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The Massachusetts Decision and the Future of Marriage

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Wednesday, November 19, 2003

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As Dawson continued: “Other societies in the past have changed their social institutions or their religious beliefs under the influence of external forces or the slow development of internal growth. But none, like our own, has ever consciously faced the prospect of a fundamental alteration of the beliefs and institutions on which the whole fabric of social life rests.”

The Supreme Judicial Court of Massachusetts has just handed down a ruling that fundamentally redefines the institution of marriage. By denying that the state has a right to prevent homosexuals from marrying, this state court has, in effect, destroyed marriage in the state of Massachusetts. More importantly, it now adds momentum to the movement for same-sex marriage across the nation. The ruling by the Massachusetts court had been anticipated for months. The court generally makes a ruling within one hundred and thirty days of oral arguments. In this case, the court delayed its ruling until it could incorporate the sweeping affirmation of homosexual rights declared by the U.S. Supreme Court in the *Lawrence v. Texas* decision this past June.

In his prophetic dissent to the *Lawrence* ruling, Justice Antonin Scalia warned that the decision would pave the way for homosexual marriage. He did not have to wait long for his prophecy to be fulfilled. The Massachusetts court cited *Lawrence v. Texas* in the very first page of its decision.

The Massachusetts case, *Goodridge v. Department of Public Health*, was decided by a 4-3 margin. The majority opinion was written by Chief Justice Margaret Marshall. “We are mindful that our decision marks a change in the history of the marriage law,” the court acknowledged. A review of the decision indicates that this court understood the sweeping nature of its decision.

The court’s majority opinion established that the essential question “is whether, consistent with the Massachusetts Constitution, the Commonwealth may deny the protections, benefits, and obligations conferred by civil marriage of two individuals of the same sex who wish to marry.” Rejecting all the claims made by the state’s Department of Public Health, the court ruled: “We conclude that it may not.”

In this decision, the court declared marriage to be an essentially civil and secular institution. “Many people hold a deep-seeded 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. Neither view answers the question before us.” In other words, moral and religious arguments were thrown out of court.

The court claimed that its sole concern is with the Massachusetts Constitution and the rights it guarantees for Massachusetts citizens. The court also recognized that the Massachusetts Constitution may offer protections not covered

by the U.S. Constitution. "The Massachusetts Constitution is, if anything, more protective of religious liberty and equality than the Federal Constitution," the court stipulated. The Massachusetts Constitution "may demand broader protection for fundamental rights; and it is less tolerant of government intrusion into the protected spheres of private life."

The court rejected all the arguments presented by the Department of Public Health and other parties defending heterosexual marriage. The fact that marriage has, until now, always referred to a heterosexual institution was acknowledged, but the majority went on to insist that this "does not foreclose the constitutional question."

According to the basic logic of the Massachusetts court, marriage is a civil invention and it should now be re-invented to include homosexual unions. The court rejected any definition of marriage that is tied to procreation and the raising of children, but then turned to claim that its ruling in favor of same-sex marriage was intended to protect the interests of children in homosexual families. "It cannot be rational under our laws," the court ruled, "and indeed it is not permitted to penalize children by depriving them of State benefits because the State disapproves of their parents' sexual orientation."

The court also ruled that marriage "is a vital social institution." It went on to claim that the exclusive commitment "of two individuals to each other nurtures love and mutual support. It brings stability to our society." Of course, the reduction of marriage to an exclusive commitment of two individuals redefines the institution itself. Heretofore, marriage has never been considered a relationship between just two individuals, but between a man and a woman. It is impossible to overestimate the breathtaking consequences of the Massachusetts court's decision.

In a concurring decision, Justice John M. Greaney went even further, arguing that opponents of homosexual marriage should just accommodate themselves to the ruling. "I am not referring here to acceptance in the sense of grudging acknowledgment of the court's authority to adjudicate the matter. My hope is more liberating," Justice Greaney asserted. This justice left legal argumentation and turned to sermonizing declaring: "We share a common humanity and participate together in the social contract that is the foundation of our Commonwealth. Simple practices of decency dictate that we extend to the plaintiffs and to their new status, full acceptance, tolerance, and respect. We should do so because it is the right thing to do."

This passage demonstrates conclusively that the Massachusetts case was not really about the law, but the culture war. A majority of justices on the Massachusetts Supreme Judicial Court decided to enter themselves in the cause of the homosexual agenda.

In a strongly-worded dissent, Justice Francis X. Spina insisted that the plaintiffs had not proved a case of unconstitutional discrimination. The marriage statutes "do not discriminate on the basis of sexual orientation," Justice Spina insisted. "As the court correctly recognizes, constitutional protections are extended to individuals, not couples." Therefore, Justice Spina argued that the marriage statutes do not disqualify homosexuals on the basis of sexual orientation. All individuals have a right to marry, the Justice asserted. "Whether an individual chooses not to marry because of sexual orientation or any other reason should be of no concern to the court."

Justice Spina went on to declare: "The court has extruded a new right for principles of substantive due process, and in so doing it has distorted the meaning and purpose of due process. The purpose of substantive due process is to protect existing rights, not to create new rights. Its aim is to thwart government intrusion, not invite it."

The full impact of the Massachusetts decision will soon be revealed. Similar cases will be brought in all remaining states, and the Massachusetts decision will be touted as a landmark change in the nation's direction and legal precedent.

The court gave the Massachusetts Legislature one hundred and eighty days to determine a solution, but the court effectively told the Legislature to ignore the will of the people of Massachusetts.

Even as the Supreme Judicial Court handed down its opinion, the Massachusetts Legislature was preparing to debate a constitutional amendment that would legally define marriage as a union between one man and one woman. Ray Flynn, the former Boston mayor, declared: "This has been a ticking time bomb in America for the last several months that has exploded in Massachusetts." The aftershocks of this explosion will spread across the entire nation.

Homosexual activists have taken these cases to the courts, because they have no hope of winning their case in the court of public opinion. Frustrated by the legislative process, homosexual activists will not rest until they have forced a

complete redefinition of sexual morality, marriage, and the family across the nation.

The Massachusetts court has turned aside millennia of moral wisdom and would lead that Commonwealth—and by extension the entire nation—into a brave new world where marriage is merely a contractual relationship between individuals and homosexuality is completely celebrated as a lifestyle.

This decision should be a wake-up call for anyone still unconvinced of the need for the Federal Marriage Amendment. If we do not act fast, there will be nothing left of marriage to protect.

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