Written by **Jack Kenny** on November 10, 2009

Myths of "Rights" Are Wrong.

The United States Supreme Court is not the only place where you can find words turned into silly putty and ambiguity derived from definitive statements. Staying in the world of legal fiction, one may go to some of our state Supreme Courts to find equally or even more imaginative interpretations of "progress" divined from 200-year-old charters.

The Supreme Judicial Court of Massachusetts, for example, discovered in 2003 that the Constitution of the Commonwealth of Massachusetts, adopted by that former colony in 1781, required the state to provide for marriage between people of the same gender. John Adams would be amazed.

But common, ordinary folks can be imaginative, too, when it comes divining new rights or discovering "rights" that have always been there, we just hadn't noticed them before. Right up until last Tuesday, a great many people in Maine were clamoring for the recognition and protection of a "right" that Adams and his generation could hardly have imagined — the aforementioned right, discovered by Massachusetts Chief Justice Margaret Marshall and her colleagues in Massachusetts, of people of the same sex to marry one another. Maine had never declared such a right to be in its or the nation's Constitution, but last spring the Legislature passed and the Governor signed legislation that made marriage either a bi-sexual or unisexual enterprise in Maine, depending on the persuasion or orientation of the couple getting hitched. To hear the proponents of gay marriage tell it, you might think that the right to marry someone of the same gender is a basic, fundamental human right, ranking right up there with the right to worship or engage in free speech or the freedom of the press, or the right to be free of unreasonable searches and seizures, etc. The right to "gay marriage" is neither mentioned nor implied in the Constitution of Maine or that of the United States, but does that matter?

Scratch the surface of most people's thoughts on the Constitution, and you quickly discover that "constitutional " means to them whatever seems reasonable and right "in this day and age." And "unconstitutional" means whatever may strike one as unreasonable or backward or insufficiently enlightened or progressive. It has little or nothing to do with what is in the text or can even be reasonably deduced from reading "between the lines" of any Constitution. Unfortunately, some people who think that way are called "Your Honor." As a result we have a system of constitutional law that, as Joseph Sobran has so well observed, often seems as unrelated to the written Constitution as the Unitarian Church is to the Book of Revelation.

But leaving aside the Constitution, which is what our lawmakers do most of the time, let us consider in terms of basic fairness, whether the rights claimed by today's "progressives" are at all just. At a superficial glance, they may appear so. Heterosexual couples can marry; why not homosexual couples? Homosexuality has been part of the human race, apparently, since the beginning. Many famous poets,

playwrights, musicians, athletes, and clergy have been what is now called "gay." But it is only recently that any people have attempted to establish "gay marriage" as a societal norm on an equal footing with heterosexual unions. It has never been widely accepted that "gay is just as good as straight." We have had drunkards in our midst since at least the days of Noah. Some of them have been great writers, poets, athletes and clergymen. But no one seriously suggests drunk is just as good as sober. Perhaps that's because most of us are sober most of the time.

It has been more than two decades since the Supreme Court of the United States upheld the right of a state to punish people for engaging in private in homosexual activity. It has been several years, in fact, since that Court ruled states no longer may do so. A same-sex couple has the untrammeled freedom to enjoy any living arrangement that suits the couple's proclivities and desires. In some states, homosexuals are even protected by anti-discrimination laws from being refused housing or other accommodations, based on their sexual orientation. So if a landlord would choose not to rent to a couple who would use the living space he is making available for homosexual activity, he may be found in violation of the law. So who is using the force of law to "impose their morality" on others?

Never mind. The law pretty well protects the ability of homosexuals to have all the options that others have for arranging their own domiciles. Some states have also established a legal entity called a civil union to give "gay" couples all the legal advantages of marriage without calling it "marriage." But there's the rub. The proponents of "gay marriage" insist that we the people of a state or commonwealth call it marriage in our laws and perhaps in our Constitution. This is where solid majorities have, on all 31 occasions that people have been given the opportunity to vote on it, drawn the line and said, "No." Marriage is what it is. To borrow Jefferson's phrase about what an activist court might do to a written constitution, we will not make of marriage a "blank page by construction."

And yet that is what the "gay" activists insist we must do, and they claim it is their right to demand we do so. So the fight has long since ceased to be over the freedom of "gay" couples to live as they wish, it is over our right as a people to not call it what they wish to call it, which is clearly what it is not. We are not all Unitarians yet. We prefer our laws and words bear some resemblance to the principles and realities they are supposed to reflect and from which they are believed to emanate.

Thus, "Maggie" Marshall and her cohorts may solemnly proclaim in the name of the Bay State's 228-year-old Constitution that marriage means same-sex as well as heterosexual unions, but that does not make it so. If the same court were to declare four-sided figures have as much right as the three-sided to the designation "triangle," it would not repeal the law of contradiction, which holds that a thing cannot be and not be at the same time. A thing cannot be a triangle and a rectangle at the same time. Neither can a union be both homosexual and a "marriage."

That is why liberals have never been happy with the Hyde Amendment, which forbids federal subsidies of most abortions. It is not enough for them to declare, as the U.S. Supreme Court has done, that a woman has a "right" to abort the child in her womb or, to put it in more polite language, to "terminate her pregnancy." They also declare that she has a right to have the rest of us pay for it, even though the "rest of us" will always include a great many who believe the deliberate, planned termination of an innocent human life is a crime that cries out to God for vengeance. Or to put it in a "kinder, gentler" way, we shall be judged by what we do for "the least of these," our brethren.

In fairness, it must be said that while the Republican Party is often contemptible in its cowardice, the nation's Democrats appear to have taken out a long-term lease on a residence and a platform well beneath the level of contempt. I recall watching and listening to the sickening spectacle of a debate in

New Hampshire before the 2000 presidential primary between Democrats Al Gore, then the Vice President, and former Sen. Bill Bradley of New Jersey. Each was claiming to be more devoted than the other to abortion "rights." Both pledged support for federal funding of abortion. Both men were competing for the nomination of the Party that claims Thomas Jefferson as its founder. It is the Party that no longer has a clue about Jeffersonian principles. Jefferson said that to force someone to support with his dollars a belief or practice that person finds morally detestable is a form of tyranny. But the Democratic Party has not been opposed to tyranny in a long time.

But a few stalwart pro-life conservatives among the Democrats in Congress have prevailed upon their colleagues to exclude coverage for abortions in the healthcare reform legislation that passed the House over this past weekend. To do so, they had to overcome the accounting fiction that the money from the subsidized portion of the healthcare coverage, which most people will receive, would be effectively segregated from the part of the coverage the individual pays for with her own money. Abortion coverage should be available under the latter goes the argument made by the champions of "choice." It is the argument made by the *New York Times* in its lead editorial today.

The *Times* is sophisticated enough to know better. Dollars are a fungible commodity. They get co-mingled in a system of public and private insurance payments and plans. Millions of people who still have the respect for life once held in common by this and other nations throughout civilization, East and West, North and South, do not want money to go for abortions in any scheme funded in whole or in part by the federal government, which belongs to us, "the People."

"We urge the Senate to stand strong behind a compromise that would preserve a woman’s right to abortion services," the *Times* said this morning. That is like saying that the right to freedom of speech and of the press means we must have federally subsidized microphones, broadcast towers, and printing presses. But the *New York Times* wouldn’t like that for that would diminish its role as the Oracle on 42nd Street. And as taxpayers they would object to being forced to subsidize ideas and causes they don’t believe in.

Welcome to the free world.

Photo: AP Images