

Decision on same-sex marriage 'tyrannical imposition' by court

By Michael Pakaluk

President Lincoln once asked some visitors to the White House: "If we decided to call the tail of a horse a leg, how many legs, then, would a horse have?" His visitors quickly answered, "Five, of course." "No, not true," replied Lincoln, "The horse would still have four legs. Just because you call a tail a leg, doesn't make it a leg."

Lincoln was trying to teach his visitors that our verbal and legal categories have to correspond to reality. In particular, just because Southern states called a black man a "slave" and said he was someone's "property" didn't make it so. A black man is a human being with dignity, no matter what a slaveholder claims.

A modern-day Lincoln might similarly ask the citizens of Massachusetts: "Suppose the Legislature goes along with the Supreme Judicial Court and declares that two men or two women can apply for licenses to be married: How many homosexual marriages will there be, then, in the state?" If you started counting homosexual couples, you'd be on the wrong track. The correct answer is: None. Two men or two women can't get married. They can be erotic partners or good friends, but they can't be husband-and-wife married. Just because the court starts calling such a relationship "marriage" doesn't make it so.

Our legal categories have to track reality, and, as George Orwell taught, we'll quickly fall into tyranny if they don't. Don't believe me? It's easy to show how exactly the same procedures and reasoning that lead to "homosexual marriage" can lead to other, tyrannical impositions.

Consider this. It's the year 2030 and the SJC now decides as follows: "From the point of view of the law, homosexual and heterosexual couples should be on completely equal grounds. But it's unfair that only heterosexual married couples can have offspring, whereas homosexual married couples cannot. To correct this imbalance, the state will therefore redistribute offspring, taking them from heterosexual couples and reassigning them to homosexual couples."

"That's a ridiculous supposition," you say. "It would never happen." Yet people who are over 30 years old remember a time when it would have been absolutely ridiculous to suppose that homosexual marriage would ever be imposed.

"But no one would go along with it," you urge. "People would object." But "homosexual marriage" is not now being adopted by democratic means

(did you ever vote on it?), nor could it be, precisely because *people would object*. Rather, it's being imposed through a 4-3 decision by members of a ruling elite. That people would object means little to activist courts; in fact, it spurs them on.

And has anyone noticed how *blase* everyone seems to be about this? A court has just decreed: "Your categories of marriage are all wrong. We require that henceforth, you must treat two men as married," and we're asleep. If they can get away with this, they'll only get bolder.

"But the state can't do that. It can't take people's children away!" It can do exactly what we allow it to do. And, in any

As I See It

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case (the court might say) everything depends on how one defines the word "children." Suppose we redefine "parent" and "child" as follows: A "child" is a minor whose custody is entrusted by the state to an adult; a "parent" is an adult to whose custody the state entrusts a minor child. If we redefine those terms in that way, then (the court could reason) the state wouldn't be taking anyone's "children" away from them, when it reassigns the offspring of heterosexual marriages to homosexual couples. "Children" in this sense is a purely legal category, and how "children" in this purely legal sense are distributed among couples should conform to standards of fairness and equality.

"But surely the court couldn't propose such a ridiculous redefinition and get away with it. That's foolish wordplay -- an absurdity -- not sound legal reasoning." But the court has proposed a comparably ridiculous redefinition of marriage and apparently is getting away with it.

Marriage has always meant the one-flesh, unconditional union of a man and a woman for the purpose of founding a family. Without blushing, the court has redefined it as: an exclusive commitment of two persons to each other as spouses.

This is clearly a nonsense definition, concocted just to

achieve the desired political end. What does "exclusive" mean in this context? What does it mean to say they are committed to each other as spouses? But the court wasn't embarrassed to serve up that kind of non-sense and impose it on everyone.

"But people dispute over marriage," you say, "yet everyone knows that 'children' means the biological offspring of parents. This biological connection implies a right that parents have, which is prior to the authority of the state. The biological relationship sets a limit to the authority of the state."

Ah, but there is a broader meaning of "children," after all: People adopt children and call them "my children." Doesn't this show that procreation is not essential to the parent-child relationship. (A stupid argument? That's how the SJC reasoned about marriage: Because we allow elderly and infertile couples to get married, the court argued, procreative ability is irrelevant to marriage.)

In general, once we deny that the procreative relationship between man and woman is the basis in nature for the authority that man and woman have to be married, then there is no reason to claim that the procreative relationship between parents and children is the basis for the authority of parents to raise their biological children. Our legal categories are limited by nature in both cases or in neither.

Define tyranny -- the opposite of liberty -- as the denial that the state's power is limited by claims which arise by nature and which are therefore prior to the state. It's easy to see that the SJC, in dictatorially imposing a strange definition of marriage on the commonwealth, by a slim 4-3 majority (with a single judge thus making law for all of us) was tyrannical in its procedure, since the court behaved just like an oligarchy.

What's harder to see, but true nonetheless, is that the SJC's decision is tyrannical also in its substance. If by a court's decision two men (or two women) can get married, then by a court's decision black may be white and white may be black -- and, for all we know, children may belong originally to the state, and a tail may be a leg.

Far wiser to return to the good sense of a Lincoln and say, "No, you can't do that. We'll not stand for it. Two men can't get married. And no court can make it so."

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