

24.150 Liberalism, Toleration, and Freedom of Speech, Fall 2023

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This image is in the public domain. Source: [Wikimedia Commons](#).



Edmund Burke, 1729-1797

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Michael Oakeshott, 1901-1990

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[Oakeshott] criticizes the modern rationalist conviction that institutions are best designed from first principles. Rather, the rationalist project founders on the fundamentally fallacious assumption that "what is made is better than what merely grows". For Oakeshott, abstract principles cannot possibly substitute for the complexity, suppleness, and flexibility of traditions of behavior. For this reason, Oakeshott opposes the modernist tendency to bring "the political, legal, and institutional inheritance" before "the tribunal of intellect," and to make reason the ultimate arbiter of policy and practice.*

Wax, Amy L. From "The Conservative's Dilemma: Traditional Institutions, Social Change, and Same-Sex Marriage." *San Diego Law Review* 42 (2005): 1059-1104. © University of San Diego. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

For Burke and Oakeshott, conceptual relationships have little to do with how customs and traditions function in the real world. Because the powers of human reason are severely limited, all but the most intellectually gifted are incapable of engaging in sustained, rigorous analysis or of thinking through problems without falling into error. The dilemmas of human existence are particularly resistant to rational analysis because social practices and traditions are not derived from first principles, but evolve over time by trial and error. Human action in society and politics operates not primarily through reasoning, but through adherence to prescriptive roles, customs, and habits continuously adjusted to the messy demands of day-to-day living. The test of behavioral rules is thus whether they work well in the real world as guides for human interaction rather than whether they conform precisely to syllogistic demands.

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1.

P1. Same-sex marriage is a social arrangement forbidden by God.

P2. The state should not legalize social arrangements forbidden by God.

C. The state should not legalize same-sex marriage.

How would Burke or Oakeshott assess this argument?

Burke thought religion was vital to civil society; Oakeshott was some kind of Christian

Wax: 'Burke's and Oakeshott's traditionalism is primarily secular and does not depend directly on religious belief of any kind. But some portion of political opposition to same-sex marriage is motivated by religious conviction...'

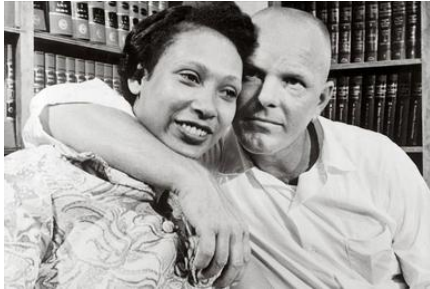
Wax, Amy L. From "The Conservative's Dilemma: Traditional Institutions, Social Change, and Same-Sex Marriage." *San Diego Law Review* 42 (2005): 1059–1104. © University of San Diego. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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2. "In *Loving v. Virginia*, the Supreme Court invalidated the ban on interracial marriage as based on an irrational animus against blacks and an unjustified revulsion against 'racial mixing'."

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Why might Burke or Oakeshott resist the parallel for same-sex marriage?



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Loving v. Virginia, 388 U.S. 1 (1967), was a landmark civil rights decision of the U.S. Supreme Court in which the Court ruled that laws banning interracial marriage violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution.^{[1][2]} The case involved Mildred Loving, a woman of color,^[a] and white man Richard Loving. In 1958, they were sentenced to a year in prison for marrying each other. Their marriage violated Virginia's Racial Integrity Act of 1924, which criminalized marriage between people classified as "white" and people classified as "colored". The Lovings appealed their conviction to the Supreme Court of Virginia, which upheld it. They then appealed to the U.S. Supreme Court, which agreed to hear their case.

From "*Loving v. Virginia*" on Wikipedia. © The Wikimedia Foundation, Inc. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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Interracial and same-sex marriage seem conceptually similar for purposes of legal analysis grounded in equality, rights, and the priority of anti-discrimination, but these arrangements might operate very differently in the real world...The issues for traditionalists are down-to-earth and pragmatic: whether recognition of same-sex marriage will end up weakening or transforming the conventions surrounding the institution in ways that have real consequences for real lives...The speculation is that homosexuals may be more likely to have multiple sexual partners, to tolerate sexual infidelity, to be childless, or to view procreation as less central to the institution than heterosexuals...this behavior could influence how everyone thinks about marriage, with significant consequences for expectations and conduct.

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3. "...sanctioning same-sex marriage will inevitably lead to the legalization of other suspect forms of conduct, including polygamy, group marriage, incest, and bestiality."

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Does Wax think conservatives should endorse this objection to same-sex marriage? Why or why not?

Sealed with a kiss: Man 'marries' his dog in sunset ceremony - but assures guests 'it's not sexual'

By DAILY MAIL REPORTER
 UPDATED: 10:29 EST, 2 December 2010



And they called it puppy love.

Joseph Guiso bends down to kiss his new 'bride' in a wedding ceremony with a difference - one of the parties has four legs and a tail.

Daily Mail Reporter. From "Sealed with a Kiss: Man 'Marries' His Dog in Sunset Ceremony - but Assures Guests 'It's Not Sexual'." *Daily Mail*, December 2, 2010. © Associated Newspapers Ltd. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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4. Is there a conservative case for same-sex marriage? What do you think?

Andrew Sullivan / August 28, 1989

Here Comes The Groom

A (conservative) case for gay marriage



Sullivan, Andrew. From "Here Comes the Groom." *New Republic*, August 28, 1989. © *The New Republic*. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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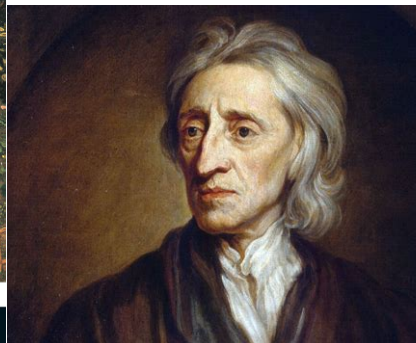
Legalizing gay marriage would offer homosexuals the same deal society now offers heterosexuals: general social approval and specific legal advantages in exchange for a deeper and harder-to-extract-yourself from commitment to another human being. Like straight marriage, it would foster social cohesion, emotional security, and economic prudence. Since there's no reason gays should not be allowed to adopt or be foster parents, it could also help nurture children. And its introduction would not be some sort of radical break with social custom. As it has become more acceptable for gay people to acknowledge their loves publicly, more and more have committed themselves to one another for life in full view of their families and their friends, A law institutionalizing gay marriage would merely reinforce a healthy social trend. It would also, in the wake of AIDS, qualify as a genuine public health measure. Those conservatives who deplore promiscuity among some homosexuals should be among the first to support it. Burke could have written a powerful case for it.

Sullivan, Andrew. From "Here Comes the Groom." *New Republic*, August 28, 1989. © *The New Republic*. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

next topic: religion



Saint Augustine. *Confessions*. Translated by R. S. Pine-Coffin. Penguin Classics, 1961. © Penguin Classics. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.



Portrait of John Locke (1697) by Godfrey Kneller. This image is in the public domain. Source: [Wikimedia Commons](#).

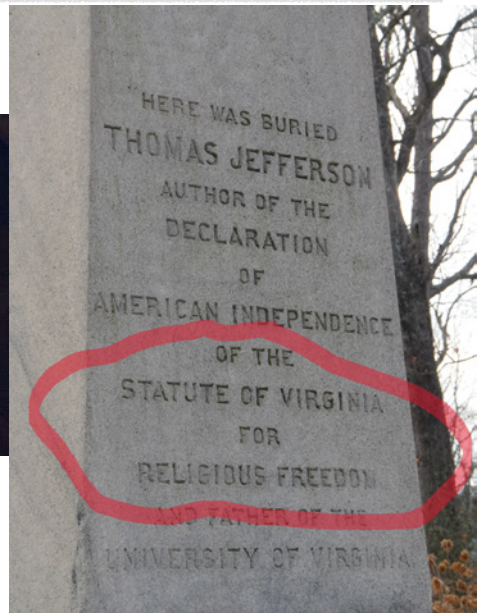


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A brief history of religious persecution

Roman religion was largely what determined Romanness. The Christian refusal to sacrifice to the Roman gods was seen as an act of defiance against this cultural and political characteristic and the very nature of Rome itself.*



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The Christian Martyrs' Last Prayer by Jean-Léon Gérôme. This image is in the public domain. Source: [Wikimedia Commons](https://commons.wikimedia.org/wiki/File:The_Christian_Martyrs'_Last_Prayer).

*https://en.wikipedia.org/wiki/Persecution_of_Christians_in_the_Roman_Empire

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the Protestant Reformation

The Diet of Worms of 1521 (German: *Reichstag zu Worms* [ˈʁaɪçstɑ:k tsu: ˈvɔʁms]) was an imperial diet (a formal deliberative assembly) of the Holy Roman Empire called by Emperor Charles V and conducted in the Imperial Free City of Worms. Martin Luther was summoned to the Diet in order to renounce or reaffirm his views in response to a Papal bull of Pope Leo X. In answer to questioning, he defended these views and refused to recant them. At the end of the Diet, the Emperor issued the **Edict of Worms** (*Wormser Edikt*), a decree which condemned Luther as "a notorious heretic" and banned citizens of the Empire from propagating his ideas. Although the Protestant Reformation is usually considered to have begun in 1517, the edict signals the first overt schism.



Luther at the Diet of Worms, by Anton von Werner, 1877

Luther at the Diet of Worms (1877), by Anton von Werner. This image is in the public domain. Source: [Wikimedia Commons](https://commons.wikimedia.org/wiki/File:Luther_at_the_Diet_of_Worms).

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From "Mary I of England" on Wikipedia. © The Wikimedia Foundation, Inc. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

Mary I (18 February 1516 – 17 November 1558), also known as **Mary Tudor**, and as "**Bloody Mary**" by her **Protestant** opponents, was **Queen of England and Ireland** from July 1553 until her death in 1558. She is best known for her vigorous attempt to reverse the **English Reformation**, which had begun during the reign of her father, **Henry VIII**. Her attempt to restore to the Church the property confiscated in the previous two reigns was largely thwarted by **Parliament**, but during her five-year reign, Mary had over 280 religious dissenters **burned at the stake** in the **Marian persecutions**.

(not, apparently, the origin of the cocktail's name)

https://en.wikipedia.org/wiki/Mary_I_of_England

María Tudor, reina de Inglaterra y esposa de Felipe II (1554) by Antonis Mor.
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Mary Tudor, Queen of England, 1553-1558

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Portrait of Sir Thomas More (1527), by Hans Holbein the Younger.
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Sir (& Saint) Thomas More (1478-1535), opposed the Protestant Reformation, executed for treason

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Bishops Ridley and Latimer, Protestant Reformers, burnt at the stake in Oxford, 1555

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During the eighteen months of the reign of Francis II, Mary [his wife, the Queen of Scots] encouraged a policy of rounding up French Huguenots on charges of heresy and putting them in front of Catholic judges, and employing torture and burning as punishments for dissenters...In what became known as the St. Bartholomew's Day Massacre of 24 August – 3 October 1572, Catholics killed thousands of Huguenots in Paris.*



Le massacre de la Saint-Barthélemy by François Dubois. This image is in the public domain. Source: [Wikimedia Commons](#).

*<https://en.wikipedia.org/wiki/Huguenots>

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Popish Recusants Act 1605

From Wikipedia, the free encyclopedia

The **Popish Recusants Act 1605** (3 Jac.1, c. 4) was an **act** of the **Parliament of England** which quickly followed the **Gunpowder Plot** of the same year, an attempt by English **Roman Catholics** to **assassinate King James I** and many of the Parliament.

The Act forbade Roman Catholics from practising the professions of law and medicine and from acting as a **guardian** or **trustee**; and it allowed **magistrates** to search their houses for **arms**. The Act also provided a new **oath of allegiance**, which denied the power of the Pope to depose monarchs. The **recusant** was to be fined £60 or to forfeit two-thirds of his land if he did not receive the **sacrament** of the **Lord's Supper** at least once a year in his **Church of England parish church**.^[1]

The Act also made it **high treason** to obey the authority of Rome rather than the King.^[2]

Popish Recusants Act 1605



Parliament of England

Citation 3 Jac.1 c. 4

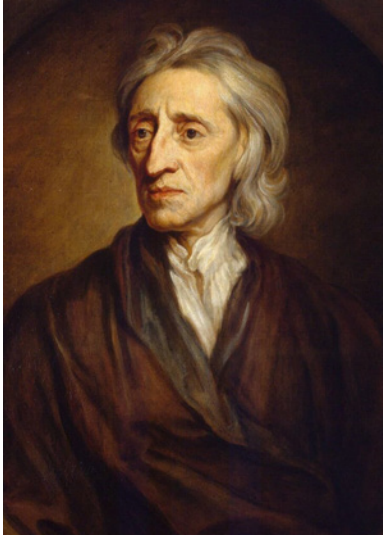
Other legislation

Repealed by Roman Catholic Relief Act 1829

Status: Repealed

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Portrait of John Locke (1697) by Godfrey Kneller.
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John Locke (1632-1704)

English philosopher and physician

Locke's father served on the
Parliamentarian side in the English Civil
War

*An Essay Concerning Human
Understanding* defends empiricism, the
view that there are no "innate ideas"

A Letter Concerning Toleration is not
actually a letter

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Locke

The commonwealth seems to me to be a society of men constituted only for the purpose of preserving and promoting the public good. By 'the public good' I mean: life, liberty, freedom from bodily illness and pain, and the possession of things such as money, land, houses, furniture, and so on.

Locke, John. From "Toleration: Conventionally Known as 'A Letter about Toleration'." Early Modern Texts. © Jonathan Bennett. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

Why isn't promoting true religion another one of its purposes?

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1. According to Locke, if making laws about religion is a legitimate exercise of government power, then it was given that power either by God or by the people. Why does Locke think the people have not given government that power?

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Locke

no-one can be so unconcerned about his own salvation that he blindly leaves it to someone else—whether monarch or subject—to tell him what faith or worship to embrace.

Locke, John. From "Toleration: Conventionally Known as 'A Letter about Toleration'." Early Modern Texts. © Jonathan Bennett. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

What if you think others know better than you?

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