

**NEWS FOR THE LIBERTARIANS:  
THE MORAL TRADITION ALREADY CONTAINS  
THE LIBERTARIAN PREMISES**

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This is a discussion long overdue in our circles, for the libertarian temptation threatens to do for us what the lure of moral relativism and postmodernism has done for liberalism in our own day, which is to render liberalism incoherent. When liberals enacted the Civil Rights Act of 1964, there was no tinge of doubt, at least, on the wrongness of racial discrimination, and liberals had no doubt about the claims of that law to render justice. But liberals in our own day invoke the claims of privacy, while they relentlessly legislate to deny claims of privacy in the management of private corporations, small private businesses, and private clubs. Liberals invoke equality at every turn, but they do not take seriously the notion that “all men are created equal” expresses a genuine moral truth. In other words, they invoke equality, but they can no longer explain what makes equality genuinely good, right, and just. The temptation has been to deny that there are grounds of moral judgment—mainly, I think, to fend off the temptation to cast moral judgments on others through legislation. The main motive, I suspect, among liberals is to insulate themselves from judgments cast on them in their sexual lives, while remaining free to legislate to restrict our private lives in all other respects.

That stance of liberals—moralism without morality and the drive to keep legislating—may account for the recoil of libertarians from people with the passion to legislate for others. But many libertarians have been drawn to the same fount of moral skepticism, and that moral relativism threatens our own side with the same incoherence that now afflicts the liberals. My claims here may be condensed in this way before I explain them: The libertarians do not seem to understand that their

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concerns are already incorporated in the classic understanding of the connection between the logic of morals and the logic of law. To that classic understanding, they run the risk of offering nothing more than a corrosive moral skepticism. For that traditional understanding already contains in its moral logic built-in burdens on people who would legislate casually, with moral pretensions but with no moral substance. The libertarians seem to have missed these anchoring points: that the claims of liberty flow only to those beings we call “moral agents”; that the libertarian argument is irreducibly a *moral* argument; and that when we understand the genuine moral requirements that attach to the making of laws, we realize that we have lifted the bars for legislation. To understand the moral ground that justifies the law is to make it *harder, not easier*, for people to legislate.

As Aristotle explained, at the beginning, the defining mark of the polis, or the polity, was the capacity to make decisions binding on everyone through the force of law. Human beings were fitted by nature to live in a polis, because law arose distinctly out of the nature of human beings: They were the only beings capable of giving and understanding reasons over matters of right and wrong.<sup>1</sup> As the American Founders understood, we may not rule beings of that kind in the way that we rule dogs and horses. Even today, in the age of animal liberation, we don’t sign labor contracts with horses and dogs or seek the informed consent of our household pets before we authorize surgery on them. But we continue to think that beings who can give and understand reasons deserve to be ruled with a rendering of reasons, and politicians have an incentive to offer those reasons when they are seeking the consent of the governed in elections.

Abraham Lincoln said of those slaves who did not throw in with John Brown that, as ignorant and as uneducated as they were, they still had the wit to see that the schemes of this crazy white man would not conduce to their well-being.<sup>2</sup> Those blacks might have been *unlettered*, but they had the capacity to reason about the grounds of their own well-being, and for that reason they were not rightly annexed to the purposes of other men without their consent. Claims of liberty flow distinctly to

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1. See HADLEY ARKES, FIRST THINGS 11–30 (1986).

2. See Abraham Lincoln, Address at Cooper Institute, New York City (Feb. 27, 1860), in 3 THE COLLECTED WORKS OF ABRAHAM LINCOLN 522, 541 (Roy P. Basler ed., 1953).

these beings who can reason about right and wrong. There is a corollary: Those beings who understand the difference between right and wrong may also grasp—as Aquinas and Lincoln recognized—that one cannot coherently claim a “right to do a wrong.” And so they may understand the things that *they may never claim a right to do, even in the name of their own liberty*. William Blackstone famously said that we give up the liberty to do mischief, the liberty we enjoyed in the state of nature, and we exchange it for a more limited set of liberties and rights under civil society.<sup>3</sup> Our James Wilson responded, “Is it a part of natural liberty to do mischief to any one?”<sup>4</sup> Even in the state of nature we had no right to kill without justification, to murder, or to rape. And therefore the laws that restrained us from murdering and raping did not deprive us of anything that we ever had a rightful liberty to do. The upshot of this understanding is that, contrary to Blackstone, as Wilson and Alexander Hamilton explained, we did not surrender our natural rights when we entered civil society.<sup>5</sup> As Hamilton said in *The Federalist* No. 84, “Here, in strictness [that is, under the new Constitution], the people surrender nothing.”<sup>6</sup> They did not enter the Constitution under the condition of surrendering or reducing their natural rights (or, we might say, their natural liberties), and the purpose of the Constitution was not to create new rights. It was, as Wilson said, to secure and enlarge rights that we already had, by nature.<sup>7</sup>

John Stuart Mill said that we stop using the language of “like” and “dislike” and start using the language of right and wrong when we think that people should be punished for what they are doing.<sup>8</sup> In that rough way, Mill caught the difference between a statement of merely personal taste and something that stands in the class of a moral proposition. In moral judgments, we move beyond personal taste and private choice, and we begin to speak about the things that are right or wrong, just

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3. 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 121–22 (Univ. of Chi. Press 1979) (1765).

4. 2 JAMES WILSON, *Of the Natural Rights of Individuals*, in THE WORKS OF JAMES WILSON 585, 587 (Robert Green McCloskey ed., 1967).

5. See THE FEDERALIST NO. 84, at 534 (Alexander Hamilton) (Benjamin Fletcher Wright ed., Harvard Univ. Press 1961) (1788); WILSON, *supra* note 4, at 586–87.

6. THE FEDERALIST NO. 84, *supra* note 5, at 534.

7. The fuller argument here, part of the original argument on the Bill of Rights, can be found in HADLEY ARKES, BEYOND THE CONSTITUTION 58–80 (1990).

8. See JOHN STUART MILL, UTILITARIANISM 60–61 (Oskar Piest ed., Liberal Arts Press 1957) (1861).

or unjust, for others as well as for ourselves. To paraphrase Aquinas, by “wrong” we mean that which no one ought to do, that anyone may rightly be restrained from doing, and if we are incapable of restraining any person in committing a wrong, then we are justified in punishing him.<sup>9</sup> With that logic, Lincoln smoked out Stephen Douglas when Douglas said that he was neutral on slavery, that he had reached no moral judgment on the matter, and so people ought to be free to vote slavery up or down in the territories as it suited their interests. Lincoln pointed out that Douglas had indeed reached a moral judgment: To say that slavery was a legitimate choice was to say that it fell into a class of things “not wrong.”<sup>10</sup> We would not say, “it is wrong for parents to torture their infants,” and then go on to say, “therefore, let them make this judgment on their own, to torture or not, as it suits their interests or their conscience.” Nor would we say, “it is wrong to torture infants, therefore, let us give parents tax incentives, or a DVD player, in order to induce them to stop.” Hence, the traditional understanding of the connection between the logic of morals and the logic of law: When we come to the recognition that any act—say, the torturing of infants—stands in the class of a wrong, we lay the groundwork for forbidding that act to people generally or universally; which is to say, we may forbid it with the force of law.

This does not strictly mean that we are obliged to make any and every act illegal once we can judge it as “wrong.” Prudence may well enter with a sense of the wrongs that it may be impolitic to reach without generating more evils, and with the sense that we are administering to a population of human beings, not angels. With the caution of Aquinas, we know that we

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9. See 2 THOMAS AQUINAS, *SUMMA THEOLOGICA* 1431–34 (Fathers of the English Dominican Province trans., Benzinger Bros. 1947) (1485).

10. See Lincoln’s classic rejoinder to Douglas during the debate at Quincy, Illinois on October 13, 1858:

[W]hen Judge Douglas says he “don’t care whether slavery is voted up or voted down,” . . . he can thus argue logically if he don’t see anything wrong in it . . . He cannot say that he would as soon see a wrong voted up as voted down. When Judge Douglas says that whoever, or whatever community, wants slaves, they have a right to have them, he is perfectly logical if there is nothing wrong in the institution; but if you admit that it is wrong, he cannot logically say that anybody has a right to do wrong.

Abraham Lincoln, Sixth Debate with Stephen A. Douglas, at Quincy, Illinois (Oct. 13, 1858), in 3 *THE COLLECTED WORKS OF ABRAHAM LINCOLN*, *supra* note 2, at 245, 256–57.

cannot hope to eradicate all vice; we would seek, rather, to keep evils constrained to certain tolerable limits. But when we say that there is a moral groundwork for the law, we mean strictly that, before we remove private choice and restrict personal freedom, the law carries the burden of showing that there is something truly wrong in principle—with the sense of a “wrong” that meets the more stringent tests that attach to a moral proposition. That standard cannot be satisfied merely by the claim that this policy reflects a strong belief shared by most people who are voting—for example, a policy to bar young lawyers from working overly long hours in offices hazardous to their health. That is not good enough to explain why it is wrong for any particular young lawyer to work additional hours if he thinks it necessary for his case or his career. As Rufus Peckham warned in *Lochner v. New York*, we could as aptly reach that kind of conclusion on the same loose reasoning that justifies restrictions on the hours of bakers who wish to work overtime.<sup>11</sup>

But quite apart from the beliefs or passions of the majority, it does not meet a moral standard to produce a policy based merely on *generalizations*—even those generalizations that are quite unmistakably true and persuasive. I would submit to you that we rarely encounter findings, based on aggregate data, as compelling as the findings assembled years ago by my friend George Gilder when he collected the data describing the plight of that hapless character known as the *single male*. Bachelors were twenty-two times more likely than married men to be committed to hospitals for mental disease (ten times more likely to suffer chronic diseases of all kinds); single men have nearly double the mortality rate of married men and three times the mortality rate of single women; divorced men are approximately three times more likely than divorced women to commit suicide or die by murder, and are six times more likely to die of heart disease.<sup>12</sup>

These data are as clear in their import as anything we have seen emerging from such aggregate data: These single men are massively at risk! Their deliverance from this condition could have the most profound effect, not only in improving public health, but actually rescuing lives. Yet, we take it that nothing

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11. See *Lochner v. New York*, 198 U.S. 45, 59–60 (1905).

12. See George Gilder, *In Defense of Monogamy*, COMMENTARY, Nov. 1974, at 31, 32.

in this set of compelling data would furnish a ground for legislating on marriage by contravening the freedom of men *and women* by assigning these men to brides. In the same way, the old Coleman report told us that if we kept the population of black youngsters in any school below twenty-five percent, we could have the effect of raising slightly the median reading scores for black students.<sup>13</sup> That is to say, there was no assurance that any particular black student would benefit from this scheme of assignments based on race. But we seem to understand that, if we cannot say in principle why this arrangement is good or just of necessity for any student, we do not have the grounds for contravening the freedom of any student (or family) by assigning these students to schools explicitly on the basis of race to meet a racial ratio considered optimal for the schools. In other words, when we take seriously the moral ground of the law and the moral requirements that must be met before we are justified in making laws, then *the result is not that we legislate more, but legislate less*. For the bar has been raised notably higher: The standard is more demanding, and that standard rules out the more cavalier grounds for legislating that people have been all too ready to accept in the past.

That standard of a moral justification would not be satisfied by empirical predictions merely contingent in nature. "If Saks Fifth Avenue moves into the neighborhood, the neighborhood will prosper." That may be true, but even if it were true most of the time, it would not be true of necessity. Whether it is true or not, or good in its effects, will be contingent on many other things, probabilistic in nature, and therefore problematic. There is a striking difference between that kind of a proposition and something closer to the proposition Thomas Reid took as one of the first principles in legal and moral reasoning, which I render in this way: We cannot hold people blameworthy and responsible for acts they were powerless to affect.<sup>14</sup> There are no con-

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13. I draw these findings from the project at Harvard to reexamine the data in the Coleman Report. See David Armor, *School and Family Effects on Black and White Achievement: A Reexamination of the USOE Data*, in ON EQUALITY OF EDUCATIONAL OPPORTUNITY 168, 197 (Frederick Mosteller & Daniel P. Moynihan eds., 1972). For the original Coleman Report, see JAMES S. COLEMAN ET AL., U.S. DEP'T OF HEALTH, EDUC., AND WELFARE, EQUALITY OF EDUCATIONAL OPPORTUNITY 330-33 (1966).

14. Reid rendered the matter in this way: "What is done from unavoidable necessity . . . cannot be the object either of blame or of moral approbation." THOMAS REID, ESSAYS ON THE ACTIVE POWERS OF MAN 370 (Garland Publ'g 1977) (1788).

tingencies under which that proposition will fail to be true, and its truth will be entirely unaffected by the question of whether its recognition in any case will bring good or bad results. And yet that proposition may explain quite a bit of the ground of our law in things like the insanity defense or even, in part, the wrong of racial discrimination.<sup>15</sup>

In striking contrast, so many of our judgments in the area of civil rights have been put forth as contingent propositions of that kind. For example, if blacks could not attend the same law school with whites in Missouri—if they had to take a voucher to attend school in another state—then, the argument ran, they could not make the connections useful to their careers in the law.<sup>16</sup> But it does not follow, as a matter of necessity, that any black student in the school will have conversations, form friendships, and make connections that lead to a rising career. Cecil Partee, the late black ward committeeman in Chicago, was barred from attending the law school at the University of Arkansas in 1938. With a voucher, he had to choose instead between the law schools at Northwestern and the University of Chicago. As he later said, “I laughed all the way to Chicago.”<sup>17</sup> Cecil Partee had not suffered a material harm as a result of being turned away on the basis of race. But he had been wronged; he had been treated according to the maxims of an unjust principle. If we considered again the cases of racial segregation in the schools, had it been wrong *in principle* to separate children on the basis of race? Or had the wrong been contingent on its effects in impairing the will of black children to learn, in depressing their performance in the schools? If the students had been separated on the basis of race, and the performance of the black students had risen (as it did at the Dunbar High School in Washington),<sup>18</sup> would the segregation have ceased to be wrong?

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15. See generally ARKES, *supra* note 1, at 85–99.

16. See *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 349 (1938) (describing petitioner’s insistence that “for one intending to practice in Missouri there are special advantages in attending a law school there, both in relation to the opportunities for the particular study of Missouri law and for the observation of the local courts, and also in view of the prestige of the Missouri law school among the citizens of the State, his prospective clients”) (internal citations omitted).

17. MILTON L. RAKOVE, *WE DON’T WANT NOBODY NOBODY SENT: AN ORAL HISTORY OF THE DALEY YEARS* 155 (1979).

18. See Thomas Sowell, *Black Excellence: The Case of Dunbar High School*, PUB. INT., Spring 1974, at 3.

But if there is a principle engaged in these cases of racial discrimination, that principle covers all of the instances in which it may be manifested. If we know the principle that determines the speed by which the ball travels down the inclined plane, as it alters with the angle of inclination, we no longer have to ask: Was it a wooden ball or a metal one, a blue one or a yellow one? And yet, as Philip Kurland once asked, how did we get from *Brown v. Board of Education*<sup>19</sup> to *Palmer v. Thompson*?<sup>20</sup> If the wrong lay in impairing the performance of black children in the schools, did we claim that the barring of children from swimming pools affected their capacity to read and learn? But if there was a wrong in principle in segregation, then that principle applies to every instance in which it could be manifested: The racial discrimination could take place on tennis courts or in access to Xerox machines, and there would not be an obligation to articulate a constitutional “right to play tennis” or a “right to use the Xerox machine.” And that is what marked the obtuseness of Chief Justice Warren’s opening line in *Loving v. Virginia* that the Court had never encountered a case of this kind before: a restriction of marriage along lines of race.<sup>21</sup> Never encountered before? Never encountered the problem of racial discrimination? Or never articulated the principle engaged in the case, the principle that would deliver the Justices from the surprise of new cases, and rescue them from the position of that hapless character who discovers the system of positive integers—one at a time.

Immanuel Kant warned, in one of his more luminous moments, that even a unanimity of feeling cannot provide the surrogate, or replacement, for a moral proposition.<sup>22</sup> For if that conviction rested solely in feeling, it was contingent upon the possibility of that feeling passing away. It may not be the same tomorrow as today. And so, even if we were unanimous in our passion for Coca-Cola or frozen yogurt, we would still not have the ground for making the cola or the yogurt compulsory. My friend Jim Wilson says that we can show people sonograms on babies in the womb at eight to ten weeks, and most of them

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19. 347 U.S. 483 (1954).

20. 403 U.S. 217 (1971).

21. 388 U.S. 1, 2 (1967).

22. See IMMANUEL KANT, FOUNDATIONS OF THE METAPHYSIC OF MORALS (1785), reprinted in FOUNDATIONS OF THE METAPHYSICS OF MORALS AND WHAT IS ENLIGHTENMENT? 3, 60 (Lewis White Beck trans., Macmillan Publ’g Co., 2d ed., rev. 1990).

will say, "That looks like a baby to me."<sup>23</sup> But if the decision turned solely on the question of "what that looks like to me," then the law would have nothing to say to that small fraction of the population who look at the sonogram and say, "Well, it doesn't look like a baby *to me*." For the law, for the question in principle, it does not matter what the child in the womb "looks like" or how people feel about it. The question is "what it is," or the ground of principle upon which we would claim that the offspring of homo sapiens in the womb is anything less than human at any of its stages.<sup>24</sup>

The discipline for the law, and for jurists, is to get clear on the grounds of principle, or the properties of a moral argument, that can alone justify a law: a binding rule that forecloses personal freedom and private choice. A law that is tested in that demanding way—with a stringent test of the moral ground of the law—is a law that will legislate less, and be far more protective of human liberty. Part of my claim here is that a law that cannot give that moral account—that account of what strictly "justifies" the law—is condemned to incoherence. A jurisprudence that seeks to avoid the moral question will appear to engage in charades, where the rationale brought forward for the law has no connection with the ground upon which people of ordinary sensibility understand the wrong of the case. And so, for example, employing the rationale of the Commerce Clause, if black people expect discrimination in public accommodations, they will travel less, and there will be fewer orders for meat and linens and tableware. What was the wrong then in racial discrimination in this construal? It depressed the interstate flow of meat and other goods. As a friend of mine remarked, that problem would be relieved by having the racists in the country eat more meat. Consider the same argument, reworked to fit the problem of abortion: that private abortion may be yours alone, as the wheat on Roscoe Filburn's farm was his alone,<sup>25</sup> but when abortion is summed up in a volume of 1.3 million every year and accumulated over the years, it has the most depressing effect on the interstate sales of diapers, baby

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23. See James Q. Wilson, *On Abortion*, COMMENTARY, Jan. 1994, at 21, 26.

24. See Hadley Arkes, *Abortion Facts and Feelings*, FIRST THINGS, Apr. 1994, at 34, 36–37; James Q. Wilson & Hadley Arkes, *Abortion Facts and Feelings II: An Exchange*, FIRST THINGS, May 1994, at 39, 42.

25. See *Wickard v. Filburn*, 317 U.S. 111 (1942).

food, bassinets, to say nothing of college educations and cohorts of workers to fund the system of Social Security.

One of the enduring sources of confusion among people who banter over moral judgments is that we cannot cast absolute moral judgments in terms of any empirical thing or activity. As Kant recognized, anything we can name, even the most prosaic things, can be part of a means-end chain leading to a wrongful end.<sup>26</sup> We can use the skill of driving to drive for the Mafia or to drive an ambulance. We cannot even say that it is wrong under all circumstances to kill your mother, for she may be trying to kill you, and we do have examples, after all, of mothers willing to kill or order the deaths of their offspring. We can make our way to the ground of moral judgment in the law only by making our way back to those logical maxims, with a necessary force, that underlie our acts.<sup>27</sup> At times those maxims have been woven into the aphorisms of the law, taught by our great jurists: The presence of a wrong justifies a remedy.<sup>28</sup> We should visit punishment only on people guilty of wrongs, and we should respect the difference between the guilty and the innocent by insisting on making those discriminations in the most demanding way—by insisting on evidence, tested by the canons of reason, rather than having defendants outrun mobs in the street. Justice Story reminded us that what we may not do directly, we may not do indirectly.<sup>29</sup> If it is wrong to kill Jones, it is wrong to hire someone to kill Jones. If the federal government cannot reach a certain subject, it may not use the tax system as a surrogate or a disguise for legislation.<sup>30</sup>

We do not know the moral significance that goes along with driving cars or using computers unless we know the end to which the activity is directed. For the same reason, we cannot pronounce a judgment on the categorical innocence of anything that takes place in a domain of privacy. A murder in a bedroom is as much a murder as a murder in the public streets, and the law may reach the most private places—even people storing

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26. See KANT, *supra* note 22, at 9.

27. For an elaboration of this argument, see ARKES, *supra* note 1, at 87–88.

28. See 3 BLACKSTONE, *supra* note 3, at \*23.

29. See *Charles River Bridge v. Warren Bridge*, 36 U.S. (11 Pet.) 420, 617 (1837) (Story, J., dissenting) (“Can the legislature have power to do that indirectly, which it cannot do directly?”); *La Nereyda*, 21 U.S. (8 Wheat.) 108, 124 (1823) (Story, J.) (“[T]he Court will not permit that to be done indirectly, which could not be done directly.”).

30. See *United States v. Butler*, 297 U.S. 1, 68–70 (1936) (Roberts, J.).

heroin in condoms placed in body cavities. That understanding, long established, explains what is so mindless in those glib formulas that suggest that anything taking place in a private setting is insulated from moral judgment, or that the law cannot cast moral judgments on “sexual orientations.” That term, grown so familiar, is so abstract that it could cover bestiality or sadomasochism. There is the strangest overlooking of the fact that even gay activists find certain “orientations” illegitimate. It has been a point of contention for years as to whether the Gay Pride Parade in New York will include the North American Man/Boy Love Association (NAMBLA). Even the activists suggest that there is something not legitimate about this “sexual orientation.” And even the Board of Education in New York City was willing to fire a teacher at the Bronx High School of Science because he was an officer of NAMBLA, and quite clearly committed to its principles (including, quite notably, a willingness to deny the legitimacy of establishing an “age of consent” for sexual engagements).<sup>31</sup> Ordinarily we allow parents to give their consent for certain involvements of their minor children, but even the libertarians do not seem inclined to permit parents to give their assent to a sexual relation between a teenage son and a male teacher.

If we are even faintly rigorous, we would have to recognize that there is no ground for legislation that bars, in a sweeping way, all discriminations based on “sexual orientation.” If the partisans of gay rights had to stop using that term, they could be pressed into saying more precisely what they have in mind. And yet it would be hard for them to do that, for it would become quite as implausible to say that we do not cast moral judgments on people in the way they achieve orgasms. There is the matter, obviously, of rape, but also things that are not so obvious, for our legal judgments are not all cast in the criminal law. Statutes on adultery are almost never enforced, and yet women have lost custody of their children because of a pattern of promiscuity, suggesting a want of fitness as a parent. In *Lawrence v. Texas*, Justice Kennedy suggested with sweeping language that the law must recede from casting moral judgments on certain intimate, sexual practices taking place in private.<sup>32</sup> Just about every conservative I know would have held back the law, or repealed that criminal law on sodomy in Texas. And yet

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31. See *Melzer v. Bd. of Educ.*, 336 F.3d 185, 189, 191–92 (2d Cir. 2003).

32. See 539 U.S. 558 *passim* (2003).

it marks a flight from sobriety—or any faintly rigorous juridical sense—to say that the law may never cast an adverse moral judgment on sexual practices taking place in private settings. If there are men who seek to be adoptive fathers, it could make the most notable difference, in the weighing of their claims, if they happen to be, like Peter Melzer in New York, committed members of NAMBLA, or people who might be committed quite openly to sadomasochistic sex. Even judges who shy away from moral language may find reservoirs of judgment as they discover plausible grounds to believe that a man committed to sadomasochism, containing in his house whips and chains and fearsome devices, would not provide the most wholesome household for the nurturing of a child.

To take a line from Henry James, Justice Kennedy is the victim of perplexities from which a single spark of direct perception might have saved him.<sup>33</sup> For a rather seasoned man of the law, he has shown a strange willingness to be seduced by airy clichés and to pronounce moral judgments utterly detached from any grounding in moral substance. The corrective is not to ban, from our reasoning and our judgments, a distinctly moral perspective, for in that path lies incoherence. The main remedy is to get clear again about the moral ground of the law, and to remind ourselves of how rigorous in fact the test must be before we pronounce upon the things that are categorically, in principle, right and wrong—and that deserve to furnish the ground of the law. To rephrase a line of Woody Allen's, there is no question there is a moral world out there; the only question is, how far is it from midtown and how late does it stay open?<sup>34</sup>

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33. See HENRY JAMES, *The Siege of London*, in *THE NOVELS AND TALES OF HENRY JAMES* 143, 190 (Charles Scribner's Sons 1908) (1882).

34. See WOODY ALLEN, *Examining Psychic Phenomena*, in *WITHOUT FEATHERS* 7, 7 (1975).