Articles

Citizenship, Same-Sex Marriage, and Feminist Critiques of Marriage

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The debate over same-sex marriage in the United States is fundamentally a disagreement about the nature of democratic citizenship and the meaning of full inclusion of adult citizens in the polity. The facts that marriage has both private and public dimensions, and is described by policy makers as natural and unchanging even as they write laws to define it create confusion among those who publicly contest same-sex marriage. The feminist critique of marriage provides insight on the issue; its critique, along with the questions raised by same-sex marriage, indicates a need to rethink many aspects of the legal regulation of families and intimate life as they affect democratic citizenship.

Every civilization since the beginning of man has recognized the need for marriage . . . Furthermore, it's just common sense that marriage is the union of a man and a woman.
——Senator Rick Santorum, 2003

Is the United States a heterosexual regime?
——Shane Phelan, *Sexual Strangers,* 2001

Activist judges . . . have begun redefining marriage by court order, without regard for the will of the people and their elected representatives. . . . Our nation must defend the sanctity of marriage.
——President George W. Bush, State of the Union Address, 2004

When President Bush endorsed a federal constitutional amendment to prohibit same-sex marriage, he confirmed an electoral strategy of using "gay marriage" as a wedge issue in the 2004 election.[1] This might have been predicted from coverage of the landmark Supreme Court decision in *Lawrence v. Texas* (2003), which focused more on same-sex marriage than on the actual substance of the court's decision regarding the right to privacy. Marriage has become a centerpiece for both opponents and proponents of greater rights for the members of the gay, lesbian, bisexual, and transgender community.[2] Social conservatives believed, correctly, that the issue would rally conservative voters for the 2004 election, regardless of the ultimate success or failure of their effort to amend the Constitution.[3]

The focus by the advocacy community on achieving the right to same-sex marriage might seem puzzling. After all, polling data in the United States have consistently shown that the American public supports same-sex marriage less than many other goals of the movement, such as nondiscrimination in employment. This has remained true even as hostility toward gays, lesbians, and bisexuals has abated over the past decade.[4] In addition, one might reasonably expect faster policy success—and therefore greater concentration of advocacy group resources—on initiatives such as the Employment Non-Discrimination Act, at the state and local level. Indeed, the quest for marriage is controversial among lesbian, gay, bisexual, and transgender (LGBT) advocates. How then did marriage come to be seen as the holy grail of gay politics by opponents and proponents alike?[5] In this essay I suggest that marriage has a significant place in our understanding of

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responsible citizenship in a democratic polity.[6] Further, marriage is seen as a prerequisite to the provision of certain rights and material benefits. Advocates on both sides of the issue agree that there is a deep connection between access to the institution of marriage and full citizenship. Thus, those who care about citizenship should attend to gay marriage, regardless of their intrinsic interest in the topic.

The 2003 majority opinion of the Massachusetts Supreme Judicial Court made this connection between marriage and citizenship explicit, both in its original decision and in its advisory opinion: "The Massachusetts Constitution affirms the dignity and equality of all individuals. It forbids the creation of second-class citizens."[7] The court further states that "[t]he dissimilitude between the terms 'civil marriage' and 'civil union' is not innocuous. . . . It is a considered choice of language that reflects a demonstrable assigning of same-sex, largely homosexual, couples to second-class status."[8]

Advocates of same-sex marriage compare their quest to those of other social movements, particularly the civil rights movement, that sought equal status as citizens before the legal institutions of the state. Comparisons are frequently drawn, for example, between the effort to eliminate state bans on interracial marriage and the quest for same-sex marriage. The comparisons have been controversial in the African American community and are rejected by some leaders who nonetheless oppose constitutional amendments banning same-sex marriage.[9]

Advocates of same-sex marriage are less likely to make reference to the movement for women's rights, which has historically seen marriage as a tool of oppression, and reform of the institution as a crucial feminist goal. Feminist political and legal theorists have critiqued the institution of heterosexual marriage as harmful to women's status as citizens; for many feminists, the flaws of the institution are deeply embedded in its reinforcing of inequality, gender roles, gender hierarchy, and male power. Indeed, those within the LGBT community who are critical of the marriage quest frequently invoke feminist arguments.

The current debate raises important questions about the role of the state in the lives of its citizens, democratic participation, and political rights in contemporary democracies. How will same-sex marriage affect LGBT citizenship? Will it, as some advocates claim, help to make the institution of marriage more egalitarian, or will it reinforce society's conservative ideas of family? Will citizenship continue to be circumscribed by the state's definition of acceptable and unacceptable relationships, or will the dialogue on same-sex marriage permit a broader understanding of families, family relationships, and public life? What are the implications for our understanding of contemporary democratic citizenship?

What is Marriage?

As Nancy Cott notes, marriage is central to ideas of citizenship in U.S. history, even though its "monumental public character . . . is generally its least noticed aspect."[10] Within the LGBT community, advocates and critics of same-sex marriage generally agree that heteronormative marriage, as historically or currently practiced, hinders the citizenship of women and LGBT individuals. But what, after all, is marriage, and how is it linked to citizenship?

Cott argues that nineteenth-century disputes over marriage—for example, over polygamy among the Mormons—were really about who should be included as full citizens in the polity. The irony is that marriage is often seen as a coveted realm of privacy in a world where little is private. Marriage establishes the right to a realm of privacy—a right not accorded to those who do not or may not marry. Thus marriage is a public institution that creates a right to private sexual relations, and yet is defined by public policy. Little wonder, then, that public

discussion of same-sex marriage reflects confusion about what exactly is being discussed.

Public officials propagate this confusion in their discussions of marriage: "Legislators . . . tried to have it both ways with marriage in political discourse—picturing it as a rock of needed stability amidst eddies of change, while also acting to define and redefine marital obligations."[11] Thus Massachusetts Governor Mitt Romney, asked to testify before the U.S. Senate Judiciary Committee on same-sex marriage, asked, "Were generations that spanned thousands of years from all the civilizations of the world wrong about marriage?" In the same statement he advocated federal and Massachusetts state constitutional amendments to define the institution.[12]

This dual feature of marriage—that it is both constructed by state law and policy and understood as "natural" and prepolitical—is partly what leads to confusion about the institution among feminist theorists, conservative opponents of same-sex marriage, and gay and lesbian activists. Indeed, if marriage were merely "natural," a "pre-Christian institution written into the human psyche,"[13] why would we need federal and state laws, or a federal constitutional amendment, to define it?

Although politicians sometimes mystify marriage,[14] scholars see marriage as an institution of human creation, the form of and justification for which has varied historically and cross-culturally.[15] The state-created institution of marriage has historically been altered—by the *Loving v. Virginia* (1967) decision on interracial marriage, by no-fault divorce, or through heightened enforcement of child support obligations of noncustodial parents—to serve new or newly recognized state interests. State-sanctioned marriage is a public institution, and the state, not the parties who enter into it, determines the terms of the marriage contract. Indeed, individuals who enter into marriage may not know the legal provisions of the institution—newly married couples receive a marriage certificate, but not a copy of the marital relations code.

Construing marriage in terms of public policy does not, of course, preclude diverse beliefs about the meaning of marriage. But in a pluralistic democratic society, all of these beliefs need not be shared by all who participate in the institution, or by all members of the polity. This is the point that advocates of same-sex marriage make in arguing that they seek civil, not religiously sanctioned, marriage.[16]

But what is marriage? And what are its *public* functions? For traditionalists, marriage serves the public function of creating social stability and a hospitable setting for raising children.[17] Many also see it as the fulfillment of religious mandates. But even those who see gender equality in marriage and inclusion for same-sex couples as politically desirable have no need to start from scratch. Scholars of family law have been discussing this question for several decades, as family relationships and institutional features of marriage have been changing.[18] Some have questioned whether the law on marriage has been transformed from status-based to contract-based, and whether alternative views on marital law are needed.[19] A number of feminist scholars go further, advocating a broad approach to the law that is neither status- nor contract-based, yet both woman-friendly and fair for diverse families.[20] This new framework would require acknowledgment of rights and obligations of family members toward one another regardless of gender and without reinforcing stereotypes and inequalities. While all of these feminist scholars support legal recognition of same-sex relationships, they do not necessarily see marriage in its present form as the best way to achieve this goal.

For some queer critics of the same-sex marriage quest, the current heterocentric vision of marriage inappropriately associates the public granting of a privacy privilege with adult citizenship for those professing lifelong, monogamous sexual relationships. Their objection is not so much to the fact that same-sex couples wish to have such relationships recognized, but rather to privileging this form of sexual relationship above all others.[21] If married couples—opposite or same-sex—are provided greater social, economic, and political privileges than nonmarried individuals, the result will be secondary exclusions and reinforcement of an undesirable link between a particular form of intimate association and adult citizenship.[22]

Marriage is a public institution whose current form in the United States results from political choices made by state and federal public officials over a long period. It is also a fundamentally conservative institution: marriage posits a specific desirable form for intimacy and family life—despite contemporary reality—and reinforces that form through legal, economic, political, and social privileges. In the current debate over same-sex marriage, democratic theorists should encourage a broad discussion about whether this public place for marriage is warranted or desirable.

Citizenship and Same-Sex Marriage

Although some efforts to advance same-sex marriage in the United States began in the 1970s, it was not until the 1990s that the gay and lesbian advocacy community began to back the cause.[23] What surfaced in the 2004 political debates as a two-sided issue has many more facets.

Advocates of same-sex marriage, LGBT skeptics of this quest, and social conservative opponents of same-sex marriage all agree that fundamental questions of citizenship status are at stake in this debate. They disagree on whether same-sex marriage will end second-class citizenship for same-sex couples—and whether that is a desirable goal. These groups have different views on citizenship and different views on the effects that same-sex marriage would have on citizenship and on the polity. Recent scholarship

on the nature of citizenship in the United States can help us put the matter into perspective. Rogers Smith's documentation of an ascriptive tradition of citizenship that developed alongside republican and liberal versions is helpful, particularly considered in concert with those who have taken up this work for somewhat different purposes, including Shane Phelan, Catherine Holland, and Bonnie Honig.[24]

Phelan's argument, for example, that the United States is a heterosexual regime suggests that heterosexuality is a necessary ascriptive characteristic for full citizenship status. For Phelan, this is evident in a number of policies related to citizenship, including the "don't ask, don't tell" policy for gay and lesbian members of the military, heterosexual marriage, and continuing employment discrimination against LGBT individuals, which is still legal in most jurisdictions. Phelan fears that even proposals to change some forms of heterosexual privilege may inadvertently reinforce the policies they seek to change by inscribing a delimited form of citizenship for sexual minorities. For example, provision of same-sex marriage may exclude those who are single, who do not wish to be married, or whose families of choice do not conform to the marriage model.

This is just one example; the parties to the debate on same-sex marriage are numerous, and below I map a few of these positions. The point I wish to emphasize is that these groups' positions and arguments with respect to the desirability (or undesirability) of same-sex marriage are related to views of democratic citizenship. Some parties hold an ascriptive, nationalist view of citizenship; others, a more egalitarian view. But some of the comparisons are surprising.

For members of the Christian Right,[25] opposition to same-sex marriage is tied to their vision of the role that Christian morality should play in national identity and citizenship. Seeing the United States as a Christian nation, they believe that laws should reflect their understanding of Christianity. Same-sex marriage, like the broader movement for LGBT rights, and the women's movement, reflect the decadence of a nation that has strayed from God.[26] Non-Christian social conservatives echo these arguments, stripped of specific religious references, in their arguments against same-sex marriage.[27] In these views, heterosexual (Christian) marriage is central to adult citizenship and should be recognized by society with benefits and privileges.

For the Christian Right and other social conservatives, then, restricting marriage to heterosexuals preserves an ascriptive version of citizenship, one that ensconces a particular form of intimate relationship as the state-recognized norm. This ascriptive status is not based on race or national origin, but on heterosexual identity and willingness to participate in and benefit from the state-sanctioned institution of marriage. The quest for a federal constitutional amendment establishing heterosexual marriage, and the state ballot initiatives that provide for similar state-level constitutional change confirm social conservative and Christian Right agreement that heterosexual marriage is central to their understanding of democratic citizenship. For these groups, same-sex marriage is a fundamental threat to the republic as a whole.

This view of citizenship is nationalist, inegalitarian, and ascriptive. The justifications for the Federal Marriage Amendment imply that heterosexuality and marriage are required for full adult citizenship. Proponents of constitutional amendments apparently feel aggrieved by the prospect of same-sex marriage because legally sanctioned same-sex marriage would harm their "privileged" place as Christian citizens.

Curiously, conservative gay advocates of same-sex marriage share much of this vision of ascriptive, inegalitarian, and nationalist citizenship. Andrew Sullivan, for example, argues that marriage has a civilizing influence on men and should be supported by conservatives; marriage, he asserts, should be the primary—indeed the only—goal of the gay rights movement.[28] Indeed, this is the point made by advocates such as Jonathan Rauch, who maintain that access to marriage will create a more mature gay culture since, in his view, marriage leads to a fulfilled adult life that connects love, sex, and responsibility.[29] Some advocates of same-sex marriage go even further, expressing the cultural desideratum that once marriage is available to same-sex couples, it should become the norm for LGBT individuals.[30] Thus citizenship should still be ascriptive, based not on sexual orientation, but on marital status.

Although many of the most prominent advocates of same-sex marriage are conservative gay men, some lesbian feminists also argue that same-sex marriage is necessary to assure full citizenship. Cheshire Calhoun argues that obtaining same-sex marriage is central to the status of nonheterosexuals (and in particular, of lesbians) as citizens:

> [T]he gain takes the form of a unique citizenship status that grounds heterosexuals' claims to special state solitude for their private lives, a partial insulation of their legal privileges from liberal principles, and special entitlement to influence the evaluative commitments of future generations.[31]

While Calhoun may not agree with the ascriptive view of citizenship, she suggests that this view may be too entrenched to alter. Advocates of full equality for LGBT citizens must, in Calhoun's view, seek access to marriage as it exists today.

Of course, some advocates of same-sex marriage do not share, or do not wish to accede to, this ascriptive view of citizenship. Many are legal scholars, and their approach to the issue reflects their concern with legal and constitutional arguments that might persuade court decision making. They see citizenship in egalitarian terms and argue that providing access to marriage for same-sex couples is a matter of equality.[32] Although these scholars disagree on the specific legal justification for same-sex marriage and

on the best institutional venue to use, most of their arguments are equality-based, hinging on equal protection against discrimination or some other legal basis.

Many legal arguments focus on the real, serious, material harms experienced by LGBT individuals and their families due to the lack of recognition under the law. These manifold harms are not about access to the word "marriage," as the dissenting opinion of the Massachusetts Supreme Judicial Court so dismissively asserts.[33] For example, civil unions—the marriage alternative proposed by some—do not accord access to federal social security benefits; legal marriage does. LGBT families, even in civil unions, lack access to economic benefits of marriage, legal rights with respect to children, and many other rights and benefits attached by law to heterosexual marriage.[34] These harms create legal and social instability for sexual-minority families in nearly every aspect of daily living, and they are central reasons LGBT families seek the legal recognition of marriage. Thus the law's very preference for marital and biological relationships is precisely what creates material exclusion for same-sex couples.

For the most ardent advocates of same-sex marriage, however, material benefits are not the whole picture. If they were, then the provision of alternative legal (for example, registered partnerships or legal contracts) and political means for accomplishing these ends might suffice.[35] These advocates for same-sex marriage also argue that lack of access to marriage constitutes unequal status as citizens, and that this denial of full citizenship is tantamount to denigration of gay, lesbian, and bisexual identity. Thus advocates are making citizenship claims that are echoed in the majority opinion of the Massachusetts court decision cited above.

Eskridge, for example, argues that "Defenders of same-sex marriage are alumni of gay people's politics of recognition and consider equal marriage rights . . . to be the ultimate recognition of gender and sexual minorities as equal citizens."[36] Similarly, Morris Kaplan, who argues both for queer cultural expression and for same-sex marriage, sees the marriage quest as a notable shift in the gay and lesbian movement toward "an effort to secure the social conditions of human flourishing on equal terms with straight citizens."[37]

Yuval Merin explicitly compares separate-but-equal doctrine to second-class citizenship:

> The fact that the models are self-consciously separate from marriage renders them inherently unequal to opposite-sex marriage; "separate but equal" in this context instantiates the same constitutional evil that led the U.S. Supreme Court to condemn this doctrine in the racial domain. This is yet another reason why marriage substitutes constitute second-class marriage. The only remedy for the existing discrimination against same-sex couples would be their inclusion in the institution of marriage.[38]

By comparing the case for same-sex marriage with *Loving v. Virginia* (1967) and to *Brown v. Board of Education* (1954), Merin clearly argues for equal status as citizens through access to the institution of marriage.[39]

These citizenship arguments are also made by nonacademic members of the gay, lesbian, and bisexual community. As Jeffrey Weeks, Brian Heaphy, and Catherine Donovan note, quoting one of the ninety-six participants in their study, "[I]t is ultimately a question of equal citizenship: 'it's about being a citizen. It's about having full rights as a citizen really, and other citizens—every citizen has the right to certain things you know.'"[40] Most of the participants in their study would not choose to exercise the right to marry, and many were critical of the marriage quest, since they did not see the institution as worthy of imitation. Still, most subjects want the right to marry; many saw the lack of access to marriage as a mark of antigay discrimination. Certainly the thousands of same-sex couples who received their marriage licenses in San Francisco, New Paltz, and Portland felt that they were participating in the movement for LGBT rights and staking a claim for equal citizenship, even if the document they received did not accord them any legally enforceable benefits.

Once the LGBT movement began investing resources in the marriage quest, especially after the victory in the Hawaii court decision in *Baehr v. Lewin,* it became more difficult to dissent from the goal of same-sex marriage.[41] Dissent was seen as counterproductive.[42] Nevertheless, critics within the queer community have criticized the quest for same-sex marriage from the outset. For the critics, most of whom see citizenship in egalitarian terms, marriage is a conservative institution that reinforces existing social, economic, and political hierarchies. Same-sex marriage, for them, would provide benefits to more privileged members of the LGBT community, but would disenfranchise others. They also point out that the gay liberation movement of the 1970s was not interested in marriage because the impetus of the gay rights movement was a radical critique of sexual heteronormativity, and that the marriage quest conflicts with the goal of queer sexual liberation. This is not simply a point about sexual freedom; rather, it is a political point about the connection between LGBT politics and egalitarian democracy.[43]

The debate within the queer community in the United States over marriage as a worthy goal began in earnest in 1989, with essays by Tom Stoddard and Paula Ettelbrick that argued, respectively, for and against advocacy groups taking up the challenge. Ettelbrick linked the feminist critique of marriage to the quest for gay and lesbian liberation.[44] She was joined in the 1990s by other, primarily lesbian feminist, skeptics of same-sex marriage, including Nancy Polikoff, Ruthann Robson, and Valerie Lehr. Lehr, for example, argues that the marriage quest not only reinforces the patriarchal family, but also harms, among others, queer youth, who may be further marginalized by the community's advocacy for marriage.[45]

Many lesbian feminists argue that the heteronormativity of marriage will not be easily overcome, given its role historically in the enforcement of compulsory heterosexuality.[46] While earlier discussions (for example, Adrienne Rich) primarily critiqued the absence of lesbians from feminist theorizing, more recent work has answered that concern, in part in response to the marriage quest. Thus, some lesbian feminist critics, while recognizing the legal advantages and the symbolic equality that marriage might provide for lesbian couples, still see marriage as an undesirable goal. In their view, there is no way for lesbians to avoid being colonized by the institution and its normalizing tendencies.[47] They advocate entirely new ways of thinking about families and intimate life.

Some critics, such as Michael Warner, also focus on the conservative nature of many arguments for marriage, suggesting that the marriage quest directly contradicts the history of the gay rights movement. For Warner, the most prominent arguments for marriage merely respond to the desire to not seem too different from mainstream heterosexuals. Marriage, he maintains, will exclude anyone who is not part of a committed long-term monogamous relationship or who is not willing to have his or her relationship subject to the state authority that accompanies legal status. Warner argues that the oppositional energy of the gay rights movement has been diluted by expending resources on the same-sex marriage issue. Though not opposed to any effort to end the prohibition against same-sex marriage, any such effort, Warner argues, must be made with queer sensibility and with broader goals, such as access to health care and rights with respect to immigration regardless of relationship status. And it should be "responsive to the lived arrangements of queer life, and articulated in queer publics."[48] This approach would require public dialogue involving people from many different positions in the queer community about a more desirable understanding of the connection between intimate association and citizenship.[49]

Phelan makes the clearest connection between issues of citizenship as they relate to sexual minorities and same-sex marriage. She charges that the marriage quest creates a set of exclusionary practices by the gay community against nonnormative members. That is, many in the queer community would be further marginalized by the normalizing effects that marriage may bring to those in the community who are most like heterosexual married couples.[50] Julie Abraham, for example, suggests that conservative marriage advocates want marriage to change queers, not queers to change marriage.[51] But why, she and others ask, should material benefits—or equal respect as citizens—be tied to long-term, monogamous, committed relationships? They do not suggest that LGBT people should wait until universal health care is available to have these benefits; nor, for the most part, do they argue that people who want to get married should not be able to do so. Rather, they are making a political argument about the privatization of citizenship rights that, in their view, the marriage quest endorses. They also share a serious concern that same-sex marriage will establish a new form of ascriptive citizenship that appears to include sexual minorities, but in fact excludes most LGBT persons.[52] Yet Phelan agrees with people like Andrew Sullivan and William Eskridge that a significant aspect of the exclusion of gay and lesbian individuals lies in their nonrecognition as full citizens. In one sense, then, queer critics of same-sex marriage agree with the advocates: heterosexual and heteronormative marriage diminishes the citizenship of people who are members of sexual minority groups.

These disagreements over the marriage quest revolve around the issues of what access to marriage would accomplish with respect to the problem of exclusion, the nature of citizenship as membership, and the meaning of full inclusion for LGBT individuals. Critics fear that providing gay, lesbian, and bisexual people access to marriage without fundamental social and political change regarding marriage, gender roles, and sexuality will result in full citizenship for only a privileged few, not for all sexual minorities. Thus, critics see arguments for same-sex marriage as part of a larger agenda that threatens the potential for progressive, egalitarian citizenship, whereas some marriage advocates see the critique of same-sex marriage in defense of a more radical queerness as itself a step backward in the quest for equality and civil rights—just as the greater visibility of drag queens than gay businessmen in pride parades is seen as counterproductive and a poor representation of the LGBT community.

The internal critique has not dampened the quest for marriage. Perhaps this is because critics and advocates alike within the queer community see access to marriage so clearly in terms of citizenship; even same-sex couples who choose not to get married agree that the Massachusetts decision means that "a significant barrier to our full citizenship has fallen."[53] But citizenship means very different things to different parties, as we have seen.

Citizenship and marriage are deeply tied in U.S. political practice. Unfortunately, the focus on citizenship by all parties discussed above has shifted too much attention away from the role of the state in marriage; our gaze is on citizenship and equality, and marriage has become the black box whose contents remain unexamined. The very symbolism of marriage as the ultimate end of adult citizenship and the fulfillment of private desires and purposes may be the reason that little attention is paid in the current debate to the details of the institution. And it is here that feminist critiques of the institution may be helpful. Will access to same-sex marriage really provide equal citizenship to LGBT persons? The feminist critique of marriage suggests that there are reasons to be circumspect.

Feminist Critiques of Marriage and Citizenship

Will the presence of same-sex couples transform the institution of marriage? Can the gender hierarchy that is reinforced by heterosexual-only marriage be altered by the existence or the practice of same-sex marriage? These questions have both empirical and theoretical components. Despite the marriage critics' radical view of citizenship, their picture of marriage as an institution is rather flat in most arguments. They leave little room for the possibility that marriage as an institution will be influenced by the presence of married same-sex couples. Whether or not it proves to be the case is, of course, a matter to be settled by future social historians.

The most useful place to look for theoretical guidance is in the feminist critique of marriage. Empirical social science can help us analyze the changes in heterosexual marriage and family relations over the past several decades in the United States and provides evidence on same-sex couples and same-sex parenting. Below, I focus mostly on the theoretical aspect of this issue, but also draw on some empirical evidence.

Feminist critiques of marriage in the United States are well known: inegalitarian marriage has historically given women a status as different kinds of citizens than men.[54] Many feminist scholars argue that the cultural and social remnants of these barriers have not disappeared, even for women who hold political office.[55] These differences persist not because of legal barriers related to marriage, but rather because of the set of gender-role expectations that have historically been, and for some—for example, the conservative opponents of same-sex marriage—continue to be, attached to the legal institution of marriage.[56] In this view, marriage denies women access to equal status and recognition as citizens by controlling women's bodies and sexuality, and by denying access to key aspects of "social citizenship" as outlined by T. H. Marshall (1950). Women were marked by the institution of marriage as sexual beings in need of control, so that paternity can be definitively established. This function of marriage was seen as so crucial to social order historically that it justified intimate and physical control of women by their husbands. That marriage pertained to social control of, in particular, white women's sexuality is most evidenced by the fact that in the United States enslaved women were treated differently with respect to marriage and paternity. Not only were African American women not allowed to marry, but paternity was legally irrelevant to their children, whose status followed their mother's—clearly serving the economic interest of slaveholders.[57]

The inegalitarian, white, heteronormative institution of marriage in this view also has a number of secondary effects on women's status as citizens, both for white women and women of color. These effects include the economic disadvantages that are both a direct result of women's marital status and a consequence of social and economic factors related to inegalitarian marriage, such as job stratification and lower pay. Inequality creates barriers for women's access both to economic and political life, and to full inclusion in the polity, since their "dependent" status contradicts the qualities of independent judgment required of citizens.[58] Thus, the denial of political rights to women was accompanied by, and reinforced through, a system of legal regulation that had its nexus in the marriage contract.[59]

In addition, feminists have critiqued the racial assumptions of marriage. Partly this critique has to do with the lack of access during the period of enslavement to the status afforded by white heteronormative marriage for women of color, particularly African Americans.[60] But even recently African American families have been criticized as "matriarchal."[61] Thus the earlier racial marking of heteronormative marriage as white, combined with negative stereotypes of African Americans, made marriage a tool for racial exclusion,[62] and the vestiges of the racial aspects of marriage have not disappeared.[63] Discussions of welfare policy in the United States are rife with stereotypes regarding families of color and their perceived failure to comply with traditional family forms.[64]

All of these critiques are intertwined, as part of an overall feminist discourse on marriage and its role in denying all women access to full status as public persons. In this view, then, the ascriptive arguments of those who support a Federal Marriage Amendment are deeply connected to notions of citizenship that see not just marriage, but gender-unequal marriage, as central to citizenship.[65]

Feminist critiques of marriage are relevant to the same-sex marriage debate for several reasons. The critique of rigid gender roles and hierarchy in marriage—and of their negative consequences for women—is also a critique of patriarchal heteronormativity, which oppresses not only women, but also members of the LGBT community. Has the feminist critique of marriage, along with the changes in women's roles during the past several decades, brought about any change in gender hierarchy and the subordination of women via marriage? If so, how significant are these changes?

Feminist scholarship suggests that the connections among marriage, gender hierarchy, citizenship, and sexuality have not disappeared. For example, kinship laws still establish married men's paternity through marriage, not through their biological relationship with children. By this means, women are equated with nature and their relationship to children is biological, whereas men's relationship to children is established politically through the law of marriage.[66] While it is true that men who are not married are declared fathers through paternity procedures in child support laws, which may entail paternity tests, the marital relation is still retained in paternity law: the existence of a legal marriage contract trumps biological paternity.[67] The

marriage contract creates fathers as *political* beings;[68] moreover, marriage still functions to control women's sexuality for the purposes of ensuring a politically controlled genealogy. The continuing political uses of marriage are further illustrated by its becoming a centerpiece of policies for low-income families, despite evidence that marriage by itself does not address poverty and has little to do with the actual lives of families whose lives are managed by poverty policy.[69] Thus the legal framework of marriage describes a specific form of family life as the desirable and recognized marriage/family nexus.

Despite legal and social changes to the institution, marriage is still a central instrument in the denial of women's status as full citizens. Household division of labor, for example, has been affected only very gradually by changes in women's roles in the labor force.[70] Regardless of the method employed to collect data on how couples divide household labor, studies indicate that men do at most 35 percent of household labor.[71] There is a relationship between men's attitudes and the amount of housework their wives perform: men with more egalitarian ideas about gender are married to women who do less housework than do other married women. Yet these men do not necessarily increase their own share of housework.[72] Cohabiting women spend less time on housework than do married women, and married couples adhere to more gendered divisions of specific household tasks.[73] These patterns of gender-role division in marriage hold remarkably true internationally and across class lines.[74] Change has occurred; men are doing more household labor, and women less, than fifty years ago. In the workplace, even though women are approaching 50 percent of full-time workers, women who work full time still earn about 75 percent of what men who work full time earn. This is due in part to continuing gender-based occupational segregation and the devaluation of wages in jobs dominated by women.[75] And women who reduce their wage labor to care for their families lose as much as 62 percent in lifetime earnings compared to men due both to reduced income and reduced opportunities for career advancement once they return to wage labor.[76] Thus the persistence of the domestic and workplace gender divisions should make us cautious in hypothesizing major transformations of the gendered nature of marriage, whether by the women's movement or by same-sex marriage.

Feminist critics of marriage see the institution's history, and the present social and political practices that are remnants of this history, as creating significant barriers for women achieving full citizenship. They have argued for major changes in the legal, political, social, and economic structures that reinforce heteronormative, gender-role differentiated marriage.[77] Some, notably Martha Fineman and Ruthann Robson, argue that women would be better served by abandoning the institution of marriage in favor of new forms of legal regulation of nuclear kinship. Changes that have resulted from institutional remedies like, for example, no-fault divorce have not favored women.[78] Social change is a double-edged sword.

Feminist critiques of marriage are key to understanding the limited potential for same-sex marriage to change the status of LGBT citizens and the nature of the institution itself. The feminist critique of marriage underscores the fact that a privileged citizenship status is conferred to heterosexuals via marriage, though unequally to men and women. Arguments for same-sex marriage that fail to recognize the flawed nature of heterosexual marriage's institutional structure and history tacitly accept a version of family and intimate life that is based on hierarchy and social exclusion.

Will same-sex marriage change marriage? There will be some effects. Perhaps the presence of publicly recognized same-sex relationships will raise questions for some people about the necessity of a gendered division of labor in marriage. Perhaps same-sex marriage will change some people's attitudes about LGBT individuals. The fact that the Massachusetts marriage license, for example, now refers to "Party A" and "Party B," rather than to "husband" and "wife," may affect how people think about marriage and how legal institutions respond to marital couples. And the visibility of same-sex married couples going about their daily lives just like their heterosexual neighbors may likewise alter attitudes and cultural practices regarding lesbian, gay, bisexual, and transgender people. The lesson of changes in heterosexual families and marriage, however, is what most social scientists would predict: the interaction between individual social actors and the institutions that they inhabit is two-way. Individuals will be affected, to some extent (even if they do not wish to be) by the institutions in which they participate as well as vice versa. For example, if the tax system continues to favor one-earner couples, are middle and upper class same-sex couples, newly eligible to file joint tax returns, likely to continue to divide wage labor and caring labor equally, or are they more likely to take on the roles of traditional heterosexual marriage, particularly if they are also raising children?[79]

In one sense, the arguments of progressive critics of same-sex marriage are institutionalist: that is, given the history and structure of this institution, there is no way to easily alter the institution and its meaning, however good our intentions. The quest for equality for gay, lesbian, bisexual, and transgender persons and their families, just as for heterosexual women in families, will need to take place in multiple arenas and through multiple means of political engagement. Access to marriage, or even transformation of the institution, will not by itself make women and sexual minorities free and equal citizens. Yet critics are right to be concerned about the simple privatization of intimate association that same-sex marriage might bring. A broader discussion of the links between intimate association and citizenship is needed.

Such a discussion will require an expansive understanding of the meanings and potential of *Lawrence v. Texas* (2003). In this case constitutional privacy doctrine was expanded to declare state sodomy laws unconstitutional. The majority opinion articulates a vision of human relationships in which physical intimacy is an important element, one that should be respected by courts and protected from unnecessary state regulation as long as it occurs in private between consenting adults. This means the end of state sodomy laws. It may mean, in addition, the end of state laws that criminalize the sale of sexual aids intended for the private use of consenting adults.[80] It could even lead to a broader conversation in a wide range of policymaking arenas, from corporate boardrooms to state legislatures, about an inclusive understanding of adult citizenship, intimate relationships, and nontraditional family structures.[81]

In some ways this discussion has begun, although participants frequently talk past one another. Feminists argue that inegalitarian marriage harms women's citizenship. Advocates of same-sex marriage believe that heteroexclusive marriage harms sexual minority citizenship, and that sexual minority citizens must be given access to marriage along with its accompanying material benefits. For critics of same-sex marriage within the gay community, heteroexclusive marriage, heteronormativity, and homophobia harm queer citizenship, but access to marriage will only benefit straight-acting gays; the secondary exclusions experienced by nonnormative LGBT individuals will be exacerbated. For conservative opponents of same-sex marriage, permitting gay marriage would harm the nation.[82] The discussion is now joined, though not yet very fruitfully.

Marriage and Citizenship

> For as surely as rights to marriage and to adoption and, indeed, to reproductive technology ought to be secured for individuals and alliances outside the marriage frame, it would constitute a drastic curtailment of progressive sexual politics to allow marriage and family, or even kinship, to mark the exclusive parameters within which sexual life is thought.[83]

Judith Butler notes that whether one argues for the normalcy of same-sex couples or for the inherently disruptive quality of queer identity, both arguments accept the existing framework for thinking about marriage and kinship. This framework, I have proposed, yields an inegalitarian understanding of citizenship by providing those who are in long-term, committed, and state-sanctioned relationships with greater recognition and status than those who are not. How can we disrupt this understanding while still pursuing achievable political goals that seem to require small moves away from the status quo? This is the dilemma that same-sex marriage poses for LGBT and feminist activists.

In her essay on American citizenship, Judith Shklar argues that citizenship as status focuses on what is denied to certain groups as a means of maintaining their outgroup status.[84] In the quest for the right to vote, for example, it is not the actual exercising of that right, but access to it that is important. Thus once the right to vote is won, people may or may not feel obliged to vote and may not see the benefits of voting. Similarly, for many advocates of same-sex marriage, it is the availability of marriage, not its exercise, that is important. This helps to explain the respondents in the Weeks, Heaphy, and Donovan study who wanted the right to marry but would not necessarily exercise it themselves. It also helps explain the concerns of those who criticize the marriage quest: once this symbolic victory is achieved, those in the community who have the most power because they are the most mainstream may see little reason to engage in further activism to achieve rights for less mainstream community members.

The feminist critique of marriage and the arguments of LGBT skeptics and of some advocates of same-sex marriage share a commitment to a broader, more radical politics of citizenship in relation to sexuality and intimate association. But what, specifically, might such a politics entail? Cathy Cohen imagines the possibility of coalitions between "punks, bulldaggers, and welfare queens,"—that is, between low-income women of color, whose sexuality has also been subject to intense scrutiny, and LGBT activists.[85] What if the politics of sexual shaming that has created punitive policies toward poor women based on racial and ethnic stereotypes of sexual depravity were challenged in public discussion of renewal of the 1996 welfare law?[86] What kinds of coalitions would be required to create a politics conducive to such a discussion? Groups who are subjected to the politics of sexual shaming and those subjected to the policies that enact that shaming—for example, low-income single mothers and same-sex couples—must find common cause. This would require extensive political and community organizing and coalition building of a kind that is difficult but not unprecedented, as evidenced by some of the state-level organizing in opposition to the 2004 anti-gay ballot measures.[87]

The political and social barriers to such coalitions are daunting. Spirited and democratic public discussion regarding sexual shaming may be too much to ask, desirable as it might be, in the current political climate,[88] but we certainly might hope for more extensive discussions regarding the public purposes of marriage.[89]

More immediately, in specific policy terms, what should follow from this broadened conception of marriage and citizenship? Certainly, public policies should not demand or require that people marry or have a specific sexual orientation in order to be accorded rights and benefits. But the working out of such a goal requires a great deal of advocacy on a state-by-state, company-by-company basis. For example, New Jersey's new domestic-partner law applies

to same-sex couples and to opposite-sex couples who are over 62 years of age. But private employers are not required to provide benefits, and local government entities can also choose not to provide benefits to domestic partners. New Jersey's largest city, Newark, has to date chosen not to provide these benefits to its employees.

Even obtaining the right to marriage does not mean that same-sex couples will automatically be afforded the same status and rights as heterosexual couples. This has become clear in some employers' reactions to the advent of same-sex marriage in Massachusetts. Cumberland Farms, for example, has announced that it will not be providing health benefits to legally married same-sex couples.[90] They are not required to do so under federal law because they self-insure; only employers who purchase insurance from insurance companies are required to provide benefits to couples as defined by federal law, which in this instance defers to the state's definition of marriage. Some companies have sought to end their domestic-partner benefits, offering benefits only to those same-sex couples who actually marry. Such policies force couples to marry or lose their benefits, confirming some of the fears of marriage skeptics. These policies will of course be opposed by the LGBT advocacy community, and case-by-case battles are likely to continue for decades to come.

The issue of political strategy is especially important, given the additional barriers to same-sex marriage that emerged in 2004 through state constitutional amendments. The LGBT advocacy community has been approaching the issue of marriage state-by-state, primarily through courts. Indeed, part of their argument against the Federal Marriage Amendment is that this is an area of law traditionally governed by the states, not the national government. The state-by-state strategy does seem to be the best approach, in part because federalizing family law has significant drawbacks and in part because this is more likely to lead to some policy victories for the LGBT community as well as to draw more citizens into the discussion. Daniel Pinello has shown that gay and lesbian claimants tend to be significantly more successful in state court claims than in federal courts.[91] Of course, with *Lawrence v. Texas,* federal courts may become more favorable venues as well.

Conservative opponents of same-sex marriage have decried the use of the courts rather than the legislatures by advocates of same-sex marriage, frequently invoking arguments of an imperial judiciary. And some advocates of same-sex marriage, such as William Eskridge and John D'Emilio, have suggested that the LGBT advocacy community needs to build public support by working through legislatures rather than through courts. Of course, there are good reasons that the framers of the Constitution did not leave basic civil liberties up to popular vote—reasons evident in the 2004 ballot initiative votes in many states.[92] Activists have sought remedies through courts for the same reasons that civil rights activists and feminists have done so. However, it may indeed be the case that seeking remedies regarding same-sex marriage at the level of courts without first carefully building strategic precedents led to defeats on these state-level ballot initiatives, and this may suggest the next set of political strategies.[93]

Some changes sought by LGBT activists require political, social, and cultural outreach. The National Gay and Lesbian Task Force's "Equality Begins at Home" initiative encouraged and funded local- and state-level activist and advocacy groups since so many decisions regarding discrimination, hate crimes, and access to civil rights protections are made at those levels. My own experience as an activist on local ordinance and state legislative issues in the Midwest is that building relationships with local officials can be effective over time. I often found that the argument that LGBT people are "normal" and everywhere (even in rural America) was most persuasive with local officials. Public officials learned that they did not necessarily have to share the goals of the LGBT movement to vote in favor of inclusion and nondiscrimination ordinances. But passage of these measures took many years and the support of many community organizations.

Lawrence v. Texas is not about same-sex marriage or even, as the *Bowers* majority put it, the "right to homosexual sodomy."[94] Rather, it is a broad affirmation of the right to government noninterference in adult private consensual sexual conduct for *all* persons. The decision is in fact an invitation to a broader discussion about "sex in public," sexual citizenship, and the history of restrictive criteria for full adult citizenship.[95] Unfortunately, the national conversation seems to have narrowed to the question of whether or not the existing institution of marriage should be extended to same-sex couples.

To be a member of an oppressed group is to be treated by those with political power as subjects who are acted upon, not as persons capable of political action.[96] Conservative opponents believe that LGBT citizens should not be accorded the same rights as heterosexuals. Thus the effort to claim public recognition of same-sex relationships is a claim to political personhood—a claim to being political actors. As Cott puts this point with respect to same-sex marriage:

> The exclusion of same-sex partners from free choice in marriage stigmatizes their relationship, and reinforces a caste supremacy of heterosexuality over homosexuality just as laws banning marriages across the color line exhibited and reinforced white supremacy.[97]

Full status as citizens for all persons marked as sexual "deviants" will require major changes and a wide-ranging conversation that addresses the nature of citizenship. Those who seek to denigrate the citizenship of sexual minorities make their public claims as though there were no other moral position. Such claims must be challenged by those who seek full inclusion for women and sexual minorities

in the polity. Ultimately, the current public dialogue must be cast aside in favor of one that lets us all think about sex, gender, sexuality, sexual orientation, and gender identity very differently than seems possible now.[98] The point must be continuously made by advocates that the question is not *whether* to permit gay and lesbian couples to live in marital arrangements but *how* the state treats those who already do so. Ultimately, the contest over same-sex marriage is a political contest over citizenship, that is, over multiple "stories of peoplehood" for sexual minority communities and for the nation as a whole.[99]

Notes

1 Amanda Paulson and Seth Stern, *Christian Science Monitor,* November 19, 2003.
2 Language and terminology are crucial in the women's movement and in feminist theorizing, as they are in the movement for theorizing about civil rights for gay, lesbian, bisexual, and transgender people. When I am talking about the overall movement, I usually use LGBT, though if it is historically more accurate to use gay and lesbian, I use this terminology. I use the term "queer" when talking about the activists and theorists who use the term; I generally do not use it to describe the movement as a whole, since many in the movement and the academy do not see the term as descriptive of themselves or their work. Finally, the movement for marriage for transgender persons has additional complexities that I do not address here (See Currah 2001). Note that the trans advocacy community is very concerned about any changes to marriage law that might define male and female in discriminatory ways.
3 Alan Cooperman, *Washington Post,* July 31, 2003; Toner and Pear 2004.
4 Wilcox and Wolpert 2000, 412–13.
5 Citron 2003; Mitchell Landsberg and John M. Glionna, *Los Angeles Times,* June 27, 2003.
6 Cott 2000; Regan 1999.
7 *Goodridge et al. v. Department of Public Health,* SJC-08860, 2003.
8 Pamela Belluck, *New York Times,* February 5, 2004, A1.
9 African American LGBT groups have also organized in support of same-sex marriage. On the politics of sexuality in the African American community see Boykin 2000; Cohen 1999; Cole and Guy-Sheftall 2003; Collins 2004. A recent study by the National Black Justice Coalition and the National Gay and Lesbian Task Force found that African American same-sex households would particularly benefit from access to the benefits of marriage. See Dang and Frazer 2004.
10 Cott 2000, 1.
11 Ibid., 219.
12 Romney 2004.
13 The statement was made by Diane Knippers, president of the Institute on Religion and Democracy, as quoted in Alan Cooperman, *Washington Post,* July 31, 2003, A1.
14 The Defense of Marriage Act (DOMA) was passed at the federal level in 1996; it declares it a matter of federal law that marriage is between one man and one woman. DOMA forbids the provision of the benefits of marriage to same-sex couples. To date, nearly forty states have passed laws with similar provisions. Surely these proponents of DOMA did not intend to provide confirmation of Carole Pateman's (1988) critique of social contract theory, though their arguments seem to suggest the continuing vitality of the (hetero)sexual contract.
15 Cott 2000.
16 Snyder 2003.
17 Elshtain 1981; Galston 1991.
18 Cohen 2002; Fineman 1995; Glendon 1989; Minow and Shanley 1996; Regan 1999.
19 Cohen 2002, 180–203; Glendon 1989; Minow and Shanley 1996.
20 Cohen 2002; Cornell 1998; Fineman 1995; Minow and Shanley 1996; Shanley 2001; Shanley et al. 2004; Struening 2002.
21 Butler 2002; Phelan 2001.
22 Phelan 2001.
23 Eskridge 1996; Eskridge 2002.
24 Smith 1997; Holland 2001; Honig 2001; Phelan 2001.
25 I refer here specifically to those Christian organizations and believers that identify their opposition to greater inclusion for gay, lesbian, bisexual, and transgender persons as central to their political and social agenda. This includes organizations such as Focus on the Family, the Traditional Values Coalition, and Concerned Women for America.
26 Burack 2003.
27 Snyder 2003.
28 Sullivan 1995.
29 Rauch 2004, 55–71.
30 Rauch 2004.
31 Calhoun 2000, 128.
32 Cahill 2003; Eskridge 1996; Gerstmann 2004; Koppelman 2002; Merin 2002.
33 Justice Sosman's dissent to the Supreme Judicial Court's opinion to the Massachusetts Senate on the question of whether civil unions would satisfy the Court's verdict in Goodridge states in part, "[W]e have a pitched battle over who gets to use the 'm' word. This does not strike me as a dispute of any constitutional dimension whatsoever. . . ." (SJC-09163, 1211).

34 GAO 1997.
35 Lehr 2003.
36 Eskridge 2002, 202.
37 Kaplan 1997, 206.
38 Merin 2002, 279.
39 Eskridge (2002) rejects the comparison of non-marriage alternatives with separate but equal doctrine, even though he sees civil unions as "different but equal" (pp. 128–39). Merin, in making his separate but equal argument, lumps feminists and other critics of same-sex marriage together (despite significant differences in their focus and concerns) and calls their arguments against marriage "unpersuasive, flawed, and incoherent" (pp. 300–301).
40 Weeks, Heaphy, and Donovan 2001, 195.
41 This was the first of a series of cases with respect to same-sex marriage in Hawaii. The Hawaii Supreme Court remanded the case back to the circuit and required that the court apply a constitutional strict scrutiny standard in deciding the case. As a result of this decision, opponents of same-sex marriage successfully amended the state constitution in 1998 to limit marriage to heterosexual couples.
42 Wolfson 1994.
43 Duggan 2003; Warner 1999.
44 As Warner (1999) notes, at the time this was more of a theoretical debate; activists were not anticipating the events of the 1990s surrounding the issue of same-sex marriage and civil unions. See also Ettelbrick 1997; Polikoff 1993; Stoddard 1997; Wolfson 1994.
45 Lehr 1999, 139–67.
46 Rich 1986, Lehr 1999, Robson 1992, Ettelbrick 1997.
47 Lehr 1999; Robson 1992.
48 Warner 1999, 146.
49 Warner's radically democratic and egalitarian view of citizenship is shared by Shane Phelan and Lisa Duggan.
50 Phelan 2001.
51 Abraham 2000.
52 Butler 2002; Duggan 2003; Phelan 2001; Warner 1999.
53 Ackelsberg and Plaskow 2004.
54 Cott 1977; James 1992; Pateman 1988; Shanley 1989; Smith 1997.
55 Thomas 2005.
56 Josephson and Burack 1998.
57 Grossberg 1985; Roberts 1997.
58 Okin 1989; Albelda and Tilly 1997; James 1992; Williams 2001.
59 Pateman 1988; Roberts 1997; Stevens 1999; Vogel 1994.
60 Baca Zinn and Dill 1994; Collins 1990; Hurtado 1989. Cott (2000) notes the eagerness of freed African American slaves to marry and the normalizing functions that this was intended to serve, even as it was also rightfully seen as an important aspect of inclusion in the rights of citizenship (see chapter 4).
61 Collins 1989; Collins 1990.
62 Cott 2000, chapter 4.
63 Ingraham 1999; Moran 2001.
64 Briggs 2002; Gilens 1999; Neubeck and Cazenave 2001; Roberts 1997; Williams 2003.
65 Josephson and Burack 1998.
66 Stevens 1999, 222–33.
67 Josephson 1997.
68 Stevens 1999, 231–33.
69 Gavanas 2002; Mink 2003; Smith 2001.
70 Hochschild 1989; Williams 2001.
71 Shelton and John 1996.
72 Ibid., 306.
73 Ibid.
74 Leonard 2001.
75 Cohen and Huffman 2003.
76 Rose and Hartmann 2004, 5.
77 Minow and Shanley 1996.
78 Josephson 1997; Williams 2001. No-fault divorce was primarily the result of advocacy by divorce attorneys to change a system that required many couples to invent an at-fault partner in order to obtain a divorce.
79 See Gina Bellafante, *New York Times,* January 12, 2004.
80 Senior 2004.
81 Stacey 1990; Weston 1991.
82 It is not incidental that conservative opponents of LGBT rights use the term "homosexual" whenever they refer to the LGBT community, nor is it incidental that many refer to same-sex marriage as "so-called gay marriage". To many in these groups, "homosexual" designates someone who experiences same-sex attractions but is struggling against these desires. Someone who adopts the label "gay," "lesbian," or "bisexual" is "choosing" to identify according to their sexual orientation. Focus on the Family, in their Love Won Out workshops, emphasizes that it is possible to be Christian and homosexual, but not Christian and gay, lesbian, or bisexual. These groups treat people who identify as transgender differently, as they are seen as having gender identity disorder.
83 Butler 2002, 40.
84 Shklar 1991.
85 Cohen 1997.
86 Briggs 2002; Roberts 1997.
87 Less reported than the eleven state ballot measures on same-sex marriage were the fourteen states where LGBT advocacy groups were able to prevent such questions from being placed on election day ballots. In many states this was done by forming coalitions with other groups, and because of long-term

grass roots organizing done by state level groups. This kind of organizing led to enactment of an equal employment law in Illinois in January 2005 after two decades of lobbying. In 1997 these state-level organizations formed the Equality Federation. Further information is available at www.equalityfederation.org.

88 Berlant and Warner 1998; Jakobsen and Pellegrini 2003.

89 Shanley et al. 2004.

90 Kristen Lombardi, "Gay-Marriage Benefits: Inconvenience Stores," *Boston Phoenix,* July 9–15.

91 Pinello 2003.

92 Kristen Lombardi, "A Sheep in Wolf's Clothing?" *Boston Phoenix,* July 9–15.

93 Thurgood Marshall and his allies had a careful strategy of litigation that led up to the *Brown v. Board of Education* decision; the NAACP built it up over nearly two decades of state and federal cases. See D'Emilio 2004.

94 *Bowers v. Hardwick* (1986) was the Supreme Court decision that upheld Georgia's sodomy statute, and that was explicitly overturned in Lawrence.

95 Berlant and Warner 1998; Jakobsen and Pellegrini 2003; Irvine 2002; Smith 2001.

96 Dietz 2002.

97 Cott 2000, 216.

98 Irvine 2002; Jakobsen and Pellegrini 2003.

99 Smith 2003.

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