

THE RIGHT TO MARRY

**A Sermon by Dean Scotty McLennan
Stanford Memorial Church
February 15, 2004**

Yesterday was Valentine's Day. I hope yours was happy. Today I'd like to speak with you about one of the most important ways love gets manifested and realized: in marriage. I'd like to speak with you about the right to marry, and how it can be denied at the hands of the state. I speak to you not just as a minister, but also as a Massachusetts attorney, who keeps up his license to practice in that state. I want to tell you the story of Davis and Perez, who fell in love and tried to get married, only to be turned away by a county clerk who refused to issue them a marriage license simply because of who they were as a condition of their birth. I also want to discuss the reasoning of the courageous state court which was the first in the nation, albeit by a very close 4-3 majority, to find that clerk's refusal unconstitutional. And that, after more than 30 state legislatures had put laws on the books that said no such marriage would be recognized in their state.

"Marriage is something more than a civil contract, subject to regulation by the state. It is a fundamental right..." Those are the words of the court. As the United States Supreme Court has long held, marriage is one of the "basic civil rights of man."ⁱ From a religious perspective, marriage of course has long been held to be sacred, and it's often noted that, in the Gospel of John, Jesus' very first miracle was performed at a wedding at Cana of Galilee.ⁱⁱ The court decision makes it clear that "there can be no prohibition of marriage except for an important social

objective and by reasonable means." Moreover, "Legislation infringing...[the fundamental right to marry] must be based on more than prejudice and must be free from oppressive discrimination to comply with the constitutional requirements of due process and equal protection of the law."

The court then goes on to consider and reject claims that the unions under consideration are unnatural, and that they are not the ideal context within which to raise children. To the claim that children within such unions will experience stigma and suffer societally, the court responds: "If they do, the fault lies not with their parents, but with the prejudices in the community and the laws that perpetuate those prejudices by giving [them] legal force..."

The three judge dissent argued that who should marry is a matter for legislatures, not courts to decide "in order that the well being of society as a whole may be safeguarded or promoted." The dissenters stated that "It is not within the province of the courts to go behind the findings of the legislature," which "in the first instance" should decide "what is necessary for the public welfare. Earnest conflict of opinion makes it especially a question for the legislature and not for the courts." Bolstering their case, the dissenting judges also noted that laws prohibiting these unions "have been in effect since before our national independence and in this state since our first legislative session." The majority opinion, however, retorted that "certainly the fact alone that the discrimination has been sanctioned by the state for many years does not supply...justification." The majority made it clear that when it comes to constitutional law, statutes duly enacted by state legislatures or the U.S. Congress must be struck down if they fail to meet judicial standards of due process or equal protection of the law.

And so, in 1948, the year I was born, the California Supreme Court became the first in the

nation to strike down an anti-miscegenation law, at a time when marriages between blacks and whites could not be performed in a majority of these United States.ⁱⁱⁱ The Nation magazine, touting itself as "America's Leading Liberal Weekly Since 1865" commended the religious organization which had represented [quote] Sylvester Davis, a Negro, and Andrea Perez, his white fiancée. As the Nation explained, at that time "Most of the civil rights organizations failed or refused to participate in the case on the assumption that miscegenation statutes could not be successfully challenged in the courts."

It took almost another 20 years until the United States Supreme Court spoke on this subject in a 1967 case ironically named Loving v. Virginia.^{iv} By that time I was in college, and we were within a year of the end of Martin Luther King's life, but more than half of the states with antimiscegenation laws in 1948 would still not permit a black person to marry a white person. The state of Virginia had argued that there was a rational basis to treat interracial unions differently from same-race unions, and refuse them marital status, or at minimum that the scientific evidence about black-white differences and their implications was still in doubt. It claimed that the courts should stay out of these matters; instead, they should defer to the democratic wisdom of legislatures in the matter of who should be allowed to marry or not, and why. The U.S. Supreme Court responded that it had the duty to decide whether laws passed muster under the due process and equal protection clauses of the constitution. It then went on to explain that under our constitution the freedom to decide whom to marry is a fundamental right which resides with the individual and cannot be infringed upon by any state legislature without compelling justification.

Religion had a central role to play in the public debate about black-white marriage. It explicitly worked its way into the Loving v. Virginia decision. When Richard Loving and Mildred Jeter were convicted of violating Virginia's ban on interracial marriages, by establishing their marital abode in the state, after having been lawfully married in the District of Columbia, the trial court judge wrote in his opinion: "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."

In the 1948 California decision, it was the Catholic Church, however, through its Interracial Council in Los Angeles, that made a religious argument on behalf of the partners in the case, both of whom were Catholic. The claim was that Davis and Perez were being denied their right to participate fully in the sacraments of their church by being denied the right to marry. One of the concurring judges cited the Bible as a positive authority on intermarriage, using these words: "The Apostle Paul declared that 'God...hath made of one blood all nations of men for to dwell on all the face of the earth.'"^v Ironically, this was probably the same Biblical passage that the Virginia judge used in denying people the right to marry because of the color of their skin. For the Apostle Paul's words continue by stating that along with God making of one blood all nations of men, God also "hath...determined the bounds of their habitation."

What can we learn from this chapter in American history for our nation's current debate about the boundaries of the fundamental, sacred right to marry? In particular, what does the Bible teach us about how to approach this question as religious people, especially when very different

conclusions seem to be drawn from the same Bible passage?

Today's gospel lesson from the book of Luke^{vi} describes Jesus as blessing those who are hated, excluded, reviled and defamed. Jesus also blesses those who weep, who are hungry, who are impoverished. It seems to me that there are two central messages that Jesus tries to convey, again and again throughout the New Testament: first, a message of deep concern for those who are oppressed and, second, a message of profound love that passes all understanding. The scandal of Jesus' ministry in its time, and today as well, is that he constantly stood with the outcast, those who were discriminated against, and those who suffered at the hands of the established principalities and powers of his day.^{vii} Upon the oppressed he pronounced God's blessing. Secondly, Jesus brought a lesson of love that turned the world on its ear. He went beyond the love represented between husband and wife at Cana of Galilee to ask us to love our neighbors as ourselves^{viii}, and then beyond that to ask us even to love our enemies, as he is quoted in the very next verse in Luke following today's gospel lesson.^{ix} The Apostle Paul explains, in a passage often read in marriage ceremonies, that "If I speak in the tongues of mortals and of angels, but do not have love, I am a noisy gong or a clanging cymbal...Love is patient; love is kind...It does not insist on its own way; it is not irritable or resentful; ...It endures all things."^x

None of this helps us specifically to know what Jesus and his disciples would say about marriages between blacks and whites, and it's possible to find a proof text in the Bible for virtually any claim, but for me the feel is clear. Instead of the judge's proof-texting -- "the fact that he [Almighty God] separated the races shows that he did not intend for the races to mix" -- the New Testament record as a whole leads me to believe that Jesus had a generous view of life-

long, committed, monogamous, loving relationships between any two people who freely chose each other to marry.

Yet, today's gospel lesson also speaks of prophets and false prophets. How can I, or you, know which tradition we're in? Jesus explains that often true prophets run against the social consensus, being hated, excluded, reviled and defamed, while false prophets run with crowd, with all speaking well of them. The 1948 California decision which allowed blacks to marry whites was so far outside of the social consensus, that not even major civil rights organizations were willing to sign onto the court challenge. It was a closely divided 4-3 decision within the court, with the attorney for the county of Los Angeles arguing [quote] "The amalgamation of the races is not only unnatural, but always productive of deplorable results." Some twenty years later, though, a unanimous United States Supreme Court could strike down the remaining antimiscegenation laws across the country in a brief opinion, stating that the only basis for such racial classification could be to maintain White Supremacy. Social consensus can shift dramatically in one generation.

On the other side of the question of social consensus lie those individuals who are deeply hurt and harmed by claims that they are inferior or sinful and that their marriage would be unnatural and productive of deplorable results. How horrible for them. Again, it seems to me that these are precisely the kinds of people whom Jesus always comforted and sanctified first: "Blessed are you who weep now, for you will laugh."^{xi} Again, I read the New Testament record as a whole as one which places a very generous conception of love at the very center of Jesus' teaching and actions. Those are the criteria -- standing with the oppressed, and a generous conception of love

-- on which I believe we should try to distinguish true prophets from false prophets.

Yet, Jesus also manifested a kind of humility that we all do well to remember. In the same chapter of Luke that we've been examining, Jesus says, "Judge not, and you shall not be judged; condemn not, and you shall not be condemned."^{xii} In a recent panel discussion where I was advocating for same-sex marriage, an audience member asked me whether gay marriage will undermine or harm traditional institutions. I responded by saying that "The harm that is done to someone when you say they can't marry the person of their choice is unconscionable."^{xiii} Afterwards I apologized for the use of the word "unconscionable" to my colleague on the panel from the Campus Crusade for Christ, who is opposed to same-sex marriages and thinks they might undermine the structure of the traditional family.^{xiv} I know him well personally, and respect how conscientiously he thinks about, and struggles with, this question. And according to all the polls I read, the majority of Americans, religious and secular, agree with him and not with me. I need to have enough humility of the sort Jesus called for, to state my own beliefs clearly and act upon them, while at the same time understanding and respecting how people of conscience can differ on these important questions.

By way of conclusion, though, on the issue of conscience, I must say that I'm haunted by the fact that it took the largest Protestant denomination in the United States, the Southern Baptists (which is the tradition of two recent American presidents) until 1995 to apologize for the role the denomination had played in the Biblical justification of slavery in the nineteenth century, and in the maintenance of a culture of racism in America in the twentieth century. It had used Biblical proof texts like the words of Paul I cited earlier or this one from the Letter to the Ephesians:

"Slaves, be obedient to those who are your earthly masters, with fear and trembling, in singleness of heart, as to Christ."^{xv} The social historian C. Eric Lincoln wrote in 1995, after the church's historic apology: "Just think of all the violence and bitterness we might have been spared if the Southern Baptists had repudiated racism earlier."^{xvi} Amen.

NOTE

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- i. Skinner v. Oklahoma, 316 U.S. 535 (1942).
 - ii. John 2: 1-11.
 - iii. Perez v. Sharp, 32 Cal2d 711.
 - iv. Loving v. Virginia, 388 U.S. 1 (1967).
 - v. Citing Acts 17:26.
 - vi. Luke 6: 17-26.
 - vii. The New Interpreter's Bible (Nashville: Abingdon Press, 1995), Vol. IX, p. 143.
 - viii. E.g., Luke 7:27.
 - ix. Luke 6:27.
 - x. I Cor. 13: 1, 4-7.
 - xi. Luke 6:21.
 - xii. Luke 6:37.
 - xiii. See Camille Ricketts, "Panel Discusses Gay Marriage," The Stanford Daily (February 4, 2004), pp. 1, 10.
 - xiv. Ibid., p. 1.
 - xv. Ephesians 6:5.
 - xvi. As cited in Peter Gomes, The Good Book: Reading the Bible with Mind and Heart (HarperSanFrancisco, 2002).