

Gay Marriage

In many countries around the world have talked about gay marriage a long time, but it is hard to make a decision whether gay marriage should be legal. There are some reasons why some people do not want gay marriage be legal, such as ethics and potential instability. Gay marriage would not like heterosexual marriage which was composed by a man and woman, so there are numerous worries. However, can people ban gay marriage just through those kind of “potential factors”? Everyone has their right and freedom to choose who they love or marry, so gay marriage should not be rejected. In the California case, making gay marriage legal would be my advice for Supreme Court, because America is a country of equality and democracy, and the country gives the rights to people who lived in US.

Actually, in America, some states begin to allow gay marriage. “Gay marriage is legal, or will be soon in nine states - Connecticut, Iowa, Maine, Maryland, Massachusetts, New Hampshire, New York, Vermont, Washington - and the District of Columbia”(Sherman). In those states, gay’s individuals’ rights will be protected, but in other states like California, the ban of gay marriage is depriving gay’s individuals’ rights as Americans. “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”(The 14th Amendment). It was openly

claimed that “any person” has the equal rights, and the rights are equally protected by the laws. The ban that does not allow gays to get marriage is a violation of the Federal Constitution, so if a state permits heterosexual marriage, the gay marriage should also be allowed. If not, it will cause an undercurrent inequality. “Undercurrent” is because “gay” cannot be accepted totally and easily in a society which has their own morality and ethics. To recognize this inequality is hard because unequal in this issue is what most voters want to see. Nevertheless, there is an undoubted disparity between heterosexual and gay. It likewise violates the norms of equality of condition because gay cannot get the same right to marriage. Gay and heterosexual are not equality in social conditions. There is no law protects gay marriage.

In the California case, it could be seen as a result of tyranny of the majority. Many people did not want gay marriage be legal, and those people were majority, and they voted to overturn gay marriage. It is the situation that for the majority, but the minority simply can surrender. “The very essence of democratic government consists in the absolute sovereignty of the majority; for there is nothing in democratic states which is capable of resisting it”(Tocqueville, p111). Tocqueville showed that the majority absolutely control power, and he also claimed that most influence is on the legislature, so the law is always serve for majority. In the California case, voters who held the majority decided to overturn the court’s determination of gay marriage. It is hard to defeat majority, but if the Supreme Court overturns voters, the society can be more equality in conditions. In addition, allowing gay marriage like a chance of developing ethics and democracy in America, and receding the tyranny of the

majority.

In this case, equality of conditions and majority tyranny was against each other. One reason for the tyranny of majority is because the majority rule, but majority rule has some positive influences such as maximize the welfare, and people are difficult to against majority rule because it is a base and caused by equality. It may be a long term to impair the tyranny of majority in majority rule. However, in the California case, the majority decision “broke” the equality of condition. Even if the Supreme Court overturn California voters, which also “touch” the equality, the “touch” is for a better level of the equality of condition so that it will bring benefit. Tocqueville has showed a view about equality of conditions: “Equality of condition does not of itself produce regularity of morals, but it unquestionably facilitates and increase it”(p238). Keeping equality of condition is very important because it can bring a creation of morals. As a contrast, how the tyranny of the majority influence society? The tyranny of the majority itself is negative. The constitutionality of Proposition 8 is the measure that prohibits gay marriage. The voter who wanted to keep this rule is the majority, but it broke the equality of conditions. And the constitutionality of Proposition 8 which was the ban of gay marriage is a consequence of tyranny of majority. It is hard to determine whether against majority or not, because majority rule is related to equality. So, the Supreme Court should compare each consequence to trade off, and recognize which one can bring a better equality of conditions or social influence.

There is another case that a women pays a huge tax bill because she married to a women. This case and California case can echo some cases including the Brown

decision such as *Briggs et al. v. Elliott et al*(Williams, p198-199). Black people school did not have school bus, but white people school did have school bus. And the conditions of black people in school were terrible. Black people did not get the equal conditions of education, and they were in the same situation as gay in gay marriage cases who did not have the right to marry. In the California case, there is a majority decision “ constitutionality of Proposition 8” which can echo “separate but equal”. And both of them are inherently unequal. In the Brown decision, Warren said: “We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal”(Williams, p226). Warren rejected “separate but equal” in education. Today, the Supreme Court can take *Briggs et al. v. Elliott et al* as an example, and reject gay marriage ban. People can take a look at the huge impact of the Brown decision. It made black people and white people becoming more equal, and it created the equality of conditions in American society, and gave a lot of help on abolishing racial segregation. It is same as the gay marriage case, a right decision will also bring many benefits.

Gay should be equal with heterosexual, and the equal right is mentioned in the 14th Amendment. Leading this society becomes more equal and democratic is an crucial task in this century and future. In history, people have known some issues such as “ separate but equal” that against equality and create practical unequal. This kind of problem should not reappear. As Tocqueville recognized, there is no absolute equality and people are inherently unequal(p.54). So people should make the equality of condition become more and more mature and complete. It is clear that allow gay

marriage is a best way to create equality of condition and the development of the society.