

The Road to Recognition

A Global Perspective on Gay Marriage

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In the previous half century the world witnessed dramatic cultural upheavals. Factions of the right and left fought many political battles pitting traditionalism against progressivism, each side arguing for its vision of a virtuous society in the changing cultural landscape. The emerging struggle in many regions of the world over legal recognition of homosexual unions is one of the latest manifestations of this conflict. It pits liberal coalitions against their socially conservative and frequently religious opponents in the latest theater of what might be called a global culture war.

In the United States, the debate over gay marriage and the methods employed in pushing for and resisting its realization were major factors in the 2004 presidential election. The issue has played a substantial role in the national political life of many other countries as well. While homosexual unions have been realized without substantial controversy in some nations, they are a topic of frequent and heated debate in many others. Few countries have fully incorporated homosexual unions into their marital laws, while a larger number have established a more limited menu of partner benefits for same-sex couples. Some countries have uniform national policies while others have differences between regional sub-states. In other countries, homosexuality is still treated as a mental illness or even as a crime.

This wide range of attitudes and policies toward homosexual partnerships reveals a great deal about social and cultural differences among regions of the world and about the conflict between tradition and modernity that shapes global politics. The persistence of the movements for partnership rights and the political forces that resist them within and across various societies demonstrate that this struggle is not one that will be resolved easily or soon. It is thus important to examine the dynamics of the conflict in different regions of the world in order to understand whether and, if so, how gay marriage is politically feasible.

Scandinavia: The Beginning

Denmark was the first country to establish a partnership law for same-sex couples. Axel and Eigil Axgil, two Danish activists, became the world's first legally recognized gay couple in Copenhagen on October 1, 1989. Called "registered partnerships," their enactment represented a major shift in Danish attitudes toward homosexuality and the first real victory in the struggle for the recognition of gay unions. The law was known as the "Danish Registered Partnership Act" and provided almost all of the same benefits as standard marriage, or as the law puts it "the same legal effects as the contracting of marriage." However, there were notable differences: same-sex couples were not allowed to adopt children or to receive artificial insemination, nor could they have their commitment ceremony held in a church. Denmark has since legalized gay adoption, but several of the other differences between registered partnerships and heterosexual marriages persist.

The controversy in Denmark over church recognition of these partnerships is an interesting one, and it reveals much about the religious element of the conflict over same-sex unions. Denmark has an official state church, the Evangelical Lutheran Church, which receives support from the Danish government. The country is split into 12 dioceses, each managed by a bishop. In 1997, in response to the expressed desires of many of the church's gay members, the bishops established a commission to study whether homosexual partnerships should receive the church's blessing. The commission found that there are no "theological or moral objections to homosexual practice that are tenable," and the bishops decided to allow pastors to bless unions, but did not create a standard ritual or mandate such blessings. There was substantial disagreement from conservative theologians about this decision. The Danish Church is unusual in that it is one of the few established, influential religious groups that has been even tepidly supportive of same-sex unions, a distinction shared by the Church of Norway and some other major Scandinavian churches.

Much of Scandinavia followed Denmark's lead in the 1990s by enacting similar civil union statutes. Norway in 1993, Sweden in 1994, and Iceland in 1996 all passed laws that roughly modeled Denmark's, granting some but not all of the same rights provided by marriage to gay couples. Greenland, which is a self-governing dependency of Denmark, held off on enacting registered partnerships until 1994. Yet despite all of the attention they have received, these countries' partnership laws have been relatively unused. As of the year 2000, there were around 2,000 registered same-sex partners in Denmark with about 250 more couples registering per year. At the same time, Sweden and Norway had around 700 partnerships each, a very small number for countries with populations in the millions. The number of registered partnerships is clearly getting larger, however, and will continue to grow. Scandinavia's unusually liberal population and the other distinguishing cultural factors may have contributed to its early adoption of gay partnership laws. Yet it is now clear that those were the beginning of a series of laws, debates, and court decisions that have profoundly affected politics and policies in all corners of the globe.

Greater Europe

Gay unions of one form or another have become a reality in a great number of European countries. The first country to allow full gay marriage, meaning no legal distinction between heterosexual and homosexual partners, was the Netherlands in 2001. The government had passed a registered partnership law in 1997, but the new law set forth full marriage rights for same-sex couples. The difference between marriage and partnership is often symbolic, as many registered partnership laws confer all the same rights as marriage. Sometimes, however, the differences mean more, as many countries do not allow same-sex partners to adopt children or receive other benefits reserved for marriage. That was the case in the Netherlands and is also often true in countries with federalist political systems where some regions are more accepting of same-sex partnerships than others, since marriage laws tend to be national while civil union laws are often passed by local governments in more liberal regions. This results in federal marriage rights not being accessible to partners with civil unions, as is the case in the United States.

Other European countries that have recognized either registered partnerships or gay marriages include Germany, Belgium, Finland, Spain, Portugal, France, Hungary, and Great Britain. Some complications have emerged in the European Union both because not all European countries have adopted these laws and because those who have vary so much from one another. Until 2003, married couples from the Netherlands and Belgium could not travel to other European countries and be recognized as couples. It was also very difficult for citizens of two different European countries to become same-sex spouses. In 2003, however, the EU Parliament established a rule that mandated all EU countries pass laws recognizing the same-sex marriages

of citizens in Belgium and the Netherlands, so that people traveling abroad did not lose their marriages or face challenges over the custody of their children. Yet, in a strange twist, there is not yet a rule mandating that the civil partnerships that are maintained by a much larger number of EU countries be recognized abroad. Part of the reason for this is that these laws vary widely. Germany's registered partnerships, for instance, are much more restrictive than those of Holland or Denmark.

Despite their relative success in Europe, gay unions are still not universally approved of on the continent. A 2003 Gallup poll of the then-15 EU countries showed that roughly 57 percent of the citizens supported gay marriage. Excepting Hungary, all of the European countries with any form of gay partnership laws form a continuous mass on the North half of the continent. While in some countries, such as Belgium, their popular support is wide and deep, in more conservative countries such as Italy and Greece legally recognized same-sex partnerships are still a long ways from realization. One interesting development in more moderate countries has been that civil unions become much more popular after they are enacted. For instance, in 1999 only 49 percent of the French public supported a proposed civil unions law. Two years later, after its enactment in 2000, a full 70 percent supported it. Even many conservative politicians in France now express approval of the law largely because it serves as a defense against the further measure of enacting gay marriage. Jacques Chirac, the center-right French President, has even expressed a desire to expand the rights granted by civil union pacts.

Perhaps part of the reason that the main opposition to these laws has come from Southern Europe is that the Vatican has been the most vocal and consistent opponent of any form of same-sex partnerships and has issued many public statements condemning them, such as one in July 2003 which held that "marriage is holy, while homosexual acts go against the natural moral law." The Church played a surprisingly large role in the public debate over homosexual unions in France, considering the strict secularism enforced by France's government. It was an even more significant factor in Spain, a country which is 94 percent Catholic.

Before the Socialist Party came to power in 2004, any form of same-sex partnership law in Spain was not within the realm of possibility. But shortly after the election, the incoming Socialist Prime Minister Jose Luis Rodriguez Zapatero declared that the government would pass a bill to put gay unions on the "same footing" as marriage, though semantically they would remain different. A poll published in July 2004 by the Center for Sociological Investigations estimated that 66 percent of Spaniards supported the law. It was approved in October 2004 and is expected to come into force in 2005. This outraged the Spanish Church. Juan Camino, a spokesman for the Spanish Bishops Conference, declared on national television that this law was like "imposing a virus on society." The animosity between the Church and the liberal government is not unique to this issue. The fight over same-sex partnerships was just one of the many conflicts that have recently arisen between Spain's liberal government and its socially conservative religious establishment.

North America

In contrast to the majority of European countries, North American gay marriage has been mainly local rather than national and has been initiated by courts rather than legislatures. In Canada, court rulings in eight provinces have established gay marriage in approximately 90 percent of the country. The issue is moving rapidly from provincial to national politics, however, as the Canadian Supreme Court ruled in 2004 that the government has the power to amend the national marriage law. While the Court did not declare such an amendment mandatory, the government has taken steps to propose it in the House of Commons, where it will likely soon pass. This is a stunning reversal from 1999, when the House of Commons overwhelmingly supported a

resolution to define marriage as “the union of one man and one woman to the exclusion of all others.” What accounts for this dramatic shift, especially in the ruling Liberal Party, is most likely the shift in Canadian attitudes towards same-sex marriage in the intervening five years. Public opinion polls consistently show that presently around 50 percent of Canadians support gay marriage, which is far more than supported it even a few years ago. While this indicates at least moderate popular support, the mandate for gay marriage is nowhere near as strong as it is in some European countries. However, polls show that Canadians are becoming more and more open to gay marriage laws. Another unique element in Canada is that it is the only country that lacks a residency requirement for gay marriage, meaning that even non-citizens can marry Canadians of the same gender. This can help couples to meet immigration requirements, which are much less stringent when one marries a citizen.

In the United States as well, the gay marriage debate has primarily been resolved at the state level, and the main impetus for it has come from court decisions. State supreme courts in Hawaii, Vermont, California, and Massachusetts have ruled that the exclusion of gay couples from marriage benefits violates state constitutional guarantees of equal protection. Currently, California and Vermont offer some form of civil unions, and Massachusetts is the only state to allow full gay marriage. In national politics, the issue has obviously attracted a great deal of attention. In 1997, the Defense of Marriage Act was passed, which allowed states to disregard same-sex marriages performed in other states. While attempts to amend the federal constitution have thus far been unsuccessful, 13 states have passed amendments to prevent the expansion of marriage to gay couples, and 39 states have laws against gay marriage. Interestingly, adoption by same-sex couples is allowed in all but a handful of states. This is essentially the opposite of the situation in Europe, where marriage or partnership laws are becoming the norm and gay adoption is still a controversial topic.

Other Regions

Outside of Europe and the Americas, countries that recognize homosexual unions are few and far between. The general trend has been that countries with these laws, or with substantial debates over their enactment, tend both to have liberal democratic polities and to be economically advanced. The regionally isolated cases demonstrate this tendency: South Africa, Israel, Australia, Argentina, and New Zealand all either have same-sex unions or seem headed rapidly in that direction. In Argentina, the city of Buenos Aires passed the first civil unions law in South America. In South Africa, the Supreme Court of Appeal ruled in December 2004 that same-sex marriages should be made legal, though the ruling did not itself legalize them. The government is expected to amend the marriage act soon, making it the first African country to establish gay marriage. This is not entirely unprecedented, since South Africa is the only country in the world that has a clause prohibiting discrimination based on sexual orientation written into its constitution. Yet despite gays’ favorable legal position, a strong majority of South Africans disapprove of homosexuality. This disconnect between the law and popular opinion is mostly a product of Nelson Mandela’s extremely liberal African National Congress having dominated post-apartheid politics for so long.

Of course, most countries in the world are still far from recognizing anything resembling gay marriage. In Iran, homosexuals are frequently and publicly executed. Homosexuality is also punishable by death in Sudan, Saudi Arabia, and Yemen. Islamic societies do not generally condone homosexuality, and it is met with jail terms in most predominantly Muslim countries. Notable exceptions to this include Turkey and Indonesia, where it is not criminalized but also not openly discussed. In East Asia, China and Japan have recently removed homosexuality from their lists of mental illnesses, a step which the United States took in the 1970s. East Asian societies are showing more tolerance towards homosexuals than in the past. Influential public

figures in some of these countries have come out publicly in support of gay marriage, including the President of Taiwan and the King of Cambodia, who declared that he wanted gay marriage to be allowed in his country after seeing footage of gay San Francisco couples celebrating their weddings.

What Is Next?

Gay partnerships are not a purely recent phenomenon. Societies have struggled over how to deal with homosexuality since antiquity, and ancient civilizations throughout the world had forms of socially accepted homosexual partnerships. What is new is the form of the modern conflict over gay marriage. The dynamic of this struggle between progressive reformers and traditionalist opposition varies between societies, though there are some important commonalities between many countries that have enacted these laws. In many circumstances, gay marriage transitions from unthinkable to the established law in a very short span of time. It usually only becomes a protracted struggle in cases where regional sub-states differ over the laws. There is also usually vigorous and powerful opposition to the new laws, but their popularity rises substantially after a few years in existence. Few countries offer full marriage with equal rights in one fell swoop; most take a gradualist approach, extending only some partnership rights to gay couples at a time. While the debate is often dominated by the question of what to call same-sex partnerships, “marriage” or “unions,” what is really at stake is a set of legal benefits that affect couples’ access to immigration, adoption, pension, and inheritance rights.

The on-going debate in much of the world over legal recognition of gay partnerships seems to be the culmination of a gradual shift in societies’ attitudes toward homosexuality. In the West it has been transformed from a perversion or crime into a socially acceptable lifestyle. The conflict will likely not be permanently resolved for a long time, but it is now clear that homosexual partnerships will remain legal for the indefinite future in many countries, while in others they will be a politically salient issue for years to come.

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