

# Marriage Equality – The Civil Rights Cause of our Times

Rosh Hashana Morning 5772

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It was December 1863. The Civil War had been raging in the United States for over two and half years. In response to the election of President Lincoln, eleven southern states had declared their succession and formed the “Confederate States of America.” The Battle of Gettysburg, which held the highest number of casualties in that long brutal war had been fought six months earlier. The Confederate armies were defeated and the beginning of the end was in sight. Only one month before, President Lincoln gave his historic Gettysburg Address proclaiming that the "government of the people, by the people, for the people, shall not perish from the earth."

In New York City, shortly before Christmas during that dark December, an anonymous pamphlet began to be circulated. The 72-page pamphlet, available on newstands for 25 cents, was called *The Theory of the Blending of the Races, Applied to the American White Man and Negro*.<sup>1</sup> Advocating the intermarriage of whites and blacks to create a “mixed race” which would be “mentally, physically, and morally” superior to “pure or unmixed” race, the pamphlet went on to make clear that this position was a plank of Lincoln’s party and that the purpose of the Civil War was its “final fruit:” after the abolition of slavery, the ultimate blending through marriage of white and black.

In the racially charged era of the Civil War, where openly racist standards were part of normal educated discourse, there could be no more inflammatory claim. Less than a decade after the “Dred Scott Decision” denied citizenship to freed slaves, Racial admixing deeply offended the vast majority of whites, including

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<sup>1</sup> ["The Miscegenation Hoax"](#). *Museum of Hoaxes*.

those opposed to slavery. New York City had already seen mass riots against the draft, just weeks after Gettysburg. Now this pamphlet, which cast the war in deeply racial and conspiratorial terms, stirred anti-war and pro-segregation sentiments.

A year later, in November of 1864, the pamphlet and its claims were exposed as a hoax. The whole scheme was concocted by Democrats to embarrass Republicans – and Lincoln in particular, in advance of the election of 1864.

The pamphlet had one lasting effect, beyond the scare tactics of presidential elections. In its opening paragraphs, it concocted a new word – a word which would resonate through American and world history for over a century. A word that would become enshrined in segregation and marriage laws, through to the Nazi era. The word is: Miscegenation.

The term “Miscegenation” was invented by the anonymous authors of this 1863 pamphlet, who were later identified as writers for the Democratic Party paper the *New York World*. It was an intentional replacement for the more common term “amalgamation” used to describe interracial unions. This new word, combining the Latin terms *miscere* (to mix) and *genus* (race), sounded more scientific. Although the science behind race has since been disproven – we are all, after all members of the same genus, species and subspecies: *Homo sapiens sapiens*. Still the word has staying power.

Throughout the 18<sup>th</sup>, 19<sup>th</sup> and early 20<sup>th</sup> centuries, many American states passed anti-miscegenation laws banning interracial marriage. Between 1913 and 1948, 30 out of the then 48 states enforced these laws<sup>2</sup> criminalizing marriage and in some states even the co-habitation of mixed-race couples. Anti-miscegenation amendments to the US Constitution were proposed three times between 1871 and 1928. None were enacted. But in 1883 the US Supreme Court upheld the law stating that it did not violate the 14<sup>th</sup> Amendment’s “equal protection” law, because both races were punished equally.<sup>3</sup> That ruling was overturned by the

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<sup>2</sup> [Where were interracial couples illegal?](#), Loving Day, quoted in [Anti-miscegenation Laws in the United States](#), Wikipedia article.

<sup>3</sup> [Pace v. Alabama, 106 U.S. 583](#)

Court in 1967 through the landmark civil rights case *Loving v. Virginia*<sup>4</sup> which ended all race-based legal restrictions on marriage in the United States. But the last state in the Union did not amend its constitution to remove anti-miscegenation laws until the year 2000. In that state referendum, 33 years after the US Supreme Court declared it unconstitutional, only 59%, barely a majority of the state's voters, voted in favor of removing the offensive legislation. That was just over a decade ago.

Prejudice remains rooted in our land, in our people and in our laws. We cannot be complacent when we see injustice – even when it is legally ensconced. We have to stand up and speak out.

That these offensive anti-miscegenation laws were given popular voice by a hoax pamphlet – taken and accepted as real by the majority population – is eerily familiar to us as Jews. “The Protocols of the Elders of Zion” a fraudulent text purporting to describe a Jewish plan for achieving world domination is still in wide circulation today. First published in Russia in 1903, it has long been exposed as a forgery of the Russian Secret Police and stolen baldy from a French satirical novel written four decades earlier.<sup>5</sup> Still the hoax document was widely disseminated in the United States and accepted as true. Notoriously, the American anti-Semite Henry Ford funding the printed of 500,000 copies in the United States and had them freely available at every Ford dealership. The protocols were studied in German classrooms as fact during the Nazi era. This false pamphlet has been cited by the historian Norman Cohn as Hitler's primary justification for initiating the Holocaust – his “warrant for genocide<sup>6</sup>.”

Anti-Semitism and Anti-Miscegenation combined in the worst excesses of the Nazi era. “Racial Purity” was the rationale for oppression. Legal discrimination paved the way to the most unimaginable horrors. We Jews know the story all too well.

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<sup>4</sup> [388 U.S. 1\(1967\)](#)

<sup>5</sup> [The Protocols of the Elders of Zion](#), Wikipedia article.

<sup>6</sup> Norman Cohn, *Warrant for Genocide: The Myth of the Jewish World-Conspiracy and the Protocols of the Elder of Zion* (New York: Harper & Row Publishers, 1966) 32–36.

Although, thanks to the Supreme Court and an evolving sense of freedom and equality in our nation, we have put these offensive anti mixed-race marriage laws behind us, we still live in an era of legal discrimination. The law of the land, the constitutions of state governments and the hearts and minds of millions allow an entire class of American citizens today a separate and unequal status. These people were also singled out by the Nazis as morally inferior. Candidates for national office, right now, score points by publically expressing the worse prejudicial statements and irrational fears. It is time to put this offensive and discriminatory past behind us.

So let me say it clearly, loudly and repeatedly, as our president and other political leaders have not yet done: Gays and Lesbians should have the legal and full right to marriage in the United States. Anything less is offensive. "Don't Ask, Don't Tell" was offensive. "Defense of Marriage" is offensive. "Proposition 8" is offensive. Oregon "Ballot Measure 36" and the state Constitutional Amendment it enshrined here in our state- is offensive.

Fifteen years ago, the Central Conference of American Rabbis, the international association of Reform Rabbis passed a resolution on Gay and Lesbian Marriage. It reads:

Consistent with our Jewish commitment to the fundamental principle that we are all created in the divine image, the Reform Movement has "been in the vanguard of the support for the full recognition of equality for lesbians and gays in society."

This was true, the resolution notes in 1977 when the CCAR adopted a resolution supporting the decriminalization of homosexual acts between consenting adults

It was true, the resolution continues, that in 1993, the Union of American Hebrew Congregations observed that "committed lesbian and gay couples are denied the benefits routinely accorded to married heterosexual couples." And it resolved that "full equality under the law for lesbian and gay people requires legal recognition."

And so, in 1996 the Reform Rabbis resolved that:

. . .the Central Conference of American Rabbis support(s) the right of gay and lesbian couples to share fully and equally in the rights of civil marriage, and . . . oppose(s) governmental efforts to ban gay and lesbian marriage.<sup>7</sup>

I was a young rabbi when that resolution was passed. I had been ordained just two years before. In truth, my views on gays and lesbian marriage were evolving at the time. When I was a rabbinic student in the early 90's there was a great deal of discussion about gay and lesbian rabbis. It had only been a few years previously that the seminary I attended had agreed to ordain homosexual students. As a straight man, I confess I didn't understand the issue. In the theatre world where I spent my college days, I knew many gays and lesbians. I didn't see my friends as oppressed or hidden. It was only from honest conversation with my classmates that I understood the difficult world many faced. Although Hebrew Union College had agreed to ordain, it was well known on campus that some professors would refuse to sign the ordination certificate of someone they knew – or suspected – to be gay or lesbian. It was absolutely unclear if any congregation would hire an openly gay rabbi. None had. My friends wondered if they would have to hide. Living the public life of a rabbi, they wondered if they would be forced to choose between a false marriage with a person of the opposite sex, or to live a life of loneliness. I saw the hurt and pain, the distrust of the very institutions we were all training to serve. My friends were living a life of "Don't Ask, Don't Tell."

I thought a great deal in later years about the nature of marriage and the Jewish commitment to family. A thoughtful discussion took place among the rabbis. Some of it was heated. One document spoke of how difficult it is to even have the discussion because of the different language we use, the assumptions about tradition and the power that it holds in charting new ways forward.<sup>8</sup> But I was moved by a few simple arguments. For example: although there is much we do not know about all of human sexual orientation – is it genetic, is it environmental, is it some combination of the two? - one thing we know emphatically is that it is not a matter of personal choice. It is also abundantly clear that homosexuality is no impediment to creating a loving, stable, committed, monogamous relationship. And Judaism, in its idea of

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<sup>7</sup> [On Gay and Lesbian Marriage, Resolution Adopted by the CCAR, March 1996](#) (slightly edited for clarity.)

<sup>8</sup> ["On Homosexual Marriage,"](#) CCAR Responsa 5756.8

marriage as a sacred covenant known as *kiddushin*, a holy bond, strives to create and support just such relationships. It is not a matter simply of law, inheritance or convenience. Marriage is sacred. I came to believe, that the denial of this basic right afforded to every heterosexual couple is to declare these relationship as less than sacred. And if we are all created in the image of G-d – and I believe we are – than those created individuals whose love is for one of the same gender, who strives to create a holy and sacred union, should be married in the eyes of G-d and the state.

We have, to be sure, the great difficulty of Biblical and Medieval Jewish texts which are unequivocal in their condemnation of the male homosexual act, although there are largely silent on lesbian sex. But it is clear that these writings did not envision the stable, loving family relationships of today. Human sexual ethics rooted in Patriarchal societies of uneven power structures, where the main goal of marital sexuality was to have as many children as possible, has to give way to a new sexual ethic in which equality between partners and stability in the family is key. As Rabbi Arthur Waskow of the Shalom Center wrote:

I believe that Torah itself has a sense of the evolving, emerging sacredness of the human race, and desires that we grow beyond the specific content of some passages of Torah, in accord with its deeper process and with prophetic aspects of its Teaching.<sup>9</sup>

With Waskow, and many others, I agree that “affirming and celebrating marriages of gay and lesbian couples will help us move toward a new sexual ethics that accords with God's continued unfolding in our world.”<sup>10</sup>

These are two different things, to be sure: religious marriage and civil marriage. There are my colleagues who disagree. There are religious leaders of many faiths whose interpretation of scripture and tradition bring them to the opposite conclusion. I respect that. But I am also convinced that the civil role of marriage will not harm them. And it certainly will not – as so many loudly proclaim – put their own marriages at risk. The institution of Marriage does not need to be defended because it is not under attack. Making room for more

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<sup>99</sup> [Toward a New Jewish Sexual Ethic](#), TheShalomCenter.org 9/8/2001. For more on the inclusion of LGBT into the Jewish community see the Boston-based Organization [Keshet](#).

<sup>10</sup> Ibid.

committed, monogamous marriages where each partner is honored and supported does not harm anyone – it only makes us all stronger. Despite claims to the contrary, no religious leader will be compelled to officiate at any ceremony which goes against his or her conscience. That is true now and it will be true when marriage equality is the law of the land.

My struggle and my decision – along with that of my colleagues – was a personal one for me. But it has been fifteen years. And it has been far longer for too many couples who have been told that their relationship is not as important as that of my relationship with Ida Rae. No one questioned our right to marry. They might have questioned her wisdom in choosing me. But the right, afforded by the state where we held our ceremony, was granted without question. Once we paid our fee. Yet in only a handful of states in this nation can the same be said for many of my friends – or for many of our congregants. Beautiful, loving, compassionate relationships. Excellent and exceedingly dedicated parents who have no answer when their children ask why they are not married like their friend’s parents are. Do we want their answer to be that the State of Oregon doesn’t want them to be married? That it is better to be a “Domestic Partner” or the member of a “Civil Union” or anything else so long as we dare not say “married”? Perhaps they will be afforded some of the same protections. Perhaps through these separate designations they will have the right to visit their loved one in the hospital, to make personal and financial decisions in case of incapacity, to inherit should the time come. These rights might be granted separately. But haven’t we learned by now: “separate” is not “equal”? Do we want our children to know that the Constitution of this state has discrimination written into it?

I was not here for the battle seven years ago. I know about the struggle when Multnomah County began issuing same-sex marriage licenses in March of 2004<sup>11</sup>. I know about the lawsuit and I know about the ballot measure which divided Oregonians. I know many in this community were on opposite sides of the issue. And I know that Rabbi Rose was a leader in the movement to defeat Ballot Measure 36, as was the ACLU and Basic Rights Oregon among many others. Through Rabbi Rose’s efforts our congregation was identified as a progressive force on this issue. This was his last civil rights stand as senior rabbi of Congregation Beth Israel before his retirement.

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<sup>11</sup> [Same-Sex Marriage in Oregon](https://en.wikipedia.org/wiki/Same-sex_marriage_in_Oregon), Wikipedia.org

I plan to take up the stand. I plan to speak out. I plan to be plain. My conscience, my sense of Jewish Justice and basic fairness, compels me. It says to me that this basic right of marriage – a right denied to too many for too long - is the Civil Rights issue of our time.

Like other civil rights issues, the battles are long and progress is not always direct. The history of our nation shows that they are fought at the state level and eventually won nationally. Although my far more learned friends – lawyers and judges in our congregation – disagree with me and even perhaps believe me to be a bit naïve on the subject, I still think that the US Supreme Court must find this kind of discrimination to be unconstitutional. The sooner the better. To me, the “Defense of Marriage Act” is in violation of the equal protection clause. But, though I cannot give a legal opinion, I will give a moral one: legislating discrimination is just wrong. That is not who we are as a people or as a nation. Allowing people to vote for discrimination is wrong. It is the worst kind of tyranny of the majority. It is time to say that we are all equal under the law.

It was not so long ago when our nation was divided squarely on racial lines. That battle is not over and one cannot claim that we live in a land of equal opportunity. But we can look with pride at the fact that discriminatory laws, like those which disallowed interracial marriage, are no longer a part of our landscape. We look back, and can hardly believe that these bans on interracial marriage were commonplace in our nation. They are no more. We have stood for freedom, for equal justice, for proclaiming the value that every human is created in the image of G-d. Soon, I believe, we will look back with surprise that same-sex marriage was once illegal in our nation.

This coming year there will likely be a new ballot initiative here in Oregon to overturn the constitutional language of discrimination<sup>12</sup>. I hope you will join me in making this effort successful.<sup>13</sup> The tide is already turning<sup>14</sup>. We can join together, religious voices proclaiming equality and respect.

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<sup>12</sup> [Press Release: Advisory Group to help Basic Rights Oregon weigh ballot decision](#), BasicRights.org, Sept. 12, 2011

<sup>13</sup> For more information or to find ways to help in Oregon, see: [Love. Commitment. Marriage. The Freedom to Marry for Oregon](#) and [Basic Rights Oregon](#)

<sup>14</sup> [Oregonian Blog – “New Oregon Poll Looks at Gay Marriage,” June 2011](#)



Last week, on the day in which the military brought its discriminatory “Don’t Ask, Don’t Tell” policy to a close, Admiral Mike Mullen declared:

I still believe, that it was first and foremost a matter of integrity; that it was fundamentally against everything we stand for as an institution to force people to lie about who they are just to wear a uniform. We are better than that. We should be better than that. And today, with implementation of the new law fully in place, we are a stronger joint force, a more tolerant joint force, a force of more character and more honor, more in keeping with our own values<sup>15</sup>

Friends, we live in a land in which discrimination is still written into our laws, in which benefits of the state are not equally applied. These are not our values. We are better than that. We should be better than that. This is a new time of struggle, of doing what is right. I believe it is a religious, to me a Jewish, struggle. It is time to welcome with joy and celebration, our Gay and Lesbian couples and families, to share the ideals, the holiness the sacred and the legal designation, and to call it what it is: nothing less than marriage.

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<sup>15</sup> [NY Times Blog - At War “Repeal Day: The End of ‘Don’t Ask, Don’t Tell’ September 20, 2011](#)