



Marriage and the State—Lesson Plan

Student Objectives

- Understand the role of the state in regulating the institution of marriage and the rights and responsibilities of married people.
- Learn about the ancient roots of the institution of marriage and how marriage is understood in different religious traditions.
- Explore the tensions between social customs and institutions and democratic decisionmaking.
- Analyze the reasons for supporting and opposing the legalization of same-sex (gay and lesbian) marriage.
- Identify areas of agreement and disagreement with other students.
- Decide, individually and as a group, whether our democracy should permit same-sex couples to marry just as heterosexual couples are allowed to do.
- Reflect on the value of deliberation when deciding issues in a democracy.

Question for Deliberation

Should our democracy permit same-sex couples (gay and lesbian) to marry?

Materials

- Lesson Procedures
- Handout 1—Deliberation Guide
- Handout 2—Deliberation Activities
- Handout 3—Student Reflection on Deliberation
- Reading
- Selected Resources
- Deliberation Question with Arguments
(optional—use if students have difficulty extracting the arguments or time is limited)



Marriage and the State

1 In 2001, The Netherlands became the first country in the world to legalize same-
2 sex (homosexual) marriage. Prior to that law, only couples consisting of a man and a
3 woman could marry. After the law passed, Anne-Marie Thus and Helene Fassen became
4 the first same-sex couple in the world to be officially married. “We’re totally ordinary,”
5 says Thus. In the next few years, other countries passed similar laws—Belgium in 2003,
6 and Spain and Canada in 2005. Today, seven countries and five U.S. states recognize
7 same-sex marriage for gay and lesbian couples.

8 The Dutch marriage law and others like it have sparked controversy. Many
9 opponents of same-sex marriage insist that it will lead to destruction of the institution of
10 marriage. These opponents question the limits of democratic decision-making in
11 overturning long-standing social customs and institutions.

12 **Defining and Regulating Marriage**

13 Marriage can have both a civil (secular) and a religious element (Andryszewski,
14 2008). The state offers **civil marriage**, which is regulated by the government. A civil
15 marriage grants the legal rights of marriage to a couple. A religious marriage ceremony
16 also includes two additional dimensions. The couple vows fidelity to God and their faith
17 tradition. In turn, the couple asks for and receives sanction from God and the community
18 of believers for their marriage. Religious institutions such as churches, synagogues, and
19 mosques have their own rules for whom they will or will not allow to marry.

20 Most democracies today restrict marriage to heterosexual couples. For example,
21 *The Family Code of the Russian Federation*, enacted in 1996, clearly requires the
22 “voluntary consent of the man and the woman” in marriage. *The Family Code of*
23 *Lithuania* defines marriage as one man and one woman and prohibits same sex marriage.
24 Indeed, marriage terms indicating a heterosexual (male and female) relationship are the
25 norm. In the English common law, the tradition that forms the basis and context for the
26 American legal system, marriage could occur only with the consent of both parties. While
27 having more than one spouse (polygamy) was practiced in other cultures—Moses in the
28 Hebrew Bible had two wives and the Prophet Muhammad in the Qur’an had four—
29 marriage in the English legal tradition was unmistakably between one man and one
30 woman (“Marriage: An Overview,” Legal Information Institute).

31 In most democracies, the national government typically regulates marriage.
32 Marriages in the United States fall under each state government’s lawmaking authority.
33 State governments set certain rules about marriage, including minimum age requirements
34 for marriage and prohibitions on marriages between certain close relatives, such as a
35 parent, brother or sister, or aunt or uncle. All states also limit marriage to **monogamy**, or
36 two people. As of this writing, every state except Connecticut, Iowa, Massachusetts, New
37 Hampshire, and Vermont restricts marriage to one man and one woman. Traditionally,
38 states must honor marriage licenses issued by other states. However, in 1994, the national
39 government passed a law called the *Defense of Marriage Act* (DOMA), which allows
40 states to ignore licenses issued to same-sex couples in other states.

41 **Marriage: Responsibilities, Benefits, and Rights**

42 Some important responsibilities go with marriage. Married people share
43 responsibility for rearing their children and sending them to school; if they fail to take
44 care of their children, the state can remove their children from their home. They must
45 take care of and pay for any property they own. Married couples receive some tax breaks;
46 conversely, if one person cheats on taxes, the spouse is not legally liable, but the couple's
47 assets (what they have) may be severely affected. Divorced individuals must take steps to
48 provide economically, if necessary, for their former partners.

49 Getting married brings with it a great many benefits that cover virtually every
50 aspect of a person's life. In the United States and in Europe, married people can
51 automatically hold joint property and inherit the property of a loved one who dies without
52 a will. They are protected (in most cases) from testifying against each other in court.
53 Spouses are entitled to collect health benefits, unemployment benefits, veterans' benefits,
54 and death benefits if their spouse is injured or dies. Married people automatically have
55 the right to visit a spouse or a child in hospital, and to take family leave for extended
56 illness or the birth of a child. Any children born to them are assumed to be theirs.

57 Some democratic nations and localities have offered **civil unions**. A civil union is
58 a secular marriage-like relationship regulated by the government. It allows couples to
59 have some of the rights that married couples have. In 2006, for example, the Czech
60 Republic passed a law that allowed same-sex couples to have a type of civil union called
61 a **registered partnership**. The partners in this relationship have inheritance rights, the
62 right to appeal court judgments on behalf of each other, and the privilege not to testify in
63 court against each other, among other rights. Significantly, registered partnerships, like

64 other civil unions, do not allow the couples to adopt children, unless they dissolve the
65 partnership and one of the partners adopts as a single parent.

66 **Marriage: Law and Tradition**

67 Many who view marriage as a purely secular or legal relationship—as well as
68 those whose religious beliefs recognize same-sex marriage—believe marriage rights
69 should belong to gay and lesbian couples who wish to marry. They believe the
70 government should not discriminate against same-sex couples by denying those rights.

71 Those who view marriage as a primarily religious relationship often believe that
72 government should not extend marital rights to couples in a way that would reject the
73 teachings of their religious tradition. They argue that redefining marriage offends the
74 fundamental values of millions of people and contradicts the long-standing representation
75 of a family by a mother, father, and child or children. In traditional Christianity, Islam,
76 and Judaism, marriage is understood as a heterosexual institution. Orthodox Christianity
77 and the Catholic Church explicitly forbid same-sex partnerships of any kind. Islamic law,
78 as well, only recognizes the validity of marriage between a man and a woman.

79 Today, however, certain Protestant Christian and Jewish denominations have
80 called for civil recognition of same-sex marriages, and their clergy have performed
81 weddings for gay and lesbian couples. A few historically Catholic countries also have
82 broken with tradition. Spain legalized same-sex marriage in 2005, and Slovenia legalized
83 same-sex registered partnerships in 2006. Some parts of historically Catholic Latin
84 America have legalized civil unions. Since 2003, for example, residents of Buenos Aires,
85 the capital of Argentina, can have same-sex civil unions. And since 2007, residents
86 of Mexico City, the capital of Mexico, may do so as well.

87 The predominantly Muslim country of Albania has seen change in marriage laws.
88 In July 2009, Prime Minister Sali Berisha proposed a measure in the parliament to give
89 same-sex couples the same rights as heterosexual couples. Albanian opponents, including
90 Muslims, Catholics, and Orthodox Christians, condemn Berisha's proposition as sinful,
91 but also as politically corrupt.

92 According to U.S. Supreme Court Justice Antonin Scalia, a democratic tradition
93 allows the majority in a society to set moral standards. Scalia has written that to
94 criminalize same-sex relations “is well within the range of traditional democratic action,”
95 and warned against “the invention of a brand-new ‘constitutional right’ by a Court that is
96 impatient of democratic change” (*Lawrence v. Texas*, 2003). The “brand new” right he
97 mentioned was legalized same-sex relationships, including marriage. Significantly, the
98 U.S. Supreme Court rejected religious freedom as a defense when it outlawed polygamy
99 (*Reynolds v. United States*, 1878).

100 Advocates of the rights of same-sex couples to marry, on the other hand, find
101 support for redefining marriage in legal traditions and democratic principles. The UN
102 International Covenant on Civil and Political Rights, for example, states in Article 23 that
103 “The right of men and women of marriageable age to marry and to found a family shall
104 be recognized.” When Spain legalized same sex marriage, Spanish Prime Minister Jose
105 Luis Rodriguez Zapatero said that Parliament was “expanding the opportunities for
106 happiness of our neighbors, our colleagues, our friends and our relatives” and “building a
107 more decent society” (“Spain Legalizes Same-Sex Marriage,” 2005). While marriage has
108 been presumed to be heterosexual in English and American law, that legal tradition also
109 includes the democratic principles of equal protection and due process, which the courts

110 have in some cases applied to marriage. For example, in 1967 the U.S. Supreme Court
111 ruled that the Constitution prohibited states from denying marriage licenses to interracial
112 couples (*Loving v. Virginia*, 1967).

113 **Marriage and Children**

114 Founding a family remains a special area of concern for people who oppose same-
115 sex marriage. Opponents of same-sex marriage contend that the tradition of heterosexual
116 marriage has always fundamentally been about procreation. “Children need both mothers
117 and fathers,” states Robert H. Knight, who helped draft the federal *Defense of Marriage*
118 *Act* in the United States,” and marriage is society’s way of obtaining them.”

119 Supporters of same-sex marriage counter that marriage certainly includes the right
120 to “found a family” but is not exclusively centered on that right. They point to
121 “legitimate” marriages without children. Married couples traditionally find
122 companionship and love, as well as rights to property. They also obtain rights to adopt
123 children. Therefore, a heterosexual couple who cannot procreate is similarly situated to a
124 same-sex couple with regard to adopting children. Also, assuming that children “need
125 both mothers and fathers,” the case for traditional marriage is not strengthened by high
126 divorce rates of heterosexual couples. Statistical evidence has shown that as many as 41
127 percent—and perhaps 50 percent—of heterosexual marriages in the United States end in
128 divorce (*New York Times*, 2005).

129 Supporters say allowing same-sex marriages would enable the establishment of
130 more, not fewer, families. And children's best interests would be protected. The executive
131 director of Amnesty International Ireland has argued, “Because a same-sex couple is
132 denied access to civil marriage, any adopted child parented by a same-sex couple will not

133 have the same rights, entitlements and protections afforded to a child adopted by a
134 heterosexual couple.” Similarly, the Massachusetts Supreme Judicial Court held in its
135 decision to legalize same-sex marriage in 2003 that the government’s goals in promoting
136 procreation and ensuring good homes for child-rearing were not promoted by a ban on
137 same-sex marriage (*Goodridge v. Department of Public Health*, 2003).

138 **Law and Democratic Change**

139 In democracies that recognize same-sex marriage, society must make significant
140 adjustments to laws and policies. Opponents of same-sex marriage argue that those
141 adjustments would place too great a burden on traditional heterosexual marriages.

142 Opponents also point out that public opinion is still firmly against legalizing
143 same-sex marriage. In the United States, about 40 percent of citizens support making
144 same-sex marriages legal (Gallup, May 2009). About 44 percent of European Union
145 citizens feel the same way (Eurobarometer, 2006). This tension exists also with respect to
146 children. Less than a third of EU citizens, for example, feel that same-sex couples should
147 have rights to adopt children. In contrast, a 2003 survey in the United States showed that
148 60 percent of adoption agencies accept applications from homosexual men and women,
149 with more and more agencies seeking training in working with those parents.

150 “It’s ironic and interesting,” says Harvard University historian Nancy Cott, “that
151 same-sex marriage advocates and conservatives of the ‘family-values’ school” both agree
152 on the value of marriage and “how crucial it is as a social institution” (“The Future of
153 Marriage,” *Harvard Magazine*, November-December 2004).



Marriage and the State—Selected Resources

- 60th Anniversary of the Declaration of Human Rights, <http://www.un.org/events/humanrights/udhr60/>.
- “Albanian gays welcome PM’s same-sex marriage plan,” <http://uk.reuters.com/article/idUKTRE56U49G20090731>.
- American Psychological Association, “APA Policy Statement: Sexual Orientation, Parents and Children,” <http://www.apa.org/pi/lgbc/policy/parents.html>.
- Andrzejewski, Tricia. *Same-Sex Marriage: Moral Wrong or Civil Right?* (Twenty First Century Books, 2008).
- Child Welfare League of America, “Position Statement on Parenting of Children by Lesbian, Gay and Bisexual Adults,” <http://www.cwla.org/programs/culture/glbtposition.htm>.
- Cosgrove-Mather, Bootie. “Global View of Gay Marriage,” *CBS News*, 4 March 2004, <http://www.cbsnews.com/stories/2004/03/04/world/main604084.shtml>.
- Czech Registered Partnership Law, http://www.ilga-europe.org/europe/guide/country_by_country/czech_republic/legal_details_of_the_czech_registered_partnership_law.
- Eskridge, William N. and Darren R. Spedale. *Gay Marriage: For Better or Worse? What We’ve Learned from the Evidence* (Cambridge, UK: Oxford University Press, 2007), <http://books.google.com/books?hl=en&lr=&id=PFpd8dq7jJcC&oi=fnd&pg=PA3&dq=netherlands++gay+marriage++reaction&ots=HD2YtmEgtH&sig=wIe2Dvu8IodCu2u9ZqQXp1W4BE#v=onepage&q=netherlands%20%20gay%20marriage%20%20reaction&f=false>.
- “Gays denied right to adopt,” *Prague Post*, 8 July 2009, <http://www.praguepost.com/news/1673-gays-denied-right-to-adopt.html>.
- Green, Jennifer. “Spain Legalizes Same-Sex Marriage,” *Washington Post*, July 1, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/30/AR2005063000245.html>
- Hodder, Fraser Harbour. “The Future of Marriage.” *Harvard Magazine*, November-December 2004 pp.38-45.
- Hull, Katherine E. *Same-sex Marriage: The Cultural Politics of Love and Law*, (Cambridge, UK: Cambridge University Press, 2006), http://books.google.com/books?hl=en&lr=&id=ppEzrsgKiGQC&oi=fnd&pg=PA1&dq=netherlands++gay+marriage++reaction&ots=Z1TGJ4Uf_w&sig=Gty94p34D0YTIVA6WZGfTdk8Ias#v=onepage&q=netherlands&f=false.
- Hurley, Dan. “Divorce Rate: It’s Not As High As You Think,” *New York Times*, 19 April 2005, <http://www.nytimes.com/2005/04/19/health/19divo.html>.
- ILGA, http://www.ilga-europe.org/europe/issues/lgbt_families
- “Mexico City Embraces Gay Unions,” *BBC News*, 17 March 2007, <http://news.bbc.co.uk/2/hi/americas/6461159.stm>.
- National Family Policy Concept," adopted by SEIMAS (Lithuanian Parliament), 2008, <http://www3.lrs.lt/docs2/GYWHJWWE.DOC> (Lithuanian).
- The Pew Forum on Religion and Public Life: “Issues: Gay Marriage,” <http://pewforum.org/gay-marriage/>.
- Public opinion and same-sex unions, http://www.ilga-europe.org/europe/issues/lgbt_families/public_opinion_and_same_sex_unions_2003.
- Russian Civil Code, <http://www.russian-civil-code.com/>.
- “Slovenia to legalize soon same-sex marriage: minister,” *Agence France Presse*, July 2, 2009, <http://www.google.com/hostednews/afp/article/ALeqM5hjrgMMgg5JR4WuLYjqWx5dRrRGOQ>.
- Sunstein, Cass R. “The Right to Marry,” *University of Chicago Law Review* (Public Law and Legal Theory Working Paper No. 76, October 2004).
- Brief of Amici Curiae American Center for Law & Justice, at 8–9, In Re Marriage Cases, 43 Cal. 4th 757 (2008).



Marriage and the State—Deliberation Question with Arguments

Deliberation Question

Should our democracy permit same-sex couples (gay and lesbian) to marry?

YES—Arguments to Support the Deliberation Question

1. Marriage offers benefits that should be open to every member of democratic society. Married people can automatically hold and can inherit joint property, collect government benefits, visit their spouse or child in hospital, and take family leave for extended illness or the birth of a child. Gay and lesbian couples deserve to enjoy these rights and privileges just as heterosexual couples do. Government should not discriminate against same-sex couples by denying these rights.
2. While marriage certainly includes the right to “found a family,” it is not the only reason people get married. People marry for love and companionship, and they marry for economic reasons. There are also plenty of legitimate marriages without children, as well as single-parent families or blended families with a parent and children from two different marriages. All of these families are legitimate, as long as there is love and respect in the home—qualities that both heterosexual and same-sex parents can provide.
3. The basic rights of people who are gay or lesbian should not be subject to a religious veto. Religious traditions in a democracy deserve respect, but they are not the foundation of democratic laws. Slavery was once accepted by Christians, Jews, and Muslims, but today all three traditions condemn slavery. Religious traditions also are not monolithic. Certain Protestant Christian and Jewish denominations have called for civil recognition of same-sex marriages, and their clergy have performed weddings for gay and lesbian couples. Religious practices, like democratic norms, evolve over time.
4. Allowing gays and lesbians to marry would create more, not fewer, families. And children's best interests would be protected. Our democracy's desire to encourage people to have children in good homes is by recognizing same-sex marriage, not banning it.



Marriage and the State—Deliberation Question with Arguments

Deliberation Question

Should our democracy permit same-sex couples (gay and lesbian) to marry?

NO—Arguments to Oppose the Deliberation Question

1. All democracies have laws limiting who can marry. There are minimum age requirements and prohibitions against marrying close relatives. Most western democracies also limit marriage to two people. Moreover, democratic tradition allows the majority to set moral standards for a society. In both European countries and the United States, a majority of the public is firmly against legalizing same-sex marriage. Our democracy can reasonably limit marriage to one man and one woman.
2. To permit gay and lesbian couples to marry will overturn centuries of custom and tradition. Marriage in both American and European law systems has been unmistakably understood as between one man and one woman. By contrast, the calls for change to this tradition are very recent. Rushing to make such a change will cause great disruptions. Our democracy can wait a few generations to see whether such a radical change is really necessary.
3. The understanding of marriage as a relationship between one man and one woman is central to many religious traditions. Marriage is thus a sacred as well as a legal institution. Our democracy should not extend marital rights to couples in a way that would reject the teachings of these religious traditions and offend the values of millions of people.
4. Marriage has always fundamentally been about procreation. Marriage is the accepted way to create and raise children. Gay and lesbian partners cannot naturally procreate, nor can they simulate the long-standing representation of a family by a mother, a father, and a child or children.