



Understanding Current LGBT-Related Policies and Debates

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Although it sometimes feels like it, Syracuse University does not exist in a vacuum. Instead, students here are simultaneously engaged with our campus culture as well as the larger society in which we live. The following discussions contextualize the experiences of LGBT students in light of current policies and debates that focus on the lives of lesbians, gay men, bisexual, and transgender people in the contemporary United States. While the topics here do not fully address the range

of issues that LGBT people must constantly negotiate, they serve as a starting point for those who are unfamiliar with current legislation and controversy to begin to engage with subjects that concern many of us. Readers are encouraged to continue exploring the current relationship between the LGBT community and the primary social institutions of our culture by following the internet links provided at the end of the article. Please note: while the following information, facts and statistics were current in 2004, our culture

is ever-changing, and rights legislation is both supportive of and detrimental to the experiences of people in LGBT communities.

Legislating Sex

Until 2003, many states outlawed any “unnatural” (non-procreative) sexual conduct, defined as sodomy. Although many heterosexuals engage in various kinds of non-procreative sex, homosexuals were disproportionately affected by enforcement practices. Under these laws, LGBT citizens, found in the privacy of their own homes having sex, were subject to arrest, prosecution, and/or fines. Those convicted under sodomy laws were also potentially labeled “sex offenders” by the State for the rest of their lives, a particularly degrading and debilitating consequence in the face of widespread sex offender websites and employee background checks. However, in 2003, the Supreme Court of the United States recognized a compelling argument in the case of *Lawrence v. Texas* and, in a

5-4 decision, the court ruled that state laws criminalizing sodomy were an unconstitutional invasion of privacy. This landmark decision effectively invalidated all contrary state laws and insured that homosexuals would never again be *legally* persecuted for their sexual practices.

Gay Adoption

Although there were problems with reporting because people could not identify as gay on the response form, the 2000 Census counted approximately 600,000 same-sex couples. Some estimates suggest there are between 6 and 14 million children with at least one gay parent. Although many homosexuals have children from prior heterosexual relationships, gays and lesbians are seeking to adopt in ever-greater numbers.

While only three states (Florida, Mississippi, and Utah) have laws that explicitly prohibit same-sex adoption, according to the Human Rights Council (HRC), courts in 10 states tend to discriminate against same-sex couples wishing to adopt. Furthermore, only six states (Connecticut, Illinois, Massachusetts,



New Jersey, New York, and Vermont) and the District of Columbia have made second-parent adoption available statewide. This provides the equivalent of step-parent adoptions to gay and lesbian couples.

The Right to Serve

In 1992, President Clinton signed “Don’t Ask, Don’t Tell, Don’t Pursue.” Under the policy, military commanders are prohibited from inquiring about an officer’s sexual orientation. The “Don’t Tell” policy allows for the investigation and administrative discharge of service members if they either make a statement indicating that they are lesbian, gay or bisexual, engage in physical contact with someone of the same sex for the purposes of sexual gratification, or marry (or attempt to marry) someone of the same sex. The “Don’t Pursue” policy bars anti-gay harassment as well as homosexual purges and certain other invasive investigations that have been used over the years to root out gay, lesbian, and bisexual service members. However, policy and practice are often two different things.

Unfortunately, women and young adults ages 18 to 25 are disproportionately affected by this policy, according to the Servicemembers Legal Defense Network (SLDN). Overall, the SLDN reports that women made up 15% of the armed forces

in 2002, but accounted for 31% of those discharged under the law. Women are investigated often in retaliation for poor performance reviews, after refusing a man’s sexual advances, or after reporting a man for sexual harassment. The 2002 Defense Department inspector general survey also found a “substantial” difference in responses according to level of service, which typically corresponds with the age of the service member. For example, 78% of respondents stated that enlisted service members were harassed in violation of “Don’t Ask, Don’t Tell.” Only 2% said the same for officers. Since its passage, more than 9,000 persons suspected of being homosexual by their superiors have been discharged from military service at a cost of over a quarter of a billion tax dollars.

Gays in the Workplace

Currently, there is no federal law preventing workplace discrimination on the basis of sexual orientation. Only 14 states and the District of Columbia have laws banning sexual orientation employment discrimination in the public and private sectors. An additional 11 states have similar laws that are effective only in the public sector. This means that in most states people fired because they are a part of a sexual minority have no sure legal remedy. The Employment Non-

Discrimination Act (ENDA), H.R. 2692, was introduced in the House of Representatives and the Senate on July 31, 2001 with significant bipartisan support, but the Senate continues to deliberate the bill. The Human Rights Council reports 7,210 workplaces offering domestic partner benefits, an affirmative statement of non-discrimination. Further, 2,579 companies, including Syracuse University, have non-discrimination policies that include sexual orientation, but these policies are optional, at best.

Transgender Rights

In 2004, four states (California, Minnesota, New Mexico, and Rhode Island), 10 counties, and 55 cities included gender identity and expression under their anti-discrimination laws. Clearly, this represents a very small portion of local and state-wide anti-discrimination statutes. Under these laws, transgender individuals are usually protected from discrimination in housing and employment, but these statutes are not consistent and only occasionally cover the domain of public accommodations and are even less likely to ensure protection from discrimination in public education systems. In fact, of the four states that include some protection for transgender people, only Minnesota guarantees them a right against discriminatory policies and practices at

public schools. Although many regions continue to add transgender-inclusive legislation, this is clearly an area where laws do not match their necessity: transgender people often report that biased treatment and violence are frequently directed toward them due to their non-normative gender identities.

Civil Unions, Domestic Partnerships, and Gay Marriage

Though not always apparent, there are many differences between civil unions, domestic partnerships, and marriage.

Same-sex marriage is the only status that confers all the benefits of heterosexual marriage, including all those previously discussed.

Civil unions, available only in Vermont and only to same-sex couples, provide the same *state* benefits received by married persons in the state, but these unions are not recognized outside the state of Vermont (except in California and Massachusetts).

Domestic partnerships are available through some states, namely California, and are also offered by private and public sector employers for the purpose of extending employer

related benefits to same-sex partners. However, domestic partnerships are not recognized by most states, or by the U.S. government. Importantly, many people within and beyond the LGBT community feel that marriage is the only choice towards full equality for LGBT partners. Civil unions and domestic partnership create a separate, but unequal, system: one that history has proven unconstitutional.

Is Marriage a Right?

The issue of whether same-sex partners should have access to legally recognized marriages is contentious at best. A December 2003 bipartisan poll conducted jointly by Public Opinion Strategies and Greenberg Quinlan Rosner Research shows that only 30% of likely voters favored allowing same-sex couples the right to marry, 56% opposed such legislation, and 13% were undecided. A similar poll asking about civil unions showed 42% in favor, 49% opposed, and 8% undecided. These numbers show high levels of opposition to gay marriage, but despite this widespread disapproval, the Massachusetts Supreme Court has recently ruled that laws barring gay couples from marriage are discriminatory and has asked its legislature to begin issuing marriage

licenses to gay couples.

Arguments supporting gay marriage indicate the many benefits denied to committed gay couples that are enjoyed by their heterosexual counterparts. According to a 1997 Government Accounting Office (GAO) report, the federal government denies 1,049 benefits to same-sex couples because either they are not allowed to marry or their unions are not legally recognized as the equivalent. More specifically, here are some examples of benefits that are systematically denied to members of the LGBT community:

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- > As unmarried partners, gays and lesbians are unable to receive Social Security survivor benefits which translate into an average loss of \$166,000 for a life expectancy of 77. Because many gay and lesbian

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partners are also legally denied the opportunity of second-parent adoption, the loss of income is compounded since a shared child is additionally denied survivor benefits of up to \$900 per month.

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- > Federally recognized marriages enjoy many tax exemptions that same-sex couples do not have access to, such as the estate and gift tax exemption, which allows property to be transferred, without tax penalty, from one spouse to another.
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- > Current immigration laws deny gays and lesbians the right to petition the government for the residency or citizenship of their same sex partners.
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- > The Federal Family and Medical Leave Act allowing married spouses up to 12 weeks of unpaid leave to take care of a seriously ill partner, parent, or child does not extend to same-sex couples.

As the polls show, views on same sex marriage are highly polarized. The Family Research Council illustrates the arguments against gay marriage and civil unions by highlighting two principles. The first is that marriage should not, and cannot, be extended to same-sex couples because it

is a construct that precedes the U.S. Constitution. Marriage, they argue, is the recognition of a social reality whereby two adults, capable of natural reproduction, form a committed relationship toward the bearing and rearing of children. Thus, in the opinion of these opponents, marriage is necessary for the survival of society and should be protected from the government since it, in turn, benefits the larger culture. Because homosexuals cannot engage in a relationship that biologically produces a child, they should not reap the same rewards as those members of society who can. The second argument posed by the Family Research Council is that homosexual relationships are harmful to their participants. Proponents of this position argue that extending marriage privileges to homosexuals would confer a stamp of approval on a harmful lifestyle and would further deteriorate the importance of the family in America.

Fearing the eventual extension of marriage to same-sex couples, conservative groups have organized campaigns nationally, and in every state, by lobbying for the passage of Defense of Marriage Acts (DoMAs). However, supporters of these proposals are not limited to groups with clear anti-gay intentions. Instead, in 1996, President Bill Clinton, often considered the most LGBT-supportive president, signed a *national* DoMA that

declared any civil union, domestic partnership, or same-sex marriage need not be acknowledged outside the state in which it was established. Since its passage, many states have passed their own DoMA laws codifying this idea in their state legislature. However, still unsatisfied with local and state-level DoMAs, President Bush has recently asked the U.S. Congress to add an amendment to the U.S. Constitution declaring marriage as a legal union exclusively between a man and a woman.

This amendment would prevent all states from adopting future laws that would counter this definition.

No doubt, this issue will continue to be a hot button between conservative groups and gay rights advocates for years to come.

Nature v. Nurture

Ah, the eternal debate: are gay people born that way or do they choose to be gay? Many gay men and lesbians say they've known they were attracted toward members of their own gender since they were very young. Explaining that a "choice" was never posed, or made, these stories serve the argument that there must be a genetic cause to sexual orientation. In fact, throughout the last few decades, many gay rights activists hoped that the discovery of a biological basis for homosexuality would lead them to winning legal rights for the



Fear of being discovered can prevent an instructor from asserting a certain position. This is especially damaging in a social science classroom.

>Teaching Assistant

LGBT community. The thinking here is that if sexual orientation were immutable, then people in the LGBT community deserve protection from discrimination, similar to other "minority groups" such as people of color and people with disabilities. However, biological studies into a "gay gene" have been inconclusive at best, leading many critics of this type of research to ask, "instead of looking for a gay gene maybe it would be easier to find a straight gene?" a challenge which, not surprisingly, has gone unmet. Instead, a biological basis for sexual orientation remains undiscovered.

Social scientists continue to contribute to the Nature v. Nurture debate by arguing that human behaviors are always social and

