

## **Marriage – A History of Change**

*(Updated: December 2011)*

*The institution of civil marriage has undergone enormous change in recent times. Within the last century, states could still place extensive restrictions on obtaining a divorce, ban interracial marriage, and subjugate the rights of women to their husbands. The picture now is very different. Racial discrimination within marriage has ended, married women have equal rights to married men, and most states have created access to no-fault divorce. Historians believe ending discrimination against same-sex couples in marriage is no more dramatic than other recent changes.*

*The last vestige of discrimination in marriage lies in the refusal of the government to grant same-sex couples access to the institution. While scaremongers would have people believe that marriage for same-sex couples will spell an upsurge in infidelity, the break-up of families and society, and the death of marriage itself, the same arguments were put forward against every one of the above changes to marriage. All of these fears have proved groundless. Marriage has always been an evolving institution, taking account of shifting societal attitudes and changing needs of families. Just as other recent changes, thought radical at the time, have done nothing to undermine marriage, acknowledging the right of committed gay and lesbian couples to marry would strengthen the institution.*

### **Race and Marriage**

The ongoing struggle to secure the right to marry the partner of your choice, regardless of their sex or sexual orientation, has clear parallels to the battle to end race discrimination in marriage. Just as people defending interracial marriage bans invoked “divine law”, “immorality” and “unnatural unions” as arguments against ending discrimination, so do the opponents of civil marriage for same-sex couples. While there are differences between the two issues, there are also profound and inescapable similarities.

Forty U.S. states, including Massachusetts, once prohibited marrying someone of the “wrong” race, no matter how much you loved them. Social prejudice accomplished much the same result in other states. Marriages between whites and persons of color were decried as “immoral” and “unnatural.” Polls showed that overwhelming numbers of Americans agreed. Massachusetts forbade interracial marriage as early as 1705, a restriction which was ultimately changed in 1843 after a three year campaign in the legislature. The legislature understood that withholding marriage based on race was an affront to human dignity and denied our basic guarantees of equality.

Despite the public opposition to interracial marriage, in 1948, the California Supreme Court became the first state high court to declare a ban on interracial marriage unconstitutional. In *Perez v. Sharp* the Court stated that:

*“A member of any of these races may find himself barred from marrying the person of his choice and that person to him may be irreplaceable. Human beings are bereft of worth and dignity by a doctrine that would make them as interchangeable as trains.”*

The decision was controversial, courageous and correct. At that time, 38 states still forbade interracial marriage, and 6 did so by state constitutional provision.

Then, in 1967, the U.S. Supreme Court struck down the remaining interracial marriage laws nation-wide. A Virginia judge had upheld that state’s ban on interracial marriages, invoking God’s intention to separate the races. The U.S. Supreme Court overturned his decision, declaring that:

- the “freedom to marry” belongs to all Americans;
- marriage is one of our “vital personal rights” and
- the right to marry is “essential to the orderly pursuit of happiness by a free [people].”

The parallels between the struggle for the freedom to marry then, and the struggle for gay and lesbian couples today is illustrated by the endorsement of marriage for same-sex couples by civil rights organizations ranging from the Asian American Legal Defense & Education Fund, the Urban League of Eastern Massachusetts, the Mexican American LDEF, the National Asian Pacific American LDEF, and the Puerto Rican LDEF.

Civil Rights hero and now U.S. Representative John Lewis, speaking in condemnation of the Defense of Marriage Act (which denies federal recognition to marriages of same-sex couples) stated:

*“This bill is a slap in the face of the Declaration of Independence. It denies gay men and women the right to liberty and the pursuit of happiness ... I have known racism. I have known bigotry. This bill stinks of the same fear, hatred, and intolerance. Every word, every purpose, every message is wrong. It is not the right thing to do, to divide America.”*

## ***Women in Marriage***

For hundreds of years, women had few to no legal rights once they married. Married women had no independent legal existence: they could not make contracts, maintain their own names, file lawsuits, have full ownership and control of property, and in some cases could not maintain custody of their children after their husband's death. The husband controlled all the family earnings and all of his wife's property in exchange for nothing firmer than the general social expectation that he would support his wife and children. Some of these inequalities continued well into the 20<sup>th</sup> century. Over time, however, both the courts and the legislature have changed marriage laws have changed to reflect the equality of spouses.

## ***Divorce***

In the early years of this country, divorce was exceedingly difficult to obtain. If people did get divorced, there were usually restrictions on the “guilty party's” ability to marry again. Over time, to deal with abusive and failed marriages, people moved to states with fewer divorce restrictions. This issue polarized the states and even reached the attention of the U.S. Congress dozens of times in just over 60 years. Ultimately, the U.S. Supreme Court ruled that states have to honor divorces granted in other states (*Williams v. North Carolina*). Later, beginning in the 1970's, many states lifted restrictions on divorce, with most creating no-fault divorce systems. In other words, while we aspire to marriage as a life long commitment, that requirement is now absent from law.

## ***History Points to a Tradition of Change***

These historical examples point the way to the proper course in ending sex and sexual orientation restrictions in marriage. All of the elements that were once considered essential or natural to a marriage (that women be subordinate to men; that it be lifelong; that it be between people of the same race) have fallen away based on our growing respect for equality and individual freedom. Restricting who can marry whom based on their sex and sexual orientation is also discrimination. It may be controversial to change the status quo, but it is time for this last vestige of discrimination in marriage to end.