

Six Voices on Proposition 8: A Roundtable

Introductory note by Russell Arben Fox: In November of 2008, I posted some reflections on my blog about California's Proposition 8 (<http://inmedias.blogspot.com/2008/11/personal-thoughts-on-proposition-8.html>). It started a long conversation with many other individuals, some Mormon and some not, some California residents and some not, some straight and some gay, some married and some single, some scholars of philosophy, religion, government, and law, others just passionate and informed observers of the whole controversy.

It occurred to several of us that it would be valuable to put together, in a somewhat formal way, a sampling of our conversation, as well as to enlist some additional views from others who hadn't participated directly but who had something worth hearing nonetheless. The result is the following roundtable, a symposium of voices, all speaking briefly one way or another, and from a variety of ideological, religious, and intellectual perspectives, about Proposition 8, same-sex marriage, homosexuality, Christian doctrine, Mormonism and Mormon political activism, the nature and symbolic significance of marriage, the politics and constitutionality of marriage laws, and the personal, professional, and spiritual conflicts which this particular debate—certainly far from the last our nation will see—gave rise to.

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Cambridge University Press, 2009); David Watkins, a lecturer in political science at Seattle University; and Kaimipono Wenger, an assistant professor at Thomas Jefferson School of Law in San Diego, California.

Two Models of Political Engagement

David Watkins

The hard-fought campaign over Proposition 8, which in November 2008 rescinded the legal right to marriage for same-sex couples in California, is evidence of an important political success for religious conservative political groups who support and seek to advance traditional marriage. Unfortunately, it's a victory they can't appreciate and perhaps can't even entirely comprehend.

On the one hand, they won an electoral victory. Proposition 8 passed with a narrow 52 percent majority of the vote. But their true accomplishment doesn't turn on this particular outcome. Indeed, this narrow accomplishment required a tremendous drain on the limited resources of money, political capital, and good will. The construction of a majority coalition supporting Proposition 8 necessitated the deployment of a number of misleading arguments in which opponents were demonized and in which dubious claims about the legal ramifications of same-sex marriage for churches were made. Moreover, the vote took place at what appears to be very nearly the last possible moment such a coalition could be put together in California. The demographics and direction of existing public opinion suggest that a majority coalition against marriage for same-sex couples will soon be a thing of the past. While religious conservative opponents of marriage for same-sex couples have figured out how to mobilize existing opposition, fears, and concerns, they have not developed a successful strategy for halting or reversing the momentum that exists for marriage rights for same-sex couples.

But the real political victory here—the one that religious conservatives can't yet appreciate or comprehend—has little to do with the fact that Proposition 8 managed to put together a slim

majority coalition. The arguments they have been making for several decades now about the value of marriage have had some considerable success, as evidenced by the priority and value now being placed on marriage. As George Chauncey argues, in the early years of the modern gay rights movement, known as the gay liberation phase, marriage rights as a political goal occupied a marginal position.¹

While test cases were launched for same-sex marriage (same-sex couples applied for marriage licenses in Louisville and Minneapolis in 1970), a substantial portion of the leadership of gay and lesbian organizations found this avenue unappealing. Gay liberation was tied to sexual liberation and a radical critique of the existing social order, both of which were seen as having little to do with marriage. Lesbian feminists in the gay liberation movement often found marriage even less appealing as a political goal: It was a tool of the master, a patriarchal institution, something to be brought down rather than reformed. For many early activists, focusing on marriage rights gave too much value to marriage and served as an insufficiently radical and transformational goal for the gay liberation movement.

Obviously, less than forty years later, marriage has moved from the margins to the center of gay rights politics and activism. Chauncey suggests two important reasons for this shift, both occurring in the 1980s: the AIDS epidemic and a lesbian “baby boom.” In the former case, end-of-life decisions or property inheritance normally reserved for spouses fell legally into the hands of family members who had, in many cases, abandoned their sons and brothers in their time of illness and who now rejected the wishes or seized the homes of the partner who had cared for their dying relative. Without the legal rights and recognition that go along with marriage, the relationships and families that gays and lesbians had only recently found the space to live publicly and openly were vulnerable.

But Chauncey’s account is incomplete, I think. If practical matters regarding legal rights and privileges served as an impetus for the turn toward marriage rights, it has become something more than that. It has become a movement that seeks recognition for the families and lives that have been created on equal footing.

In formulating the demand for equal recognition, marriage has become something worth being equal to. If not, why not simply accept the civil union compromise? The recognition that marriage has a positive, stabilizing, even conservatizing influence has become part of the argument for marriage rights for same-sex couples. Some version of David Brooks's claim that "we should regard it as scandalous that two people could claim to love each other and not want to sanctify their love with marriage and fidelity"² has found support in the gay and lesbian community.

This "conservative case" for marriage rights for same-sex couples is not a new argument. It has been made by, among others, Jonathan Rauch, Andrew Sullivan, David Brooks, and the editors of *The Economist*.³ My purpose here is to consider why this argument has little or no purchase in conservative Christian circles. It seems to me there are two possible modes of culturally conservative and broadly traditionalist political engagement. I'll call these the influence model and the control model. In the influence model of traditionalist political engagement, the goal is first and foremost to make the case, through words or actions, that some traditional modes of living, habits, norms, and values have function, purpose, and beauty that are in jeopardy of being diminished, obscured, or lost. The goal of the influence model is to influence the course of social, political, and cultural change in a way that the value of the traditional is not dismissed but incorporated and transmitted into the futures we build together.

In the second, or control model, of conservative political engagement, attention fixates on a particular mode of being which is seen to best embody the values and norms they seek to protect. Those employing this model attempt to control social and political outcomes to fit their image of life in that particular fashion. They undertake political engagement, not to influence the shape of future change, but to prevent it to the extent that such change might take us further away from the ideal-historical mode of living, which is usually a highly idealized version of a time in the recent past.

A prominent example of this approach can be found in David Blankenhorn's *The Future of Marriage* (New York: Encounter Books, 2007), a book heavily promoted by the Family Research Council, a prominent conservative group working against same-sex marriage rights. On the first page, Blankenhorn recounts his

first serious attempt, as a long-standing advocate of marriage's value, to grapple with the issue of same-sex marriage. He explicitly rejects the idea that his role is merely to influence future developments in the meaning and practice of marriage. While his tone is measured and he makes a conscious effort to consider the potential benefits of same-sex marriage, he nevertheless concludes that failure to control this particular feature of marriage will have substantial deleterious consequences: the social devaluation of marriage, higher divorce rates, more children growing up without fathers, a loss of religious freedom, and possibly polygamy and group marriage, among many others.

Christian conservatives have had some notable success in their arguments about marriage as viewed from the influence model. But as demonstrated by Proposition 8 and the high priority placed on resisting and turning back the right for same-sex couples to marry (and in many other states, though not in California, civil unions as well), Christian conservatives are stuck in the control mode of political engagement. One of the many problems with this mode of political engagement is that it is inevitably quixotic. It's based on a sociology that's entirely too static for modernity; outcomes such as the future of marriage can be influenced but cannot be controlled.

The only victories such a mode of political engagement can produce are like the electoral victory of Proposition 8: sure to be fleeting in content, alienating, and divisive. It provokes bad arguments. Tying the case against same-sex marriage to complementarian theories of gender will be unpersuasive to the increasing number of opposite-sex partners whose marriages are based on egalitarianism, but the argument is required by the nature of the idealized historical moment in the history of marriage which they've made the focus of their political vision.

But the inevitable political failures of the control mode of engagement have another consequence: They reinforce a sense of distinction and separation between the Christian community and the secular world. This attitude, however, leads to a retreat from the world, from political engagement, and from democratic politics. Whatever the reason Christian conservatives are stuck in control mode, it is unfortunate, as it undervalues their contributions

and commits them to an oppositional politics that all too often and too quickly turns ugly. Moreover, the influence model is a form of political engagement best suited for pluralism: It allows success at influencing those who do not share all elements of your comprehensive worldview.

I've often said that one of the most compelling reasons that marriage rights for same-sex couples should be legally and socially recognized is exceedingly simple: They do what married couples do, and live as married couples live. They have built lives together, cared and sacrificed for each other, and raised children together. In these substantive ways, in the ways that make up the social practices of marriage, their commitment to the values of marriage is as strong as that of legally married couples. But it's not the same: Their commitment is, in an important sense, greater. Opposite-sex couples often stumble into marriage; it is, for many, just doing what's expected and taking the path of least resistance. Same-sex couples don't have that luxury; the project of building a life together as married couples do—emotionally, socially, financially, and within a religious community—faces far more substantial obstacles. That so many choose to overcome those barriers and build these relationships can just as plausibly be taken as a sign of health and staying power for the institution of marriage.

It is an odd consequence of the control model of political engagement that, even as it makes the case for marriage, it presents marriage as a weak institution, able to thrive only if buttressed by a specific set of gender norms and roles. In defending marriage, they end up vastly underselling it.

This is why the concern that same-sex marriage amounts to a "forced redefinition" of a venerable social institution, thus potentially weakening it and reducing its appeal, is misplaced. To the extent that marriage is being redefined, that redefinition is not taking place exclusively in the legal and political realm. It has been going on for decades now, long before any state court or legislature considered the issue. Same-sex couples have been building lives together as members of communities, families, and churches. These changes are social and cultural as well as legal and are no more "forced" than social change normally is. This change has been influenced positively by the conservative, traditional case for mar-

riage. I look forward to the day when conservative defenders of the value of marriage are ready to celebrate with me.

Notes

1. George Chauncey, *Why Marriage? The History Shaping Today's Debate over Marriage Equality* (New York: Basic Books, 2005).

2. David Brooks, "The Power of Marriage," *New York Times*, November 22, 2003, <http://www.nytimes.com/2003/11/22/opinion/22BROO.html> (accessed July 4, 2009).

3. Jonathan Rauch, *Gay Marriage: Why It Is Good for Gays, Good for Straights, and Good for America* (New York: Henry Holt, 2004); Andrew Sullivan, "The Conservative Case," in Andrew Sullivan, ed., *Gay Marriage: Pro and Con* (New York: Vintage, 1997), 146–54; David Brooks, "The Power of Marriage"; *The Economist* editorial board, "Let Them Wed," *The Economist*, January 4, 1996, http://www.economist.com/displaystory.cfm?story_id=2515389 (accessed July 4, 2009).

The Church's Use of Secular Arguments

Kaimipono Wenger

One fascinating development in the Proposition 8 debate in California was the extent to which secular arguments—involving legal, political, and sociological claims—came to take center stage, even in announcements from the Church itself. The Church's initial forays into the same-sex marriage debate are, of course, much older than Proposition 8. A decade earlier, when Hawaii temporarily instituted civil unions for same-sex couples,¹ the Church issued "The Family: A Proclamation to the World." The proclamation drew on ideas of divine intent and accountability, stating: "The family is ordained of God. Marriage between man and woman is essential to His eternal plan," and "We warn that individuals who violate covenants of chastity, who abuse spouse or offspring, or who fail to fulfill family responsibilities will one day stand accountable before God." While warning of relatively vague "calamities foretold by ancient and modern prophets," the proclamation made no specific political, legal, or sociological claims.²

Church statements during the Proposition 22 campaign in

2000 included the use of more secular arguments than had been deployed earlier.³ The Prop 8 debate refined and built on this precedent. During the Proposition 8 debate, Church leaders and representatives made a number of political theory arguments, mostly centered on the question of democratic legitimacy; they also made a number of specific sociological arguments relating to same-sex marriage, and further made a number of legal arguments, mostly predictions of problematic legal consequences if Proposition 8 failed to pass. The extensive use of secular arguments meant that the Church necessarily gave less emphasis to moral, spiritual, scriptural, or theological claims.

There may be disadvantages to this rhetorical move. The Church's primary role in modern society has not been that of legal or political analyst or social scientist; to the extent that the Church relies on those kinds of arguments, it is working outside its expertise. In addition, a Church position based on legal, political, or sociological arguments is vulnerable to counter-arguments within each of those disciplines. Indeed, it turns out that some of the Church's secular arguments about Proposition 8 are problematic for a variety of specific reasons.

1. Political Arguments. In the Proposition 8 context, the Church and individual members made a number of political arguments hinging on a particular idea of democracy and the role of courts. The Church's very first official statement to congregations opened with a naked political-theory argument:

In March 2000 California voters overwhelmingly approved a state law providing that "Only marriage between a man and a woman is valid or recognized in California." The California Supreme Court recently reversed this vote of the people. On November 4, 2008, Californians will vote on a proposed amendment to the California state constitution that will now restore the March 2000 definition of marriage approved by the voters.⁴

The Church's "Divine Institution of Marriage" press release of August 13, 2008, made similar arguments, stating:

The people of the United States—acting either directly or through their elected representatives—have recognized the crucial role that traditional marriage has played and must continue to play in American society if children and families are to be protected and moral values propagated

In contrast, those who would impose same-sex marriage on American society have chosen a different course. Advocates have taken their case to the state courts, asking judges to remake the institution of marriage that society has accepted and depended upon for millennia. Yet, even in this context, a broad majority of courts—six out of eight state supreme courts—have upheld traditional marriage laws. Only two, Massachusetts and now California, have gone in the other direction, and then, only by the slimmest of margins—4 to 3 in both cases.⁵

Individual members also employed this sort of argument. Notably, author Orson Scott Card—appointed in early 2009 to the political group National Organization for Marriage⁶—wrote in June 2008 for the *Mormon Times* section of the *Deseret News* and published on the section's website that same-sex marriage decisions in Massachusetts and California “[mark] the end of democracy in America.”⁷ He elaborated: “No constitution in the United States has ever granted the courts the right to make vast, sweeping changes in the law to reform society. Regardless of their opinion of homosexual ‘marriage,’ every American who believes in democracy should be outraged that any court should take it upon itself to dictate such a social innovation without recourse to democratic process.” Card went on to label the California court “dictator-judges” and wrote that “any government that attempts to change [marriage] is my mortal enemy. I will act to destroy that government and bring it down.”⁸

There are serious problems with this political rhetoric in the Prop 8 context. First, this simplistic political analysis largely misses the point of courts in a democracy. Theorists from James Madison to Alexander Bickel, John Hart Ely, and Bruce Ackerman have explained the complicated role of courts in a democracy.⁹ While there is some disagreement on specifics, most theorists accept Madison's influential idea that minority groups must be protected from “tyranny of the majority.”¹⁰ Given the danger that majority groups will overreach, the role of courts becomes a “counter-majoritarian” safety valve to protect vulnerable groups. Cases like *Brown v. Board of Education* illustrate this principle. *Brown* involved the undoing of majority-passed laws and exactly the sorts of “vast, sweeping changes” that Card decries—and it's a damn good thing that it did.

This function of the courts is part of our constitutional system of checks and balances, which Church leaders have often called inspired. And in fact, the Church itself has drawn on exactly that understanding in the past. Brigham Young and other Church leaders made clear their views that marriage laws were not subject to simple majority definition if those laws affected minority rights. Early Church leaders repeatedly asked the courts, in cases like *Reynolds v. United States*, to override majority rules about marriage.¹¹ The recent shift to a simple majoritarianism ignores the Church's own prior understanding of courts as providing counter-majoritarian protection for minority groups.

A second problem with this political argument is its limited scope. It assumes a world where same-sex marriage is always imposed on an unwilling majority by divided courts. However, the political winds are shifting, and it is not clear how much longer that description will apply. The 2009 unanimous Iowa decision¹² suggests that the era of 4–3 court decisions may be a thing of the past. Even more importantly, state legislatures in New Hampshire, Vermont, and Maine recently enacted same-sex marriage laws.¹³ And given the demographics of Prop 8 support and the huge drop between Prop 22 support (61 percent) and Prop 8 support (52 percent) just eight years later, it seems quite likely that California voters themselves will also pass a same-sex marriage law within perhaps the next half dozen years. In a world of legislatively enacted same-sex marriage, majoritarian arguments lose their bite.

2. *Sociological Arguments.* The Church also made a series of specific sociological arguments against same-sex marriage. To some extent, these echo the Proclamation on the Family's warning of calamities, but they add far more detail. For instance, the "Divine Institution of Marriage" press release cites specific findings from David Popenoe, David Blankenhorn, Maggie Gallagher, and other researchers.¹⁴ However, the sociological evidence that children suffer from being raised in same-sex households is far from unanimous or conclusive, and a number of recent studies support the opposite view. Those studies have proven crucial in court decisions; for instance, the Iowa Supreme Court in *Varnum v. Brien*, after reviewing the studies cited on both sides, concluded: "The research appears to strongly support the conclusion that same-sex couples foster the same wholesome environment as

opposite-sex couples and suggests that the traditional notion that children need a mother and a father to be raised into healthy, well adjusted adults is based more on stereotype than anything else.”¹⁵

As the number of same-sex marriage increases, abundant evidence will be added. If new evidence fails to support the Church’s view—that is, if the evidence shows that children raised by married same-sex couples are not disadvantaged—such findings will further undermine the sociological arguments the Church has made against same-sex marriage.

3. *Legal Arguments.* Church leaders and members also made a number of legal claims regarding Proposition 8. For instance, the “Divine Institution of Marriage” press release included legal claims relating to adoption agencies, tax exemptions, and school curricula.¹⁶ An October 8 broadcast to Church members in California went further. Elder Quentin L. Cook, a former California attorney, reiterated and detailed the claims relating to school curriculum, adoptions, and tax exemptions. Elder David A. Bednar, an educator, extended the claims still further, stating that “there could be sanctions against the teaching of our doctrine” unless Proposition 8 passed.¹⁷

These kinds of claims received even more elaboration in a widely circulated document, “Six Consequences the Coalition Has Identified if Proposition 8 Fails.”¹⁸ This document was circulated at the ward and family level through email and blogs.¹⁹ And of course, LDS law professor Richard Peterson of Pepperdine University made similar legal claims about school curricula in a series of extremely popular political advertisements (“Think it can’t happen? It’s already happened!”) which were widely credited with turning the tide among undecided voters.²⁰

However, many writers, including Mormon attorney Morris Thurston, have demonstrated that those legal claims range from dubious to flat-out wrong.²¹ For instance, popular emails (not to mention General Authority broadcasts!) claimed that Catholic Charities was forced out of Massachusetts because of same-sex marriage. The “Six Consequences” document states: “Religious adoption agencies will be challenged by government agencies to give up their long-held right to place children only in homes with both a mother and a father. Catholic Charities in Boston already

closed its doors in Massachusetts because courts legalized same-sex marriage there.”²² But in fact, this example is inapposite. As the *Boston Globe* has detailed, the Catholic Charities investigation dates back to 2000 (four years prior to the *Goodridge* case which legalized same-sex marriage) and was based on state anti-discrimination law, not marriage law.²³

Claims that Church leaders will be sued for hate speech or that the Church will lose its tax-exempt status are also legally dubious at best. A letter from fifty-nine professors of constitutional law and family law at California law schools criticized the use of “misleading claims about the current state of the law or about what Proposition 8 would do,” and stated directly: “Prop 8 would have no effect on the tax exemptions of churches” and “Prop 8 would have no effect on teaching or the protection of parental rights already provided by state law.”²⁴

For that matter, the *Marriage Cases* opinion itself—which established same-sex marriage in California to begin with—belies some of the more alarmist claims. It states outright: “No religion will be required to change its religious policies or practices with regard to same-sex couples, and no religious officiant will be required to solemnize a marriage in contravention of his or her religious beliefs. (Cal. Const., art. I, § 4.)”²⁵

In addition to being of dubious veracity, the legal claims, like the sociological claims, are ultimately forward-looking in nature and thus vulnerable to being positively disproved over time. With half a dozen same-sex marriage jurisdictions, it will be easy to see whether the predicted parade-of-horribles (Church leaders sued for hate speech, tax exemptions revoked, Elder Bednar’s unspecified “sanctions against the teaching of our doctrine”) will, in fact, occur. Most legal scholars are confident that no such results will take place. Massachusetts has allowed same-sex marriage for five years now, and there have been no lawsuits against the Church for failure to marry same-sex couples, no hate speech prosecutions against Church leaders, and certainly no gay weddings in the Boston Temple.

If the predicted dire consequences do not occur, their absence will further undermine the alarmist arguments made by Church leaders and members during the Prop 8 debate which depended in part on legal claims. Indeed, some recent develop-

ments, like the passage of a same-sex marriage bill in New Hampshire with explicit protection for religious organizations,²⁶ suggest that predicted clashes between same-sex marriage and religious freedom are far from inevitable.

Overall, the use of secular arguments, whether legal, political, or sociological, was probably a winning strategy for the short term and very likely helped to pass Prop 8. But the transitory and vulnerable nature of many of these secular arguments means that they are unlikely to be effective as long-term building blocks in a Church strategy on same-sex marriage.

Notes

1. The Hawaii timeline is complicated. The Hawaii Supreme Court first ruled in 1993 that the same-sex marriage ban might be discriminatory. This led to further court hearings in 1995 in which the Church sought to intervene. During this time, the Church and Church leaders made several statements about same-sex marriage and homosexuality, one of them being the Proclamation. The Church was not allowed to intervene in the court cases, and ultimately Hawaii ended up adopting a Reciprocal Partnership statute instead of marriage. See generally "Chronology of Mormon/LDS Involvement in Same-Sex Marriage Politics," <http://www.mormonsocialscience.org/?q=node/59> (accessed July 3, 2009).

2. This may be expected, because the proclamation is presented as a revelation or quasi-revelation. However, as this essay will discuss, the Church took a different approach in the Prop 8 debate years later.

3. See generally Robert Salladay, "Mormons Now Target California: Church Asks Members to Back State Ballot Initiative," *San Francisco Examiner*, July 4, 1999, A-1, discussing Church efforts in the Proposition 22 campaign. The Church also contributed a significant amount to the constitutional amendment campaign in Alaska. See Bob Mims, "Church Funds Initiative to Ban Same-Sex Marriages in Alaska," *Salt Lake Tribune*, October 5, 1998.

4. See "Preserving Traditional Marriage and Strengthening Families," letter from the First Presidency to be read to California congregations on June 29, 2008, <http://newsroom.lds.org/ldsnewsroom/eng/commentary/california-and-same-sex-marriage> (accessed July 3, 2009).

5. See "The Divine Institution of Marriage," Church Press Release, August 13, 2008, <http://newsroom.lds.org/ldsnewsroom/eng/commentary/the-divine-institution-of-marriage> (accessed July 3, 2009).

6. Lisa Riley Roche, "Guv Draws Scrutiny over Stance on Civil Un -

ions," *Deseret News*, April 20, 2009, <http://www.deseretnews.com/article/705298582/Guv-draws-scrutiny-over-stance-on-civil-unions.html> (accessed July 3, 2009).

7. Orson Scott Card, "State's Job Is Not to Redefine Marriage," *Mormon Times* (section of *Deseret News*), July 24, 2008, http://www.mormontimes.com/mormon_voices/orson_scott_card/?id=3237 (accessed July 3, 2009).

8. Ibid.

9. See, e.g., John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge, Mass.: Harvard University Press, 1980); Alexander Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (New Haven, Conn.: Yale University Press, 1986).

10. Madison's views are expressed most strongly in two of the *Federalist Papers*, No. 10 and No. 51.

11. See generally Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 2001).

12. *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009).

13. Edith Honan, "Power Struggle Impedes New York Gay Marriage Vote," *Washington Post*, June 29, 2009 (discussing recent developments in the legal status of same-sex marriage in different states), <http://www.washingtonpost.com/wp-dyn/content/article/2009/06/29/AR2009062903079.html> (accessed July 3, 2009).

14. "The Divine Institution of Marriage."

15. *Varnum v. Brien*, 763 N.W.2d at 899n.26.

16. "The Divine Institution of Marriage."

17. The October 8 Broadcast is available in video form at the lds.org website, in two parts. The Bednar/young adult portion is at http://www.lds.org/ldsnewsroom/media/mediaplayer.swf?media=http://broadcast.lds.org/newsroom/video/flv/bednar_edit02_150k.flv&type=FLV, and the Ballard/Cook/Clayton portion is at http://www.lds.org/ldsnewsroom/media/mediaplayer.swf?media=http://broadcast.lds.org/newsroom/video/flv/California_Broadcast_8Oct08.flv&type=FLV (each accessed July 3, /2009). I have not been able to locate any official transcript of the broadcasts. Various websites have published unofficial transcripts, including at http://wikileaks.org/wiki/LDS_church_Proposition_8_broadcast_transcript_8_Oct_2008 (accessed July 3, 2009).

18. The document as popularly circulated was not attributed to any author. The document is available online in a number of locations on both sides of the debate. See, e.g., <http://protectingmarriage>.

wordpress.com/2008/09/14/six-consequences-the-coalition-has-identified-if-proposition-8-fails/ (accessed July 3, 2009).

19. I personally received the document several times in email from family and ward members. This seems to have been a common pattern, especially in California. See also Morris Thurston, Guest Post: "Rebuttal to 'Six Consequences if Proposition 8 Fails,'" Mormons for Marriage blog, September 18, 2008, <http://mormonsformarriage.com/?p=35> (accessed July 3, 2009). He notes that the "Six Consequences" document was circulating among members, especially in California.

20. Michael Foust, "Historic Campaign Secured Prop 8's Passage in California," *Baptist Press*, November 6, 2008, <http://www.sbc Baptist Press.org/bpnews.asp?id=29277> (accessed July 3, 2009), asks, "How did supporters of Proposition 8 manage, in a mere seven weeks, to turn a 17-point polling deficit into a five-point Election Day victory?" The answer? "A number of factors, led by three main ones: a solid consistent message about the impact of gay marriage on public schools, better-than-expected fundraising and historical cooperation among various religious groups to back the measure and get out the vote." Peterson's commercials are available at http://www.youtube.com/watch?v=cOWjhqT_me8 (school curriculum) and <http://www.youtube.com/watch?v=fNaHpHl3t8g> ("whether you like it or not"). Many Pepperdine alumni expressed discomfort with Peterson's identification as a Pepperdine professor in the ads. See Jaimie Franklin, "Proposition 8 Ad Angers Students, Pep Intervenes," *Pepperdine Graphic*, October 2, 2008, <http://graphic.pepperdine.edu/news/2008/2008-10-02-gay-marriage.htm> (accessed July 3, 2009).

21. Morris A. Thurston, "A Commentary on the Document 'Six Consequences . . . if Proposition 8 Fails,'" <http://www.mormonsformarriage.com/wp-content/uploads/2008/10/mat-responses-to-six-consequences-if-prop-8-fails-rev-1-1.pdf> (accessed July 3, 2009). Thurston's essay shows in detail how "Six Consequences" misstates fact and law in its assertions.

22. "Six Consequences."

23. See "Catholic Charities Stuns State, Ends Adoptions," *Boston Globe*, March 11, 2006; "Seven Quit Charity over Policy of Bishops—Deplore Effort to Exclude Same-Sex Adoptions," *Boston Globe*, March 2, 2006.

24. The press release was printed by a number of news organizations. See, e.g., Press Release, "Letter from Legal Scholars about Proposition 8—Leading Legal Scholars Reject Prop 8 Arguments," *San Diego Union Tribune*, October 30, 2008, <http://www.signonsandiego.com>.

com/news/politics/voterguide/20081030-prop8letter.html (accessed July 3, 2009).

25. *In re Marriage Cases*, 43 Cal.4th 757, 855 (2008).

26. Abby Goodnough, "New Hampshire Legalizes Same-Sex Marriage," *New York Times*, June 3, 2009, notes that the final bill included extensive protection for religious organizations.

How We Talk about Marriage (and Why It Matters)

Robert K. Vischer

A decade from now, same-sex marriage will likely be the law in a majority of states. Given the domino effect of legislatures embracing a cause that has successfully claimed the mantle of equality, coupled with the stark generational shift in views on same-sex marriage, our national conversation seems headed toward a resolution. Nevertheless, the conversation will remain vital to our country, not just in terms of the end result, but in terms of the way the conversation unfolds. It matters very much how we talk about same-sex marriage, as well as how we talk about those who reject the idea of same-sex marriage.

To begin to understand why the conversation is so difficult, we need to understand why opponents of same-sex marriage—particularly those whose opposition is rooted in their Christian beliefs—have struggled to halt the swing in public opinion. Two factors that have little to do with the issue's merits have nevertheless created nearly insurmountable obstacles for Christians hoping to persuade their fellow citizens that marriage must be limited to a husband and wife.

First, Christians in general have been much more outspoken about same-sex marriage than about other threats to the sanctity of marriage: no-fault divorce, the rise of prenuptial agreements, popular culture's pervasive denigration of marriage, et cetera. I recently spoke to a group of conservative evangelical Christians about same-sex marriage, and this is the image I used to convey the GLBT community's distrust of Christians on this issue: "Imagine

that marriage is a house, and the Christian is sitting on the front porch. The house is engulfed in flames. A gay person is walking down the sidewalk, lighting a cigarette with a match. The Christian stands up and yells, 'Hey, don't throw your match near my house—that's a fire hazard!' Viewing the scene, the gay person can't help but conclude: 'This isn't about marriage. This is about me.'

Second, over the past fifty years, few prominent Christians have taken leadership roles in condemning obvious injustices against the GLBT community. Instead of letting Anita Bryant and Jerry Falwell define the "Christian" perspective on the law's treatment of homosexuality as the gay rights movement began to gather momentum, what if more mainstream Catholics, evangelicals, and Mormons had been outspoken regarding job discrimination, harassment, and violence targeting gays? Just as it became impossible to separate bans on interracial marriage from the scandalous history of race in this country, it is becoming difficult to separate bans on same-sex marriage from the scandalous history of homosexuality in this country. I am not suggesting that there are no grounds for distinguishing bans on interracial marriage from bans on same-sex marriage, but the historical contexts of the bans are leading the public to embrace similar conclusions regarding their rationales. History has made it too easy for observers to conclude that opposition to same-sex marriage is part of a rearguard action by Christians who are perceived as trying to marginalize gays and lesbians at every turn.

The difficulty of the conversation is exacerbated by the merits of the case against same-sex marriage. Especially when aligned against captivating concepts such as "marriage equality," the arguments available to same-sex marriage opponents are ill-suited to sound-bite advocacy. Same-sex marriage does change marriage to the extent that it further decouples marriage and procreation, but it is difficult to translate this change into terms that resonate with America's live-and-let-live pragmatism.

Most arguments focus on the importance of connecting children to their biological fathers and mothers. The thrust of the argument is not always clear, though. Emphasizing "biological" appears to marginalize adoption, not just parenting by same-sex couples. Emphasizing "father and mother" makes more sense, sug-

gesting that both genders are necessary to child-rearing because men and women have different functions in child-rearing. But as socially grounded gender roles become fuzzier, our confidence in biologically grounded distinctions between the caregiving functions of men and women has become a bit shakier, as has our confidence in the constitutional validity of such characterizations. Does the fact that, all things considered, we would like children to be raised by mothers and fathers mean that we should prohibit adoption by same-sex couples, especially if the alternative is a life in foster care? And if we are willing to permit adoptions by same-sex couples, do we thereby lose a fundamental premise of the case against same-sex marriage?

The strongest argument against same-sex marriage seems to be, "Look, we're messing with the definition of a very important social institution that has served us well for many years. Because the idea of two men or two women being parents together is relatively new, we do not have enough empirical data to say whether children will be better or worse off. We should not take that risk." But if people acknowledge the risk, count the cost of excluding an entire class of committed couples from the stabilizing and identity-affirming institution of marriage, and conclude that gender differences are no longer a sufficient basis for that exclusion, do Christians have a compelling, publicly accessible reason for telling them that they are making the wrong decision?

These concerns about same-sex marriage are not inconsequential, though, and they cannot be written off as thin covers for bigotry. In that regard, we have to care about more than the merits of the same-sex marriage debate; we also need to care about the way in which we carry on the debate—especially the assumptions made about the opposing side. Much of the rhetoric offered in support of same-sex marriage is unhelpful and unproductive. Take, for example, a recent speech by New York Governor David Paterson, who unveiled his proposal for same-sex marriage and made it very clear what he thinks of anyone who does not get on board:

Anyone that has ever experienced degradation or intolerance would understand the solemn duty and how important it actually is. Anyone that's ever experienced antisemitism or racism, any New Yorker who is an immigrant, who has experienced discrimination, any woman who has faced harassment at work or suffered violence

at home, any disabled person who has been mocked or marginalized, understands what we're talking about here. We have all known the wrath of discrimination. We have all felt the pain and the insult of hatred. This is why we are all standing here today. We stand to tell the world that we want equality for everyone. We stand to tell the world that we want marriage equality in New York State.¹

Yes, it is undeniably true that many gays and lesbians have experienced discrimination, violence, and marginalization on account of their sexual orientation. But to imply that all opposition to same-sex marriage is coming from a place of "hatred" is inaccurate and irresponsible. It further polarizes a debate that is already deeply contentious. And when the governor of New York appears eager to engage in this sort of stark line-drawing, it does not bode well for the future viability of religious liberty. Same-sex marriage is well on its way toward becoming the law of the land, but the tone and substance of the political discourse used along the way matter a lot.

The debate about marriage is not, and should not be, primarily a debate about individual rights. The state has an interest in marriage beyond its general interest in facilitating the satisfaction of individual preferences. Marriage is an essential social institution; and reasonable, caring, non-bigoted citizens can disagree about how malleable the institution can be without losing its social function. Christians who oppose the redefinition of marriage are not invariably engaged in gay-bashing, nor are they plotting a theocratic takeover of government. Their arguments may not prove persuasive, but their arguments are often (though not always) perfectly consistent with the norms of public reason—i.e., not dependent on religious authority or experience for their persuasive appeal. While I readily concede that not all Christians have honored the spirit of public reason in this debate (e.g., "God created Adam and Eve, not Adam and Steve"), it is important for proponents of same-sex marriage to do so, especially when responding to Christians who have tried to ground the conversation in public values.

Especially in the wake of Proposition 8, the conversation has shown signs of devolving from an exercise of public reason into an exercise of public shaming. One television ad supporting Proposition 8 showed two Mormon missionaries entering a lesbian couple's home saying: "We're from the Church of Jesus Christ of

Latter Day Saints, and we're here to take away your rights." The missionaries remove the couple's wedding rings, ransack their house, and rip up their wedding certificate. A voice proclaims, "Members of the Mormon Church have given over \$20 million to pass Proposition 8" and urges viewers to "Say no to a church taking over your government."² Picketing churches, mocking religious tenets, and shaming believers—all of which happened in Proposition 8's aftermath—hollow out the conversation about marriage by reducing it to a crass form of religious identity politics. The best way to encourage religious believers to embrace accessibility in their political discourse is to engage them as citizens rather than through a direct attack on their religious identities.

By using religious identity as a stand-in for substantive arguments about the meaning of marriage, some proponents of same-sex marriage seem intent on narrowing the circle of legitimate political participation, as some Christians would undoubtedly like to do, though on different grounds. A Christian's political views cannot help but be shaped by his or her religious beliefs. Christians should be encouraged to articulate those views in terms that are accessible—even if not agreeable—to their fellow citizens. At the same time, those other citizens should work to engage Christians on the merits of their expressed views, not on the reasonableness or rationality of the sources from which the views derive.

I am not suggesting that religiously shaped political positions should somehow be immune from criticism. But battling over the policy implications of religious beliefs is different than targeting the religious communities from which those beliefs emerge. In particular, shaming Mormons based on their support of Proposition 8 has to be seen against the background of this country's long history of shaming Mormons in general.

Proposition 8's supporters came from a variety of racial, ethnic, and socioeconomic backgrounds, and, yes, most of them are religious. But the debate about marriage is about more than religious identity. Marriage as an institution contributes significantly to the common good, and thus we all have a stake in its viability and vitality. As our society's view of marriage changes (as it surely does), we cannot dismiss or demonize disagreement as a product of mere prejudice, personal animus, or ignorance. Doing so may not alter the trend toward same-sex marriage that is currently tak-

ing shape, but it will put further strain on the social fabric of a post-same-sex-marriage America. Maintaining a rich and respectful public conversation about the meaning of marriage is hard work, but abandoning the project creates a void that is quickly filled by the concept of marriage as a private contract. Marriage is not solely about individual rights, or privacy, or equality; marriage is a set of substantive commitments that transcends easy calculations of individual self-interest, but is crucial to the perpetuation of inter- and intra-generational caregiving in our society. Recognizing its public dimension could be the start of a wonderful conversation.

Notes

1. "Governor Paterson's Remarks on the Introduction of a Marriage Equality Bill," April 16, 2009, http://www.state.ny.us/governor/keydocs/speech_0416091_print.html (last visited on Jun. 29, 2009).
2. <http://www.youtube.com/watch?v=q28UwAyzUkE> (viewed and notes taken June 29, 2009).

An Evangelical Perspective

Lindsey Chambers

As an evangelical Christian living in California, I had mixed feelings about the Christian community's involvement in Proposition 8. I had just started attending a new church during election time. One Sunday, I was handed a bulletin with every issue on the ballot listed and my new church's stance delineated in full. Essentially, I was given a voting guide: which politicians were God's chosen leaders, and what God wanted me to vote for on every proposition.

It took only a brief scan of the guide and an earful of the congregation's easy and enthusiastic assents to send me into a "righteous" fury. I tore the guide to pieces and spent the remainder of the service mourning the state of America's evangelical community. There was no dialogue. There was no room for prayerful consideration of the issues. I was given an order, and I was supposed to follow without question. But I *did* have questions. As

both a Christian and a political philosophy student, I have questions about what role my faith *should* play in my political involvement; “should” is an important and difficult notion for me both as a Christian *and* as a reasonable citizen.

From a Rawlsian standpoint, there are reasons to support same-sex marriage even if one believes same-sex marriage is wrong from a religious perspective. The problem of justice, as framed by Rawls,¹ arises because our project of social cooperation is between people who disagree about what constitutes a good life. We come to the table of cooperation with a pluralism of values, and this pluralism is taken as a fixed feature of our society. Though we have competing interests and different values, we share an interest in finding a reasonable way to work and live together that goes beyond a mere *modus vivendi*. The fact of pluralism precludes us from adjudicating our competing claims by appealing to any one doctrine of what is good or best, be it a metaphysical or a moral doctrine.

Our task, then, is to find some common ground on which we can structure society. Part of being a good-willed and reasonable participant in this project is recognizing that the claims made by other members of society have equal worth to our own; and in light of that recognition, we endeavor to justify our political activity in a way that is universally acceptable to those other members.

If we are all involved in a project of social cooperation under such terms, then Christians have a duty to come to the discussion of same-sex marriage in good will. They must be ready to make their arguments universally acceptable, and doing so requires that they do not appeal exclusively to their religious convictions in the justification of their position. They need not give up their religious convictions, but they cannot expect those convictions to carry weight in the public square. Religious participants have a duty to recognize that the claims of the homosexual members of society are *as worthy* as their own in our project of cooperation.

Justifying a ban on same-sex marriage, then, cannot be merely based on religious appeals to the alleged evils of homosexuality because such claims are not universally acceptable. One type of justification that is, or could be, universally acceptable is an appeal to harm. Christians could try to make a case that same-sex marriage harms either its participants or some third party. I be-

lieve Christians would be hard pressed to find a suitable paternalistic case against two consenting adults committing themselves to a long-term monogamous relationship. In fact, it is that sort of relationship that is championed by both sides of the divide, and part of the motivation for the Christian opposition to same-sex marriage is to protect this sort of relationship for heterosexual couples. Christians must, then, be able to make a convincing case that allowing same-sex marriage would cause considerable harm to the institution of marriage itself, and would therefore harm society as a whole. Such an appeal would require two forms of argument: one argument must show why the institution of marriage is valuable to society, and the other argument must convincingly show that same-sex marriage would harm this institution.

Regardless of whether one's political commitments are individualistic or communitarian in nature, it is possible to find broad agreement that there is something important about a person pursuing a life of meaning. A life of meaning for some people may involve spending their lives in a loving, committed relationship. One would be hard-pressed to make a paternalistic case against such relationships for homosexual couples while supporting such relationships for heterosexual couples. Because we typically see such relationships as valuable, it seems that, as long as those individuals are in a position to consent to such a relationship and as long as they are not harming any third parties, we ought to promote such endeavors. Marriage is a valuable institution because it promotes, or has the potential to promote, the sort of long-term and committed relationships that are conducive to many people's flourishing. Because both sides of the Proposition 8 divide agree that such relationships are valuable and worth promoting, the real question is whether marriage, as a valuable institution to society, is in danger. If Christians want to justify a stance against same-sex marriage, I believe this is where the burden of justification lies, and it is a burden I think they are unlikely to meet.

Intuitively, increasing the number of participants in the institution of marriage ought to strengthen it (or at least its appeal), especially now that cultural norms seem to be shifting away from marriage for younger generations. If there is an enemy to the institution of marriage, the prevalence of divorce is the more obvi-

ous choice. I should note here that I do not believe marriage, as it is legally and religiously understood, is the only way to promote the sort of relationship that both sides find valuable. Consequently, I am open to marriage being one form of this relationship (one male, one female) and some other institution being a sign of commitment between same-sex couples. If it is the relationship that matters, and if some alternative to “marriage” promotes this sort of relationship at least as well as (or perhaps better than) marriage, then I think that remains a viable choice (particularly if it is the more politically feasible option).

With that caveat in mind, I want to turn to the attitude of the (Protestant) evangelical community. This community, *my* community, vehemently opposes same-sex marriage. They have scripture on their side, to a point. The Old Testament warns against homosexual relations, as do parts of the New Testament—more commonly in the form of broader imperatives to remain sexually pure. If we’re honest, we must admit that such imperatives are frequently disregarded. Many Christians are quick to point out that the Bible explicitly says a man will leave his father and mother to be with a woman, that they will become one flesh (Gen. 2:23–25, New International Version). Yet as Paul reminds the Corinthians, there is a difference between holding fellow believers accountable to the law of God and holding non-believers to such a standard: “What business is it of mine to judge those outside the church?” (1 Cor. 5:12, NIV). How can we expect someone who does not acknowledge God’s law to live under it? How did Jesus handle God’s commands? He explained God’s commands to us, but he did not legislate them. He loved the sinner, he communed with the sinner, but he did not bring the sinner under condemnation of earthly laws.

Should the Church spend its time and resources fighting a political battle, or should it be more concerned with the battle for souls? We are called to love one another as God loves us. We understand God’s love best when we are loved by others. Promoting the committed relationship of two homosexuals may be the best way I can love and minister to them. That position doesn’t mean I’m committed to marrying them in a church under God, but it may mean that I’m committed to promoting their chance at happiness and the stability of their relationship. In doing so, I can be a light in their lives, and showing them light is the best way I can

point them to my heavenly Father. As Jesus commanded us, “Let your light shine before men, that they may see your good deeds and praise your Father in heaven” (Matt. 5:16, NIV).

Note

1. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).

The Political Is Personal

Mary Ellen Robertson

As a California native, I have a stake in my home state’s politics, especially on social issues such as same-sex marriage. I was living in Pasadena, California, in 2000 when Proposition 22, defining marriage as being between a man and a woman, was roiling the political waters. And in 2008, I watched from Utah as the LDS Church’s new political machinery kicked into gear to pass Proposition 8.

As I’ve observed these two campaigns, I have questions about the effects of participating in campaigns to define marriage the same way Latter-day Saints and many other conservative religious groups do. I’m concerned about the trade-offs in Church members’ participation, particularly because there’s little discussion of the unintended consequences or human cost of these actions. I have been pained by the often insensitive behavior of Church members in their zeal to pass these measures and the interpretation of some that the Church’s position on gay marriage gives them carte blanche to proudly display their homophobia. What have Mormons sown and what will Mormons reap as a result of our fervent campaigning against same-sex marriage?

During the campaign to pass California’s first gay-marriage ballot-initiative, Proposition 22, in 2000, I was single. Because I knew what it was like to want to be married but not have the option available, I was unwilling to deny the option of marriage to anyone—straight or gay—who wanted to participate.

During the months preceding the election, I endured politicking, testimonials, and much inflammatory rhetoric at church and

in panicky forwarded emails about the dire consequences if Prop 22 didn't pass: massive school curriculum changes that would make gay sex education mandatory and families headed by same-sex couples seem *normal*. Such claims played on Church members' emotions and fears rather than making any rational sense.

My reaction was to leave in protest—temporarily. I wrote a letter to the stake presidency, my bishopric, and Relief Society president. In it, I explained that the relentless campaigning at church disturbed my spiritual equilibrium and contradicted Joseph Smith's approach of teaching correct principles and letting us govern ourselves. Since the campaigning at church was having such a negative effect, I explained that I would not attend services until after the election.

The reaction was mixed. The stake president read parts of my letter in a ward conference as an example of how *not* to approach the issue. In a one-on-one conversation that I initiated, he insisted that I could not have a spiritual confirmation that differed from the Church's official position on the issue and warned that I was on a slippery slope to apostasy. A counselor in my bishopric called to thank me for writing the letter; he had wrestled with the issue and the public position he had to take because of his calling. The other recipients did not respond.

I purchased a "No on 22" sign for my apartment window and volunteered at the phone bank for the "No on 22" campaign. When I returned to church about eight weeks later, the stake president seemed surprised to see me there, even though my letter had indicated that my hiatus from meeting attendance would be temporary.

Eight years later, the machinations surrounding the LDS Church's involvement in Proposition 8 made previous efforts to pass Prop 22 look like amateur hour, making me wonder if the Church had hired the political equivalent of a vocal coach, tutor, stylist, and agent.

The 2008 campaign was far more polished and tightly organized, though still scripted to appear publicly as a "grass roots" effort on the part of individual Church members. I didn't have the front row, first-hand experience of being in California this time, but Prop 8 was nearly inescapable in the news media, at church, and on social networking sites.

Rather than leaving in protest as I had before, this time I joined the protest. I posted attorney Morris Thurston's thoughtful, reasoned article titled "A Commentary on the Document 'Six Consequences . . . if Proposition 8 Fails'"¹ on my FaceBook page. I identified California Mormon donors (including my parents) on the Mormonsfor8.com website.

My dear friend, Marilyn, was working for the "No on 8" campaign in Los Angeles and asked me to make reminder calls to "No on 8" volunteers. I took the unpopular Saturday night shift, calling from 6:00 to 10:00 P.M., and took a bit of wry pleasure from making calls from my 801 area code land line. After Prop 8 passed, I joined thousands of like-minded folks who attended a rally and marched around Temple Square in Salt Lake City on November 7, 2008. I carried a sign that read "Every family has value."

Even though the measure passed, thanks to significant Mormon involvement and financial support, many Mormons seemed caught off guard by the public reaction after the election. Had Mormon leaders and members stopped to count the cost of taking such a high-profile role in Prop 8? As we continue to reflect on Church members' participation, what have we sown and what will we reap?

In some Church media outlets and conservative Mormon-themed blogs, opposing same-sex marriage and protecting traditional marriage were painted as the epic battle of our lifetimes. Writers and speakers intimated that those who didn't fall into step with the Church's marching order had an insufficient grasp of the gospel. They just didn't understand; otherwise they'd be on the correct side of the issue. After all, the prophet had spoken.

Sowing such seeds results in divisions and contention among Church members. Those who feel they are right express feelings of superiority. People who have a different opinion—often because of a close relationship with gays or lesbians—are demonized and treated as if they have joined the enemy if they express support for marriage equality.

This high-stakes politicking can undermine goodwill and cohesiveness among friends and family and inflict serious damage on a ward community. Some individuals used the campaign as license to vent their uncharitable feelings about gay people. In

2000, a man in my ward commented during a Church meeting that AIDS was the means by which “those faggots were getting what they deserve.” His views were challenged by other members of his quorum, thankfully. But this man was heavily involved in fund-raising and house meetings to promote Prop 22, and such incidents make it harder to believe that Church members’ political activities are not motivated by visceral anti-gay sentiment.

Even if the sentiment expressed by that man is not the norm among Church members, the Church’s position against same-sex marriage (and its tepid statements regarding civil unions) can make Mormons seem homophobic to outsiders and critics. Whether the charge of homophobia is fair, contributing huge amounts of money and time to defeat measures aimed at recognizing and giving legal structure and support to gay couples sows the seeds of a reputation for unfriendliness to the gay community.

As has been widely pointed out, Mormon involvement in promoting traditional one-man/one-woman marriage seems hypocritical given our polygamous past. The Mormon practice of plural marriage was established at great personal cost to many participants and resulted in Mormons being demonized, subjected to violence, being forcibly expelled from the Midwest, and being subjected to thirty years of steadily increasing legislative and judicial pressure from the federal government. Contemporary Mormons condemning same-sex marriage lack credibility and can come across as hypocritical.

Another area where the Church’s involvement has been problematic is promoting the idea that politicking against same-sex marriage is a grass-roots effort coming from individuals rather than one organized and maintained by the institutional Church. Given the June 2008 letter from the First Presidency encouraging members to “express themselves on this urgent matter to their elected representatives in the Senate,” it’s hard to buy Mormon involvement as a grass-roots movement.²

Most Church members comply when the leadership merely implies there is one true course of action or a right way to vote on a ballot proposition. Mormons involved in Prop 8 say loudly that the campaign is not being run by the Church, but many inside and outside the Church see such a claim as disingenuous. Technically, no, President Monson is not personally running the campaigns

against same-sex marriage in California and other states. But General Authorities, savvy Mormon lawyers, public relations professionals, and Church employees are most definitely involved; and it would be ludicrous to suggest that top Church leadership knows nothing about their activities on such a high-stakes moral issue.

While Mormons may have helped win the battle against same-sex marriage in California, I believe they've lost the war—probably at great cost to the Church over the long run. The strong negative reaction to Mormons' involvement lingers and could cause problems in current/future missionary and humanitarian efforts. Our efforts have caused division within our "tribe" between Church members who feel differently about same-sex marriage. Outsiders have cause to be suspicious about Mormons' involvement in political campaigns, and our actions and reactions have swelled the ranks of people who actively hate Mormons. I believe we'll be reaping a Prop 8-tainted harvest for years to come.

Notes

1. "A Commentary on the Document 'Six Consequences . . . if Proposition 8 Fails,'" http://www.hrc.org/documents/Responses_to_Six_Consequences_if_Prop_8_Fails.pdf, print-out in my possession.

2. "First Presidency Urges Support of Marriage," press release, <http://www.ldschurchnews.com/articles/49041/First-Presidency-urges-support-of-marriage.html> (accessed July 2008), print-out in my possession.

Four Reasons for Voting Yes

Russell Arben Fox

I don't live in California, and so the questions of what I thought of Proposition 8 and of my Church's involvement in it were never presented to me with any more force than that of any other announcement from the pulpit after sacrament meeting or any other stray comment that gets mentioned in Gospel Doctrine class. I've no doubt that there were many wards throughout the country (and perhaps throughout the world) where, for reasons having to do with the beliefs and priorities of local or regional

leaders, or perhaps due to some combination of demographic or cultural factors, the ecclesiastical demand to support Proposition 8 firmly, or at least announce your opinion about it vocally, was very strong. But that wasn't the case for my ward in Wichita, Kansas, and I suspect that it also wasn't the case in the great majority of wards and branches throughout the Church.

For which I'm grateful—and not because I don't like politics in Church. The truth is, I think Mormon Church life would actually be *improved* if our congregations were more political, but that's a different argument. No, my gratitude stems from the fact that the lack of any intensity on Sundays meant I had time to think through how I would have approached Proposition 8, without ecclesiastical pressure from above or social pressure from below.

Would I have voted for the proposition if I'd lived in California? I think probably yes, reluctantly, for four reasons:

1. Because my church asked me to.
2. Because I agree with some (but not all) of the philosophical arguments which my church and others who pushed for the proposition adduced as part of their case for the proposition.
3. Because, all things considered, I will almost always side with any proposition or referendum that involves setting matters directly before voters and thereby demands of them democratic deliberation and legislative compromise, rather than contenting ourselves with all-or-nothing decisions issued by courts;
4. Because—and this is important—it was a narrowly focused proposition, one which would have reestablished a formal distinction between same-sex relationships and heterosexual marriages in the state of California, but which would not have removed any substantive rights that gay couples currently enjoy under state law.

Note that key word “reluctantly.” I include it for at least two reasons. First, California is almost certainly the wrong place for this kind of struggle. It is far too large and too diverse to be, I think, responsibly conceived of as an arena within which an argument about what a community wants or expects or believes when it comes to marriage could be worked out. Second, the specific political arguments which the “Yes on 8” side made use of—as opposed to the more tentative and general philosophical ones which I, in part, agree with—were often complete paranoia and nonsense. Such crummy and inflammatory arguments are enough to

make me want to vote against something in principle, even if I see the general point of the proposition.

With regards to (1), a fair question to ask is: If I am supposedly obedient enough to take seriously the way leaders of the Church ask us to vote, why do the arguments mentioned in (2) matter at all? Well, they matter because (a) my commitment to the Church doesn't ever quite override my reasoning faculties, and because (b) the Church leadership didn't actually "tell" anyone to, or at least not so far as I am aware.

Did our prophet, and all the rest of the Church leaders (or at least, those Church leaders who actually spoke out on this matter, which was only a tiny minority of all those who potentially could have spoken out) really *want* the Saints in California to vote a certain way? Absolutely. Official statements were read in California wards encouraging members of the Church to organize and vote in support of the proposition, along with references to scripture, and statements were put out by Church media, and directives came down from Church leaders giving advice and support to regional leaders in California who contacted members and involved them in various campaign activities, and many millions of dollars were raised along the way. But does that asking and encouragement equal being "told" to do something? I don't think so. The official language from Salt Lake City was always one of "encouraging" members, not ordering them. Perhaps that will change, as these conflicts over same-sex marriage continue. But for now, that is how things stand.

With regard to (2), what, then, were the arguments that I considered persuasive? Well, to me, the general point of the proposition was one of drawing distinctions. I do happen to accept the deep cultural and/or communitarian and/or conservative presumption at work behind most traditionalist thinking about marriage. That is, I believe that civilized society depends on sustaining certain norms (like heterosexual marriage). I also believe that many (not all, but many) norms reflect essential characteristics of the way the majority of human beings has historically related and will continue to relate to one another. And I further believe that opening up social institutions to forced redefinitions—as if said institutions were based on nothing more than self-satisfying, mu-

tually agreed upon contracts—undermines their ability to support and draw the good out of those norms regarding human relationships for the benefit of society.

But allow me to quote Noah Millman, a commenter on cultural matters whose writings can be most often found on The American Scene blog (<http://www.theamericanscene.com/>), on this topic, as he's much clearer about the subject than I:

[Many advocates of same-sex marriage want the state to] redefine marriage to mean any exclusive partnership . . . between any two individuals regardless of their biological sex. . . . That's not what marriage means, nor ever has meant, because the complementarity between men and women is at the heart of the meaning of marriage. Marriage has changed an awful lot over the centuries, and we in the West have ultimately repudiated the polygamy and consequent second-class status for women that were central to marriage for its first few thousand years as a legal institution. But the proposed redefinition would be, essentially, a linguistic falsehood. For that reason, I fear that it would . . . make the traditional language of marriage relating to complementarity of the sexes appear to be nonsensical[;] it would make it that much harder for men and women to learn how to relate to one another, and form stable marriages. And because it would have advanced under the banner of rights such a reform would implicitly concede that marriage is a choice rather than a norm—a choice we all have a right to make but, by the same token, the right not to make if we prefer to live otherwise.¹

While it's unlikely to get much of a hearing by partisans on both sides of this struggle, I would note that Millman is not arguing against any kind of legally recognized same-sex marriage; he's merely arguing against our currently existing marriage system (which is by no means the only possible set of marriage laws and understandings available either today or historically) being expanded to include same-sex couples.

So what do we do for same-sex couples? We create a new institution exclusively for same-sex couples that would have many—perhaps even all—of the rights and responsibilities of marriage. Will this proposal ever fly? Probably not. We reduce so much to either/or questions of legal rights in this country, partially by (unintentional) constitutional design, partially by inclination and habit, with the result that consensual, democratically deliberated dis-

tinctions that might otherwise emerge are rarer in our polity than they ought to be.

Distinctions along the lines of “differentiating between black and white people in deciding which kind of jobs are appropriate for them is invidious discrimination, whereas distinguishing between gay people and straight people in determining which sort of marriage union is appropriate for them is not” probably wouldn’t survive in our legalistic environment, in which the claims of “separate but equal” are dismissed without argument as relics of a pre-*Brown v. Board of Education* era. And as much as it frustrates me to say so, perhaps that’s for the best; perhaps, given our polity’s history of discrimination and sexual paranoia, there is little reason to believe that a fully democratic engagement over which forms of marriage could be best accommodated within our history and culture would result in the fair but distinct forms of recognition I’m gesturing at here. But it is depressing to believe that the only alternative is for judges to forbid our legislative bodies from even trying.

Admittedly, there are practical reasons to doubt all this as well: the evidence that such “distinctions” could even be operable is, admittedly, minimal. I tend to think that the French were on the right track when they established their *pacte civil de solidarité*, first instituted in 1999, to serve as an alternative to marriage, thus avoiding unnecessary fights with various religious communities. But they failed to articulate what they were doing as a route for gay couples in particular; and as a result, heterosexual couples looking to avoid the social implications of marriage flocked to civil unions, which warped the legislation’s potential to be a model for addressing the deeper issues of “distinction” which I think are—or at least ought to be—relevant here, to the extent that you think any of this is worth worrying about.

I would also add that if the California proposition had moved beyond what I saw as simply insisting upon a distinction, I wouldn’t have voted for it. This is the point I made in (4). For all the problems associated with it, the truth is that I am fundamentally a modern person and therefore a believer in modern liberties, one of which is the right to privacy which the Supreme Court defined and defended (however dubiously) in *Romer v. Evans*. I do not

want to see sodomy recriminalized, and I do not think gay and lesbian couples deserve any less legal and economic protection than state laws provide to straight couples

Finally, with regard to (3), I have to confess that, as both a modern American (and thus a believer in individual equality) and a Christian (and thus a believer in a God capable of performing an act that demands a response which could potentially trump every single other commitment or connection any individual may have), it's hard to maintain hard and fast rules that always give priority to community integrity, popular decision making, and public opinion, especially when I am confronted with a question that potentially involves the rights and moral worth of individual persons. Still, I'm pretty cautious when it comes to all such interventions in the political process in the name of higher principles because I respect the messy compromises of democracy. Failing to do so is, I think, to set oneself up as an elite decision maker by virtue of one's position or enlightenment, and treat the beliefs of others as contemptible.

Practically speaking, in the American political context, this means I'm suspicious of judicial review and the ability of courts to mandate, in the name of Constitutional principles, practices that to my mind really need to be hammered out in our conflicted, divided communities by the folks who actually live in them.

And, in the end, all other things being said, Proposition 8 *was* an opportunity—a basically reasonable, only minimally harmful opportunity—to say, “Judges don’t rule in our democracy; majorities do.” And if you think trusting in majorities is itself somehow retrograde or wrongheaded, then you must have a sufficiently large suspicion of the democratic process to make any anger you may have about the result of Proposition 8 seem pale by comparison.

Note

1. Noah Millman, http://gideonsblog.blogspot.com/2005_11_01_archive.html#113224786664342821#113224786664342821 (accessed May 1, 2009).