

Articles

Cece Cox, *To Have and To Hold-Or Not: The Influence of the Christian Right on Gay marriage laws in the Netherlands, Canada, and the United States.*

Long-time activist and legal scholar, Cece Cox, examines societal and legal responses to the issue of marriage rights for gays and lesbians around the world. She focuses her analysis on three countries: the United States of America, where opposition to officially authorized recognition is the strongest, the Netherlands, where public outcry is muted and same-sex marriage is recognized with little controversy, and Canada, where its geographic ties and historical roots place it in the midpoint between the outer limits of Western debate. The Dutch were the first to grant equal marriage rights to all couples, which Cox attributes to cultural tolerance, social reverence for human rights and equality, and most notably a parliamentary body with multiple parties. Canada does not recognize equal marriage rights for all couples on the Federal level, but individual provinces have amended codes to include protections for same-sex couples. Cox notes the federalist system in Canada is more decentralized than that of their neighbors to the south, and in the absence of Christian fundamentalist influence on the national culture, provincial governments and judiciaries have carved their own paths towards anti-discriminatory policies. Contrarily, the individual states in the U.S. have taken few forward strides towards equality, and have more frequently regressed with passage of traditionalist amendments. Cox weaves the influence of the Christian right as it relates to marriage equality throughout the paper, but it is most relevant to her discussion of the U.S. She suggests that the Christian Right has used its deep-rooted political organization to advance fundamentalist Christian ideals of dualism. Cox attributes their success, at the expense of the gay and lesbian community, to various socio-political elements, most notably alignment and acceptance within a two-party political system, anti-intellectualism, and media exposure.

Michael L. Rosin, *Intersexuality and Universal Marriage.*

Rosin, a freelance writer and scholar, examines the impracticability of defining the fundamental right of marriage to be between "a man" and "a woman" in the proposed Federal Marriage Amendment. Rosin criticizes the ill-fated attempt to define a fundamental right using sexual binaries which are not fundamental metaphysical categories. For centuries, the existence of physically intersexed people with atypical combinations of sexual characteristics has been recognized. In light of current amendments, legislation, and debate, Rosin raises the question of what defines a "man" and what defines a "woman" and envisages how it would be addressed as a question of constitutional law. Rosin takes a multi-faceted approach to the question examining cultural and sociological history, scientific theory, philosophical thought, and the interplay between metaphysics, psychology, and identity. Throughout, Rosin ties his interdisciplinary approach to a broad legal history concerning individual cases from around the world. The article raises questions such as the nature of the individual, to the nature of the institution of marriage, highlighting the difficulties Rosin puts forward, and explains that a right to marriage is divisible from the nature of consummation is one that raises none.

Evan Wolfson, *Marriage Equality and Some Lessons of the Scary Work of Winning*.

In his keynote speech, delivered at the National Lesbian and Gay Law Association's 2004 Lavender Law Conference, Evan Wolfson discusses the history of civil rights movements and his experiences as an advocate for equality as they relate to the current national struggle for equality in marriage. The speaker shares some important lessons he has learned as inspiration to fuel future outreach, advocacy, and dialogue. Most notably he reminds the audience that struggles of the highest magnitude are not won and lost in a specific moment, but require perseverance and commitment through both successes and setbacks.

NLGLA Writing Competition

Anne Tamar-Mattis, *NLGLA Writing Competition: Implications of AB 458 for Californian LGBTQ Youth in Foster Care*.

J.D. candidate Tamar-Mattis's prize essay addresses the lack of protection offered to lesbian, gay, bisexual, transgender, and questioning (LGBTQ) adolescents in the foster care system. Especially dangerous is the impetus for adolescents to disregard a system designed for their protection for a life on the street because of homophobia, transphobia, and victimization. Tamar-Mattis tackles the issue by analyzing AB 458, a recently passed California law that seeks to protect LGBTQ adolescents in foster care, and its overarching implications. Without case law to guide analysis, Tamar-Mattis analogizes to racial discrimination in foster care, sexual discrimination in schools, sexual discrimination in employment, and gender identity discrimination, to form a backdrop for her analysis. The author praises the law for the protection and stability it offers adolescents, the resources it makes available, and the training it requires of care providers. She concludes by lauding the explicit statutory protection established, but reminds advocates that the law is but the foundation, and future needs-assessment and judicial definition are essential to shape the law's structure and effectiveness.

Case Notes

Amanda M. Crowley, *Note*, *Cote-Whitacre v. Department of Public Health: Disproving the Misconception that Massachusetts Created a National Loophole for Same-Sex Marriage*.

Crowley examines the Superior Court of Massachusetts' constitutional review of the "domicile evasion" provision of the state's marriage law and its relation to *Goodridge v. Public Health*, where the court held that barring same-sex marriage violates the Massachusetts Constitution. The court clarified the decision in *Goodridge* and emphasized it was reached without classifying homosexuality as a suspect class and without declaring same-sex marriage a fundamental right. Therefore, applying a rational-basis test the court here found that nonresidents had no fundamental right to travel from other states to marry in Massachusetts. The court calmed misguided apprehension of a marriage "loop-hole" finding the provision constitutional as it applied equally to all couples, was rationally related to a legitimate state interest, and, relying on *Goodridge*,

that strict scrutiny was unwarranted. The author opined that the court arguably catered to national prejudice and sacrificed an opportunity to secure same-sex marriage as a fundamental right. However, the author also noted that the decision may have been prudent, as civil rights have historically been acquired and widely accepted on a gradual basis.

Lauren R. Dana, *Note*, Andersen v. King County: *The Battle for Same-Sex Marriage-Will Washington State Be the Next to Fall?*

Dana examines the historical context of Judge Downing's opinion and its relation to the unique judicial barriers to same-sex marriage in the United States. Following the precedent set by the Massachusetts court in *Goodridge v. Public Health*, the court in the noted case found that denial of marriage licenses to same-sex couples in Washington was unconstitutional. Furthermore, the court in the noted case broadly focused on the right to marry and found it to be fundamental right which required a strict scrutiny analysis. Like many other contemporary legal scholars, the author finds the case to foreshadow the gradual movement, or domino-effect, of American jurisdictions towards more progressive marriage laws such as those prevalent in Europe and Canada.

Theresa Rose Goulde, *Note*, In re Kandu: *Defending DOMA-Deferential Washington Bankruptcy Court Deals Blow to Equal Protection and Due Process by Upholding Federal Ban on Recognition of Same-Sex Marriage.*

Goulde looks at the first published federal court opinion ever to address the constitutionality of the Defense of Marriage Act. The Bankruptcy Court for the Western District of Washington deferred to Congress' intent and found that federal bankruptcy courts can exclude same-sex couples, married or otherwise, from joint debtor recognition. The author felt the decision was predictable considering the court's limited and deferential role within the federal judiciary. However, the author also laments the court's disregard of the Constitution's equal protection guarantees which do not tolerate "classes amongst citizens" and the inference that the marriage right is not ultimately fundamental.