

Genesis 2: 18-24

And Jehovah God said, It is not good that the man should be alone; I will make him a help meet for him. And out of the ground Jehovah God formed every beast of the field, and every bird of the heavens; and brought them unto the man to see what he would call them: and whatsoever the man called every living creature, that was the name thereof. And the man gave names to all cattle, and to the birds of the heavens, and to every beast of the field; but for man there was not found a help meet for him. And Jehovah God caused a deep sleep to fall upon the man, and he slept; and he took one of his ribs, and closed up the flesh instead thereof: and the rib, which Jehovah God had taken from the man, made he a woman, and brought her unto the man. And the man said, This is now bone of my bones, and flesh of my flesh: she shall be called Woman, because she was taken out of Man. Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh.

Mark 10:1-8

And he arose from thence and cometh into the borders of Judaea and beyond the Jordan: and multitudes come together unto him again; and, as he was wont, he taught them again. And there came unto him Pharisees, and asked him, Is it lawful for a man to put away his wife? trying him. And he answered and said unto them, What did Moses command you? And they said, Moses suffered to write a bill of divorcement, and to put her away. But Jesus said unto them, For your hardness of heart he wrote you this commandment. But from the beginning of the creation, Male and female made he them. For this cause shall a man leave his father and mother, and shall cleave to his wife; and the two shall become one flesh: so that they are no more two, but one flesh. What therefore God hath joined together, let not man put asunder.

George Reynolds grew up outside London in the 1850's, and he became a devoted follower of a new church movement called The Church of Jesus Christ of Latter-Day Saints. George immigrated to Utah in 1865 and within three weeks of arrival married Mary Ann Tuddenham. George Reynolds was a gifted writer, and that gift, along with his religious devotion, helped him quickly rise in the ranks of the church hierarchy. By the late 1860's, George was the secretary to the President of the Church, Brigham Young. He was the main writer of the Church's instructional materials, and he was elected to the Board of what would become the University of Utah, as well as to the Salt Lake City Council.

Brigham Young asked George Reynolds, who had taken a second wife in 1872, to be the guinea pig in a legal test case against the 1862 Morrill Anti-Bigamy Act, a federal enactment signed into law by President Lincoln, a law that banned bigamy and limited church and non-profit ownership in any territory of the United States to \$50,000. While

he signed it into law, President Lincoln made an agreement with Brigham Young that the law would not be enforced if Brigham Young and his church stayed out of the Civil War.

After Lincoln and the war, however, and within the general context of a prim and proper Victorian era, Mormons were increasingly coming under fire for their religious belief in and practice of plural marriage, and hence the desire to take a legal case all the way to the Supreme Court, thinking that the Morill Anti-Bigamy Act was an infringement on the free exercise of their religion. Reynolds was indicted and convicted in the District Court for the 3rd Judicial District of the Territory of Utah under sect. 5352 of the Revised Statutes, which stated:

“Every person having a husband or wife living, who marries another, whether married or single, in a Territory, or other place over which the United States has exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than \$500, and by imprisonment for a term of not more than five years.”

Opening arguments before the Supreme Court in *Reynolds versus The United States* took place in November 1878. In January of 1879, the Supreme Court ruled against Reynolds and the Church of Jesus Christ of Latter-Day Saints. Relying on a quote from Thomas Jefferson, the Court said there is a distinction to be made between religious belief and religious practice, so that all religious beliefs are protected under the constitution, but not all religious practices are. The Court’s decision made reference to the possibility of a religion wanting to practice human sacrifice. Under the U.S. Constitution, it is okay to believe in such a thing, however, *“to permit [the practice of] this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.”* The Court’s decision affirmed that under the First Amendment, the Congress cannot pass a law that prohibits the free exercise of religion. However it argued that the law prohibiting bigamy did not fall under the free exercise clause. The fact that a person could only be married to one person had existed since the times of King James I of England in English law, upon which United States law was based.

In response to the conviction and subsequent imprisonment of George Reynolds, the Mormon Church said,

“Our crime has been: We married women instead of seducing them; we reared children instead of destroying them; we desired to exclude from the land prostitution, bastardy and infanticide. If George Reynolds is to be punished, let the world know the facts Let it be published to the four corners of the earth that in this land of liberty, the most blessed and glorious upon which the sun shines, the law is swiftly invoked to punish religion, but justice goes limping and blindfolded in pursuit of crime.”

The Supreme Court’s decision against plural marriage was essentially based on English law precedent and the distinction between belief and practice, and the Court upheld Congress’ power to establish laws against religious practices that “subvert the peace and good order.”

Based on this, I offer the following modest proposal:

1. English Law was shaped by the Christian religion. Etymologically and historically, marriage has been a word and social institution inextricably entwined with religion, whether that religion was primitive or complex, eastern or western.
2. Up until recently, the American understanding of marriage has been primarily shaped by religious views. Ideas of monogamy, faithfulness, “until death do us part,”¹ are all inherited from religious traditions, not secular traditions. By appealing to English law dating back to the early 1600’s, the U.S. Supreme Court, in *Reynolds versus The United States*, was implicitly appealing to a religious tradition, a particular religious view of marriage.
3. The 20th century judicial evolution of a “wall of separation” between church and state, religion and government, is, in my view a good thing. The church has been more harmed than helped when allied closely with government.
4. This wall of separation should extend to marriage since marriage is historically and inherently a religious concept and practice.
5. Hence, marriage should be declared a religious belief and practice, and the government should make no laws concerning marriage, nor should there be any acknowledgment of marriages by the government, and religious officials (clergy, etc) should have no civil authority (“By the power invested in me by the State of...”).
6. Every religious tradition can define the idea and practice of marriage based on the dictates of their religious traditions,² and no religious practice of marriage can be interfered with by the government unless it clearly subverts the general peace and good order.
7. The Government and its citizens are then free to invent a non-religious social institution (Civil Unions is the current phrase but it could be called anything) that allow for any legal necessities of people making commitments to one another (property sharing and transfers, power of attorney, insurance and medical decisions, etc). The burden will then be on the government and its citizens to define who can and cannot enter into such unions without appeal to religious traditions, and to establish whatever offices and procedures are necessary for the performance and recording of any ceremonies related to such unions.
8. All U.S. Citizens will then be entitled to enter into the newly defined unions as they choose.

¹ I would suggest that any “union” ceremonies developed by the secular government and its citizens, as well as marriage ceremonies by any religious tradition unwilling to enforce a “no divorce rule,” should drop the whole notion of “until death do us part,” or the more modern, “for as long as we both shall live.” Is it not understood, and for the most part practiced, that we will love, honor and cherish only as long as we are loved, honored, and cherished? Do we agree that marriage should not make someone a door-mat for the misbehavior and cruelty of another? If we agree to that, what about sheer indifference or emotional neglect? Unless you are part of a tradition that absolutely forbids divorce, is it not understood that there are legitimate reasons to opt out of the union? And if so, why speak of “until death do us part,” and not speak of the other things short of death for which we believe we can opt out?

² Monogamy has no direct biblical support, and the Bible provides plenty of examples of non-monogamous “heroes of faith.” The Mormons cannot be accused of being “non-biblical.”

9. Adherents of particular religious traditions, who are “married” in those traditions, may choose to also be part of a civil union, as long their marriage does not violate any of the terms defined by the new civil union’s legislation.

So, in this modest proposal, here’s a brief summary of what I imagine most religious people would do. I think most would have a legal, civil union, held at the courthouse or wherever it was decided such things should be held, and officiated by whatever state official authorized to perform such ceremonies of union, though, rather than a state official, it might be any lawyer, since, it would be a purely legal matter.

Then couples who are already part of a religious tradition would seek a *marriage* ceremony within their religious tradition. Such marriages would then be done, or not, according to the particular religious tradition in question.

Now, let’s suppose my pipe dream were to become a reality. This still leaves the difficult intra-religious question: Is marriage only for Adam and Eve and not for Adam and Steve, (or Amber and Eve).

The PC(USA) has debated issues regarding homosexuality for thirty-three years now. Ever since the 1978 General Assembly, the question about homosexuality has been part of the annual (up until recently when it became biennial) assembly. Those against homosexuality have cited the Bible, from the story of Sodom and Gomorrah, to the Levitical code, to the three New Testament passages where it is explicitly mentioned. Those in support of homosexuality have cited the Bible, pointing out why such passages as the Sodom and Gomorrah story do not address the kind of homosexuality being advocated— faithful, partnered, monogamous homosexuality—and why some scriptural passages are to be interpreted, and even ignored, in light of other scriptural passages. For example, the PC (USA) has ignored, or interpreted, Jesus’ teaching against divorce in Mark 10, in light of the pervasive experience of divorce and a more general interpretive stance based on the love of God and love of neighbor motif that Jesus said fulfills all the law.

My point, and the one I end this sermon with, is not to settle each of these particular interpretive issues. My point is to suggest a different way of reaching an ecclesiastical decision. The General Assembly is composed of men and women, with an equal number of teaching elders and ruling elders, chosen by their respective presbyteries, with each representative have an equal vote on every matter. If our church continues to insist that, in matters of faith and belief, the Bible is the unique and authoritative source, then I believe such matters need to be decided by vote of the teaching elders alone. The Bible is a complex collection of writings covering a span of 2,000 years. Teaching elders who have studied the original languages and history can and will disagree,³ but those

³ [Homosexuality and Christian Community](#), edited by Choon-Leong Seow is the finest example of this I know of. It is a collection of essays by various Princeton Seminary professors, both pro and con.

disagreements will be based on a level of conversation and dialogue not accessible to most ruling elders. Whatever decisions are reached would, of course, be interpreted for the whole church, and could (should) include conversations with the whole church, but nonetheless, the final interpretive view of the Bible would be the result of the teaching elders alone. This of course is similar to what happens with our Roman Catholic brethren with their Congregation for the Doctrine of the Faith, a group of clergy whose role is to determine, in light of Scripture, tradition, and experience, what is appropriate for their followers to believe and practice. The key difference would be that since the composition of the PC(USA) General Assembly changes each year, it would not be the same group of white-haired old men deciding on issues year and after year.⁴

It would be unwise, in my view, to suggest that the composition of the U.S. Supreme Court, should consist of a equal number of experienced legal jurists and car mechanics. Car mechanics are important, valuable people, and a good, trustworthy mechanic is a great blessing; yet, I do not think they are equipped to make the best interpretations of our 220 year old U.S. constitution that was written in English. I think the same applies to a 4,000 year old Bible, a collection of 66 writings, not a single book or single constitution, writings written over a 2,000 year time period in three different languages in which very few people today are have any knowledge. I do not want a Supreme Court judge working on the fuel injection system of my car. I want and need a good car mechanic for that. And while I may enjoy a good conversation about the constitution with a car mechanic, and I do not want the car mechanic making final decisions about the constitution.

Let the wall of separation remain strong and become even stronger in the civil sphere, and let a new wall of separation arise in our Presbyterian tradition, a wall that allows teaching elders alone to render the final decision on matters of Biblical interpretation.

⁴ And as alluded to earlier in this paragraph, I would also hope the Presbyterian version would be less paternal, more involving of the larger church membership in conversation, explanation, and education.