

The Fourteenth Amendment

Michael Sean Winters | Aug. 5, 2010 | Distinctly Catholic

The Fourteenth Amendment is one of the crown jewels of the Constitution. Adopted in 1868, it was literally paid for with the spilt blood of hundreds of thousands of Americans. Its guarantees of equal protection and due process have embedded themselves in the culture, giving voice to one of the most admirable qualities of the American national character, our sense of fair play. Its text should be approached with reverence, even awe, but lately, from two distinct quarters, the Fourteenth Amendment has fallen victim to the culture wars.

A group of Republican Senators have decided to question the applicability of the Fourteenth Amendment to the children of undocumented immigrants. Why, they ask, should women be allowed to come to the U.S. to deliver their children solely for the purpose of extending the rights of citizenship to their children? There is no proof? at least none any one has produced? that this is a common phenomenon. I suspect it is like the charge that Phoenix is the #2 kidnapping capital in the world behind Mexico City, a charge with no basis in fact. Or the cries about increasing violent crime along the border, another claim that has been disproved decisively.

It is undoubtedly the case that some undocumented immigrants have children while here in the U.S. They do not come here to give birth. They come here for the same reasons my Polish grandparents and Irish great-great-grandparents came here: They are seeking a better life. But, the rightwingers have put the focus on an issue where it should be: the fact that current immigration law makes little provision for families with different legal status. As Catholics, keeping families together is a paramount moral concern. Any law that fails to do this is an unjust law on its face. It is up to us to turn the debate around, to ask why our nation tolerates a law that separates children from their parents and to demand the kind of comprehensive immigration reform that will put families first.

The political motivation for this effort to change the Fourteenth Amendment is made obvious by the fact that amending the Constitution requires two-thirds of both houses of Congress. That is to say, it has no chance, zero chance, of passage. And, there is not a court in the country that will alter the clear meaning of the text to deny citizenship to children born in the U.S. This is all about riling up the base in advance of the midterm elections. It is shameful and hateful, and the more shameful because it is so hateful.

The Fourteenth Amendment was also at the heart of the federal court decision overturning Proposition 8 in California. I have not read the ruling, but you really don't have to. If you approach the issue of same-sex marriage from the standpoint of rights, I can tell you how it will turn out. If you approach the issue from the standpoint of what marriage is, I can tell you how that will turn out. How you frame the issue will almost always decide where a person comes down on the issue itself.

For us Catholics, marriage is a sacrament, a lifelong commitment between a man and a woman, committed to participating in God's on-going work of creation. Impotence remains an impediment to a valid marriage in canon law and there is no such thing as Catholic divorce. But, our culture does not view marriage the same way and the reason for the difference has little to do with gays and lesbians. When liberal divorce laws took affect, and divorce lost its social stigma, our culture separated the marriage bond from the procreation of children irrevocably. We lost that battle in the sixties, not yesterday.

The immediate effect of the ruling is to make life more difficult for those gays and lesbians who live in states than New England and the West Coast. 30 states now have constitutional amendments banning gay marriage and 19 have constitutional amendments that ban any kind of same-sex civil unions. It is the gays and lesbians living in those 19 states that should be most distressed by the ruling in San Francisco. The other immediate effect is to make it less likely that moderate Democrats elected in conservative districts will survive the upcoming midterms. If marriage rights are the only issue that matters to gays and lesbians, then okay. But, my guess is that many gays and lesbians also care about climate change legislation, health care reform, funding for AIDS treatment and research, and a host of other important national concerns, all of which are now more difficult to achieve because conservatives have an emotionally explosive issue to wield.

Time is on the side of the advocates of gay marriage. Every poll shows that in trying to determine how someone will come down on the issue, the most important thing to know is not their political affiliation or denominational adherence but their age. A bit of patience might have made it more likely that gays and lesbians in states like Arkansas and Georgia could achieve the benefits of civil unions sooner rather than later. Americans tend to support civil unions, another expression of their sense of fair play. But, for many Americans, and especially many Catholics, marriage is not a congeries of rights, it is something more organic, and they oppose gay marriage. There is no winning a debate between a half-loaf crowd and a whole-loaf crowd. I will only point out that the weak provisions of the 1957 Civil Rights Act, a real half-loaf, paved the way for the more sweeping 1964 Civil Rights Act, and that by patiently working through the legislatures rather than simply seeking redress through the courts, the 1964 Civil Rights ended a debate about the Fourteenth Amendment. My fear is that the California court ruling, precisely because it was a court ruling, only guarantees that the debate over gay marriage will continue to poison our politics in the near term.

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