The Defense of Marriage Act

The History and the Controversy

**Introduction**

In many cases of policy definition, a cultural shift takes place that forces politicians to address a previously unidentified social issue. The general public is usually the first group to become aware of a problem, and they transfer the responsibility for dealing with that problem to the policy makers. In the case of marriage for homosexuals, it is a matter that is still in the throes of conflict and changing policy.

The issue of gay marriage was not always a social problem. As homosexuals have become more influential and accepted in our culture, the idea of marriage has presented a problem for liberals and conservatives. Should society redefine what has come be known as traditional marriage? Should marriage itself be debated in the public square and legislated on by policy makers? Does the federal government have a responsibility to end discrimination, even if it means jeopardizing states’ rights? These and more questions are what are at the heart of the marriage equality debate, and they steer policy makers in making their decisions.

In an effort to confront this issue, the Clinton administration signed into law The Defense of Marriage Act (McClain, 2009). This congressional bill stipulated that marriage, by definition and lawful practice, would only be for couples of the opposite sex. This law, in effect, shuts loving homosexual partners out of marrying, and thus does not grant them the hundreds of benefits that heterosexual marriages enjoy.

The entire debate over same sex marriage has affected our society unlike any other political issue. Musicians like Lady Gaga have voiced their feelings on the issue. The idea of the homosexual lifestyle and agenda is now irrevocably tied to marriage. Everyone seems to have an opinion on the matter, from celebrities to priests, the downtrodden and the affluent. The larger question in the debate is: what is the definition of marriage according to the United States, and does same sex marriage threaten that definition and traditions of this country?

While the overarching debate over homosexual equality is an important one to have, this paper will look at the Defense of Marriage Act policy, which bluntly defines marriage as between one man and one woman. The intention of this definition and legislation is clear: to comfort the discriminatory groups who are against homosexuals and further silence a persecuted minority in this country.

**History**

Since the era of the AIDS crisis, the public has become more conscious of the homosexual community and the disparities they face in society. Policy makers continuingly try to update and alter current legislation in order to accommodate homosexuals and heterosexuals who are caught in a changing society. Since 2004, six states have enacted laws that recognize the lawful marriage between people of the same sex. However, those marriages are only recognized in those six states, as the marriage between homosexuals is not recognized at the federal level.

In 1996, President Bill Clinton signed the Defense of Marriage Act (DOMA) into law. This act by Clinton was in response to a court decision in Hawaii which ruled that same sex marriage was lawful under the Hawaii constitution. Congress and the President faced tremendous pressure from religious and other social groups that demanded the US only practice traditional, heterosexual marriage (Anderson, 2011). The impact of the Hawaii decision was viewed as a threat to the other states, and those groups wanted a clear position from the federal government on the definition and practice of marriage.

Since becoming law, DOMA has faced a steady amount of political and social blowback. Many Democrats now want to reform, or fully repeal, the law in light of recent social movements that have resulted in a paradigmatic shift in this culture’s attitude toward homosexuals. For over a decade, public support for gay marriage has steadily been on the rise, with many polls now showing an even split between those who favor and oppose the concept of homosexuals marrying one another. In fact, some Democrats now want it to be a position on their party platform this year. President Obama has said his stance on marriage equality is evolving, but many people want him to fully endorse the idea this year. In fact, some political observers believe the president is already in favor of marriage equality, but is waiting for a politically opportune moment to declare his position. If the president were to put his support and power behind marriage equality, it would have the effect of energizing the bases of both major political parties. As usual for the government, this decision may wind up being a political move rather than a position based on conviction.

On the Republican side of the political spectrum, the party of Lincoln still views gay marriage as a threat to not only traditional, man and woman marriage, but also a threat to the moral fiber of the country. A longstanding tradition for the GOP has been to introduce policies that affect the budget, military and general relationship between the federal government and business. Alongside these legislative endeavors, the party also tries to hold together the moral and ethical consciousnesses of the nation.

Many Republican politicians feel religion (particularly Christianity) should not be excluded from public discussions of policy formulation and implementation. In fact, many public servants on both sides of the aisle get there policy ideas from their religion and upbringing. For the Republicans, this includes legislating on matters on abortion, marijuana and the very definition of marriage. While there are no studies or statistics to suggest that heterosexual marriages are more productive or take care of children better than homosexual marriages, the GOP offers another take on why they are fighting this issue so vehemently. The view of most Republicans is that America would be a greater power in the world if it went back to the original messages and laws the framers had when they wrote the Constitution.

This helps explain why they tend to lean towards conservative stances. Unlike liberals and progressives, who feel that the only way to solve social issues and crises is to move forward and update laws, conservatives feel the government intercedes too much and actually hinders social growth and change. They view the country, and its policies, as too complicated and too far removed from what the founders intended. This combination of religious injection into social politics and restoring the founder’s intentions explains the party’s resistance to updating our views on marriage.

The religious aspect of this particular debate cannot be understated. It seems as if every issue has some kind of religious dogma thrown in to it now. Abortion, marijuana, same sex marriage: all are framed and debated around the role and prominence of religion in this country. While many would like to see the US implement a more rigorous adherence to the Bible, that opinion may well be jeopardizing any hope of solving these matters (Greene, 2009).

The Bible does, indeed, state that homosexuality is a sin. Also, that marriage should be between one man and one woman. However, there are many other passages that could be followed just as easily; such as not wearing clothing made from two different types of material. Or not eating shellfish. Or beating a disobedient child in the public square. Or selling one’s daughter. These and many other passages are all in the Bible. The religious right seems fixated on the issue of same sex marriage, and loves to quote from the Bible often. However, to ignore the other passages is to ignore, possibly, the true meaning of the book.

The issue of same sex marriage seems to have overridden the policy process to a certain extent. In a perfect world, policy makers would become aware of a problem, come up with solutions that address it, and implement one, or a combination of, solutions (Theodoulou & Cahn, 1995). However, because of the political vitriol and general abhorrence to homosexual issues, policy makers seem to have hit a road block. They are unable to properly debate and legislate on this issue, as their own feelings, and the feelings of their constituents, get in the way of any meaningful debate.

Since the implementation of DOMA, the legal woes between the states and federal government have only increased. Even though several states have legalized homosexual marriage in their territory, the federal law of the Defense of Marriage Act supersedes the practices and laws of the individual states (Charlow, 2009). For example, some gay couples who have been married in states where it is legal still do not have all of the legal benefits of marriage. Recently, a gay couple who were married faced legal troubles because one of the partners did not have a green card. In heterosexual marriages, this circumstance is bypassed by marriage. In the case of this homosexual couple, the policies in DOMA still treat them as if they weren’t married at all.

This is not the only issue with DOMA. For people who do not live in a state that recognizes gay marriage, couples who have been together for decades can face discrimination and inequality. There are many stories (popularized in various TV shows) that describe gay men and women, who have been in a committed relationship for many years, who cannot act as their partner’s voice. Should someone in this couple fall into a coma, the other partner would not legally be allowed to speak on their behalf.

These, and other problems, are all reasons why many people admonish the federal policy. However, there is still no clear direction in how policy makers should address DOMA. While the issue of marriage equality is likely to be a political football for years to come, the DOMA legislation is itself in the process of being altered. Recently, President Obama directed his administration to stop defending the policy, and has even stated that it is unconstitutional. In light of the president’s stance, the constitutionally of gay marriage may shift from the states to the federal government. However, if the Defense of Marriage Act is still in place, it will conflict with any progress on the issue.

The current presidential campaign is not helping matters. As the two dominant parties become more entrenched with fighting with each other, issues such as same sex marriage will be a wedge issue that divides Congress and the people. As long as hot heads are allowed to prevail in the public square, no real progress or compromise can be attained.

**Solutions**

Policy makers have been forced to deal with this issue in light of lawsuits against DOMA from states and married homosexuals. The fact that individual states have a law that differs so greatly from a federal policy is an inherent conflict that cannot be ignored or left unresolved. Whether it is the current administration and Congress, someone will need to implement a policy that addresses this issue and fixes it. In my mind, there are three options that policy makers should consider when reviewing DOMA: to leave it alone, reform it, or repeal the law.

To begin with, policy makers have the option of leaving the law intact as it stands. While President Obama did direct his administration to no longer uphold the law that does not mean that a future administration would not just reinstate the law in full force. Indeed, recent Republican presidential candidates have stated that they would do just that. The issue can be ignored and put off, which certainly some politicians would find advantageous in order to avoid a political battle.

In order to leave the law as is policy makers would need to put aside any LGBT agenda. Also, by leaving DOMA intact, politicians would be sending a clear message to homosexual couples who want to marry: the policy of restricting the definition of marriage would not be changed and would continue to impact how states can operate for themselves. Leaving a controversial law intact is one way for politicians to kick the can down the road, so to speak. They are passing the responsibility onto a predecessor, and onto the next generation.

This method of dealing with a policy problem can have its benefits and detriments for policy makers. Many people who get into politics do not want to introduce legislation that would cause any kind of social upheaval. They are looking out for their own legacy when they choose to not address a pressing social dilemma. While this outlet may allow them to have a clean record and high approval ratings, it does not advance society because they do not address the needs of the public.

The second option for dealing with DOMA would be to reform the law. This would entail altering, rewriting, and even throwing out or keeping certain aspect of the law. As our culture continues to move in the direction of accepting and endorsing marriage equality, many people do not want it to come too quickly. Still others are not comfortable with the idea all together, fearing it will lead to the diminishment of society. With several conflicting opinions regarding gay marriage, it may be beneficial to just reform the policy in order for people to get accustomed to the idea of marriage equality.

Reforming the policy of DOMA could lead to several areas in which policy makers could update the law. For example, they could rewrite the law to not deport people who have already been married in the states that allow it. Alongside this, the law could implement a policy that married couple’s rights can transfer to other states should they move (Ginsberg, 2010). As it stands, couples need to remain in the states where they are married in order to receive the same protections and advantages as other married couples. If this continues, homosexuals may be defined as a diasporas minority in society, meaning they would primarily be located in states that have passed marriage equality legislation. This option, like the previous one, also has the effect of the majority ruling on the rights of a minority. Such a practice is indefensible and abhorrent to justice and equality.

Take the Proposition 8 marriage law in California. People who were outright against marriage equality were allowed to legislate on an issue that does not affect them. Indeed, the issue of gay marriage affects gay couples, and really no one else. No matter how that vote went a few years ago, allowing an entire state to vote on an issue like that was wrong. Without any public debate and objective thought, people should not have a say on the rights of others.

For advocates of marriage equality, a reformation of the law would signal a clear shift in the stance of policy makers. For opponents of marriage equality, leaving some of the law in place would help to get them acclimated to the idea of gay marriage. Reforming the law would help to implement a phased understanding and acceptance of the issue. As this culture moves steadily towards accepting homosexuals and homosexual marriage (Alexander, 2011), the people who are currently opposed to the idea may find their beliefs changed as time goes on.

Finally, the last option policy makers have for DOMA would be to completely repeal that law in its entirety. While repealing DOMA would not automatically mean gays and lesbians could marry in every state, this option would clear the way legally for many states to adopt marriage equality legislation. Additionally, it would put an almost immediate end to the lawful discrimination practices embedded in the law. It would also end the deportation of already married couples who could not become citizens through marriage, because of the way DOMA was written.

The current administration has the best chance of fully repealing the law. The Obama presidency has already seen huge changes to policies regarding homosexuals (Matz & Tribe, 2012). President Obama repealed the Don’t Ask, Don’t Tell military law. Additionally, he has added gays and lesbians onto domestic and international anti-discrimination policies, spoken repeatedly at the Human Rights Campaign conference, and directed the justice department to no longer defend DOMA.

Of course, repealation of the law would result in a backlash towards the administration. The far right wing of the Republic party, for instance, would view the move as the federal government imposing its views upon the states. Many people would see this as the federal government redefining traditional marriage, and there are many couples already threatened by the idea of gay marriage. The repealing of the Defense of Marriage Act would galvanize the far right, and they would argue that this president is not ethical enough to hold office.

**Recommendation**

The option that is the most attractive to policy makers might be reforming the Defense of Marriage. Certainly it has its benefits. Reforming the law would help end discrimination in some areas, smooth out legalities and issues associated with the law, and allow politicians and law makers to continue to debate this issue. What is not needed, some might argue, is to change the law completely before society is ready for it.

However, the position of this piece is that DOMA should be repealed in its entirety immediately. While it may be appealing to not take on such a divisive issue where so many people have different opinions and feelings on the matter, sometimes it is necessary in order to allow minorities to have equal rights. Take the Civil Rights Act for example. This legislation effectively illegalized Jim Crow laws of the day and made it illegal to discriminate against people of a different color (Gardina, 2009). While there are still certainly issues to address for civil rights, President Johnson and Dr. King knew not to phase the law into society.

Such a strategy is necessary for dealing with DOMA. Too many couples are not allowed to share their lives with one another, and even more face discrimination and violence from people. Minorities, throughout history, have usually been discriminated against. Whether it is Jews, African Americans, Native Americans, or homosexuals, anyone who seems to not be in step with ‘traditional’ values and beliefs is ostracized in society. It should be the role of the government and policy makers to help the minority become accepted in society, not pander to bigots who feel any way of life other than their own is wrong.

This debate does not just encompass the gay lifestyle, or what it means to be gay. This debate deals with the very nature of marriage itself. Of course, marriage in this country has altered already. People, generally speaking, no longer offer a dowry for brides. Interracial couples have been allowed to wed for generations now, a practice that was once reviled. For people who wave the Bible around to support their beliefs, that definition of marriage has also changed. A woman is not the property of a man, for example.

Certain minorities may always be discriminated against by groups of people, and maybe even by social institutions. However, governments should be in the business of not allowing institutionalized discrimination to permeate for long. Unfortunately, this has been allowed to happen for gay couples who want to enjoy the same rights and benefits as every other tax-paying American. For a truly free society, everyone must be allowed to be free and equal in the eyes of the law.

**Conclusion**

The debate over homosexual marriage is nothing new, and will likely continue for some time. Some people will never support the concept. However, it is important to remember that lawful discrimination is still discrimination. Some forms of discrimination are culturally acceptable. Denying same sex couples equal rights is, right now, a socially acceptable act. It is the duty of policy makers, though, to not encourage discrimination. Indeed, it should be there role to clearly stand up for the disadvantaged and speechless; to fight back against discrimination, whether it is a small group who is doing it or if it is institutionalized.

The Obama presidency has made huge gains in helping homosexuals achieve equal rights and status in this country. While some people may never be comfortable with the idea of same sex marriage, equality and equity should take precedence over intolerant beliefs. Eventually, I feel that this president and country will accept same sex marriage. Until then, legislators and policy makers should not stand shoulder to shoulder with the discriminatory proud and few.

Indeed, this debate should be about what lies within our own hearts and minds; about why we feel the need to persecute and discriminate against those who are different from ourselves. Instead, the issue of DOMA and same sex marriage has been used to drive people apart and appeal to the lowest common denominator in society. Perhaps this debate should continue, but only after equal rights have been granted to everyone, regardless of their race, creed, ethnicity, and yes, sexual orientation.

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