

Same-Sex Marriage and Legalized Relationships: I Do, or Do I?

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ABSTRACT. At a time when heterosexual marriage rates are declining, many countries and localities are advocating for the rights of lesbians and gay men to enter legalized relationships, including marriage. This article reviews the legal status of same-sex relationships in the U.S. and other countries. Not only does the general public have mixed opinions about same-sex marriage, but so do lesbian and gay male communities. Some of the theories about pros and cons of same-sex marriage will be presented. The article reviews the very scant literature on same-sex legalized relationships and presents some ideas for future research. *[Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HA WORTH. E-mail address: <docdelivery@haworthpress.com> Website: <<http://www.HaworthPress.com>> © 2005 by The Haworth Press, Inc. All rights reserved.]*

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On January, 7, 2004, *USA Today* quoted Bob Doyle, who had been with his partner Greg Parks for 27 years and recently had a civil union in Vermont (in Bayles, p. 1): "It solidified our relationship with ourselves, our peers and our families," Doyle says, "There is more acceptance because we are a legal entity."

On August 31, 2003, the *New York Times* contained the following interview in its article "Now free to marry, Canada's gays say, 'Do I?'" (Kraus, p. 1): "Ambiguity is a good word for the feeling among gays about marriage," said Mitchel Raphael, editor in chief of *Fab*, a popular gay magazine in Toronto. "I'd be for marriage if I thought gay people would challenge and change the institution and not buy into the traditional meaning of 'til death do us part' and monogamy forever. We should be Oscar Wildes and not like everyone else watching the play."

As these two quotes illustrate, same-sex legalized relationships, including marriage, are not without controversy even in lesbian and gay male communities. This article will describe the legal status of same-sex relationships, including marriage, in the U.S. and other countries, and present some theories that are for and against same-sex legalized relationships. It will review the very sparse literature on legalized same-sex relationships, and provide some suggestions for future research.

HETEROSEXUAL MARRIAGE AS A MODEL FOR SAME-SEX MARRIAGE?

In their book *The case for marriage: Why married people are happier, healthier, and better off financially* (2000), Waite and Gallagher make the following statement (p. 17): "Marriage is not only a private vow, it is a public act, a contract, taken in full public view, enforceable by law and in the equally powerful court of public opinion. When you marry, the public commitment you make changes the way you think about yourself and your beloved; it changes the way you act and think about the future; and it changes how other people and other institutions treat you as well." To what extent can the same statement be made about same-sex marriages?

The same-sex marriage debate is gaining ground at a time when heterosexual marriages are declining in frequency. U.S. Census data indicate that 5.5 million Americans were living together and not married in 2000, compared with 1.1 million in 1970 (Eskridge, 2001). In the 2000 Census, more Americans were living alone than those who are married, nearly half of single mothers had never been married, and the rate of

middle-aged adults who had never married has doubled since 1970 (Eskridge, 2001). More than half of all marriages ultimately end in divorce.

Eskridge (2001) points out that lesbians and gay men, too, used to get heterosexually married, in order to avoid detection of their sexual orientation. Now that same-sex couples can be more open about their sexual orientation, the rate of lesbians and gay men marrying someone of the opposite sex in order to "pass" has greatly declined. Nevertheless, many lesbians and gay men were heterosexually married in the past. According to 1990 U.S. Census data, 19% of gay or bisexual men in same-sex couples and 31% of lesbians or bisexual women in same-sex couples were heterosexually married in the past (Cahill, Ellen & Tobias, 2002). Almost 40% of same-sex couples who had civil unions in Vermont consist of at least one partner who was heterosexually married in the past (Bayles, 2004).

SAME-SEX MARRIAGE

In 1989, Denmark became the first nation in the world to legalize lesbian and gay male relationships (Soland, 1998). Since then, Belgium, Canada, and the Netherlands have legalized same-sex marriage, and other nations have legal registration for same-sex partnerships (France, Germany, Hungary, Iceland, Israel, Norway, Portugal, South Africa, Sweden; Eskridge, 2001). Legal recognition of same-sex relationships is currently being debated in countries all over the world (see Wintemute & Andenaes, 2001, for most comprehensive review of international status). Just recently, Dutch and Belgium same-sex married couples won the right to be recognized as married in all countries of the European Union (Arie, 2003).

In the United States of America, there is no federal legislation for same-sex relationships. This fact never ceases to surprise members of the general public, who hear so much about "gay marriage" in the media and in religious institutions that they have long assumed such legislation already exists. As of this writing, only three states have or will have some form of legal recognition of same-sex relationships. In Vermont, *An Act Relating to Civil Unions* took effect on July 1, 2000. This law stated that same-sex civil unions are the equivalence of marriage. In California, same-sex couples will have most of the rights of married couples beginning on January 1, 2005. And the Massachusetts Supreme Court ruled on November 18, 2003 that lesbians and gay men have a

right to marriage, giving the legislature 180 days to amend the marriage law. In all cases, this legislation is only legal in those three states, and only at the statewide level.

Lumping together legal rights offered by various countries and regions can be misleading. For example, same-sex couples in Belgium can get legally married, but this does not include legal co-parenting status. Denmark has had registered partnerships for same-sex couples since 1989, but these partners could not adopt each other's children until 1999 (Lund-Andersen, 2001). In contrast, eight U.S. states and the District of Columbia currently permit a child to have two legal mothers or two fathers (Eskridge, 2001). Australia has widespread legal recognition of unmarried heterosexual relationships, putting them on a par with heterosexual marriages. Thus, in Australia, lesbian and gay male couples are unlikely to advocate for marriage but instead for similar legal protection as that available to heterosexual couples (Millbank & Morgan, 2001). In France, both same-sex and heterosexual couples can have civil unions ("pacte civil de solidarite" or pacs). For heterosexuals who can also choose marriage, pacs represent a less formal union; for lesbians and gay men it is the only option. Borrillo (2001) has thus described the pacs as "midway" between marriage and cohabitation for same-sex couples.

As soon as the first legal referenda took place for same-sex marriage, many U.S. states introduced legislation prohibiting recognition of same-sex marriage from other states. As of this writing, 37 U.S. states have such legislation. Because the U.S. Constitution indicates that the laws of one state, including marriage, should be recognized by other states, the Defense of Marriage Act was signed into law in 1996, which states that no U.S. state is required to honor same-sex marriages from other states. Furthermore, opponents of same-sex marriage are currently advocating for a constitutional amendment banning same-sex marriage.

In the last few years, the U.S. public has become increasingly tolerant of lesbians and gay men. Polls indicate that the majority of Americans know someone who is gay or lesbian, and support gay rights (Bumiller, 2003). Gay characters are appearing in television situation comedies and reality shows. Yet when it comes to marriage, the public opposes legalizing same-sex marriage by a strong margin. A July 2003 opinion survey indicated that 59% of Americans opposed allowing gays and lesbians to marry compared with 32% who were in favor (Lochhead, 2003). When asked about support of "legal agreements giving many of the same rights as marriage," 51% were opposed and 41% in favor

(Lochhead, 2003). A multitude of factors accounts for this opposition. Yep, Lovaas and Elia (2003) state that the debate in the mainstream media has consisted of "historical, philosophical, religious, moral, political, legal, personal, and emotional grounds" (p. 46).

DO LESBIANS AND GAY MEN WANT TO MARRY?

With all the debate in the mainstream media about gay marriage, many people are unaware that same-sex marriage is by no means the universal ideal in lesbian and gay male communities. Yep et al. (2003) have presented a model of two competing sexual ideologies in the U.S. The *assimilationist* position argues that all people have the right to get married, and that marriage results in stable relationships. In contrast, the *radical* position asserts that marriage is an oppressive institution, and that same-sex relationships should be unique and freely chosen, not mimicking heterosexual norms.

In their international compendium of same-sex partnerships, Wintemute and Andenaes (2001) refer to a *liberal versus progressive* stance in favor of same-sex marriage. The liberal argument posits that same-sex marriage presents no threat to society, and same-sex couples should be able to enjoy the same benefits as heterosexual couples. The progressive position states that "the sameness argument marginalizes most queer people" (p. 117) and sanctioning marriage undermines and hides other ways of relating. Interestingly, they also present a model for taking an anti-marriage positions. The *traditional position* states that same-sex marriage would normalize and legitimate lesbian and gay relationships, and thus undermine heterosexual marriage. The *progressive position* asserts that same-sex marriage would denigrate lesbians and gay marriage who are not coupled and bring the state into same-sex partnerships.

Legal experts specializing in same-sex partnerships are similarly divided along these lines. Mary Bonauto, a major attorney in the Vermont civil union legislation (Moats, 2004), has differentiated wanting same-sex marriage from its legal availability. She wrote: "Whether or not an individual chooses to participate in the institution is a different issue from having the choice-as a free and equal citizen-to marry the person of his or her choice" (Bonauto, 2001, p. 177). Conversely, Nitya Duclos (1991) cautions same-sex couples to consider the negative as well as the positive ramifications of marriage. She points out that heterosexual marriage disadvantages women, so same-sex marriage, too, should be

examined separately for each gender. Legal recognition also means that same-sex relationships will be regulated by law, and that the "effort of making out a case for 'sameness' has costs both for those who try to fit the mold and for those who clearly cannot" (p. 50).

Gender Differences Among Same-Sex Couples in Legalized Relationships. Due to the very nature of their definition as "same-sex" legal relationships, national registries keep data of the number of female versus male couples. Thus, one of the few facts known about legal same-sex partnerships is the ratio of men to women. Waaldijk (2001) has provided the numbers of same-sex partnerships in Denmark, Norway, Sweden, Iceland, and the Netherlands for each year since the legislation began. In all of these countries men predominated, usually in a ratio of three to one. Early data on Canada (October 22, 2002, <http://www.gaydemographics.org>) indicate slightly more male than female couples getting married in the first few months of the legislation. Lesbians predominate in all Canadian provinces except Quebec, Ontario, and British Columbia, but the large urban areas in these provinces (Montreal, Toronto, and Vancouver, respectively) account for more men. In Vermont, twice as many women as men have had civil unions (Solomon, Rothblum & Balsam, in press).

What could account for this difference in gender ratios between Europe and the U.S. (the data on Canada are very preliminary)? Although it is impossible to know the actual number of lesbians and gay men in any society, most surveys (e.g., Laumann, Gagnon, Michael, & Michaels, 1994) find more gay men than lesbians. Thus, one could argue that the ratio of gay men to lesbians who have legalized relationships in European countries more accurately reflects the gender ratio. Secondly, Soland (1998) theorized that fewer lesbians than gay men took advantage of the Danish registered partnership legislation because same-sex partners could not adopt children, including children of their partner (this restriction was lifted in Denmark in 1999 but still exists for same-sex marriage in Belgium). A third argument is that two men in a couple on average would have higher incomes than two women. Thus, gay men may benefit more from the financial aspects of legalized relationships, such as inheritance (all the European countries with same-sex legalized relationships have national health care coverage, so this is not an issue). Finally, Soland (1998) suggests that more lesbians questioned the notion of marriage as socially conservative. It is possible that radical politics among lesbians are more prevalent in Scandinavian and northern European nations than in North America as a whole.

What about the preponderance of women in same-sex legalized couples in the U.S.? Currently in the U.S., only civil unions in Vermont have the same legal rights as marriage in Vermont, and only at the state-wide level. The pending California and Massachusetts laws, too, will only affect couples in those states and for statewide benefits only. Thus, in contrast to Europe and Canada, same-sex legalized relationships in the U.S. are primarily a symbolic act, and it is possible that women are socialized to value the symbolism of marriage more so than men. Most benefits of marriage are at the federal level (e.g., inheritance, retirement, social security, sponsoring a partner from another country for U.S. immigration, filing joint income tax; Cahill et al., 2002) and thus men, whose higher incomes may have more to gain from legal marriage, are not interested. As gay historian John D'Emilio stated (in Bayles, 2004, p. 2): "There hasn't been a rush for civil unions because there isn't much advantage to it."

OTHER DATA ON LEGALIZED SAME-SEX RELATIONSHIPS

Other than gender, there is surprisingly little information about same-sex couples in legal relationships. Scherf (1999) published a report on male/male, female/female, and male/female couples who had legal registered partnerships in the Netherlands. This legislation began in 1998 (i.e., before same-sex marriage was legal in the Netherlands). Based on data provided by municipalities, registered partnerships were most frequent in the largest urban areas. This ratio was due to higher percentage of same-sex couples, especially men, who registered in larger urban areas (male/female couples were more evenly distributed across municipalities). Couples in registered partnerships were considerably older (early 40s on average) than those who got married (age 30 for men and 28 for women on average). This may have been due to the "catching up" nature of couples who had not been able to take advantage of this legislation before (Scherf, 1999, p. 16).

Letters were sent to 222 municipalities with over 20,000 residents, asking them to send a letter to all registered partners in their district (Scherf, 1999). Of these municipalities, 141 replied and sent out a total of 1,575 forms to registered partners. A total of 510 couples replied, of which 480 agreed to a telephone interview. The research team limited their interviews to 51 male/male, female/female, and male/female couples, respectively.

Sixty percent of interviewees reported that they did not have a religion, compared with 40% in the Dutch population. Interviewees were also more highly educated and more likely to have dual-earner incomes than the Dutch population as a whole. Thirty percent of male/female registered couples had children, compared with 24% of female/female and 20% of male/male couples. Asked whether their decision to register the partnership was emotional or financial, male/male couples were evenly divided. Female/female couples were more likely (61 %) to indicate emotional rather than financial (35%) reasons, whereas male/female couples more often reported financial (72%) over emotional (18%) reasons (Scherf, 1999).

Our research (Solomon, Rothblum, & Balsam, 2004; Solomon, Rothblum, & Balsam, 2003) focused on same-sex couples who had civil unions in Vermont during the first year of this legislation (2,475 civil unions took place during the period July 1, 2000 to June 30, 2001). Based on information on the civil union certificates (which are public information), only 21% of the couples were from Vermont, two-thirds of couples were female, and 10% of individuals were members of ethnic minority groups. We sent a letter to each couple, congratulating them on their civil union and asking them if they were willing to participate in a research project that focused on ". . . demographic information, your relationship, your connection to your family of origin, and social supports available to you in your community." We also asked civil union couples if they would provide us with contact information of a heterosexual married sibling and his/her spouse, and also a gay or lesbian couple in their friendship circle who had not had a civil union. We received back reply forms from 947 couples, indicating willingness to participate in the study.

We had funding to send out questionnaires to 400 civil union couples as well as 400 lesbian and gay couples not in civil unions, and 400 married heterosexual couples. Of the 400 sets of questionnaires sent out, we received back at least one questionnaire from 388 (97%) "families" of couples (this ranged from receiving questionnaires from both members of all three types of couples to only one questionnaire from all six possible respondents), including 659 out of 800 questionnaires (82%) from lesbians or gay men who had a civil union, 466 (58%) from lesbians or gay men not in civil unions, and 413 (52%) from married heterosexuals.

Lesbians in both types of couples (those in civil unions and those not in civil unions) had higher levels of education, were less religious, were less likely to have children, and had been in their current relationship for a shorter duration, than heterosexual married women. Lesbians were

more likely to share housework and childcare, whereas heterosexual married women did more of these tasks than their partners. Heterosexual married women perceived more support from, and had more contact with, their families of origin than did lesbians. Lesbians in civil unions were more "out" about their sexual orientation than those not in civil unions and also, to some extent, closer to their families of origin.

Gay men in both types of couples were less religious, more likely to live in large cities, had relationships of shorter duration, and were less likely to have children than heterosexual married men. Gay men were more likely to share some household tasks whereas heterosexual married men did less of these than their partner. Gay men perceived more social support from friends, and to some extent had less contact with their families of origin, than heterosexual married men. Gay men in civil unions had more contact with their families of origin, were more likely to have mutual friends with their partner, were less likely to have considered ending their relationship, were more likely to have children, and more often had joint checking and savings accounts compared with gay men not in civil unions (Solomon et al., in press).

Both of these studies were conducted when the new legislation (registered partnerships in the Netherlands and civil unions in Vermont) had just ended its first year. Much more research is needed to examine factors that affect same-sex couples in legalized relationships over time.

FUTURE DIRECTIONS

The countries and U.S. states covered in this article represent only the tip of the iceberg. Many other countries and U.S. states have some legislation protecting the rights of unmarried couples, including same-sex couples (see Wintemute & Andenaes, 2001, for a review). Lesbian and gay organizations of countries in every continent are working on legal rights for same-sex couples. Furthermore, as same-sex couples in legal relationships travel and live around the world, countries will need to deal with the reality of such relationships.

At the same time, the increasing salience of legalized same-sex couples raises political issues even within LGBT communities. How representative are same-sex couples in legal relationships of lesbian and gay male couples in general? Should LGBT communities be advocating for institutions such as marriage? How can we question such laws without coming across as reactionary?

Finally, there is endless room for research on legalized same-sex couples. Given that same-sex partnerships and marriages need to register with state or national government registries, this is an ideal avenue to gather data on a whole population. Most available research on same-sex couples has focused on small, volunteer, convenience samples. Additionally, same-sex marriages can be compared with heterosexual marriages, and there has been little research in the LGBT arena with good heterosexual comparison data. It is also important to compare same-sex couples in legalized relationships with lesbians and gay men in coupled relationships who have chosen not to legalize their relationship. This may yield some data to explain the gender differences in legalized same-sex relationships, as well as understanding some of the ideological reasons why lesbians and gay men do or do not legalize their relationship. Finally, public data also permit examination of who terminates a legal relationship.

In addition to these methodological suggestions, there are many content areas to be explored among same-sex couples in legalized relationships. Who chooses to become legally united and why? What factors contribute to relationship quality, and also to relationship termination versus longevity? How does outness affect same-sex couples in legal relationships, and are there discrepancies in each partner's level of outness? What is the role of children in couples' decisions to legalize their relationship? And how can same-sex couples serve as a model of equality for heterosexual couples?

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