

## CHANGING POLICIES: DO TELL THE ONGOING BATTLE OF SAME-SEX MARRIAGE APPEAL

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### Abstract

*From the first of the infamous Oscar Wilde trials in Great Britain in 1895 to the repeal and appeal of California's Proposition 8 in the United States, same-sex relationships continue to ignite strong emotions. Society imposes its own standards on love which often force people to hide their desire for fear of social rejection or more severe consequences such as imprisonment and even death. History reveals that many people suffered the trials and tribulations of discrimination because they dared to defy societal norms. The stories of these martyrs often enable change to occur, even though change may be slow to occur. Even as individuals enter the legal stage to fight for and defend their right to love and marry another person of the same sex, proponents of same-sex marriage recognize that now is the time to assert their presence as visible members of society.*

**Keywords:** Same-sex Marriage, California's Proposition 8, "Don't Ask, Don't Tell," "Defense of Marriage Act," Discrimination, Bunbury, Oscar Wilde, Sexual Revolution

### Introduction

The repeal of the seventeen year old "Don't Ask, Don't Tell"<sup>1</sup> policy signed into law by President Bill Clinton represents a huge victory for the Gay, Lesbian, Bisexual, and Transgendered (GLBT) community, as members of the United States' military can no longer be prohibited from disclosing their sexual orientation. In the same breath, however, the United States' Supreme Court has yet to make a decision that same-sex marriage is a natural and legal right of its citizens. Although gay marriage is legal in twelve states<sup>2</sup>, thirty-eight states have yet to recognize the basic right of its citizens to form legally sanctioned marriages even though several support same-sex civil unions. Many people who are opposed to same-sex marriage such as those who support Proposition 8 argue that marriage between a man and a woman is "an essential institution of society" (California General Election, 2008). They also claim that if the constitution is left unchanged it would "result in public schools teaching our kids that gay marriage is okay" (California General Election, 2008). Ultimately, they are adamant that gays "do not have the right to redefine marriage for everyone else" (California General Election, 2008). They fail to recognize, however, that they are defining marriage for everyone else.

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<sup>1</sup> The "Don't Ask, Don't Tell" policy was signed into law by President Bill Clinton on January 29, 1993.

<sup>2</sup> Gay marriage is legal in Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont, Washington, and the District of Columbia. On May 31, 2013, Illinois may be the thirteenth state to legalize same-sex marriage.

### **American Essential Institutions**

What these proponents fail to realize is that institutions like civilizations are destined to rise and fall as a reflection of the will of the people. The German term *zeitgeist*, meaning the spirit of the times, is appropriate when considering essential institutions, as it was not so very long ago in the history of the United States that slavery was an institution that became essential to the success of the developing United States of America. If it had not been for the opponents of slavery, the Civil War, and the courage of President Lincoln to issue an executive order to free the slaves with his Emancipation Proclamation, it is possible that the proponents of the right to own slaves would still consider slavery an essential institution of society and education a privilege of one race and gender. Proponents of the Civil War to maintain their way of life are a testament to their strongly held beliefs that slaves and abolitionists did not have the right to redefine freedom for everyone else. Considering the first slaves arrived in Virginia in 1619 and the Emancipation Proclamation did not occur until 1863, the reality that slavery existed for 244 years before justice was rendered is beyond comprehension. Considering the first settlers arrived in the New World (America) in 1607 and that same-sex marriage was not recognized in the United States until 2004, some 397 years later and is now legally possible in only twelve states, is also beyond comprehension. The fight for personal freedom rarely has a beginning and ending point, as usually many incidents lead up to a declaration of war and many incidents occur after someone claims victory that supposedly ends the war. The “Emancipation Proclamation” freed the slaves, but they continued to be subjected to racial discrimination and were prevented from obtaining basic rights as citizens such as the right to vote for almost one hundred years after their emancipation.

### **Champions for the Marginalized and Disenfranchised**

The Civil Rights Movement that erupted during the fifties and sixties of the Twentieth Century brought about many changes for people of color, women, and other minority groups, but it would be unrealistic to say that the war was over and that they were no longer subjected to discrimination. Even with the courage of President Kennedy who issued an executive order that established the basis of affirmative action that was upheld by the Supreme Court of the United States, discrimination still exists. Even though "President Obama has instructed the Justice Department to no longer defend the constitutionality of the Defense of Marriage Act" (Montopoli, 2011)<sup>3</sup>, the same-sex marriage battle is not championed by his convictions, even though he has “evolved” on the issue, and it has yet to be argued as a fundamental constitutional guarantee before the Supreme Court of the United States; consequently, it is not difficult to surmise that opponents of same-sex marriage have been given unspoken authorization, even presidential support, to continue their discrimination against those who believe that the freedom to marry is a fundamental right. The right to marry and the reasons some people are allowed to marry while others are not are entrenched in political, social, moral, and religious ideologies, to which most people have given little or no thought and to which most people adhere for the sake of tradition. Although many individuals are aware of the injustices to which others are subjected, few are willing to champion those who are marginalized, even disenfranchised, by the very people who were elected to protect them. History reveals that some individuals rise to the occasion with distinction such as Presidents Abraham Lincoln and John F. Kennedy as well as other leaders such as Martin Luther King, Jr., but it must be noted that these great men sacrificed their lives with the hope that their pursuits would create a world of equality.

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<sup>3</sup>The “Defense of Marriage Act” (DOMA) is the legal prohibition of federal recognition of same-sex marriages and defines marriage as a legal union between a man and a woman

## Great Queers in History

The incidences leading up to the demand for equality under the law by the GLBT community span many centuries, but the term gay, and what it signifies, did not originate until the mid-Twentieth Century. The term most commonly used until the end of the Nineteenth Century was "sexual inversion" with the pejorative code name "shame." When considering some of the great queers in history—Plato, Socrates, Alexander the Great, Julius Caesar, Nero (Emperor of Rome), King Edward II of England, Leonardo da Vinci, Oscar Wilde, Tchaikovsky, Gertrude Stein, Cole Porter, and Walt Whitman, just to name a few—it is difficult to think of them with shame. In fact, most people utter their names with great respect and a sense of pride. These are well-known individuals whose names are associated with great artistic, philosophic, and military accomplishments. The names of these important historical figures are part of a standard educational curriculum for most students, who are exposed to history, art, music, philosophy, social studies, literature, drama, poetry and many other disciplines. Rarely do educators announce that these great people were great queers; rather, they were great for some other reason (the Mona Lisa (a painting), "the Socratic Method" (A dialectic method of inquiry), the *Symposium* (A philosophical text), *Swan Lake* (a ballet), *The Nutcracker* (a ballet), the *1812 Overture* (a musical composition), *Leaves of Grass* (a collection of poems), *Kiss Me, Kate* (a Broadway musical), *The Importance of Being Earnest* (a play) and many other "great" works. Rarely are students provided insights into the trials and tribulations some of these individuals suffered because of their sexual orientation. Rarely do students learn of the torture some individuals suffered such as King Edward II of England who was purportedly killed "as legend has it, by a red-hot poker [forced] up [his] rectum" (Bremmer, 2011). Of all the names mentioned, Oscar Wilde is probably the most well-known individual who suffered for his sexual orientation, because of his refusal to flee into exile and avoid the charges of sodomy and gross indecency placed against him by the British Crown. Wilde did not deny his homosexuality; rather, he deferred to historical references such as Plato as a means to explain his actions as natural and normal and to defend the love that exists between men. His speech was eloquent and moving, but the judge was not moved and rendered him guilty and sentenced him to serve the maximum punishment allowed by law—two years of hard labor in prison.

## Keeping Socially Taboo Relationships Private

Of all of Oscar Wilde's plays, *The Importance of Being Earnest: A Trivial Comedy for Serious People*, is probably the one play that has the most profound effect on gay audiences because of its characters, Algernon, who pretends to have an invalid friend name Bunbury that offers him a pretext to escape from social obligations, and Jack Worthing, who leads a double life as Jack in the country and Ernest in the city. Audiences recognize almost immediately that Jack is a bunburyist. There is probably no need to place any emphasis on the name Bunbury and the jokes that ensue such as "burying in the bun" and that Jack is "one of them," but it is also fun to mention, as an inside joke for those "in the know," just for a few laughs. This play is significant for several other reasons. It was first performed on February 14, 1895, a day well-known even in the Nineteenth Century as a day when lovers express their love for each other. Although the play pokes fun at many of the conventions of Victorian society, especially the reasons why one individual loves another, one of the major themes to be treated in a trivial manner is the institution of marriage. Perhaps the real irony of the play is that its author was a married man who seemingly trivialized his heterosexual marriage through his involvement in a homosexual relationship. Perhaps it was not ironic at all since most of society knew that Wilde was involved in a relationship with Lord Alfred Douglas (Bosie). In fact, many if not most people in society were aware that such relationships existed in general. Certainly they would not have been shocked. As long as socially taboo relationships were kept quiet, it is easy to speculate, considering the temperament of modern society that most people really did not care what

other people did as long as they did it in private and did not flaunt it in public. It is also possible to view the creation of the play as one man's attempt to be earnest and publicly end his facade and be the man he truly was, a man in love with another man.

### **Earnest in the Face of Inevitable Adversary**

Would it be possible for an extremely successful and popular playwright, who was a married man with children, not to shock the sensibilities of Victorian society with a proclamation of his gay identity? If he had the opportunity to express his love publicly for his lover, perhaps society would have been sympathetic, forgiving, and even supportive of the relationship. "If" is such a little word that contains many infinite possibilities that ultimately expresses regret. In Oscar Wilde's case, even if it was his intention to "come out<sup>4</sup>," so to speak, his lover's father, The Marquess of Queensberry, thwarted his opportunity and forced his "outing" by accusing him of being a sodomite. As the saying goes, "the rest is history" culminating in the three trials of Oscar Wilde dealing with his civil suit for libel against the Marquess of Queensberry and the government's two criminal charges against Wilde for acts of gross indecency. Wilde lost the court cases, but his conviction to be earnest in the face of inevitable adversary set into motion an ongoing trial on the global stage that encourages all people, regardless of their sexual orientation, to demand equal protection and rights under the law.

### **Love That Is Stronger Than Hate**

How much pain and suffering can one man endure and still forgive the person that was the cause of his bankruptcy, imprisonment, and personal ruin? In his letter, *De Profundis*, Oscar Wilde reveals that even though Lord Alfred Douglas was the cause of his misfortune, public disgrace, and, ultimately, the end of his professional career as a playwright, he acknowledges that he too was responsible for his own fate. As a moth is attracted to a flame that will consume its body, Oscar Wilde was attracted to Lord Alfred Douglas (Bosie) who was the flame intent on satisfying his own desires at the expense of, even the death of, his victim who was blinded by the intense light that radiated from him. Wilde acknowledges that he was aware Bosie was interested in him only as long as his own light was shining and that he was aware Bosie was using him to satisfy his own sense of vengeance against his family; nevertheless, his personal feelings, his love, for Bosie were stronger than his love or respect for himself or his family. Throughout the two years he spent in prison, Wilde heard only one time from his lover; nevertheless, even after all the suffering he experienced, Wilde still wanted to see Bosie as soon as he was released from prison. The moth that escapes the intense heat of the flame with only singed wings will continue to seek out the flame until it results in its death. The two lovers reunited and rekindled their relationship only to be separated by their respective families who threatened to withdraw their financial support. Wilde died within three years of his release from prison at the age of forty-six.

### **Significant Historical Events**

Society imposes its own standards on love which often force people to hide their desire for fear of social rejection or more severe consequences such as imprisonment and even death. History reveals that many people suffered the trials and tribulations of discrimination because they dared to defy societal norms. Those who suffer for a cause often provoke change to occur, even though the change may be slow to occur, may never occur in their lifetimes, and may cost them their lives.

As the infamy of his trial faded from memory, and as sexual mores relaxed after World War I, a more sympathetic light was cast on Wilde. When the gay rights movement erupted in the United States and

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<sup>4</sup> "To come out" or "coming out" is a figure of speech indicating one's disclosure of his or her sexual orientation or preference.

Europe, LGBT people sought historical icons with which to identify. Wilde's life seemed to encompass the extremes of being homosexual: possessing brilliance, wit, and beauty, but suffering shame, opprobrium [scorn], and fear in the name of love. (Long, 2008)

By the mid-Twentieth Century, The Vietnam War was a catalyst to major changes in the United States that set into motion a demand for equality and liberal freedoms that challenged traditional codes of behavior especially as they related to sexuality. This was not just a time of Hippies with their "make love, not war" mantra and their "love fest" at Woodstock. This was a time when a young, voting age generation of people expressed their strong opposition and disapproval of the war and societal dictates that expected them to conform to the status quo and not challenge the prevailing institutional powers<sup>5</sup>. The erupting Sexual Revolution was a battle for their sexual liberation from the confining moral codes that dictated not only their sense of patriotism but also their apparel, hair length and interpersonal relationships.

### **Significant Historical Legal Decisions**

Interracial relationships were among the most controversial of topics during the Civil Rights Movement. Up until this point, individuals involved in interracial relationships did so in a hostile environment because society was conditioned by religious, political, moral, and social regulating institutions to believe their unions were unnatural and immoral. The State of Virginia that passed the "Racial Integrity Act of 1924" made it illegal for a white person to marry a non-white person. In fact, "By the early 1960's at least 41 states had enacted anti-miscegenation statutes at one time" (Robinson, 2008). This law was overturned in the 1967 Supreme Court Landmark Civil Rights decision that recognized the rights of individuals of any race to marry<sup>6</sup>. Although it is fairly common to see people involved in interracial relationships, their unions are still singled by the flame of intolerance reflecting an antediluvian mindset that maintains pureness of race is "an essential institution of society." According to Robinson (2008), this belief is currently sustained by about three percent of the population that, unfortunately, wields great influence over the majority of Americans. Interracial couples have a constitutional right to marry, but they continue to struggle for societal acceptance.

### **Fundamental Legal Issues**

Most individuals involved in same-sex relationships are no longer willing to appease the public by maintaining a hidden presence in society and are endeavoring to push the boundaries of acceptable relationships, as they continue to fight for their natural and legal right to marry. Even as a California Federal Appeals Court attempts to review the subject of gay marriage and lawyers argue the constitutionality of gay marriage, proponents of "Prop 8" continue to beat their one note argument that marriage between a man and a woman is "an essential institution of society." Even as other nations such as Great Britain embrace same-sex unions, the United States continues to be entrenched in questions regarding the nature of marriage itself, state rights, and other fundamental legal issues that continue to prevent the passing of state wide same-sex marriage laws. What these proponents fail to acknowledge is that far from an avant-garde movement that is challenging the status quo, same-sex relationships have existed for centuries, predating the Roman Empire.

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<sup>5</sup> "Protests against the brutality and stupidity of the war in Vietnam started slowly, beginning in Berkeley, California in 1965. By 1968, there were massive anti-Vietnam war marches, protests, sit-ins and student strikes in major cities and on college and university campuses across the country" (Sayre, 2008).

<sup>6</sup> Robinson provides great insight into the rapidly changing attitudes that occurred over four decades and states that in 1948, about 90% of American adults opposed interracial marriage when the Supreme Court of California legalized it. In 1967, about 72% were opposed to interracial marriage and 48% felt that marrying a person of another race should be prosecuted as a criminal act. This was the year when the U.S. Supreme Court legalized interracial marriage everywhere in the U.S. In 1991, those adults opposed to interracial marriage became a minority. Opposition dropped at about 1 percentage point per year between 1948 and 1991.

## Fear as a Controlling Factor

Throughout history, as a result of political and religious pressure, same-sex relationships were forced to remain undisclosed by laws that threatened their lives or their means of livelihood. For centuries, fear was the controlling factor. This is the same fear that allowed slavery to exist. This is the same fear that relegated women into positions of inferiority. This is the same fear that prevented interracial relationships, and this is the same fear that forced the GLBT community to maintain a hidden and silent presence in society. History lessons have served a significant purpose by revealing that change requires strength and determination, as well as sacrifice. Members of the GLBT community acknowledge that they too are responsible for their fate and are no longer afraid of public sentiments. They are refusing to stay in the "proverbial closet<sup>7</sup>." They recognize that "The Declaration of Independence" guarantees all people, regardless of their sexual orientation, "Life, Liberty, and the Pursuit of Happiness" as their unalienable rights; therefore, they are demanding legal recognition as their constitutional right. In opposition to religious and political agendas that argue marriage between a man and a woman is "an essential institution of society," by spreading fear that the deterioration of social mores is a stake, proponents of same-sex marriage recognize that now is the time to assert their presence as visible members of society, by opening a pathway that will ensure their equality and their unalienable right to form legally sanctioned marriages.

## References

- Bremmer, Ian (2013). "Wales: English Conquest of Wales c.1200 - 1415." *BBC History of Britain Series*. 2013. Web. 3 May 2013. <[http://www.bbc.co.uk/history/british/middle\\_ages/wales\\_conquest\\_01.shtml](http://www.bbc.co.uk/history/british/middle_ages/wales_conquest_01.shtml)>.
- California General Election (2008). "PROP 8: Eliminates Right of Same-Sex Couples to Marry. Initiative Constitutional Amendment." *Official Voter Information Guide*. November 4, 2008. Web. 3 May 2013. <<http://voterguide.sos.ca.gov/past/2008/general/argu-rebut/argu-rebutt8.htm>>.
- Long, Kat (2008). "Oscar Wilde's Influence on Gay Identity." *Suit101*. November 16, 2008. Web. 11 May 2013. <<http://suite101.com/article/oscar-wildes-influence-on-gay-identity-a78821>>.
- Montopoli, Brian (2011). "Obama Administration Will No Longer Defend DOMA." *CBS News*. February 23, 2011. Web. 9 May 2013. <[http://www.cbsnews.com/8301-503544\\_162-20035398-503544.html](http://www.cbsnews.com/8301-503544_162-20035398-503544.html)>.
- Robinson, B. A. (2008). "Marriage Prohibitions: The Battle over Inter-racial Marriage in the United States." *Religioustolerance.org*. May 7, 2008. Web. 5 May 2013. <[http://www.religioustolerance.org/hom\\_mar14.htm](http://www.religioustolerance.org/hom_mar14.htm)>.
- Sayre, James K. (2008) "Anti-Vietnam War Protests." *Bottlebrush Press*. August 8, 2008. Web. 3 May 2013. <<http://www.bottlebrushpress.com/antivietnamwarprotests.html>>.

<sup>7</sup> "in the closet" is a figure a speech indicating one has not revealed his or her sexual orientation or sexual preference.