

## WHO'S AFRAID OF ADAM AND STEVE? THE GAY MARRIAGE DEBATE

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The speaker addressed the 1996 Minnesota Republican Party Convention to convey the topic, "Stopping the Threat of Gay Rights." As his speech built to a crescendo, he finished with this line: "If we can't stop them with bullets, we'll stop them with ballots."

Apparently a firing line directed towards gays would have been this speaker's preferred option in dealing with the gay "problem," but perhaps that would have been too visible and too messy, not to mention illegal. Imagine if that comment would have been targeted toward African Americans, Jews, Native Americans or most any other minority in American culture. The audience response might have been gasps and even jeers. Instead, this comment toward gays drew applause.

Are we really that surprised? After all, most of us in this room tonight spent significant parts of our lives in which gays were overwhelmingly considered sick, perverted and downright evil. In popular culture, homosexuality was a punch line or an embarrassed silence. It wasn't until the Stonewall Riots of 1969, when gays finally fought back against authority, that the dignity and worth of homosexual people has been part of the public forum. Then in 1973 the American Psychiatric Association removed homosexuality from its classification of mental disorders, and recently a wealth of scientific data has suggested that being gay is not a choice, but an orientation determined genetically and biologically. Suddenly, Americans had to try to reconcile their ideals of individual liberty, equality before the law, and civil rights against their religious beliefs and traditional culture.

Recently, the discussion about gay rights has entered an area that I admit I thought would never occur in my lifetime. The matter of homosexual couples being granted civil marriage has emerged as a highly emotional yet defining issue pitting religious versus secular principles. The battle rages despite the effectiveness of, yes, the ballot to thwart the progress of gay marriage. Tonight, I wish to explore with you the background and issues surrounding this complex topic, so we can be better informed as the gay marriage debate continues.

First, let's consider the historical context of this issue and examine the evolution of marriage over the years. In past centuries, marriage was very different from anything we'd recognize in the United States today. Marriage was understood as a dynastic or property arrangement for families and the basic social unit, which was households. Marriage was not always about two people, as in the case of the Biblical patriarch Jacob, whose two wives and two concubines produced the head of the 12 tribes. Marriage has not always been a religious blessing. You may be surprised to know that the Catholic Church had nothing to do with marriages during the church's first thousand years: weddings were not recognized as a sacrament, nor were weddings then performed in churches. Marriages have not always been recognized by the law. Centuries of working class European marriages were conducted outside the law, in which no property was involved. Marriage is, and has always been, variations on a theme. Even the claim that marriage has always been between men and women is not entirely true. Whether or not you accept historian John Boswell's claims of same-sex marriages in Europe from ancient times through the 18th century, historical documents do show same-sex unions recognized in Chinese, African and Native American cultures.

In the United States itself, marriage has undergone four major shifts. Divorce is now much easier to obtain. Women were once legally subordinate to their husbands, and any property she owned before or after marriage became his. Contraception within marriage was once illegal. And lastly, interracial marriages were illegal in many states. Before these obstacles were removed, the opponents of these changes were making the same predictions they're making about gay marriage today: the institution of marriage and civilization itself will be destroyed if the changes are made. It took decades of fighting to overturn these injustices as marriage evolved to what we have today.

Coincidentally, the legal battle over gay marriage is already three decades old. You might be surprised to hear that fact. For many, the gay marriage issue seems very new. Last year, as we approached the 2004 presidential election, some liberal Democrats politely said to me, "Gee, it's unfortunate that gays are pushing marriage now, when we have a good chance of defeating George W. Bush. Now we have all these state constitutional amendments on the ballot that will bring the conservatives out to vote for Bush." What I think they really meant to say was "Dammit, why are you gays pushing this issue NOW, when we have the chance to beat Bush. Let's beat Bush first, and then you'll have a friendlier administration as you push for gay marriage."

What Democrats and Republicans alike may not realize is that, as far back as 1971, gays were initiating court cases for states to allow them to marry. In 1993, the Supreme Court in Hawaii ruled in favor of the gay plaintiffs that Hawaii's marriage law restricting marriage to opposite sex couples was unconstitutional. Then the backlash began, which led to an amendment to the Hawaii constitution allowing the legislature to ban same-sex marriages, which it did in 1998. Previous to that action, and with the Hawaii court decision in mind, the federal government passed the so-called Defense of Marriage Act, often called DOMA, in 1996. DOMA was enthusiastically signed by then-president and Democrat Bill Clinton, leaving suspect any hopes for Democratic administrations being friendly to gay marriages. Not only did DOMA allow states where gay marriage was unlawful to not accept gay marriages legally conducted in other states, it prevented legal gay marriages from receiving any federal marriage protections, responsibilities and benefits.

Glancing around the world now, history was made in 2001 when the Netherlands became the first country to legalize same-sex marriage. Belgium approved similar legislation in 2003, and most recently, Spain and Canada hopped on board. "Registered partnerships," involving most, but not all, of the same rights and responsibilities as those associated with opposite sex marriage, are now in place in five Scandinavian countries. Less expansive forms of same-sex unions have been approved in Hungary, France, Germany and Portugal.

With the exception of the legalization of gay marriage in Massachusetts and civil unions in Vermont and Connecticut, matters have not been so bright for same sex couples in the U.S. Voters from 12 states passed amendments to their state constitutions in 2004 to further codify the DOMA provisions. Twenty-six other states have similar laws on the books. In those instances where the public voted on the state constitutional amendments, it was largely a matter of the majority limiting the rights of a minority.

Is this a wise thing to do, to have the civil rights of a minority be a matter decided by popular vote? For example, as recently as 1967, when the Supreme Court ruled in *Loving vs. Virginia* that interracial marriages could not be prohibited, polls showed 70 percent of the population was opposed to that ruling and 48% believed interracial marriage should be a crime. Imagine the dejection of interracial couples if the opposition had prevailed with arguments like "let the people vote" or with attacks on "activist judges." Then imagine the feeling gay couples do experience - the hurt, the rejection, the humiliation - when the public votes to keep gays as second class citizens.

Take this real life example. Ed and Brian were partners for 15 years. Brian was a lineman for the power company, that is, until he had a work-related accident that left him permanently brain damaged. After a few awkward weeks in the hospital, Brian's parents didn't let Ed visit anymore. Eventually they moved Brian to their home, where Ed is not allowed. Because Brian's parents were considered next of kin, Ed had no recourse in the matter. However, if Ed were Brian's husband, he would have been able to care for his spouse and not be shut out of the rest of his life. Put yourself in Ed's place and imagine the agony of loving someone for 15 years, and potentially not being able to see that person for the rest of your life because you are willing but not able to be married.

Or consider the story of Julie and Hillary. After Julie delivered their baby by cesarean section, Hillary was denied entry into the ICU to see her newborn daughter. The reason? Only immediate family was allowed. These are but two examples of the real pain gay couples face every day.

Granted, emotions are at a fever pitch for this political football because it involves the most fundamental institution in society, marriage. Furthering the debate's intensity is that marriage is often seen as intertwined with religion. That perception fails to understand that, in a democratic and secular society such as ours, marriage is fundamentally a civil and legal institution. After all, how do we know if someone is married? Is it because two people love each other, live with each other, have children together? No, those conditions could be the same for unmarried couples. Do you have to be religious to be married? No, atheists and agnostics can be married. Do you have to be "moral" to be married? No, because marriage is open to convicted murderers, child molesters and rapists, as long as they're heterosexual, that is. The way in which we know a couple is married is if there is a signed, legal document between both parties.

Of course, when we think of a wedding, we often picture a ceremony in a church setting, which is one reason why the religious connection seems so strong when we discuss marriage rights. While it's true that the majority of married couples do get married in a religious setting, the percentage of those having a purely civil ceremony is nearly 40 percent and growing. As far as the law is concerned, what counts is not what you do at the altar, but that you get a civil marriage license from the government and sign a legal document. That's why when gays frame their end of the marriage debate, they term it "civil marriage" to separate the issue from the commonly-held religious element. And because marriage is ultimately a legal matter, it takes away one of the objections hurled at proponents of gay marriage, which is the concern that religions will have to recognize and even conduct same-sex marriages. The answer is no, because the free exercise clause of the first amendment allows houses of worship the right to limit marriages on whatever theological grounds they choose.

Many other objections to same sex-marriage are raised as well, and I will deal with a few of them briefly here.

One of the major points raised by anti-gay marriage proponents is that marriage is for procreation, and since homosexuals can't procreate naturally, they should not be allowed to marry. Even Supreme Court Justice Antonin Scalia noted the weakness of this argument when he wrote, "What justification could there possibly be for denying the benefits of marriage to homosexual couples exercising the liberty protected by the constitution? Surely not the encouragement of procreation, since the sterile and the elderly are allowed to marry." As author Jonathan Rauch observes, "To put the point more starkly, sterility disqualifies all homosexuals from marriage, but it disqualifies no heterosexuals. So the distinction is not procreation at all. It is merely antihomosexual."

Often lost in the quarrel about procreation is the fact that families headed by gay parents exist already. Data gleaned from the 2000 census reveals that as many as one in five gay male couples and one in three lesbian couples are raising children. Anti-gay marriage proponents often claim that leading experts say that children fare better with a mother and father. What the experts actually say are that children, on average, do better when raised by two parents. Experts including the American Association of Pediatrics agree that these parents can be a mother and father, or two mothers or two fathers. In fact, that organization issued a formal policy statement in 2002 in support of gay parents and their children. So the question persists, would it be better for the children of gay parents for the parents to be married or unmarried?

Still, the opposition hammers on about the male-female benefit, as evidenced by this comment from conservative Bill Bennett, who wrote, "With all due respect to proponents of same-sex marriage, it is also important to say publicly what most of us believe privately, namely, that marriage between a man and woman is in every way to be preferred to the marriage between two men or two women." Stay with Bennett's "in every way" comment as I read to you this letter to Dear Abby. "Dear Abby: I am 10 years old. My best friend, 'Elizabeth,' can't communicate with her mom or her new stepdad because every night and day they go to bars and get very drunk. Elizabeth's mom is disabled, and she is always trying to kill herself. She can't say 'hi,' 'good morning,' or 'I love you' to her mom because they don't have time to talk to her. They tell her they have to work, but they go to the bars instead. Can you give me some advice on what I can do to help Elizabeth. - Caring Friend in Olympia, Wash." I'm sorry, but if my partner and I were parents to this little girl, I believe we would be better than these parents "in every way."

Another canard raised by gay marriage opponents is what is sometimes termed the "men behaving badly" argument. In short, that argument sounds like this: men are different than women, and male-male couples are inherently more prone to adultery. Gay couples' infidelity will prove contagious. Their adultery will damage or destroy the norm of fidelity among straight couples. Therefore, the best policy is to keep same-sex marriage illegal. Here are my short answers to this argument. First, the gay males most likely to marry will be the ones most tradition-minded and more likely to be monogamous. Even if one or both are adulterous, it's hard to imagine that they'll publicly pronounce that adultery and potentially affect opposite sex couples. Finally, the Catch 22 is that gays aren't allowed to marry because they're perceived to be promiscuous, but then they wouldn't be as promiscuous if they were allowed to marry.

Another argument against same sex marriage is called the slippery slope argument, which goes something like this: if marriage is opened to include same-sex couples, we have no principled grounds to oppose the taboos of polygamy or incest. I'm not going to spend much time debunking this argument, except to say that gays are not asking for the legal right to marry anybody they love or everybody they love. Instead, homosexuals are asking for what heterosexuals have already: the legal right to marry somebody they love. If the rule is that the law should give everyone a realistic hope of marrying somebody he loves - not two people, not three people, but one person - there is no other group in the country whose situation is comparable to gays, because only homosexuals are barred by law from marrying anyone they love. In regards to the so-called slippery slope, with gay marriage the slope ends at a natural stopping place: one person, one spouse.

Of all the arguments against gay marriage, probably the one with the most traction is that of tradition. Many people who support gay rights in employment and housing get squeamish about upsetting the tradition of heterosexual-only marriage. The argument from tradition states simply that marriage is as it is, and you can't just make it something else. And if you do make it something else, chaos might erupt.

The problem with this position is that one would have had to say, 150 years ago, that slavery should not be forcibly abolished, because it was customary in almost all human societies. The same point might be raised about equal rights for women, despite centuries of codified discrimination. Both injustices were then supported by Biblical references, much as passages from the Bible are used in the gay marriage debate today. Still, in instances like slavery and women's rights, sometimes society must make changes in the name of fairness and decency, even if there may be hidden costs. For those predicting the end of civilization as we know it if gay marriage is approved, we need only to look at the other examples in the world where gay marriage or forms of gay marriage have been tried and notice that chaos hasn't erupted.

In fact, when Denmark allowed a form of gay marriage in 1989, 72 percent of the Danish clergy were opposed to the law. A survey conducted in 1995 indicated that 89 percent of the Danish clergy admitted the law is a good one and had many beneficial effects, including a reduction in suicide, a reduction in the spread of sexually transmitted diseases and in promiscuity and infidelity among gays.

Despite these positive outcomes, many Americans still find it hard to assign the word "marriage" to gay relationships. So we've manufactured compromises, most notably civil unions. Civil unions do provide a form of commitment for gay couples which includes the same benefits the state government provides heterosexual married couples. On first glance, this status seems to solve the problem of gay couples being barred from any benefits or government-recognized rituals for their relationships. Most importantly for conservatives and others, this avoids planting the label of marriage on a same-sex union.

The first problem with this compromise is that, even though the civil union spouses receive about 300 benefits from the state government, they do not receive any of the more than 1,100 benefits and protections from the federal government. No visit to a lawyer to write up private agreements for a gay couple would even begin to touch the many, far-reaching advantages automatically provided married couples by federal law.

One of the primary federal benefits not available to unmarried partners is the Social Security survivorship benefit. Let's look at an example to see what impact this has in dollars and cents. If a gay civil union partner was born before Jan. 1, 1960, made \$50,000 a year and died in 2005, the surviving partner would be denied about \$1,400 a month at normal retirement age. If that partner lived 20 years beyond retirement, that would mean \$336,000 in lost benefits, benefits that would have automatically been paid to a widow or widower.

In short, civil unions, and any gay marriage alternative, are inherently unequal to marriage. As the Massachusetts Supreme Court noted in its decision ruling that civil unions are not a suitable substitute for marriage, "Because the proposed entry (of civil unions) by its express terms forbids same-sex couples entry into civil marriage, it continues to relegate same sex couples to a different status. The history of our nation has demonstrated that separate is seldom, if ever, equal."

Another concern with civil unions and domestic partner programs is that they actually may harm marriage. After all, they are programs that governments and corporate human resources departments just made up, and now they may be serious competitors to traditional marriage. Although these marriage alternatives are often thought to be just for same-sex couples, about two-thirds of partner programs in America are in fact open to both same-sex and opposite-sex couples. To whatever extent that they mimic marriage, domestic partner programs and civil unions send the message that, from the law and society's point of view, marriage may no longer be unique. As Jonathan Rauch notes, "If you want to damage marriage, then blur its boundaries, surround it with competitors, and riddle it with carve-outs and exceptions. While you're at it, unbundle the rights from responsibilities...Just for good measure, leave people unsure exactly who is married and who is not."

Here's another interesting thought: right now in the United States, if you want to get together with someone, and depending on where you live and work, you can have cohabitation, employer domestic partner benefits, public domestic partner benefits, civil unions, marriage or even covenant marriage (which is a version of marriage that is harder to get into and out of).

So a poignant irony here is that, while gays are asking to move beyond cohabitation into all the responsibilities of marriage, the self-styled proponents of matrimony are telling the gays to stay shackled up instead. Perhaps the real issue today isn't between same sex marriage and traditional marriage, but between marriage and non-marriage.

Now that we've covered the arguments for and against gay marriage, allow me to close with some barstool philosophy.

Let's face it, relationships are tough. They require a lot of work, communication and compromise to keep them stable over the years. Gay relationships can be especially challenging because there's virtually no social underpinning for them. Marriage provides a strong backbone to relationships with the social expectations it carries and special status it provides.

If marriage is a good thing, if it promotes stability, monogamy and responsibility, why close the doors to gay people and attack them as being unstable, promiscuous and irresponsible? After all, it's only been about 40 years since gays have emerged from a severe societal repression. In that time, gays

have moved from a party atmosphere through the scourge of AIDS and now slowly into the mainstream of society. Still, the federal government refuses to pass anti-discrimination laws to protect people based on sexual orientation, and now voters and legislators are excluding gays from the province of marriage. Even as a growing number of people have come to accept homosexuals as part of the human family, many still strive to keep gays locked in a world of secrecy and isolation.

Why the nastiness? Why is it that we continue to judge people as categories, like gay or straight, black or white, Republican or Democrat, instead of human beings who actually have more in common than they do differences? All of us have goals, dreams, families, jobs, friends and lives. Are people of a different race, nationality and sexual orientation really all that different from us, and if they are, should they be punished for that fact? Is it really worth our time and effort to make other people's lives miserable? Do we need bullets or ballots to achieve those ends?

When it comes to gay relationships, are they really that insignificant? Do they deserve to be flicked away like some pesky gnat? I invite you to share in my description of the relationship between my partner and me, and decide for yourself, is it really all that different from you and your spouse?

We meet. We talk. We share. We connect. We wonder. We probe. We test. We confide. We withhold. We object. We argue. We worry. We weep. We wonder. We reconcile. We adjust. We grow. We learn. We touch. We support. We care. We live. We love. We wonder...we wonder if someday, in our lifetime, if we'll be able to share the same level of commitment that so many of our heterosexual friends share. We wonder if someday, in our lifetime, the majority in this country will open their hearts to allow other human beings to enjoy the tradition. So we ask you...Let us bond. Let us commit. Let us marry.