public support has grown to an all-time high of 83%--an increase of 11% since FFAA’s launch in 2015. They have scored major victories in the Supreme Court and at the ballot boxes both in red and blue states.²³

In order to coordinate these massive efforts, the report stresses, the FFAA campaign team has doubled in size. Over three dozens of the movement’s organizations--national groups, statewide advocacies, and community centers--generate hundreds of constituent contacts, media stories, and personal grass tops touches over an 18-month campaign to secure the 10+ GOP Senate votes needed to pass the bill.²⁴ Together with the U.S. Chamber of Commerce and business stakeholders, the FFAA has created the business-led and business-run America Competes coalition for lobbying and mobilizing more aggressively than ever before.²⁵ Nearly 225 opinion editorials and human-interest stories appeared in 2022 in national and local media that drew attention to the needs of LGBTQ people. The movement has also launched Faces of Freedom--the first dedicated storytelling hub featuring more than 500 stories of LGBTQ people and their allies from nearly every U.S. state.²⁶

The Biden administration continues its systematic efforts on behalf of the Equality Act. Following a new submission of the Act to 118th Congress, President Biden again issued a call for its adoption. In one of his statements addressed to members of

Congress Biden appealed to members of the legislature: “Let’s also pass the bipartisan Equality Act to ensure LGBTQ Americans, especially transgender young people, can live with safety and dignity.”²⁷ The proponents of the Equality Act have also made a push to extend the Act’s provisions. They argue, for example, that the proposed legislation should also include the protection of at least one more characteristic, namely, appearance.²⁸ The U.S. government actively promotes LGBT rights abroad.²⁹

The activism on the left has galvanized opponents of the Equality Act. Religious organizations and conservative activists have mobilized their resources against the liberal agenda. The principal claim coming from the opponents is that the Act discriminates against religion; its provisions, they argue, make impossible to use the Religious Freedom Restoration Act (RFRA) to protect believers against violations of their rights.³⁰ This line of criticisms emerged shortly after the Supreme Court issued a ruling that upheld marriage equality in 2015. Religious conservatives and their organizations expressed apprehension that pastors who maintained a strict biblical view of marriage might be forced to officiate at weddings for same-sex couples.³¹

The most visible and vocal opposition to the Act comes from the Catholic Church. The U.S. Conference of Catholic Bishops, for example, has issued a warning that the Act imposes “sweeping regulations to the detriment of society as a whole.” “The act’s definitions alone,” the Catholic leaders maintain, “would remove women and girls from protected legal existence.” In addition, the bishops claim that the bill seeks to regulate thought, belief, and speech in an “unprecedented departure” from America’s founding principles.³²

Many Catholic priests subscribe to this claim.³³ In addition to the U.S. bishops, critics of the Equality Act include the National Association of Evangelicals, the Church of Jesus Christ of Latter Day Saints, the Seventh-day Adventist Church, and the Coalition for Jewish Values. They all argue that the bill lacks religious accommodations and that it, most notably, is the first federal legislation to exempt itself from the Religious Freedom Restoration Act.³⁴ The opponents of the Equality Act also publicize numerous cases in which they claim that pro-transgender policies hurt and violated the rights of children and adolescents across America.³⁵

The nonprofit Christian legal group Liberty Counsel describes the bill as being “wrongly named.” It also characterizes it as the “most extreme threat to religious freedom, free speech, privacy, and to women’s rights that has ever been proposed by Congress.” The group warns that the controversial legislation “will be used as a wrecking ball to churches, religious organizations, religious freedom, and free speech.”³⁶

Conservatives have conducted numerous fundraising campaigns for organizing protests and demonstrations against the adoption of the Equality Act. Some examples include Parental Rights in Education, Secure Our Schools, Universal School Choice for All, Parents for Education Reform, Defend Kids from Partisan Censorship, Freedom from Mandates, Protect Kids from Drag Sexual Exploitation, Protect Children’s Innocence, Stop States Providing Sanctuary to Minors Gender Affirming Care Without Parental Consent, and many others. Conservative Christian publications have barraged the public with their views and opinions about the Act. Writing for *Focus on the Family*, a highly influential Christian ministry, Jeff Johnston warns that the legislation is “dangerous” and “would have serious harmful consequences for people of faith and families.” Johnston and other influential conservatives stress that Christians believe what the Bible says about

marriage. God, they insist, created two types of humans, male and female, and children ought to have a mother and a father.³⁷

The panel discussion organized by Public Policy Center, an influential Catholic organization, and sponsored by several Catholic dioceses has warned that the bill got the anthropology completely wrong and is going to do serious harm to society. In one of his communications about the Equality Act, Ryan Anderson, president of the Ethics and Public Policy Center, writes: “We need to be able to affirm in law and public policy that everyone is made in God’s image and likeness and therefore unjust discrimination is wrong, but our bodily reality as male or female isn’t discriminatory.”³⁸

Given the fact that debates over LGBTQ rights and the Equality Act have been going on for quite some time, one would expect that their intensity should go down. This, however, is hardly the case. The division between the two camps is growing and interactions are becoming increasingly bitter. There are no signs of a rapprochement as the two sides continue to trade mutual accusations, insinuations, and innuendos.

The main point that supporters of LGBTQ rights make is that sexual minorities and gender dissidents have suffered and continue to suffer from numerous injuries and disabilities. The Equality Act, they argue, is absolutely necessary to eliminate various forms of discrimination against them. America, they contend, has a moral obligation to remedy this injustice; and the Act will do the job. In addition to employment, the Act will cover will cover other areas where sex discrimination should be eliminated: education, housing, and health care.³⁹ Proponents of LGBTQ rights claim that in most of the United States “employees fired from their jobs or tenants evicted from their homes, simply for being lesbian, gay, bisexual or transgender (LGBT), have no adequate recourse.”⁴⁰ The Equality Act will put an end to this continued injustice.

As the argument goes, there are several ways in which the Act will benefit members of the LGBTQ community. First, it will make clear that federal laws will prohibit discrimination based on sex stereotypes, pregnancy, sexual orientation, gender identity and sex characteristics.⁴¹ Second, the bill will expand existing protections by prohibiting discrimination in public sphere, including entertainment, places that sell goods and services, and transportation facilities.⁴² The Equality Act will ensure that the Religious Freedom Restoration Act (RFRA)—the bill that protects the exercise of religious freedom in the United States--cannot be misused as a license to discriminate in cases involving members of the LGBTQ community.⁴³ Finally, the Equality Act will be a national law, which means that it will cover states that currently do not have adequate anti-discrimination laws to protect LGBTQ. According to the Human Rights Campaign, an LGBTQ advocacy organization, there are still twenty-seven states that do not have such laws.⁴⁴

Another important area highlighted by the supporters of the Act is health and medical services. These are particularly important for members of the transgender community who need a great deal of medical attention, much of which is not covered by most insurance companies.⁴⁵ According to LGBTQ rights organizations, there is a large body of research documenting that discrimination in the area of health and medical services inflicts a great deal of harm on LGBTQ people. In one instance, they cite, the Alabama state legislature wanted to pass a bill that would have banned best practice medical care for transgender youth. Trans kids and their parents had to step in and help to kill the bill by lobbying lawmakers.⁴⁶ Another specific claim that LGBTQ activists

make concerns homelessness that disproportionately affects members of the LGBTQ community. According to the data they cite, 33% of young people who experience homelessness are members of the LGBTQ community.⁴⁷

The most important claim that animates the opponents of the Equality Act is that the bill will eliminate religious freedom protections established by the Religious Freedom Restoration Act (RFRA). The adoption of this bill in 1993 has set a higher bar for the government to defend laws if people argue that those laws infringed upon religious freedom.⁴⁸ Following the adoption of the Equality Act in the House, a number of prominent church and religious organizations—including the U.S. bishops, the National Association of Evangelicals, the Church of Jesus Christ of Latter-day Saints, the Seventh-day Adventist Church and the Coalition for Jewish Values—have noted that the bill is the first federal legislation that exempts itself from the Religious Freedom Restoration Act.⁴⁹ The U.S. bishops warned that the promulgation of the Equality Act on a national scale would be a “violation of precious rights to life and conscience.” New York Cardinal Timothy Dolan, chairman of the U.S. bishops’ religious liberty committee, has described the bill as “ill-named” and made a dire prediction that it will “chip away at religious freedom.”⁵⁰

There is one particular paragraph in the Equality Act that draws critics’ wrath that states: “[T]he Religious Freedom Restoration Act . . . shall not provide a claim concerning, or a defense to a claim under, a covered title, or provide a basis for challenging the application or enforcement of a covered title.”⁵¹ Under the Equality Act, critics claim, no entity can use RFRA to challenge the act's provisions and no one will be able to use RFRA as a defense to a claim made under RFRA.⁵² A number of legal experts agree with these conclusions. Douglas Laycock, a law professor at the University of Virginia, who has criticized the Equality Act since its initial introduction in 2019, offers, for example, the clearest formulation of this objection. “It [the Equality Act] protects,” he writes, “the rights of one side, but attempts to destroy the rights of the other side . . . We ought to protect the liberty of both sides to live their own lives by their own identities and their own values.”⁵³ Senator Mitt Romney has criticized the Act by stressing that religious liberty protections are essential to any legislation like the Equality Act. He has stated in an interview that since such provisions are absent from the bill, he cannot in good conscience support it.⁵⁴

Most detractors of the Equality Act find objectionable and unacceptable even a compromise version of the bill proposed by Utah Representative Chris Stewart. In a letter to Stewart sent in December 2019 the U.S. bishops wrote that they could not support this modified version because “the ends (securing the included religious freedom protections) do not justify the means (establishing gender ideology as a basis for a national policy, further undermining the anthropological basis of the family).”⁵⁵

There are also other aspects of the Equality Act that many critics find unacceptable. They see the Equality Act as a poster child for the claim that congressional bills have titles that are complete opposites of their content. The act, they contend, is anti-religion, anti-woman, and anti-child.⁵⁶ Another concern is that the Act unjustifiably codifies controversial categories such as “sexual orientation” and “gender identity.” A statement signed by the heads of four committees and one subcommittee of the U.S. bishops stresses: “All persons must be protected from violence, but codifying the classifications ‘sexual orientation’ and ‘gender identity’ as contained in S. 47 is

problematic.”⁵⁷ Critics charge that the provisions that offer protections from being fired from a job on the basis of sexual orientation are simply redundant and that the already existing legislation does that.⁵⁸ A number of church leaders predict that the Equality Act will bludgeon religious schools and Christian adoption agencies. The Equality Act, Catholic bishops and Protestant leaders warn, “threatens the withdrawal of financial aid like Pell grants to the neediest students and federal research grants to any religious educational institution.”⁵⁹

Another concern is that the Equality Act threatens businesses and organizations that have religious objections to serving LGBTQ people. It will force them to choose between remaining in business or following their beliefs.⁶⁰ “Given the act’s purpose of promoting LGBTQ,” critics maintain, “doctors and facilities could similarly be forced to perform or support gender reassignment surgeries in violation of both their consciences and the best interests of the patient.”⁶¹

The provisions of the bill related to the transgender community cause particular acrimony. In just a few years since the 2020 elections, conservative state lawmakers have managed to pass a record number of bills that limit transgender procedures among students in schools. The passing of the Equality Act can overturn these efforts.⁶² In the run-up to the 2022 mid-term elections, conservatives rallied their grass-roots supporters by seizing on issues such as restricting athletes to sports corresponding to their assigned sex at birth. Given the fact that biological males who identifying as transgender females are already besting women in sports, there is a genuine concern that a federal mandate that legitimates transgender athletes will destroy the gains made by women athletes.⁶³ There are ongoing contestations over shared bathrooms and public accommodations,⁶⁴ the use of politically correct pronouns, and the proverbial new designation for mother and father as “parent 1” and “parent 2.”⁶⁵ Finally, legal specialists predict that the passing of the Equality Act will spark a wave of work claims and legal suits.⁶⁶

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The above overview shows that the Equality Act provokes a clash over one commitment that is fundamental to American civilization. It is the commitment to ensure that all citizens enjoy equal protection. The controversies over the Act reveal the failure to reconcile the protection of the rights of members of the LGBTQ community, on one hand, and the rights of religious believers, on the other. The promise to provide equal protection to all Americans is a moral commitment. Bitter disputes and rivalries over the Equality Act represent nothing short of a moral crisis in America. It is a crisis of American conscience.

Although this crisis has been in existence for some time, it shows no signs of abatement; on the contrary, its intensity is on the rise. The Democrats have once again introduced the Equality Bill in the House that should take it up some time this fall.⁶⁷ Yet the chances of passing the bill are extremely slim to say the least. The proponents of LGBTQ rights continue to mobilize numerous national and international human rights organizations and other entities that support the LGBTQ community. They have secured massive financial backing from a number of foundations and private donors such as the Soros Funds, the Gill Foundation, Evelyn & Walter Haas, Jr. Fund, and others.⁶⁸

Numerous rights organizations continue to campaign relentlessly on behalf of the Equality Act in public media. These organizations include the American Civil Liberties Union, Anti-Defamation League, Human Rights Campaign, Human Rights Watch, Southern Poverty Law Center, Lambda Legal, the Navajo Nation, the National Organization for Women, NAACP, AARP, and many others.⁶⁹ Yet with the Republican majority in the House, the passing of the bill is very much in doubt. In anticipation of encountering resistance to the adoption of the bill, its proponents intend to move even more aggressively with their public campaigns and in courtrooms.⁷⁰ They try to put pressure on the members of the Supreme Court demanding removal of justices identified as conservatives or threatening to pack the Supreme Court with more liberal members.⁷¹ Advocates of LGBTQ rights put much hope on the widely anticipated Supreme Court decision on the case of *Muldrow v. City of St. Louis*. The case deals with sexual discrimination. The decision in this case is likely to stir a great deal of controversy and to have wide ramifications for LGBTQ rights.⁷²

The opponents of the Equality Act are not wasting their time either. They have secured support by a variety of church and religious organizations, conservative movements, and highly motivated activists among ordinary citizens. They also have substantial funds at their disposal. But most importantly, they have valuable allies in Congress where Republicans have a majority in the House that is quite sufficient to prevent the passing of the Equality Act.

The battle lines are drawn. The two sides are fully armed and ready for what promises to be another significant escalation. There is no peace in sight. The contentions discussed in this section show that the gap separating the two camps is very wide and continues to grow; it appears to be unbridgeable with participants locked in a life-and-death combat. The opponents of the Equality Act are determined to kill this bill, and its supporters are no less determined to have it passed. As one advocate for the Act aptly summarized, anything less than the adoption of the Equality Act in full, is less than equal and is, therefore, unacceptable.⁷³

No one can predict how far this rivalry will go, how intense it will become, or how much chaos and instability it will create. Although many still hope for a resolution of this crisis, no one can possibly imagine what can possibly bring such resolution. Even a cursory overview of the debates shows that at this point there is absolutely no ground to bring the two sides together. Bias and partisanship reign supreme in both camps. Acrimonious back-and-forth exchanges appear to be a continuous routine. Steven White is one of many who thinks that the impasse will continue. Claims on both sides, White observes, make “any kind of shared solution impossible, just as the Equality Act makes any kind of shared solution impossible.”⁷⁴

The arguments and controversies reviewed in this section reveal a complete failure to reconcile the two moral principles that are fundamental to American civilization: freedom of religious expression and universal equality. These principles are written into the Declaration of Independence and the American Constitution. They are integral to the moral foundation of American society. The failure to reconcile these two principles represents a genuine crisis of American conscience that threatens the very survival of this nation.

Critique of the Equality Act

As the impasse of the conscience crisis continues, there is a growing realization of the urgency of finding its resolution and restoring our national moral integrity. But is there such resolution? The current situation gives little hope that the two sides in this conflict will be able to come together; and at this point they are not even trying. As of today, the conflict appears irresolvable. The only possible way to move forward in this seemingly hopeless situation is to step outside the melee and to take a broad view of the controversy. A critical examination of the Equality Act is a good starting point.

General Observations

The Equality Act has its origin in the promise of liberation that has been central to the ideology and practice of liberalism since its inception back in the 18th century. The concept of freedom is at the heart of this project (also known as the project of the Enlightenment).⁷⁵ For liberals equality is the key to the realization of this project. The connection between freedom and equality defines liberal politics that has given rise to the Equality Act. Thus, equality is intimately related to the conception of freedom to which liberals subscribe.

There are many definitions of freedom. One that liberals commonly use defines freedom in negative terms--that is, liberals conceive of freedom as the absence of constraints, as non-domination, or as self-determination. "Freedom," according to Katharine Gammon, for example, "is the power or right to act, speak, or think as one wants without hindrance or restraint, and the absence of a despotic government."⁷⁶ There is also a definition that connects freedom to choice. A standard liberal claim is that freedom of choice is "not only instrumentally valuable but also intrinsically valuable, that is, valuable for its own sake."⁷⁷ There have also been attempts to define freedom in a positive sense. Freedom in this definition is not about absence of constraints, but about a capacity to do something. Joel Feinberg argues, for example, in his book *Social Philosophy*: "We may be free of all constraints to our desire to do X . . . and still not be free to do X. Hence, . . . 'positive freedom' (freedom to . . .) is something other than the absence of constraint."⁷⁸ These are just some of the examples of current definitions.

Despite their differences, all these definitions have one common feature. They do not tell us what freedom is about and what its source is, but only about conditions that make freedom possible. Despite all the efforts to define freedom in a positive way, the definition remains elusive. In their article "The Representation of Freedom in Decisions," Stephan Lau and Sophia Walter write in desperation: "How you can objectify and represent freedom? How to view it tangibly?"⁷⁹ John Macquarrie describes freedom as something ineffable:

Freedom begins as an act of negation. It is fundamentally nothing. It has no empirical characteristics that can be observed and described. There is a sense then in which freedom remains a mystery--and by a "mystery" I do not mean something totally incomprehensible, but something that can never be fully taken in by understanding or experience . . . Freedom is the

empty space, the room that is still left for maneuver and has not yet been filled up and determined. It cannot.⁸⁰

Robert George, associates freedom with human well-being. However, the problem he sees is that “There are many irreducible dimensions of human well-being.”⁸¹

The failure to provide a definition that would clearly explain the content of freedom and its source indicates that for contemporary liberal thinkers freedom, just like a positive definition of God in Christianity, remains unscrutable. For this reason, they have to rely on a *via negativa* approach, i.e., essentially use negative definitions that tell you what freedom is not, rather than what it is.⁸²

There are some characteristics of freedom on which all researchers agree. Freedom is, for example, indivisible and universal, i.e., universality is its essential property. Freedom can not be partial; it is either is or is not. As an essential attribute of freedom, equality is also universal. It cannot be selective. Selective equality is a form of inequality.⁸³

Since liberals have only negative understanding of freedom and do not define freedom by what it is but by what it is not, they do not have a rational explanation of the universality of freedom. For the same reason, they also do not grasp the universal nature of equality. They understand equality as the absence of inequality. As a result, their pursuit of equality always focuses on specific manifestations of inequality. The strategy of their approach is to deal with inequality by eliminating its individual forms, or manifestations, one by one, rather than address the general cause that is common to all forms of inequality. In other words, they seek to treat symptoms rather than the general cause of the ailment.

The basis for this piecemeal approach is the unspoken (and unexamined) premise that by pursuing individual manifestations of inequality, they will eventually reach the state of universal equality. They offer no justification for this premise that they accept on faith. There is a problem with this approach. For one thing, one cannot attain a universal solution by pursuing particular cases. The whole is always greater than the sum of parts. Liberal doubts that this approach may be successful is never far below the surface. As President Biden remarked in his inaugural address without a tinge of pessimism:

Our history has been a constant struggle between the American ideal that we are all created equal and the harsh, ugly reality that racism, nativism, fear, and demonization have long torn us apart. The battle is perennial.⁸⁴

There is, however, another and more serious problem with the piecemeal approach. By focusing on individual symptoms of inequality, rather than on its general source, practitioners of the liberal approach have to decide which symptom they will address. They have to select a specific form or forms of inequality that they will seek to eliminate. They inevitably have to prioritize; they have to choose which cases they will address before others. In other words, their struggle for equality becomes selective. They will include some and exclude other forms of inequality. The basis for such selective decisions can only be subjective and biased. When practitioners of the liberal approach select some cases, they necessarily exclude others. In other words, by striving

to eliminate exclusion and inequality, they inevitably perpetuate exclusion and inequality. No matter how many instances of inequality they will eliminate, there will always be others that have not been chosen and that have been, for this reason, preserved. An approach that does not practice universal inclusion will always be exclusive. Those who make decisions will always be a limited group, or elite. This approach inevitably involves inequality. The very practice of this approach perpetuates inequality.

The failure to see the universal aspect of equality has another negative consequence for the liberal approach. If inequality and oppression exist today, as liberals correctly point out, the reasons for their survival must be in the present. Yet liberals do not see the general, universal, and timeless aspect of inequality. They remain blind to perennial causes of inequality and do not factor them into their solutions. The failure to appreciate the timeless aspect of equality affects the way liberals deal with inequality today. They often explain inequality by conditions that no longer exist but are hidden somewhere in the past. For example, liberals correctly point out that black Americans still face discrimination today. However, they explain the continued inequality that affects black Americans by conditions of slavery, even though those conditions no longer exist.

This explanation sees the cause of inequality of black Americans to be distant and, as a result, unreachable, elusive, and ephemeral. The enemy of equality is hard to pin point and consequently to deal with effectively. This perception prompts solutions that are fanciful and irrational. Liberals, for example, propose that in order to eliminate inequality of black Americans today, we have to change the past; hence such voodoo proposals as to use reparations to redress injuries of slavery. Thus by offering reparations to black Americans, they expect to eliminate current inequalities. Liberals make similar proposals in cases of LGBTQ folks. Such remedies are worse than the disease. For one thing, they are ineffective because they address the consequences, not the cause. They are also harmful because they generate inequality, antagonism, and controversy. They can never be part of the solution. There is a fundamental philosophical problem that makes such remedy completely unworkable. The past is what has already happened. One has no access to it. There is simply no way one can change the past. Time travel may be an attractive hypothesis, but it has no practical significance. This philosophical problem in the liberal approach is yet another reason that makes it ineffective.

The above observations reveal the general problems with the liberal approach in dealing with inequality. There can be only one conclusion that follows from these observations. The liberal ideology and practice of liberation inevitably lead to exclusion and inequality. The Equality Act is a product of the liberal approach and inherits all its flaws. For this reason, just like the liberal ideology and practice, the Equality Act is little more than a political gimmick—a publicity trick that will never be able to eliminate inequality, but will only serve to perpetuate its existence.

The Bunching Problem

Having a wide reach is a key to success in politics: the broader the support base, the better chances are for succeeding. Focusing on specific forms of inequality benefits particular groups and cannot secure broad support. Liberals understand this problem.

For this reason, they try to bring together many diverse groups that have different interests and not much in common.

Specific forms of inequality affect only relatively small groups of people. This fact is particularly significant in the case of sexual minorities and gender dissidents who in general represent a very small percentage of the population. Their share in total populations is very small. According to a 2022 Gallup poll only 7.1% of adult Americans identify as LGBTQ.⁸⁵ The Household Pulse Survey identified 1.03% of the US population as transgender.⁸⁶ In order to forge a coalition to promote LGBTQ rights, liberals have united diverse factions of the LGBTQ community that may otherwise have little in common except for the fact that they have all experienced some form of discrimination and oppression. The British Equality Act of 2010, for example, included nine protected characteristics: age, pregnancy and maternity, disability, race, gender reassignment, sex, faith and belief, sexual orientation, marriage and civil partnership. Maintaining coherence among different groups with these characteristics was not easy; it complicated the arguments in support of the act.⁸⁷

Lesbians, gays, bisexuals, transgender, and queer (and there are even more groups than listed here) are members of one coalition. Beyond that they have few substantive interests and characteristics that brings them together. Transgender individuals are particularly exemplary in this respect. They really stand out in relation to the rest of the LGBTQ coalition and differences between them and the rest of the LGBTQ coalition are often a source of tensions. In their contribution on the subject of LGBTQ rights Gilbert Gonzales and Kyle A. Gavulic, for example, discuss numerous disparities within the LGBTQ movement.⁸⁸ The only commonality that all members of the LGBTQ coalition have is the fact that they have all historically experienced discrimination and oppression. Otherwise, there is little that can maintain strong bonds of solidarity among them. The only reason that liberals bring them together is to increase the size of the coalition. Liberals even try to bring racial minorities into the LGBTQ movement, even though racial minorities do not necessarily share LGBTQ concerns and may even have some traditional residual hostility toward sexual minorities and transgender dissidents.

Bunching diverse groups together does offer some advantages. It increases the size of a coalition and its resources. Bunching also makes possible to use diverse organizational structures with different capabilities and to rely on the use of much wider support networks.⁸⁹ However, bunching also creates problems. It brings together groups that may be incommensurable. Members of such coalitions are rarely aware of or feel strongly about the bonds that the organizers are trying to forge among them. Specific differences may prevail over commonalities. Members of such coalitions may even have serious conflicts with each other that threaten the integrity of the entire alliance. For example, liberals are trying to broaden the coalition in support of LGBTQ rights by co-opting black Americans into it. However, black Americans have little interest in or sympathy for transgender or queer issues.

Bunching has also provoked criticism and opposition to LGBTQ rights. David Cloutier, a professor of theology at the Catholic University of America, points out that the bishops refuse to support LGBTQ because of its “conflationary” nature.⁹⁰ As Cloutier explained:

The language “LGBTQ” conflates a set of categories that are different in kind. They are all different things. The very language isn’t clear about what is included and why it’s included. I think the vagueness that is generated by the term leads them [the bishops] to be wary about the ability of the law to make various kinds of distinctions that the bishops would want to be made.⁹¹

Transgender theory and practice particularly stand out within the LGBTQ coalition. As *TransHub* explains: “While lesbian, gay and bisexual are sexualities, trans is a description of gender instead. Trans people can be straight, gay, bisexual, lesbian, queer, or any other sexuality, just like cis people can.”⁹² Gender theory is confusing. Many of its aspects are vague and in need of elaboration and clarification. It presupposes a new anthropology that many find unacceptable. The transgender practice and its implications create additional controversies that the rest of the coalition does not necessarily appreciate or welcome. It leads to conflicts that are specific to the transgender. The approach toward resolving these conflicts must differ from the one that is to be used in cases of gays, lesbians, and bisexuals. Conflicts related to the transgender movement create problems that make protecting the rights of sexual minorities more difficult. In March of 2021, for example, during the first hearing in the Senate Judiciary Committee of the Equality Act in which its authors included (bunched together) diverse categories (such as people of color, immigrants and religious groups) lawmakers focused their arguments against the bill mainly on the issue of transgender males in women’s sports.⁹³ These examples illustrate the fact that disparities due to bunching make the Equality Act more controversial, which leads to more pressure on the coalition as a whole and does not help its overall agenda.

Conflation of Human and Civil Rights

As has already been mentioned, the most contentious issue related to the Equality Act is the claim that it undercuts freedom of religion. The particular paragraph that many cite in support of this claim reads as follows: “The Religious Freedom Restoration Act . . . shall not provide a claim concerning, or a defense to a claim under, a covered title, or provide a basis for challenging the application or enforcement of a covered title.”⁹⁴ This particular provision of the Act clearly puts LGBTQ right on a higher plane than freedom of religion. Neither the Equality Act, nor contributions by its supporters explain why they hold LGBTQ rights to be superior to the rights that protect religious freedom. They simply state as a fact that the protection of LGBTQ rights is of paramount importance. No other legal act, including RFRA, can in anyway restrict the implementation of LGBTQ rights. This fact shows that while the Act affirms the ultimate importance of the principle of equality, it also denies the principle of equality by proclaiming LGBTQ rights are superior. Thus, the Equality Act appears to contradict itself: on one hand, affirming the principle of equality and, on the other, perpetuating inequality.

There are two principal categories of rights: human rights and civil rights. Human rights are absolute, universal, and non-negotiable. Civil rights are temporal and subject to interpretations, restrictions, and limitations. Religious rights are clearly in the

category of civil rights. The fact that the Equality Act places LGBTQ rights above religious freedom suggests that the authors do not see them as civil rights, but rather as human rights, which makes them absolute, universal, and subject to no restrictions. That is the only way we can understand the injunction that they cannot be restricted by freedom of religion.

Many LGBTQ documents and the Equality Act do not clearly differentiate between human rights and civil rights. In fact, they often use these two categories interchangeably, which creates theoretical and practical confusion with serious implications. The lack of a clear differentiation makes possible to shift rights from one category to another with little or no justification and for reasons of political expediency that are subjective and arbitrary.

The failure to differentiate human rights from civil rights is not new and it does not relate exclusively to the Equality Act. The American Declaration of Independence makes this distinction. In order to justify the rebellion of colonies against the British crown, the Declaration invokes human rights. The relevant and often-cited passage of the Declaration reads as follows: “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.”⁹⁵ This passage warrants several observations:

1. The unalienable rights the Declaration cites (“life, liberty, and the pursuit of happiness”) are absolute and universal. Their source is the Creator.
2. All humans without exception are entitled to these rights by virtue of being human. They cannot be deprived of these rights that the Declaration calls unalienable.
3. In the mind of those who signed the Declaration, God is inscrutable. The human mind is incapable of understanding God and, for this reason, cannot provide a rational justification for the existence of the rights that the Declaration defines as fundamental. The Declaration views these rights as self-evident; as such, they must be accepted on faith.

The Declaration further reads that in order to secure these fundamental rights, “governments are instituted among men, deriving their just powers [rights] from the consent of the governed.” The Declaration stipulates that the people have the right to abolish these powers instituted by the government and “institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to affect their safety and happiness.”⁹⁶ Obviously, the Declaration tries to distinguish between two kinds of rights. One kind is rights that are absolute, universal, and unalienable. These rights cannot be changed. The other kind is rights, or powers, that are temporal. Their source is not God but people and the government formed by the consent of the people. These rights are not absolute and not universal. They can be changed and they are alienable.

The Declaration makes clear that the two kinds of rights are interrelated. It also clearly indicates that they are very different. The temporal rights are derivatives from the

absolute and universal rights. Their purpose is to safeguard the latter. The intention of the Declaration is clear: these two categories of rights should be treated differently; they are not to be conflated. Clearly, the Declaration considers drawing this distinction to be important. The differentiation presents some problems because the source of human rights is inscrutable and defies rational understanding, which makes anchoring human rights difficult. One thing is clear, though, universal human rights are fundamental and non-negotiable since they originate in God who is absolute and universal. The temporal, or civil, rights are negotiable; they are also subject to restrictions and limitations. All rights and freedoms that belong to the category of civil rights are equal. Therefore, civil rights are equal and cannot be used to infringe on each other or against each other.

The difference between rights that are absolute and universal, on one hand, and rights that are temporal, or civil rights, has become more obscure in the documents dealing with human rights that have been subsequently adopted, popularized, and used in our contemporary discourse. One example of this change is the Universal Declaration of Human Rights adopted by the United Nations on December 10, 1948.⁹⁷ There are some significant departures in the Universal Declaration from the Declaration of Independence. The U.N. Declaration replaces the pursuit of happiness—a universal aesthetic principle—with the vague right to “security of person” that the Declaration of Independence clearly includes into civil rights where it says that governments are responsible for securing the safety of people.

Just like the Declaration of Independence, the UN Declaration does not explain the source of the rights it proclaims as fundamental. However, in contrast to the former that traces the source of fundamental rights to God, the source of fundamental rights in the Universal Declaration is nothing more than a consensus among the governments that signed this Declaration. Consensuses are exclusive. They emphasize commonalities and suppress differences. For this reason, they are subjective and cannot be a source of universality.

The Universal Declaration does not distinguish human rights from other kinds of rights and conflates all rights into one undifferentiated mess. In addition to the rights to life, liberty, and security of person, the Universal Declaration also puts on its list of fundamental human rights the right to free speech, freedom of assembly, freedom of expression, freedom of opinion, the right to education, the right to be recognized as a person before the law, the right to a fair trial, the rights to privacy, the right to freedom of movement and residency, the right to asylum, the right to marry and create a family, the right to be free from forced marriage, the right to own property, the right to social security, and even the right to rest, leisure, and limited work hours. No doubt that all these rights are important, but most of them definitely belong to the temporal sphere of civil life. Therefore, they cannot be and in fact are not absolute and universal. As such, they cannot be fundamental and are, consequently subject to negotiations, limitations, and restrictions. To make things even more confusing, the Universal Declaration attributes the property of being fundamental to all rights listed in it. The Universal Declaration does not explain what fundamental rights are and what makes them fundamental. Even the United Nations organization is not particularly sure whether LGBTQ rights and human rights belong together. As Juneau Gary and Neal Rubin write:

. . . a crucial question before the world community today is whether gay rights are included under our basic human rights. At the United Nations, this question is slowly taking center stage, but it is not at all clear what the U.N. deliberations will yield from the linkage between gay rights and human rights.⁹⁸

The confusion is not a result of mere sloppiness; it is a result of muddled, subjective, and arbitrary thinking. There is more evidence from the Universal Declaration that supports this conclusion. Its characteristic conception of freedom and liberation is a negative one. It regards freedom as the absence of constraints and liberation is the process of elimination of constraints. The U.N. Declaration does not see the universal and positive source of freedom. Consequently, it does not see a common source that deprives people of freedom and equality. It can identify only specific forms of exclusion, inequality, and oppression. As follows from the Declaration, the path to liberation can only pursue the elimination of specific forms of exclusion and disabilities. Without identifying the general cause of exclusion and inequality, the only course of remedial action that the Declaration opens is the treatment of symptoms, rather than to cause of the ailment (i.e., inequality) that afflicts our civilization. One can also see the exclusive nature of the UN Declaration in its very narrow view of humanity. In the spirit of the Enlightenment tradition, it declares that the definitive features of human nature are reason, rationality, and conscience. This view shows its unmistakable connection with the Enlightenment and has been criticized as narrowly Eurocentric.

The multiplicity of rights listed in the Declaration reveals chaos. Certainly, one cannot view the right to life on par with the right to a fair trial, the right to privacy, or the right to leisure and limited work hours. No doubt these latter rights are important, but under no condition one can see them as fundamental, absolute, and universal. Obviously, the authors and signatories of the Universal Declaration realized the need for some order in this chaos. For this reason, they felt compelled to introduce a hierarchy of human rights where some human rights are “perceived as superior, more intrinsically valued than others.”⁹⁹ However, the hierarchy has not solved the problem of chaos. As Stephen Hunt has perceptively noted, in the practice of human rights “further questions arise” as to whether some rights “are advancing up an abstract hierarchy of rights,” while others “are descending in the context of secular environments.”¹⁰⁰

The dynamic property of the hierarchy creates another problem. As has already been pointed out, the politics of rights pursues specific forms of discrimination and disabilities. As politics evolves (and it always does), it gives rise to the problem of universal application of rights—which rights do and which rights do not have universal application. As a result of changes in political priorities, changes also occur in the relative status of rights: rights that previously had low standing in the hierarchy and were considered a priority have subsequently been elevated to a higher status with preferred priority. Such was definitely the case with LGBTQ rights that are currently treated as universal human rights. These politically motivated shifts present a theoretical and practical problem that the practitioners of the politics of rights had to solve. One such solution is what liberals call “targeted universalism.” In accordance with this solution, political expediency is the way to define the status, not the intrinsic value of the rights in question. John A. Powell and his colleagues at the Haas Institute for a Fair and Inclusive

Society at UC Berkley provide a cogent, if not convoluted, definition of “targeted universalism.” In their view, targeted universalism:

. . . is an alternative framework to design policies and implementation strategies to achieve policy goals. Targeted universalism is sensitive to structural and cultural dynamics in ways that often elude both targeted and universal strategies. As such, it is also a way of communicating, a vernacular to build support for inclusive policies.¹⁰¹

Even in this convoluted form the definition clearly conveys the meaning of the term: targeted universalism is what political expedience requires to be represented as universal.

The tendency to conflate human and civil rights also creates practical organizational problems. For example, the Equality and Human Rights Commission (EHRC) in Great Britain faced major difficulties trying to bring all rights together within the framework of this organization. The commission originated in the 1990s as a “Human Rights Commission.” Its mission was to incorporate the European Convention on Human Rights (ECHR) into domestic British law through separate plans for a “Single Equality Body.”¹⁰² However, a major problem has emerged shortly after the creation of the commission. Many governmental and non-governmental agencies expressed concerns about a complex array of differing equality provisions in which some sections of the public had significantly greater protection from discrimination than others. In other words, they saw the emergence of a hierarchy that would undermine the very notion of equality on which the new body was to be based. For this reason, members of the taskforce decided not to issue the final report with recommendations but only published a record of their discussions.¹⁰³

The Equality Act Against Religious Freedom

The conflation of human rights and civil rights helps understand the main controversy created by the Equality Act—criticisms that the Act violates religious freedom. At the heart of the controversy is one provision included in the Act. Following a long list of various injuries and disabilities suffered by members of the LGBTQ community, the Act includes the following provision:

SEC. 1107. CLAIMS. The Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.) shall not provide a claim concerning, or a defense to a claim under, a covered title, 6 or provide a basis for challenging the application or enforcement of a covered title.¹⁰⁴

Numerous religious leaders and church organizations, including the U.S. bishops, the National Association of Evangelicals, the Church of Jesus Christ of Latterday Saints, the Seventh-day Adventist Church and the Coalition for Jewish Values, have stressed that the Act lacks religious accommodations. Critics have also noted that the Act is the first federal legislation to exempt itself from any action under the Religious Freedom Restoration Act.¹⁰⁵ Dr. Randy Lancaster-Short, a black reverend with family connections

to heavyweights in the original civil-rights movement who serves as the political chair for the Gone 2 Far movement put it very simply. He said that the bill “will criminalize the Christian faith” and “deny religious belief as a justification for not complying” with its provisions.¹⁰⁶

According to Monica Burke with the Center for Religion and Civil Society at the Heritage Foundation, the Equality Act and laws based on it will have a disastrous impact on faith-based foster care and adoption agencies. Many such agencies in Pennsylvania, New York, Illinois, California, Massachusetts, and the District of Columbia have already closed down, further “exacerbating our current foster care crisis.” Catholic hospitals are already facing suits for refusing to surgically mutilate individuals who are confused about their gender. Teachers have been fired for not using gender-orientated personal pronouns. Biological males are competing against biological female and beating all women athletic records. Homeless shelters for women also face legal suits for refusing to allow transgendered biological males staying at shelters for biological females. Parental rights are under attack since “adherence to radical gender ideology” is becoming “a new litmus test for parental fitness.”¹⁰⁷ The Act, Burke claims, does not promote equality. She explains:

The federal Equality Act would only make this bad situation worse. The bill would pose an existential threat not only to religious organizations from churches to schools to charities, but also to secular institutions as well—not to mention the livelihoods of individuals who do not agree with new sexual norms or gender ideology. That's why a federal sexual orientation and gender identity law with religious exemptions is still bad policy. That strategy only protects the interests of a few and imposes a bad law.¹⁰⁸

Even some gay activists oppose the Equality Act. Gregory Angelo, former leader of the homosexual Log Cabin Republicans—a national organization that represents LGBT conservatives. In one of his contributions, Angelo writes:

Don't be fooled by the name. The Equality Act is legislation that would compromise American civil rights and religious liberty, as we know it. All reasonable Americans, especially gay Americans who support pluralism and tolerance, should oppose it.¹⁰⁹

Angelo, who promised earlier that legalization on gay marriage would not affect Christians, complains that the LGBTQ activists behind the Equality Act are making him a liar.¹¹⁰

In response to these accusations the proponents of the Equality Act charge that critics are using scare tactics and engaging in fear mongering. They also argue that most concerns that critics express have little to do with reality and are in the vague area of hypothetical speculations. They deny the allegations that the Act is directed against religion. On the contrary, they maintain, the Act merely reinforces the traditional separation of church and state; it attempts to “strike a balance between religious freedoms and civil rights” and, in fact, preserves “certain exemptions from CRA [the Civil Rights

Act of 1964], such as the right for religious groups to discriminate in hiring positions for teaching and preaching.”¹¹¹

Americans United (AU), a leading organization that supports the Equality Act, counters criticisms that the Act promotes “special privileges” by arguing that being free from discrimination is not a special privilege. The bill, AU contends, “merely adds sexual orientation and gender identity to the list of protected classes that already exist in the Civil Rights Act and would extend to members of the LGBTQ community the same protections that many other Americans take for granted.”¹¹² In an official statement on behalf of AU Rachel Laser, president and CEO of this organization, writes:

Today, despite our country's recent strides toward equality, LGBTQ people are still vulnerable to discrimination that affects their safety, families, livelihood and daily experiences. This is true for two main reasons: the patchwork of current laws doesn't provide adequate protections, and where such protections do exist, opponents of equality have too often succeeded in claiming a right to discriminate in the name of 'religious freedom.’¹¹³

Responding to accusations that the Act is a staged assault against religion, Robert Boston, Senior Adviser for Americans United for Separation of Church and State and Editor of *Church & State* magazine, explains:

But that's not what the act would do. It's designed (in part) to make it clear that owners of businesses are expected to serve the entire public, a concept that has been ingrained in U.S. law for decades. Restaurants, hotels or stores cannot summarily refuse to serve people on the basis of race or religion, and many Americans agree that it's time to extend protections to members of the LGBTQ community.¹¹⁴

The Equality Act, AU claims, simply closes “longstanding gaps in existing civil rights laws by barring sex discrimination in federally funded programs and businesses open to the public. According to AU, the Act would expand equality protections against discrimination on the basis of race, religion and national origin in public spaces.”¹¹⁵

Rather than attack religious freedoms, Boston contends, the Act will merely stop the “Religious Right's aggressive agenda to redefine and weaponize ‘religious freedom.’”¹¹⁶

Many LGBTQ activists reiterate these same arguments. For example, Camden Hargrove who is the national organizing manager for the National Black Justice Coalition, one of the country's leading civil rights groups for black LGBTQ people, writes: “Not all people currently have all of the rights . . . It [the bill] is something that could create immediate, lasting change for an entire community of people and all of their family and loved ones.”¹¹⁷ In her contribution for *The New York Times* Cecilia Gentili, a trans activist, writes: “Some people believe that in respecting my rights, they will lose some of their own. But equality is an endless cake. The more we eat from it, the more there is to share.”¹¹⁸

Rachel Laser echoes many voices on the left when she argues that the commotion around the Equality Act is merely a ploy by the religious right to suppress the LGBTQ

community. The goal of the Equality Act, in her view, is fundamentally about keeping religion and government separate.¹¹⁹ She blames the religious right for striving “to redefine ‘religious freedom’ for the purposes of imposing their views on the rest of us in the LGBTQ equality debate.” “If we want to put an end to this strategy,” Laser continues, “we must support critical legislation like this that insists on holding our country accountable to the American ideals of both equality for all and religious freedom.”¹²⁰

The partisan nature of these exchanges makes very difficult to form an objective view. Both sides make important points. Few, even among opponents of the Equality Act, would dispute that religion should not be used for discrimination. Also, one must agree with the proponent of the Equality Act when they say that since the Act has not been adopted, claims that it may have negative effects on the capacity of religious organizations to pursue their goals are, indeed, largely hypothetical at this point. There are few direct proofs for such claims. However, these hypotheses are not outside the realm of possibilities.

The arguments both sides use in this controversy are undoubtedly biased in nature. Many facts that are used by the two sides are selected to support their partisan contentions. Therefore, the outcome of the reliance on their argumentations is that one inevitably begins to gravitate toward taking sides. One can, however, avoid this outcome by focusing on non-partisan evidence that makes possible to go beyond partisan rivalry and gain an objective view.

Before proceeding any further one important observation is in order. The Equality Act builds on the Civil Rights Act of 1964; it extends the provisions of CRA to the LGBTQ community. The connection with CRA is one indication that the Equality Act is primarily about civil rights, not about fundamental human rights. Also, freedom of religion, sexual orientation and gender identity are ultimately about self-expression. All rights related to self-expression belong to the domain of civil rights and they are equal to each other. The conclusion that follows from this observation is that neither religious freedom nor LGBTQ rights can claim primacy vis-à-vis each other.

The critical paragraph of the Equality Act quoted earlier clearly indicates that, in the mind of the authors of the Act, the status of LGBTQ rights is superior to that of freedom of religion since the provisions of RFRA cannot be invoked to protect freedom of religion in cases that involve also LGBTQ rights.¹²¹ The text of the Equality Act is specifically inimical to religion. It clearly states: “The Religious Freedom Restoration Act . . . shall not provide a claim concerning, or a defense to a claim under, a covered title, or provide a basis for challenging the application or enforcement of a covered title.”¹²² The text of the paragraph cannot be any clearer: the provisions of RFRA cannot be used to defend religious freedom in cases when LGBTQ rights clash with religious rights.

If LGBTQ rights cannot be disputed or negotiated, they cannot be in the domain of civil rights. So, what category of rights then do they belong to? The only other category of rights that we know is human rights and indeed they are superior to civil rights. Therefore, in order to support this controversial paragraph, the Equality Act must place LGBTQ rights into the category of human rights and thus proclaim them as absolute, universal, and non-negotiable. In fact, many human rights organizations—for

example, the Human Rights Campaign—do identify LGBTQ rights with human rights, which is hardly a universal view.¹²³ Even the UN does not quite support this view.¹²⁴

Neither the Equality Act nor contributions that explicate its provisions offer any explanation for elevating LGBTQ rights to the status of human rights. They simply present this decision as a fact that should be considered as self-evident--something that does not need any justification and must be accepted on faith. This slight of hand creates a legal chaos, and chaos always results in tensions, controversies, and conflicts.

The supporters of the Act are not blind to the fact that their claim is tenuous. However, they justify this claim by references to discrimination and oppression that the LGBTQ community has experienced for a long time and continues to suffer. However, the logic of this justification is flawed. The fact of oppression and discrimination cannot be used as a justification for classification LGBTQ rights as human rights, i.e., elevating them to a totally different category. The proponents of the Equality Act cannot simply pronounce LGBTQ rights as superior to all other civil rights, including the rights to religious freedom. One cannot arbitrarily decide to prioritize LGBTQ rights vis-à-vis other civil rights simply because members of the LGBTQ community have experienced and continue to experience injuries to their civil rights. There may be political or emotional reasons for prioritizing LGBTQ rights; but there is no legal justification for such prioritization that is exclusive by nature and violates the principle of equality of all civil rights. Thus, in the name of equality, the Equality Act discriminates and suppresses equality of all civil rights, which results in inequality.

Although the Equality Act has not been adopted and all claims as to adverse consequences that its adoption may possibly produce are hypothetical, there is some empirical evidence that confirms apprehensions expressed by the opponents of the Act—i.e., that the Security Act might indeed be used against religious freedom. The legal case against Mr. Jack C. Phillips, the owner of Masterpiece Cakeshop in Lakewood, Colorado, shows that this apprehension indeed is at least to some degree justified. The details of the case are well known and need not be rehearsed here in full.¹²⁵ However, a brief overview will be helpful in understanding the substance of the case. The plaintiffs (a gay couple) accused the defendant (Mr. Phillips) of sexual discrimination because he had refused to make a cake for the gay couple's wedding. The plaintiffs claimed that the defendant broke the Colorado law that prohibits discrimination on the basis of sexual orientation in places of public accommodation. The defendant argued that as a Christian he did not believe in same-sex marriages and that by making a cake for the gay couple he would be violating his religious convictions.

The controversial nature of this lawsuit mesmerized the media for several years. The case eventually went to the Supreme Court that decided it for the defendant. Yet acrimonious public exchanges continued even after the Court's decision. The supporters of the plaintiffs insist that the suit is about discrimination and has little to do with freedom of religion. Religious protections, they maintain, could not be used in cases of discrimination. Those who back the defendant argue that the case is about religious freedom.

There are some facts in the files that, indeed, support the view that the defendant's refusal was motivated by his religious beliefs, not the alleged intention to discriminate against the gay couple. The Supreme Court's summary of the case cites the exact words of the defendant in his initial response to the gay couple. "I'll make," he said, "your

birthday cakes, shower cakes, sell you cookies and brownies. I just don't make cakes for same sex weddings.”¹²⁶ In other words, the defendant did not refuse to serve gay customers; he refused to use his creative gifts only in instances that involved gay marriages because that would go against his religious beliefs. His motivation was to remain loyal to his Christian faith. The plaintiffs could go to many other bakeries in the area—over 200 of them, according to a Yelp search¹²⁷—and obtain the service they wanted. However, they chose a different path. They wanted to make an example. They wanted to force the owner to violate his sincerely held beliefs and to comply with their values. That would clearly violate his religious freedom. The plaintiffs and their supporters obviously felt the case was not about two kinds of civil rights associated with self-expression that are absolutely equal. They insisted that the rights of the gay couple were to supersede the defendant's rights of religious freedom.

The facts of this case were not sufficient to prove the case of discrimination. As Samuel Staley summarizes:

The baker's individual actions may have “humiliated” the gay couple as individuals, but their personal offense did not rise to the level that bakers, artists, or even restaurant owners must be compelled to create customized products for them when the request conflicts with their religious beliefs or free expression.¹²⁸

In trying to prove discrimination, the plaintiffs and their supporters used facts selectively and exclude the facts related to the defendant. Their proof pivoted on one unspoken and unjustified assumption that their rights were superior to those of the defendant. This approach is definitely exclusionary.

Phillips victory in the case against the gay couple was not the end of his woes. In 2019 a transgender lawyer filed a suit against him for refusing to make a cake that would celebrate his transition. According to the court filings, the attorney, Autumn Scardina, also demanded that the custom cake he ordered should depict Satan smoking marijuana. When Mr. Phillips declined, Scardina sued him and won the case in the lower court of Colorado that decided for the plaintiff. Phillips appealed to the Colorado Supreme Court that finally, only in the fall of 2023, decided to hear the case. While the fact that the court agreed to hear the case is certainly a small victory for Phillips, it is no guarantee that the court will decide in his favor and that he will not have to go again to the U.S. Supreme Court. The two lawsuits against Mr. Phillips show that LGBTQ activists are determined to go to any length and use all kinds of pressure, both emotional and financial, to force Mr. Phillips to relent, forego his religious beliefs, and submit to their will. They want to use him as an example that would intimidate others like him.¹²⁹

Public education policies offer numerous examples of the approach that favors the LGBTQ agenda. As is well known, the separation of church and state prohibits churches and religious groups to be in any way involved in public education. At the same time, school curriculums offer a wide variety of courses and activities that promote the agenda and interests of the LGBTQ community. Emma Nottingham uses primary schools in Britain as an example of how schools can promote the LGBTQ agenda.¹³⁰

The policies used in many American public schools for advancing the LGBTQ agenda stand in violation of the principle of fundamental equality of LGBTQ rights vis-à-vis religious rights. While the educational establishment and institutions in America do not allow religious organizations anywhere near public schools, they at the same time offer many opportunities for exposing children and adolescents of school age to views that favor the LGBTQ ideology. Courses that promote the LGBTQ agenda are abundant in the curriculums of American public schools. Many “how to” guides instruct teachers on ways to bring LGBTQ themes into their classrooms. A popular site for educators Faculty Club offers, for example, extensive and elaborate manuals on how to incorporate LGBTQ materials into school instruction.¹³¹ School administrators sponsor various pride observances and events that celebrate LGBTQ. While schools do not permit prayer on their premises, they give permissions for various performances, including drag queen shows that popularize LGBTQ life style and practices. The common venue for introducing LGBTQ themes is classes in sex education that are a requirement in the national curriculum. There have been instances of complaints that teaching “LGBTQ issues” amounted to indirect discrimination on ethnic and/or religious ground.¹³²

These are just some examples showing that the dominant approach views religious rights as inferior to LGBTQ rights. In light of this conspicuous display of unequal treatment, it hardly comes as a surprise that many opponents of the Equality Act are uneasy about the fate of religious freedom if the Equality Act becomes a law of the land. The fact that liberals in general do not favor religion makes religious organizations and communities even more apprehensive. Liberals view religion mostly as superstition that should have no place in secular culture. Many liberals even consider that the impact of religion on society is largely harmful since it, in their view, impedes progress. For this reason, they insist that the influence of religion should be constrained and it should be disallowed from many spheres of our life.

Liberals generally see themselves as heirs to Humanism and the Enlightenment tradition—the two major intellectual currents that largely viewed religion as their adversary. Liberals have a profound commitment to both Humanism and the Enlightenment and have thoroughly embraced their views, attitudes, and values—the fact that compels them to oppose religion and even to eliminate its influence completely.

Liberal hostility toward religion and religious institutions is well known and thoroughly documented. Voltaire, Rousseau, Diderot, d’Alambert, and later Feuerbach, Marx and other prominent thinkers in the Enlightenment tradition were very critical of religion. Although their criticisms have varied and often focused on the church rather than on religion, they still saw reason and science to be the only possible foundation upon which humans must build their future. Some liberals conceded that religion could have a legitimate place--albeit a very limited one--in modern society; others, like Marx, Lenin, and communists, thought that religion was little more than “the opiate of the people” and it should be relegated to the proverbial “trash heap of history.” Although liberalism eventually made peace with religion,¹³³ liberals have absolutely no doubt that our laws and norms must be guided by reason and rationality, with as few religious inputs as possible. They have already secured the commanding role of secular knowledge and science in shaping our way of life, often reducing religion and religious values to being merely insignificant extras.¹³⁴

Aversion to religion is strong among contemporary liberal elites who would like to see a complete demise of religion. This attitude is very visible among supporters of the Equality Act. Rob Boston, the editor of the magazine *Church & State* and a board member of the American Humanist Association, speaks quite openly and aggressively about religion in his numerous contributions. Humanists, he writes in one of his articles, “are clear on the question of god’s existence: All available evidence indicates that there isn’t one. People are hungry for the next step, and the AHA is providing it.”¹³⁵ Boston further insists that Humanism “must provide an ethical framework that guides daily life—and that means addressing a host of issues—or it is of little value.”¹³⁶

Of course, Boston is a firebrand who does not shy away from jarring radical statements. However, one does not hear many liberal voices that offer anything in defense of religion. They may be more restrained and more cautious in their rhetoric, but they certainly are no less staunch in their anti-religious convictions. Their views and attitudes toward religion are warlike. They often see themselves as victims of aggression that comes from religious institutions and believers. They rarely miss an opportunity to play this passive-aggressive game in their comments on religion and often display what one might call an unabashed “siege mentality.”

Liberal proponents of the Equality Act are convinced that over at least the last four decades, behind various legislative acts that restricted LGBTQ+ rights, there has always “lurked the heavy hand of fundamentalist religious groups, eager to convert their repressive theological views into law.”¹³⁷ They refuse to give any benefit of the doubt to concerns and reservations expressed by their opponents. They refuse to see that their proposals may inspire fear among religious leaders and ordinary believers. They refuse to consider their arguments that the Equality Act poses a threat to religious freedom. Despite all the arguments that she has heard from the religious community, Rachel Laser nevertheless insists that the proponents of the Act mean no harm to religion. “[W]e’re supporting the Equality Act,” she insists, “because the bill is fundamentally about keeping religion and government separate.”¹³⁸ She and others completely ignore the fact that the resistance to their efforts in promoting dubious gender ideology and unconventional forms of sexuality over the four decades has not come exclusively from religious extremists, but also from many mainstream churches, religious leaders and institutions, and even ordinary believers.

The bias that liberals have toward religion makes impossible for them to even see this fact, to say nothing about reflecting on it. All they see is attacks against them on all sides. Rob Clucas is one of many who claim: “There is no obvious desire for the legislature to challenge the power of organised religions in their own domains at present, but instead there are indications of religious challenge to proposed secular re-orderings such as civil marriage.” He further elaborates:

Sexuality and religion rights are unequal due to existing structural inequalities and the unrecognised power of the heterosexual imaginary. Resistance to sexuality rights on the part of the religious, especially the institutional Church, is entrenched. Advances in equality for gay people are likely to need significant political mobilisation and persistence—and the battle is still uphill.¹³⁹

This blindness to the obvious is simply astounding. Rob Boston sees that all he has been doing in the thirty-five years of his career is simply to defend the separation of church and state since “church-state separation intersects with a host of human rights and important policy initiatives.”¹⁴⁰

The use of scare tactics and apocalyptic visions is common among liberals. They argue that if secular humanism does not prevail, democracy, racial equality, LGBTQ rights (particularly transgender rights), and women’s rights will be under a threat of complete elimination. Like biblical prophets liberals predict doomsday, and they are surely mobilizing for it:

Now picture one with the issues humanists care about resting on top of it—reproductive freedom, LGBTQ+ rights, secular public education, the rights of non-believers and non-Christians, women’s rights, the freedom to learn, and so on. If that wall is undermined to the point of collapse, all those rights will fall as well—and there will be nothing to keep religion from being used as the basis for public policy.¹⁴¹

The liberal response to the threat they perceive is mobilization. Rachel Laser explains:

Why did we decide to mobilize all of you, our thousands of members and supporters, to advocate on its [the Equality Right] behalf? In part, it was a straightforward decision because of the bill's explicit language prohibiting the misuse of the Religious Freedom Restoration Act to override the bill's protections.¹⁴²

According to liberals, there is only one way to understand and approach human rights. The approach should be based exclusively on a secular foundation; this approach should completely religion. Rob Clucas, for example, offers this reflection: “There is an oppositional quality to the Church’s self-identity in relation to secular society as well as to homosexuality which I suggest makes voluntary change along the lines of secular understandings of human rights unlikely.”¹⁴³ If voluntary action is impossible, then obviously the only other option is war. War cannot possibly resolve the conscience crisis; war can only make the conscience crisis more acute and dangerous.

Overcoming the Conscience Crisis

The moral commitment to providing equal protection of citizens’ rights is at the heart of American civilization. The conscience crisis represents the failure to fulfill this commitment. Our country is failing to protect the rights of sexual minorities and gender non-conformists, on one hand, and religious freedom, on the other. The conscience crisis is a critical moment in American history. The survival of American civilization vitally depends on resolving this crisis.

Anchoring Human Rights

As has been shown earlier, the critical factor that has produced the conscience crisis is the failure to differentiate fundamental human rights and civil rights. The American Declaration of Independence draws a clear distinction between these two categories. It anchors human rights in God and civil rights in human will. Human rights are absolute, universal, and unalienable, while civil rights are temporal, negotiable, and subject to limitations and restrictions. This important difference drawn in the Declaration has later disappeared. It is not present, for example, in the Universal Declaration of Human Rights. According to the Universal Declaration, the source of human rights is not God, but the consensus of the signatories to this document. The reference to God in the Declaration of Independence was critical for the distinction between the two categories of rights. The removal of God from the Universal Declaration de-anchored human rights; the distinction between human rights and civil rights has disappeared. The disappearance has created confusion since the categorization of rights has become a matter of human preference and political expedience.

There is a realization that human rights need a more solid foundation than a consensus based on human will that is notoriously volatile and changeable. Many theorists have proposed that human rights should be anchored in human nature.¹⁴⁴ This proposal has not been successful. Anchoring human rights in human nature is different than anchoring them in God. God is inscrutable. Divine authority does not have to be explained; it relies on faith for its justification and proof. Human nature, by contrast, is a rational and even naturalistic concept that calls for a rational justification and an empirical verification. Explaining human nature has proven to be a formidable task. Even a stable definition of human nature has proven to be elusive.¹⁴⁵

There are many diverse definitions of human nature.¹⁴⁶ Despite their differences they agree on several key points. They all recognize that human nature is universal. It is unchangeable and does not depend on a particular time period, location, or culture. Human nature is common for all human beings. Current definitions also agree that although humans may share many features with animals, human nature is unique. The human mind is the most important feature that distinguishes humans from animals. The mind can perform symbolic operations. Indeed, many animals have a capacity to perform symbolic operations. The sheer volume and complexity of operations that humans can perform by far exceed what other animals can do. Humans also have consciousness that offers a possibility of infinite reflection and the capacity to create an infinite number of new and increasingly more powerful levels of organization. No other animal comes even close to match what the human mind can do.¹⁴⁷

The unique human capacity to create an infinite number of new and increasingly more powerful levels of organization is an evolutionary feature.¹⁴⁸ For what is the evolution if not a succession of new and increasingly more powerful levels of organization? The process of creating these new levels is what makes the evolution possible. This process of creation originates in conservation—a phenomenon that is ubiquitous in the Universe.

Our universe is unique. It is all there is. Nothing can come into it from the outside because there is no outside; and nothing can disappear from it because there is nowhere to disappear. Everything must be conserved.¹⁴⁹

Conservation requires resources that are always limited. Therefore, access to new resources is essential for conservation. Resources can only be obtained from within the universe, not from the outside. Therefore, they have to be created from what is available in the universe. The only infinite resource that the universe offers is the capacity to create an infinite number of new levels of organization. A new and more powerful level of organization offers new possibilities that offer access to new resources. Thus by creating new and increasingly more powerful levels of organization, the process of creation conserves the universe and everything in it. This process results in the evolution. Again, what is the evolution if not the succession of new and more powerful forms?

Humans are a product of the evolution. They have inherited the properties of the evolution, including the capacity to create new levels of organization. However, in contrast to all other entities that exist in the universe and are involved in the process of creation, the human mind is capable of creating an infinite number of new and increasingly more powerful levels of organization. This infinite resource has a critical role in sustaining our existence as individuals and civilization. It makes us human and defines our nature.

Human rights arise from human nature. Their role is to protect our capacity to create new levels of organization and thus sustain our life as human beings. The authors of the Declaration of Independence have intuitively captured this fundamental connection between the right to life and God. The approach that centers on human nature as the source of human rights rationalizes this intuition. It demonstrates the connection between the right to life and the process of creation. The process of creation is absolute and universal. It makes our life possible. Hence the right to life is also absolute and universal.

Any restriction or limitation of the right to life disrupts the process of creation and poses a threat to our existence as individuals and to the survival of our civilization. The capacity to create is an essential property of human nature. An act of creation realizes this capacity thus expressing our essential nature. As a realization of our creative capacity, an act of creation manifests and frees our essential nature. Thus the process of creation is intimately related to human freedom. Freedom is about manifestation of one's nature. Therefore, the right to freedom (liberty in the Declaration of Independence) is also an essential human right. Finally, by creating new levels of organization we affirm and gratify our most important function. Gratification is the source of pleasure and happiness. The Declaration of Independence captures the connection between the Absolute and the right to pursue happiness. The perspective centered on human nature explains this connection between the process of creation and gratification of the most important human function. The right to pursue happiness spelled out in the Declaration captures this connection and gives expression to the aesthetic principle linked to the process of creation. One can only admire the remarkable intuition of the Founding Fathers who put these human rights in the center of the document that proclaimed the foundation of American civilization.

The perspective that centers on the process of creation rationalizes and explains their intuitions. But it does much more. It makes possible to go beyond these intuitions. The Founding Fathers considered God to be the source of human rights; and for them, God remained inscrutable. A rational understanding of the process of creation—the absolute and universal source of creation--was beyond their grasp. We do not regard the

process of creation as inscrutable. On the contrary, many researchers think that it is open to human understanding. We know more today about the process of creation and understand it better.¹⁵⁰ Our understanding of the process of creation helps identify other human rights that we do not find in the Declaration. For example, an analysis of the process of creation shows that it works on universal inclusion of all differences. Only by combining all differences we can create new and increasingly more powerful levels of organization. The process of creation can work only by including and conserving all differences as entities that play an equal role in this process. Thus, the process of creation works on universal inclusion and equality.¹⁵¹ Therefore, the right to equality and to inclusion is another important human right.

By combining differences, the process of creation does not destroy them. On the contrary, new combinations conserve differences as autonomous entities, which leads to a conclusion that the right to autonomy is also related to the process of creation and for this reason should also be included in the list of human rights. The conservation of autonomy is the source of morality and justice. Therefore, the right to justice is yet another right that can be traced to the process of creation and that should be included in the category of human rights. This list of human rights is hardly exhaustive. As we learn more about the process of creation and as we understand it better—and there is still much to learn and understand in this process—we will certainly be able to identify other essential human rights. The anchoring of human rights in the process of creation and a better understanding of this process will make possible to draw a clear distinction between human rights and civil rights and avoid the confusion that reigns today.

The Resolution of the Conscience Crisis

The anchoring of human rights and eliminating the conflation of human rights and civil rights is an important step toward the resolution of the conscience crisis. However, the practical problems remain. What is the way to resolve conflicts that emerge in cases when civil rights clash with each other? How do we, for example, resolve the conflict between, on one hand, LGBTQ rights and, on the other, freedom of religion? As this article has emphasized, both belong to the domain of civil rights and, contrary to the formulation in the Equality Act, neither should have priority over the other.

The process of creation is the most powerful tool we have in dealing with reality. It should help us overcome such conflicts. As has been pointed out earlier, the process of creation works on universal inclusion and empowerment. In the perspective that uses the process of creation as its main organizing principle, differences are the source of creation. They are to be viewed as a resource, not as a threat. Differences play an essential role in the process of creating new and more powerful levels of organization that give rise to new approaches toward and solutions of problems that we encounter.

In accordance with the perspective that uses the process of creation as its main organizing principle, the process of creation is the only possible path toward resolving conflicts among civil rights. One cannot resolve conflicts by suppressing one side and subordinating it to the other. The only way to find a real and lasting solution is to create a new frame—a new and more powerful level of organization—that has sufficient power to include both sides involved in the conflict, all differences, as its particular cases—that

is, cases that are true under specific conditions or assumptions. Neither side should seek superiority over the other. They should recognize the simple fact that their positions cannot be and are not absolute and universal. Consequently, they should take the path of careful interactions and negotiations in which they pursue the creation of a new level of organization that will have sufficient power to include all differences as particular cases of a new, more general and more powerful whole.

As has been pointed out earlier, there are two principal operations that are to be involved in creating a new frame. They are assimilation and adaptation. All sides should combine these operations in search for a resolution of the conflict. Rather than engage in adversarial competition for primacy, aggressive search for converts, and imposition of their views, life styles, or practices, proponents of LGBTQ rights and defenders of religious freedom should pursue the path of careful negotiations on equal terms. Gaining advantages over their counterparts should not guide their efforts. Rather, they should seek a common victory in creating a new and level of organization that will have sufficient power to include their differences as particular cases of a larger whole.

Such inclusive practice should be the goal and the outcome of their efforts. The new frame will conserve the essential differences that all sides bring into negotiations. It will also delineate spaces of application that validate conserved differences. For example, in conflicts that involve LGBTQ rights, the solution should carefully define conditions and situations in which these rights can be applied and should be respected and protected. Since these rights are not absolute and universal, their application should be carefully coordinated with the rights claimed by other groups that have reservations about indiscriminate universal applications of LGBTQ rights. For example, parents' concern about the well being of their children is a legitimate objection to the exposure of children and underage adolescents to alternative sexual practices.

Again, the goal for all sides involved should not be a victory over other sides but the creation of the most powerful framework that will include all sides. Although LGBTQ rights and practices must unquestionably be protected, one should also recognize that same-sex practices have a derivative nature. They do not represent a new level of organization and are merely inversions of heterosexual practices. As inversion of heterosexual relations, same-sex practices are dependent on heterosexuality for their existence. Therefore, the path should be one of a constructive dialogue that will delineate the areas of proper application of rights of same-sex couples without destroying the frame that sustains both heterosexuality and homosexuality. The approach that involves universal inclusion and empowerment will discourage a sense of self-righteousness that still permeates discussions related to LGBTQ rights. All sides—both individuals whose rights should be protected and society as a whole--will stand to benefit from such non-ideological approach,

There are some examples when, indeed, the sides have taken this path of conflict resolution. The negotiated approach toward same-sex marriage has already produced positive, if modest results in America.¹⁵² Non-ideological, pragmatic approaches have brought success to LGBTQ activists in Singapore who used community issues to create a space for mutual understanding, rather than pursue a path of confrontation.¹⁵³ No doubt many obstacles still lie ahead, but prospects for solutions are in creative interactions among all sides, not in battles for domination.

There is a growing awareness of the need for an inclusive approach toward the rights of sexual minorities and gender non-conformists that would include all concerns and not just the rights of those who engage in homosexual relations. The rights of sexual minorities are not absolute and universal. Although there have been some efforts to bridge the gap that separates the community of faith and the advocates and supporters of LGBTQ rights, the prospects for such coming together remain at this point rather grim.¹⁵⁴ The new approach with its focus on universal inclusion has better chances for ending this strife than fierce battles and confrontations. This approach is not to guide participants toward seeking compromises and commonalities. Compromises and commonalities exclude differences. Yet differences, not commonalities, are the ones that have a productive and creative role. The new approach emphasizes the inclusion of all differences. It will also encourage all contributors to become partners in a joint and creative enterprise of constructing an inclusive frame that incorporates all differences as particular cases of a new and comprehensive synthetic whole.

The Solution of the Transgender Problem

The most challenging issue associated with the Equality Act is undoubtedly the transgender problem. Controversies over transgender fuel most resistance to the Equality Act. They are too many and too diverse to be recounted here. However, a brief overview is certainly in order.

Perhaps the most acute conflicts occur over the invasion of schools by transgender ideology and practice.¹⁵⁵ Gender theory has become a staple in the curriculum in public schools. Gender issues often appear in courses on sex education. Mercedes Shlapp, senior fellow at the American Conservative Union Foundation, is one of many who express concerns about the spreading of what she calls the toxicity of gender ideology. “If we lose our children,” she contends in her comments, “if we become a genderless society, if we continue to create confusion here in America, it will be the fall of this great country.”¹⁵⁶ Many critics of the transgender movement share similar sentiments. Even liberal supporters of the transgender movement recognize the seriousness of the problem and recommend accommodation. Ashley Woo and Melissa Deliberti, both researchers at the Rand Corporation and the Brookings Institution, see the problem and recommend partnering with parents as the solution for the growing polarization in public schools.¹⁵⁷

The practice of assisting students in gender transitioning without parents’ knowledge that exists in many public schools draws particular ire. Speaking at an event organized by Moms for America, a national movement that is an outspoken critic of transgender practices, January Littlejohn recounted her experience with suing a Florida school that had assisted her daughter in changing her gender without January’s knowledge. The suit drew national attention and prompted Florida Gov. Ron DeSantis to approve legislation prohibiting schools from making decisions regarding students’ health and well-being without consulting parents. “The one thing I tell parents,” Littlejohn said at the event, “is that you are the expert on your child, not the school, not the therapist.”¹⁵⁸

Erin Friday, a resident of California, recounted in the national media the harrowing story of her ordeal in dealing with the middle school officials about the way they had double-crossed her in the case of gender transition that involved her 11-year-old

daughter. Her account gives some sense of how this strategy operates in school environment. Friday, for example, told how she learned that a third-party group had come to school to teach for five hours in a sex education course. The name of the group Health-Connected did not raise any red flags for parents. Erin provides a description of what happened during these five hours:

They spent an entire hour of the five hours of instruction teaching about gender ideology, having the “genderbread man” cartoon—where they point to the brain and they point to the body parts—and they essentially say that you can have a female brain and a male body, or vice versa.¹⁵⁹

One can only add that the target audience in this instruction was a bunch of 11-year-olds.

Erin was alarmed when she began to notice changes in her daughter’s behavior that she described as a “mental tailspin.” The daughter began to use male pronouns and eventually substituted a male name for her given name. That was the first flash point that set off the alarm. Erin did not hold back but confronted the school administrators with her accusations of secretly violating her parental rights. Her accusations brought in Child Protection Services and the police. CPS expressed their concerns that Friday’s daughter was a suicide risk, which infuriated Erin. She thought that it was totally inappropriate for CPS and school administrators to use this scare tactic to disguise what Erin called an abuse of her daughter.

CPS eventually dropped its investigation. Erin regained the trust of her daughter and reclaimed her mind. The daughter safely resumed her normal development as a female. The story has a positive ending. Others may not be so lucky. The real cost to Erin and her daughter in money and emotions was enormous. At one point Erin had to quit her job as an attorney to devote 16-hour days to unraveling the lies that were used by school officials and CPS to ensnare her daughter. Following this experience, Erin joined Our Duty, a parent-run international group that deals with transgender abuse in schools.¹⁶⁰

The medical procedures involved in transitioning are another source of controversy, particularly in relation to children and adolescents. Decision to affirm one’s gender has serious implications. It involves long, risky, and costly treatments and even surgical procedures that are not only expensive but also carry considerable health risks. Ex-transgender teens recall with horror the experience of transition.¹⁶¹

Transitions are in many instances irreversible, particularly when they involve surgeries. Many regret having chosen this path.¹⁶² The surgery is so controversial that some even compare it to lobotomy.¹⁶³ There are known cases when individuals who had transitioned expressed regrets about this decision later in their life.¹⁶⁴ Decisions about gender affirmation are not to be taken lightly. Individuals who consider transitioning must be well informed and capable of making rational choices that will affect their future. De-transitioning is often costly and painful and sometimes is simply impossible.¹⁶⁵ Underage individuals are certainly not in a position to make such decisions. Giving parents the power to make such decisions for them is totally inappropriate since they will not have to live with consequences.

Decisions that involve long-term consequences require a mature judgment. In this connection, critical questions arise with regard to gender transition: who and at what age can make such decisions? Public confusion about gender and transitions should not be surprising. Even the LGBTQ community has no clarity in this matter. Theorists and activists of the transgender movement argue that gender identity takes shape at an early age. Therefore, they contend, gender transitions must be initiated at the pre-puberty stage of child development. In his statement for the federal court in North Carolina, Dr. George Brown, a member of the board of World Association for Transgender Health, has argued, for example, that gender identity “is usually established early in life, by the age of 2 to 3 years old.”¹⁶⁶ Consequently, the preparation for gender transition should start well before the onset of puberty. Critics point out that children and even adolescents are not in the position to make such important decisions in an informed and responsible manner; they cannot even comprehend what is involved in transitioning and its consequences, both short- and long-term.

Laura Perry Smalts, author of *Transgendered to Transformed*, has endured years of cross-sex hormone therapy and two significant gender-affirming surgeries. She thus recounts her experience:

Nobody ever told me that this wasn't real, that this was all just an aesthetic appearance. I had no idea the profound effect it would have on my body . . . I was so depressed and became suicidal. And I didn't know what to do. I didn't want to be a woman, but I knew I'd never be a man. I was caught somewhere in between.¹⁶⁷

If this is the experience of an adult person, how much more difficult and devastating it must be for a young person. Jazz Jennings, a poster child for the transgender movement, started her hormone therapy at the age of 11. Six years later she had her first confirmation surgery, subsequently followed by two more serious operations. She also had a severe bout with infection. Although successful in her career, she is still waiting for fulfillment and love in her personal life.¹⁶⁸

Another serious criticism of the transgender movement comes from organizations that are generally aligned with LGBTQ. Many women organizations express serious concern that self-declaration of gender may ruin many hard-won achievements of women's rights movements.¹⁶⁹ For example, the inclusion of transgender athletes on female school teams in Connecticut has profoundly divided women's rights advocates who are usually in agreement when it comes to female athletics.¹⁷⁰ Many feminist activists see profound ethical issues involved in allowing transgender athletes to compete in women's sports.¹⁷¹ This issue has also produced a shift in American public opinion that was at one point positively inclined toward transgender rights. Recent polls show that Americans do not think that biological males should compete with biological females in sports.¹⁷²

Debates over use of public bathrooms are another hot and polarizing topic. Female public school students, their parents, members of women sororities, and ordinary Americans express their distress and even anger over access of transgender biological males to female public restrooms. Members of the transgender movement and their

supporters voiced their dismay over what they see as oppressive bathroom laws and regulations.¹⁷³

Even the use of personal pronouns, names, parental designations, and language in general has become a contentious issue in public discourse. Many find gender vocabulary very confusing, particularly the separation of biological sex from gender. Parental titles, such as mother and father, have become the object of frequent ridicules, particularly the replacement of traditional “mother” and “father” with neologisms “parent number one” and “parent number two.”¹⁷⁴ The rise of the transgender phenomenon ignited national debates about media practices of reporting on transgender issues. There have been many complaints that stories using male names with female pronouns tended to elicit negative attitudes toward transgender.¹⁷⁵ These days the use of conventional personal pronouns instead of pronouns preferred by transgender subjects by schoolteachers may lead to an accusation for lack of professionalism, which may lead to censuring or even expulsion.

One could also add to the list of negative consequence related to the transgender movement the fact that the attitude toward the transgender problem sharply divides Democrats and Republicans, thus exacerbating the political rift that destabilizes America.¹⁷⁶

This brief overview of a variety of diverse transgender issues gives a sense of a high level of contentiousness that surrounds the transgender movement. Despite this fact, however, the transgender movement and its supporters persist in forcefully promoting their agenda. Even the fact that this agenda is one very important obstacle to the adoption of the Equality Act does not deter activists. They claim that most criticism directed against the movement comes from the right-wing extremists and transphobes who are determined to deny equality to transgender people at any cost.¹⁷⁷ This attitude is prevalent among trans folks. As a result of this perception, criticisms only convince the transgender people and their supporters of the importance of their cause that they see as part of the struggle for democracy in America and strengthen their determination to intensify their fight for equality. The combative atmosphere within the transgender movement is not conducive to re-examination of the movement’s theory and practice. Critics of the movement have noted the resistance to self-criticism.¹⁷⁸

Many commentators find gender theory to be confusing. It abounds in contradictions and inconsistencies that gender theorists rarely, if at all, question or even recognize.¹⁷⁹ The conspicuous lack of self-criticism is the main reason why even neutral critics see the transgender movement as a cult that uses brainwashing and indoctrination, rather than seeks intellectual enlightenment.¹⁸⁰ Many also note a certain degree of opportunism among transgender activists who often make conflicting claims depending on what is useful or expedient at any particular moment.¹⁸¹ There is a widespread opinion that transgender ideology is corrosive and is a prime subject for questioning and re-examination.¹⁸²

Transgender is a category that is different from other LGBTQ categories. If the rights of gays, lesbians, and bisexuals are primarily about sexuality, transgender rights involve a different set of problems. Their solution requires a different approach than the approach used for resolving conflicts related to sexual minorities.

The defining feature of gender theory is the distinction it makes between biological sex and gender. Sexual identity does not question the primacy of biological

sex. It only questions heterosexual practices and norms, yet biological sex remains for sexual minorities unproblematic and integral to their identity. By contrast, gender theory insists that biological sex does not define gender identity; rather, it argues that gender identity is defined by social relations, i.e., socially constructed roles and norms of masculinity and femininity that establish a system of distribution of power in society and a hierarchy of subordination. The problem of gender rights goes way beyond sexual practices and norm; it challenges the very foundation of the distribution of power in modern society.

Gender theory is not unambiguous; it has its share of contradictions and controversies that affect the problem of transgender rights.¹⁸³ For example, while members of the transgender community recognizes that gender identity does not depend on biological sex, they nevertheless insists on controversial practices of changing one's biological sex in accordance with one's chosen gender identity. Such fetishism related to sexual characteristics is very odd for those who believe that gender is primarily about mental constructs and power relations. This insistence is particularly surprising since changing one's sexual characteristics causes a great deal of difficulties for the transgender movement and activists. It is a political albatross around the neck of the movement. The fact that members of the transgender community choose to fight for something that should not be particularly significant or important for them seems very strange. Yet oddly enough, these practices remain perhaps the most important aspect of the transgender movement and one that causes most tensions and acrimony. Nevertheless, trans activists continue to uphold something that is not theoretically substantive or essential for their movement, thus putting at risk a much larger and far more important issue of passing the Equality Act.

In order to solve a problem, one has to go to its source. The gender problem is primarily about gender differentiation. This gender problem would not exist without gender differentiation. Therefore the main question that arises in connection with the gender problem is about the source of gender differentiation.

According to gender theory, biology cannot be the reason for the rise of gender differentiation in our civilization. The explanation that gender theory offers is that gender differentiation is a social construction that legitimates and codifies the system of domination of males over females. This explanation merely tells us what purpose gender differentiation serves; it does not explain the source of gender differentiation. What is the physical reality behind the differentiation of masculinity and femininity? What provided the model for such differentiation?

Gender theorists tell us that gender identity is about relations. It is about the way we relate to each other and to reality in general. According to gender theory, there are two basic types of such relations that are represented by the categories of femininity and masculinity. That is as far as gender theory goes. That should be the starting point in the search for an answer to the question about the source of gender differentiation.

Interactions with reality play an essential role in human existence. These interactions provide resources that make sustaining our individual life and the survival of our civilization possible. Therefore, in order to solve the problem of gender, we have to understand what human relationship with reality involves.

Jean Piaget who studied early child development has shown the importance of the relationship between a child and reality in the child's development, and particularly in the

rise of human intelligence. His monumental study *The Origins of Intelligence in Children* is a detailed examination of this relationship.¹⁸⁴ Piaget shows that the process that defines the relationship between children and reality involves two distinct operations: assimilation and adaptation. The study also shows that these two operations are closely interrelated; both are integral aspects of the process that plays such crucial role in child development, the rise of human intelligence and consciousness, and in the emergence of human species. Consequently, this process is critically important for the survival of the human race.

Survival requires resources; and resources are always limited. Therefore, in order to survive we need to gain access to new resources; and the only way to gain access to new resources under conditions of scarcity is by creating new and increasingly more powerful levels of organization that offer new possibilities and, consequently, access to new resources.¹⁸⁵

As has been shown elsewhere, the process of creation is universal; it is ubiquitous throughout our universe.¹⁸⁶ It sustains our universe. Our universe is unique. It is all there is. There is nothing outside our universe. Nothing can come into our universe from outside since there is no outside; and nothing can disappear from our universe because there is nowhere to disappear. Everything must be conserved.

Conservation requires resources that are always limited. Consequently, there is only one way that the universe can sustain itself: only new and increasingly more powerful levels of organization offer new possibilities and resources needed to sustain our universe. Thus conservation leads to creation. The process of creation makes the evolution of our universe possible. For what is the evolution if not a succession of new and increasingly more powerful levels of organization and forms?

Humans are products of the evolution. They have inherited its main features, including the capacity to create an infinite number of new and increasingly more powerful levels of organization. This capacity is the key to our evolution and the survival of our civilization. Assimilation and adaptation are integral to this process. They are its two interrelated and mutually complementary aspects. We can observe these operations in interactions between organisms and reality/nature, including our own interactions. They are observable in the work of our mind—i.e., the creation of new levels of mental organization that constitute our mental and cultural evolution.¹⁸⁷ Building on the work of Jean Piaget, I have argued elsewhere that one important condition for the process of creation is a balance between these two operations.¹⁸⁸ They must be in balance: domination of one over the other disrupts the process. The disruption makes our relationship with reality dysfunctional, unproductive, and even destructive.¹⁸⁹ This balance between assimilation and adaptation is the key to our survival.

So, what do these operations about? Assimilation is about inclusion of external systems or entities into operational functions of the organism. It incorporates systems and objects and uses them for sustaining the functioning of the organism. In other words, assimilation is the way that the functional operations of an organism structure reality according to the needs of the organism. It is a violent operation to be sure. It is akin to devouring of one organism by another. Adaptation is very different. It accommodates the internal functional operations of an organism to other systems and entities in its environment. In other words, it changes internal functional operations and thus the internal structure of the organism to fit the environment.

As has already been mentioned, gender is also about relationship with reality. Gender theory distinguishes two types of interactions between humans and reality—the feminine type and the masculine type. These two types of interactions define the two fundamental categories that are critical for gender theory: femininity and masculinity. There is a huge body of literature on masculinity and femininity that offers numerous and varying ways of defining these two fundamental categories.¹⁹⁰ Theorists explain the diversity of these definitions by pointing to the changing nature of both femininity and masculinity and by their capacity to create combinations. Both femininity and masculinity are capable of including some of each other's features.¹⁹¹ The occurrences of so-called pure types are rare. For this reason, theorists write about traditional or hegemonic types of masculinity and femininity that represent quintessential features of these categories.¹⁹² Sven Kachel and his co-authors, for example, define “traditional masculinity” and “traditional femininity” as “relatively enduring characteristics encompassing traits, appearances, interests, and behaviors that have traditionally been considered relatively more typical of women and men, respectively.”¹⁹³ Other researchers used association between gender and role behaviors (for example, head of household vs. nurturing children), as well as physical characteristics (for example, tall, broad-shouldered vs. soft voice, graceful).¹⁹⁴

One description of masculinity tells us that the current dominant masculine norms include “providing for others, physical strength, emotional toughness, self-reliance, competitiveness, risk taking, protector, toughness and aggression, competitiveness, winning, dominance (including sexual), virility, control, power, heroism, honour and courage.”¹⁹⁵ It further elaborates:

1. A real man is a fighter and a winner.
2. A real man is a provider and a protector (of women, children and others).
3. A real man retains mastery and control.¹⁹⁶

The description by the American Psychological Association emphasizes such features as stoicism, competitiveness, dominance and aggression.¹⁹⁷ The description in *Wikipedia* points out that standards of masculinity vary across different cultures, subcultures, ethnic groups, and historical periods. In Western society, masculinity traits include strength, courage, independence, leadership, and assertiveness.¹⁹⁸

Just like standard features of masculinity, standard traits of femininity also vary across cultures, societies, and periods. The following characteristics occur most frequently in descriptions: gracefulness, gentleness, empathy, humility, and sensitivity. Other traits may include nurturance, sensitivity, sweetness, supportiveness, gentleness, warmth, passivity, cooperativeness, expressiveness, modesty, humility, empathy, affection, and tenderness. Being emotional, kind, helpful, devoted, and understanding also belong to feminine stereotypes.¹⁹⁹ Planned Parenthood cites some of the same feminine features: gracefulness, gentleness, empathy, humility, and sensitivity; but also adds: being passive, naive, sexually inexperienced, soft, flirtatious, graceful, nurturing, and accepting.²⁰⁰

The diversity of these descriptions and multiplicity of terms they use may obscure the view: one may miss the forest for the trees. By generalizing on the details of these

descriptions, one may, for the purpose of analysis, outline a composite picture that succinctly captures the essence of masculinity and femininity. At a risk of oversimplification, one might propose two such generalized contours. Masculinity is about a forceful, aggressive, assertive and externally oriented action by individuals intent on transforming and subordinating reality, and forcing one's control over it. By contrast, femininity involves a mode of action that is non-aggressive, adaptive, accommodating, and internally oriented; it recognizes that reality is autonomous and does not seek to control it.

These generalizations suggest a parallel between the two principal types of operations involved in human relationship with reality—assimilation and adaptation—and the two gender categories of femininity and masculinity that also describe two types of human relationship with reality. In other words, principal operations involved in human relationship with reality and gender categories are both about relationship between humans and reality. Their fundamental features also correspond. This correspondence cannot be accidental.

Gender theory cogently points out that there is no causal influence of biological sex on gender differentiation. Therefore, the identification of the two gender categories could not have originated in biological sex. Where then did it come from? One could venture to suggest that it has originated from a basic insight of humans that capture the two basic modes in human relationship with reality. Biological sex could not have been the source of the realization that there are two different modes of relationship with reality. Biological sex is a product of nature, while the perception of the modes of relationship is a human mental construct. Mental constructs represent a much more powerful level of organization than the level of biological organization. The less powerful level cannot define the level that is more powerful; rather, the influence could only take the opposite direction. One might suggest that when the realization of the existence of the two modes of relationship with reality consolidated and crystallized in human mind, the conceptual apparatus for designating these two modes was still lacking. One would dare say, parenthetically, that the creation of this conceptual apparatus is still in progress. The current understanding of our relationship with reality is vague; its terminology is still in the process of formation. Consequently, when the need to designate the two modes of relationship emerged, humans used the biological categories that were familiar to them to describe the phenomena that transcended the biological sphere; they belong to the cultural and social sphere. The terms “male” and “female” have little to do with biological sex; they are mostly biological metaphors for higher-level phenomena that humans observed. In other words, in defining gender categories humans used what they knew to understand what they did not know. The relationship between metaphor and object is never deterministic. As post-modernists have repeatedly pointed out, there is no causal relationship between the signifier and the signified. It is not the unknown that defines the known, but rather the other way around: our internal constructs (signifiers) that define the signified (reality) for us.

Subsequently, humans projected and applied their gender constructions on social reality, thus establishing the basic categories of femininity and masculinity in social organization. The projection of this categorization on social practice inevitably followed. Legitimated by the elite hierarchies, these categories were eventually integrated into the structure of social and political subordination and controls that maintained elite rule.

This explanation does not contradict the existing interpretation of the connection between gender categories and social relations and indicates the path that this development has probably taken.

To summarize, masculinity and femininity closely correspond to the two principal operations involved in our relationship with reality—assimilation and adaptation. The correspondence could not be accidental. In fact, there is every reason to accept the notion that femininity and masculinity represent important human insight into interactions between humans and reality. This insight was captured in mental constructs that are related to the natural differentiation of humans by their biological sex and then identified with biological males and females. That is one reason why many researchers have noted that biological males may possess some female gender characteristics (effeminate males) and vice versa (masculine females or tom-boy girls).

As has already been pointed out, assimilation (“masculinity” in gender vocabulary) and adaptation (“femininity”) are integral to our interactions with reality that involve the process of creation. Although they are very different from each other, they harmoniously coexist within the process of creation. However, if one does not see the process of creation or does not understand how it functions, the two aspects of this process—assimilation (masculinity) and adaptation (femininity)--will appear as totally separate from and diametrically opposed to each other.

Despite the importance of the process of creation for our existence and the existence of the entire universe, we know pitifully little about it and understand it even less. There is certainly no shortage of theoretical perspectives that try to explain creativity and the process of creation. Yet the sad fact remains that our understanding of the process of creation remains very rudimentary, to say nothing about controlling it. Margaret Boden, one of the pre-eminent researchers in the field of creativity, draws the following conclusion in her very influential book on the subject:

Our ignorance of our own creativity is very great. We are not aware of all the structural constraints involved in particular domains, still less of the ways in which they can be creatively transformed. We use creative heuristics, but know very little about what they are or how they work. If we do have any sense of these matters, it is very likely tacit rather than explicit: many people can be surprised by a novel harmony, but relatively few can explicitly predict even a plagal cadence.²⁰¹

We do not understand the process of creation. As a result, assimilation and adaptation appear to us as completely separate and diametrically opposed to each other. This same failure is the main reason why we also see masculinity and femininity as completely separate and diametrically opposed to each other. This failure is the reason for gender differentiation and problems that this differentiation creates.

The problem of gender identity is a problem of self-affirmation. The importance of self-affirmation in our life is hard to overestimate. At the heart of affirmation is conservation. By affirming our self we affirm, or conserve, our mental constructs that constitute our self. Such conservation is the key to our survival, wellbeing, and happiness. We vitally need and, for this reason, crave self-affirmation. Self-affirmation is not about something fortuitous, accidental or fleeting; it is not about our momentary urges, eccentricities, or conceits. Self-affirmation is not a whim. True self-affirmation is

about our essential being; it is about that which makes us human and sustains our life. Thus, self-affirmation that is at the heart of the problem of gender identity is about something that is fundamental to our existence and that is intimately related to the process of creation that sustains our individual existence, the survival of our civilization, and the existence of our universe.

We cannot solve the problem of gender identity without understanding the deep connection between our life and the universal process of creation. We cannot solve this problem on the basis of gender differentiation that is a result of our failure to embrace and understand the process of creation. We must overcome the profoundly flawed perception of irreconcilable opposition between masculinity (assimilation) and femininity (adaptation). Shifting gender labels, mutilating our bodies, ruining our health and life cannot and does not solve the problem of self-affirmation. They will not affirm our life. They cannot and do not give us the eagerly sought satisfaction and happiness. As all flawed approaches, the approach that does not recognize the profound unity of the two behavioral modes of masculinity and femininity can only lead to endless cycles of suffering and torture we inflict on ourselves.

There is only one way to solve the problem of gender identity. The solution requires that we should go to the source of this problem. We should correct the flawed perception of the irreconcilable opposition between masculinity and femininity. We can only solve this problem by embracing the process of creation, by understanding the role of assimilation (masculinity) and adaptation (femininity) in this process, by appreciating the importance of their close interrelationship, and by liberating our true self from the burden of oppression that we have imposed on ourselves.

In 1929 Virginia Woolf published her thoughtful and deeply philosophical essay *A Room of One's Own*. This inspiring essay contains her illuminating intuitions related to gender and gender identities. Her profound and creative insights and arguments bear remarkable resemblance to the arguments in the preceding paragraphs. The similarities are so striking that they make worthwhile to revisiting her essay and to recapitulate her crucial arguments.

In the middle of her essay, Woolf raises a cardinal question that relates to the problematic of her work. She writes: “What was Shakespeare's state of mind, for instance, when he wrote *LEAR* and *ANTONY AND CLEOPATRA*? It was certainly the state of mind most favourable to poetry that there has ever existed.”²⁰² Analyzing several writers, both males and females, Woolf concludes that each group has its own “creative force”—masculine and feminine. She also concludes that each creative force has its own merits and, more importantly, its limitations.

Woolf criticizes the feminist demand to make men and women equal. “It would be a thousand pities,” she writes, “if women wrote like men, or lived like men, or looked like men, for if two sexes are quite inadequate, considering the vastness and variety of the world, how should we manage with one only?”²⁰³ Humans, in Woolf's understanding, are much richer than what one-sided categorization of them into men and women asserts. She argues that the mind includes both types of creative force. The human mind is androgynous. The mind of Shakespeare was, in her view, androgynous; it is, as she describes it, “the man-womanly mind.” The creative state of mind, Woolf concludes, “[t]he normal and comfortable state of being is that when the two live in harmony

together, spiritually co-operating.”²⁰⁴ The flow of her poetic imagination powerfully synthesizes her intuitions. Woolf writes:

If one is a man, still the woman part of the brain must have effect; and a woman also must have intercourse with the man in her. Coleridge perhaps meant this when he said that a great mind is androgynous. It is when this fusion takes place that the mind is fully fertilised and uses all its faculties. Perhaps a mind that is purely masculine cannot create, any more than a mind that is purely feminine, I thought. But it would be well to test what one meant by man-womanly, and conversely by woman-manly, by pausing and looking at a book or two.²⁰⁵

The powerful symphony that Woolf creates in her imagination reaches crescendo. One can hear in it new and otherworldly notes. Her thoughts and images create the outline of a new vision that represents a new and more powerful level of organization in which the feminine and the masculine coexist in harmony, not in conflict. The melodic flow of her thoughts and words changes before our very eyes; it transforms readers’ mind and explodes their imagination. Woolf draws the line between a one-sided and gender specific thinker and the powerful thoughts of Samuel Taylor Coleridge:

. . . when one takes a sentence of Mr. B into the mind it falls plump to the ground-dead; but when one takes a sentence of Coleridge into the mind, it explodes and gives birth to all kinds of other ideas, and that is the only sort of writing of which one can say that it has the secret of perpetual life.²⁰⁶

Woolf’s thinking transcends the boundaries of gender problematic. She rises above herself and boldly poses the important eternal question about human freedom. The answer she gives enters readers’ mind like a prayer in a spontaneous rush of humbling and awe-inspiring acceptance that encounters no resistance but gives that calm of peace. Relying on any one type of creative force, either feminine or masculine, is fatal, she claims, it dooms one’s work to oblivion:

It ceases to be fertilised. Brilliant and effective, powerful and masterly, as it may appear for a day or two, it must wither at nightfall; it cannot grow in the minds of others. Some collaboration has to take place in the mind between the woman and the man before the art of creation can be accomplished. Some marriage of opposites has to be consummated. The whole of the mind must lie wide open if we are to get the sense that the writer is communicating his experience with perfect fullness. There must be freedom and there must be peace. Not a wheel must grate, not a light glimmer. The curtains must be close drawn. The writer, I thought, once his experience is over, must lie back and let his mind celebrate its nuptials in darkness. He must not look or question what is being done.²⁰⁷

Conclusion

Almost two and a half centuries ago, at the time of our nation's birth, Americans made a solemn promise to themselves and to future generations that they would uphold and cherish a sacred principle of universal equality. Ever since this promise was made, this principle has been the beacon that has guided the American nation through the trials and tribulations of its tumultuous history. America has also conveyed the importance of this principle to other nations of the world.

The proponents of the Equality Act claim that the intention behind this bill is to continue the victorious march of equality. However, intentions are subjective; they tell us what we want; they are no guarantee that we are on the right track to realize our intentions. This study has subjected the Equality Act to a thorough and critical analysis. It has shown that the approach in creating this Act--the theory and practice espoused by its creators—is profoundly wrong. This approach involves exclusion and inequality. It is selective and elitist. As a result, it perpetuates exclusion and inequality.

This study and some other writings cited in it argue that inclusion and equality can only be absolute and universal. Selective inclusion is a form of exclusion. The Equality Act is based on an exclusive approach. For this reason, it cannot and does not eliminate inequality and oppression. It perpetuates them.

As the conflict between the proponents of the Act and the advocates of religious freedom shows, the approach that the Act exemplifies is contradictory and controversial. That is why it encounters strong resistance. Instead of unity, the Equality Act has become a source of division, rivalry, and conflict. The explanation used by the proponents of the Act that right-wing extremists are the main obstacles to the adoption of the act. This is too easy, too facile, and too self-serving. It lacks self-criticism and denigrates the opponents of the Act, reducing them to a view that is simplistic and distorts reality. The supporters of freedom of religion make a cogent argument that the Equality Act threatens to undermine the commitment to religious freedom that is just as important as the commitment to protect LGBTQ rights. There is ample empirical evidence that shows that, indeed, the right to religious freedom takes a back seat in the Equality Act. Despite its claims to the contrary, the Equality Act violates the principle of equality and, thus, perpetuates inequality.

There is no question that America must uphold the principle of equality, which means that we should guarantee equal protections to the rights of all Americans, including members of the LGBTQ community. However, the current approach to protecting LGBTQ rights cannot achieve this goal. We cannot provide protections to members of the LGBTQ community at the expense of the rights of other groups. As this study argues, LGBTQ rights and the right to religious freedom both belong to the domain of civil rights. As such, they are absolutely equal and deserve equal protection. The solution of the conflict between these two categories of rights cannot possibly involve a subordination of the rights of members of the religious community to the rights of members of the LGBTQ community. Only full and universal equality can be the basis for the resolution of the conscience crisis. The realization of the rights of one group cannot infringe on the realization of the rights of another group. As the article also argues, the practical solution of such conflicts must involve careful and meticulous negotiations and mutual adaptation. The only way to solve such conflicts is by creating a broad frame that is powerful enough to include all perspectives as its particular cases—

that is, cases that are true and valid under specific conditions or assumptions. The solution must carefully delineate the areas of validity for the application of all specific cases.

As this study argues such solution must necessarily be creative, which means that it must give rise to something that has not existed prior to its emergence. Such solution involves the process of creation. This process is universal. It sustains our universe and all that is in it. This process has propelled the evolution that has led to the rise of humanity. As products of the evolution, humans have inherited all its essential features and, most importantly, the capacity to create an infinite number of new and increasingly more powerful levels of organization that offer new possibilities that provide access to new resources. Only the embracing of this process can make the survival of our civilization possible. Given the vital significance of this process, we must study and understand it better. Moreover, we must develop practical methods and skills that are essential for this process and for our effective and efficient interactions with reality. This approach is the only one that can provide solutions to many problems we encounter today and those that will emerge in the future.

Since the process of creation affirms human nature, there is no way we can affirm our self and be happy without using this process. Only the creation of new and increasingly more powerful levels of organization makes genuine self-affirmation possible. By enacting this process, we sustain our existence as human beings and gratify our essential function. It is our path to happiness.

As this study shows, an act of creation involves two essential operations that are integral to the process of creation: assimilation (masculinity) and adaptation (femininity). Combining these operations will produce a new and more powerful level of organization that will give rise to new ideas, new approaches, and new solutions.

The current approach to the problem of gender does not provide a solution of this problem. Jiggling and shifting identity labels, mutilating our bodies to realize our fantasies merely perpetuate gender differentiation. This is not a solution; it is the simulacra of a solution. It creates an illusion of a solution. The true solution is in going beyond gender differentiation and abandoning the perspective that sees masculinity (assimilation) and femininity (adaptation) as two separate entities that are totally separate and diametrically opposed to each other. To solve the problem of gender identity, including the problem of transgender, we must recognize and embrace the fundamental unity of these two operations. We must gain control over the process of creation by learning how to combine these two essential operations. By mastering the process of creation we will liberate our true self in an act of creation.

There is one belief that in many ways defines our civilization. It is the belief in struggle, in competition, and in winning. In order to survive and prosper, one must prevail over others. Much harm has come from this belief because it advocates exclusion of and domination. Inequality is an inevitable outcome of this belief. Many of us learn this simple truth from childhood; we practice it diligently throughout our life. We have even invented a way of practicing exclusion and inequality under the guise of championing equality and justice.

One day—and this day will certainly come—we will understand that we cannot cheat on equality. We will have to abandon the tired wisdom of our ancestors that we have learned so well and accepted as self-evident without questioning. We will have to

transform our civilization. We will have to adopt a new theory and practice that will have the process of creation as their central organizing principle that is absolute and universal. We will not undertake this change out of idealistic considerations or under the command of some divine revelation. Our hard won experience and wisdom will lead us to the realization that following this new perspective is not an option that we are free to make or not, but it is the only way for us to survive.

ENDNOTES

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