

Baby Steps

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A Global Investigation of Same-Sex Marriage and Gay Adoption: Is the order of Legalization Important?

The goal of my paper is to develop a path dependent theory upon which to critically evaluate the passage of legislation regarding same-sex marriage and gay adoption on a global level. There are eight countries in the world that have legalized same-sex marriage: The Netherlands (2001), Belgium (2002), the United States of America (Massachusetts – 2004), Spain (2005), Canada (2005), South Africa (2006), Norway (2009), and Sweden (2009). Eight additional countries have legalized gay adoption: Australia (2004), England (2005), Wales (2005), the UK (2005), Andorra (2005), Iceland (2006), Uruguay (2009), and Denmark (2009). I will first provide a historical framework for the gay rights movement, through a global timeline of important events in both gay rights and social/human rights and a brief discussion of the various positions in this intensely debated topic. My analysis then moves on to discuss the importance that media plays in the evolution of the gay rights movement through articles, blogs, movies and interview clips. I begin my argument with an application of path dependence theory to explain why gay adoption is accepted more often than same-sex marriage. Scott E. Page, the author of the article “Path Dependence”, defines path dependence as “a popular conveyor of the idea that history matters” (Page, 2006). My argument then applies path dependence theory to Gosta Esping-Andersen’s model of three welfare-state regimes: liberal, social-democratic, and conservative. Esping-Andersen’s book “The Three Worlds of Welfare Capitalism” brings attention to interesting patterns and ideas when categorizing the countries listed above along with others that have not yet passed legislation on either issue, but are heavily involved in the gay rights movement. To narrow my explanation of welfare-state regimes, I will use the United States for the liberal regime, Germany for the conservative regime, and Sweden for the social-democratic regime. As discussed in my earlier analysis of social rights, gender rights are closely tied to the gay rights movement. As such, I will address Ann Shola Orloff’s article that provides an interesting gender critique of Esping-Andersen’s welfare-state regime model. With an understanding of both the global timeline of the gay rights movement and basic welfare-state dimensions, my application of path dependence theory to specific welfare-state regimes will result in interesting findings that the reader may rely on to predict the future evolution of same-sex marriage legislation based upon previous legal action with respect to gay adoption.

1. Introduction

Why this Topic?

My topic is important to sociology on multiple levels. Throughout my paper I investigate areas such as religion, politics, family, social movements, and marriage, all of which are significantly important to the studies of sociologists. From a sociological perspective, the topic of gay rights uniquely ties together these various elements in a fascinating way. In addition, my paper uses both micro and macro-sociological outlooks. I provide the reader with a broad, global over view of the gay rights movement, but also take a critical eye to specific countries that give my topic more depth and concrete support. Overall, I believe that my topic of gay marriage and gay adoption demonstrates how the discipline of sociology is complex, yet can be interconnected in a vast range of ways.

My initial interest in my topic arose simply from my interest in the cases of adoption within my own family. My father was adopted, my oldest sister has expressed interest in adopting a baby from China, and my middle sister is gay and has also expressed interest in adoption. Adoption itself as a topic was too broad, so I chose to invest my time researching gay adoption, considering the gay rights movement has become a central issue to politics, social movements, etc. over the past decade. I then stumbled upon a list of countries that have legalized gay marriage. I discovered that though there were clear similarities between the list of countries that had legalized gay marriage and gay adoption I was drawn to the differences. Eight countries have legalized gay marriage and an additional eight have legalized gay adoption. What accounts for the difference in the number of the countries that have not legalized both gay adoption and

marriage? These curiosities lead me towards a more clear foundation for my research question.

As a side note, at this time I feel it is appropriate to mention that I am a gay rights supporter. Though it will be a challenge, I intend to acknowledge a range of opinions when necessary. I am passionate about this topic and will do my best to illustrate that through my research.

My Research Question

As I had begun to discuss above, the difference between the numbers of countries that have legalized gay marriage and gay adoption is where I focused my efforts during my research. My initial curiosity was, along with that of the average person, the institutions of family and marriage seem to stand for and represent similar values and beliefs, so how could the numbers be so different? I then came across the pattern that out of the eight countries that had legalized gay marriage five had legalized gay adoption prior to gay marriage. This then leads me to my main research question: Does the order in which gay marriage and gay adoption is legalized matter? Why, over the past decade, is there a trend that countries tend to legalize gay adoption prior to gay marriage? What is the significance? Is there a noteworthy significance? I then introduce the theories of path dependence and welfare state regimes in an effort to aid me in deciding whether this pattern in the law is a predictable and significant one.

Global Gay Rights Timeline

To begin, I would like to address major events in gay rights history. Historians and

modern activists have documented that one of the first gay rights movements was rooted in Germany. The leading German activist, Karl Heinrich Ulrich, "campaign[ed] for the repeal of anti-sodomy laws...in pre-World War II Berlin, Germany", but his efforts were later shattered by Adolph Hitler during the Nazi regime (Gay Rights – History 2006). Across the Atlantic in 1924, "the Society for Human Rights in Chicago became the earliest known gay rights organization" in the United States, yet it was a more private one (American Gay Rights 2007). On June 27, 1969 riots broke out after a police raid at a gay bar called the Stonewall Inn in Greenwich Village in New York City. These riots represented the first time homosexuals had fought back (CBC News 2009). The Stonewall Riots transformed the image of the gay rights movement and fueled activists with the passion to "protest for equal rights and acceptance" (American Gay Rights 2007), which "became known as the Gay Liberation Movement" (Gay Rights – History 2006). In response to the controversial riots, desire to fight for equal rights had intensified and the number of gay and lesbian organizations immensely increased across the country. Arguably the most well known organization was the Gay Liberation Front, the GLF (Gay Rights – History 2006). The GLF was not only concerned with gay rights in America, but established "chapters in other countries...these groups would be the seeds for the various modern gay rights groups that campaign for equality in countries around the globe" (Gay Rights – History 2006).

It was during this time that other human rights focused social movements were growing with dramatic prestige across the United States. In Elizabeth A. Armstrong's book, *Forging Gay Identities*, the author mentions political scientist Robert B. Putnam's theory that "the fabric of American community life began to unravel" in the 1960s, and that "the movements of the 1960s may constitute an 'important countertrend'" (Armstrong 2002:202). The 60s were a turning point in America regarding social policy and desire to keep up with modern changing ideals. As

Armstrong states, this era was “preoccupied with issues of identity that transformed social movements, challenged the ability of social movement scholarship to account for them, and quite possibly contributed to a transformation of our civic landscape” (Armstrong 2002:204). This quote highlights that the 60s were filled with a desire for identity and belonging in society. Not only the chaos of the gay rights movement, but the additional commotion of the civil rights and women’s rights movements made this time in American history pivotal for the passage of policies in our more recent history.

In 1973, the American Psychiatric Association “removes homosexuality from the *Diagnostic and Statistical Manual of Mental Disorders*” (Blackwell 2006:7). In the coming years, various laws and policies were approved and rejected regarding American gay rights. The state of Wisconsin “becomes the first state to outlaw discrimination on the basis of sexual orientation” in 1982 (American Gay Rights 2007). On October 1, 1989, Denmark became the first country to recognize same-sex partnerships as a substitute institution for marriage for gays and lesbians (CBC News 2009). The year of 1996 represented both a set back and progression for the gay rights movement in two ways. First, the *Defense of Marriage Act (DOMA)* was passed and signed by President Bill Clinton, stating that no state is required to recognize same-sex relationships as marriage, even if it is deemed legal in another state and that marriage is defined as a union between a man and a woman by the federal government. The second major event occurred in South Africa. With the end of the apartheid rule in South Africa, came the transition of becoming a democratic nation. The African National Congress (ANC) makes South Africa “the first country in the world to adopt a constitution that guarantees the rights of gays and lesbians” (Meldrum 2009). From this point in the gay rights movement to the present day, gay marriage and gay adoption have been catapulted into the forefront of political debates and

activism. The Netherlands becomes the first country to legalize same-sex marriage in 2001, followed by Belgium (2003), Spain (2005), Canada (2005), South Africa (2006), Norway (2009), and Sweden (2009). Within the US, Massachusetts was the first state to legalize gay marriage in 2004, California in 2008 (though Proposition 8 reinstated a ban on same-sex marriage later that year), Connecticut in 2008, Iowa and Vermont in 2009, and New Hampshire's law will take effect January 1, 2010 (LifeTips 2009). In the past century, gay rights have gained incredible ground in gathering support from the public and response from the political and legal actors that actually create and pass laws.

2. The Same-Sex Marriage Debate

I would like to begin by mentioning that I have described the gay rights movement as a continued success, but both pro and anti-gay rights supporters have won and lost battles over this movement. The most recent crushing blow to the gay rights movement in the United States was the passage of Prop 8 on November 4, 2008 in California. A slight majority of 52% of Californians, who voted, believed that “marriage in the state constitution” should be defined “as a union between a man and a woman” (CBC News 2009). The CBC article also mentioned a fascinating statistic; “spending for and against Prop 8 reached \$74 million” deeming this two-sided mobilization as “the most expensive social-issues campaign in U.S. history” (CBS News 2009). In May of 2009, gay and lesbians mobilized thousands of advocates to sign petitions and appeal Prop 8, but their valiant efforts were denied in the California Supreme Court decision of 6-1 in favor of upholding the ban (CBC News 2009). The passage and implementation of Prop 8 was an incredible win for anti-gay rights voters and devastating loss for pro-gay rights voters. If anything, these historical events will encourage advocates from every position to fight for their

beliefs.

David Masci's article titled, *The Gay Marriage Debate: Where it Stands*, opens his assessment of same-sex marriage acknowledging that "in the last year alone, three states have banned same-sex marriage and four states have legalized the practice" (Masci 2009:1). Iowa, Connecticut, and Vermont all legalized same-sex marriage and "voters in California, Florida and Arizona approved ballot initiatives amending their state constitutions to prohibit same-sex marriage" (Masci 2009:1). The United States is an ideal example of a liberal regime, as I will discuss later.

In Linda C. McClain's article, she evaluates whether the legalization of same-sex marriage "would signal the end -- or destruction -- of the institution of marriage" (McClain 2006:200). Though McClain does acknowledge the importance of preserving a millennia-old tradition, she believes that the resistance to the evolution of marriage holds no weight because "the evolution has already occurred" (McClain 2006:200). Since the beginning of the gay rights debate, evolution and tradition have been fundamental arguments. McClain blatantly states that she will "concur with those who contend that recognizing same-sex marriage is an appropriate and just evolution of the laws of marriage" (McClain 2006:201). Studies that McClain references in her article found that "'citizens and lawmakers have observed that same-sex marriages in their states have not had negative effects'" and as a result "'public opposition to same-sex marriage has steadily eroded'" (McClain 2006:206). I hesitate to agree with McClain on this point because legalized same-sex marriage is such a recent phenomenon. I will, however, agree with her discussion of evolution. In the next section I will address this evolution of not only terms, but also of the gay movement itself.

3. Evolution of Terms

Family and Marriage

It is undeniable that in many nations the definitions of family and marriage have evolved. David Badash is a blogger, who wrote an article titled "If You Want Gay Marriage, You Need To Fight For Gay Adoption" and proposes a bold, inquisitive statement. His statement is as follows,

So, if gays are allowed to adopt, that means the state is condoning gay adoption. If gay adoption is sanctioned by the state that means the state is saying gays are acceptable parents. If gays are acceptable parents to the state, and if the purpose of marriage is to have (raise) children, the state has to allow gay marriage (Badash 2009).

Here, Badash brings attention to a very interesting point. If a nation allows homosexuals to adopt, nations are allowing homosexuals to create family. Anti-gay rights advocates preach that marriage must be preserved between a man and a woman to have and raise a family. This point is refuted when nations allow gay adoption because then nations are allowing gays to raise families, as well. The validity of the argument that the sanctity of marriage must be preserved is lessened when governments pass legislation allowing gays to adopt. Because the definition of family is constantly evolving, it is difficult to describe why gay adoption does not go hand-in-hand with same-sex marriage.

Also, theorists have illustrated concern over the legal definition of family being stagnant. Blackwell states that, "the legal system has been slow to recognize gay parents through family policy...many scholars are challenging the courts to alter perceptions and definitions of the term family" (Blackwell 2006:6). Sixteen countries have deemed gays as adequate parents by legalizing gay adoption, which fosters families, yet countries like the United States have failed to recognize gay families in family legislation. With the accepted evolution of the definition of

family, the definition of family in the law must evolve accordingly. Ronald Louw also addresses legality in terms of defining family. Louw states that, “the legal conception of family what constitutes family life should change as social practices and tradition change” (Louw 2005:151). I believe that both Louw and Blackwell are correct in their belief that the evolution of family is not only a social issue, but also a legal one. Though laws have legally recognized gay families in various nations, laws pertaining to family are slow to be amended.

Media and Marriage:

Media has been a very important aspect of my paper and research. I have explored sources including interviews, documentaries and read blogs and news media sites that have all helped me further understand the evolution of the gay rights movement. In an interview with gay rights activist and attorney Urvashi Vaid, the current state of the gay rights movement was addressed. The weekend before the interview, a massive demonstration of gay rights supporters, of over 200,000 people rallied in Washington, DC on Sunday October 11, 2009. Vaid mentions an interracial couple. The man was Caucasian and the woman was African American, and they were holding a sign that read "Our Marriage Was Once Illegal Too" (Democracy Now 2009). The sign this couple was holding shares a message of hope for the gay rights movement and also helps support the idea that marriage is constantly evolving. Interracial marriage was legalized in a 1967 Supreme Court decision. The definition of marriage is not concrete. At one time, women didn't have the choice to marry who they wished, a black woman couldn't marry a white man, now two people of the same-sex can't marry. Traditional norms are being challenged, yet the value of marriage remains. It is important to note activists, like Vaid who is both an activist and a legal practitioner, because they are often the agents that mobilize movements and are major

factors as to why laws gets passed.

Gay Rights Movement Gaining Momentum:

Urvashi Vaid believes that the gay rights movement is experiencing three new characteristics: a generational or grassroots switch, a new wave of activism, and a more multi-issue agenda, all of which are ways the policy can expand and be more progressive (Democracy Now 2009). No longer are gay rights solely a gay person's concern.

In the majority of progressive countries, gay rights have evolved into an issue of hot debate and consideration. Uruguay has recently passed gay adoption legislation and days after was called into question because the bill did not explicitly mention certain elements of gay adoption. The issue of gay rights has gained significant global recognition. In less than a decade eight countries have passed same-sex marriage laws. An additional eight have passed gay adoption over the past decade.

In addition to the Democracy Now! Interview, I also looked into documentaries that focused on the gay rights movement. I watched several trailers of films and found myself extremely intrigued by one titled "For the Bible tells me so". In the short trailer a pastor or priest, his affiliation was not stated, said,

For a long time the Bible has been misused for prejudice, apartheid, segregation, slavery, the second class women, and now it's being misused to condemn gay people...it's an old trick fundamentalist Christians have been using through the ages and now they're doing it again (For the Bible tells me so 2009).

I was enticed by his speech because I think people tend to forget and lose sight of the past too easily. Only a few decades have passes since women were not allowed to vote and schools were segregated. I believe this speech put elements of history in perspective, which is an important

aspect of the path dependence theory I discuss later.

Overall, the way in which the media portrayed the gay rights movement was stimulating. Often, the interview or movie clip connected the gay rights movement to other human rights movements and oppression both in the United States and abroad. Media has an incredible ability and power to transform and project an image. Many of the movies I watched were winners of Sundance Film Festival awards, arguably validating their legitimacy and popularity.

Global Gay Rights

Over the past decade, the gay rights movement has seen an immense increase in support. In 2003, the U.N. Commission on Human Rights proposed “a vote on a resolution calling on all countries ‘to promote and protect the human rights of all persons regardless of their sexual orientation’” (WorldNetDaily 2003). Though this gay rights motion is overly ambitious, and despite the outcome, it further supports that the gay rights movement is an exceptional global debate. A member of the International Gay and Lesbian Human Rights Commission (IGLHRC) was quoted, “the resolution is a historic opportunity to advance [homosexual] issues in international human-rights law” (WorldNetDaily 2003). (Established in 1990, the IGLHRC is an organization that brings together gay rights information in a professional manner. Their tag line is “Human Rights for Everyone Everywhere” (IGLHRC 2009). This website provides a glance into gay rights across every continent.) Predictably, the resolution received immense opposition, including a memo from a commission member of the Organization of the Islamic Conference who said, “the resolution directly contradicts the tenets of Islam and other religions...approval would be a direct insult to the 1.2 billion Muslims around the world” (WorldNetDaily 2003). Though this measure did not pass, the debate that surrounded it furthered the movement in a way

of informing the world of the gay rights movement. Worldwide gay rights movements, parades, organizations, etc. will continue to question and challenge millions of people's opinions and beliefs and I believe that this movement has only just begun. The attention the gay rights movement has gained in over the last decade is monumental and I intend to investigate the progression of gay rights through gay adoption and same-sex marriage. After providing a personal, historical, and modern presentation of the gay rights movement, I will use my newfound knowledge to investigate past, present, and future legislation regarding global gay rights.

4. Gay Marriage (M) and Gay Adoption (A): includes years each was passed.

- See Table 1 for reference.

Prior to addressing my theories I would like to briefly mention the pattern on my chart. It is clear that the passage of gay marriage downward slopes as the passage of gay adoption upward slopes and the two meet in the middle with the passage of both in Spain in 2005. This is known as an inverse slope; as one variable goes up, the other goes down. Unfortunately, my theories do not address this pattern. It is clear that my investigation of the correlation between same-sex marriage and gay adoption is not complete. I say this because the gay rights movement is not over, and, arguably most importantly, remains a very young movement. It has been a mere ten years since the Netherlands passed same-sex marriage in 2001. As my paper will later show, I predict that the global gay rights movement is only in its initial stages and same-sex marriage and gay adoption will continue be legalized and debated. A close eye on the pattern of this movement will be very beneficial to further research.

5. Path Dependence Theory according to Page, Pierson, Greener and Skocpol

“The most compelling and extreme examples of path dependence include positive externalities as well as negative externalities” (Page 2005:113).

Scott E. Page, in his essay titled “Path Dependence”, defines path dependence “as in common interpretations, to mean that current and future states, actions, or decisions depend on the path of previous states, actions, or decisions...of late, path dependence has become a popular conveyor of the looser idea that history matters” (Page 2006:88). By applying the path dependence theory to my question of why gay adoption passes before gay marriage, I would see that more often than not gay adoption passes prior to same-sex marriage. Also, as simply put in the definition: history matters; “history matters because formations put in place in the early stages of an institutional or policy life effectively come to constrain activity after that point” (Greener 2005:62). Greener’s theory of historical institutionalism and path dependence makes an interesting claim when compared to the legalization pattern of gay rights. Page states that, “the central claim of historical institutionalism is that choices formed when an institution is being formed, or when a policy is being formulated, have a constraining effect into the future” (Page 2005:62). I believe that the two models together can be applied to the case of gay adoption being passed prior to gay marriage, especially in the cases of Norway and Sweden where same-sex marriage was passed seven years later. Norway and Sweden were becoming more and more modern and the next step in gay rights was to legalize same-sex marriage. Also, in a recent article about Uruguay’s acceptance of gay adoption, the article states that “the country has *history* of adopting a more liberal stance on social questions...in 1907 it became the first country

in the region to approve divorce and women were given the right to vote in 1932” (BBC News 2009). This quote is important for two reasons: 1) one definition of path dependence is history matters and here, the author mentions that Uruguay has a tendency to be more liberal, and 2) like the United States and other nations, women’s rights were addressed before gay rights, but, once again, were mentioned as support for the passage of gay rights legislation. I believe the path dependence argument is simple, but very applicable to why gay adoption is generally legalized prior to same-sex marriage. Historically, gay adoption is passed more often and prior to same-sex marriage. Sixteen countries have passed gay adoption, yet only half have passed same-sex marriage. My preliminary answer is that history matters, and that once a nation legalizes gay adoption, the idea of legalizing same-sex marriage becomes much more tangible. Granted, one may argue that the same argument would be true if gay marriage were legalized prior to gay adoption. Though this is a valid assertion and little research has been paid to this argument of why adoption first, I believe that the reason gay adoption is legalized first refers to the big claim that countries and governments are more willing to accept adoption because it does not directly hinder and denounce the sanctity of marriage, which remains the main argument of anti-gay rights advocates.

As Skocpol and Pierson state, “once actions have ventured far down a particular path, they are likely to find it very difficult to reverse” (Skocpol and Pierson 2002:66). This argument is intriguing because once a country has legalized gay adoption, the next step in gay rights, is either debate on same-sex marriage or the actual legalization. This idea that Skocpol and Pierson present will eventually assist me in tying path dependence to my second theory of welfare-state regimes. I connect the two theories in the sense that countries do not shift between welfare-state regimes and therefore the courses in which laws embark are predictable, as path dependence

states. Only during times of dramatic and sudden shifts in government power, like the end of the apartheid in South Africa, do countries switch welfare-state regime affiliation.

Greener also provides a definition of path dependency when he says, “once particular paths have been forged, it requires a significant effort to divert them on to another course” (Greener 2002). This argument is similar to Skocpol and Pierson’s model for it refers to how certain policy decisions strictly guide other policy decisions down the same predictable path. For instance, if a nation were completely against same-sex marriage, it would never pass gay adoption legislation. With the legalization of pro gay rights laws, a nation is proclaiming that it is accepting of homosexuality and, thus, makes it more probable that that nation will pass same-sex marriage in the future. In 20 years it will be interesting to see how the worldwide gay rights movement has progressed and whether gay adoption continues to precede same-sex marriage.

To add to my path dependence argument, I would like to note that once gay adoption is passed, gay marriage is always a topic of debate. In numerous media articles about the legalization of gay adoption, same-sex marriage is nearly always mentioned. Though the two issues typically do not become legalized at the same time, it seems as though if one is being debated the other does not go unmentioned. Gay adoption and same-sex marriage are intensely connected.

Though the path dependence argument is compelling in a historical sense, Esping-Andersen’s liberal, social-democratic, and conservative welfare-state regime model allows me to delve deeper into my question of why gay adoption is typically legalized prior to same-sex marriage.

6. Path Dependency Theory Transition to the Welfare State Regime Theory

The main principle of the path dependency theory is that history matters and as Gosta Esping-Andersen points out in his book, *The Three Worlds of Welfare Capitalism*, the laws of these three regimes “nearly always posit similar and convergent evolutionary paths” and “they owe their origins to different historical forces” (Esping-Andersen 3). By Esping-Andersen using the words “evolutionary” and “historical forces”, I can better argue the likeness between these two theories and how they do compliment and build from one another.

Esping-Andersen’s Welfare-State Regime Theory

Though Esping-Andersen does not investigate gay rights with his theory, I believe that welfare-state regimes are predictors for how policies get passed and what policies will pass. I also will use Ann Shola Orloff’s article, which is a gender critique on Esping-Andersen’s regime theory to help me construct my argument, as well. Esping-Andersen uses both historical – like the theory of path dependence – and political structure of countries to categorize them into his three welfare-state regimes. As I will later discuss with more focus,

welfare states may be equally large or comprehensive, but with entirely different effects on social structure. One may cultivate hierarchy and status, another dualisms, and a third universalism. Each case will produce its own unique fabric of social solidarity (Esping-Andersen 58).

I believe that this quote is important to set the stage for my argument of Esping-Andersen’s welfare state regime theory. From my reading, I would classify the countries concerned with “hierarchy and status” as the conservative regimes like Germany and Austria, “dualism” as the liberal regimes like the United States and Canada, and “universalism” as the social democratic regimes like Sweden and the Netherlands.

Welfare-State & Regime

Geof Wood and Ian Gough's article "A Comparative Welfare Regime Approach to Global Social Policy" gives definitions of both the welfare state and regimes, prior to discussing Esping-Andersen's complete model. Wood and Gough define "'welfare-states' as a structure embracing a combination of pensions and social protection benefits, social services and labor market regulation" (Wood & Gough 2006:1). "'Regime' refers to a set of rules, institutions, and structured interests that constrain individuals through compliance procedures" (Wood & Gough 2006:3). Esping-Andersen's welfare-state regimes are based on the empirical testing of 18 countries that are part of the Organisation for Economic Co-Operation and Development (OECD) (www.oecd.org 2009). The mission of the OECD is to "bring together the governments of the countries committed to democracy and the market economy from around the world...where governments compare policy experiences, seek answers to common problems, identify good practice and coordinate domestic and international policies" (www.oecd.com 2009). From these 18 countries, Esping-Andersen classified countries as liberal, social-democratic, or conservative welfare states based on "the key dimensions: (1) state-market relations, (2) stratification, and (3) social citizenship rights" (Orloff 1993:306). Orloff argues that the analytical framework of welfare states must be "'gendered'" (Orloff 1993:306). By this, Orloff "means because power resources analysis does not consider gender relations, its conceptual apparatus must be reworked to incorporate gender" (Orloff 1993:306). While Orloff applies her gender critique to Esping-Andersen's model, I am applying my gay rights critique to Orloff's model.

- Reference Table 2 for specific regime categorization.

Conservative Regime

Esping-Andersen states that the conservative regime is structured on “the principles of maintaining status and hierarchy and should result in sharp inequalities” (Esping-Andersen 75). The conservative regime is also focused on “the degree of status segregation, or corporatism” (Esping-Andersen 73). These conservative regime countries are generally connected to Catholicism in my research. Catholics strictly believe in marriage being between a man and a woman and, thus, the acceptance of same-sex marriage in a Catholic country is not generally a reality. Also, this strict belief of marriage predicts that these countries are rooted heavily in traditional family values making them less likely to pass gay legislation. Countries that fall under this regime-type are Austria, Belgium, France, Germany, and Italy. The conservative regime I have chosen to analyze further is Germany.

Though Germany has still not legalized gay marriage or gay adoption completely, gay rights in Germany have come a long way. As noted in the *Gay Rights Timeline* section, one of the first known gay activists, Karl Heinrich Ulrich, “campaigns for gay rights in pre-World War II Berlin” (Gay Rights – History 2006). On August 1, 2001, Klaus Jetz a leader for the “Lesbian and Gay Association of Germany (LSVD)” lead the protest for gay rights that, in turn, lead to the “German parliament passing the ‘registered partnership’ bill, which gave gay and lesbian couples new status in the eyes of the state, one that had many of the advantages of marriage” (German Gay Marriage 2006). This bill was a monumental turning point for the gay rights movement in Germany. Though gay marriage has not yet been legalized, gay activism won an important battle when the registered partnership law “was amended, giving one partner the right to adopt the other partner’s biological child” (German Gay Marriage 2006). This amendment to the 2001 legislation gives the movement a huge element of hope. Germany has continued to progress. The next step for German gay adoption rights is allowing gay couples to adopt and, as my theory of

path dependence would predict, in time, gay adoption will be accepted and the next feat would be gay marriage. In the article, *German Gay Marriage Law Marks Fifth Anniversary*, the author concludes with a powerful quote from Klaus Jetz that puts global gay rights in perspective when he says, “but even in the Netherlands and Denmark it took 10 years until lesbian and gay partnerships were made 100 percent equal to heterosexual ones” (German Gay Marriage – 2006). Like the path dependence theorists I have mentioned and the definition of the conservative regime illustrates, patterns are evident in this movement and these patterns are providing hope for the global gay rights movement. It is clear that Jetz will remain unsatisfied with registered partnerships until the legal elements of gay marriage mirror heterosexual marriage, but he also recognizes how far the movement has come over the past fifteen years. Germany serves my theories and research questions well for Germany recognizes a variation of gay couple adoption, and the next logical step would be to completely legalize gay adoption and then move onto the task of gay marriage.

Social-Democratic Regime

Social-democratic regimes promote “universalism as the reigning principle...accent on equality should produce low differences” (Esping-Andersen 75). Social-Democratic regimes take great pride in their egalitarian ways and care of their citizens. These regimes provide high benefits and offer many programs of assistance. The countries that fall under this regime-type are Denmark, Finland, the Netherlands, Norway, and Sweden. Sweden will serve as my social-democratic country under investigation.

In the 1990’s “Sweden gave gay couples legal ‘partnership’ rights and allowed them to adopt children in 2002” (CBC News 2009). Seven years after gay adoption is legalized,

“Sweden’s parliament votes 226-22 to recognize same-sex marriage” (CBC News 2009). I believe it is important to bring attention that years separate the legalization of gay adoption and gay marriage, except in the isolated case of Spain in 2005. Though Swedish parliament took years to approve same-sex marriage, it remains one of eight countries that have legalized same-sex marriage throughout the world. Sweden’s universalistic response to the gay rights movement can serve as a strong example for the direction in which other social democratic regimes are headed.

Liberal Regime

Esping-Andersen defines the liberal regime as a regime where “social rights are unusually underdeveloped” (Esping-Andersen 75). The liberal regime puts a high emphasis on being competitive in the work industry and work ethic. Though it is a liberal regime, a feminist political scientist Valerie Lehr, the author of “Queer Family Values” describes the state of the liberal welfare-state regime in a logical, yet blunt way. Lehr “suggests that although this liberal understanding of freedom assumes that we are free when we do not feel power operating we need to understand that power is always operating...total freedom is not a feasible goal, but as citizens we can engage in struggles with the potential to decrease domination and increase freedom” (Lehr 1995:15). Lehr’s account refers to this idea that citizens of liberal regimes believe they have complete freedom, yet government is constantly exercising its power. I chose the United States as the ideal liberal welfare state I will investigate.

The gay rights movement in the United States is clearly depicted in my *Gay Rights Timeline* section above. A liberal regime, such as the United States, allows for constant debate about gay rights issues. A clear example was the issue of Proposition 8 in California. Same-sex

marriage was legalized in June of 2008 and then was later appealed in November of the same year. Out of the three regimes that Esping-Andersen argues, the liberal regime is the least predictable one. In social-democratic and conservative regimes, laws and regulations are less often overturned, as my research has suggested.

At this juncture, I would like to address the fact that Esping-Andersen does not apply his welfare-state regime theories to gay rights, but through Ann Shola Orloff's gender critique of Esping-Andersen's regimes, I am able to predict how certain regimes would react to gay rights legislation.

7. Ann Shola Orloff's Theory

Gender Relations and Welfare States

As I continue to build my argument, Ann Shola Orloff's gender critique of Esping-Andersen's regime theories will allow me to better predict how the welfare-state regimes of the United States, Sweden, and Germany would react to proposed gay rights legislation. Orloff's main finding is "variation across countries and over time in the character and effects of social provision on gender relations has been considerable and significant" (Orloff 1993:304).

State-Market Dimension

Orloff argues that, "states in a given regime-type act similarly in regard to the market" (Orloff 1993:310). This point circles back to Skocpol, Pierson, and Greener's path dependence argument that decisions made in the past affect decisions made in the future and that diverting from this path is nearly impossible. Decisions made within regimes are based on the same basic principles today as they were years, decades, centuries ago. Regimes have been on a constant

path of policymaking that is representative of what these regimes stand for. With modern times, policies change, but regimes act according to their basic structure. For instance, “liberal states tend to respond to societal ‘failures’ rather than intervene to prevent problems from occurring” (Orloff 1993:310). In contrast, “social-democratic and conservative regimes are pro-active and retain a larger range of welfare activities, effectively crowding out the market” (Orloff 1993:310). I would predict that in a liberal regime, like the United States, considering gay rights are generally decided state-by-state, states would stick to traditional rules and regulations until these laws were challenged. With conservative and social-democratic regimes, I would predict that Germany and Sweden would each predict social trends and enact legislation accordingly. With Sweden and Germany, government controls the state-market and, though the two countries are on opposite political spectrums, they are related because the two governments mold how they want society to act and behave in the state-market. The two regimes suggest all-exclusive or inclusive elements that is not present in a liberal regime.

The Stratification Dimension

The stratification dimension is defined as being “an active force in the ordering of social relations” (Orloff 1993:310). Depending on the welfare state, certain policies “may promote equality, cross-class solidarity, while others may promote social dualism or maintain or strengthen class or status differentiation” (Orloff 1993:310). Stratification is a very important factor of the welfare-state regime model and policies regarding gender are formulated and imposed with a certain goal in mind. Orloff states that “the social-democratic regimes foster solidarity by including all citizens in common programs, and they reduce class differences through income redistribution” (Orloff 1993:310). With “conservative regimes, status and

occupational differentiation by offering separate provision for different social strata, such as distinct programs for blue collar and white collar workers, is enforced” (Orloff 1993:311). Lastly, “liberal regimes encourage social dualisms between the desperate minority, that relies on limited forms of social assistance, and the majority, that relies principally on the market for welfare” (Orloff 1993:311). In Sweden, I would predict that it would react favorably to gay rights, especially when Orloff says “including all citizens in common programs” because this is a sort of egalitarian and universal outlook that promotes a level of equality. I do not believe Sweden would use homosexuality as a means of stratification. In Germany, strict provisions are enforced and play to the belief that conservative regimes are not apt to change. I would predict that stratification is explicit and enforced regarding sexual orientation and that the traditional values of this regime would be less accepting of change. The social dualisms in a liberal regime, such as the United States, would force me to predict that pro and anti-gay rights advocates will remain entangled in debate.

The Social Citizenship Dimension

This classification is based on “distinctions that regulate access to benefits, and along with benefit levels and the range of entitlements, they determine the ‘degree to which the individual’s typical life situation is freed from dependence on the labor market’” (Orloff 1993:311). This independence from the market is also known as decommodification. Social-democratic regimes “are the most decommodifying since provision is generous, many benefits are universal, and access is relatively easy for workers” (Orloff 1993:311). Liberal regimes “limit decommodification of labor by conditioning limited benefits on means tests or contributions based on work” (Orloff 1993:311). The conservative regimes, “which have strong

citizenship rights to social benefits, do not promote decommodification of labor, because the conditions for benefits reinforce reliance on work and the market” (Orloff 1993:311). Overall, as predicted in the previous two dimensions, the United States would set a few restrictions, Sweden would have very few restrictions, and Germany would have the strictest restrictions.

Women’s Employment in Sweden, Germany, and the United States as a Final Predictor

According to Orloff’s article, “regime types do not fully predict women’s employment patterns” (Orloff 1993:312). In Sweden, “provision of services is important to the Swedish welfare state, and this ‘provides a phenomenal multiplier-effect for female employment’” (Orloff 1993:312). Orloff notes that, “the lack of services in Germany has retarded the growth of female employment” (Orloff 1993:312). In the United States, “women’s employment has increased sharply, driven by market forces, in spite of the dearth of public services” (Orloff 1993:312). Overall, I believe that using Orloff’s critique of gender, I was able to accurately predict how the United States, Sweden, and Germany would react to gay rights legislation.

8. Findings

From my research, I have gathered that welfare-state regimes are accurate predictors of how a given society will react to the gay rights movement. As predicted, social-democratic regimes would be accepting of gay rights and most likely to accept gay adoption, as well as same-sex marriage. In Table 2, three out of the top five countries in the socialist column have passed same-sex marriage. Those three countries would be the Netherlands, Norway, and Sweden and Denmark is also listed, but has only passed gay adoption. Two out of the top five in the liberal column have passed same-sex marriage: Canada and the United States. Belgium is the

only country in the conservative column to have passed same-sex marriage. I believe that the liberal, social-democratic, and liberal regimes allow me to predict how gay rights will be handled in the specific countries I chose to address. In conclusion, the historical evolution of these regimes is why I am able to predict how regimes will respond to new social policy. Granted, Sweden, Germany, and the United States are ideal examples of the three welfare states and are possibly special cases that fit these models perfectly. It is possible and highly likely that other countries would not fit into these regimes as well. In regards to my theory of path dependence, I believe that this theory remains important to my research question. However, my results are somewhat inconclusive as to why gay adoption is generally legalized prior to same-sex marriage. The lack of research that has been done on this topic is a definite obstacle in discovering more about the pattern of this social policy. At this time, my predictions are based on a gendered critique of welfare-state regimes. In summation, I discovered that path dependence is a predictor of policy and that welfare-state regimes can be understood through path dependence because the history of these regimes allows a person to predict the course of policy in that respective society.

9. Conclusion

If I were able to conduct my research again, I would have graphed my information sooner than I had. The inverse relationship between same-sex marriage and gay adoption shown in Table 1 is incredibly fascinating. Because these two issues are such new phenomenon, little research has been done and I would be very interested in spending more time looking into this pattern. Will same-sex marriage continue to be legalized second to gay adoption? I unfortunately did not reach an answer to my question and I believe that looking more intensely into the pattern of Table 1 would help me arrive closer to an answer. In summation, though I did not arrive at a

clear answer to my questions of why order matters, I did discover compelling information that will be used in my future research of this topic. A major reason as to why I did not reach a satisfying answer is because the gay rights movement is such a young movement. The Netherlands legalized same-sex marriage less than a decade ago. I believe it would be extremely wise to look into the relationship between gay adoption and same-sex marriage in another ten years to see if this order persists or not. I would especially like to examine the status of same-sex marriage in the eight countries that have passed gay adoption, but not same-sex marriage. As Ann Shola Orloff critiqued Esping-Andersen's theory from a gender perspective, I attempted to use her arguments to support my gay rights perspective.

I also believe that strongly that though I have rather inconclusive findings as to why the legalization order of gay marriage and gay adoption matters, I think I am tapping into a very interesting debate. As I have noted in earlier sections, I can only deduce my conclusions from a decade of information. In another ten or twenty years, the inverse pattern I found on my chart may have changed, but I know that the attenuated pattern I have discovered at the present time is important. Why? I am still unsure, but I do not feel that that is a good enough reason to completely discount my initial research question of why the order matters with these laws. My prediction is that over the next couple of decades, more countries will pass gay adoption, along with gay marriage. I predict a great number of social-democratic countries will follow suit, then a number of liberal countries, and fewer conservative countries. This topic is not only pertinent to the sixteen countries I have listed, but dozens more countries all over the world. I will stand by my topic, while also understanding that my conclusions may not be what I anticipated. I do firmly believe that Esping-Andersen's welfare state regime theory, along with path dependency, are reliable predictors for how a country will approach gay rights.

I remain intensely interested in the gay rights movement and this relationship between gay adoption and same-sex marriage. The gay rights movement is taking baby steps between gay adoption and same-sex marriage. I firmly believe that these baby steps are transforming the global gay rights movement at an impressive rate.

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