An Argument for Same-Sex Marriage

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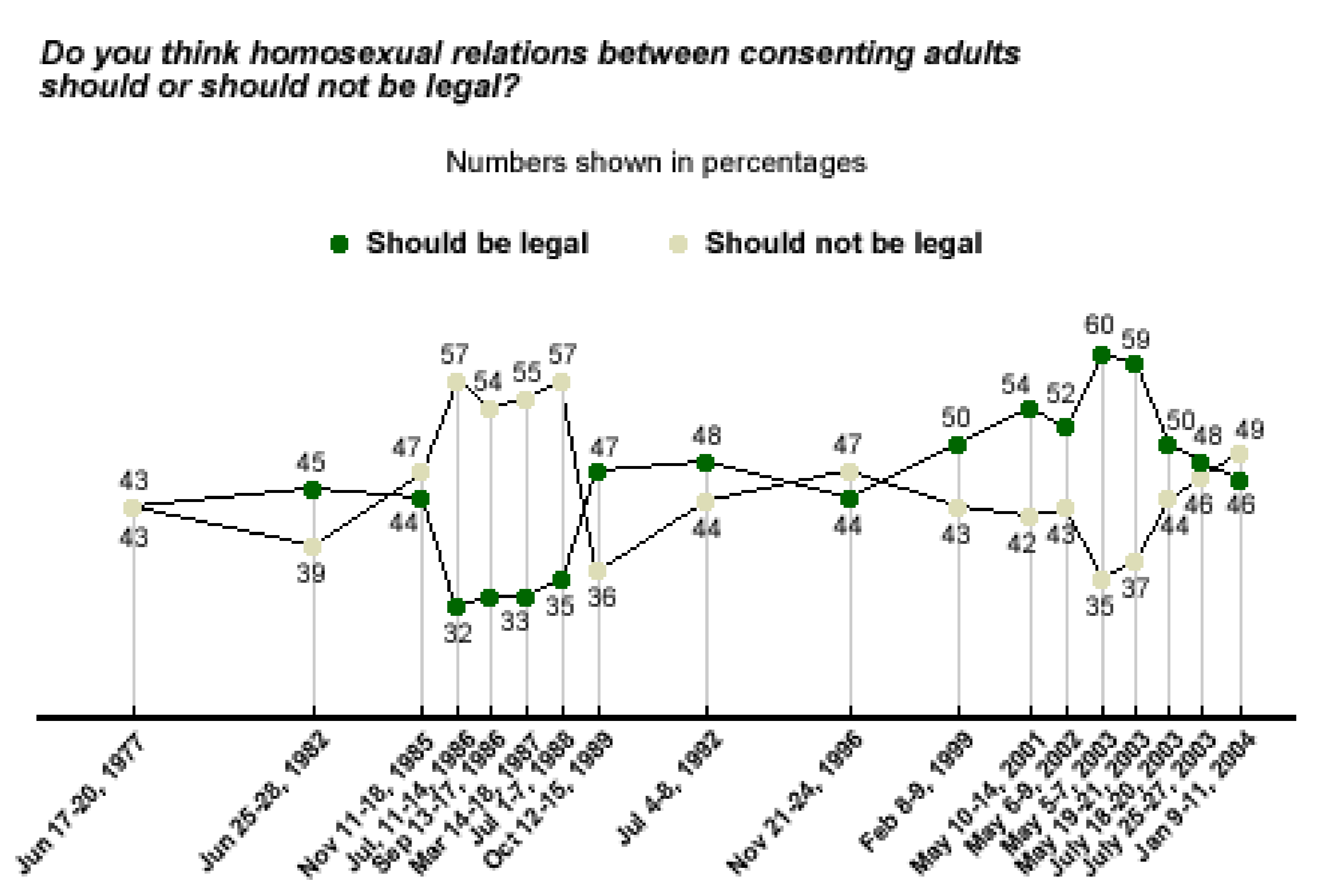
Part 1: The State of Affairs

Some rights afforded by marriage (Goodridge 2003)

- Joint tax filing
- Automatic inheritance of property of deceased spouse
- Right to share medical policy of spouse
- Access to veterans' spousal benefits and preferences
- Equitable division of maritable property on divorce
- Temporary and permanent alimony rights
- Right to bring claims for wrongful death
- Presumptions of legitimacy and parentage of children
- Prohibition against spouses testifying against one another
- Right to make medical decisions for incompetent/disabled spouse
- Application of predictable rules of child custody, visitation, support, etc. upon divorce

Public opinion: Homosexual relations



Public opinion: Constitutional amendment

"Favor or oppose a constitutional amendment defining marriage as being between a man and a woman?"

Group	Favor (%)	Oppose (%)	Don't know (%)
Total	51	45	4.5
Party: Republican	66	31	2
Independent	46	49	4
Democrat	41	54	4
Ideology: Conservative	65	32	4
Moderate	48	47	5
Liberal	29	65	5

Source: Gallup News Service (Newport 2004). Based on 2,527 interviews conducted July 2003–February 2004. +/-3% error with 95% confidence.

Public opinion: Constitutional amendment

Group	Favor (%)	Oppose (%)	Don't know (%)
Total	51	45	4.5
Education: HS or less	55	40	5
Some college	52	43	5
College grad	49	48	4
Postgrad	38	58	4
Attend church: weekly	63	32	5
less than weekly/monthly	51	45	4
seldom/never	42	54	4

Less pronounced differences based on age, region of the country, sex.

U.S. Households (Census 2000)

Household Type	Number	Percent
All	105,480,101	
All coupled	59,969,000	100.0
Married couples	54,493,232	90.9
Unmarried couples	5,475,768	9.1
Opposite sex	4,881,377	8.1
Same-sex	594,391	1.0
Female/female	293,365	0.5
Male/male	301,026	0.5

I.e. 1% of coupled households reported themselves as same-sex.

Note small same-sex probability increases error.

Same-sex households by city (Census 2000)

1. **San Francisco, CA (2.7%)**
2. Fort Lauderdale, FL (2.1%)
3. Seattle, WA (1.9%)
4. **Oakland, CA (1.8%)**
5. **Berkeley, CA (1.8%)**
6. Atlanta, GA (1.7%)
7. Minneapolis, MN (1.6%)
8. Washington, DC (1.5%)
9. Long Beach, CA (1.4%)
10. Portland, OR (1.3%)

Households with own children (Census 2000)

- Married-couple: 46%
- Opposite-sex unmarried: 39-43%
- Same-sex female: 33-35%
- Same-sex male: 22-24%

(Ranges due to excluding or including non-biological children of the householder.)

"Data from Census 2000 illustrate the variety of living arrangements of households with children: while the vast majority of households containing own children were married-couple households (24.8 million), over 2 million households included own children whose parents were living in nontraditional arrangements (1.9 million opposite-sex unmarried partners, 96,000 female partners, 66,000 male partners)."

Part 2: The Arguments

Equality

Heterosexual-only marriage is

- **Discrimination based on sexual orientation:** Only heterosexuals may pursue their happiness by marrying the one they love.
- **Discrimination based on sex:** Can Bob and Sam get married? Depends on whether Sam is male or female. Hawaii Supreme Court (Baehr v. Lewin, 1993): *"[existing law] discriminates based on sex ... thereby implicating the equal protection clause ... of the Hawaii Constitution" and is* **unconstitutional unless "it furthers compelling state interests** *and is narrowly drawn to avoid unncessary abridgments of constitutional rights."*

  Clear parallel with race: *"Substitution of 'sex' for 'race' [in Loving v. Commonwealth (1966)] and article I, section 5 for the fourteenth amdendment yields the precise case before us together with the conclusion that we have reached."*

No Compelling State Interest in Banning Gay Marriage

"The sex-based classification in [Hawaii marriage law] … is unconstitutional and in violation of the equal protection clause … of the Hawaii Constitution." (Baehr v. Miike, 1996)

The state has **no compelling interest** in banning same-sex marriage. It does not harm children, others' heterosexual marriages, or society as a whole.

Next, we support this argument.

(What happened in Hawaii? Its constitution was amended in 1998 to explicitly prohibit same-sex marriage.)

Why gay marriage won't harm society

"Marriage is meant to encourage stable relationships."

- Gay marriage will create *more* commitment, not less.

"Children are the foundation of society, and only straights have children."

- Gay couples raise children too (previous straight marriage, artificial insemination, adoption)
  - 33% of female same-sex couples
  - 22% of male same-sex couples
- Many straight couples don't have children.
  - 39% of unmarried opposite-sex couples
  - 46% of married (opposite-sex) couples

Data from 2000 U.S. Census (Simmons and O'Connell 2003)

"Children of gays have an abnormal upbringing."

- Most current reliable research compares biological children of 2-parent lesiban vs. heterosexual families. Thus parents influence children through *both genetics and formative environment*. No studies of adopted children.
- Results here from Stacey and Biblarz (2001), meta-study of 21 studies 1981 - 1998
- As we should expect, there are differences: children of gays
  - have less stereotypical gender roles (dress, play, physicality, school activities, occupational aspirations)
  - are more likely to have same-sex relationships
  - are *not* more likely to self-identify as bi- or homosexual
  - may have more sexual partners (females)
  - experience more peer stigma regarding own sexuality

- Important differences stem from sex of parents:
  - Mothers (lesbian and heterosexual) more involved in child-rearing than heterosexual fathers
  - Gay male parents less likely to raise children (contributes to less strong knowledge of gay male parenting)
- **No difference** in intelligence, self-esteem, anxiety, depression, behavioral/emotional problems, ability to socialize.
- No evidence that adopted children of homosexuals are more likely to become homosexual, or to the contrary
- Gay men are no more likely than straight men to sexually abuse children (Patterson et al 1994).
- **Conclusion: Different? Yes. Worse? No.**

"Nature did not intend gays to marry or raise children."

- *"Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix."* – Virginia trial judge Leon Bazile, 1959, in ruling that led to landmark Supreme Court *Loving v. Virginia* ruling
- Illustrates changing notion of marriage: interfaith, non-male-dominated, interracial ... and now same-sex.
- *"Psychologists, psychiatrists and other mental health professionals agree that homosexuality is not an illness, mental disorder or an emotional problem"* (APA, 2004).
- Notion of nature's intent varies widely and should not be decreed by government – for the same reason that we separate church from state.

"The meaning of my straight marriage will change."

- *"Our nation must defend the* **sanctity** *of marriage."* – George W. Bush, 2004 State of the Union (CNN, 2004) (emphasis added)
- Need to differentiate between **civil** marriage and **sacred** marriage.
- Churches may still perform and recognize only heterosexual marriages if they wish.

"We'll be led down a slippery slope to polygamy and incest."

- This is clearly distinct from gay rights.
- Sex discrimination argument does not apply here (discrimination based on whether you've signed a particular contract is OK).

Why not just a civil union?

- Full equality in rights is necessary by the above arguments.
- Extracting all references to “marriage” from law and replacing them with “civil union” for same-sex or opposite-sex partners would be OK, but is impractical.
- Allowing same-sex marriage is the easiest path to full equality.
- Most importantly, “separate but equal” necessarily consigns gays to a lower status.

Conclusion

Our opinions of what is right or natural vary widely from person to person and change over time.

We need to recognize that what is right for one person is not what is right for all others; and we should embrace these differences by letting each person, not the state, make fundamental decisions about how to live his or her life.

The primary role of government should be to protect this freedom to the maximum extent possible.

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