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Point of View

The marriage amendment, 1875

By Gene Nichol

May 5, 2012

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If Amendment One passes on Tuesday, it won't be our first state constitutional provision regulating marriage. In 1875, we altered our charter to declare that "all marriages between a white person and a Negro or between a white person and a person of Negro descent to the third generation inclusive are, hereby, forever prohibited."

The 1875 amendment, too, was adopted shortly (two years) after an invigorated anti-miscegenation statute had been enacted by the legislature. Even more clearly than is the case today, the proponents could not have worried that an amendment was actually needed. No one fretted that a 19th century North Carolina court would invalidate the earlier separationist statutory rule.

The interracial amendment was apparently designed to serve other aims. It was constitutionalism by epithet, by exclamation point. No government structure or power or authority was actually altered. Instead, North Carolinians used the constitution to double down – to declare, in as potent a format as exists, their unyielding hostility to marriage between blacks and whites.

They etched a bold antipathy to equality, and a continuing assertion of superiority, into our foundational charter. Their official ascendancy would continue by law “forever.”

(The 1875 interracial marriage ban remained part of our state charter until a new constitution was adopted in 1971; though the U.S. Supreme Court famously invalidated anti-miscegenation laws in the 1967 decision, *Loving v. Virginia*.)

Amendment One, similarly, is not constitutional alteration in the way we have traditionally conceived it. Our federal Constitution, for example, has been amended only sparingly, less than 30 times in our long history. Almost the entire list falls into three categories. They outline foundational liberties (1-10), restructure government powers and processes (11, 12, 16, 17, 20, 22, 23, 25, 27); or extend rights of membership and participation to new frontiers (13, 14, 15, 19, 24, 26). Only the 18th amendment (Prohibition) falls outside this framework, embracing temporary substantive demands. And it was, of course, repealed by the 21st.

The amendment we’re now considering secures no liberties, alters no decision-making structures, opens no doors to a broader swath of the citizenry. Instead, through its phrases, a powerful majority enshrines its supremacy over a small and disfavored minority. It expresses hostility in the most distinctive way available. It carves it into our constitution. It declares, in effect, that “in this foundational matter, thou shalt never be equal.” As 1875 shows, it’s not the first time.

There is an additional oddity to the Amendment One shaming effort. Its most visible patron, Speaker of the House Thom Tillis, deems it “a generational issue.” If it passes, he noted, “I think it will be repealed in 20 years.” The demographics are apparently stark. Amendment One may enjoy a daunting congeniality in the over-50 crowd. But those under 30 are more inclined to think the whole debate is nuts. My daughters claim to be flummoxed: “Why don’t they just chill?”

So, an older generation seeks, effectively, to constrain a younger one. A younger cohort that, it knows, doesn’t buy the premise. Understandably, a whiff of desperation pervades the venture. It is now or never.

But not only are the under-30s unbelieving, they have, being younger, the far greater call on the marriage decision itself. Those of us in the twilight operate, for the most part, at a distinctly greater distance from the defining transaction. Still, seemingly, we want to call the shots for those disinclined to listen. We yell from the far horizon, “fight on, fight on.”

Our fervor, unfortunately, calls to mind Mark Twain’s admonition that, for the crusader, nothing needs reforming quite so much as other people’s habits.

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