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Same-Sex Marriage in the United States

Michael Stambolis-Ruhstorfer
Université Bordeaux Montaigne

Set of documents

Document A

"It's the Symbolism, Stupid"

When the Massachusetts high court ruled last week that gay couples must be granted full marriage rights, it lobbed a grenade into John Kerry's lap. Here he is, struggling to define himself as a hog-riding, puck-slamming populist, when the patrician tradition of New England liberalism bites him in the butt.

As a senator, in 1996, Kerry stood against the tide by voting no on the Defense of Marriage Act. But now he's doing the presidential-candidate dance, slippin' and slidin' to position himself between the right wing and his own progressive record. Kerry supports "equal rights" for same-sex couples but not marriage. In fact, he just might back an amendment to the Massachusetts constitution that would overturn the court's ruling. "It depends entirely on what the language is," Kerry says […]

There's a twisted reasoning behind Kerry's contortion. He's hoping the amendment in question will void the court's decision but leave room for a civil-union statute. Something like that has happened in California, where voters passed a referendum outlawing gay marriage while the legislature enacted the nation's most sweeping domestic-partner package. But Massachusetts is not Cali. Its history includes a certain tolerance for gay unions, dating back to the 19th century. There's a reason why women living together in those days could be referred to as partners in a "Boston marriage." This genteel tradition is about to collide with blue-collar values, and no one knows which force will prevail. Right now, polls show an even split.

For the present, Kerry is content to claim, "I have the same position that Dick Cheney has," alluding to the vice president's 2000 statement that marriage is a matter for the states to define. Of course, Cheney has now joined the crusade to amend the U.S. Constitution so that states won't have this right. According to his campaign, Kerry opposes that drastic step. So let's get this straight, as it were: Kerry is open to a state marriage amendment but not a federal one. This is a contradiction the Republicans won't let stand. […] Once again gay people find themselves at the hot center of American politics. […]

Considering how little would change if people of the same sex could marry, you have to wonder why this issue has such power. It's got nothing to do with

wages or war. It's not about the deficit or the distribution of wealth. It doesn't involve the question of when life begins. In short, there's no material reason why gay marriage should be such a megillah. But like so much else in American politics today, this is not a matter of substance. It's the symbolism, stupid. […]

This chaotic situation is pretty much the state of American society. The history of this country is an ongoing battle between stigmatized groups and their oppressors, and every gain has produced a ferocious backlash. The abolition of slavery was just the start. The modern civil rights movement sparked major political changes, from white flight to the rise of the New Right. Feminism has had a similar, if subtler impact. […]

Gay liberation should cause far less disruption than other social movements because it doesn't threaten paychecks or require a revision of power relations between men and women. But sexual stigma has a lot to do with how groups are organized—especially male groups. Everything from sports teams to the bastions of patriarchy must be renegotiated when the status of faggots rises. This is much trickier than it might seem. When you talk about patriarchal structures you're dealing with things like religion and the military. That's why issues like gay marriage and the rights of homosexual soldiers are much thornier than discrimination and hate crimes.

Add to this mix the changing nature of marriage. These days, it often follows a long period of cohabitation, and divorce is common. Our ancestors would be stunned to learn that at the age of 30, a third of all American women are single. In their affectional patterns, straights are becoming more like gays once were, and vice versa. Same-sex marriage epitomizes this shift; indeed, it symbolizes everything elastic about status and structure in American life. That's why this issue lies at the heart of the culture wars. It doesn't just involve shared assets and visitation rights. It has to do with the patriarchal order—that is to say, the social order, and if you're a fundamentalist, the word of God. […]

It's often said that the Democrats are bereft of symbols. They can't play the Republican game of bashing the other, since they are the party of otherness. But that speaks to a hidden strength. Barred from the magic kingdom, the Democrats have no choice but to represent the alternative: tangibility. They can remind people that politics are about the allocation of resources, not the meaning of marriage.

Are we still living in a material world? God only knows. But one thing is clear: The most significant issue of this presidential campaign is whether Americans will be led by symbols or reality. Which side is John Kerry on?

Richard Goldstein, article in *The Village Voice*, February 3, 2004.

Document B

I have discussed three main reasons study participants gave for supporting legal marriage—legal and financial benefits, equal rights and social legitimacy—and have presented them as distinct bases of support. But close examination of the comments of the study participants suggests that these reasons often overlap in telling ways. Some study participants discussed *only* benefits, rights or legitimacy in explaining their support legal recognition, but more often people mentioned some combination of these reasons when they talked about legal marriage. Recall how Judith Klein talked about the value of legal marriage, citing rights and social recognition in the same breath when she remarked that same-sex marriage is "a basic civil rights, which just shouldn't be denied, but it will also force a lot of people to reckon with the reality of couples that are same-sex." It is possible to separate these different reasons for analytical purposes, but often the words of the study participants suggest that theses reasons are closely interconnected. For example, when Brad Schuster talked about his desire of he benefits that accompany legal marriage, he framed the benefits as a fairness issue, asking: "Why shouldn't we get the Social Security, and the insurance, and all this other stuff that everyone else is getting if we're doing the same thing?" Likewise Anthony Parisi expressed his desire for equal treatment stating, "I would like to see laws passed that would make it equal to heterosexual marriages, the same benefits, the same acknowledgement." The tangible benefits of legal marriage are important to both Brad and Anthony, then, not only for their inherent value but also as a marker of equal treatment. One's status as an equal citizen is realized by being treated the same way that similarly situated people are treated, including being given the same benefits and protections.

The interpenetration of the different reasons for desiring legal recognition is well illustrated in the comments of James Logan. When we began talking about the legal recognition, James focused on legal and financial benefits. […] In response to these comments, I asked James, "So you think the main benefits of legal marriage would be these financial and legal things?" He responded:

Well it's beyond that though. It's a cultural recognition. It's a background of the social fabric that society as woven into an acceptance of marriage in general. I mean, marriage is as old as this country, as old as society basically, and there's always been benefits that have been reaped and have been levied into those relationships that don't inure to two people of the same sex. And it's not fair…That's the structure that society has come up with, so you function in it, but you should benefit from it as well, that same fabric. It's not just financial.

[…] So for James, the question of legal recognition simultaneously involves tangible benefits, equality, and cultural recognition, all of which are interwoven in a social structure that honors marriage by bestowing rights, benefits and social status on the married.

Kathleen E. Hull. 2006. *Same-Sex Marriage: The Cultural Politics of Love and Law*. New York: Cambridge University Press, pp. 130-132.

Document C

The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity. The petitioners in these cases seek to find that liberty by marrying someone of the same sex and having their marriages deemed lawful on the same terms and conditions as marriages between persons of the opposite sex. These cases come from Michigan, Kentucky, Ohio, and Tennessee, States that define marriage as a union between one man and one woman. […] The petitioners are 14 same-sex couples and two men whose same-sex partners are deceased. The respondents are state officials responsible for enforcing the laws in question. The petitioners claim the respondents violate the Fourteenth Amendment by denying them the right to marry or to have their marriages, lawfully performed in another State, given full recognition.

Petitioners filed these suits in United States District Courts in their home States. Each District Court ruled in their favor. […] The respondents appealed the decisions against them to the United States Court of Appeals for the Sixth Circuit. It consolidated the cases and reversed the judgments of the District Courts. […] The Court of Appeals held that a State has no constitutional obligation to license same-sex marriages or to recognize same-sex marriages performed out of State. The petitioners sought certiorari. This Court granted review […]

Marriage remains a building block of our national community. For that reason, just as a couple vows to support each other, so does society pledge to support the couple, offering symbolic recognition and material benefits to protect and nourish the union. Indeed, while the States are in general free to vary the benefits they confer on all married couples, they have throughout our history made marriage the basis for an expanding list of governmental rights, benefits, and responsibilities. These aspects of marital status include: taxation; inheritance and property rights; rules of intestate succession; spousal privilege in the law of evidence; hospital access; medical decisionmaking authority; adoption rights; the rights and benefits of survivors; birth and death certificates; professional ethics rules; campaign finance restrictions; workers' compensation benefits; health insurance; and child custody, support, and visitation rules. […] The States have contributed to the fundamental character of the marriage right by placing that institution at the center of so many facets of the legal and social order.

There is no difference between same- and opposite-sex couples with respect to this principle. Yet by virtue of their exclusion from that institution, same-sex couples are denied the constellation of benefits that the States have linked to marriage. This harm results in more than just material burdens. Same-sex couples are consigned to an instability many opposite-sex couples would deem intolerable in their own lives. As the State itself makes marriage all the more precious by the significance it attaches to it, exclusion from that status has the effect of teaching that gays and lesbians are unequal in important respects. It demeans gays and lesbians for the State to lock them out of a central institution of the Nation's

society. Same-sex couples, too, may aspire to the transcendent purposes of marriage and seek fulfillment in its highest meaning.

[…]

It is now clear that the challenged laws burden the liberty of same-sex couples, and it must be further acknowledged that they abridge central precepts of equality. Here the marriage laws enforced by the respondents are in essence unequal: same-sex couples are denied all the benefits afforded to opposite-sex couples and are barred from exercising a fundamental right. Especially against a long history of disapproval of their relationships, this denial to same-sex couples of the right to marry works a grave and continuing harm. The imposition of this disability on gays and lesbians serves to disrespect and subordinate them. And the Equal Protection Clause, like the Due Process Clause, prohibits this unjustified infringement of the fundamental right to marry. […]

These considerations lead to the conclusion that the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them. Baker v. Nelson must be and now is overruled, and the State laws challenged by Petitioners in these cases are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite- sex couples.

[…]

The dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right. The Nation's courts are open to injured individuals who come to them to vindicate their own direct, personal stake in our basic charter. An individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act. The idea of the Constitution "was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." West Virginia Bd. of Ed. v. Barnette, 319 U. S. 624, 638 (1943). This is why "fundamental rights may not be submitted to a vote; they depend on the outcome of no elections." Ibid. It is of no moment whether advocates of same-sex marriage now enjoy or lack momentum in the democratic process. The issue before the Court here is the legal question whether the Constitution protects the right of same-sex couples to marry.

[…]

Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central

to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered. The same is true of those who oppose same-sex marriage for other reasons. In turn, those who believe allowing same- sex marriage is proper or indeed essential, whether as a matter of religious conviction
90 or secular belief, may engage those who disagree with their view in an open and searching debate. The Constitution, however, does not permit the State to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex.

Excerpt of Opinion of the Supreme Court of the United States, delivered by Justice Kennedy. Obergefell et al. V. Hodges, Director, Ohio department of Health, et al.
No. 14–556. Argued April 28, 2015—Decided June 26, 2015

Analysis

Preliminary remarks on technique

You will find below the example of a synthetic essay that analyzes three documents related to the issue of same-sex marriage in the United States. The aim is for students preparing to seat the CAPES to have a sense of what can be done with a topic that is both controversial and contemporary. The documents are texts and presented in chronological order from 2004 to 2015. They are different in nature and perspective. Document A is an editorial by a progressive journalist making sense of John Kerry, a former Democratic presidential candidate, and his stance against same-sex marriage. Document B, perhaps the most unusual for students at this stage in their careers, is a short section of a chapter from a non-fiction book written by a sociologist, Kathleen Hull, in which she presents interviews with gay and lesbian people about their feelings on same-sex marriage. Document C is an excerpt from the much longer official opinion written by Supreme Court Justice Anthony Kennedy in the decision that legalized same-sex marriage nationally.

There are some traps here. First, the documents are in chronological order. One might be tempted, therefore, to write an essay that deals with them in their progression. While this is technically possible, the risk of simply describing the texts, rather than analyzing the broader issue using them, is high. As you will see, I chose instead to focus on the ways in which the texts help us understand what is particular about same-sex marriage debates in the United States. That does not mean I ignore their chronology. On the contrary, I engage with the way the debate and status of same-sex marriage changed over time. Yet my focus is not just that progression. I seek to go beyond that by using my knowledge of the institutional, political, and cultural context in the United States. This brings us to the second trap. Success with this essay requires prior knowledge about the Constitution, the Declaration of Independence, and the functioning of the American political and

legal systems both on the state and federal levels. Mastery of this information is generally standard for all students in *civilisation américaine*. Nevertheless, debates over same-sex marriage also require familiarity with gay rights and some knowledge about the Supreme Court decision Obergefell v. Hodges. It is reasonable to expect that students in English Studies pay attention to major political and social events in English speaking countries. Gay rights, like other social movements, including feminism, anti-racism, or environmental activism, are the kind of issue of which students should be keeping abreast.

In reading the essay, pay attention to the way the ideas I write about build on each other in a logical manner. Pacing is important and gives you reader a sense of rhythm and balance. To craft the essay, I first began by reading each of the documents, carefully seeking out common themes across them and thinking about how they speak to each other. For example, Hull's research provides a nice personal illustration of some of the more political questions outlined by the other documents. I then created an outline with the three parts you will see below. Next I pulled out quotes from each of the documents and inserted them into the different sections, organizing and reorganizing them until I was satisfied. Ultimately I did not use all of the quotes I had identified but doing that work helped me think through the documents and the argument I wanted to make. Finally, I wrote out the full essay. You should be aware that I have used headings and subheadings so that my thought process is clear for you but in the official exercise you should use transitions instead. I would like to thank Isabelle Licari-Guillaume for providing an excellent example that inspired my work here.

Introduction

It is not a stretch to argue that American culture is obsessed with marriage and relationships. Whether it be popular interest in the 'First Couple', composed of the president and his or her spouse, the plethora of reality television shows about weddings, or the myriad of customs, such as Prom or Homecoming dances that prepare young people for romantic relationships, the United States is awash in discourse lauding marriage. Given this cultural attachment, it does not come as a surprise that many gay and lesbian Americans would also want to fully participate in the social recognition and legal security afforded to their heterosexual peers for their intimate relationships. This simple demand, however, was until recently the source of significant political controversy and public hostility. The story of same-sex marriage in the United States, from seeming impossibility to constitutionally sanctioned reality, is one of rapid social change. Each of the documents under study here attests to this remarkable process.

Document A is an editorial by Richard Goldstein printed in the newspaper, *The Village Voice*, which was published at the beginning of the 21st century (2004). The title, "It's the Symbolism, Stupid," is a play on the words of the phrase "It's the economy, stupid" that is said to have been President Bill Clinton's winning campaign mantra in 1992. The phrase has since come to signify any

political issue that has a significant impact on presidential electoral politics. In his piece, Goldstein presents the conundrum of Democrat John Kerry, who was running against incumbent George Bush, a Republican, in the 2004 presidential election, as he grapples with the divisive question of same-sex marriage. Goldstein considers Kerry's lack of support for same-sex marriage despite his earlier progressive commitments in light of the highly contested symbolic nature of marriage in American culture. Stating that "politics are about the allocation of resources" (line 66), he argues that gay rights pose no financial drawbacks to society. Goldstein seems to suggest that in a society where gay and lesbian people are still stigmatized, Americans would embrace the legalization of same-sex marriage if Democrats emphasized this economic argument rather than get mired in debates over symbols.

Document B is an excerpt from Kathleen E. Hull's book *Same-Sex Marriage: The Cultural Politics of Love and Law* that was published in 2006. Hull, a professor of sociology, presents findings from her research based on interviews with same-sex couples in the United States. She asks them about their feelings on marriage, which was illegal in all but one state at that point. In this passage, we learn that her interviewees give three reasons to justify why they think same-sex couples should be allowed to marry: "legal and financial benefits, equal rights and social legitimacy" (l.2-3). Yet these justifications also overlap and mix together, ultimately giving marriage a meaning and power that is more than just the sum of its parts. As one of her respondents James Logan suggests, his desire to get married is motivated by practical considerations and by a desire to participate equally in an institution that is a fundamental part of American culture.

Document C is an excerpt from the majority opinion of the United States Supreme Court in the case of Obergefell *et al*. v. Hodges that was decided in 2015. It was delivered by Justice Anthony Kennedy who was writing on behalf of the majority Supreme Court Justices in their five to four ruling that same-sex marriage is a fundamental right guaranteed by the Constitution of the United States. The opinion describes the different parties in the case, their stances, and the history of the appeals process. It then lays out in detail how the majority justifies its ruling in favor of the Petitioners, same-sex couples who are suing their states. Specifically, Kennedy cites the "Due Process and Equal Protection Clauses of the Fourteenth Amendment" (l.61) which, taken together, make clear that same-sex couples cannot be treated differently than different-sex couples. The opinion concludes with a discussion of how religious liberty, as protected by the First Amendment, is not a sufficient justification for banning same-sex marriage.

From different angles, these documents each engage with the research axis *l'amour, l'amitié* by interrogating how marriage as a legal institution both regulates and rewards couples. From the perspective of overcoming inequality and recognizing the effects of social change, Goldstein, Hull, and Kennedy each presents a historically specific perspective on the successful quest of same-sex

couples to achieve justice despite a long history of hostility. The Obergefell opinion represents the culmination of decades of legal and political battles in which same-sex couples' rights are ultimately protected. Hull and Goldstein give insights into the stakes of same-sex marriage before anyone could have imagined that the Supreme Court would hear such a case, let alone make such an historic decision. Their pieces reveal reflections at a time when the issue was politically fraught on a national level and a source of injustice for those most concerned.

As this essay will explore, debates on marriage are at the intersection of politics, legal institutions, and deeply intimate experiences for ordinary people. Because of this, they are typical of the feminist expression from the 1960s: "the personal is political." In particular, the American struggle over same-sex couples reflects the legal institutional circumstances particular to the country as well as the specific role of marriage in cultural rituals and the distribution of material benefits. Thus, understanding the meaning behind these documents requires thinking simultaneously about the legal and symbolic dimensions of same-sex marriage within the context of the contemporary United States.

To unpack these multiple meanings, this essay will first look at the unique way in which marriage operates as an institution in the United States and how that helps explain the high stakes behind demands for marriage equality. We will then turn our attention to the particular political and legal dynamics that shape strategies for legalizing same-sex marriage and the route that ultimately led to the Supreme Court's decision. Finally, the argument will focus on how legalizing same-sex marriage is both a demand for equality that fits squarely within the American tradition of social justice but is also more than a mere request for equal treatment.

I. Marriage: an American institution

Battles over same-sex marriage are best understood when analyzed within their specific national contexts. We begin, therefore, with an analysis of the way these documents reveal their specific American perspective on the issue.

Part of American heritage

On a basic level, marriage has long been a core part of social and cultural life in the United States. As James Logan, one of Hull's respondents declares, "marriage is as old as this country" (doc. B l.33). From as early as the colonial era, marriage was the key way in which family structures were organized to ensure growth of the colonies and patrilineal land control. Over time, access to this social institution has come to signify acceptance and upwardly mobile social status. Indeed, although the contemporary United States has evolved significantly since the seventeenth century, neither democratic revolution nor major changes like the embrace of capitalism have dethroned the place of marriage as "a building block of [the] national community" (doc. C l.21). Indeed, despite these changes, it continues to be seen by ordinary people as "a background of the social fabric"

(doc. B l.31-32). In fact, the resilience of the institution over time leads Goldstein to claim that "it symbolizes everything elastic about status and structure in American life" (doc. A l.58). In other words, marriage orders social life. The rules concerning it, including who can marry or not, what kinds of rights and privileges are associated with it, and who controls it, the state or religious organizations, for example, are all important markers of the role of marriage in the United States. For Justice Kennedy, an authoritative voice about legal dimensions of the question given his position on the Supreme Court, marriage is an "institution at the center of so many facets of the legal and social order" (doc. C l.34). These perspectives make it clear that weddings are more significant than a simple expression of a private commitment between two people. Indeed, because of its importance, the state invests in marriages.

A public policy for distributing benefits

Public investment in marriage takes the form of specific "material benefits" (doc. C l. 23) that serve to both "protect and nourish the union" (doc. C l.23-24), a fact that Kennedy insists on when pointing out how excluding same-sex couples from legal marriage means cutting them off from those advantages. In the United States, this "constellation of benefits" (doc. C l.38) is especially important because of the way the country does not offer a strong welfare state, unlike most other major industrialized countries. This means that many types of social protection, such as healthcare and retirement benefits, to name only those two, are linked with a person's marital status. These benefits provide married couples with significant financial and legal advantages relative to their unmarried peers. On this point, it is worth quoting Justice Kennedy at length because he takes specific care in the majority opinion to enumerate them: "taxation; inheritance and property rights; rules of intestate succession; spousal privilege in the law of evidence; hospital access; medical decisionmaking authority; adoption rights; the rights and benefits of survivors; birth and death certificates; professional ethics rules; campaign finance restrictions; workers' compensation benefits; health insurance; and child custody, support, and visitation rules" (doc. C l.27-31). This list suggests the sheer scope of the investment of American policy in marriage as a privileged institution.

Same-sex couples, whose relationships were ineligible for these rights in many states before the Obergefell v. Hodges decision, were acutely aware of the repercussions of bans against same-sex marriage on their wellbeing. The testimony of Hull's respondents makes clear that they feel a deep sense of injustice that their relationships are excluded from access to "the Social Security, and the insurance, and all this other stuff" (doc. B l.17). This disparity between married and unmarried couples is all the more acute in the United States precisely because the material benefits it implies are not otherwise provided by the government; rather they are often contingent on martial status.

Marriage and federalism

Another typically American aspect of the same-sex marriage debate revealed here concerns federalism. Like so many other aspects of American law, and counter to the situation in many other countries, laws on marriage are a state-level question. This means that there can be significant variation across states within the United States as to the rules concerning who may enter into a marriage. For example, before Loving v. Virginia, the landmark 1967 Supreme Court case that struck down state laws banning interracial marriage, some laws prohibited people of different races from marrying while others allowed it. This variation also applies to the advantages of marriage. Kennedy reminds his readers that "states are in general free to vary the benefits they confer on all married couples" (doc. C l.24). State variation in law, however, also means that some states, before Obergefell, were free to allow same-sex marriage even as others chose to ban it. A "tradition of New England liberalism," for example, meant that Massachussetts was among the first states to legalize same-sex marriage (doc. A l.5). Yet this disparity created a problem. Typically in the federal system, states have had reciprocity in which marriages contracted in one state would be honored in another state, allowing couples to move across state borders without losing their marital status. To prevent same-sex marriages from gaining recognition in this way, states passed laws, ultimately reversed by the Supreme Court, that made it impossible "to recognize same-sex marriages performed out of State" (doc. C l.18-19). This complicated situation was enabled by the leeway American states have to organize most of their domestic policy. Federalism also plays a key role in the way American law was ultimately changed to legalizing same-sex marriage nationally. We now turn our attention to that question.

II. The Politics of changing the law

Gay rights in the United States

The status of homosexuality has changed quickly since the middle of the twentieth century. The gay rights movement has been crucial in pushing American laws to "renegotiate" (doc. A l.48) the patriarchal norms that have excluded them from full membership in society. Access to marriage is one of the many issues in that fight. For same-sex couples, it is obvious that having full legal sanction for their relationships is "a basic civil right" (doc. B l.10). Although the Supreme Court eventually concurred with that perspective in 2015, the road to that decision was complicated and the outcome uncertain. Same-sex marriage is entangled with questions of morality, people's deeply held religious views, and basic demands for rights. For these reasons, it is deeply controversial and, until recently, was so politically toxic that even more progressive politicians were reluctant to embrace it.

Politicians confront fundamental rights

When John Kerry was running for president against George Bush in 2004, same-sex marriage was one of the main campaign issues. The Republican Party, which had endorsed a position against it, was using the issue as a wedge to divide Democrats. In an attempt to appease both sides, Kerry said he supported "'equal rights' for same-sex couples but not marriage" (doc. A l.9). This stance, which Goldstein seems to criticize as hypocritical, was typical of the Democratic Party at that time. Indeed, until Barack Obama came out in favor of same-sex marriage a decade later, the prevailing view among party leaders was that same-sex couples should have the same benefits as married couples, including those discussed above. These contracts would be called civil unions or domestic partnerships and treated distinctly from traditional marriage. It may have been politically expedient at the time. Indeed, as Goldstein himself observed, "polls show[ed] an even split" (doc. A l.22). The division in public opinion likely meant that Kerry's position reflected an effort to garner support from the half of voters not in favor of same-sex marriage.

This political calculus, however, runs into the underlying question about whether fundamental rights should be up for political debate at all. The concept of inalienable rights, enshrined in the Declaration of Independence and built into the Constitution, suggests that some issues should not be submitted to popular consideration. In the eyes of the Supreme Court, who is judging on centuries of judicial precedent, the Constitution was designed in order to "withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials" and ensure that "fundamental rights may not be submitted to a vote" (doc. C l.78-79). Whether or not allowing same-sex couples to get married is such a right was what politicians disagreed about during the 2004 presidential campaign. Gay and lesbian activists, however, did not have to rely only on elected officials to seek legislative changes. They could turn their efforts to the courts as well.

Turning to the courts

Indeed, the judicial avenue of reform, one of the hallmark venues through which minority groups have sought justice in American democracy, was their other option. Kennedy points out "that individuals need not await legislative action before asserting a fundamental right" (doc. C l.70). Judicial review, the idea that courts have the power to determine whether acts of Congress or state legislatures respect the Constitution, allows for just this kind of examination. When Goldstein's editorial was published, the gay and lesbian community had just earned an early judicial victory when the Massachusetts high court ruled that gay couples must be granted full marriage rights" (doc. A l.43). The state supreme court had ruled in their favor and, in so doing, had "lobbed a grenade into John Kerry's lap" (doc. A l.3). Evidently Kerry was so determined to maintain his anti same-sex marriage stance that he was willing to consider sponsoring an

"amendment to the Massachusetts constitution" (doc. A l.10) with the expectation that doing so would invalidate the court's ruling.

Many state legislatures would in fact modify their constitutions during the 2000s in order to prevent their courts from interpreting their constitutions in the same way as the Massachusetts judges. They had anticipated that courts might find that marriage was indeed a fundamental right. The gain made in Massachusetts sparked "a ferocious backlash," like so many other instances of advances of "stigmatized groups" (doc. A l.39-40). In this instance, conservatives modified their constitutions to make clear that marriage could only be contracted between a man and a woman. In turn, same-sex couples could argue that their right to marry was enshrined in the United States Constitution, which by virtue of the "supremacy clause" (Article VI, Clause 2) is superior to state constitutions. While the confrontation would continue in the states, both in courts and legislatures, activists turned their attention to the federal courts.

Kennedy describes how the cases that ultimately arrive before the Supreme Court emerged when litigants filed suit in "United States District Courts in their home States" (doc C l.13), specifically "Michigan, Kentucky, Ohio, and Tennessee" (doc. C l.6), and then appealed to the Circuit Court. These states had explicitly banned same-sex marriage, leaving gay and lesbian activists with federal courts as their only recourse. Though most people who lose in a lower court petition for "certiorari" (doc. C l.19), or appeal for consideration to the Supreme Court as a last resort, the Court rarely grants it. Though the Court never reveals why it decides to grant certiorari, we can assume that the high political stakes, the deep polarization, and the clear constitutional implications of the case motivated them. What we do know is that their final ruling was decided by a very slim margin, with only five of the nine justices in the majority siding with the arguments of the same-sex couples. Those couples and their attorneys gambled that they could convince enough of the justices to agree that the Constitution protected their rights. They were correct. Kennedy and his concurring colleagues found two parts within the Fourteenth Amendment of the Constitution to support their ruling, "the Due Process and Equal Protection Clauses" (doc. C l.60-61). These clauses, which have also been used to expand the rights of other subjugated groups in major decisions, to determine that "couples of the same-sex may not be deprived of that right and that liberty" (doc. C l.61-62). As the next section discusses, this groundbreaking decision not only gave same-sex couples the equality of rights they were seeking, it also gave them a deeper form of social recognition.

III. More than equality

Defining equality

In light of the Supreme Court decision in Obergefell, we now know that John Kerry's claim that he supported "'equal rights' for same-sex couples but not marriage" (doc. A l.9-10) would be constitutionally contradictory. Distinct

institutions for gay and lesbian couples, such as domestic partnerships or civil unions, even if they grant all the same privileges and responsibilities as marriage, are inherently unequal. The Supreme Court's decision makes clear that a standard definition of equality, treating people in the same situation the same way, is required by the Constitution in this case. In the words of the majority opinion, the state cannot "bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex" (doc. C l.95-96). This legal definition mirrors the lived experiences of ordinary gays and lesbians, including those interviewed by Hull. For them, "being treated the same way that similarly situated people are treated" was what motivated them in the first place (doc. B l.24). Having their relationships recognized in the same way would be "a marker of equal treatment" (doc. B l.23).

Inequality as oppression

As mentioned in the first section, marriage is more than just a package of benefits. It is a fundamental right inherent in the liberty of the person" (doc. C l.60) and organized socially. The investment of the state "makes marriage all the more precious by the significance it attaches to it" (doc. C 41-42). Same-sex couples, when asked about their views on it, realize that they live "in a social structure that honors marriage by bestowing rights, benefits and social status" (doc. B l.40-41). Putting things differently, Justice Kennedy affirms that the state sanctioning of marital relationships mirrors the bond between the spouses. He writes, "just as a couple vows to support each other, so does society pledge to support the couple" (doc C l. 22-23). Whether or not this exceptional status of marriage relative to other relationships is fair remains a valid question. Yet, because it's "the structure that society has come up with," as James Logan affirms to Hull, "you should benefit from it as well" (doc. B l.36-37). Denying same-sex couples access, therefore, creates a particularly noxious form of oppression that goes beyond unequal treatment.

Because of the special social meaning of marriage, "exclusion from that status has the effect of teaching that gays and lesbians are unequal in important respects" (doc. C l.43). Barring them access to marriage harms same-sex couples specifically but it also sends a larger message that gay and lesbian people are not as worthy as their heterosexual counterparts. For Justice Kennedy, there is no justification for prohibiting same-sex marriage other than to "disrespect and subordinate" (doc. C l.55-56). Goldstein's analysis of the marriage debates in 2004 confirms that marriage laws have to do with the "patriarchal order" (doc. A l.60) of which homophobia is a symptom. Combatting bans against same-sex marriage, therefore, is all the more impactful because it also strikes against anti-gay oppression more generally.

Full citizenship

Because of these broader implications, the Supreme Court's decision goes beyond just recognizing marriage equality. It establishes a fuller citizenship for gay and lesbian Americans by including them into the fold of social acceptance. Same-sex marriage has been a "megillah," (doc. A l.35) a Yiddish expression qualifying a complicated issue, precisely because of this "symbolism" (doc. A l.36). Justice Kennedy himself acknowledge this "symbolic recognition" (doc. C l.23) that marriage bestows upon the groups of people a country deems worthy of the institution or, as one of Hull's interviewee says, "It's a cultural recognition" (doc. B l.31). For example, when anti-miscegenation laws where struck down by the Loving case in 1969, the Supreme Court undermined the logic of racism by allowing men and women to marry someone of another race. In this way, there are "transcendent purposes of marriage" (doc. C l.45) where its material and symbolic aspects are "interconnected" (doc. B l.14). Judith Klein, another of Hull's respondents, makes this point clear. Legalizing marriage for gay and lesbian people forces "a lot of people to reckon with the reality of couples that are same-sex" (doc. B l. 11-12). In addition to guaranteeing legal equality for their relationships, same-sex marriage creates visibility and legitimizes a group that has faced historic stigmatization.

Conclusion

This essay has analyzed the way in which each of the three documents engages with the meaning and evolution of same-sex marriage in the United States at the turn of the twenty-first century. We first dealt with the specifically American aspects of the debate as they are reflected in perspectives of the different authors, from the historical role of marriage in American culture to the distribution of welfare and the impact of federalism. To make sense of the order and progression of the debates over time, the second section examined how same-sex marriage has played out in presidential politics but was ultimately decided by the judiciary through a landmark Supreme Court decision. Finally, looking at the impact of that decision, we considered the way legalizing same-sex marriage is about equality, in the strict sense and as understood by same-sex couples themselves, and has further implications for the social acceptance and citizenship gay and lesbian Americans more generally.

Thanks to the Obergefell decision, same-sex couples in the United States can get married on terms equal with those of different-sex couples. This is undoubtedly a success from the perspective of advocates of gay rights. Yet many domains of American life, such as the workplace or public accommodations, remain sources of inequality for gay and lesbian people. Indeed, without federal laws prohibiting discrimination on the basis of sexual orientation, the symbolic gains of marriage equality may remain muted in many states. Under the current administration and with the makeup of the Supreme Court having shifted to favor more conservative justices, one wonders if the avenues that led to success in the past are becoming more treacherous.

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