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### Same-Sex Marriage and Religion: An Inappropriate Relationship

#### Brittney Baker

Key words, names, terms, concepts: California's Proposition 8, Prop 8; morals legislation; same-sex marriage, gay marriage; religion, religion and politics; separation of church and state; police powers; equal citizenship, equality; 2008 election.

#### Introduction and Thesis

The debate over same-sex marriage has been a prominent issue in our society over many years now, appearing in several ballot initiatives such as California's Proposition 8. The idea of allowing two people of the same gender to enter into the institution of marriage has brought out drastic emotions and reactions from many different groups of people. Those who engage in the debate believe strongly in their convictions; the two loudest voices tend to come from the gay community and the religious community, the former arguing in favor of same-sex marriage and the latter against it. Religious groups, predominantly from a Christian based faith, seem to be the single most influential force in the attempts to keep same-sex marriage illegal. Proposition 8 passed by a vote of 52% to 48%; according to one exit poll 81% of self-identified Evangelicals supported the proposition and those who say they attend church services weekly supported it by a vote of 84%. Compare this to the non-Christians who supported Proposition 8 by a much smaller margin of 15% and those who do not attend church regularly by a vote of 17%. In order to better understand the significance of these numbers, it is important to note that forty five percent of Californian voters say that they attend church services weekly, with an additional twelve percent of voters who attend church services at least once a month. This does not include the voters who also attend for religious holidays such as Christmas or Easter (Stone 2008). Thus these statistics represent a large portion of Californians, and thus a majority of voters.

Not only is a religious preference translating through the vote, but also the initial funding and awareness efforts for ballot initiatives such as Proposition 8 come largely from religious groups. A month prior to the election when Prop 8 was on the ballot, supporters had contributed over \$19.7 million to the initiative, and an estimated 43% of that or \$8.3 million came from Mormons both in and out of state. Leaders from the Mormon community, from the Church of Jesus Christ of Christ of Latter-day Saints, headquartered in Utah, strategized how to get Mormons from around the country involved in the passing of Proposition 8, whether by contributing time or money. And it was such efforts as these, made by religious groups, which helped push Proposition 8 through at the last minute. The

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convictions of these religious groups on homosexuality and same-sex marriage are strong, stemming from their sacred text, the Bible. The point of this essay, however, is not to question the validity of the scripture that is so frequently referenced in order to justify their efforts to keep homosexual marriage illegal. What I do take issue with is the idea that one group's beliefs and values are affecting, and essentially governing, the manner in which American citizens are allowed to live their lives.

Our country is composed of diverse people who hold countless different belief systems, faiths, and ways of life. It concerns me that one single religious point of view can prohibit an entire group of individuals from being able to express love for another by entering into marriage, something that the majority of us take for granted. How is it that religious concerns are dictating the functioning structure of a secular institution? It is my belief that the religious argument does not currently belong in the legal or public policy debate over same-sex marriage. The various concerns that religious groups use, as reasons to prohibit homosexual marriage, are in my opinion weak and can actually be turned around and made into arguments in support of same-sex marriage. However, I think it is important to first get a brief understanding of how religion and marriage became so invariably linked together.

### **The History of Religion and Marriage**

Before the many religious wars that ravaged through Europe, marriage was almost entirely wrapped up in religion, specifically the Christian faith. It was of course a time of little religious tolerance and if the authority of the Church was questioned, it would produce dire consequences. But even in a climate so different from the one we presently live in, it is interesting to note that it was not required to have a priest or religious leader to solemnize a marriage. Marriage was however controlled by church courts, which are courts that have jurisdiction over a wide array of religious and spiritual concerns. It used to be that only these courts could validate a marriage, and if any conflict arose within a marriage that needed to be dealt with legally, it was addressed there. It was the belief of these church courts, and the religion they were founded upon, that marriage was intended to be a life-long commitment between a man and a woman. As such, it was entered into with a contractual frame of mind that created a specific status for both the male and the female (Henley 2008).

Although marriage was not specifically a contract, it was entered into as such in that both the man and woman must mutually agree to the relationship; and this would effectively establish the marriage, despite the lack of having a tangible contract. Marriage not only created a role for each spouse within the relationship according to Christian tradition, but it also created a very specific legal status for both the husband and the wife. The man became the head of the household and was expected to provide for his wife, an idea that is still perpetuated today but to a much lesser degree as family norms have changed since then and are still evolving. However, once married, the woman essentially became her husband's property and all of her assets became his. After becoming married, a woman no longer had a legal personal identity; the husband would represent them both. These statuses could only change upon the death of either the husband or wife (Henley 2008). This tradition has long since been abandoned; neither spouse has civil control of the other. Today, in legal terms, both the man and woman are

equals within a marriage, although within the relationship the role of husband and wife may of course vary according to the individuals.

These traditions traveled to the New World with the colonists; however, neither the authority of the church court in a marriage, nor the specific statuses created by a marriage still exist today in America. It was a slow evolution, but religion no longer has any legitimate power to control the public institution of marriage. In order to enter into a valid marriage in the United States the basic steps taken (with slight variation according to county or state) would be to go to a county clerk's office to file certain reports and documents, present proper identification, and pay a fee. Many American citizens chose to involve religion in their marriage procedures whether by having a member of the clergy officiate or by having the ceremony in a place of worship such as a church or synagogue, and this is oftentimes the norm. However, there is no legal marriage requirement to get religious approval or to have a religious ceremony, for obtaining a legal marriage is entirely a civil matter, while incorporating religion is voluntary. The reason that religion is no longer a requirement for marriage is because of the doctrine of separation of church and state that our nation has a history of implementing.

### **Separation of Church and State**

Borrowing ideas from British philosopher John Locke's *A Letter Concerning Toleration*, the phrase separation of church and state was first articulated by Thomas Jefferson when talking about the First Amendment. He was referencing the fact that the United States government should not establish a state religion and that there should be a wall of separation between church and state, and this has become known as the Establishment Clause of the First Amendment. Our founding fathers had great concerns about the new nation becoming a church-state like the one they had left in England, and rightly so. They had not had good experiences in their previous homeland with the church becoming a source of power for kings and queens to do whatever they chose. Therefore they wanted to ensure that the same problems would not arise in the United States.

Throughout our history we have seen efforts by the Supreme Court to maintain that separation of church and state. In *Reynolds v. United States*, George Reynolds was convicted of violating a statute that prohibited bigamy. He appealed to the Supreme Court and argued that his Mormon religion called for him to marry more than once, and religious freedom should allow for this. The Court however did not agree, it clarified that the State can legitimately govern actions but not beliefs regarding religion and that prohibiting bigamy does not violate the free exercise clause of the First Amendment seeing as marriage has been between two people since before our ancestors traveled to America from England (*Reynolds v. United States* 1878). The Supreme Court also ruled that it was unconstitutional for state officials to require the recitation of a school imposed prayer in *Engel v. Vitale*. The decision stated that despite the prayer being vague in that it doesn't recognize a specific religion or god it still involves state endorsed religion, which is unacceptable in light of our government's commitment to the free exercise of religion (*Engel v. Vitale* 1962).

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### **A Different Animal**

Same-sex marriage, however, is different than the issues presented in *Reynolds* and *Engel*, and it is different from the common concept of a violation of the Establishment Clause. With same-sex marriage, there is no clear endorsement of a given religion, nor is there discrimination against a specific religion. And it is for this reason that many people do not see that there is a problem with the vast amount of influence religion has held in keeping same-sex marriage illegal. Gordon Babst attributes this problem to something he identifies as the shadow establishment of religion, or "an impermissible expression of sectarian preference in the law that is unreasonable in the light of the nation's constitutional commitments to all its citizens" (Gill 2009, 65). When this happens on a large scale, such as with Proposition 8, essentially what happens is that, those religious preferences become enacted into law; preferences that not all citizens agree with, preferences that encroach upon and limit how a group of people live their lives. This alone would seem to be sufficient justification to prevent Babst's 'shadow establishment,' but some would argue that this is merely morals legislation, something we have seen examples of in the Supreme Court.

### **Morals Legislation**

In 1986 the case *Bowers v. Hardwick* reached the Supreme Court. This case addressed the constitutionality of a Georgia sodomy statute, which made oral and anal sex illegal even when between consenting adults, under which Michael Hardwick was convicted when he was found engaged in homosexual sodomy. Hardwick's case evolved into whether or not there was a fundamental right to homosexual sodomy, even though the Georgia statute applied to all acts of sodomy and not sodomy specifically between people of a certain sexual orientation. Thus it seemed as if the Court was merely expressing a distaste for a specific type of sodomy, that between homosexuals, because they were unequally applying the law according to sexuality. Justice Byron White justified the Supreme Court's decision in his majority opinion when said that

Even if the conduct at issue here is not a fundamental right, respondent [Hardwick] asserts that there must be a rational basis for the law and that there is none in this case other than the presumed belief of a majority of the electorate in Georgia that homosexual sodomy is immoral and unacceptable...The law, however, is constantly based on notions of morality, and if all laws representing essentially moral choices are to be invalidated under the Due Process Clause, the courts will be very busy indeed. Even respondent makes no such claim, but insists that the majority sentiments about the morality of homosexuality should be declared inadequate (*Bowers v. Hardwick* 1986).

Hardwick's conviction was upheld because the Court found that there was a standing tradition of sodomy laws, there was no fundamental right to homosexual sodomy, and that the expression of morality through the law was legitimate. And this has been the argument made for morals legislation, if the expressed morality is the commonly

held belief of the majority, then it is acceptable to deny any given "ick" factor. In this case, the majority of Georgians agreed that sodomy was such an "ick" factor that should be restricted. However, one the reason this form of morals legislation is unacceptable is because the morality is only being enforced against homosexuals, and not all who engage in sodomy, not to mention the majoritarianism at work. The decision made in *Bowers* was overturned when *Lawrence v. Texas* reached the Supreme Court. Unlike the statue in *Bowers*, this case dealt with a Texas statue that explicitly outlawed only homosexual sodomy, and the Court effectively ruled that both were unconstitutional. In the majority opinion the Justices asserted that the morals legislation used in *Bowers* was invalid because "the longstanding criminal prohibition of homosexual sodomy upon which *Bowers* placed such reliance is consistent...with an established tradition of prosecuting acts because of their homosexual character" (*Lawrence v. Texas* 2003). This instance of morals legislation was merely an expression of discrimination towards a certain class of people instead of distaste for the actual act of sodomy itself. Morals legislation, however, is neither illegal nor unconstitutional. When morals legislation occurs, it is merely viewed as an aspect of our democracy in which the majority voices its opinion. It is argued that it should not matter what sways our democratic vote, whether it be lessons taught to us by a parent, or values dictated by our religion or religious leaders. As American citizens we are each guaranteed a voice in the political process through the vote, however it is possible for elections and legislation to exemplify a tyranny of the majority. When this occurs, the majority opinion drowns out the concerns and needs of minorities. Essentially what results from this is that a minority group ends up being oppressed because they do not have sufficient numbers to stand up for the rights that they are seeking out. This was not the intent the Founding Fathers had when they prescribed citizens the right to vote. The democratic process of including the citizens in voting was not meant to create legislation without the legislature. We see that examples of tyranny of the majority frequently happen with ballot initiatives in state elections. Many times groups that represent the majority opinion on an issue will push through their interests using such propositions that arguably cater to the electorate's unreflective instincts, moral or otherwise. And this is what we saw happen with California's Proposition 8. Religious groups became extremely active in attempting to return marriage to being only between a man and a woman, a belief derived from their scripture. This idea is especially concerning because Proposition 8 became a part of California's state constitution, and was driven through from the efforts and views of religious groups.

### **Police Powers**

Another argument religious groups often put forth in defense of the continuing prohibition on same-sex marriage centers on the state's police powers. The police powers are typically classified as the right of the state to regulate activity that can influence the safety, security, or public welfare of the community. Those who oppose same-sex marriage claim that it is indeed an issue of morality, which falls under the category of public welfare, and therefore is within the realm of the state to interfere. In this case, the religious opposition tends to use their view of morality, which states more or less that homosexuality is a sin or against nature as God created it. Needless to say, this does not equate to a secular morality that all citizens can adhere to. Babst refers to the Wolfenden Report, which asserts that "unless a deliberate attempt is made by society, acting through the agency of the law, to equate

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the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business" (Babst 2002, 43). This suggests that the attempt of religious believers to impose their morality on all citizens is unjust and unconstitutional. Crime is a matter for the law, sin a matter for religion, and the two cannot coincide within the sphere of politics and legislation. This is due to the fact that we have separation of church and state in this country, a notion that has been long embedded in our history and legal traditions. However, most people do not make these various connections between the current situation with same-sex marriage prohibitions and a violation of separation of church and state. And therefore most citizens do not see a problem with the religious influence in keeping same-sex marriage illegal. I will now turn to the common arguments put forth by religious groups in their attempts to maintain a prohibition against same-sex marriage, show how ambiguous those arguments are, and demonstrate how each argument can be turned around and used to support same-sex marriage, beginning with the argument from scripture itself. Although I believe the religious influence on the matter to violate the ideal of separation of church and state, I feel it is still important to examine arguments that are more purely religious, given the focus of this paper is on the relationship between religion and same-sex marriage.

### **Homosexuality and Same-Sex Marriage as Sin**

The most common religious argument against same-sex marriage revolves around scripture, which many faith communities believe came directly from the mouth of God, and they interpret scripture to forbid homosexuality, and by extension, same-sex marriage. The most frequently quoted piece of scripture to meet this end comes from Leviticus 18:22, cited from the New International Version Classic Reference Bible, which says "Do not lie with a man as one lies with a woman; that is detestable" (1988, 133). For many religious groups, this is the beginning and the end of the discussion. In this one statement, God declares homosexuality to be a sin, and therefore no argument over it need occur. However, using this one verse of scripture for prohibiting same-sex marriage is entirely unconstitutional. If this were the only justification they used, religious groups would be in clear violation of the American ideal of separation of church and state. Moreover, it is not a question of the religious validity of the statement, whether or not God actually spoke these words. The fact is that not all citizens abide by this scripture; it is therefore wrong to legislate by it when not all believe in it, nor is it the business of the state to try to persuade its citizens of a (contestable) religious truth.

Another commonly quoted piece of scripture to argue against homosexuality and same-sex marriage is found in 1 Corinthians 6: 9-10,

Do you not know that the wicked will not inherit the kingdom of God? Do not be deceived:  
Neither the sexually immoral nor idolaters nor adulterers nor male prostitutes nor homosexual  
offenders nor thieves nor the greedy nor drunkards nor slanderers nor swindlers will inherit the  
kingdom of God (1988, 1300).

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But what if these various "wicked" peoples are not interested in inheriting the kingdom of God? Do they still deserve to have these beliefs imposed upon them through law? This scripture condemns many others aside from homosexuals; do greedy people also deserve to have their rights revoked as citizens? Again we see the problem that not all of us agree with these beliefs. In addition, it seems that the religious are being selective from amongst the "wicked" they wish to discriminate against in the law.

It is interesting to note what the next verse in 1 Corinthians 6 goes on to say "and that is what some of you were. But you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ and by the Spirit of our God" (1988, 1300). I do not pretend to be a theologian, but this seems to suggest that even the "wicked" are forgiven and made clean again through Christ. If this is so, then why can't the religious groups, who claim to be extensions of that same God, forgive as well, even if those to be forgiven do not abide by the same faith? By reading on just one more verse, it seems that the same piece of scripture can also be used as motivation for the religious to in fact be accepting of homosexuals rather than condemning, as God is of all sinners.

This is an idea supported by Jack McKinney, a reverend of a Baptist church in Raleigh, North Carolina. Reverend McKinney argues that as people of religious faiths, they need to be accepting and tolerant of all people, just as Jesus Christ taught. Reverend McKinney looks to the same scripture as those who are against homosexuality and same-sex marriage, but instead finds reason to support it. He even references the same book previously mentioned, a mere six chapters later. In 1 Corinthians 12: 12-13, the apostle Paul says that

The body is a unit, though it is made up of many parts; and though all its parts are many, they form one body. So it is with Christ. For we were all baptized by one Spirit into one body- whether Jews or Greeks, slave or free- and we were all given the one Spirit to drink (1988, 1306).

This was written at a time when men had all the power, your ethnicity determined what kind of life you had, according you some rights while giving others none. And yet Paul is saying that through Christ, all of these people are equal. According to McKinney, "Jesus and Paul are naming all the ways power has been held by certain members of society to the exclusion of others- and they are naming it a sin" (2004, 284). We can see that this has happened with several groups throughout our history, African-Americans, women, and now the homosexual community. McKinney is asserting that according to the teachings of Christ, we should get rid of such divisions of rights and power according to supposed inequalities, because in the eyes of God we are all equal.

### **The Argument from Definition**

There are some from among religious believers who recognize that the arguments formed around scripture will not suffice, and look to something seemingly less indefinite. To this end, a definition of marriage is sought. But right here we incur our first difficulty, whose definition do we use? Which dictionary do we reference? According to the Merriam-Webster Online Dictionary marriage is "the state of being united to a person of the opposite sex as husband or wife in a consensual and contractual relationship recognized by law" and also less specifically "the

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mutual relation of married persons." Even when we limit our definition to one source, we get slightly different meanings. The first option clearly precludes homosexual marriage while the second does not. Yet for some, such as Robert H. Knight, the definition of marriage is straightforward and means "what it has always meant: the social, legal, and spiritual union of a man and a woman" (Knight 1994, 114). And with this I take issue with two things; first, as previously discussed, there is no requirement for marriage to include a spiritual aspect and many people do not, and secondly the definition of marriage has not been stagnant but has in fact changed throughout the course of our nation's history, to say nothing of western civilization at large.

In 1924, the legislature of Virginia passed the Racial Integrity Act, which mandated two things: all peoples be divided and recorded at birth into two categories, white or colored, and a prohibition on miscegenation, or the marriage of people of two different races (specifically white and non-white). In 1958 Mildred Dolores Jeter and George Loving were charged with violating this Act, so the couple took their case to court. The lower trial court in the case stated that "Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents...The fact that he separated the races shows that he did not intend for the races to mix" (Strasser 1997, 13). Here we see an unacceptable sectarian preference for a religious view expressed in the court's decision, a view that most religions today would agree is morally wrong. But, even if we disregard this incursion, the Supreme Court still did not agree with the trial court's reasoning and overturned it with a unanimous decision. Chief Justice Earl Warren explained that it was in violation of the Fourteenth Amendment's equal protection clause to prohibit a "fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes" (McKinney 2004, 281). And this argument can be extended to sexual orientation. We cannot prohibit a group of citizens from participating in such a basic right as marriage simply because of classifications of sexuality and semantics. Before the decision for *Loving v. Virginia* was made in 1967, the definition of marriage did not allow for interracial marriage. The definition of marriage has changed before, so why can't it change again to include homosexuals? Religious groups answer this query with the assertion that if we were to change the definition, and we were to allow same-sex marriage, there would be several consequences. They assert that the family and the institute of marriage would crumble, causing children to be raised poorly, and thus shortly thereafter society as a whole would meet its demise as a result.

### **Marriage, Family, and Procreation**

Religious groups tend to put marriage on a pedestal, thus it is easy for them to claim that allowing same-sex marriage will end the perfection that is the institute of marriage. However, marriage is already struggling as roughly half of all marriages today end in divorce, though the numbers vary slightly according to the source. And, simply the number of marriages occurring has been steadily dropping; in 2004 there were 2,279,000 marriages and the following year there were 2,230,000 despite an increase in population of 2.9 million people, by 2008 the number had further decreased to 2,162,000 marriages. Larry King, the infamous CNN interview show host, has just recently filed for his eighth divorce; actress Elizabeth Taylor has been married eight times and is rumored to be approaching her ninth. Both of these individuals are heterosexual, they as well as the many others like them, have caused great harm to the reputation and sanctity of marriage all on their own. Thus the argument that same-sex

marriage will ruin the institute of marriage is slightly irrelevant, considering heterosexuals are not honoring it in the way most religions believe it should be honored.

Many argue that it is not the norm for homosexuals to practice monogamy, that it is in fact a rarity. In the issue of same-sex marriage, people tend to seek the errors in homosexual relationships and fail to see that the same problem almost always exists in heterosexual relationships as well. If anyone were to bother to look, heterosexual men and women are just as faulty in keeping a monogamous relationship. According to the Infidelity Facts website, in 41% of marriages either one or both spouses have admitted to an infidelity, and 57% of men and 54% of women admit to committing infidelity in any relationship they have had. This goes to show that heterosexual partnerships in a marriage aren't any better off than homosexual relationships in keeping faithful. Thus it seems hypocritical to condemn those in same-sex relationships for things that the majority of us, gay or straight, are guilty of. Often, the argument goes one step further to say that even if homosexuals are successfully monogamous, "the result is not healthier behavior. A study published in the journal *AIDS* found that men in steady relationships practiced more anal intercourse and oral-anal intercourse than those without a steady partner" (Knight 1994, 116). Again, I feel it necessary to counter with the question, what about the heterosexual relationships that involve that same "unhealthy" behavior of anal or oral-anal intercourse? But it never occurs to them for this question to be asked, just like it never occurs for people to ask why heterosexuals are heterosexual instead of why homosexuals are homosexual. It might be best not to get distracted by such irrelevant and disingenuous arguments.

### **The Traditional Family**

Another argument religious groups put forth in their attempts to prohibit same-sex marriage is that such relationships go against the grain of the traditional family. And in a sense this is true, traditionally families have not been thought to include two mommies or two daddies. But this does not mean that such a family is ineffectual or incapable of providing the same benefits of living as a traditional family with one mom and one dad. Yet just the opposite is claimed, that "the best chance for having a successful, strong marriage is to grow up in a family with a strong marriage as a family," which to most religious groups means via a family consisting of heterosexual parents (Knight 1994, 119). Thus allowing same-sex marriage would suggest an equality in their ability to raise children, which they suggest is untrue. However, studies and statistics show that there are no significant differences between children raised by heterosexual couples versus same-sex couples. Sean Cahill Reports that:

The vast majority of children's advocacy organizations, including the American Academy of Pediatrics, the National Association of Social Workers, and the American Psychological Association (APA), recognize that gay and lesbian parents are just as good as heterosexual parents, and that children thrive in gay- and lesbian-headed families. One APA publication reports, "not a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents (Cahill 2004, 46).

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With no significant difference found, the concern over same-sex couples causing harm to children by raising them doesn't signify. Thus, allowing same-sex couples to adopt should not be prohibited, especially when there are countless foster children and orphans who could be provided a stable home with two parents, something that no one of any religion ought oppose. Once the consideration of raising children insufficiently is eliminated, religious groups will then argue that the purpose of marriage revolves around procreation, and that same-sex couples cannot biologically have children.

### **The Purpose of Marriage**

Again looking to scripture, religious groups argue that one of the highest purposes of marriage is to procreate and bear children. This is physically impossible for same-sex couples and thus it follows that this would disqualify them from fulfilling the duties of marriage, as seen by the religious. But what about all of the heterosexual couples who never intend to have children or are physically incapable of becoming pregnant? According to a report issued by the Census Bureau, 18.2% of married women aged 15 to 44 are childless (Bachu 2002, 4). Are we to tell these people that their marriages are not truly valid because they have no children, whether by choice or physical limitations? Should these marriages be legally nullified? Should we start questioning all who want to marry of their intent to bear children? Most would respond to these questions in the negative, because that would be an unacceptable intrusion by the state into their privacy as individuals. If no one has ever thought to ask heterosexual couples whether or not they plan to have children and carry out this specific "purpose" of marriage, it should not be a consideration that inhibits the ability of same-sex couples from entering into the institution of marriage.

Rabbi Yoel H. Kahn offers a religious viewpoint that affirms this argument. Kahn asserts that his Jewish faith does not exclude homosexuals from kiddushin, or marriage, because of the inability to procreate. He agrees that it is unfair to require this of same-sex couples when we do not ask it of heterosexual couples. Kahn adds that, "halachah states that a woman who does not bear children after ten years can be divorced by her husband. But evidence that this law was reluctantly or negligibly enforced is precisely the type of historical example...often cited to support the explicit expansion of a value we find implicit in our historical tradition" (Kahn 1989, 75). In other words, although the Jewish faith has expressed a preference for procreation in marriage, it has not historically shown it to be a priority that has been strictly adhered to or enforced. It is for this reason that Kahn claims same-sex couples should not have to overcome such a frivolous burden on their path to attaining access to the institute of marriage.

### **Marriage Alternatives**

Many proponents of same-sex marriage, especially those within the gay community, argue that they should be allowed access to the institution of marriage in order to have the rights and benefits of a married couple. Without these rights, same-sex couples face many hardships that straight married couples do not have, or benefits they take for granted. For example, a same-sex couple would have difficulties with visitation rights if one of them were

to become hospitalized. Or, if one person owned the house the couple lived in and that person died, the other would have no right to the house and would most likely have to pay an inheritance tax that a traditional spouse would not have to pay. And in order to remedy problems such as these, various alternatives to marriage have developed in the law such as civil unions, domestic partnerships, and life partnerships. Civil unions and domestic partnerships are intended to give same-sex couples a number of rights, privileges, and benefits that traditional marriage affords opposite-sex couples, however the exact definition of each term varies by state or country.

Domestic partnerships first developed in Denmark in 1989 and "as in marriage, the registered partnership creates mutual obligations of maintenance, rights regarding compensation, and insurance benefits. Registered partners have insurance rights, rights of survivorship, and responsibility for funeral arrangements on the same scale as spouses" (Dupuis 2002, 123). California was the first state to legally recognize domestic partnerships and they were made available to both same-sex couples as well as opposite couples. At first, the benefits of domestic partnership in California were very limited, but over the years the state legislature has greatly expanded those rights to the extent that it is now very similar to marriage. And this is a point promoted by many religious groups; domestic partnerships and civil unions provide almost the same privileges as marriage, so why do same-sex couples need to be allowed access to traditional marriage? But the fact of the matter quite simply is that domestic partnerships and civil unions are not equal to marriage. Even the most developed forms of these marriage alternatives in the United States do not provide federal benefits or protections, "some of these are very important, like Social Security survivor benefits, the right to sponsor a partner for immigration purposes in binational relationships, and Medicaid and Medicare programs" (Pinello 2006, 165). In addition, because the definition of domestic partnerships and civil unions vary and not all states have these options available, if a domestic partnership couple from California, for example, were to cross the state line, they would cease to have any legal relationship with each other.

In addition to these two options, more and more couples both straight and gay are choosing simply to cohabit and/or enter into registered partnerships. Peter S. Wenz describes the negative effects that cohabitation is having on the institute of marriage:

According to the 2000 census, during the 1990's the number of unmarried-partner households in the United States increased by 72 percent.... Now the number [is] more than 5 million cohabitating couples, the vast majority of them heterosexual.... Marriage, meanwhile, is headed in the other direction. The marriage rate (defined as the annual number of weddings per thousand single women age fifteen or older) fell by 40 percent from 1970 to 2000 (2009, 197).

Strictly speaking, all of these alternatives to marriage are undermining the traditional institution. Domestic partnerships, civil unions, and cohabitations geared toward same-sex couples provide the practicalities of marriage without the social expectation of life-long commitment that is expected of a marriage.

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I believe that encouraging cohabitation of same-sex couples should concern religious groups that promote these different marriage alternatives. In many states, cohabitation is the only option for gay couples because there are no civil unions. Couples living together outside of marriage do not represent an ideal that most religions approve of. Yet when more and more same-sex couples cohabitate "because they can't get married, cohabitation as an alternative to marriage for straight couples is reinforced" (Wenz 2009, 197). Having so many options that aren't as binding as marriage only erodes the institution's status. Allowing same-sex couples access to traditional marriage would actually strengthen marriage as an institution. If access to marriage were given to gay couples, it would help return it to the respected and coveted institution that it once was, and it would also reinforce the ideal that the religious groups hold so important, the idea that committed couples enter into marriage so as to solidify that relationship that exceeds the two persons individually. If same-sex marriage were allowed, there would no longer be a need for so many alternatives that not only deteriorate the value of marriage, but also are also unequal to it.

We have seen in our nation's past that separate is not equal; this justification did not work for racial segregation, nor does it validate attempts to prevent same-sex couples from entering into traditional marriage. During the 1960s, segregation led to the creation of school systems and other public services for African-Americans that were supposed to be equivalent to those given to the rest of the citizens. However, the rights of African-Americans were restricted to the point where they were being deprived of the equal citizenship that the Equal Protection and Due Process Clauses of the United States Constitution provides. And the same thing is happening in the current situation in which same-sex couples are being denied the right to marry.

### **What's At Stake**

By prohibiting same-sex marriage and denying its validity, we have created a class of citizens who are unequal and of a lower status than the rest. By keeping same-sex couples out of marriage, the government is suggesting that one sexual orientation is superior to another, the higher standard being that of heterosexual status. However the government should neither condone nor condemn any form of sexuality because it creates two classes, insiders and outsiders, and thus furthers inequality between citizens. By prohibiting same-sex couples from marrying, we are essentially supporting the discrimination against a specific group of people. Thomas Jefferson stated in the Declaration of Independence that "all men are created equal," an ideal that our nation has been built upon. It is relevant to mention however that when this was written it only applied to rich, white, land-owning men, leaving out all women and all African-American slaves. But this was remedied over time by granting both groups full and equal citizenship. Today homosexuals essentially have the status of partial citizenry, as slaves and women both did at one point in our nation's history. And although some states concede to homosexuals the right to engage in civil union or domestic partnership, these options are not equal to marriage. There has been a long and sad history of discrimination against homosexuals in this country, and because of that long history, the mentality that homosexuality is wrong or unacceptable has been more or less ingrained into our society's mindset. And because of this discrimination, we are preventing a class of people, homosexuals, from having the same access to rights that other citizens have.

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In his "Introduction" to *Moral Argument, Religion, and Same-Sex Marriage*, Gordon Babst agrees with the idea that prohibiting same-sex marriage creates a class of people with unequal citizenship. He too looks to the Constitution in demonstrating why this is an infringement of rights. In regards to allowing same-sex marriage Babst says that "the new territory we stake isn't predicated in any other assumption than that the Constitution, properly understood, offers nothing less than full and equal citizenship before the law, and after, and that its protections are sincere, not facetious" (2009, viii). In denying homosexuals the level of equal citizenship that heterosexuals enjoy, we assert that the basic rights of the Constitution do not apply to them. They can see the promise that those words hold on paper, but for them those rights are not a reality.

Precluding same-sex couples from the institute of marriage is an abridgement of a basic right. According to Jack McKinney "marriage is such a basic civil right that no state is justified in denying this right to people based on discriminatory classifications" (2004, 282). And we have seen examples of this in our nation's past. Before the Women's Rights Movement in the late 1800s and early 1900s, women were given a lower status in society, because of a prejudice and sense of superiority held by men; they were deemed unequal in social abilities and knowledge and therefore were not allowed the right to vote. Women had to fight for equality, and homosexuals are currently doing the same. They are not granted the right to enter into a marriage based on long held discrimination and an inaccurate belief that they are inadequate on some level to do so.

There is one important commonality between religious groups and the homosexual community, a commonality that is often overlooked. The First Amendment right to freedom of religion allows people to live out their lives according to their beliefs and to practice them as they see fit, which is an encouragement of their right to form and exercise their own conscientiously-held beliefs. This right, however, is not one afforded to those of same-sex attraction, they are not allowed to practice that aspect of their identity to its fullest because they are denied the legitimacy that most religions are given. Religious groups want to deny same-sex couples the very freedom that allows them to practice their faith, and that is the ability to practice their religion without legitimate state interference.

Both homosexuality and religion are viewed as central to a person's identity; they are aspects that define who they are as a person in the fact that they would not be the same without it. How is it just to deny homosexuals the ability to exercise that basic aspect of human existence? Renowned constitutional law scholar David A.J. Richards suggests that it can't be, not without a compelling state interest to prohibit it. And as we have examined, there is no such valid state interest here. Most frequently what we hear are forms of prejudice and discrimination masquerading as compelling state interests, but "overall, religious or particularist secular grounds should not count as grounds of abridgement. If they did count, weighing your religious objections, for example, against my practice of my conscious beliefs implies that your beliefs somehow trump my own." (Gill 2009, 59) As Americans we are allowed to live our lives by faith or devoid of faith, either way that is a right to conscientiously-held beliefs. The same should apply to sexuality, whether heterosexual or homosexual, the right to fulfill your life according to either orientation is your individual right.

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## **Conclusion**

After examining the various arguments put forth in attempts to justify the prohibition of same-sex marriage, the only one that holds any true validity is the argument derived from scripture, which cannot be disconfirmed. But, using a purely religious text or concern to preclude a group of people from a civil institution is unconstitutional as well as an abridgement of the separation of church and state ideal. Even looking solely at the religious aspects of the debate, there are differing views as to what exactly the Christian faith prescribes about homosexuality and same-sex marriage. There are pieces of scripture that oppose it, while others can be used to support it; some churches are more than willing to perform marriage ceremonies for same-sex couples, and some religious leaders preach the need for acceptance of homosexuality and same-sex marriage. So if religious believers as a whole do not even agree that it is absolutely wrong and should be prohibited, how can they justify banning same-sex marriage regardless of the arguments put forth? I therefore believe that due to its messiness, religion should play no role whatsoever in keeping same-sex marriage illegal in the United States.

Several European nations have legalized same-sex marriage, and those countries have yet to collapse because of it, as is the fear of the religious opposition here in America. However, such countries as the Netherlands and Denmark are far more progressive on gay and lesbian rights than the United States, something achieved decades ago. For example in Denmark,

homosexuality and homosexuals have become increasingly visible in the media in less stereotyped and negative ways since the 1970's. Large-scale public campaigns directed by the health authorities at the prevention of HIV and AIDS did not provoke hostility toward homosexual activity. Since June 1987, an anti-discrimination law has prohibited public defamation of any group of people based on their sexual orientation" (Dupuis 2002, 127).

We have yet to reach this level of open public recognition of gays and lesbians as here homosexuals continue to be stereotyped and their way of life is often still viewed as less than desirable. But it is undeniable that progress has been made, that we have come a long way from the time when homosexuality was classified as a disease that should be cured. And the fact of the matter is that gays, lesbians, and same-sex couples are here to stay. They have been steadily been gaining acceptance in the United States, and denying their right to marriage is not going to stymie that headway. Kathleen Hull reports:

Despite recent political setbacks in the United States, most notably the passage of state constitutional amendments blacking same-sex marriage, the establishment of comprehensive legal recognition for same-sex relationships has taken on an air of inevitability. Polls show that most Americans favor some form of legal recognition for same-sex couples, either marriage or an alternate status like civil unions, and most Americans now believe that legal same-sex marriage will eventually be established throughout the United States (Hull 2006, 204).

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I think that Americans are beginning to see the debate of same-sex marriage for what it is, an issue of equality and rights. We are a nation that prides itself on freedom and equality for its citizens, and I do not think we can continue on in such a blatant rejection of these ideals from a single group of people. Thus I believe the passing of Proposition 8 and other similar ballot initiatives to be against the values represented by the U.S. Constitution. It is also my belief that same-sex marriage should be made legal throughout the United States. Religious groups who oppose same-sex marriage are holding on to a faith-based objection, which denies gays and lesbians a basic human right. Such a consideration is not enough, nor is it acceptable, and it goes against the ideals upheld by the Constitution, ideals of freedom and equality that make this great nation what it is.

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