

from the editor...

The licensing of marriage is the last uncomfortable intersection of law and religion left in our increasingly secular society. Marriage is, on the one hand, a religious ceremony—one of the three great rights common to all denominations of the priestly classes—and, on the other, a contractual union with appendant civil oversight and regulation.

Within the milieu of religion, marriage bestows a cultural recognition and support of the solemn promise of two people to live together in mutual love and respect. As an ideal, it is the moment when one's small community of faith, friends and family join together in celebration of a life shared.



As a civil contract, marriage is codified in over 1,000 federal 'automatic' benefits and countless more in the state and private sectors. With licensing certificate in hand, the couple becomes a unit, which is everywhere predefined in the laws that govern everything from inheritance to privacy protection and access.

This uncomfortable intersection, leads to an uncomfortable, and highly inappropriate, collusion between lawmakers and religious leaders. The religious estate of our republic, sees marriage as a purely religious issue—the civil license merely being a recognition of non-secular solemnization—ignoring the numbers of people who obtain a civil marriage, only, without interface with clergy. The secular leaders view marriage as much more than the act of licensing clerks, recognizing that it creates a legal class with more privileges and responsibilities than any other in our society.

When debating civil unions, the Vermont legislature admitted to being confused as on one day a religious leader would advise them against the proposed bill, while on the next another religious leader would speak in favor of the bill. It was obvious from the legislators' comments, their collective confusion arose out of their inability to glean a consensus of religious understanding from the various positions presented before them by the line of religious authorities.

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In a recent *Newsweek* editorial, Anna Quindlen posed the question, “In a secular nation, why should church leaders be required to acknowledge civil marriage—or, for that matter, be attended to when they pass judgment on what they will not acknowledge?”

The real crux of the ‘gay marriage’ question is not a religious debate. It is, rather, a wrestling for the retention of one of the last areas of religious control of secular life. Ultimately the question of marriage legislation is a secular one, positioned squarely in the domain of law and codified social custom. The solemnizing of unions is a religious question, while the licensing of a special coupled class of society is not.

Recently a colleague asked why gay men and lesbians would want to fight for marriage anyway. On the surface, it does seem a lot of energy to claim an anachronism. It is, however, one of the last great vestiges of exclusion directed at a colonized people.

“A constitutional amendment banning same-sex marriages is a form of gay bashing.”

—Coretta Scott King

One cannot help but feel something akin to the Berlin wall being torn down, as each new town is added to the list of gay marriage havens... On the other side the last stalwarts desperately trying to hold on to a history and golden age that never existed.

The opponents of gay marriage argue that the concept erodes the foundations of the very concept of marriage itself. They paint an image of marriage that claims to look

backward into time immemorial at a continuity of glorious union—pristine, perfect and biblically sanctioned.

The truth, of course, is that modern marriage has not historic antecedents. The history upon which they choose to premise their arguments, does not exist. In the 21st century, marriage is about love and commitment—a construction that would have been unthinkable scandalous in proper society just 100 years ago. For the centuries prior, marriage has been a contract of property and inheritance with little or not relation to the practice today.

Just a little over thirty years ago, interracial marriage was illegal in much of the United States. When it was legalized nationally, the country was less divided over the issue than it is today over the question of gay marriage. Unlike current polling, an *overwhelming majority* of the country opposed interracial marriage. A Gallop poll conducted in 1968 showed that fully 72% of the country opposed interracial marriage with 48% openly expressing the opinion that it should be criminalized.

For me as an observer of this debate, the important facet in the current events and court rulings is a subtle, but vitally important, shift in the rubric of power in the debate of



gay rights (so called). I have long been ambivalent about the notion of demanding rights, as I see a large, unintended, side-affect being the ironic, and often self-defeating, empowering of others to bestow rights. This has allowed the far-right to control the debate for the last 20 years, by casting the demand for equality under the law as a fight for ‘special rights’ and asking the loaded (rhetorical) question of how far should the ‘expansion’ of ‘rights’ go.

It may seem like a subtle shift, but asking someone to give you what you already have, only gives them the power to withhold it.

With the Supreme Court’s overturning their own *Bowers v. Hardwick* (1984) ruling in *Lawrence & Garner v. Texas* (2003), the debate transformed overnight to a question of existing rights, rather than an attempt at articulating new rights or extending novel protections. Justice Scalia, in his dissenting opinion, correctly observed that the court’s overturning of *Bowers* called into question the “validation of laws based on moral choices” including, in his list of examples, same-sex marriage. For once, I actually agree with a Scalia opinion, though he and I are at complete odds as to whether this change bodes well or ill for society. Without question or exception, in a modern, secular society, laws should never be based on “moral choices.”

The Massachusetts Supreme Judicial Court was the first to correctly extend *Lawrence v. Texas*, ruling that exclusively inter-sexual marriage laws are unconstitutional (*Goodridge v. Department of Public Health*, 2003). In their decision, the court acknowledged that “many people hold deep-seated religious, moral, and ethical convictions that marriage should be limited to the union of one man and one woman, and that homosexual conduct is immoral. Many hold equally strong religious, moral, and ethical convictions that same-sex couples are entitled to be married, and that homosexual persons should be treated no differently than their heterosexual neighbors.” The court ruled that “the State may not interfere with these convictions, or with the decision of any religion to refuse to perform religious marriages of same-sex couples.” The held “these matters of belief and conviction” to be “properly outside the reach of judicial review or government interference.”

In the court’s response to the Massachusetts Senate, went further, giving reality to Scalia’s fears, stating “neither may the government, under the guise of protecting ‘traditional’ values, even if they be the traditional values of the majority, enshrine in law an invidious discrimination that our Constitution [...] forbids.” The court saw clearly

*“You cannot have
selective sin as a legal
argument.”*

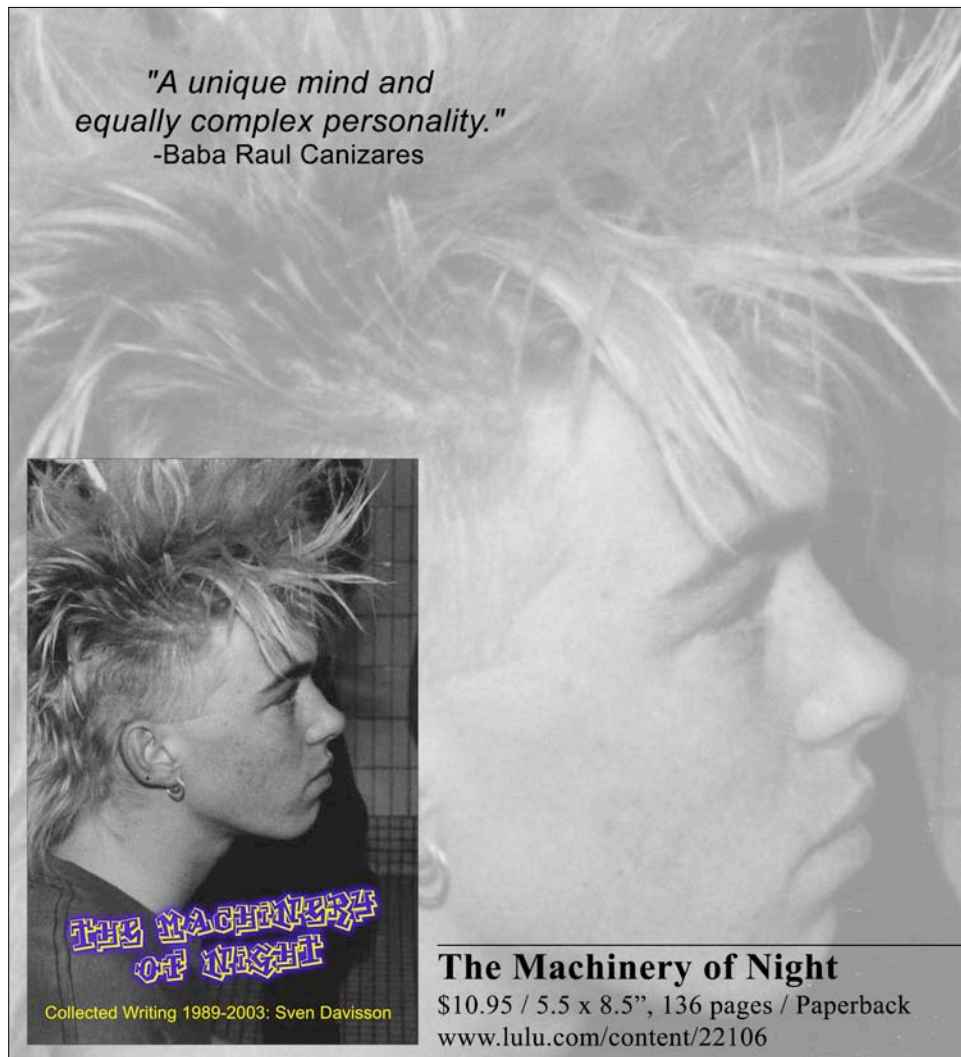
—Rev. Al Sharpton



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that the existing state marriage law created a class relegated “to a different status.” In rejecting the Senate’s proposed compromise legislation outlawing same-sex marriage while, with the same stroke of the pen, creating ‘civil unions’—same as marriage in everything but name—the Massachusetts SJC could deduce no rationality in creating a segregated group. In their response, they observed, “The history of our nation has demonstrated that separate is seldom, if ever, equal.”

Love light laughter, *Sven*



*"A unique mind and
equally complex personality."
-Baba Raul Canizares*

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