

Same-Sex Marriage: The Debate

By Josh Champion

Business 49 Honors

Professor I. Ephrem

December 14, 2007

Table of Contents

1	Title Page
2	Table of Contents
3	Abstract
4	Introduction
5	Benefits of Marriage
5	History of Same-Sex Marriage
10	Current Situation and Possible Outcomes
11	The Debates: Religious Aspect
13	The Debates: Social Aspect
16	The Debates: Biological Aspect
18	Philosophy: Utilitarianism
25	Philosophy: Deontology
29	Opinion
32	Works Cited

Abstract

This paper serves to show the various arguments for and against same-sex marriages in the United States, with an emphasis on the philosophical views of Utilitarianism and Deontology. It explores in depth the history of how we have come to where we are today, the various debates from religious, social, biological, and philosophical standpoints, as well as the possible future outcomes of the issue at hand. This paper helps to better weigh the pros and cons of same-sex marriage, and overall improve understanding of both sides of the issue.

Introduction

Is a marriage between two men or two women a beautiful thing, or a direct threat to American moral values? Is there any reason to expressly deny the right to marry, or would doing so open the floodgates to a morally decaying society? The issue concerning the right of gays to marry and be afforded all the rights that marriage offers is a very controversial topic. The issue is so divided that there is still no national standard. As of this point, there is no law which prevents states from granting full marriage rights to same-sex couples, nor one forcing them to declare it illegal. This issue has been left up to each state to decide on its own. Certain states, such as Massachusetts, have found laws denying gays the right to marry to be in violation of their state constitution, while others, such as Texas, have expressly denied the right to marriage (Nelson, Christine).

There are strong arguments on both sides, both in terms of the legality as well as morality of the issue. Many argue that the legalization of gay marriage devalues the strength of the American "Family," while others believe that allowing the unions is the next logical step in an ever changing world in an effort to be as open-minded and non-judgmental as possible. Some will claim that it is medically unsafe, and therefore biologically wrong, while many will argue that the government should steer clear of invading the bedroom. Most of these arguments can be approached by two philosophical theories: utilitarianism and deontology, which have both commonly been applied to this issue.

Benefits of Marriage

Before exploring the various arguments for and against same-sex marriage, it is helpful to first understand why the issue is worth debating. What is it about the status of marriage that has caused such unrest amongst those to whom it is being denied?

According to Title 1, Chapter 7, Section 7 of the U.S. Code, “the word ‘marriage’ means only a legal union between one man and one woman as husband and wife” (Title 1,7).

This, however, does nothing to allude to the vast amounts of economic and social benefits that are afforded by our government to married couples. Same-sex partners would fight to have this definition changed from “one man and one woman as husband and wife” to something to the effect of “two persons as life partners.” Among the reported 1138 benefits of marriage, some of the most important are the right to make life-or-death decisions, the assumption of social security for a deceased spouse, the right to mandatory visitation in a hospital or prison, and inheritance without a will (Johnson, Ramone).

Additionally, married couples are offered various tax breaks and property rights that unmarried couples cannot utilize. These benefits, however, are not the only thing that the gay community aspires towards. What they truly desire is equality. While the title of marriage will never truly grant equality, given that discrimination will always exist, it is a major step toward the overall acceptance of the homosexual lifestyle in America.

History of Same-Sex Marriage

Same-sex couples’ road to equality in America has been a long one, and it is far from finished. One of the first major events in their journey occurred in 1971, when Richard John Baker and James Michael McConnell, a gay couple, applied for a marriage

license in the state of Minnesota. The application reached Gerald Nelson, the clerk of the Hennepin County District Court, but was denied based solely on the fact that Nelson believed marriage to be between a man and a woman, and therefore would not grant a license to two men. Baker filed suit against Nelson, and the case, Baker v. Nelson, reached the Minnesota Supreme Court. The courts ruled that Nelson's denial of the marriage certificate did not violate the State's Constitution, and that Baker's argument claiming this case had precedent in Loving v. Virginia, which overruled a ban on interracial couples, was false. They stated that "in commonsense and in a constitutional sense, there is a clear distinction between a marital restriction based merely upon race and one based upon the fundamental difference in sex" (Baker v. Nelson). Even though the court had ruled that a ban on gay marriage was not unconstitutional, this ruling was not a total loss in the sense that it also did not state that a provision which did allow gay marriage would be any different. This case, while a major blow to the gay community, showed that if they could sway public opinion enough to support gay-marriage, there was no constitutional reason that they could be denied those rights. Essentially, if they could manage to pass a law allowing gay marriage, there would be nothing the opposition could do to counter, short of passing a new law that reversed such a decision. This case marked the beginning of same-sex couples' crusade for the marriage title.

The struggle was removed from the spotlight for many years, but re-emerged during the late 90's in more powerful ways than ever. However, given that the fight for equal rights was gaining popularity, this meant that those opposed would double their efforts in an attempt to gather support for their side of the argument. In 1993, the Hawaii State Supreme Court found in Baehr v. Lewin that "it was sex discrimination to deny

marriage licenses to same-sex couples” (Hosek, Linda). This ruling would seemingly allow same-sex couples the right to marry, but instead, a stay was placed on the ruling and the courts ordered the state legislation to justify its perceived discrimination.

This ruling, while not immediately allowing the marriages, caused a mass hysteria among opponents who believed that couples would flock to Hawaii in the event that the legislation failed to justify their actions, and same-sex couples would marry as soon as legally possible. They were afraid that these couples would then return home with legally recognized marriages, and their efforts would be lost. Public pressure behind this idea caused Bill Clinton in 1996 to sign into legislation the Defense of Marriage Act, which permitted states to deny same-sex couples the benefits of marriage, even if these marriages occurred legally within another state. Many states, seeing this as their chance to finalize a ban on gay marriage, began fighting to have legislation passed which would define marriage as between one man and one woman. Hawaii, after placing a stay on its previous ruling, later legislated and passed one such amendment. Alaska was also successful in their efforts to “protect” marriage. These were the first legal documents in America to define marriage as between one man and one woman (Vestal, Christine).

Opponents of this bill claim that it is a direct violation of the Full Faith and Credit Clause of the Constitution, which states that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State” (Manning, Jason). Essentially, this clause says that states must respect and uphold the judicial rulings of other states. The purpose of the Full Faith and Credit Clause is to maintain unity throughout the nation. It aims to establish a common ground amongst the states, rather than differing stances between them. At the same time, it also ensures that

each state remains “meaningfully empowered,” each with its own “distinct polities” (Rosen, Mark D). This can be seen in the case of Pacific Employers Insurance Co. v. Industrial Accident Commission, in which a Massachusetts man working for a Massachusetts employer was injured at a California jobsite in the course of employment. The courts found that the Full Faith and Credit Clause “does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events” (Rosen, Mark D.). This ruling indicates that in the case of conflicting court findings, if it is not a matter of substantial federal concern, each state will be allowed their own ruling. This precedent could seemingly apply to the issues raised over the Defense of Marriage Act, although this theory has not been brought before any courts.

In the following years, each state defined their stance on same-sex marriages. There were four options to which the states could align themselves: Firstly, they could create a constitutional amendment which defined marriage as one man and one woman. Secondly, they could create legislation which bans same-sex marriage. Third, they could create an alternative to marriage, most commonly referred to as a “civil union,” which is discussed further on. Or lastly, they could legalize gay marriage.

All of these events occurred in the judicial and legislative levels, but in reality, much of the advancement of homosexuals occurred in the real world, through protests and the attempts to change popular opinion. One of the major goals of these efforts was “to end various kinds of discrimination towards homosexuals” (Crooks, Robert).

Same-sex couples have undergone discrimination since the birth of their movement for equal rights in the 1960's. Because the majority of people are heterosexual, and being homosexual is considered "wrong" by so many, there is inevitable discrimination. Homosexuals have been targeted by hate groups such as the KKK, the Nazis, and religious extremists. They are viewed as "impure," and historically have been burned at the stakes in an effort to "cleanse" them of such impurities (Varnell, Paul). Homosexuals have been subjected to such discriminatory terms as "fairy," "homo," "fag," and "queer" (Politically Incorrect and Niggardly Terms to Avoid). Polls show that, as late as 1996, some 68% of Americans felt that same-sex couples were undeserving of the benefits of marriage. For one reason or another, they all opposed the idea of legalization of same-sex marriage. This number has slowly, but surely, been decreasing. The same poll, conducted in 2006, put that number down to 58%. Additionally, those in favor rose from 27% to 39% (Saad, Lydia). The apparent reason that these numbers are gradually changing is the passing of the older, more conservative generation, which is being replaced by a younger, more liberal crowd who has been brought up more open to the idea of same-sex couples. A CBS News poll in 2004 showed that only 12% of persons aged 65 and older felt that same-sex marriage should be legalized, as opposed to 43% of those 18-29 years old (Law and Civil Rights). These numbers would indicate that the times are changing, and support for homosexuals only continues to grow.

Current Situation and Possible Outcomes

At this point in time, there is one state, Massachusetts, which has completely legalized gay marriage, nine states which have offered some sort of alternative similar to marriage, and the remainders have either legislatively outlawed gay marriage, or amended their constitution to define marriage as one man and one woman.

This will, undoubtedly, change. As time passes, public opinion changes, and as a result, laws do as well. Public opinion is moving in the direction of approval of same-sex marriage, albeit rather slowly. It is only a matter of time before the majority of Americans support a change, and once this occurs, it is safe to assume that there will be a federal law deciding the issue one way or another. This is due to the fact that a “patchwork of marriage laws across the country would be a social, cultural, and bureaucratic nightmare” (Cline, Austin). As laid out by Austin Cline, a popular columnist on the issue of same-sex marriage, there is only one path that this activism can go down: the same road as Loving v. Virginia: “It has been 35 years since the Loving v Virginia decision struck down state laws against interracial marriages, decisions that prompted word-for-word the same legal arguments being used against gay marriages today” (Cline, Austin). This change can occur first either in the public domain, or within the courts. However, once one shift comes, it is inevitable that the other shall follow. Ed Brayton argues that “within 25 years at the most, the prevailing opinion in the US will be to wonder what all the fuss was about” (Cline, Austin), just as is the case today for interracial marriages. The issue is insignificant, and it is only a matter of time before same-sex marriages result in the same outcome.

There is, however, a third possible outcome. Rather than either the legalization or outlawing of same-sex marriage, the federal government could choose to institute “Civil Unions” – a legally recognized partnership which shares all the benefits of marriage, but still withholds homosexuals from being officially “married,” thus maintaining the “sanctity.” This too, however, is unacceptable according to gayalliance.org: “Why create a special legal category for same-gender loving couples...doesn’t that reek of the bad kind of special, like unequal and second-class kind of special?” (Iowa District Court Says Same Sex Couples Must Be Allowed to Marry). Inevitably, this too, will come before the federal government. For now, however, the issue is left up to each state to decide, and is theoretically “up in the air.”

The Debates: Religious Aspect

One of the largest and fiercest debates over same-sex marriage comes from the religious standpoint. Opponents of same-sex marriage argue that because same-sex couples are not procreational, a moral value strongly emphasized by religious communities, they should not be recognized. They argue that same-sex couples serve no purpose, and should have no place, in furthering our growth and ensuring our continuation as a species. Homosexuality serves no biological purpose, and exists only for physical pleasures – pleasures that center around acts of sodomy, which are forbidden in Christian-based religions. James Dobson, producer of “Focus on the Family,” a conservative based radio station, and recently named “Most Influential Evangelical Leader in America” (Olson, Ted)), has written a book outlining the conservative Christian’s argument against same-sex marriage. This book, [Marriage Under Fire: Why](#)

We Must Win This Battle, states that “Every civilization in the world has been built upon [heterosexual marriage]” (Dobson, James). He also cites biblical condemnation in the form of Romans 1:24-27, which relates a story of how “Men...abandoned natural relations with women and were inflamed with lust for one another. Men committed indecent acts with other men, and received in themselves the due penalty for their perversions” (Romans 1:27). The Christian right interprets this article to state that men shall be punished for engaging in lustful acts with other men, and for abandoning “natural relations with women.”

However, counters to this argument, such as one by the Metropolitan Community Church of Topeka, believe this passage refers not to homosexuality, but instead to rape and the submission to primal desires. They argue that, due to the social context of the times, there is no realistic explanation for why Paul would address the issue of homosexuality. This was not a problem that needed to be outlined in the Bible – it was nonexistent. According to the MCCT, “Paul could not have known that there were people with same gender sexual orientation; any more than the author of Revelation could be aware that the heart was not the seat of intellect or the kidneys the seat of emotions, which is an example of the scientific understanding of that time” (Same Gender Sexual Behavior and the Scriptures).

Other churchgoers, despite their personal disapproval of homosexuality, believe it is not the place of the government to enforce such a belief. They refuse to acknowledge same-sex marriages from a religious standpoint, but have no issue allowing them to occur outside of church (Cline, Austin). These groups cite Separation of Church and State as the basis for their beliefs. They realize that their beliefs do not necessarily fall in line with

every other religion, and therefore it is unconstitutional to impose a majority belief unto minorities, especially when that belief is based on a purely religious document. Others, such as the Unitarian Universalist Assembly, who also support homosexuality, would alternatively argue that “there is nothing in the Bible which condemns people with a homosexual orientation having same gender relationships” (Same Gender Sexual Behavior and the Scriptures). These groups willingly perform same-sex marriages, and actively fight for the civil rights of same-sex couples.

The Office of Bisexual, Gay, Lesbian, and Transgender Concerns, a division of the Unitarian Universalist Association of Congregations, cites as its mission statement: “The Office is guided by the vision that someday we will be able to put ourselves out of business and that oppression against bisexual, gay, lesbian, and/or transgender people of all ages, abilities, colors, and genders, whether it be overt or subtle, will be a thing of the past” (About Us).

The Debates: Social Aspect

Another area of debate over same-sex marriage is the social aspect. Opponents of same-sex marriage argue that it is a violation of tradition, that “Traditional marriage between a man and a woman is a sacred institution that forms a pillar of the community” (If gay Spaniards can marry, what's the fuss?). They believe that the “one man and one woman” portion is especially significant because of the widely held belief that each parent holds a specific role to fill in the development of their child as defined by their gender.

David Popenoe, author of “Parental Androgyny,” an article supporting these traditional parenting roles, argues that “the idea of a gender-neutral model of parenting” is illogical and impossible. He states that “mothers and fathers have specific roles that are complementary; both parents are essential to meet children’s needs” (Parenting Roles: Can Fathers be Mothers?). Supporters believe that in order for a child to develop and mature into a fully rounded, functioning member of society, they must receive both a masculine, guardian aspect from the father as well as a nurturing, caring aspect from the mother. Children who do not receive both ends of the spectrum will themselves gravitate to one side. They will either be overly masculine or overly feminine.

Opponents of this view cite cases of single mothers or fathers who produce perfectly capable, functioning, mature children. They also refute the claim that males are incapable of providing the nurturing needed for proper development. They believe that in a relationship between two males with a child, one of the fathers will naturally conform to the mother role, while one retains the disciplinary role. Louise Silverstein, author of Fathering is a Feminist Issue, argues that “good parenting is not sex-specific or sex related.” She claims “that although nurturance has been traditionally associated with mothering, this connection is cultural, and that fathers can nurture just as effectively as mothers, and that they should and do play different roles in childrearing” (Parenting Roles: Can Fathers be Mothers?).

In response to this claim, opponents argue that growing up with two mothers or fathers is essentially the same as growing up with only one, which statistically shows is unfavorable for the child. According to research by the Education Resource Information Center, “living with a single mother...is associated with poorer child development

outcomes relative to living in married mother arrangements” (Kalil, Ariel). Despite this, there have been many cases in which “Single parents have raised...well-rounded, successful people. Many negative predictions for children raised by a single parent have more to do with economic hardship than the lack of one parent” (Being a Single Parent). This research would suggest that the reason couples generally produce more stable, mature children is not because they provide complementary parenting roles, but instead simply because two parents can afford to raise a child much easier than a single person alone. Opposing parent roles apparently do not have as much an impact on the child as financial security, and therefore two of the same sex is always better than one.

It is, however, a given fact that marriage has traditionally been between one man and one woman. As of this moment, it is legally defined as such (Title 1,7). In order for this to be changed, Justice Martha Sosman cites, in her dissenting opinion of the Goodridge v. Dept. of Public Health case, the precautionary principle. This states that the burden of proof must be put on the proponents of change. As the world is today, we are stable. In order to change the status quo, one must first prove that the change will do no harm. She argued that advocates of same-sex marriage have not provided adequate evidence that the change would not devolve our society into a morally decaying state (Precautionary Principle).

However, countering this, one must only look at the Netherlands, which legalized same-sex marriage in 2001. Researcher Darren Spedale found that not only was Denmark not in a state of social decay, but that “long-range trends in marriage rates, divorce rates, and non-marital births either have been unaffected by the advent of same-sex partnership or have moved in a direction that suggests that the institution of marriage is

strengthening” (Eskridge, William). Additionally, according to the National Center for Health Statistics, the divorce rate in Massachusetts, where same-sex marriage is also legal, is actually lower than the average of the remaining 49 states (U.S. Divorce Statistics). The rate of divorce has actually declined since the introduction of same-sex marriages.

Even with this research, it can still be argued that the permission of same-sex couples to marry has devalued the actual title itself. Traditionally, marriage has been a government sanctioned union between two persons in order to promote procreation. Same-sex couples cannot procreate, so they therefore do not qualify for the right to marriage and the benefits it provides. However, if this were the only qualification necessary for marriage, then technically couples who cannot procreate, such as ones between an impotent male or post-menopausal woman, should also be denied. Proponents believe that marriage is not just an incentive to procreate, it is a reason to settle down, to promote stability, and to discourage promiscuity. There are plenty of married couples who never intend on having children, just as there are many same-sex couples who would gladly adopt or conceive their own child through artificial insemination.

The Debates: Biological Aspect

Much of the debate over homosexuals and the rights they should be afforded stems from the question of “Nature vs. Nurture.” Is homosexuality a choice, or is it predetermined based on our genes? Two opposing sides have attempted to answer this question, both of which can cite adequate support to make their claims plausible.

On the nature side, several studies have been done which correlate biological traits with a homosexual preference. Three of the most noted studies are the Finger Length Study, the Left-Handed Study, and the Cognitive Abilities study. The Finger Length Study shows a high correlation of lesbian women whose ring finger is longer than their index finger. This is contrasted with the large majority of heterosexual women, whose fingers are approximately the same length (Crooks, Robert).

The Left-Handed Study shows a high occurrence of a dominant left-hand in homosexual men. In comparison, a higher portion of heterosexual men show right hand dominance (Crooks, Robert).

The final study shows that homosexual men display a higher aptitude in verbal and spatial skills when compared to heterosexual men. This is notable because these skills are normally found in heterosexual women. In fact, it has been consistently found that homosexual men's scores are much more in line with heterosexual women rather than heterosexual men (Crooks, Robert).

As much as these studies would seem to prove an undeniable genetic link to homosexuality, there are just as many studies that clearly refute that very claim. Behaviorists will show, through the studies of identical twins, that homosexuality is not genetic.

These studies, done on identical twins raised in identical environments, "gave a concordance rate between identical twins of less than 50%" (Whitehead, N.E.). These twins are 100% identical biologically, so therefore if homosexuality were truly genetic, should the correlation not be 100% as well?

In the end, there have been no conclusive studies either flawlessly linking or refuting the genetic link of homosexuality. This issue, however, is still very relevant because there are many individuals who are either against same-sex marriage or else on the fence that would realign themselves if homosexuality can be proven to be genetic. They would argue that if homosexuality was truly a genetic trait, and not a choice, then homosexuals must be afforded all the rights of the Constitution. They must be a protected class, just as race, sex, and skin color are. They did not choose to be homosexual, and thusly cannot be discriminated against.

However, until conclusive data has been found, the debate will inevitably continue on other fronts, hoping that a consensus may one day be reached.

Philosophy: Utilitarianism

One such front is the philosophical debate. Often times, when the right decision is unclear through standard logic and factual evidence, as is the case for same-sex marriage, we can take a philosophical approach in an effort to better understand the pros and cons for each issue from a less subjective viewpoint.

One popular theory that has been applied to this issue is Utilitarianism, a concept made popular by Jeremy Bentham. Utilitarians believe that for each act, there is a net-outcome of measurable happiness, referred to as "Utils." Whenever a decision is to be made, the moral choice is always that which grants the most net amount of utils, or the most happiness.

This seems a rather simple concept, but through the several variations of Utilitarianism, we can see the weaknesses and complications of this theory.

The first two conflicting types are act utilitarianism and rule utilitarianism. Act theory states that we must measure each individual act as its own, unique event. One decision is never identical to another. Each individual may net a different amount of total happiness from two similar acts. This theory rejects the use of widespread rules or laws, arguing that we must instead measure each situation independently and the consequences that result: “It is the value of the consequences of the particular act that counts when determining whether the act is right” (Utilitarian Resources).

Criticisms to this theory state that it is impossible to know every possible outcomes, that you cannot possibly “[attain] a full knowledge and certainty of the consequences of our actions” (Utilitarian Resources).

These critics are often members of the counter to act theory, which is rule utilitarianism. This theory states that we must measure the consequences of a rule that can be applied across the society. The rule with the greatest net happiness is then considered the moral choice. For example, a law which forbade murder would yield more happiness and satisfaction throughout society than a law which allowed it.

However, rule utilitarianism does not allow for exceptions, and that is where the criticism lies. In rule theory, murder in self-defense is considered wrong, which is obviously an unfavorable result. This one example would seem to throw rule theory entirely out the window; however, some would argue that a law stating murder to be wrong but self-defense to be allowed would be perfectly logical and moral. Act utilitarians are quick to point out that this could be an exception to their “rule,” and that “if the rules take into account more and more exceptions, [rule utilitarianism] collapses into [act utilitarianism]” (Utilitarian Resources).

It is difficult to say whether or not act utilitarians would be in favor of same-sex marriage. They stress the idea that there are no widespread rules, and that each case must be viewed on its own terms. However, this becomes incredibly complicated when talking about the issue of same-sex marriage. You could never possibly measure the right to marriage as a single incident. For one, each marriage would supply a limited amount of happiness to the individuals involved, but would be easily outweighed by the unhappiness it would cause to the millions of people who oppose gay marriage. But would each marriage increase the subsequent unhappiness of those opposing? Every time a gay couple wed, would they experience the same pain and displeasure? No, they obviously would not, but it would exist at the first occurrence. Therefore, act utilitarians would probably oppose same-sex marriage for the simple reasons that it goes against a societal norm. If one couple were to wed, their happiness would be easily outweighed by the unhappiness of opponents, and is therefore immoral. If we could manage to make it past that first marriage, then perhaps they would support it, as the pain and suffering of opponents would no longer increase at the same rate as the first marriage caused. But for the time being, the happiness of same-sex couples is insufficient to outweigh the negatives that the first marriage would inevitably cause to society.

Rule utilitarians would probably agree with act utilitarians in this regard. At the moment, there are more Americans opposed to gay marriage than are in favor of it, and therefore it would seem logical that a law which granted same-sex couples the right to marry would cause more societal harm than good. However, we must consider the issue as a whole, and attempt to estimate the amount of happiness that would be gained, versus the displeasure that would be caused as a result. According to the American Community

Survey's most recent report on American life, there are an estimated 777,000 same-sex couples in America (Gates, Gary J.). Counter this with the over 150 million Americans opposed to marriage rights for same-sex couples, and you can see that each individual couple would need to achieve approximately 200 times the amount of happiness from their marriage as compared to the unhappiness that it caused, in order to be moral (Saad, Lydia). We cannot possibly know if each couple is achieving that much happiness, as we have no definitive way to measure either happiness or displeasure.

However, even if today the situation is clearly in favor of the opponents, it may not be for long. According to that same survey, "the number of same-sex couples in the U.S. grew by more than 30 percent from 2000 to 2005" (Gates, Gary J.). The amount of same-sex couples is increasing, and shows no sign of slowing down. Even if today they must each achieve 200 times the happiness of a single person's displeasure, that number will inevitably shrink, either due to the increase in amount of couples, or decrease in those opposed. It will eventually shrink to such a small number, that it will only seem logical to allow same-sex marriages to occur. Additionally, we must consider the happiness that will be granted to homosexuals who are not currently in relationships. "There are an estimated 8.8 million gay, lesbian, and bisexual persons in the U.S." (Gates, Gary J.), most of whom would be granted at least a small bit of happiness from the knowledge that they would be legally allowed to marry if they should so choose. Therefore, rule utilitarians would, as of today, find the right to marriage for gay couples to be immoral, but that will eventually and inevitably change.

Two additional utilitarianist theories, total and average, also have conflicting results.

Total utilitarianism measures each situation in terms of its total effects on society. This theory states that whichever option yields the most total utility, no matter if it is spread across a population or condensed into one individual, is the moral choice (Consequentialism).

This theory falls under criticism on issues such as birth control: overall, each individual born will inevitably increase total utility – everyone experiences happiness. However, the inescapable problem of overcrowding and shortages of resources in a birth-control free world would inevitably be detrimental to society – despite total utility still being positive. A total utilitarian theorist would be forced to say that birth control is therefore wrong, despite its logical benefits to society.

An alternative to total theory is average utility theory. This theory states that whichever option yields the most average utility for the individuals involved is the moral choice. Thus, in the birth control example, despite the total utility going up, the population would rise as well, lowering the overall average utility of society. Average theorists would therefore be in support of birth control (Consequentialism).

This theory, too, is subject to criticism. Given that an increase in population lowers the overall average utility, we can infer that individuals who do not produce adequate utility are looked down upon, as they decrease the average. This would imply that a small population of high utility would be preferable. This fact would eventually lead to the elimination of all but the happiest, most resourceful individual, referred to as the “Utility Monster” (Stanovich, Keith). To an average theorist, a population of only the single happiest person on earth, who therefore has the highest average utility possible, is the ultimate moral outcome.

Regardless of their criticisms, both theories can be applied to the issue of same-sex marriage: Logically, total utilitarians would be opposed to same-sex marriage for the same reasons that rule utilitarians are. The benefit provided to a single couple would be greatly outweighed by the displeasure caused to the large number of Americans who are against same-sex marriage. A single couple would have to produce enough happiness to outweigh 150 million individuals' unhappiness in order for the decision to be moral. This, logically, is impossible.

Average utilitarians, alternatively, would favor same-sex marriage. The total happiness provided to the two persons being wed, when weighed against the unhappiness of two persons who opposed the marriage, is obviously superior. In order for same-sex marriage to be wrong to average theorists, every person who opposed gay marriage would have to experience as much unhappiness over their lifetime as a single couple experienced happiness – this is obviously illogical. Same sex marriage is more of an annoyance to opponents, and thus provides a small negative utility, whereas marriage provides those involved a potential lifetime of pleasure and satisfaction. The latter obviously outweighs the former.

In utilitarianism, just as in society, religion, and biology, the debate is divided. Unfortunately, the issue is even less able to be resolved here, due to lack of any factual evidence whatsoever. Utilitarianism as a whole suffers from the fact that it is impossible to numerically measure happiness. Who is to say that one marriage provides X amount of utility? Who can say that society as a whole does or does not suffer because of the marriage? Obviously, each person is going to benefit a different amount than their partner from the marriage, and each couple will benefit a different amount from the next.

Happiness is not a constant in each situation; we cannot measure it, and therefore we cannot weigh one person's against another. Utilitarianism as a whole then becomes a simple theory of hypothetical situations.

Additionally, it could be argued that each successive marriage will not displease society as much as the last, and eventually the net amount of happiness from the couples would outweigh the overall detriment to society. The first marriage will cause much more negative utility than the 1000th, but the total utility gained will still slowly continue to grow due to the happiness of each couple involved. This is known as "diminishing marginal returns." In the same sense that, when hungry, the first slice of pizza provides you more happiness than the 5th, the first marriage will provide more unhappiness than the 1000th. This fact can be seen in issues such as interracial marriage: what once was considered morally intolerable to some is now an accepted social practice. It is a non-issue in today's society.

For now, however, same-sex marriages are still considered wrong. Because we know it will eventually be right, can we instead weigh the situation as a whole? Do we measure the happiness that will inevitably come 10, 20, 30 years down the line, as each new generation is married? Do we turn the other cheek for now, allowing these perceived immoral acts to occur, knowing that one day, they will become acceptable? Unfortunately, these questions are rather irrelevant because again, we cannot numerically measure happiness. Utilitarianism is a valid theory, but due to the complexity of this issue as well as the large number of individuals potentially affected, it can do nothing but provide us minor insight into the possible choices. It cannot give us a conclusive answer.

Philosophy: Deontology

Another popular theory, one that often conflicts with utilitarianism, is deontology, a theory largely credited to C. D. Broad. Where utilitarianism is a theory based on results, deontology is more concerned with the motives and intent behind the actions. Deontology is “characterized by a focus upon adherence to independent moral rules or duties” (Cline, Austin). In order to be moral, we must first establish a set of moral “codes,” which we must follow at all times. These codes become our duty, and thus “when we follow our duty, we are behaving morally” (Cline, Austin).

There are two main variations of this theory: divine command theory, and the theory which follows the teachings of Immanuel Kant, sometimes referred to as natural law theory.

Divine command theory, as defined by about.com, entails that “our duties, rules, and obligations are determined by God. Being moral is thus a matter of obeying God” (Cline, Austin). This theory varies between religions, and rests on the metaphysical assumption that God does, in fact, exist, and that he has laid out a moral code which we should follow. The divine basis for this theory leads to a variety of criticisms.

Firstly, if you do not believe in God, this theory becomes irrelevant.

Secondly, how are we to truly know that God is right? The word of God comes from ancient scriptures and is therefore subjective. Why did God decide that murder was wrong and charity right? Morality merely becomes an interpretation of God’s “preachings.” These have the ability to change from day to day, depending on our interpretation of ancient scriptures.

Lastly, how could the teachings of God, which are thousands of years old, apply to modern situations? There is no way in which we can interpret the writings of scriptures to apply to modern issues such as stem-cell research and abortion. These simply were not issues at the time in which the scriptures were written. In such a case, what is the moral choice?

Divine command theory deontologists would argue that the word of God is right, and is relevant today, because we are merely creations of God, and are therefore subject to His will. What He decides is right, is right. His teachings are broad, and through the various verses and stories, can be interpreted to apply to any modern situation. Others would argue that God did not decide what was right; He merely reiterated what we already knew to be right within us. We have a set of internal rules that we know to be right, and God has explicitly restated them such that there will be no confusion. But if we already have these morals within us, why do we need a God? Could it not be argued that we are not obeying God, but instead the intrinsic rules we as humans know to be moral?

This leads into the opposing variation of deontology: the natural law segment, a theory based on Immanuel Kant's writings. This theory is similar to divine command, but argues that instead of obeying God, we are merely acting in line with our internal morals. These morals can be considered "right" only if they can be applied across society without any overwhelming detrimental effects (Ursery, Danny).

Critics of this stance argue that since there is no expressly stated law, that there is no reason for a moral theory. Natural moral code essentially states that people are operating in line with their internal moral values; they are not following any moral theory.

Natural law deontologists would respond by saying that they have no issue with this “critique.” In fact, all that deontology is to these individuals is simply putting a name to the idea of sticking to ones’ morals. Deontology tells us to choose our “duties” and pursue them with all our power, which, it could be argued, is what any “moral” individual is doing (Ursery, Danny).

Deontology, just as utilitarianism, is divided on the issue of same-sex marriage. Divine command theory, for example, varies from religion to religion in terms of what is moral. Some religions have expressly stated that homosexuality is a sin, and therefore, deontologists of that religion would agree. Others either have not stated it is wrong, or else praise it, and followers of these religions would obviously be in favor. For these groups, it is irrelevant as to what the results of their decisions would be; it only matters that they conform to the will of their particular God. Following the teachings of their respective religious text is one of their most important “duties.” Their religion either tells them that homosexuality is a sin, and they therefore treat it as such, or else it tells them that it is right, and they will in turn praise and welcome it.

Natural law deontologists, on the other hand, do not follow any religious text as a “duty.” Instead, they view ideas such as stances on homosexuality, abortion, and other issues as merely preferences, which are less important than their duties (Ursery, Danny). Natural law theorists would support same-sex marriage, because they can respect that it allows for the pursuit of happiness amongst thousands of homosexual couples. Pursuing happiness is one of their most important duties, and any action which brings them closer to this goal would be considered moral.

Again, however, we run into the same issues that are encountered with any philosophical theory. There are no concrete facts or evidence which would lead to the support of one side versus the other; instead, there are intricate shades of gray, and overall no clear decision.

Opinion

In my opinion, homosexuals are equal citizens and must be granted the same rights as heterosexuals in America. My reasons for this stance are numerous, and have already been briefly touched on in this paper.

In regards to religion, I believe that the separation of church and state is one of the most important issues in our nation today. I feel that the line between religion and government is gradually fading, and this attempt to legislate a widely held “Christian” belief is a direct violation of this clause. We cannot legislate based on our own personal beliefs, especially when those beliefs are religion-based and are not shared by a large portion of the nation. The Constitution proclaims majority rule with minority protection, and this is a shining example of such a case. It is clear, based on Gallup Polls, that the majority of this nation feels marriage is between one man and one woman (Saad, Lydia); however, the majority of Americans also felt that African Americans and women were inferior at one point as well. Both of these stances have been proven to be illegal and ill conceived, despite the fact many of the same arguments are being heard today in opposition of same-sex marriage.

In regards to the social impact of same-sex couples, I believe that the effect of legalizing same-sex marriage would be negligible. Homosexuals are not causing “social decay,” they are not degrading the American “family,” and they are not a disease which needs to be cured. As can be seen in the Netherlands and Massachusetts, same-sex marriage has obviously not had any overwhelming detrimental effects on society. Instead, the opposite seems to be true. Additionally, homosexuals are obviously not a disease which can be cured, given that there is evidence of their existence thousands of years ago.

They will continue to exist, and denial of the right to marriage does nothing but ignite the flame beneath their feet further. As long as we refuse to grant them equality, they will have a cause to fight for, and will remain a central issue in America. If they are granted the rights they desire, they will undoubtedly drop out of the spotlight, just as women and African Americans largely did when their crusade for equality ended. As long as this issue remains relevant, it will continue to polarize the nation. When equality is granted, we can move on to other, more relevant issues. Put this issue out of sight, and it will eventually drop out of mind.

As for the biological conditions of homosexuality, I believe that it is entirely irrelevant if homosexuality is a genetic condition or a learned behavior. Admittedly, if it were a genetic condition, that would make it much easier to justify protection under the Constitution; however, I feel that it being a choice does not automatically deny them these protections either. Many lifestyle choices are protected under the Bill of Rights, and this should be as well. For example, religion is a lifestyle choice, and yet it is illegal to discriminate based on individual beliefs. A Catholic cannot be denied the same rights as a Christian, a Mormon, or a Muslim. Homosexuality falls in the same vein as these “choices.” Even if we determine that homosexuality is in no way genetic, this does not give us the ability to deny them rights. No matter the causal factor, the outcome is the same. Equal rights cannot be denied.

It is my philosophical belief that the happiness of a single couple who has been granted their wish to marry vastly outweighs any minor inconvenience caused to the opposition. Same-sex marriage would not have any significant, detrimental effects on the day-to-day life of opponents, but it would greatly increase the day-to-day happiness and

well-being of a married couple. In this respect, I am an average utilitarian. I know that we cannot truly measure happiness, but I believe it is fairly plain to see that the happiness granted by marriage outweighs the displeasure caused to opponents. On these grounds, there is no reason to deny homosexuals the right to marry.

Overall, I believe that the arguments against same-sex marriage are ill conceived, illogical, and not based in fact. There has been no conclusive evidence showing any harm that would be caused by same-sex marriage or homosexuals in general, and the stances against them can nearly all be traced back to religious roots. We cannot deny rights based on these grounds. Equality is far more important than moral disapproval. As stated by Justice O'Connor in her concurring opinion of Lawrence v. Texas, "Moral disapproval of a group cannot be a legitimate governmental interest" (Lawrence v. Texas).

Works Cited

- "About Us." Office of Bisexual, Gay, Lesbian, and Transgender Concerns. 31 July 2007.
Unitarian Universalist Association of Congregations. 20 Nov. 2007
<<http://www.uua.org/aboutus/professionalstaff/identity-basedministries/bisexualgay/index.php>>.
- "Article 1." Hawaii State Constitution. 01 Jan. 2005. Hawaii Legislative Reference Bureau. 20 Nov. 2007 <<http://www.hawaii.gov/lrb/con/conart1.html>>.
- Baker V. Nelson. No. 191 N.W.2d 185. Supreme Court of Minnesota. 1971.
- "Being a Single Parent." MetLife. 20 Nov. 2007
<<http://www.metlife.com/Applications/Corporate/WPS/CDA/PageGenerator/0,4132,P985,00.html>>.
- Cline, Austin. "Future of Same-Sex Marriage." About.Com. 23 July 2004. 20 Nov. 2007
<<http://atheism.about.com/b/2004/07/23/future-of-same-sex-marriage.htm>>.
- "Consequentialism." Stanford Encyclopedia of Philosophy. 20 May 2003. Stanford U. 20 Nov. 2007 <<http://plato.stanford.edu/entries/consequentialism/>>.
- Crooks, Robert, and Karla Baur. Our Sexuality. Belmont, CA: Thomson Wadsworth, 2005.
- Dobson, James. Marriage Under Fire. Sisters, Oregon: Multnomah, 2004.
- Eskridge, William N., Darren R. Spedale, and Hans Ytterberg. "Nordic Bliss? Scandinavian Registered Partnerships and the Same-Sex Marriage Debate." Journal of Legal Scholarship (2004).
- Gates, Gary J. "Same-Sex Couples and Gay, Lesbian, Bisexual Population." The Williams Institute (2006).

Homophobia and the Bible. By Bob Karnan. Unitarian Universalist Church, Portsmouth, NH. 4 Oct. 1994.

"Homosexuality and the Ancient Greeks." Religion Facts. 20 Nov. 2007

<http://www.religionfacts.com/homosexuality/ancient_greeks.htm>.

Hosek, Linda. "Some Conservative Groups Predicted..." Honolulu Star Bulletin. 20 Nov. 2007 <<http://starbulletin.com/97/01/22/news/story1.html>>.

"If Gay Spaniards Can Marry, What's the Fuss?" The Prague Post. 12 July 2006. 20 Nov. 2007 <<http://praguepost.com/P03/2006/Art/0713/opinpv.php>>.

"Iowa District Court Says Same Sex Couples Must Be Allowed to Marry." Gay Alliance of the Genesee Valley. 31 Aug. 2007. 20 Nov. 2007

<http://gayalliance.org/index.php?option=com_jd-wp&Itemid=27&m=200708>.

Johnson, Ramone. "Marriage Benefits." About.Com. 20 Nov. 2007

<<http://gaylife.about.com/od/samesexmarriage/a/benefits.htm>>.

Kalil, Ariel, Thomas Deleire, Rukmalie Jayakody, and Meejung Chin. Living Arrangements of Single-Mother Families: Variations, Transitions, and Child Development Outcomes. Chicago, IL: University of Chicago, 2001.

"Law and Civil Rights." Polling Report. 20 May 2004. 20 Nov. 2007

<<http://www.pollingreport.com/civil2.htm>>.

Lawrence V. Texas. No. No. 02—102. Supreme Court of the United States. 26 June 2003.

Manning, Jason. "The Defense of Marriage Act." Online NewsHour. 30 Apr. 2004.

PBS.Org. 20 Nov. 2007

<http://www.pbs.org/newshour/bb/law/gay_marriage/act.html>.

Nelson, Christine. "Same Sex Marriage, Civil Unions and Domestic Partnerships."

National Conference of State Legislatures. June 2007. 20 Nov. 2007

<<http://www.ncsl.org/programs/cyf/samesex.htm>>.

Olson, Ted. "Who's Driving This Thing?" Christianity Today. 2005. 20 Nov. 2007

<<http://www.christianitytoday.com/ct/2005/februaryweb-only/12.0c.html>>.

"Parenting Roles: Can Fathers Be Mothers?" Associated Content. 21 Apr. 2006. 20 Nov. 2007

<http://www.associatedcontent.com/article/28844/parenting_roles_can_fathers_be_mothers.html>.

"Politically Incorrect and Niggardly Terms to Avoid." Adversity.Net. 20 Sept. 2005. 20

Nov. 2007 <http://www.adversity.net/special/niggardly_terms.htm>.

"Precautionary Principle." Science & Environmental Health Network. 20 Nov. 2007

<<http://www.sehn.org/precaution.html>>.

"Romans 1:27." NetBible. 2005. 20 Nov. 2007

<<http://net.bible.org/verse.php?book=Rom&chapter=1&verse=27>>.

Rosen, Mark D. "Why the Defense of Marriage Act is Not Unconstitutional." Minnesota Law Review (2006).

Saad, Lydia. "Americans Still Oppose Gay Marriage." Gallup. 22 May 2006. 20 Nov.

2007 <<http://www.gallup.com/poll/22882/Americans-Still-Oppose-Gay-Marriage.aspx>>.

"Same Gender Sexual Behavior and the Scriptures." Metropolitan Community Church of Topeka. 07 Jan. 1998. 20 Nov. 2007

<<http://members.cox.net/paulmcc/mcc/samegen.html>>.

Stanovich, Keith. The Robot's Rebellion. Chicago, IL: University of Chicago P, 2005.

"Title 1,7." U.S. Code Section. Cornell University. 20 Nov. 2007

<http://www4.law.cornell.edu/uscode/html/uscode01/usc_sec_01_00000007----000-.html>.

Ursery, Danny. "Deontological Theories." Danny Ursery Homepage. 27 Feb. 2002. St. Edward's University. 20 Nov. 2007

<<http://www.stedwards.edu/ursery/deontolo.htm>>.

"U.S. Divorce Statistics." Divorce Magazine. 20 Nov. 2007

<<http://www.divorcemag.com/statistics/statsUS.shtml>>.

"Utilitarianism Resources." Utilitarianism.Com. 20 Nov. 2007

<<http://www.utilitarianism.com/>>.

Varnell, Paul. "Punishing Gays Under Islam." Independent Gay Forum. 21 Oct. 2001. 20 Nov. 2007 <<http://www.indegayforum.org/news/show/27132.html>>.

Vestal, Christine. "Civil Unions Spread, But Gays Want to Wed." Stateline.Org. 31 Mar. 2007. 20 Nov. 2007

<<http://www.stateline.org/live/details/story?contentId=212354>>.

Whitehead, N. E. "The Importance of Twin Studies." National Association for the Research and Therapy of Homosexuality. 20 Apr. 2006. 20 Nov. 2007

<<http://www.narth.com/docs/whitehead2.html>>.