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MARRIAGE LAWS SHOULD TREAT ALL AMERICANS EQUALLY

Michael Coblenz

The Massachusetts Supreme Court recently ruled that same-sex couples have the right to marry. The response from President Bush and most conservatives was predictable: This was the work of "activist judges."

But the real villains aren't judicial activists, they are radicals named Thomas Jefferson and Abraham Lincoln. In the Declaration of Independence, Jefferson wrote: "We hold these truths to be self evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness."

The idea of equality and individual rights wasn't Jefferson's -- philosophers had discussed it for years -- but he was the first person radical enough to propose the idea as the foundation of a government.

Many who joined Jefferson in signing the Declaration understood the implication of his idea. They knew that equality, if followed to its logical conclusion, would certainly end slavery and probably many other so-called traditions.

So, while Jefferson was away, serving as ambassador to France, they drafted the Constitution without his broad vision of equality. They ignored Jefferson's ideal and granted rights only to white males.

Many people were outraged by this, particularly by the idea that slaves were only three-fifths human, and set about to change things. But change comes slowly, and it took nearly 80 years to happen.

One of the men outraged by the hypocrisy of a nation that was founded on the principle of equality but refused to provide equality in its laws was Abraham Lincoln.

Lincoln, like politicians today, struggled with how to resolve the competing interests of equality and tradition. He believed that the principle of equality was a worthy goal, but he worried about the incredible social disruption that would likely occur if laws were changed to implement that goal.

Many Southerners did not trust Lincoln to craft the proper balance between these competing interests, so when he was elected president, most Southern states seceded.

Lincoln initially focused on fighting the war, but by 1862, as Union fortunes improved, he signed the Emancipation Proclamation, freeing many slaves. Then, after the Union Army successfully repelled a Southern invasion at Gettysburg, Lincoln noted that the founders created a new nation "conceived in liberty, and dedicated to the proposition that all men are created equal."

He said the purpose of the Civil War was to ensure that such a nation "shall not perish from the Earth."

Due largely to Lincoln's eloquence at Gettysburg and his tragic assassination, the Constitution was amended to incorporate Jefferson's idea of equality.

Under the Constitution, equality doesn't mean that everyone is the same, but it does mean that everyone must be treated the same. The 14th Amendment says that the government shall not "deny to any person within its jurisdiction the equal protection of the laws."

Lincoln taught us that Jefferson's phrase "all men" did not just mean white men, and subsequent history -- suffrage and civil rights -- shows that "men" means "mankind" and includes women.

So if our nation is founded on the principal that all people should be treated equally, how can we justify treating some people differently when it comes to property, inheritance or parentage rights? The inescapable answer is that, according to the Constitution and its history, we can't.

That's all that the Massachusetts Supreme Court said. If that is activist or even radical, we have no one to blame but Jefferson and Lincoln.

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