

Common Sense Says ...

...that anti-gay-marriage arguments are resurrecting old prejudices.

MARRIAGE RIGHTS

In this past election, eleven states changed their state constitutions to not only make it impossible for people of the same sex to marry, but also to invalidate any marriage that same-sex couples might obtain in another state. Many Americans would define marriage as a long-standing and sacred institution between a man and a woman, yet the history of marriage is not as clear-cut as one might think.

American society's vision of what marriage entails has been molded by the gradual granting of rights in marriage. Charges of moral decline and social chaos have countered every change. When married women were granted property rights (the right for married women to own property, keep their own wages, and have custody of their children) in New York in 1848, one legislator insisted that marriage was "about to be destroyed in one thoughtless blow that might produce change in all phases of domestic life."¹ Marriage was not destroyed in 1848. People continued to marry, but women began to be considered independent of their husbands.

In the summer of 1958, a couple married in the District of Columbia. They returned to their home state of Virginia, and by that fall they were facing an indictment for breaking the law. Their crime? He was white; she was black. They were convicted of violating Virginia's anti-miscegenation law which states that "if any white person and colored person shall go out of this State, for the purpose of being married, and with the intention of returning . . . they shall be punished" by "not less than one nor more than five years" in the state penitentiary.² The judge gave them the option of leaving the state and not returning rather than facing actual jail time. They left the state. Nearly ten years later, Virginia's anti-miscegenation statutes were deemed to be in violation of the due process clause of the Fourteenth Amendment by the U.S. Supreme Court.

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One might think that miscegenation laws were only a thing of our unenlightened past. But consider this: North Carolina did not repeal its ban on interracial marriage until 1977,³ and Alabama approved a referendum removing the prohibition from the state constitution only four years ago (with forty percent of the vote desiring to keep the laws in place).⁴ The Virginia judge responsible for the 1958 miscegenation conviction ruled that "Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix."⁵

A new amendment is in the works that would once again withhold the rights of some Americans to marry the person they love. The proposed Federal Marriage Amendment states that "marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution or the Constitution of any state, nor state or federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups."⁶ So not only

could same-sex couples not marry, but also the benefits of marriage now being granted piecemeal to same-sex couples by many local governments and states would be eliminated.

This is crucial for several reasons. There are written laws and unwritten understandings to which married couples are entitled. Social security benefits, insurance breaks, bereavement leave, and the ability to make medical decisions for each other are just a few of these benefits.⁷ Same-sex couples are not party to these benefits because they cannot obtain unions that are recognized by law. Since 1996, North Carolina law has held that same-sex marriages are invalid.

The language used to promote this amendment

and oppose same-sex marriage rights is similar to the rhetoric that has been used throughout the history of the United States to justify withholding the rights of some to marry. In the late 1800's, miscegenation laws were reinstated and expanded after Reconstruction. The justifications used by judges and policymakers then are being echoed today by same-sex marriage opponents. Then, they claimed that interracial relationships were about a lifestyle choice of "illicit sex rather than" a committed relationship.⁸ Now, they claim same-sex relationships are "mere subjective preferences" designed to "satisfy the desires" of gay couples.⁹ Then, they claimed that interracial marriage was contrary to God's will.¹⁰ Now, they say that a gay relationship is "not right, and it's not biblical."¹¹

The biggest argument by far was the claim that interracial marriages were unnatural. The Virginia Supreme Court declared that "the moral and physical development of both races . . . require that they should be kept distinct and separate . . . that connections and alliance so unnatural that God and nature seem to forbid them, should be prohibited by positive law, and be subject to no evasion."¹² In Georgia, the court declared that interracial marriages were "not only unnatural, but...always productive of deplorable results. They are productive of evil, and evil only, without any corresponding good (in accordance with) the God of nature."¹³ Today, religious leader Pat Robertson calls homosexuality an "abomination. The practices of those people are appalling. It is a sickness."¹⁴

At the forefront of the argument against same-sex marriage is the notion that these marriages are a way to discredit and weaken the institution of marriage. Focus on the Family's James Dobson claims that "most gays and lesbians do not want to marry each other. Who needs a lifetime commitment to one person? The intention is to destroy marriage altogether."¹⁵ The irony of preventing homosexuals from commitment because they don't want commitment seems to be lost on these critics.

Marriage is an institution with benefits that are far-reaching to society and to individuals. However, marriage does not look as it always has. Marriage was not recognized as a sacred institution by the Christian

Church until 1215.¹⁶ Nevertheless, opponents of same-sex marriage claim it "would in effect abolish the institution, by collapsing the moral principles at its foundation."¹⁷ They fear that this change to the understanding of marriage "will contribute to the breakdown of our social order and threaten the well-being of children."¹⁸ Those who claimed that America would be overcome by familial chaos if married women were allowed property rights were wrong. Those who condemned interracial couples were prejudiced and wrong. They used language filled with accusations supposedly supported by God's law to claim that the interracial love was immoral, lust-driven, perverse, and, most of all, unnatural. Those very same words are being used now to oppose the rights of gays and lesbians to marry.

We should ask ourselves, "If religious, scientific, moral opposition to interracial relationships—sex, marriage, and adoption—were wrong, notwithstanding the sincerity and good faith of those who believed in the opposition, then are the same arguments any more justified when they are used to oppose same-sex relationships?"¹⁹ Common sense says we need to consider our language and determine if prejudice is once again being masked by erroneous justifications.

Critics of interracial marriage have called it "unnatural" and "evil," based on "illicit sex" rather than commitment.

Written by CSF intern Kacey Reynolds.

¹ www.marriageequality.org/facts

² www2.law.cornell.edu

³ NCGA General Statutes, Chapter 51. Marriage. Section 3.1.

⁴ Human Rights Campaign, *Top Ten Reasons for Marriage Equality*

⁵ caselaw.lp.findlaw.com

⁶ <http://thomas.loc.gov>

⁷ Marriage Benefits, www.secondclassaction.com

⁸ Peggy Pascoe, "Why the Ugly Rhetoric against Gay Marriage is Familiar to this Historian of Miscegenation." History News Network.

⁹ Robert P. George, National Review, July 13, 2001.

¹⁰ Peggy Pascoe.

¹¹ NC State Senator James Forrester. "Sides Gear up Over Gay Vows," Michael Biesecker, News and Observer, March 24, 2004.

¹² Peggy Pascoe.

¹³ www.marriageequality.org/facts

¹⁴ Pat Robertson, 700 Club, June 6, 1988. (from the People for the American Way Foundation)

¹⁵ James Dobson, www.calvarymemorial.com/ministries

¹⁶ www.marriageequality.org/facts

¹⁷ Robert P. George.

¹⁸ Called2Action, "Our Values," called2action.org

¹⁹ Kim Forde-Mazrui, Director of the Center for the Study of Race and Law, September 30, 2004. www.law.virginia.edu