

The confusion over discrimination

By M. Gregg Fager

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Americans and our courts will “discriminate” with regard to gay marriage — how well remains to be seen. American educator Noah Webster published *An American Dictionary of the English Language* in 1828. Since Webster’s day, “discriminate” has noted our ability to distinguish or separate “existing” differences or distinctions. Now, as then, we notice existing differences or distinctions in people and things and select what we prefer, as in choosing good apples instead of bad apples. To this day, each of us routinely discriminates in favor of or against “existing” differences or distinctions.

Since Webster’s day, “discriminate” has also noted our tendency to “make up” differences or distinctions. Now, as then, some of us rely on truth to virtuously discriminate, while others falsely “demean” good apples by calling them bad, or falsely “dignify” bad apples by calling them good, in an attempt to viciously discriminate. To this day, each of us virtuously or viciously discriminates in favor of or against our own or someone else’s “made up” differences or distinctions.

In later dictionaries, such as *Black’s Law Dictionary*, “discrimination” became associated with “unfair treatment or denial of normal privileges to persons because of their race, age, sex, nationality or religion. A failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored.” Some dictionaries have now reserved the word “discriminatory” to mean “unfair” or “unequal” principles or practices.

In cases where a class of people seeks to legitimize virtuous conduct, it is good, just, right and wise (and thus not “unfair”) to virtuously discriminate in favor of that conduct to keep it “unequal” with what is vicious. Conversely, where a class of people seeks to legitimize vicious misconduct, it is good, just, right and wise to virtuously discriminate against that misconduct to keep it “unequal” with what is virtuous. If we are not supposed to consistently and virtuously discriminate in favor of “good” and against evil in our laws, then why does the word “good” appear in Article III of our Constitution? To treat good and evil as “equal” is to corrupt our liberty, hope, peace and joy, and our language.

The term “marriage” should discriminate and preserve “existing” differences or distinctions pertaining to virtuous heterosexual relations legitimized by “marriage” between a man and a woman. People who favor homosexual misconduct should not be allowed to erase those differences or distinctions or to “make up” corrupting and confusing

differences or distinctions by associating the word “marriage” with unnatural sexual acts or relations between or among members of the same gender.

Our legal motto should be “Equal Justice Under Virtuous Law.” Let the courts virtuously discriminate in favor of preserving “marriage” between a man and a woman by ruling that “marriage” within their jurisdictions shall be recognized as legal and lawful only when it is between a man and a woman. Let the courts virtuously discriminate against “marriage” between members of the same gender by ruling that any legalized relationship between them shall be known at law as a “same gender partnership” and shall not otherwise be named or confused with the word “marriage” within their jurisdictions.

There are discriminating principles and practices by which all human beings should be discriminated and should discriminate. To fail to sustain any one of them is to sustain its opposite. We shall see which of our judges and which of us virtuously discriminate in favor of “truth” and against error, in favor of “virtue” and against vice, and in favor of “integrity” and against corruption. That is the heart of it.

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