

Is Gay Marriage An Idea Whose Time Has Come?

☒ Now that the U.S. Supreme Court is considering the constitutionality of same sex marriage, it might be a good time to consider this tidbit that should make even the most ardent opponent of gay marriage feel uneasy: In the United States of America a convicted felon in prison for robbery, rape, murder or a whole bunch of other crimes is allowed to marry – but, except in a handful of states, gays can't.

To many of us, this makes absolutely no sense. Neither does the argument that if the court rules that gay marriage is legal it would re-define the meaning of marriage. Yes it would. And?

Another argument, this one made by Charles Cooper, the lawyer representing the anti gay marriage side at the Supreme Court, makes even less sense.

At one point Justice Elena Kagan said this to Cooper: “It seems as though your principal argument is that same-sex and opposite-sex couples are not similarly situated because opposite-sex couples can procreate, same-sex couples cannot, and the State's principal interest in marriage is in regulating procreation. Is that basically correct?”

Cooper replied, “That's the essential thrust of position, yes.”

So does that mean couples in their 50s and 60s not to mention 70s and 80s can't marry – because marriage, after all, is for having children and there aren't a lot of 75 year old women having babies these days?

The argument is beyond absurd. And they're all canards, masking the real source of opposition to gay marriage – which,

in a word, is the Bible.

As my pal Bill O'Reilly, passionately put it on The Factor: "The compelling argument is on the side of homosexuals. That's where the compelling argument is. 'We're Americans, we just want to be treated like everybody else.' That's a compelling argument. And to deny that, you have to have a very strong argument on the other side. And the other side hasn't been able to do anything but thump the Bible."

Conservatives, like Rush Limbaugh, are arguing that gay marriage should be left to the states – not to nine men and women in robes in Washington. And there's something to that. The Supreme Court handed down their ruling on abortion in Roe v. Wade 40 years ago and we're still fighting over it. The decision on gay marriage, Limbaugh and other conservatives say, should be the result of "the will of the people" – not the edict of a court.

But what would the will of the people have been back when black people were fighting for their civil rights. Does anyone really think the people – or the state legislatures – in Georgia or Alabama or Mississippi would have voted to let black people vote, or eat at lunch counter, or drink out of water fountains reserved for "whites only," or stay at hotels, or go to public school with white kids?

Not likely. After all, these are the same people who voted for segregationists like George Wallace to make sure those "Negroes" knew their place.

I'm all for letting the people decide. That's the best way to go. But do we really want to put civil rights up for a vote?

Opponents of gay marriage say this isn't about civil rights. The same thing was said back in 1967 when a mixed race couple – Richard and Mildred Loving – was arrested in Virginia, simply for being an interracial married couple living in Virginia where that kind of thing was against the law.

The trial judge in the case, one Leon M. Bazile, suspended a one-year sentence on condition that the Lovings leave Virginia and promise not to come back for 25 years. And at their sentencing the judge also said this:

“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.”

Remember, this was in 1967, which in the big scheme of things wasn't that long ago. When the case got to the U.S. Supreme Court in 1967, Virginia's law was unanimously shot down. In the court's ruling, Chief Justice Earl Warren said:

“Marriage is one of the ‘basic civil rights of man,’ fundamental to our very existence and survival... To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discrimination. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State.”

Now the question is not about race but about sex. We may all be better off if the states decide the issue one by one. But on principle, banning same sex marriage is just as wrong as banning interracial marriage. Chief Justice Warren was right: Marriage is a basic civil right. Besides, if convicted felons can marry, do we really want to deny that basic civil right to gay Americans, who have committed no crime?