

# What Kind of Fool am I? A Reflection on the Same-Sex Marriage Debate

Dear Folks,

I'm back from South Africa and will begin telling you about our trip next week, but today we have a wonderful piece from Marie Failing of Hamline University. Here's her bio in her own words:

*"I'm a Valpo grad (B.A. 1973, J.D. 1976), practiced law in Legal Aid In Indiana (Indianapolis and Evansville) for 5 years, taught at Valpo's legal aid clinic before going to Indianapolis, and for the last 16 years I've taught law at Hamline University School of Law—I teach ethics, law and religion, constitutional law, criminal law, civil rights, etc. I'm a single mom of two (adopted) kids, now teenagers; we're an interracial family, as they're African American and I'm German American. I was one of Ed's students in my freshman year, which is how I got involved with Crossings, and I've got an article about to come out about Justice William Rehnquist (a Lutheran), entitled, 'The Justice Who Wouldn't Be Lutheran,' part of a set of work on Lutherans and law. [This piece is] inspired by Rev. John Priest and friends, who wrote a little now-lost? booklet called 'What Kind of Foolishness is This' at Valparaiso University, circa 1970."*

One thing before Marie's piece. Some(all?) of you received a message through the Crossings e-mail list that started out "Many of our members earning 5-figure incomes per week after

only 10 weeks". Now any of you who are acquainted with the practical realities of theologians today know that making a 5-figure income per week doing theology is a RARE occurrence and those of you acquainted with Crossings know that when we talk money, we are inclined to straightforward begging rather than get rich quick schemes. What I'm trying to say is that someone from the outside got into our e-mail list and sent that message. We think we've remedied the problem and apologize for any inconvenience and/or confusion.

Peace and Joy,

Robin

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## **What Kind of Fool am I?**

### **A Reflection on the Same-Sex Marriage Debate**

In December, 1999, Vermont's highest court ruled that its state constitution is violated by Vermont marriage law which permits people of opposite sexes, but not people of the same sex, to marry. (*Baker v. State of Vermont*, 1999 WL 1211709 (December 20, 1999)). Rather than suggesting that Vermont is required to extend legal marriage to same-sex couples, however, the court found that extending similar legal protections to same-sex couples would be constitutionally sufficient. The Vermont Supreme Court follows the highest courts of two other states – Hawaii and Alaska – who found constitutional violations in their states' opposite-sex marriage laws, but whose rulings were overturned by the unusual act of constitutional amendment by the people of each state. The furor in Hawaii resulted in a rare Congressional domestic relations law, the Defense of Marriage Act (DOMA), which allows states that object to same-sex marriages to refuse "full faith and credit" to such marriages legally contracted in other states, something which is not true with most other state-recognized marriages.

Thus, the debate about same-sex marriage is no longer academic (in both senses of the word) but has been joined in the legal and political arenas, where real people make public decisions profoundly affecting other real people. It is, in short, a debate that American Christians cannot avoid, as those who are created to be part of this world, and who have obligation as citizens in political structures which they themselves co-create.

Lutherans and others from similar traditions are particularly swept into the discussion because it puts into question our understanding of one means of God's protecting and sustaining work – called an "order of creation" or "Creator's Ordainings" – that we call marriage or the family. Gay and lesbian couples who hope to legally marry find themselves at the eye of the this maelstrom of uncertain meaning, but our culture and our religious community often like to forget that they simply represent the question, they do not contain it – that swirling mass holds within it singles, unmarried heterosexual couples, indeed married couples themselves, and children, those in households and those orphaned.

In fact, the same-sex marriage debate calls into question what we might mean when we talk about humans as co-creators with God – a theological position which at once embraces human freedom and limitation, which imposes human responsibility in a context where our own right-doing and wrong-doing are mysteriously commingled with the creating and preserving work of Another who is beyond recognition, much less understanding.

We can daily see the ways in which law protects and sustains in the "ord(a)inance" of marriage. In the most direct sense, at least in our time, criminal law can stop spouses from battering their vulnerable partners, sometimes imprisoning them when it cannot deter them with the threat of jail, denounce them into

remorse, or force them into treatment. Husbands cannot simply desert their wives when they grow bored, imagining that their wives can be justly discarded as so much trash (nor wives their husbands). The law at least ameliorates such abandonment, preserving some modicum of economic support, ordering the threads of relationship that must be sustained for the children, and announcing (admittedly with lessening volume) some social disapproval for such faithlessness. Law sustains commitment that may not dependably rely on human love as it is tested by human anger, competition, greed, resentment, neglect. People stay, not so much as they used to, but still they stay through the difficult times, in part because the law makes their separation more difficult. Law sustains human community through fairness and consideration of need as well: property is equitably shared by divorcing partners by law rather than their choice in many cases, so when a professionally degreed spouse leaves her supporter behind, she may have to make good on his past sustenance; or a disabled spouse may be protected from the streets by a maintenance award. In short, law curbs the temptation to abuse one's power, a temptation perhaps never greater than toward a vulnerable spouse.

Yet, law participates in creation as well. In marriage law, to make a couple is to make a new world of human responsibility. Law does not simply give a sign about the goodness of intimate human community, it signals duties of a newly created couple toward the world and the world's duties to recognize and support the family, as well as the duties imposed between spouses. Just as such a legally protected relationship constrains behavior, it frees as well: two people who are (at least greatly) liberated from the profound anxiety of protecting their emotional, social and economic security by the law's promise (as well as their partner's) are liberated for work in the world, whether in their extended families or among the strangers with whom they work and

play and share a community.

By exclusion, however, law can also signal the lack of protection, of sustenance, and perhaps most importantly, of respect for the gifts of love and commitment that make such inter-responsibility with the world possible. The condemnations signaled by marriage law indeed may force gay and lesbian people to ask themselves often, "am I a plain fool, a damn fool, or a fool of God?" Again, it is a question they share with singles, those committed to those who cannot/will not marry them, and those in socially disfavored marriages (once and still interracial couples, perhaps abused spouses these days, etc.) though the law presses the issue more clearly for them by announcing them to be "fools and damn fools." This is a question which marriage, recognized by church and law, relieves "standard" married couples from asking, at least as respects their relationship, even though they perhaps SHOULD ask such a question, as Christians.

Let me unpack what I mean by my foolish distinction. Most Christians have traditionally recognized some relationship between what is often called the "natural world" and those structures, including law, which impose normative responsibilities on human beings as part of that "natural world." The range of understandings is wide; some virtually assume that the natural IS the normative; on the other extreme, some believe that the natural world limits our duties very little, and human morality is largely a matter of human choice informed by God's Word.

Lutherans, I think, stand somewhat in their usual difficult position: what is "natural" at least in the sense of what "most people" see or experience is not automatically and thoroughly good because sin is pervasive in our given world. Indeed, the way in which we see and feel and come to equate it with what is

“natural” and what others see and feel (beyond our comprehension) as “unnatural” is itself sinful, arrogating to ourselves the task of deciding which of God’s creations is deviant. (And never so much as in sexuality, in our time.) Yet, the connection between the good work of God in the natural world and what is good for human beings remains close – our world is, after all, given to us as well as made by us, who ourselves embody both givenness and freedom, both adoration and arrogance. Similarly, as God is the God of history, today and tomorrow are both discontinuous and continuous; creation can both disrupt the previous moment and embellish it, and we never quite know when disruption is of God, and when it is our own sinful making, anymore than we know when our attempts to tinker with our world rather than to remake its radical evil are cowardice and not loving prudence.

For Christians in human relationships, this difficulty thus poses the foolish-questions. Luther opined that, for the most part, law and rulers should be obeyed by mere mortals, even when they were unjust, unless the Gospel itself were at risk. If he were of this age, as a man curious about science, I could see him describing law and the law of the family in particular as a membrane holding in a cell of floating human emotion and action. Burst the membrane, and what keeps the cell viable (able to build up the body of which it is a part) crashes into destruction.

Yet, at times, Luther seemed to think that divine grace in history would bring us heroes, whose God-calling was precisely to go beyond law, people whose defiance of law would testify to and act out the unpredictable will of the hidden God. Now, his hero-image brings us too much out of the world: the hero as contemporary people imagine him is one not like ourselves, who sees more clearly, who acts more courageously, who is able to leap tall buildings at a single bound. He is male in virtue,

even when he comes disguised as a woman, a Joan of Arc. We look up to him; we wish we could be like him.

As contemporary Christians, we might instead look to the fool as Luther's world-disrupting character, the one who both knows and does not know that (s)he violates accepted practices and norms. The fool at times seems to live in the world oblivious to the "average Joe's" common sense of that world's biological or socially constructed "natural" rhythms. At other times, the fool is painfully aware of the disjunctions between his/her actions and the expectations of the world. The fool goes blithely on without seeing how the world sees him/her, but then in a moment of disclosure is fully, agonizingly aware of how (s)he is seen. AS the fool grows older and wiser, (s)he is not at the mercy of difference, but wryly seeks to challenge the world with riddles. One riddle is the fool him/herself: neither male nor female, both at once; costumed to hide sexuality or boldly distort it, costumed to hide a self that can be captured in notions of "natural," to universalize or obscure race, bodily form, even facial features and expressions. God's fool hides more than discloses, both in appearance and in speech, song and riddle. Those of us who imagine ourselves to be "normal" look down on the fool, and find ourselves fooled in our condescension; the fool exposes our very pretensions precisely in his/her participation in the most mundane moments, the fart or the "splat", even though we want very much to see the fool as exotic, unworldly. We find ourselves outsmarted, both by what is disclosed and by what is hidden, made foolish ourselves in our attempt to expose the hidden in the fool's riddles and in our attempts to hide what embarrasses us about the fool's presence. The fool shows up when we least expect, when his/her presence is least desired, when we are least ready to listen to the fool's counsel. The fool stays when we are most irritated with him/her—as well as when no one else will stay with us.

And so the question of foolishness. "Am I a plain fool?" a man or woman must ask, when a loving commitment is not secured by law and social approval. Am I one who simply cannot see that I love in a way that puts me at risk of harm, for no good reason, out of sync with the "natural" order of things designed to secure individual persons? "Am I a damn fool?" as society says I am – is my foolishness, my inability to live the family life that the world around me calls "normal" (as simultaneously "ought" and "is") in fact the sinful hubris of defiance against the living structures God has given us to protect and sustain us? "Or am I a fool for God?" Do I, as the fool, expose the very pretensions of humanity to know what God has in store for human beings. Do I upset the apple cart, the awful idolatry in humanity's sure belief that in the "natural" we see God, when we only see is the shadow God has left behind as God races to hide in our future.

To be unremittingly uncertain about which kind of fool one is may perhaps be theologically a good place to live. But it is a tough, crushing and lonely place, perhaps more than human beings can bear day by day by day. And in part for this, perhaps, our Wise Nurturer gave marriage, to make it possible for at least some of us not to have to bear the weight of this question every, every day. Which has to bring Christians to ask, should we demand by law that some of us – gay and lesbian couples, and all whom the law leaves out of the "ord(a)inance" of marriage – bear the crushing burden of this foolish question for us all?

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