



GAY MARRIAGE TODAY... POLYGAMY TOMORROW?

If you're like me, you know the whole "gay rights" question isn't really a question: it's an eventuality. According to an ABC poll from 2011, 68% of Americans under the age of 30 support gay marriage rights. More strikingly, 65% of those under the age of 40 do as well. Even a slight majority of the population between the ages of 40 and 50 support full marriage rights. The numbers for every age group have risen significantly from only five years ago. And so it's sort of funny, really, watching evangelical Christians and Republican politicians rail against gay marriage, knowing that, given a few years' time and the passing of another generation, the argument has already been won.

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Of course, the staunchest of gay marriage opponents think they know. Rick Santorum seized on his argument a couple months ago at a New Hampshire college. Responding to a question about gay marriage, he asked:

If it makes three people happy to get married, based on what you just said, what makes that wrong?"

It's the same argument we've heard since the advent of the gay-rights movement: if you legalize gay marriage, what's to stop the legalization of polygamy, incest, pedophilia, bestiality, etc.? And the answer, for all but one, at least, is "quite a bit." Pedophilia and bestiality are of course prohibited by the whole notion of "consent." A dog cannot express consent in a way that a judge would understand; and a seven year-old is understood to be unable by virtue of a lack of brain development. Incest

is a whole other can of worms, dealing with possible damage to the gene pool. It will probably come up someday, but it effects such a miniscule population, I doubt we'll see a movement to legalize brother-sister relations anytime soon.

On the matter of polygamy, however, Santorum has a point—though I doubt it's the point he wanted to make. The student to which he posed his question knew the game. She didn't react with the level of disgust he might have expected. "That's irrelevant," the student answered. And, before moving on, stated, "In my opinion, yeah, go for it." Polygamy is almost certainly the next marriage-rights debate. And, unless the Santorums of the world are willing to push America back to 1868, and repeal the fourteenth amendment, they will all have to acknowledge that the



polygamists' victory is inevitable.

The mistake Santorum keeps making, and he made it again at that New Hampshire college, is his claim that "marriage is not a right." Unfortunately for him, the Supreme Court settled that matter in 1967 and they concurred, unanimously, the opposite. The basis for their decision? The Fourteenth Amendment—specifically the "equal protection clause," which states, in part, that "No State shall make or enforce

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any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Now, interpretation of those words has varied widely since their inception. Clearly, at the time when the Amendment was drafted, the writers did not intend to legalize polygamy or gay marriage. They also didn't intend to legalize interracial marriage—but, according to the Supreme Court, their words made it legal anyway.

In 1967, the Supreme Court struck down Virginia's law banning interracial marriage. In *Loving v. Virginia* the state argued precisely what Santorum argued to that New Hampshire college student—that marriage was a privilege and not a right. But, as Justice Earl Warren wrote, in the unanimous opinion of the Court:

"The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men." He continued, "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."

Although he was writing in that case about a white man's ability to marry a black woman, Justice Warren must have known the importance of his words—the first clear definition by the Court of Marriage as a civil right.

It was inevitable, then, that once Justice Warren wrote his majority opinion enshrining the "right to marriage," that such a right would extend beyond his original intent, to homosexual unions. And now it is inevitable that other marginalized groups—like the polygamists—will test the legal waters to determine whether that right extends to them as well. I don't think it will happen as quickly as Rick Santorum might predict, but the beauty of the constitution is that it always seems to be expanding rights, adding to the rolls of the enfranchised, as awareness expands.

Though the story hasn't garnered much attention yet—as anything

other than an entertainment tidbit—one polygamous family has recognized the direction of the changing winds. Stars of the TV reality show *Sister Wives* are currently suing the state of Utah in Federal Court over its anti-bigamy law. Though they aren't suing for equal marriage rights, they want the legal ability to live together in "spiritual" marriages. The current state law forbids a married person from professing to be married to multiple people or from cohabiting with those people. And so, given the precedence of *Lawrence v. Texas*, and its landmark decision on the right to privacy in sexual matters, the family sees an opportunity to move the law in their favor.



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It's hard to imagine the gay community and the fundamentalist Mormon community agreeing on anything, but the Sister Wives are smart to look to gay rights achievements for their inspiration. I can't imagine how any judge would rule against them—a group of consenting adults who have lived responsibly with each other for years—but it's possible that they will have a long fight ahead of them. It's possible that it will be a still longer fight until they receive the right to legally marry. And then who knows what battle will come next—which other groups will follow, rising up to claim the same rights as their neighbors. All I know is that more are coming. And I wish all the best to them.

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