

20 Years of Marriage Equality: A Mountain of Evidence, Expertise, and Experience

Evan Wolfson*

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Abstract

2021 marks 20 years since the Netherlands became the first country to end the exclusion of same-sex couples from marriage. Since then, 29 other countries have affirmed same-sex couples' freedom to marry, on every continent and across many cultures, the most recent being Switzerland in December 2020. This immense progress provides a mountain of evidence, expertise, and experience, roundly refuting the fearmongering and arguments made by opponents of the freedom to marry. This article offers an overview of the various paths to equal marriage—through courts, in legislatures, and at the ballot, and shows how countries have pushed past lesser or other “alternatives” such as domestic partnership or civil union as no substitute for marriage itself. The track record in these 30 countries over 20 years demonstrates that many benefits come from the freedom to marry momentum, helping combat wider discrimination against LGBTQ+ people and creating healthier, more inclusive societies. The mountain of evidence and track record offer a blueprint and call to action for those other states that have yet to accept the freedom of all couples, whether same-sex or different-sex, to marry.

Introduction

Thirty countries worldwide so far have affirmed the freedom to marry for same-sex couples, meaning that more than 1.2 billion people now live in a country in which same-sex couples can share in the tangible and intangible protections, responsibilities, dignity, security, and commitment of marriage (see the accompanying table in the appendix to this article). Marriage discrimination has been engaged in a variety of arenas and ended via a variety of methods: in the courts, the legislatures, at the ballot, in public debate, and in millions of conversations that have opened hearts and changed minds. The resultant mountain of evidence, expertise, and experience refutes the claims made of problematic consequences, and instead proves that when the exclusion of same-sex couples from marriage ends, families are helped, and no one is hurt.

Respecting gay people's right to marry does not interfere with each faith's ability to determine its own rites of marriage; religious freedom and civil equality are compatible and cherished in free societies. Neither the demands that marriage be preserved for “procreation”, nor fears that giving same-sex couples access to marriage will somehow put off different-sex couples from getting married, nor, for that matter, the more general “sky falling in” arguments hold any water. In fact, the opposite is the case. Extending the freedom to marry to same-sex couples has not and will not undermine the institution of marriage itself; the history of marriage is a history of change and expanding inclusion. Marriage is not impaired by respecting same-sex couples' equal participation and need; the sky has not fallen where marriage has

*Evan Wolfson founded and led “Freedom to Marry”, the campaign that won marriage in the United States in 2015. He now devotes his time to sharing the lessons from that success with other movements and causes in the US and globally. The author gratefully acknowledges research assistance for this article from Christopher Gray (University of Bristol) and Donnchadh Greene (Doughty Street Chambers), as well as the 2020 summer associates at Dentons US, the world's largest law firm.

embraced same-sex couples; and in those countries that have ended the denial of marriage, the gays have not used up the marriage licenses. There is enough marriage to share—and now, that mountain of experience to prove it.

The worldwide track record also demonstrates that “civil partnership”, “civil union”, and other such comparable or “same but different” / “separate and unequal” alternatives in the place of marriage are no substitute for the freedom to marry itself, because lesser and other options fail to provide the full protection, security, clarity, and dignity that come with marriage. Additionally, “same-but-different” solutions maintain the “otherness” of same-sex couples, leaving them in a state of legal incapacity through continuing discrimination and denial of dignity. This is untenable in a twenty-first-century society. All this is not conjecture; there is now a track record and evidence.

To celebrate the twenty years since the introduction of equal marriage legislation, this article will summarise how the progress various jurisdictions, including the UK, have made in affirming the freedom to marry for same-sex couples has yielded important benefits to those couples, their children and loved ones, the economy, and the society as a whole, and has at the same time refuted the concerns and claims made by opponents of equal rights for lesbian, gay, bisexual, and transgender people and their families.

Implementation of the freedom to marry

The table in the Appendix to this article shows how marriage equality between same-sex and different-sex couples has been achieved in 30 countries so far over the course of 20 years, starting with the Netherlands in 2001 and with Switzerland bringing a happy end to a dismal pandemic year by enacting inclusive marriage legislation in December 2020.¹ The debates and progress have played out in courts, in legislative bodies, and in popular votes. The laws that required change were, in the civil law world, codified restrictions on who could marry in national *Civil Codes* or *Marriage Laws*; and in the common law world, codified restrictions on marriage in *Marriage Laws* or the common law conception of marriage as stated in *Hyde v Hyde and Woodmansee* (1865–69) L.R. 1 P.&D. 130 at p.133:

“I conceive that marriage, as understood in Christendom, may for this purpose be defined as the voluntary union for life of one man and one woman, to the exclusion of all others”.

Marriage is not defined by who is denied it, and in fact the restriction expressed in *Hyde* has been undone by:

- the evolution in the equality of women and discarding of sex roles in the law; once the roles of respective partners in a marriage were equalised and women no longer suffered from legal incapacity with respect to their husbands, the way was open for a broader acceptance of equality in marriage.² And,
- the greater understanding of who LGBTQ+ people are and their equal claim to lives with dignity; awareness that they, too, form families and desire companionship and affirmation; and that they, too, share a need for marriage and its tangible and intangible protections, responsibilities, and meaning. As the federal court in Utah wrote in 2013, affirming the freedom to marry for same-sex couples: “It is not the Constitution that has changed, but the knowledge of what it means to be gay or lesbian”.³

¹ The Swiss legislation is still provisional in nature, however, in that it requires a referendum to be held if opponents collect 50,000 anti-marriage signatures by 10 April 2021. Subject to that proviso, the earliest effective date of the legislation is 1 January 2022. See: “FAQ: What does marriage mean for everyone?” (5 January 2021), *Pink Cross*, <https://www.pinkcross.ch/faq-ehe-fuer-alle> [Accessed 10 January 2021]. Polls show overwhelming support for enactment of the freedom to marry.

² For a fuller history of changes in understanding of marriage see the Historians of Marriage Amicus Brief in *Obergefell v Hodges* 576 U.S. 644 (2015) at <http://s3-us-west-2.amazonaws.com/fim-assets/fim/SCOTUSBriefHistoriansofMarriage.pdf>, p.16 [Accessed 15 January 2020].

³ *Kitchen v. Herbert* 916 F.Supp 2d 1181 (2013).

In addition, restrictions on marriage that were once considered “natural” and “right”, such as the prohibition of marriage between people of different races or religions in various parts of the world, are now looked upon with abhorrence.⁴

Countries which have introduced marriage between same-sex couples

The jurisdictions that have so far affirmed the freedom to marry for same-sex couples now include every continent (even, thanks to Taiwan, Asia, and thanks to international treaty, Antarctica). Same-sex couples can marry in all of North America (excepting only the Caribbean countries), most of Europe, and most of Latin America (where more than 70% of the population now live in a freedom to marry country). The table in the Appendix shows which countries have ended the denial of marriage to same-sex couples and how this was done—whether via the courts, through legislatures, or at the ballot.

The changes to marriage laws were enacted to remove restrictions, not to “redefine” the meaning of marriage itself. As the amendment to the marriage law extending the right to marry to same-sex couples in Spain in 2005 made clear: “Marriage will have the same requirements and effects when both parties are of the same or different sex”. And just to clarify this further, the Preamble to the law stated:

“Certainly, the Constitution, by entrusting the legislator with the normative configuration of marriage, does not in any way exclude a regulation that delimits couple relationships in a way different from that which has existed up to now, a regulation that allows for new forms of marriage.”⁵

In New Zealand in 2013 the amendment to the Marriage Law 1955 also clarified the removal of existing restrictions with a replacement clause stating that “marriage means the union of 2 people, regardless of their sex, sexual orientation, or gender identity”.⁶ In jurisdictions, such as Malta, where the old marriage laws included gendered references to “husband” and “wife”, these have been replaced with the more neutral “spouse”.⁷

As the table in the Appendix shows, several countries retained the option of “civil partnerships” or “civil unions”, where they already existed for same-sex couples, simply extending these to different-sex couples. Some countries, like Ireland for example, amended legislation so that new civil partnerships could no longer be registered, although couples already in a civil partnership may apply to marry or simply remain as they are.⁸

International law

In addition to the individual examples included in the table in the Appendix, countries that are contracting states to the American Convention on Human Rights are now obliged under that treaty to end the exclusion of same-sex couples from marriage after the Inter-American Court’s Advisory Opinion of 2017. This covers 22 countries, including the Latin American countries stated above.⁹ These countries comprise both Spanish-speaking countries, whose legal systems are based on a Civil Code, and English-speaking common law countries of the Caribbean.

⁴ Historians of Marriage Amicus Brief in *Obergefell v Hodges* 576 U.S. 644 (2015) at <http://s3-us-west-2.amazonaws.com/ftm-assets/ftm/SCOTUSBriefHistoriansofMarriage.pdf>, p.19 [Accessed 15 January 2020].

⁵ Law 13/2005, of July 1, which modifies the Civil Code regarding the right to marry, available at <https://www.boe.es/buscar/doc.php?id=BOE-A-2005-11364> [Accessed 10 January 2021].

⁶ Marriage (Definition of Marriage) Amendment Act 2013, available at <http://www.legislation.govt.nz/act/public/2013/0020/latest/DLM4505003.html> [Accessed 10 January 2021].

⁷ Marriage Act and other Laws (Amendment) of 2017, available at <https://legislation.mt/eli/act/2017/23/eng/pdf> [Accessed 10 January 2021].

⁸ See “Citizens Information”, available at https://www.citizensinformation.ie/en/birth_family_relationships/civil_partnerships/civil_partnership_and_same_sex_couples.html [Accessed 10 January 2021].

⁹ American Convention on Human Rights, available at https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm [Accessed 10 January 2021].

That is now the international obligation across the Organization of American States from the US-Mexican border to the Antarctic Ocean.

In the Council of Europe, the European Court of Human Rights determined in *Oliari v Italy* (2017) 65 EHRR 26 that art.8 of the European Convention on Human Rights (ECHR) imposed a positive obligation on contracting states to provide to same-sex couples a “specific legal framework providing for the recognition and protection of their same-sex union” (paras 185–187). That is the international obligation across the Council of Europe from the Atlantic Ocean to the Pacific Ocean.

It also bears noting that in these 30 freedom-to-marry jurisdictions, where an alternative institution to marriage was created for same-sex couples, both to give and withhold prior to marriage equality, that alternative institution: was (1) abolished upon marriage equality, (2) always applied to same-sex and different-sex couples alike, or (3) reformed after marriage equality to open it as well to different-sex couples, eliminating the sex discrimination. What is consistent across the many experiments over the years is the clear finding that alternative regimes such as partnership or civil union are no substitute for the freedom to marry itself. Not only do separate regimes fall short of providing full, tangible protection, separate and unequal status does not cure the violation of fundamental rights, and separate for the sake of separate is inherently unequal. As the Inter-American Court cautioned:

“... there would be no sense in creating an institution that produces the same effects and gives rise to the same rights as marriage, but that is not called marriage except to draw attention to same-sex couples by the use of a label that indicates a stigmatizing difference or that, at the very least, belittles them.”¹⁰

The Preamble to the Canadian Civil Marriage Act (2005) neatly sums up both the unchanging nature of marriage with respect to the Constitution and the need for couples of the same sex to have access to it and not to be palmed off with a lesser alternative:

“WHEREAS the Parliament of Canada is committed to upholding the Constitution of Canada, and section 15 of the Canadian Charter of Rights and Freedoms guarantees that every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination;

WHEREAS only equal access to marriage for civil purposes would respect the right of couples of the same sex to equality without discrimination, and civil union, as an institution other than marriage, would not offer them that equal access and would violate their human dignity, in breach of the Canadian Charter of Rights and Freedoms;

WHEREAS marriage is a fundamental institution in Canadian society and the Parliament of Canada has a responsibility to support that institution because it strengthens commitment in relationships and represents the foundation of family life for many Canadians;

AND WHEREAS, in order to reflect values of tolerance, respect and equality consistent with the Canadian Charter of Rights and Freedoms, access to marriage for civil purposes should be extended by legislation to couples of the same sex...”¹¹

Common law

Empirically, the statement of Lord Penzance in *Hyde*, which is said to establish a common law “definition” of marriage, is no longer true (and, as noted above, was never really a definition, rather a restriction).

¹⁰ Advisory Opinion OC-24/17, of 24 November 2017, requested by the Republic of Costa Rica, available at https://corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf, para.224 [Accessed 10 January 2021].

¹¹ <https://laws-lois.justice.gc.ca/eng/acts/c-31.5/page-1.html> [Accessed 15 January 2021]

Secondly, because of the evolution in society and the law on (1) the equality of women and men, and (2) the understanding of LGBTQ+ people, it is now recognised there is no good reason for denying same-sex couples and their families the dignity, security, protections and responsibilities afforded by marriage, as shown by the mountain of evidence, expertise, and experience in the debates and progress in the 30 countries, including the UK, that have affirmed same-sex couples' freedom to marry. The Constitutional Court of South Africa highlighted this righting of a wrong succinctly:

“the concept of ‘separate but equal’ served as a threadbare cloak for covering distaste for or repudiation by those in power of the group subjected to segregation. The very notion that integration would lead to miscegenation, mongrelisation or contamination, was offensive in concept and wounding in practice.¹²”

Regression

On 1 June 2018, Bermuda became the world's first jurisdiction to strip away the freedom to marry from same-sex couples, by the Domestic Partnership Act 2018. On 7 November 2019, the Cayman Islands became the second jurisdiction—and the only subsisting one—to have removed marriage equality, when the Cayman Islands Court of Appeal reversed the Grand Court's immediate modification of the Marriage Law in the ongoing proceedings in *Day and Bodden Bush v the Governor et al.* As Bermuda and the Cayman Islands are UK Overseas Territories, both of these aberrant, regressive, harmful actions are now being challenged before the Judicial Committee of the Privy Council, which is their highest court.

Acceptance

All of this progress has resulted in a 20-year track record showing that there is no good reason for denying the freedom to marry, all claims to the contrary having been effectively refuted either via the courts, legislatures, through public consultation and debate, and in lived experience. Many of the objections raised were and are faith or religion based. While people are, of course, entitled to their religious views, even those that others regard as prejudice, it is well established that in democratic, pluralistic, rule-of-law societies, divergent faith or religious beliefs cannot trump fundamental rights in such a way as to deny individuals or groups rights under the law.¹³ To put it another way, the law should not be used as a weapon to enforce or impose one religious view on others; the freedom to marry, like other freedoms, inheres in the individual and belongs to all. There is no incompatibility between religious freedom, properly construed, and equal respect for all under the law.

When marriage discrimination against same-sex couples ends, there are three broad trends that can be observed from the 30 countries that have affirmed the freedom to marry for all loving and committed couples.

- 1) *First*, support for the freedom to marry increases when it is introduced; even in countries where there is initial population support, support increased for the freedom to marry; in Brazil, for example, where support for the freedom to marry rose from 45% in 2013 to 52% in 2017;

¹² *Minister for Home Affairs v Fourie* [2005] ZACC 19, available at <http://www.saflii.org/za/cases/ZACC/2005/19.html>, at para.150 [Accessed 10 January 2021].

¹³ See, e.g., *Obergefell v. Hodges* 576 U. S. 644 (2015) at 27: “The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered. The same is true of those who oppose same-sex marriage for other reasons. In turn, those who believe allowing same-sex marriage is proper or indeed essential, whether as a matter of religious conviction or secular belief, may engage those who disagree with their view in an open and searching debate. The Constitution, however, does not permit the State to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex.”

- 2) *Second*, ending marriage discrimination leads to further progress such as anti-discrimination measures being reinforced and implemented and LGBT people being protected as a result;¹⁴ and,
- 3) *Third*, where same-sex couples are able to share in marriage, the opponents' projected societal breakdown, so-called "Acts of God" and divine wrath, etc., have failed to materialise, and their false and damaging claims, demonising and othering LGBTQ+ people, have been effectively refuted by truth and the lived witness.

Provisions dealing with adoption, discrimination in the workplace or housing, the recognition of LGBTQ+ hate crimes, and the banning of conversion therapies for LGBTQ+ people have come in the wake of marriage recognition in many of these jurisdictions, as catalogued below.

The biannual European Social Survey, for example, has shown a consistent rise in the acceptance of LGBTQ+ people over a fourteen-year period in those European countries that have introduced marriage for same-sex couples. Conversely, countries such as Russia, Poland, or Ukraine, where there is no freedom to marry for same-sex couples, have seen a decline in acceptance of LGBTQ+ people over the same period. As one researcher who has analysed the survey said "It highlights the role of the state. It's a great responsibility of our politicians how they lead us, and what kind of messages they sponsor".¹⁵

Equally, perpetuating the discrimination against LGBTQ+ people that the denial of the freedom to marry effects denies human dignity and inflicts injury on those groups, undermining the momentum towards the affirmation of important rights, such as non-discrimination in other arenas, as highlighted above. It effectively places them in the category of legal incapacity and represents a failure to understand who LGBTQ+ people are at all. The refusal to respect the equal freedom to marry under law makes the state the chief engine of discrimination, stigma, and harm, rather than putting the law on the side of all people.

A heartening example of how ending marriage discrimination has a powerful positive impact beyond the happy couples or marriage itself can be found in the evidence that affirming the freedom to marry significantly reduces teen suicide. A study in the USA found a notable association between enactment of the freedom to marry and a reduced number of high school students reporting suicide attempts.¹⁶ With suicide being the second most common cause of death among adolescents in the US,¹⁷ and with a disproportionately large number of adolescents reporting attempting suicide identifying as LGBTQ+,¹⁸ this is an illustration of how the freedom to marry is not "just" a matter of rights, and not "just" of enormous importance to gay people and their loved ones, but more broadly, a matter of public health. Another study conducted in Denmark and Sweden confirmed a similar effect in reducing suicide rates.¹⁹

Why is there this effect? It's not because these high school students are rushing out to get married; they are, of course, teenagers. It's because affirming the freedom to marry and reducing discrimination sends a message of acceptance, inclusion, and hope, allowing young gay people to dream of a life together with a partner in a welcoming community, and encouraging non-gay youth to respect and navigate a world with people who are different. Affirming the freedom to marry puts the law on the side of love, rather than reinforcing stigma and imposing obstacles. These findings regarding the reduction of youth validates

¹⁴ M. Davies, "Homophobia seen rising in European countries without gay marriage" (20 August 2020) *Openly*, <https://www.openlynews.com/i/?id=1a95a764-f102-4a39-8643-a9b23b728018&fbclid=IwAR0-OVktXBkSbqMpgZwdQ52-dO3J2i9g8zBR1ZQ5aQ0jsnN1HO1te7y1nio> [Accessed 10 January 2021].

¹⁵ *Ibid.*

¹⁶ J. Raifman et al., "Difference-in-Differences Analysis of the Association Between State Same-Sex Marriage Policies and Adolescent Suicide Attempts" (2017) 171(4) *JAMA Pediatrics* 350.

¹⁷ Center for Disease Control, "10 Leading Causes of Death by Age Group, United States — 2018", https://www.cdc.gov/injury/images/lc-charts/leading-causes-of-death-by-age-group-2018_1100w850h.jpg [Accessed 4 January 2021].

¹⁸ L. Kann et al., "Sexual identity, sex of sexual contacts, and health-related behaviors among students in grades 9-12 — United States and selected sites, 2015" (2016) 65(9) *MMWR Surveill Summ* 1.

¹⁹ A. Erlangsen et al., "Suicide among persons who entered same-sex and opposite sex marriage in Denmark and Sweden, 1989-2016: a binational, register-based cohort study" (2020) 74 *Journal of Epidemiology and Community Health* 78.

the insight of the human rights advocates who long argued that working to end marriage discrimination was not just an important goal in its own right, but a strategy for achieving broader acceptance and a better society for all.

Effectively, no one loses when the freedom to marry is extended to same-sex couples. Acceptance of marriage for same-sex couples helps make advances in other areas. Whether in common law or civil law jurisdictions, constitutions are not changed by this acknowledgement, but societies' understanding of LGBTQ+ people is enhanced. Our common humanity, whether gay or non-gay, transgender or non-trans, becomes more obvious and respected when we all share in society's institutions, including marriage.

Therefore, considering all these factors together, the answer to the question whether a State is permitted to hinder the enjoyment of the freedom to marry or the associated right to manifest beliefs and practices, consistent with human rights and even basic empathy and fairness, is No. National governments should act to cure this harm, and international covenants and entities should uphold this principle without further delay. Every day of denial means continued injury, indignity, and injustice—and the evidence in support of affirming same-sex couples' equal freedom to marry is transnational and clear.

“The sky is not falling”

The freedom to marry—civil marriage under the law—in no way prevents religious belief or practices, despite many of the arguments faith groups have presented in opposition to it. In fact, where marriage equality has been adopted it has gone some way towards clarifying the relationship between religious and civil marriage.²⁰ It would, in any case, be wholly wrong for the religious beliefs of one set of people (that it is right to discriminate against LGBTQ+ people in the context of marriage) to be prioritised over the rights of another set of people who seek access to the benefits and comfort of civil marriage.²¹ Respecting the freedom to marry of others under law does not require people to abandon their deeply held religious beliefs. In no country where the right to marry has been extended to same-sex couples, have religious institutions been forced to carry out marriages between same-sex couples.

It is true that much of the opposition to the freedom to marry for same-sex couples, or, for that matter, the equal treatment and dignity of gay or trans people under the law at all — or indeed, the very idea of the separation of church and state — often comes disguised as religious objection. And while religion is often the excuse, rather than the reason, proffered to justify or shut down discussion about discrimination or prejudice, it is also fair to grant that some do have sincere religious beliefs and, of course, that religions should absolutely be free to preach and hold whatever beliefs they choose.

However, when government is involved, it is also necessary to respect the boundaries between civil and religious spheres, both to protect personal freedom under law and, importantly, religious freedom as well. Government does not issue bar mitzvah licenses or communion licenses, but it does issue marriage licenses, and in that sphere of civil marriage, the freedom of faiths, clergy, and adherents to profess what they want, and a faith's ability to govern its own rituals and doctrines, do not include a right to have the law embody those views and impose them on others. Government should not be used as a weapon to impose religious views of some on all, or to pick and choose amongst faiths. While acknowledging sincere difference in religious ideology, the law should stand apart from and above the fray of preachments and should stand on the side of assuring the equal protection, freedom, and rights of all.²²

²⁰ See the brief for religious organisations in *Obergefell v Hodges* 576 U.S. 644 (2015) at <http://s3-us-west-2.amazonaws.com/flm-assets/flm/archive/files/pdfs/SCOUSBriefFaith2015.pdf>, p.27 [Accessed 15 January 2021].

²¹ Recent research corroborates the logical concern that carving out licenses to discriminate through special religious exemptions does in fact invite and increase discrimination. See Netta Barak-Corren, “How One Supreme Court Decision Increased Discrimination Against LGBTQ Couples,” *The Atlantic* (Feb. 6, 2021) at <https://www.theatlantic.com/ideas/archive/2021/02/masterpiece-cakeshop-lgbtq-discrimination/617514/> [Accessed 8 February 2021]. The researcher correctly observes, “If religious exemptions increase discrimination, as I have found, then enforcing antidiscrimination laws without exception may be the best way to promote equality, and perhaps the only way.”

²² While a rehash of religious objections and why they must not be permitted a veto of lawful and equal participation in civil marriage is beyond the scope of this article, the subject has been exhaustively and repetitively covered in the myriad debates in legislatures, courts, academia, and public

In the House of Lords debate on the Equal Marriage Bill in the UK, the Bishop of Leicester lamented the fact that, while

“the complementarity of men and women is what enriches and stabilises society ... Equal marriage will bring to an end the one major social institution that enshrines that complementarity.”²³

The experience of the UK (and every other country) suggests otherwise. In countries where marriage has been extended to same-sex couples, divorce rates for same-sex couples have been either less than or equal to different-sex couples, with the UK also seeing a decline in divorce rates for different-sex couples.²⁴ Narratives of the end of marriage, like all of the claims made to impede the freedom to marry and the inclusion of LGBTQ+ people in society, have been proven untrue.

And, of course, there have been many religious leaders who have supported the freedom to marry on the grounds that extending marriage to same-sex couples is consistent with their values, their faith, their love for their neighbour, their understanding of the Golden Rule of treating others as you would want to be treated. Many see it, in fact, as a conservative thing to do. One Catholic commentator in the US, in response to the Supreme Court decision in *Obergefell*, stated “The sky is not falling”, going on to say, “[s]ame-sex marriage is a very conservative movement. Homosexual people who seek stable and committed relationships are implicitly declaring their opposition to promiscuous, violent, or exploitive sex. Like heterosexual couples they seek faithful relationships based on real love.”²⁵

Allal Cherbib, a Muslim human rights activist interviewed during the campaign for the freedom to marry in France in 2014 saw the issue as one of equality: “We cannot demand equalities and fight for democracy in Arab countries and come to France and refuse equalities for everyone.”²⁶

Far from the sky falling, the extension of marriage to same-sex couples has reinvigorated the institution (as have other changes such as respecting the equality of the sexes), while enhancing equality across society.

Support for marriage for same-sex couples increases

Were the claims made by opponents or the concerns expressed to justify delay and waiting grounded in reality, you would expect that in those countries where the freedom to marry has been accorded, there would be regression or a peeling away of support. In fact, as people have seen with their own eyes families helped and no one hurt and witnessed that the claims of opponents turned out to be false and their concerns unfounded, support for the freedom to marry has increased, as has more general acceptance.

Australia, for example, is one of the few countries to have implemented marriage for same-sex couples following a plebiscite. In the unique postal survey of Australians, 61.6% answered yes to the question of

discussion in all of the countries discussed herein. For a fuller examination and refutation of claims that the religious views of some, or the legitimate scope of religious freedom, should suffice to deny the freedom to marry or equal treatment under the law, see, e.g., the *amici* briefs filed by various religious authorities and advocates in the U.S. Supreme Court in 2015, such as the Brief of 2000+ Religious Leaders And Clergy members, <https://s3-us-west-2.amazonaws.com/fim-assets/fim/archive/files/pdfs/SCOUSBriefFaith2015.pdf>; Brief of Americans United for Separation of Church and State, <https://s3-us-west-2.amazonaws.com/fim-assets/fim/archive/files/pdfs/SCOTUSBriefAmericansUnitedforSeparationofChurchandState2015.pdf>; and Brief of the Council of Churches, <https://s3-us-west-2.amazonaws.com/fim-assets/fim/archive/files/pdfs/SCOTUSBriefCaliforniaCouncilofChurches2015.pdf> [All accessed 10 January 2021].

²³ C. Crampton, “18 arguments made against gay marriage in the House of Lords” (*New Statesman*, 4 June 2013) <https://www.newstatesman.com/politics/2013/06/18-arguments-made-against-gay-marriage-house-lords> [Accessed 10 January 2021].

²⁴ “Divorces in England and Wales: 2018” (*Office for National Statistics*, 29 November 2019) <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/divorce/bulletins/divorcesinenglandandwales/2018> [Accessed 10 January 2021].

²⁵ Fr P. Daley, “Same-sex marriage: The Sky is not falling” (*National Catholic Reporter*, 26 October 2016) <https://www.ncronline.org/blogs/parish-diary/same-sex-marriage-sky-not-falling> [Accessed 10 January 2021].

²⁶ R. Aboulkheir, “Supporters of gay marriage in France include some Muslims” (*Al Arabiya*, 23 February 2014) <https://english.alarabiya.net/en/perspective/features/2014/02/23/Supporters-of-gay-marriage-in-France-include-some-Muslims-> [Accessed 10 January 2021].

whether the law should be changed to allow same-sex couples to marry. Following the passage of legislation allowing same-sex couples to marry, support for equal marriage had increased to 65%.²⁷

In Argentina, marriage for same-sex couples was permitted in 2010 following amendment to its Civil Code. In the first four years after ratification, over 9,000 same-sex couples got legally married in Argentina.²⁸ In tandem with the large uptake by same-sex couples, support for freedom to marry has increased year on year: in 2013, approximately 52% supported marriage for same-sex couples, but equally the same poll found that 74% of Argentinians had positive attitudes regarding LGBT individuals in general.²⁹ Indeed, by 2017, support for marriage for same-sex couples increased to 65%.³⁰

Canada has allowed same-sex couples to marry since 2005. At that time only 42% of Canadians supported the freedom to marry.³¹ However, the most recent poll, put that figure at 76%.³² There are now at least 24,370 marriages between people of the same sex.³³

Prior to 2017 in Finland, same-sex couples who wished to have their relationships recognised were restricted to registered partnerships. At this point, only 45% of Finnish citizens supported freedom to marry.³⁴ Since the affirmation of marriage between same-sex couples, 76% of Finnish people believe that the freedom to marry should be allowed throughout Europe.³⁵

Taiwan achieved marriage equality by legislative enactment that followed a mandate from the Judicial Yuan, despite a set of ballot measures that then showed public opposition to the freedom to marry for same-sex couples. Following the legislative enactment, however, support for equal marriage in Taiwan increased from 37.4% of country residents to approximately 52.5% who now say that same-sex couples should have the same rights to marriage as different-sex couples do.³⁶

One of the starkest positive results was seen in Denmark and Sweden. Denmark and Sweden allowed marriage between same-sex couples in 2012 and 2009 respectively. During a long period, suicides of people in same-sex unions were observed to have fallen by 46%.³⁷

These select examples paint a diverse picture with one strong theme: that support for ending the exclusion of same-sex couples from marriage only increases following its implementation. Behind these statistics, of course, are individuals who have not only seen the law change with respect to marriage, but the attitudes of their countries shift towards greater acceptance of the freedom to marry as a protected right and for the rights of LGBTQ+ people in other arenas. Behind the statistics, in other words, are couples now better able to affirm their love and commitment and see it supported and strengthened by law as well as among their family, friends, and circles; children growing up in families now affirmed and protected, parents now able to dance at their kids' wedding; businesses whose interest in diversity and inclusion no longer have to thread the needle through the law's patchwork; communities strengthened by stronger families;

²⁷ K. Murphy, "Support for marriage equality rises in Guardian Essential Poll" (*The Guardian*, 4 October 2017) <https://www.theguardian.com/australia-news/2017/oct/04/support-for-marriage-equality-rises-in-guardian-essential-poll> [Accessed 10 January 2021].

²⁸ "A cuatro años de la sanción de la ley, más de 9.300 parejas del mismo sexo se casaron en la Argentina" (*Telam News*, 15 July 2014), (in Spanish), <https://www.telam.com.ar/notas/201407/71033-matrimonio-igualitario-ley-aniversario.html> [Accessed 10 January 2021].

²⁹ See "Social Attitudes" in "Religion in Latin America" (Pew Research Center, 13 November 2014) <https://www.pewforum.org/2014/11/13/chapter-5-social-attitudes/> [Accessed 10 January 2021].

³⁰ R. Espinal, et al., "Cultura Política de la Democracia en la República Dominicana y en Las Américas 2016/17" (November 2017) https://www.vanderbilt.edu/lapop/dr/AB2016-17_Dominican_Republic_Country_Report_W_12.11.17.pdf [Accessed 10 January 2021].

³¹ Ontario Consultants on Religious Tolerance, "Canadian Public Opinion Polls on Same-Sex Marriage" (12 February 2005) <https://www.religioustolerance.org/homssmpoll05.htm> [Accessed 10 January 2021].

³² "Are you in favour of same-sex marriage? 74% of Canadians and 80% of Quebecers support it (and Death in Venice by Benjamin Britten)" (*Crop*, 20 November 2017) <https://www.crop.ca/en/blog/2017/20/> [Accessed 10 January 2021].

³³ A. Cheung, "Toronto, other Canadian cities now hubs for same-sex marriage: 2016 census" (*CBC News*, 2 August 2017) <https://www.cbc.ca/news/canada/toronto/toronto-other-canadian-cities-now-hubs-for-same-sex-marriage-2016-census-1.4233087> [Accessed 10 January 2021].

³⁴ "Eight EU Countries Back Same-Sex Marriage" (*Angus Reid Global Monitor*, 23 December 2006), https://web.archive.org/web/20100227020312/http://www.angus-reid.com/polls/view/eight_eu_countries_back_same_sex_marriage/ [Accessed 10 January 2021].

³⁵ "Eurobarometer on Discrimination 2019: The social acceptance of LGBTI people in the EU" (European Commission, 23 September 2019) at p.2, <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/87771>, [Accessed 10 January 2021].

³⁶ W. Cheng-chung & K. Lin, "Taiwan Records 4,021 Gay Marriages, Almost One Year After Law Passage" (*Focus Taiwan CNA English News*, 23 May 2019), <https://focustaiwan.tw/society/202005230005> [Accessed 10 January 2021].

³⁷ R. Savage, "Suicide Falls with Gay Marriage in Sweden, Denmark as Stigma Fades" (*Reuters*, 14 November 2019) <https://www.reuters.com/article/us-nordics-lgbt-health-trfn/suicides-fall-with-gay-marriage-in-sweden-denmark-as-stigma-fades-idUSKBN1X0010> [Accessed 10 January 2021].

and societies living up to their values and the ideals of freedom, equality, pluralism, and the pursuit of happiness.

Anti-discrimination provisions

While none of the negatives conjured up by opponents of the freedom to marry for same-sex couples prove true, one undeniable result of the ending of marriage discrimination is the consequential ending of other forms of discrimination against LGBTQ+ people.

The discredited practice of so-called “conversion therapy”, for instance, is the forced attempted adjustment of a child’s sexual orientation or gender, often with catastrophic consequences for the young person. In Germany, as in several American states, conversion therapy has been banned for minors following the passage of freedom to marry.³⁸

In Sweden, alongside the provisions for marriage of same-sex couples, discrimination was also outlawed on the basis of age and transgender identity or expression.³⁹ Similarly, in 2009 lesbian and gay people were permitted to serve openly in the military in Sweden, and current anti-discrimination provisions were extended to protect against housing and employment discrimination on the basis of sexual orientation and gender identity.⁴⁰

A consequence of the end of marriage discrimination in Portugal occurred in 2013 when the Portuguese Government launched the first-ever governmental campaign against homophobic and transphobic bullying through the Commission for Citizenship and Gender Equality.⁴¹

Similarly, Norway implemented an LGBT Action Plan in the same year it ended marriage discrimination.⁴² This demonstrates an expansive approach to tackling discrimination that directly relates to discrimination against a person’s identity beyond the context of marriage. The LGBT Action Plan’s purpose was to “put an end to the discrimination met with by [LGBT] persons in different phases of life, social contexts and working life, and promote better living conditions and quality of life”.⁴³ The Norwegian Government has continued to update and issue new Action Plans over the years, the most recent covering the years 2017–2020. The Government’s goals continue to be “to secure LGBTI rights and to combat discrimination on grounds of sexual orientation, gender identity and gender expression” and to “help ensure that LGBTI persons experience society as safe and inclusive”.⁴⁴ The action plan was coupled with the Sexual Orientation Anti-Discrimination Act, which prohibits discrimination on the basis of sexual orientation, gender identity, and gender expression.⁴⁵

A further direct consequence of ending marriage discrimination is commensurate ending of discrimination based on identity for trans individuals. In some instances this relates directly to trans people’s ability to enter or remain in marriages without getting a divorce; for example, Australia has removed any requirement to divorce in order to transition,⁴⁶ this is a direct consequence of the end of marriage discrimination with

³⁸ “Germany passes law banning ‘gay conversion therapy’ for minors” (*BBC News*, 8 May 2020) <https://www.bbc.com/news/world-europe-52585162> [Accessed 10 January 2021].

³⁹ *New Anti-Discrimination Legislation and a New Agency, the Equality Ombudsman* (Ministry of Integration and Gender Equality, January 2009), https://www.legislationline.org/download/id/3395/file/Sweden_Discrimination%20info_2009_en.pdf [Accessed 10 January 2021].

⁴⁰ “LGBT Rights in Sweden” (Equaldex, 2020) <https://www.equaldex.com/region/Sweden> [Accessed 10 January 2021].

⁴¹ “Reply of Portugal to the Office of the United Nations High Commissioner for Human Rights Request for Information on the Implementation of HRC Resolution 27/32 on Human Rights, Sexual Orientation and Gender Identity” (7 January 2015), https://www.ohchr.org/Documents/Issues/Discrimination/LGBT/Res_27_32/Portugal.pdf [Accessed 10 January 2021].

⁴² Norwegian Directorate for Children, Youth, and Family Affairs, “Norwegian experiences with LGBT Action Plans”, <https://rm.coe.int/16804931c4> [Accessed 10 January 2021].

⁴³ Norwegian Ministry of Children and Equality, “Improving Quality of Life Among Lesbians, Gays, Bisexuals and Trans Persons”, <https://www.regjeringen.no/contentassets/6e1a2af163274201978270d48bf4dfbe/safety-diversity-opennes.pdf> [Accessed 10 January 2021].

⁴⁴ Norwegian Ministry of Children and Equality, “Action Plan: Safety, Diversity, Openness (2017-2020)” at 17, <https://www.regjeringen.no/contentassets/6e1a2af163274201978270d48bf4dfbe/safety-diversity-opennes.pdf> [Accessed 10 January 2021].

⁴⁵ Rainbow Europe, “Norway” (2019), <https://rainbow-europe.org/#8652/0/0> [Accessed 10 January 2021].

⁴⁶ C. Silver, “‘Forced Divorce’ Laws for Transgender People Undermine Australia’s Same-Sex Marriage Legalization” (10 January 2018), <https://www.newsweek.com/forced-divorce-laws-transgender-people-undermine-australias-same-sex-marriage-77758> [Accessed 10 January 2021].

the removal of fixed gender requirements. What is more, in Brazil, transgender people have married at an extremely high rate in spite of increasing hostility.⁴⁷ In Ireland,⁴⁸ Argentina,⁴⁹ and other countries, trans people have been able to self-identity legally with their gender identity without the intervention of a doctor.

As mentioned above, a study in the United States has shown that the freedom to marry for same-sex couples, introduced piecemeal across various states from 2004 until the Supreme Court's decision of 2015 extended it to all states, has led to a significant reduction in suicide attempts by LGBTQ+ youth in those states where same-sex couples were allowed to marry before 2015. This is compared with either an increase or no change in the rate of suicide attempts for the same groups in states where the freedom to marry was denied same-sex couples. The report concluded:

“As countries around the world consider enabling or restricting same-sex marriage, we provide evidence that implementing same-sex marriage policies was associated with improved population health. Policymakers should consider the mental health consequences of same-sex marriage policies.”⁵⁰

In one of the most important decisions of the Supreme Court since the freedom to marry win in *Obergefell, Bostock v Clayton County*, the Court ruled that discrimination on the grounds of sexual orientation or gender identity is necessarily discrimination “because of sex” prohibited by Title VII of the Civil Rights Act 1964. This effectively extends employment protection to all LGBTQ+ people and reflects and amplifies a significant shift in attitude towards the rights of sexual and gender minorities in the US—a product of the momentum from the marriage conversation and the freedom to marry win.⁵¹

Conclusion

Perpetuating the denial of marriage to same-sex couples delays progress in so many areas—and, the record is clear, there is no good reason for that perpetuation. Putting the government and the law on the side of loving and committed couples and their families may not eliminate all prejudice and disagreement, but it affirms basic values of freedom, equality, and dignity, helping advance progress more effectively. The track record in the 30 countries that have introduced the freedom to marry shows that acceptance grows, often quickly, after implementation—even in countries where there was originally relatively low popular support for marriage between same-sex couples. Once people see the truth, following enactment, they move forward, or at least move on, and the law must look to evidence and to principles, not to unfounded fear or prejudice.

Low support or parochial concerns should not hinder courts and legislatures from the pressing human rights question as to whether a State is permitted to deny the enjoyment of the freedom to marry or the associated right to manifest beliefs and practices. In light of the above, and in the demonstrated absence of any substantiated justification for perpetuating denial, the answer to this must be no. Ending marriage discrimination not only allows same-sex couples to enjoy the dignity and protection of marriage equality but also has positive consequences for sexual minorities, including those within the trans community, their loved ones, other minorities, and—crucially—society as a whole.

The freedom to marry should be respected as a universal human right, and no *ad hoc* lesser alternative should be promulgated as a “same-but-different” substitute. There is a mountain of evidence and experience

⁴⁷ Patricia Sanches, *Transgender Families in Brazil*, *International Society of Family Law* (World Conference in Amsterdam, July 27, 2017).

⁴⁸ <https://www.glaad.org/blog/ireland-passes-bill-allowing-gender-marker-changes-legal-documents> [Accessed 15 January 2021].

⁴⁹ <https://tgeu.org/argentina-gender-identity-law/> [Accessed 15 January 2021]

⁵⁰ <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2604258> [Accessed 15 January 2021]

⁵¹ *Bostock v Clayton County* 590 U.S. (2020). For further analysis of this case, see the case note by Henrietta Hill QC and Preetika Mathur, printed elsewhere in this issue.

now from countries around the world⁵²—and it’s time to allow all loving and committed couples, in all countries, to share in the freedom to marry without further, harmful delay.

Appendix

Country	Former restriction abolished upon equal marriage	Other national institution prior to equal marriage	Route to equal marriage	Equality in other institution?
1. Argentina	Civil Code: “husband and wife”	No	2010: amendments to Civil Code to change words for “husband and wife” to “spouses”. Adds a provision that “Marriage will have the same requirements and effects regardless of whether the parties are the same or of different sex”	N/A
2. Australia	Common law restriction until 2004; after 2004, definition added to the Marriage Act 1961: “a man and a woman” (s.5)	No	2017: Marriage Amendment (Definition and Religious Freedoms) Act 2017 amended s.5 to “2 people”	N/A
3. Austria	General Civil Code: “two persons of opposite sex” (art.44)	2010: registered partnership for same-sex couples only	2018: Constitutional Court declared the sex restrictions in both marriage and registered partnership to be unconstitutional. Wording of the General Civil Code changed to remove the words: “of opposite sex”	Yes: restriction on different-sex couples’ access to registered partnership removed upon equal marriage
4. Belgium	Civil Code art.143 (Book 1, Title V, Ch.1), which had restricted marriage to persons of different sex had already been repealed on 31 March 1989.	2000: statutory cohabitation for both same-sex and different-sex couples	2003: amendment of art.143 of the Civil Code to “two persons of different sex or of the same sex”. Modified by art.3 of the 13 February 2003 law, which provided for a number of alterations to the Civil Code to make account of same-sex couples.	Yes: always equal
5. Brazil	The Brazilian Constitution of 1988. Article 226(3) recognises a family as “the stable union between a man and a woman”. Not removed but interpreted in a broad way by the judiciary.	2004: court decision in Rio Grande do Sul sees the first civil unions between same-sex couples. 2011: Supreme Federal Court extends civil union to the whole State.	Various dates: court declarations for different states The 2011 ruling of the Supreme Court is taken as affirming the freedom to marry for same-sex couples. 2011: first conversion of a civil union into a marriage by a judge in São Paulo. May 2013: the National Justice Council passes a resolution requiring all notaries to marry same-sex	N/A

⁵² Consider, too, the friend-of-the-court amici briefs filed before the United States Supreme Court in 2015, marshaling evidence and expertise from authorities in public health, medical, psychiatric/psychological, business, historical, child-welfare, human rights, civil rights, educational, and other important fields, alongside the law: <http://freedomtomarry.org/pages/resources-the-u.s.-supreme-court-in-obergefell> [Accessed 10 January 2021].

Country	Former restriction abolished upon equal marriage	Other national institution prior to equal marriage	Route to equal marriage	Equality in other institution?
			couples. This administrative ruling has not been struck down despite court challenges.	
6. Canada	Common law restriction	No	2005: Civil Marriage Act 2005 introduced statutory definition: "Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others" after Ontario Court of Appeal declared common law restriction as unconstitutional.	N/A
7. Colombia	Civil Code: "a man and a woman" (art.113)	No	2011 and 2016: Constitutional Court declarations.	N/A
8. Costa Rica	Family Code and General Young Persons Act: different-sex restriction	No	2018 and 2020: Constitutional Court declared restriction unconstitutional in light of Inter-American Court of Human Rights' Advisory Opinion OC-24/17 of 2017.	N/A
9. Denmark	Act on the conclusion and dissolution of marriage: There was an effective, de facto different-sex restriction	1989: registered partnerships for same-sex couples only	2012: removal of restriction by Act amending the Act on the conclusion and dissolution of marriage, the Act on the legal effects of marriage and the Code of Judicial Procedure, and on the repeal of the Act on Registered Partnerships.	Yes: registered partnership abolished prospectively
10. Ecuador	Civil Code: "a man and a woman" (art.81); Constitution 2008: "Marriage is the union of a man and a woman" (art.67)	2008: alternative recognition protected by Constitution 2008 (art.68)	2019: Constitutional Court declared restriction in Civil Code as unconstitutional in light of Inter-American Court of Human Rights' Advisory Opinion OC-24/17 of 2017, and that art.67 must be interpreted taking into account the constitutional principles of equal protection and non-discrimination.	Yes: unions outside of marriage constitutionally recognised between "two persons" (art.68)
11. Finland	Marriage Act 1929: "a woman and a man" (s.1(1))	2001: registered partnerships for same-sex couples only	2017: amendment to the Marriage Act 1929 to make the law gender-neutral entered into force after being adopted in 2015.	Yes: registered partnership abolished prospectively, with mechanism to convert to marriage
12. France	Civil Code: no express statement that marriage must be between different sex, but read from art.75 ("a declaration that they would take each other as	1999: civil solidarity pacts for both same-sex and different-sex couples	2013: amendment to Civil Code to "two people of the same or different sex"	Yes: always equal

Country	Former restriction abolished upon equal marriage	Other national institution prior to equal marriage	Route to equal marriage	Equality in other institution?
	husband and wife”) and 144 (unequal ages of consent to marry for men and women, repealed in 2006).			
13. Germany	The Bundesverfassungsgericht (German Constitutional Court) had held in 2002 that despite the inclusion of civil partnership in the civil code, marriage was limited to different-sex couples under the Constitution.	2001: registered life partnerships for same-sex couples only	2017: amendment to Civil Code to “by two persons of different or of same sex”.	Yes: registered partnership abolished prospectively, with mechanism to convert to marriage
14. Iceland	Marriage Act 1993: “a man and a woman”	1996: civil registered partnerships for same-sex couples only	2010: amendment to Marriage Act 1993 to “two persons”.	Yes: registered partnership abolished prospectively, with mechanism to convert to marriage
15. Ireland	Constitution of Ireland 1937 was presumed, although not accepted by all, implicitly to bar same-sex couples’ access to marriage (art.41)	2010: civil partnerships for same-sex couples only	2015: paragraph added to art.41 after a ballot measure: “Marriage may be contracted in accordance with law by two persons without distinction as to their sex”, and by commencement of Marriage Act 2015.	Yes: civil partnership abolished prospectively, with mechanism to convert to marriage
16. Luxembourg	Civil Code: different-sex restriction	2004: civil solidarity pacts for both same-sex and different-sex couples. Benefits were expanded in 2010.	2015: amendment to the Civil Code	Yes: always equal
17. Malta	Marriage Act: gendered expressions “husband” and “wife”. There was an effective, de facto different-sex restriction	2014: civil unions for both same-sex and different-sex couples	2017: Marriage Act and other Laws (Amendment) Act 2017 inter alia substituted the word “spouse” for “husband” and “wife”	Yes: always equal
18. Mexico	Marriage and partnerships are governed at state level.	2006: civil partnership for same-sex couples in Mexico City, followed by some other states 2010: the Supreme Court hold that Mexico City’s same-sex unions must be recognised by other states.	2009–2015: Mexico City becomes the first state to allow same-sex couples to marry, followed by three other states (Chihuahua, Coahuila, Quintana Roo). 2015: Supreme Court rules that state laws that do not respect the rights of same-sex couples are unconstitutional, and holds that marriages contracted in one state must be respected throughout the country.	No: in some states, a civil union is only open to unmarried same-sex couples (e.g. the solidarity pact in Coahuila). However in many states a civil union is open to same-sex and different-sex couples.
19. Netherlands	Civil Code: “man and woman”.	1998: registered partnership for both same-sex and different-sex couples	2001: amendment to Civil Code to “two persons of opposing or the same sex” (art.1:30)	Yes: always equal

Country	Former restriction abolished upon equal marriage	Other national institution prior to equal marriage	Route to equal marriage	Equality in other institution?
20. New Zealand	Common law restriction. In 1996 three lesbian couples sought to challenge that the Marriage Act 1955 did not expressly forbid same-sex marriage, but the Court of Appeal held that the common-law restriction was law (<i>Quilter v Attorney-General</i>)	2004: civil unions for both same-sex and different-sex couples	2013: Marriage (Definition of Marriage) Amendment Act 2013 amended Marriage Law 1955 to “clarify that a marriage is between 2 people regardless of their sex, sexual orientation, or gender identity” (emphasis added)	Yes: always equal
21. Norway	Marriage Law 1991: gendered restriction.	1993: registered partnerships for same-sex couples only	2009: Marriage Law 1991 amended to “two persons of opposite sex or of the same sex may contract marriage” (section 1)	Yes: civil partnership abolished prospectively, with mechanism to convert to marriage
22. Portugal	Civil Code: “two persons of different sex” (art.1577) and an express bar on marriages between persons of the same sex (art.1628(e) Civil Code)	2001: recognition and protection of de facto non-marital partnerships	2010: Civil Code amended to “between two persons” (art.1577)	Yes: always equal
23. South Africa	Common law restriction	No	2006: Civil Union Act 2006 passed after the Constitutional Court declared common law restriction to be unconstitutional	Yes: Civil Union Act 2006: in addition to formally extending marriage to same-sex couples, introduced civil unions for both same-sex and opposite-sex couples
24. Spain	Civil Code: “Men and women are entitled to marry” (art.44); Constitution: “Men and women have the right to marry with full legal equality” (art.32(1))	1998-2005: Many of the autonomous regions of Spain had enacted forms of civil partnership since 1998 (Catalonia being the first) through formalised cohabitation relationships.	2005: paragraph added to art.44 of Civil Code by Law 13/2005: “Marriage will have the same requirements and effects when both parties are of the same or different sex”; Preamble to Law 13/2005 states: the Constitution, by entrusting the legislator with the normative configuration of marriage, does not in any way exclude a regulation that delimits couple relationships in a way different from that which has existed up to now, a regulation that allows for new forms of marriage”	Yes: before 2005 there were distinctions in some states between relationship recognition for different-sex and same-sex couples, however, these were repealed after the freedom to marry for same-sex couples was affirmed in 2005.
25. Sweden	Marriage Code: gendered restriction	1994: registered partnerships for same-sex couples only	2009: Marriage Code amended to provide non-gendered definition of marriage	Yes: civil partnership abolished prospectively, with mechanism to convert to marriage
26. Switzerland	Constitution: the right to marry (art.14) was interpreted as having no state guar-	2007: same-sex civil partnerships come into effect after a referendum in 2005	December 2020: a bill is adopted ending the exclusion of same-sex couples from marriage. Opponents	Yes: the December 2020 bill also opens civil partnership to different-sex couples

Country	Former restriction abolished upon equal marriage	Other national institution prior to equal marriage	Route to equal marriage	Equality in other institution?
	antee of equality, and therefore left as a religious institution.		may attempt to force a referendum by collecting 50,000 voter signatures, which they must do by 12 April 2021. polling shows 80% of the Swiss public support the freedom to marry.	
27. Taiwan (<i>de facto</i> jurisdiction)	Civil Code: different-sex limitation was interpreted by the Ministry of Justice from Part IV of the Code, although this was not expressly provided.	No	2019: Same-Sex Marriage Law after Constitutional Court's judgment of 2017 declared the exclusion of same-sex couples from marriage to be unconstitutional	N/A
28. UK	England and Wales: Common law restriction; the Matrimonial Causes Act 1973 said a marriage is void if "the parties are not respectively male and female" (s.11(c)) Scotland: the Marriage (Scotland) Act 1977 said there is a legal impediment to marriage where "both parties are of the same sex" (s.5(4)(e)) Northern Ireland: Marriage (Northern Ireland) Order 2003 included restriction: "both parties are of the same sex".	2004: civil partnership for same-sex couples only	2013: the Marriage (Same Sex Couples) Act 2013 for England and Wales, which formally extended marriage: "Marriage of same sex couples is lawful" (s.1(1)); 2014: the Marriage and Civil Partnership (Scotland) Act 2014; 2020: the Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 removed restriction introduced by 2003 Order.	Yes: civil partnership initially retained only for same-sex couples, with mechanism <i>retroactively</i> to convert to marriage from date of civil partnership; but in 2018 Supreme Court declared restriction to same-sex couples to be incompatible with ECHR, resulting in legislation to correct incompatibility
29. Uruguay	Civil Code: "husband and wife"	2008: civil unions for both same-sex and opposite-sex couples	2013: amendment to Civil Code to "two persons of different or equal sex" (art.83)	Yes: always equal
30. USA	Marriage governed at a State level	No	2015: US Supreme Court declared State exclusions of same-sex couples from marriage to be unconstitutional	N/A

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