

Anna Quindlen: The Loving Decision

By Anna Quindlen | 3/13/10 at 7:47 PM

One of my favorite Supreme Court cases is *Loving v. Virginia*, and not just because it has a name that would delight any novelist. It's because it reminds me, when I'm downhearted, of the truth of the sentiment at the end of "Angels in America," Tony Kushner's brilliant play: "The world only spins forward."

Here are the facts of the case, and if they leave you breathless with disbelief and rage it only proves Kushner's point, and mine: Mildred Jeter and Richard Loving got married in Washington, D.C. They went home to Virginia, there to be rousted out of their bed one night by police and charged with a felony. The felony was that Mildred was black and Richard was white and they were therefore guilty of miscegenation, which is a \$10 word for bigotry. Virginia, like a number of other states, considered cross-racial matrimony a crime at the time.

It turned out that it wasn't just the state that hated the idea of black people marrying white people. God was onboard, too, according to the trial judge, who wrote, "The fact that He separated the races shows that he did not intend for the races to mix." But the Supreme Court, which eventually heard the case, passed over the Almighty for the Constitution, which luckily has an equal-protection clause. "Marriage is one of the basic civil rights of man," the unanimous opinion striking down the couple's conviction said, "fundamental to our very existence and survival."

That was in 1967.

Fast-forward to Election Day 2008, and a flurry of state ballot propositions to outlaw gay marriage, all of which were successful. This is the latest wedge issue of the good-old-days crowd, supplanting abortion and immigration. They really put their backs into it this time around, galvanized by court decisions in three states ruling that it is discriminatory not to extend the right to marry to gay men and lesbians.

The most high-profile of those rulings, and the most high-profile ballot proposal, came in California. A state court gave its imprimatur to same-sex marriage in June; the electorate reversed that decision on Nov. 4 with the passage of Proposition 8, which defines marriage as only between a man and a woman. The opponents of gay marriage will tell you that the people have spoken. It's truer to say that money talks. The Mormons donated millions to the anti effort; the Knights of Columbus did, too. Like the judge who ruled in the *Loving* case, they said they were doing God's bidding. When I was a small child I always used to picture God on a cloud, with a beard. Now I picture God saying, "Why does all the worst stuff get done in my name?"

Just informationally, this is how things are going to go from here on in: two steps forward, one step back. Courts will continue to rule in some jurisdictions that there is no good reason to forbid same-sex couples from marrying. Legislatures in two states, New York and New Jersey, could pass a measure guaranteeing the right to matrimony to all, and both states have governors who have said they would sign such legislation.

Opponents will scream that the issue should be put to the people, as it was in Arizona, Florida and California. (Arkansas had a different sort of measure, forbidding unmarried couples from adopting or serving as foster parents. This will undoubtedly have the effect of leaving more kids without stable homes. For shame.) Of course if the issue in *Loving* had been

put to the people, there is no doubt that many would have been delighted to make racial intermarriage a crime. That's why God invented courts.

The world only spins forward.

"I think the day will come when the lesbian and gay community will have its own *Loving v. Virginia*," says David Buckel, the Marriage Project director for Lambda Legal.

Yes, and then the past will seem as preposterous and mean-spirited as the events leading up to the *Loving* decision do today. After all, this is about one of the most powerful forces for good on earth, the determination of two human beings to tether their lives forever. The pitch of the opposition this year spoke to how far we have already come—the states in which civil unions and domestic partnerships are recognized, the families in which gay partners are welcome and beloved.

The antis argued that churches could be forced to perform same-sex unions, when any divorced Roman Catholic can tell you that the clergy refuse to officiate whenever they see fit. They argued that the purpose of same-sex marriage was the indoctrination of children, a popular talking point that has no basis in reality. As Ellen DeGeneres, who was married several months ago to the lovely Portia de Rossi (great dress, girl), said about being shaped by the orientation of those around you, "I was raised by two heterosexuals. I was surrounded by heterosexuals. Just everywhere I looked: heterosexuals. They did not influence me." As for the notion that allowing gay men and lesbians to marry will destroy conventional marriage, I have found heterosexuals perfectly willing to do that themselves.

The last word here goes to an authority on battling connubial bigotry. On the anniversary of the *Loving* decision last year, the bride wore tolerance. Mildred Loving, mother and grandmother, who once had cops burst into her bedroom

because she was sleeping with her own husband, was quoted in a rare public statement saying she believed all Americans, "no matter their race, no matter their sex, no matter their sexual orientation, should have that same freedom to marry." She concluded, "That's what *Loving*, and loving, are all about."