

Mentoring of the Same Sex Marriage as A Social and Legislative Right

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ABSTRACT: *When two individuals of same sex or gender get married in a legal or religious ceremony, this is referred to as a same-sex wedding, also known as a gay marriage or a homosexual marriage. Records of same-sex marriages date back to the first century, according to some sources. In the modern period, marital equality was first given to same-sex partners in the Netherland on April 1, 2001, marking the beginning of the modern era. The question of whether or not same-sex marriage should be legalized in the United States is a very contentious and divided one. Congress, state legislatures, federal and state courts, and the ballot box are all debating a variety of “hot button” issues relating to same-sex marriage at the moment. Despite widespread support for establishing civil unions for same-sex couples, a recent survey found that just 39 percent of the general population favors giving these couples full marriage privileges. These national figures, on the other hand, obscure the enormous variation that exists from state to state. Consider the fact that although 53 percent of the population in Rhode Island favors legalizing same-sex marriage, just 23 percent of the people in Alabama agrees.*

KEYWORDS: *DoMA, Federal, Marriage, Policy, Same-Sex Marriage.*

1. INTRODUCTION

In addition, polls indicate that young people are much more inclined than older individuals to favor the legalization of same-sex marriage. The legalization of same-sex marriage was supported by almost 60% of those between the ages of 18 and 29 according to a recent Gallup Poll, the only age group for whom there is majority support for the practice. According to political scientists Patrick Egan and Nathaniel, if present trends continue, a majority of Americans will approve same-sex marriage by the year 2014 [1]. Regardless of whether or not their prediction comes true, there is no doubt that the debate over same-sex marriage will continue to elicit heated and difficult discussions about what marriage should mean, who should be eligible for the numerous legal benefits associated with marriage, and whether such decisions should be made at the local, state, or federal levels, in the courts, or by legislators. In this piece, I shall propose that discussions regarding these problems should take place in schools. Involving secondary students in serious, rigorous, and well-facilitated discussions concerning contentious policy and constitutional issues pertaining to same-sex marriage is an excellent use of time and resources. For example, one high school student said to me, "Gay marriage is a new problem that is coming up". For the foreseeable future, it is likely to have an impact on the way we conduct ourselves as citizens for the rest of our lives. So, if it is important to us, I believe it is appropriate for us to discuss it".

It's true that some instructors have already begun to engage their pupils in this discussion. Following up on my continuing investigation of contentious topic conversations in high school social studies, I have discovered many excellent lessons on same-sex marriage that may be used in the classroom. However, they are most likely the exceptions. It seems probable that the overwhelming majority of social studies instructors are concerned about pupils whose religious beliefs have a significant impact on their opinions on the subject. Teachers have also expressed

concern that parents would oppose to a lesson on same-sex marriage because they think that addressing the topic in the curriculum is equivalent to supporting a certain point of view [2].

These are very genuine worries expressed by instructors who do not want to hurt children or upset parents by making inappropriate comments. Student's ability to prepare for participation in one of the most important civil rights problems of our day is jeopardized if they avoid discussing the subject. The discussions that take place in the classroom on this subject may teach students important material and skills that should be at the heart of any democratic education programme. As an added bonus, including this topic conveys the message that everyone "counts" as a contributing member of society, that problems of special significance to the homosexual community are acceptable subjects for academic research. Without a doubt, this is a sensitive subject that requires thoughtful handling. However, if instructors approach the topic well-informed and focused, they may avoid many of the pitfalls and enable students to debate the subject in ways that are unlikely to occur outside of the classroom. Schools tend to be more politically varied than other places where young people congregate, so they may be exposed to a variety of viewpoints that they would not otherwise be exposed to in other settings [3].

1.1. Matter of Policy or Constitutionality:

For a fair debate of contentious topics to take place, it is critical to be clear about the kind of subject that is being considered. In the argument over same-sex marriage, one point of contention is how the problem should be framed: whether it should be addressed as a federal or state-level issue, or as a constitutional or policy issue. In this section, I will concentrate on teaching about same-sex marriage in two ways: as a matter of federal policy and as a matter of federal constitutional law. It is my goal to clarify the distinctions between policy and constitutional issues that apply to same-sex marriage (and many other issues as well), and to explain the similarities and differences between what students would learn in a policy discussion and what they would learn in a discussion that focused on constitutional issues [4].

I will use two federal instances to demonstrate how the subject of same-sex marriage might be taught as a policy or as a constitutional problem, despite the fact that the majority of policy and constitutional action around same-sex marriage takes place at the local and state levels. The first is a proposed federal legislation, and as such it is a public policy issue: Should the Marriage Equality and Respect for Marriage Act of 2009 be signed into law? The second is a federal constitutional issue that has been raised in at least two legal cases that are presently pending in the lower federal courts, including the following: Is it possible that laws and constitutions that ban same-sex marriage are in violation of the 14th Amendment to the Constitution of the United States? There is a valid and constructive discussion about both of these problems going on right now [5]. Policy and constitutional problems are open questions, which means that there are numerous and competing valid solutions to be found even if individuals frequently have strongly held and well-reasoned views about which answer they prefer, and thus are not closed questions.

This is a particularly important topic to consider when it comes to problems of same-sex marriage. When it comes to same-sex marriage problems, there are individuals on both sides who think they should be handled as "closed questions", questions for which there are only correct answers that instructors should want pupils to provide and believe. Although the concept of "closing an issue" may seem strange on the surface, we are aware that many issues in the curriculum are presented in this manner for a variety of valid reasons and to beneficial effect. For example, my impression

from talking to teachers is that questions about interracial marriage are typically taught as closed issues now that *Loving v. Virginia*, the 1967 United States Supreme Court case that ruled state bans on interracial marriage unconstitutional, was correctly decided and should be applauded and that the Supreme Court should be applauded. Although I realize that addressing the topic of same-sex marriage as a policy and constitutional concern is controversial, I believe that for the time being social studies instructors should approach these issues as open questions, even if this pedagogical stance is itself a source of debate.

Why should the question of same-sex marriage be left unresolved? First and foremost, this topic is functionally open in the world outside of school, and as a general rule, I believe it is more genuine to position issues in ways that are comparable to the ways in which they are handled outside of school. The second reason is more pragmatic: it is more likely that administrators, parents, and other members of the community would support the inclusion of this subject in schools if it is presented as a matter for decision rather than as a matter for discussion. This means that teachers should argue that this is a significant enough public issue to warrant curricular attention; that it has the potential to provide significant learning about law (particularly the 14th Amendment), federalism, and the separation of powers; and that we want students to engage in a rigorous and fair analysis of multiple points-of-view [6].

1.2. Same Sex Marriage as A Federal Political Issue:

It was in 1996 that Congress enacted the Defense of Marriage Act (DoMA), which defined marriage for the first time under federal law as a relationship between two people who are not related by blood or marriage. In other words, only married heterosexual couples are entitled to receive any of the estimated 1,138 government benefits that are specifically allocated for married individuals. ⁹ The supporters of this measure believed that it would deter states from adopting laws legalizing same-sex marriage and that it would remove the need that states recognize same-sex weddings that had taken place in other jurisdictions. DoMA was signed into law by President Clinton after it was passed by Congress with overwhelming support. Tax discounts for opposite-sex married couples, the opportunity to file joint tax returns, and the ability to inherit a spouse's estate are just a few of the federal advantages that are available to them. Health care, job placement helps, survivor benefits, and the ability to continue receiving some benefits if one's spouse dies or the pair divorces are all available to spouses of federal government workers and military veterans, among other things [7].

While the Defense of Marriage Act prohibits same-sex couples from receiving federal benefits, it does not and cannot dictate which state benefits are provided to married couples, how individual states define marriage, or what state laws are passed concerning other aspects of married couples' daily lives. This characteristic of the United States federal form of government has resulted in a diverse variety of state laws governing what defines marriage and the privileges that married individuals are entitled to under the Constitution. In an attempt to counteract the influence of DoMA, advocates for same-sex marriage are urging state legislatures to pass legislation legalizing same-sex marriage and/or same-sex civil unions, as well as legislation recognizing same-sex marriages performed in other states, thereby weakening the influence of DoMA. The Respect for Marriage Act of 2009, which was presented in the House of Representatives on September 15, 2009, has garnered the support of more than 90 sponsors and co-sponsors as of this writing. Its main objective is to get DoMA repealed. In contrast to state laws that ban same-sex marriage, the

federal government would be required to give federal benefits to same-sex couples who are married in a state or another nation that has legalized same-sex marriage. The bill says, in detail, as follows:

If an individual's marriage is valid in the state where the marriage was entered into, or, in the case of a marriage entered into outside of any state, if a marriage is valid in the place where it was entered into and the marriage could have been entered into in another state, the individual is considered married for the purposes of any Federal law in which marital status is considered. The bill is presently in the Judiciary Committee of the House of Representatives. President Obama has expressed support for abolishing the Defense of Marriage Act, but the White House has not stated whether it would back this specific measure. Furthermore, Representative Barney Frank, one of the most prominent gay members of Congress, has stated that he will not support the bill at this time because he believes that there are more important issues that should be addressed first, such as the fight to repeal the military's "don't ask, don't tell" policy [8].

1.3. *Public Policy Issues:*

Consider the following scenario: a lecture on whether or not this measure should become law. Students may participate in a variety of events to learn more about this topic, including a pretend congressional hearing, a mock legislative debate, a Structured Academic Controversy, a public affairs talk, or a debate. These instructional formats vary in significant ways, but they have one thing in common: they both place a strong emphasis on disagreement among students regarding the topic at hand. The discussion should be focused on the most important issues. For example, "Does there seem to be an issue that has to be solved, and if so, what exactly is it?" "Does this policy provide a reasonable answer to the problem?" And, of course, "Will it work?" There are many different types of arguments and evidence that could be used in such a discussion, including ethical and moral arguments and evidence; historical arguments and evidence; personal experience and evidence; sociological evidence; and in this case, constitutional or legal arguments and evidence. The discussion should also include information on the history and nature of the specific issue that the policy is intended to solve, as well as the ultimate objective that the policy will strive to achieve [9].

For example, one might anticipate hearing discussion about issues related to federalism in the case of the Respect for Marriage Act of 2009 (DoMA), that is, under what circumstances should the federal government become involved in regulating marriage given that prior to DoMA, marriage was largely a state-by-state affair. Policy-focused debates will also concentrate on what the intended end goal of an issue should be, as well as whether or not a specific policy would be effective in achieving that objective. When students participate in a discussion of a policy issue, they should gain a deeper and more comprehensive understanding of the causes and nature of the specific problem(s) that the policy issue is about; the origin(s) and history of the policy; what makes the policy controversial; who supports it and who does not; and arguments in favor of and against the policy that are based on a variety of different types of arguments (e.g., economic, historical, etc.). Many instructors expect that as a result of policy debates, students will become more inspired to engage in political activism and become more involved in their communities. When dealing with this situation, instructors may want to make certain that students who are interested in campaigning for or against the Respect for Marriage Act of 2009 are aware of the steps they should take [10].

2. DISCUSSION

When it comes to constitutional problems, it is disputes regarding the meaning of the Constitution that cause widespread debate. State and federal courts have jurisdiction over such matters. A court must examine whether or not an existing government policy or action is constitutional before making a decision on the issue. Can the government use authority in a certain manner without violating the Constitution, to put it another way? Is it necessary for the government to behave in a certain manner because the Constitution demands it in other cases? For example, the issue of whether or not the United States Constitution should be construed to prevent state and federal governments from prohibiting same-sex marriage is presently an example of the first kind of topic to be debated in the country. When it comes to same-sex marriage prohibitions, the issue before the federal courts is whether they violate the 14th Amendment. Or, to put it another way, do the federal and state governments that have policies or constitutional provisions that prohibit same-sex marriage comply with the federal Constitution? If a federal court found that the federal Constitution protected the right to same-sex marriage, it is possible that subsequent lawsuits would concentrate on what the federal government was obliged to do as a result of the right to same-sex marriage being recognized (for example, to extend the benefits that currently go to heterosexual couples to same-sex couples).

In contrast, if a federal court rules that there is no constitutional right to same-sex marriage, states and the federal government may choose to give such a right via court proceedings (in state systems) or state or federal legislation, but they would not be obliged to do so under the law. This is due to the fact that the federal courts create a constitutional floor rather than a constitutional ceiling. This is a key element of constitutionalist thinking in the United States that must be expressly taught since it is so often misinterpreted by students. States have the authority to provide their people rights that go beyond those guaranteed by the federal Constitution, and they often do so. What they are unable to do is deny to provide rights to those who are entitled to protection under the federal Constitution. The Supreme Court may grant certiorari in at least two federal court cases involving same-sex marriage that are now pending and it is conceivable that the Court may do so in any of these cases, or in another that may emerge in the future.

Given the fundamental distinction between constitutional and public policy problems, the kinds of arguments and evidence that should be utilized to address each should be distinct as well. A constitutional debate should center on the language of the Constitution and should examine opposing interpretations of what a particular section of the Constitution means (or should mean) in the context of a specific government policy and important case precedents, among other things. When it comes to the issue of same-sex marriage, the 14th Amendment would be the most important thing to consider. Remember that this amendment prohibits the states (and, according to judicial interpretation, the federal government) from depriving any person of life, liberty, or property without due process of law, or from refusing equal protection of the laws to any person within their jurisdiction.

Previous Supreme Court decisions, such as *Zablocki v. Redhail* (1978), which established heterosexual marriage as a fundamental right; *Loving v. Virginia* (1967), which established that laws prohibiting interracial marriage violated the equal protection clause; and *Lawrence v. Texas* (2003), which established that same-sex sexual activity is not only a fundamental right, but also a constitutional right; will also be studied by students. If a constitutional issue discussion is effective, students should achieve a variety of important educational goals, including: developing a deeper and broader understanding of the meaning of a specific part of the Constitution; understanding that

meaning is socially constructed and changes over time; understanding the important precedents for the issue and various interpretations of how they relate to the issue; and understanding the importance of precedents for the issue and various interpretations of how they relate to the issue.

That there is a difference between what is determined on contentious political matters and what is decided on constitutional problems is a key distinction that, if misinterpreted, may lead to both poor education and poor governance. To provide an example, I often come across instructors who cite constitutional cases as the only preparation for engaging students in policy debates—which is problematic since, as previously said, successful policy talks should rely on a far wider variety of materials. Furthermore, it makes it difficult for pupils to comprehend that just because something can be done does not always imply that it should be done.

I highly urge instructors to incorporate both kinds of problems in their classes—and to connect those together wherever feasible, while yet preserving important distinctions—in their curriculums. The reason for this may be that there just isn't enough time to cover both policy and constitutional concerns connected to same-sex marriage in a single course. If this is the case, one criteria to consider when deciding whether to teach the subject as a policy or constitutional problem is whether the topic is a good match for the curriculum. Consider the following scenario: a teacher is teaching a history course on civil rights legislation and wants to incorporate the federal policy problem as a current example. Another option is to incorporate the federal constitutional problem as a current case inside a broader study of the Fourteenth Amendment in a government or law course, which may be more effective.

Scientific studies have shown that marriage improves the economic, psychological, and physiological well-being of homosexual individuals, and that kids of same-sex parent's gain from being adopted by wedded same-sex couples in a marriage that is recognized by law and promoted by social institutions. Social science study has shown that excluding gays from marriage stigmatizes and encourages public prejudice against them, and research has also found that limiting marriage to heterosexuals is not necessary for civilization or for the survival of social systems to exist. In addition to providing those who are committed to same-sex friendships with relevant public services and placing financing needs on them comparable to those placed on those who are married to someone of a different gender, same-sex marriage can also provide them with legal protections including such inheritance as well as hospital visitation rights. The arguments in objection to same-sex marriage include the assertions that homosexuality was unnatural and deviant, that the acceptance of same-sex partnerships would encourage homosexuals in society, and also that children are best off when their parents are opposite-sex. Scientific research has shown that homosexuality is indeed a normal and natural variety in human sexuality, and also that sexuality is not a matter of personal preference. There have been many studies that have demonstrated that children of the same couples' fare equally as well as kids of opposite-sex couples; in fact, some research have demonstrated that being raised by the same couples has advantages[11].

3. CONCLUSION

Important to remember is that there are learning objectives to be met in either a policy or a constitutional problem debate. Most importantly, either subject would assist students in honing their abilities as participants in a discussion on a topic that often produces a great deal of heated debate and discussion. We would like them to be able to do the following in order to develop these

abilities: listen with respect, ask questions of their classmates, and articulate their own opinions and the reasons that support them, have their opinions examined, and be courageous enough to examine the opinions of others, among other things. Overall, we encourage students to strive for the highest possible standards of public dialogue. We should not be attempting to "alter their views," but rather to expand and deepen the scope of what they already believe. We want students to know more coming out than they did going in, both in terms of the information necessary to grasp the problem and in terms of their own and other people's points of view. Following a debate on same-sex marriage in her high school government subject, one student said, "When it comes to topics like gay marriage or abortion, individuals always have different views, and I felt it in this class as well". However, although some students have claimed that they have changed their minds on extremely contentious topics as a result of discussions in class, the majority of students have said that learning about the problem has helped them better grasp the reasons for their respective views. Students stated that they had the confidence to address critical topics and were no longer scared of doing so. Democracies cannot operate properly if we are afraid of having a public debate about our most difficult problems. In the event that we can assist students in becoming less fearful of speaking out about tough public problems, we will have accomplished one of our most essential objectives as educators.

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