

Marriage Equality

Chapter 12

Learning Objectives

- After reading this chapter, you will be able to:
 - 12.1 Summarize the history of marriage equality as an issue in the United States up to the June 26, 2015 Obergefell Supreme Court decision.
 - 12.2 Critically analyze the arguments for and against marriage equality, the place of religion in the argument, and the role of utilitarian moral reasoning in the debate.
 - 12.3 Discuss the different moral arguments for and against marriage equality after reading selections by Senator John Cornyn, Sally Kohn, and Cleve Jones, as well as Justice Anthony Kennedy's majority opinion from the Supreme Court bench.

Supreme Court grants Marriage Equality

- On June 26, 2015, The United States Supreme Court declared marriage equality the law of the land. In a historic 5-4 civil rights decision turning on both equal protection under the law and due process liberty interests for all Americans, the court decided the Obergefell v. Hodges case in favor of equality, making the United States of America the 21st country in the world to have full marriage equality for all its citizens. The decision voiced the need to grant that right to all citizens and, in Justice Anthony Kennedy's issued majority opinion, also expounded movingly on the dignity of all persons and on the power of love.

- "No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family," wrote Justice Anthony Kennedy in the majority opinion. "In forming a marital union, two people become greater than they once were. As some of the petitioners in this case demonstrate, marriage embodies a love that may endure even past death. It would be to misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions."

DOMA

- Few if any moral and legal debates in our lifetime have moved as fast as the question of marriage equality. All but unimaginable a generation ago, as of this writing, marriage equality has become the law in the Netherlands, Belgium, Spain, Canada, South Africa, Norway, Sweden, Portugal, Iceland, Argentina, Denmark, France, Brazil, Uruguay, New Zealand, Great Britain, and Scotland. The United States, like Mexico, has regional marriage equality; that is, some states have it and some ban it. However, in the United States, a landmark 2013 U.S. Supreme Court decision declared the **Federal Defense of Marriage Act** (known as DOMA) unconstitutional.

Focus on Interracial Marriage

- In 1958, two Virginia residents, a black woman and a white man who were in love, decided to drive across the Potomac to Washington, D.C. and get married. Interracial marriage was forbidden in Virginia by the 1924 Racial Integrity Act, a so-called **anti-miscegenation** law that was the norm in many states along with other forms of racial discrimination that denied American citizens civil rights because of who they were. After their wedding, Mildred Loving and Richard Loving returned to their home in Central Point just north of Richmond. Virginia state police broke into their house in the middle of the night and arrested them.

Not Adam and St(eve)

- Natural Law and then the consequentialist arguments of the harm that allowing interracial marriage would cause to the American family. "Almighty God created the races, black, white, yellow, malay [sic] and red, and placed them on separate continents," declared the trial judge Leon M. Bazile. "And, but for the interference with this arrangement there would be no cause for such marriage. The fact that he separated the races shows that he did not intend for the races to mix." One can suppose that if God had intended for the races to mix, he would have made everyone beige. A parallel argument, more recent, is that God created Adam and Eve, not Adam and Steve.

1967 Law Overtured

In 1967 the U.S. Supreme Court in a unanimous decision struck down the Virginia law and, by legal implication, all other antimiscegenation laws in the books at the time in roughly one-third of the United States. In his historic ruling, Chief Justice Earl Warren wrote that "There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Constitution's Equal Protection Clause." This was a civil rights issue. In 2012, the National Association for the Advancement of Colored People passed a resolution endorsing same-sex marriage as a civil right.
