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Director of Public Information

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By Martha E. Kempner, M.A.

MARRIAGE: INSTITUTION OR RELATIONSHIP?

Martha E. Kempner, M.A.

Director of Public Information

The summer that I was 24, I went to twelve weddings. In the years that followed, it seemed like every other weekend my partner and I grabbed a gift from Crate & Barrel, packed our fancy clothes, and traveled to a rustic inn, banquet hall, or strategically located backyard to watch our friends tie the knot.

The routine of a Friday night rehearsal dinner (they are no longer just for the bridal party), Saturday evening event, and Sunday morning brunch became second nature. We had fun at weddings populated by joint friends and learned how to make small talk at events where we knew no one but the busy bride and groom. We tried to be helpful guests, offering to pick up tuxes, bustle dresses, and even (once) ensure that the bridesmaids looked exactly alike by stealing pearls from the first guest to arrive wearing a strand.

In anticipation of our own wedding, which we had yet to discuss openly, we took notes, developed opinions (cocktail hours can be torture, especially when you know no one), and gathered ideas (scattering family photos around the reception area made it seem more like your own home).

We also asked questions. Why was it that our friends, the majority of whom were the product of divorced families, chose not only to marry, but to marry young? Why did my female friends, all products of feminist households, choose to enter into an institution that for generations had fostered traditional gender roles and the inequality of women? Why did so many of these women choose to change their names? Why did our otherwise liberal friends enter into an institution that they readily understood discriminates against our lesbian and gay friends? And, why did our friends, none of whom could be considered religious, fall back to the teachings of their youth and marry in traditional religious ceremonies?

If asked, many of my friends would likely say that they wanted to have the same name as their children or that they chose a church to please their mothers. I suspect, however, that the real answer may be rooted in one of the fundamental questions about marriage: is it an institution or is it a relationship?

In this issue we look at marriage from different perspectives—the public and the private, the historical and the current, and the personal and the political—in the hopes that we can answer some of these most basic questions.

**MARRIAGE THE RELATIONSHIP
BENEFITS COUPLES**

During my summer-of-a-thousand weddings, few people were discussing the benefits of marriage. Now that the debate over same-sex marriage rights has gained so much political attention, many people realize that marriage provides numerous benefits.

The legal and financial benefits of marriage are well documented. As a number of our authors mention in this issue, a recent report from the U.S. Government Accounting Office identified over 1,100 direct benefits of marriage bestowed by the federal government, ranging from those related to family leave, healthcare decision-making, and parenthood to those involving taxes, property rights, and inheritance.

According to the National Marriage Project at Rutgers University, “the institution of marriage itself provides a wealth-generation bonus.” They explain that married people are more likely to save money and that men in particular tend to become more economically productive after marriage. In addition, married couples can serve as an economy of scale (“two can live more cheaply than one”) and “act as a small insurance pool against life uncertainties such as illness and job loss.” The Project acknowledges that some of these behaviors or benefits are likely the result of social norms, but suggests that many economic benefits of marriage are independent of government-provided support.¹

Other research suggests that married people are not only wealthier but happier, healthier, and having better sex. Specifically, research suggests that married people take fewer risks, have better health habits, and enjoy a wider social support network. For example, Barbara Dafoe Whitehead, co-director of the National Marriage Project, explains that married men are “less likely to hang out with male friends, to spend time at bars, to abuse alcohol or drugs, or to engage in illegal activities.”²

Some argue, however, that any steady, long-term relationship is bound to increase happiness, promote good behavior, and allow for a better sex life. It seems logical, in fact, that any type of relationship could achieve these advantages if it were to be as universally accepted, both legally and socially, as marriage is in our society. Research comparing married couples to long-term cohabitating couples suggests that those who live together do not reap the same rewards.³ Clearly, however, this is not an accurate or fair comparison because those who live together do not receive the economic or social blessings that society bestows on married couples.

The truth is that research cannot tell us if marriage is, inherently, the only relationship that can provide these benefits. Marriage is so ingrained in our culture that it is almost hard to imagine the circumstances under which a truly fair comparison could be made.

I am sure that most of my friends married with an expectation of happiness, but I doubt that any of them were thinking about the benefits that joining the institution of marriage would bring to them. Rather, they were focused on their own relationships and the personal benefits of a lifetime commitment to someone they loved.

MARRIAGE THE INSTITUTION BENEFITS SOCIETY

While some of my friends may have come to realize the benefits offered by marriage when they joined their partner's health care plan or filed their taxes jointly for the first time, I doubt that to this day they have given any thought to the idea that their marriage benefits society as a whole. Some researchers, however, would say that it does.

In her recent testimony to the Senate Committee on Health, Education, Labor and Pensions, Subcommittee on Children and Families, Dafoe Whitehead suggested that "marriage performs certain critical social tasks and produces certain social goods that are valuable to the community and far harder to achieve through individual action, private enterprise, public programs, or alternative institutions."⁴ She argues that the ways in which being married changes an individual's lifestyles, habits, associations, and obligations are not only personally beneficial, but benefit society as well. "For example, married parents are more likely to vote and be involved in community, religious, and civic activities."⁵

Arguments about societal benefits often focus on the role that marriage plays in childbearing and the outcomes for children. Research has suggested that young people who grow up with two biological parents in a low-conflict marriage fare better educationally, economically, and emotionally than their peers with single-parents or step-families. Research has even suggested that the benefits of living with two biological parents who are married are not gained when

two biological parents cohabitate. ChildTrends suggests that cohabitating unions are generally more fragile and that children are more likely to experience instability.⁶

The "fragile" nature of cohabitation, however, may say nothing about the relationships themselves and everything about the fact that society continues to withhold support from unmarried couples.

Nonetheless, some continue to argue that society benefits when children are raised within a marriage. Dafoe Whitehead says that marriage promotes parental investment and "reliably creates the social, economic, and affective conditions for effective parenting."⁷

Again, even if these assertions are true, it remains impossible to prove that these benefits are inherent to the institution of marriage and cannot be achieved in other ways. It is possible to argue, for example, that government support of a variety of family structures would alleviate the social and economic strain that many parents face and would help parents in all living situations effectively and successfully raise their families.

SAME-SEX MARRIAGE: A THREAT TO THE INSTITUTION?

Among those who believe that the institution of marriage brings benefits that couples, children, and society cannot find elsewhere, there remains a divisive split. Some, like Dafoe Whitehead, suggest that the beneficial relationship of marriage should be open to all, while others argue that despite—or even because of—these benefits, marriage should be limited to heterosexual couples. If same-sex couples are allowed to marry, they suggest, the traditional institution would be degraded to the point where it could never recover.

The conservative think tank, the Heritage Foundation, for example, suggests that "forcing marriage to mean all things will force marriage to mean nothing at all."⁸ Writing for Heritage, Matt Spalding lists a host of "problems" that might arise from the legalization of same-sex marriage, including the fear that this will lead to federal laws banning discrimination in hiring based on sexual orientation and concerns that those opposed to same-sex marriage would be "stigmatized as prejudiced."⁹ Once same-sex marriage is accepted, he argues, "students will be instructed that marriage, like slavery before it, is a vestige of America's discriminatory past that was overcome by the latest step forward in the advancement of civil rights."¹⁰

Although Spalding is presenting this as a grim view of the future, I am sure that many people (including my married friends) see this as a giant step in the right direction. They would agree that marriage today is a discriminatory institution that should be changed just as schools were desegregated and men's clubs were forced to accept women.

ENTERING MARRIAGE

This brings us back to the idea that most couples appear to view marriage as a private relationship. Such a view helps explain why so many of us who would never have joined the all-male social club or the athletic club that did not allow Blacks or Jews, are willing to enter marriages long before the next wave of civil rights makes it a more equitable institution. It also explains why so many children of divorce choose to marry despite being warned that 50% of marriages will end in divorce. And, it may also help explain why self-proclaimed feminists choose marriage despite its history as a sexist institution and do not view changing their names as giving in to patriarchy.

When people look at marriage as their own relationship, rather than an age-old institution, they realize that they are able to mold it in their own image and create a partnership that is not discriminatory or sexist, and that they truly believe will stand the test of time.

IN THIS ISSUE

For this issue, we wanted to explore the institution of marriage from many angles and answer some questions that have been stirred up as marriage equality becomes the newest “wedge issue” in American politics. We wanted to question why, if most people see marriage as a personal relationship, it continues to hold a prominent and public place in society; why the debate over marriage equality seems so threatening to some; and why the government is doing so much to politicize marriage.

First, an excerpt from *Public Vows: A History of Marriage and the Nation*, by Harvard History Professor, Nancy Cott, examines the founding of the United States and explains that public policies on marriage have directly affected national understanding of gender roles, racial differences, and what it means to be a citizen.

Next, Evan Wolfson, founder of Freedom to Marry and author of *Why Marriage Matters*, explains that today’s debate over marriage-equality is in fact very similar to other civil rights movements. After carefully laying out the benefits of marriage and the need for marriage equality, Wolfson suggests ways in which we can push forward despite recent setbacks. He reminds us that achieving equality is a process that may take time but will ultimately be successful.

Jodie Levin-Epstein of the Center for Law and Social Policy then helps us understand how the government is currently working to promote marriage through the use of welfare funding. She goes on to make a series of recommendations on what Congress could do to ensure that funding for abstinence-only-until-marriage programs and marriage promotion truly meet the needs of the populations for which they are intended.

Finally, Jennifer Gaboury tackles marriage from a more personal perspective when she explains why she and her (heterosexual) partner decided not to marry. Gaboury further examines the benefits of marriage and suggests that if given the same advantages, other institutions and relationships would better serve individuals and society.

CONCLUSION

Whether we see marriage as a personal relationship or an important social institution, or both, it is clear that the most important thing anyone can have is choice. We need to ensure that we all have the right and the ability to make our own decisions regarding relationships, free from implicit or explicit pressure, economic or social coercion, and discrimination. Acknowledging these freedoms, and the presumption of equality that underlies them, is itself a monumental societal benefit that can bring our nation closer to the principles and ideals on which it was founded.

References

1. *The State of Our Unions 2004* (New Brunswick, NJ: National Marriage Project, June 2004), 17.
2. *Testimony of Barbara Dafoe Whitehead, PH.D., Co-Director, National Marriage Project Rutgers University*, given before the U.S. Senate, Committee on Health, Education, Labor and Pensions, Subcommittee on Children and Families, 28 April 2004, accessed 14 March 2005 <<http://marriage.rutgers.edu/Publications/Pub%20Whitehead%20Testimony%20Apr%2004.htm>>.
3. *The State of Our Unions 2004*, 17.
4. *Testimony of Barbara Dafoe Whitehead*.
5. *Ibid.*
6. Kristin Anderson Moore, et. al., *ChildTrends Research Brief: Marriage from a Child’s Perspective: How Does Family Structure Affect Children, and What Can We Do about It?* (Washington, DC: ChildTrends, June 2002), 2, accessed 14 March 2005, <<http://www.childtrends.org/files/MarriageRB602.pdf>>.
7. *Testimony of Barbara Dafoe Whitehead*.
8. *What Are the Consequences of Redefining Marriage*, Heritage Foundation, accessed 14 March 2005, <http://new.heritage.org/Research/Family/ConsequencesMD.cfm>.
9. Matthew Spalding, “A Defining Moment: Marriage, the Courts, and the Constitution,” *Heritage Foundation Backgrounder* (#1759), 17 May 2004, 4, accessed 14 March 2005, <<http://www.heritage.org/Research/LegalIssues/bg1759.cfm>>.
10. *Ibid.*

PUBLIC VOWS:
A HISTORY OF MARRIAGE AND THE NATION

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Editor's Note: In pulling together this issue of the SIECUS Report, we thought it was important to take a closer look at the history of marriage in order to help us understand why what we often consider a private relationship is subject to so much public debate. In Public Vows: A History of Marriage and the Nation, Nancy Cott explains that public policies on marriage have directly affected national understanding of gender roles, racial differences, and what it means to be a citizen. Public Vows follows U.S. history from the founding of the nation through the present day and explains the federal government's influence on marriages

The following excerpt contains the first chapter of Public Vows, "An Archeology of Marriage," in its entirety. This chapter examines the founding of the United States in depth and explains how monogamy has played in this nation from the very beginning.

AN ARCHEOLOGY OF MARRIAGE

In the beginning of the United States, the founders had a political theory of marriage. So deeply embedded in political assumptions that it was rarely voiced as a theory, it was all the more important. It occupied a place where political theory overlapped with common sense. Rather than being "untutored," or "what the mind cleared of cant spontaneously apprehends," Clifford Geertz has pointed out, common sense is "what the mind filled with presuppositions...concludes." Kinship, organization, property arrangements, cosmological and spiritual beliefs give rise to common sense, so that it varies from culture to culture.¹ The common sense of British colonials at the time of the American Revolution was Christian; Christian common sense took for granted the rightness of monogamous marriage. Moral and political philosophy (the antecedent of social science) incorporated and purveyed monogamous morality no less than religion did.² Learned knowledge deemed monogamy a God-given but also a civilized practice, a natural right that stemmed from subterranean basis in natural law.

Yet at that time, Christian monogamists composed a minority in the world. The predominance of monogamy was by no means a foregone conclusion. Most of the peoples and

cultures around the globe (so recently investigated and colonized by the Europeans) held no brief for strict monogamy. The belief system of Asia, Africa, and Australia, of the Moslems around the Mediterranean, and the natives of North or South America all countenance polygamy and other complex marriage practices, which British and European travel writings on exotic lands recounted with fascination. Anglo-America itself was set down in the midst of polygamist and often matrilineal and matrilineal cultures. No doubt Christians in Britain, Europe, and America at the time thought monogamy was a superior system, but it had yet to triumph.

As a result, while no one involved in founding the new nation would have disputed that Christian marriage should underpin the society, political thinkers and moral philosophers at the time were conscious of monogamy as a system to be justified and advocated. European political theorizing had long noted that monogamy benefited social order, by harnessing the vagaries of sexual desire and supplying predictable care and support for the young and the dependent. From the French Enlightenment author Baron de Montesquieu, whose *Spirit of the Laws* influenced central trends of American republicanism, the founders learned to think of marriage and the form of government as mirroring each other.³ They aimed to establish a republic of enshrining popular sovereignty, ruled by a government of laws, and characterized by moderation. Their Montesquieuan thinking tied the institution of Christian-modeled monogamy to the kind of polity they envisioned; as a voluntary union based on consent, marriage paralleled the new government. This thinking propelled the analogy between the two forms of consensual union into the republican nation's self-understanding and identity.

Although the details of marital practice varied widely among Revolutionary-era Americans, there was a broadly shared understanding of the essentials of the institution. The most important was the unity of husband and wife. The "sublime and refined...principle of union" joining the two

was the “most important consequence of marriage,” according to James Wilson, a preeminent statesman and legal philosopher. The consent of both was also essential. “The agreement of the parties, the essence of every rational contract, is indispensably required,” Wilson said in lectures delivered in 1792. He saw mutual consent as the hallmark of marriage—more basic than cohabitation. Everyone spoke of the marriage *contract*. Yet as a contract it was unique, for the parties did not set their own terms. The man and woman consented to marry, but public authorities set the terms of the marriage, so that it brought predictable rewards and duties. Once the union was formed, its obligations were fixed in common law. Husband and wife each assumed a new legal status as well as a new status in their community. That meant neither could break the terms set without offending the larger community, the law, and the states, as much as offending the partner.⁴

Both the emphasis on consent and the principle of union seamlessly adapted Christian doctrine to Anglo-American law. Even before the Protestant Reformation, the Church had made consent more important than consummation in validating marriage. The legal oneness of husband and wife derived from common law but it matched the Christian doctrine that “the twain shall be one flesh,” having exclusive rights to each others’ bodies. James Wilson noted this congeniality. Christian doctrine expected heterosexual desire to be satisfied exclusively within marriage and so demanded sexual fidelity of both partners. The Bible also made the husband the “head” of his wife—his wife’s superior—as Christ was the head of the church. In the spiritual domain of immorality of the soul, however, Christianity equalized wives and husbands; that did not end marital hierarchy, but it required respect for the wife’s position. Anywhere on the wide and shifting spectrum of Protestantism in the early republic from deism to Anglicanism, these basic Christian beliefs about marriage were in place.

As Wilson emphasized, the common law turned the married pair legally into one person—the husband. The husband was enlarged, so to speak, by marriage, while the wife’s giving up of her one name and being called by his symbolized her relinquishing her identity. The legal doctrine of marital unity was called *coverture* and the wife was called a *feme covert* (both terms rendered in the old French still used in parts of English law). Coverture in its strictest sense meant that a wife could not use legal avenues such as suits or contracts, own assets, or execute legal documents without her husband’s collaboration. Nor was she legally responsible for herself in criminal or civil law—he was. And the husband became the political as well as the legal representative of his wife, disenfranchising her. He became the one full

citizen in the household, his authority over and responsibility for his dependents contributing to his citizenship capacity.

The legal meaning of coverture pervaded the economic realm as well. Upon marriage a woman’s assets became her husband’s property and so did her labor and future earnings. Because her legal personality was absorbed into his, her economic freedom of action was correspondingly curtailed. This was basic to the economic bargain of marriage, essential to marital unity, and preeminent in daily community life. The husband gained his wife’s property and earning power because he was legally responsible to provide for her (as well as for himself and their progeny). The wife in turn was obligated to give all her services and labor to her husband. By consenting to marry, the husband pledged to protect and support his wife, the wife to serve and obey her husband. The body of marriage was understood to rest on this economic skeleton as much as on sexual fidelity.

Because marriage and the state both were understood to be forms of governance—of the husband over the wife, the ruler over the people—in the sixteenth and seventeenth centuries it was easy to think of them analogously. Shakespeare drew on this accepted rhetoric in *The Taming of the Shrew*. Kate, the title character, not only became chastened and reformed by the end of the play, but also advised other recalcitrant wives to obey their husbands:

Such duty as the subject owes the prince
Even such as a woman oweth her husband,
And when she is forward, peevish, sullen, sour
And not obedient to his honest will,
What is she but a foul contending rebel
And a graceless traitor to her loving lord?⁵

Kate justified wifely obedience by reciting the many benefits and protections a husband was obliged to give his wife, including laboring to support her. Marriage governed the wife, but it also governed the husband. Like a good prince, a husband had to behave in certain ways to deserve his name and was not an unconstrained wielder of power.

John Winthrop, the leader of the Massachusetts Bay colony, similarly used an analogy between marriage and secular government when he wanted to defend the power of the ruling magistrates over the restive colonial populace in the 1630s. He maintained that in both marriage and government, freedom of choice coexisted with a corollary necessity to obey once the choice was made. “The woman’s own choice” in marriage, he said, “makes such a man her husband; yet being so chosen, he is her lord, and she is to be subject to him, yet in a way of liberty, not of bondage.” The freemen of the colony had likewise exercised choice in establishing the political order by electing the magis-

trates—“it is yourselves who have called us to this office, and being called by you, we have an authority from God,” he emphasized. Consequently, the freemen were obliged to bow to the magistrates’ authority.⁶

At the time Massachusetts Bay was founded, European monarchs liked to claim that royal power over subjects was authorized by God, as much as the power of fathers and husbands over their families was.⁷ Winthrop’s emphasis on the freemen’s consent showed him to be somewhat more liberal. Like monarchists, however, he saw marital governance and political governance as linked along the same continuum; they occupied the same spectrum and each contributed to the other’s stability. The Puritan leaders of Massachusetts Bay so seriously expected family, church, and state authority structures to be interlocking that they made infractions against the Fifth Commandment, “Honor Thy Father and Thy Mother,” part of their criminal law. They interpreted the commandment as a directive not only to children but also to wives to respect and obey their husbands, to congregants to respect and obey their ministers, and to subjects to respect and obey their kinds and magistrates. An unruly wife, congregant, or child threatened *all* lines of authority in church and state; one convicted of disrespect would suffer public punishment, being made to stand in stocks wearing an identifying sign and reciting the Fifth Commandment.⁸

By the 1760s, however, few Britons in the American colonies believed that monarchs governed by divine right handed down from the first father, Adam. Most of them had come to think that government authority derived from men’s consent and intention to preserve their own interest. A revolution in theory and practice had challenged the patriarchal theory of political legitimacy, by radically differentiating the authority of family heads from that of political rulers and denying that the two occupied the same continuum. During the power struggle of the king and Parliament leading to Britain’s Glorious Revolution of 1688, parliamentary supporters argued that political authority had been purposely constructed by individuals’ collective consent to be governed, because these individuals had inherent natural rights to defend. In the view of John Locke and other theorists, individuals would give their consent and thus form a governing social contract in order to gain the advantages of social order and collective protection, endowing a ruler with power but also setting limits on it. The people’s consent to be governed bound them to obey. If the ruler abused his power and broke the social contract, however, then rebellion among the governed might be reasonable.⁹

This transformation underlay the political theory justifying the American Revolution. When colonial Americans were imagining their way toward independence they

nonetheless often interpreted Great Britain’s imperial relations with the colonies in terms of familial analogies.¹⁰ Since children typically first confront authority, hierarchy, and reciprocal rights and duties in a family setting, use of a family model to think about justice and policy has never become entirely irrelevant.¹¹ Rebellious colonists used both parent-child and husband-wife analogies in their rhetoric—the first in order to make the break with Great Britain, the second more often to model the political society to be. These analogies remained forceful in considerations of political authority despite the way that social contract theory had broken the direct link between patriarchal authority and legitimate government.

Contractual thinking about authority was so appealing, in fact, that it became knit into views of the ideal family. In an era when the natural rights of individuals were being heralded, even parental and husbandly authority seemed to require justification other than nature or custom. The eighteenth-century Scottish moral philosophers favored by colonial revolutionaries contended that reciprocal rights and responsibilities bound husbands and wives, parents and children, magistrates and subject, masters and servants, *all*, just as they did the ruler and the citizens.¹² Thus the child should obey the parent because the parent guarded and supported the child, not simply because generational hierarchy was in place. In corollary, the parent who was abusive or negligent might not deserve obedience.

Belief in a father’s natural dominion had once justified kingly absolutism, but American revolutionaries used the analogy between familial and governmental authority to reinforce ideals of contractualism and reciprocity as requirements for justice. When they protested against imperial harshness in the 1760s, American spokesmen portrayed the colonies as the abused offspring of a cruel and unfeeling imperial parent, who left the child no alternative but to disobey. John Adams, the Massachusetts revolutionary who would become the second president of the United States, wrote, “We have been told that...Britain is the mother and we are the children, that a filial duty and submission is due from us to her and that we ought doubt our own judgment and presume that she is right, even when she seems to us to shake the foundations of government. But admitting we are children, have not children a right to complain when their parents are attempting to break their limbs, to administer poison, or to sell them to enemies for slaves?” Revolutionaries justified colonial independence with a family analogy of generational change, contending that Britain “took us as babes at the breast; they nourished us... [but now] the day of independent manhood is at hand.” “A parent has a natural right to govern his children in their minority,” another emphasized, “but has no such authority over them as they arrive at full age.”¹³

When the colonies declared independence and joined together in a new nation, a marital metaphor became far more compelling than the parent-child reference so serviceable to interpret empire and colony. The method of the new nation was union and the essence of the national union was to be the voluntary adherence of its citizens. Allegiance was to be contractual, not coerced—to be motivated by love, not fear. Yet this chosen bond could not be a passing fancy of the moment. Individuals' loyalty and the states' allegiance to one another had to last if the new nation was to succeed. "Only in union is there happiness," the Revolutionary minister Jonathan Mayhew declared. Marriage, being a voluntary and long-sustained bond, provided a ready emblem. Understood to be founded on consent, marriage could be seen as an analogue to the legitimate polity.¹⁴ And marital status permeated personal identity and civic role as national allegiance was intended to.

As an international and harmonious juncture of individuals for mutual protection, economic advantage, and common interest, the marriage bond resembled the social contract that produced government. As a freely chosen structure of authority and obligation, it was an irresistible model. The suitability of the marital metaphor for political union drew tremendous public attention to marriage itself in the Revolutionary era. Newspapers, essays, pamphlets, novels, stories, and poetry—including Thomas Paine's journalistic writing just at the time he wrote the incendiary pamphlet *Common Sense*—abounded with discussions of marriage choices and roles. This continued after independence. Essays and doggerel with titles such as "Thoughts on Matrimony," "On the Choice of a Wife," "Character of a Good Husband," "Praise Marriage," "Reflections on Marriage Unions," "Matrimonial Felicity," "Conjugal Love," and "On the Pleasures Arising from a Union between the Sexes" defined marital companionship, advised on choice of mate, prescribed how to achieve fairness and balance between the partners. Many fictions centered on the consequences of husband and wife being well matched or mismatched.

In this flood of authorship, marriage appeared ideally as a symmetrical union. Marital relations were reenvisioned in terms of reciprocal rights and responsibilities rather than a formal hierarchy. Not protection and obedience, not headship and subordination, but rather the "mutual return of *conjugal love*," "the ties of reciprocal sincerity" between husband and wife, defined a happy marriage. The ideal marriage was "the highest instance of human friendship," wrote the Presbyterian cleric and president of the College of New Jersey, John Witherspoon, shortly before becoming a signer of the Declaration of Independence. Therefore the couple should be equally suited in "education, tastes, and habits of life." Reason, virtue, and moderation were the keys in choosing a partner—not fortune, beauty, or momentary passion.¹⁵

This emphasis suggested some ongoing reevaluation of hierarchy between husbands and wives in actual marriage but did not indicate that the husbandly superiority had wafted away. Use of the analogy between marriage and government in the political atmosphere of 1776 stressed symmetry between partners, in order to highlight consent and reciprocity, but interest had shifted in the more conservative post-Revolutionary period to the bond formed by the granting of consent. By consenting, the citizens delegated authority to their elected representative, and the wife gave authority to her husband. In both instances governance based on consent was no less governance. The future lexicographer Noah Webster meant to dampen grass-roots political assertions in the 1780s when he likened a citizen's relation to his representative to a bride's unity with her groom. He implied that the representative was the more knowledgeable and judicious one of the pair, who should make decisions, as most people assumed the husband was and did. The analogy cut both ways. A 1793 essayist who called himself "a real friend of the fair sex" urged wives to "cheerfully [*sic*] submit to government of their own chusing [*sic*]," arguing that "women entering upon the marriage state, renounce some of their natural rights (as men do, when they enter into civil society) to secure the remainder." A wife gained "a right to be protected by the man of her own choice," just as "men, living under a free constitution of their own framing are entitled to the protection of the laws," he contended. Like Shakespeare's Kate, he further advised that "if rebellion, insurrection, or any other opposition to a just, mild, and free political government, is odious, it is not less so to oppose good family administration."¹⁶

More than an analogy was involved in the public reiteration of the "loving partnership" between husband and wife. Actual marriages of the proper sort were presumed to create the kind of citizen needed to make the new republic succeed. It was not only that marriage and the families following from them brought a predictable order to society (although that was never unimportant). There were specifically political reasons imbedded in revolutionaries' thinking about human nature, human relations, and the possibilities for just government that put demands upon marriage. American revolutionaries' concern with virtue as the spring of their new government motivated this attention to marriage. The United States was a political experiment, an attempt to establish a republic based on popular sovereignty in a large and diverse nation. The character of the citizens mattered far more there than in monarchy, Revolutionary leaders believed. In this they drew on Montesquieu's *Spirit of Laws*, which categorized all governments as republics, monarchies, or despotisms, each with a distinctive source of sovereignty and a characteristic principle prompting the

people to act conformably. Concern for honor drove monarchy, fear made despotism work.¹⁷ In a republic, the people were sovereign, and the motivating principle was political virtue. The government would depend on the people's virtue for its success.

"Virtue," the political catchword of the Revolution, meant not only moral integrity but public-spiritedness.¹⁸ Selfish, small-minded individuals narrowly seeking their own advancement would not do: citizens in a republic had to recognize civic obligation, to see the social good of the polity among their own responsibilities. How would the nation make sure that republican citizens would appear and be suitably virtuous? Marriage supplied an important part of the answer, at the same time it offered a model of consensual juncture, voluntary allegiance, and mutual benefit. To complement (and mitigate) the individualistic foundation of social contract thinking, the revolutionaries turned to Montesquieu and subsequent moral philosophers who believed that human beings had to define themselves in relation to others and to seek companionship.¹⁹ The conviction that most reasonable and humane qualities of mankind arose in sociability rather than in isolation set the stage for American republicans to see marriage as a training ground of citizenly virtue.

Not everyone had to read political or moral philosophy for these themes to pervade late eighteenth-century American's political attitudes. An essay called "Conjugal Love" in the *Massachusetts Magazine* of 1792 typically affirmed, "Reason and society are the characteristics which distinguish us from the other animals" and "these two privileges of man...enter into wedlock." Marriage played a salutary part because it served as a "school of affection" where citizens would learn to care about others. A 1791 paean to matrimony praised love for enabling man to "live in another," subduing selfishness and egotism: "In detaching us from self, it accustoms us to attach ourselves the more to others...Love cannot harden hearts, nor extinguish social virtues. The lover becomes a husband, a parent, a citizen." John Witherspoon urged marriage upon reluctant men in part because it stimulated a sociable attitude, whereas "continuing single to the end of life narrows the mind and closes the heart," he said. Witherspoon took for granted "the absolute necessity of marriage for the service of the state, and the solid advantages that arise from it." To Revolutionary-era readers, it followed that when "the tender feelings and soft passions of the soul are awakened with all the ardour of love and benevolence" by marriage, "man feels a growing attachment to human nature, and love to his country."²⁰

Eighteenth-century assumption about differences between the sexes made marriage the best site for nourishing these social virtues (rather than friendship between men, for

instance). Male citizens had a natural superiority in reason and judgment, it was assumed, but the social virtues lay in the "heart" or "affections," where women were presumed to excel.²¹ Intimate interactions between the sexes in courtship and marriage would serve especially well to cultivate and exercise these qualities in men. Enlightenment political and moral philosophers and republican statement never neglected the presence of women—even though their main attention focused on male citizens—and their understanding of "manners" explained why. At the time, the word "manners" referred not simply to deportment but to habits and values, including morality, bearing, and character, which were conveyed by patterns of behavior and expression. Manners were understood to be learned behavior, although slow and difficult to change in adulthood. Because individuals inevitably and even unwittingly displayed their manners in social interactions, opportunities lay all around for moral education by exposure to good company. The presence of refined women promised benefit to male citizens. "The gentle and insinuating *manners* of the female sex tend to soften the roughness of the other sex," Henry Home, Lord Kames, noted in his *Six Sketches on the History of Man*, published in Philadelphia in 1776. Because women were assumed to be more pliable and impressionable than men by nature, they were also assumed to acquire polished manners more easily.²²

In their campaign for virtue, Revolutionary-era Americans adopted this perspective. "Dissipation and corruption of manners in the body of the people" was as much a danger to "the liberties and freedom of our country" as was power-grabbing by rulers, warned a Fourth of July orator in 1790. He was sure that "in a republic, manners are of equal importance with laws"; and while men made the laws, "the women, in every free country, have an absolute control of manners."²³ John Adams showed himself enmeshed in this kind of thinking when, in France on a wartime diplomatic mission in 1778, he visited the residence of Madame de Pompadour. She had been mistress to the French king Louis XV. Imagining the covert machinations of the king at her residence, Adams reflected,

The Manners of Women are the surest Criterion by which to determine whether a Republican Government is practicable in a Nation or not. The Jews, the Greeks, the Romans, the Swiss, and the Dutch, all lost their public Spirit, and their Republican Forms of Government, when they lost the Modesty and Domestic Virtues of their Women. What havock [*sic*] said I to myself, would these manners make in America? Our Governors, our Judges, our Senators, or Representatives and even our Ministers would be appointed by Harlots

for Money, and their Judgments, Decrees and decisions be sold to repay themselves, or perhaps to procure smiles (*and Embraces*) of profligate Females.

If the company of good women could refine and polish, so could bad company degrade and corrupt the republican citizen. Adams's reasoning that "the manners of Women were the most infallible Barometer, to ascertain the degree of Morality and Virtue in a Nation" led him into a brief for monogamous fidelity. He recorded his conviction that "the foundations of national Morality must be laid in private Families. In vain are Schools Accademics [*sic*] and universities instituted, if loose Principles and licentious habits are impressed upon Children in their earliest years... How is it possible that Children can have any just Sense of the sacred Obligations of Morality or Religion if, from their earliest Infancy, they learn that their Mothers live in habitual Infidelity to their fathers, and their fathers in as constant Infidelity to their Mothers."²⁴

On this point, that republican success relied on faithfulness to monogamy, Adams was exceptionally articulate, but his convictions were not extraordinary. For him as for other Revolutionary-era leaders, marriage had several levels of political relevance, as the prime metaphor for consensual union and voluntary allegiance, as the necessary school of affection, and as the foundation of national morality. Revolutionary-era discussions of appropriate marriage partners and the usefulness of marriage in the republican social order assumed that household conduct was linked to political government. On this point American revolutionaries and constitutionalists were following Montesquieu, as they did also in their convictions about checks and balances, the rule of law, and moderation of government. Montesquieu's *Spirit of the Laws* had declared that the source of sovereignty in any government operated in reciprocal equilibrium with people's motivation. Therefore, the "general spirit, the mores, and the manners" of a society, including household arrangements and relations between the sexes, materially affected political values. "Domestic government" and "political government" were "closely linked together."²⁵

Montesquieu had first drawn the relation between domestic government and the political order in a cautionary satire, his epistolary novel *Persian Letters* (1728).²⁶ The novel took the form of letters written between two Persian travelers in France, Usbek and Rica, and the eunuchs and wives whom Usbek had left in his seraglio, or harem, at home. With Usbek gone, the harem (ruled by his delegated subordinates) became riven with jealousies and intrigues so intense as to cause the tragic suicide of his favorite wife. Motivated by fear and maintained by coercion, the harem embodied the spirit of despotism. The

Persians' letters home also satirized the excesses and pitfalls of French honor, the motivating force for monarchy. Their commentary implied that a government of laws, characterized by political moderation and liberal treatment of women, would solve these problems.

Although Montesquieu's target was not non-Western cultures but despotic aspects of the French government (and the Catholic Church), his work initiated what became a formulaic Enlightenment association of polygamy with despotism. The harem stood for tyrannical rule, political corruption, coercion, elevation of passion over reason, selfishness, hypocrisy—all the evils that virtuous republicans and enlightened thinkers wanted to avoid. Monogamy, in contrast, stood for a government of consent, moderation and political liberty. Thus an American post-Revolutionary essay lauded the benefits of monogamous love contrasted to the ways of the harem: "Behold in the seraglios human nature at the lowest point of abasement. Wretches there, maimed in body and in mind, know only to be cruel. They thirst for misery of another to allay their own... To crush a feeling heart under the despotism which has proved fatal to themselves, is their only joy."²⁷

From the perspective of the American republic, stock contrasts between monogamy and polygamy not only illustrated the superiority of Christian morality over the "heathen" Orient and reassured Christian monogamists in their minority position worldwide, but also staked a political claim. The philosophers and ethicists favored by leading men of the early United States endorsed monogamy outright and found both moral and political reasons to support it. For example, *The Principles of Moral and Political Philosophy* (1785) by William Paley, which became the most widely read college text on the subject in the first half of the nineteenth century, touted the private happiness and social benefits of monogamous marriage. An Anglican bishop and Enlightenment utilitarian at the same time, Paley was admired by the American political and literary elite. His defense of monogamy, did not rest with divine law alone; he examined arguments for and against such alternatives as fornication and cohabitation and found social reasons for believing formal marriage far superior. In comparison to monogamy, he contended, polygamy did "not offer a single advantage" but rather produced the evils of political intrigue, jealousy, and distrust, as well as "voluptuousness," abasement of women, and neglect of children. Paley's and similar prescriptive pronouncements about marriage and the public order, expounded by the jurist James Wilson in the 1790s and adopted by such important antebellum writers of legal treatises as Chancellor James Kent of New York and U.S. Supreme Court Justice Joseph Story, shaped the thinking of the bar and permeated American legal and political traditions.²⁸

The thematic equivalency between polygamy, despotism, and coercion on the one side and between monogamy, political liberty, and consent on the other resonated through the political culture of the United States all during the subsequent century. Buttressing the social and religious reasons for Americans to believe in and practice monogamy, this political component also inhabited their convictions, all the more powerful for seeming self-evident. A commitment to monogamous marriage on a Christian model lodged deep in American political theory, as vivid as a belief in popular sovereignty or in voluntary consent of the governed or in the necessity of a government of laws. This commitment would emerge when national circumstances demanded—and even when they did not.

References

1. Clifford Geertz, "Common Sense as a Cultural System," in his *Local Knowledge: Further Essays in Interpretive Anthropology* (New York, Basic Books, 1983), 84.
2. Dorothy Ross, *The Origins of American Social Science* (New York, Cambridge UP, 1991), 36-37.
3. Baron de Montesquieu [Charles-Louis de Secondat], *The Spirit of the Laws*, trans. and ed. Anne M. Cohler et al. (Cambridge, Cambridge UP, 1989), 270, 316; and see Anne Cohler's introduction xxvi-vii, on Montesquieu's influence on the founders, which all scholars credit, e.g. Henry F. May, *The Enlightenment in America* (New York, Oxford UP, 1976), 282; Robert A. Ferguson, *Law and Letters in American Culture* (Cambridge, Harvard UP, 1984), 42-43. *Spirit of the Laws* was held by more American libraries during the years between 1750 and 1813 than any other work of political theory; David Lundberg and Henry F. May, "The Enlightened Reader in America," *AQ*, 28 (Summer 1976), 262-93.
4. Robert G. McCloskey, ed., *The Works of James Wilson* (Cambridge, Harvard UP, 1976), 600-01; Hendrik Hartog, "Marital Exits and Marital Expectations in Nineteenth Century America," *Georgetown LJ*, 80:1 (Oct. 1991), 95-129; Carole Pateman, "The Shape of the Marriage Contract," in *Women's Views of the Political World of Men*, ed. Judith Stiehm (Dobbs Ferry, N.Y., Transnational Publication, 1984), 77.
5. G.B. Harrison, ed., *Shakespeare: The Complete Works* (N.Y., Harcourt, Brace and World, 1948), 363; I have changed "froward" to "forward."
6. John Winthrop, "On Civil Liberty," quoted in Linda K. Kerber, *Toward an Intellectual History of Women* (Chapel Hill, U of North Carolina P, 1997), 200, 203; and Mary Beth Norton, *Founding Mothers and Fathers* (N.Y., Knopf, 1996), 317-319.
7. See Lawrence Stone, "The Rise of the Nuclear Family, in *The Family in History*, ed. Charles Rosenberg (Philadelphia, U of Pennsylvania P, 1975), 13-59; Sarah Hanley, "Engendering the State: Family Formation and State Building in Early Modern France," *French Historical Studies*, 16:1 (1989), 4-27; Mary Lyndon Shanley, "Marriage Contract and Social Contract in Seventeenth Century English Political Thought," in *The Family in Political Thought*, ed. Jean Bethke Elshtain (Amherst, U of Massachusetts P, 1982).
8. Norton, *Founding Mothers*, 17-19, 38, 58-59, 401; David Flaherty, "Law and the Enforcement of Morals in Early America," *Perspectives in American History*, 5 (1971), 56-59, Jane Kamensky, *Governing the Tongue* (New York, Oxford UP, 1997), 99-126.
9. Edwin G. Burrows and Michael Wallace, "The American Revolution: The Ideology and Psychology of National Liberation," *Perspectives in American History*, 6 (1972), 168-79, Melissa A. Butler, "Early Liberal Roots of Feminism: John Locke and the Attack on Patriarchy," *American Political Science Review*, 72:1 (March 1978), 135-50; Shanley, "Marriage Contract and Social Contract"; Susan Moller Okin, "Women and the Making of the Sentimental Family," *Philosophy and Public Affairs*, 11:1 (1981), 65-88; Linda J. Nicholson, *Gender and History: The Limits of Social Theory in the Age of the Family* (New York, Columbia UP, 1986); Carole Pateman, *The Sexual Contract* (Stanford, Stanford UP, 1988).
10. I rely on Burrows and Wallace, "The American Revolution," 165-306, and Jay Fliegelman, *Prodigals and Pilgrims: The American Revolution against Patriarchal Authority, 1750-1800* (New York, Cambridge UP, 1980), especially 120-30, for discussion of familial analogies in Revolutionary argument.
11. See Susan Moller Okin, *Justice, Gender, and the Family* (New York, Basic Books, 1989).
12. On the Scottish moralists, see May, *Enlightenment*, 342-47; Rosemarie Zagari, "Morals, Manners, and the Republican Mother," *AQ*, 44 (June 1992), 192-215, and "The Rights of Man and Woman in Post-Revolutionary America," *WMQ*, 55:2 (April 1998).
13. Quotations from Burrows and Wallace "The American Revolution," 194, 211-2, 213, 215. See also Joan Gunderson, "Independence, Citizenship, and the American Revolution," *Signs*, 13:1 (Aug. 1987), 59-77, on the impact of this rhetoric on women's citizenship.
14. I am indebted to Fliegelman, *Prodigals and Pilgrims*, 123-29 (quotation from Mayhew on 126) and to Jan Lewis, "The Republican Wife: Virtue and Seduction in the Early Republic," *WMQ*, 44 (Oct. 1987), 689-721, on the impact of rhetoric on women's citizenship.
15. "Letters on Marriage" (1775) reprinted in *The Work of the Rev. John Witherspoon* (Philadelphia, 1902), 4:169; other quoted fragments and article titles are to be found in Lewis, "Republican Wife." See also Norma Basch, "From the Bonds of Empire to the Bonds of Matrimony," in *Devising Liberty: Preserving and Creating Freedom in the New American Republic*, ed. David Thomas Konig (Stanford, Stanford UP, 1995), 229-34; Fliegelman, *Prodigals*, 123-24. On the other side of the Atlantic, in British publications, practical advice on finding the

right mate did not differ markedly, but where British spokesmen were most concerned with marriages as anchors of society, Revolutionary Americans saw them also as models for the ship of state.

16. Webster quoted in Carroll Smith-Rosenberg, "Dis-Covering the Subject of the 'Great Constitutional Discussion,' 1786-1789," *JAH*, 79-3 (Dec. 1992), 841-73; *The Weekly Museum* (New York), March 16, 1793.
17. See Anne M. Cohler, *Montesquieu's Comparative Politics and the Spirit of American Constitutionalism* (Lawrence, UP Of Kansas, 1988), esp. 12-17. Diana J. Schaub, *Erotic Liberalism: Women and Revolution in Montesquieu's Persian Letters* (London, Rowman & Littlefield, 1995); Mary Lyndon Shanley and Peter G. Stillman, "Politics and Marital Despotism: Montesquieu's *Persian Letters*," in *The Family in Political Thought*, ed. Jean Bethke Elshtain (Amherst, U of Massachusetts P, 1982).
18. See Gordon Wood, *The Creation of the American Republic* (New York, Norton, 1969).
19. Schaub, *Erotic Liberalism*, 25-31; Fliegelman, *Prodigals*, 24.
20. *Massachusetts Magazine* quoted in Jan Lewis, "Motherhood and the Construction of the Male Citizen in the United States, 1750-1850," in *Constructions of Self*, ed. George Levine (New Brunswick, Rutgers UP, 1992), 162; "On Love," *New-York Magazine*, June 1791; Witherspoon, *Letters*, 166, 162; The Royal America of 1774 quoted in Fliegelman, *Prodigals*, 127.
21. See, e.g., Thomas Gisborne, *An Enquiry into the Duties of the Female Sex* (London, Cadell, 1797), 23.
22. Kames, quoted in Zagarri, "Morals, Manners," 201. I am indebted to Zagarri's essay for the analysis of manners.
23. James Tilton, quoted in Zagarri, "Morals, Manners," 201.
24. Entry of June 2, 1778 in *Diary and Autobiography of John Adams*, ed. Lyman H. Butterfield (Cambridge, the Belknap of Harvard UP, 1962), 4:123.
25. *Spirit*, 316, 270.
26. My discussions of the novel are indebted to Shanley and Stillman, "Political and Marriage Despotism," Cohler, introduction to *Spirit*, and Schaub, *Erotic Liberalism*.
27. "On Love," *New-York Magazine*, June 1791.
28. William Paley, D.D., *The Principles of Moral and Political Philosophy* (Boston, Benj. Mussey, 1852), quotations from 185, 194-95. See Wendell Glick, "Bishop Paley in America," *New England Quarterly*, 27 (1954), 357054; Donald H. Meyer, *The Instructed Conscience: The Shaping of the American National Ethic* (Philadelphia, U of Pennsylvania P, 1972), 7-8. D. L. LeMahieu, *The Mind of William Paley: A Philosopher and His Age* (Lincoln, U of Nebraska P, 1976); M. L. Clarke, *Paley: Evidences for the Man* (Toronto, U of Toronto, P, 1974), esp. 153-62; and Maxwell Bloomfield, *American Lawyers in a Changing Society 1779-1876* (Cambridge, Harvard UP 1976), 86, 106-06.

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NEW BOOK EXAMINES WHAT IT MEANS TO BE A WIFE

For *The New Wife, The Evolving Role of the American Wife*, author Susan Barash, a professor of Critical Thinking and Gender Studies at Marymount Manhattan College, interviewed more than 500 women to analyze how the role of wife has evolved over the last half a century.

In her introduction, Barash explains, "It is an intriguing notion that a woman's identity is wrapped up in the role of wife. Yet the attitudes and expectations of this role have evolved so that a woman who becomes a wife today is not positioned in the same way as a woman who became a wife

as recently as ten, twenty, or thirty years ago. Although being a wife is as desired now as it has been in the past, the point of view of the wife is altered...The new wife's sense of entitlement and power is more pronounced than that of her predecessors."

The New Wife: The Evolving Role of the American Wife by Susan Barash published by Nonetheless Press, February 2005.

ENDING MARRIAGE DISCRIMINATION: AMERICA IN A CIVIL RIGHTS MOMENT

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The Library of America's two-volume anthology, *Reporting Civil Rights*, collected the journalism of the 1940's, '50's, '60's, and '70's, which together described what the day-to-day struggles of those years felt and looked like before those living through that moment knew how it was going to turn out.

Exhilarating, empowering, appalling, and scary. That's what a civil rights moment feels like when you are living through it—when it is uncertain and not yet wrapped in mythology or the inevitability of triumph.

In 2004, our nation celebrated the 50th anniversary of *Brown v. Board of Education*, the landmark court decision that declared “separate but equal” to be inherently unequal and mandated an end to segregation. But what followed *Brown* was not the sincere (or even insincere) embrace it gets today. In the words of the time, what followed *Brown* included legislators in a swath of states declaring “massive resistance;” billboards decrying “Impeach Earl Warren,” the then-Chief Justice who wrote the decision; and members of Congress signing resolutions denouncing “activist judges.” In fact, pretty much everything we think of today as the civil rights movement—the marches, Freedom Rides, organizing summers, engagement, hard work, violence, legislation—all happened after *Brown*.

Today, America is again in a civil rights moment, as same-sex couples, their loved ones, and non-gay allies struggle to end discrimination in marriage. A robust debate and countless conversations are helping our nation (in Lincoln's words) “think anew” about how we are treating a group of families and fellow citizens among us. Today it is Lesbian, Gay, Bisexual, and Transgender (LGBT) individuals and same-sex couples who are contesting second-class citizenship, seeking inclusion and equality, and fighting for our country. It is scary as well as thrilling to see the changes and feel the movement.

MARRIAGE — NOT “GAY-MARRIAGE”

It is important for us all to understand that this movement is about marriage, not “gay-marriage.” “Gay marriage” is a short-hand term that opponents use to make gay people's families seem different or lesser. The truth is we're working

for an end to discrimination in marriage itself. We're working for the same rules and responsibilities, the same protections, the same dignity, the same commitment, and the same opportunity to declare our love for another person with whom we are building a life. Same-sex couples want the equal choice—the freedom to marry—not two lines at the clerk's office yet again for separate and unequal treatment.

In a democracy founded upon the principles of fairness, there is no justice in being barred from marriage, a legal institution regulated by the government through the issuance of marriage licenses. Freedom of religion ensures that each religion can decide for itself whether or not to marry any particular couple, but no religion should dictate to the government who gets a marriage license. If gay people are considered equal citizens when it comes to paying taxes and obeying laws, then we should have access to the same marital rights held by other citizens.

BENEFITS OF MARRIAGE

Most couples marry for love and the desire to reinforce the personal commitment they have made to each other. Most also want the public statement of commitment and support that marriage offers. The intangible benefits that marriage offers include clarity, security, structure, dignity, spiritual significance, and an expectation of permanence, dedication, and stability. Like most non-gay couples, most same-sex couples share these aspirations and needs.

In addition, according to a 2004 report from the U.S. General Accounting Office, there are at least 1,138 tangible benefits, protections, rights, and responsibilities that marriage brings couples and their kids—and that's just at the federal level. Add in state and local law, and the policies of businesses, employers, universities, and other institutions, and it is clear that the denial of marriage to couples and their kids makes a substantial impact on every area of life, from raising kids, building a life together, and caring for one another, to retirement, death, and inheritance. Most of these cannot be secured by private agreement or through lawyers.

Here are just some of the ways in which government's denying the freedom to marry punishes couples and families

by depriving them of critical tangible as well as intangible protections and responsibilities in virtually every area of life:

Death: If a couple is not married and one partner dies, the other partner is not entitled to bereavement leave from work, to file wrongful death claims, to draw the Social Security of the deceased partner, or to automatically inherit a shared home, assets, or personal items in the absence of a will.

Debts: Unmarried partners do not generally have responsibility for each other's debt.

Divorce: Unmarried couples do not have access to the courts' structure or guidelines in times of break-up, including rules for how to handle shared property, child support, and alimony, or protecting the weaker party and kids.

Family leave: Unmarried couples are often not covered by laws and policies that permit people to take medical leave to care for a sick spouse or for the kids.

Health: Unlike spouses, unmarried partners are usually not considered next of kin for the purposes of hospital visitation and emergency medical decisions. In addition, they can't cover their families on their health plans without paying taxes on the coverage, nor are they eligible for Medicare and Medicaid coverage.

Housing: Unmarried couples of lesser means can be denied or disfavored in their applications for public housing.

Immigration: U.S. residency and family unification are not available to an unmarried partner from another country.

Inheritance: Unmarried surviving partners do not automatically inherit property should their loved one die without a will, nor do they get legal protection for inheritance rights such as elective share or bypassing the hassles and expenses of probate court.

Insurance: Unmarried partners can't always sign up for joint home and auto insurance. In addition, many employers don't cover domestic partners or their biological or non-biological children under health insurance plans.

Portability: Unlike marriages, which are honored in all states and countries, domestic partnerships and other alternative mechanisms only exist in a few states and countries, are not given any legal acknowledgment in most, and leave families without the clarity and security of knowing what their legal status and rights will be.

Parenting: Unmarried couples are denied the automatic right to joint parenting, joint adoption, joint foster care, and visitation for non-biological parents. In addition, the children of unmarried couples are denied the guarantee of child support and an automatic legal relationship to both parents, and are sometimes sent a wrongheaded but real negative message about their own status and family.

Privilege: Unmarried couples are not protected from having to testify against each other in judicial proceedings, and are also usually denied the coverage in crime victims counseling and protection programs afforded married couples.

Property: Unmarried couples are excluded from special rules that permit married couples to buy and own property together under favorable terms, rules that protect married couples in their shared homes, and rules regarding the distribution of the property in the event of death or divorce.

Retirement: In addition to being denied access to shared or spousal benefits through Social Security as well as coverage under Medicare and other programs, unmarried couples are denied withdrawal rights and protective tax treatment given to spouses with regard to IRA's and other retirement plans.

Taxes: Unmarried couples cannot file joint tax returns and are excluded from tax benefits and claims specific to marriage. In addition, they are denied the right to transfer property to one another and pool the family's resources without adverse tax consequences.

Marriage also protects the economic interests of children by providing an economic safety net for families and the kids themselves. The children have automatic and undisputed access to the resources, benefits, and entitlements of both parents. Married couples do not have to incur any expenses, legal or otherwise, to ensure that both parents have the right to make important medical decisions for their children in case of emergency. The children of legally married couples are automatically eligible for health benefits from both parents, as well as child support and visitation from both parents in the event of separation. If one of the parents in a marriage dies, the law provides financial security, not only for the surviving spouse, but for the children as well, by ensuring eligibility to all appropriate entitlements, such as Social Security survivor benefits.

Like other forms of discrimination, marriage discrimination disproportionately harms poor and otherwise disadvantaged couples. Compared with the relatively cheap option of marriage, the creation of a legal web meant to simulate some of the protections of marriage is an expensive

and time-consuming project that simply cannot serve as a viable alternative for people of lesser means. In addition, the economic safety net of marriage is especially critical for children in families of lesser means.

The children of same-sex couples, whose marriages are unrecognized by law, do not have such a safety net. They suffer from their parents' lack of access to all of the rights and entitlements that maximize their economic well-being and are deprived of economic protection in case of death, disability, divorce, or other life-changing events.

THE HUMAN RIGHTS BATTLEFIELD OF MARRIAGE

Marriage has always been a human rights battleground on which our nation has grappled with larger questions about what kind of country we are going to be—questions about the proper boundary between the individual and the government; questions about the equality of men and women; questions about the separation of church and state; and questions about who gets to make important personal choices of life, liberty, and the pursuit of happiness.

As a nation, we have made changes in the institution of marriage, and fought over these questions of whether America is committed to both equality and freedom—in at least four major struggles in the past few decades.

We ended the rules whereby the government, not couples, decided whether they should remain together when their marriages had failed or become abusive. Divorce transformed the so-called “traditional” definition of marriage from a union based on compulsion to what most of us think of marriage today; a union based on love, commitment, and the choice to be together and care for one another.

We ended race restrictions on who could marry whom: restrictions that were based on the traditional “definition” of marriage, defended as part of God’s plan, and had become a seemingly intractable part of the social order.

We ended the interference of the government in important personal decisions such as whether or not to procreate, whether or not to have sex without risking a pregnancy, and whether or not to use contraceptives—even within marriage.

And we ended the legal subordination of women in marriage, thereby transforming the institution of marriage from a union based on domination and dynastic arrangement to what most of us think of it as today, a committed partnership of equals.

In each of these struggles, opponents of equality claimed that the proposed change was “against the definition of marriage” and “against God’s will.” Many of the same gloom-and-doom claims are made today by the same kind of opponents, now seeking to prevent loving

same-sex couples from taking on the legal commitment of marriage.

Our nation has struggled with important questions on the human rights battlefield of marriage, and we meet on that battlefield once again.

MID-MOVEMENT PATCHWORK

As in any period of civil rights struggle, transformation will not come overnight. Rather, the classic American pattern of civil rights history is that our nation goes through a period of what I call “patchwork.”

During such patchwork periods, we see some states move toward equality faster, while others resist and even regress, stampeded by pressure groups and pandering politicians into adding additional layers of discrimination before, eventually, buyer’s remorse sets in and a national resolution comes.

So here we are in this civil rights patchwork. On the one hand, as the recent powerful and articulate rulings by courts in Washington and New York demonstrated, several states *are* advancing toward marriage equality.

On the other hand, eleven states targeted by opponents of equality enacted further *discriminatory* measures this year, compounding the second-class citizenship gay Americans already endure. These opponents are not only anti-marriage-equality but also anti-gay, anti-women’s equality, anti-civil-rights, anti-choice, and anti-separation-of-church-and-state. And, they are throwing everything they have into this attack campaign because they know that if fair-minded people had a chance to hear the stories of real families and think it through, this country would move toward fairness.

THE UNION OF A HOUSE DIVIDED

In past chapters of civil rights history, this conversation and this patchwork of legal and political struggles would have proceeded in the first instance—and over quite some time—in the *states*, without federal interference or immediate national resolution.

That’s because historically domestic relations, including legal marriage, have, under the American system of federalism, been understood as principally (and almost entirely) the domain of the states.¹ States worked out their discrepancies in who could marry whom under the general legal principles of comity, reflecting the value of national unity. The reality that it makes more sense to honor marriages than to destabilize them was embodied in the relevant specific legal principle, generally followed in all states—indeed, almost all jurisdictions around the world—that a marriage valid where celebrated will be respected elsewhere, even in places that would not themselves have performed that marriage.

States got to this logical result not primarily through legal compulsion, but through common sense—addressing

the needs of the families and institutions (banks, businesses, employers, schools, etc.) before them. Eventually a national resolution came, grounded, again, in common sense, experience, and the nation's commitment to equality.

But when it comes to constitutional principles such as equal protection—and, it now appears, even basic American safeguards such as checks-and-balances, the courts, and even federalism—anti-gay forces believe there should be a “gay exception” to the constitution, to fairness, and to respect for families.

Inserting the federal government into marriage for the first time in U.S. history, opponents federalized the question of marriage in 1996, prompting the passage of the so-called *Defense of Marriage Act (DOMA)*. This federal anti-marriage law creates an un-American caste system of first and second class marriages. If the federal government likes whom you marry, you get a vast array of legal and economic protections and recognition. Under DOMA, if the federal government doesn't like whom you married, this typically automatic federal recognition and protection are withdrawn in all circumstances, no matter what the need.

The federal anti-marriage law also purported to give states the authority not to honor the lawful marriages from other states (provided those marriages were of same-sex couples). This defies more than two hundred years of history in which the states had largely worked out discrepancies in marriage laws among themselves under principles of comity and common sense, as well as the constitutional commitment to full faith and credit.

When this radical law was first proposed, many spoke up immediately saying it was unconstitutional—a violation of equal protection, the fundamental right to marry, federalist guarantees, and limits on Congressional power. Ignoring these objections, opponents pressed forward with their election-year attack.

Now, however, they concede the unconstitutionality of the law they stampeded through just eight years ago, and are seeking an even more radical means of assuring gay people's second-class citizenship, this time through an assault on the U.S. Constitution itself, as well as the constitutions of individual states.²

Because they do not trust the next generation, because they know they have no good arguments and no good reason for the harsh exclusion of same-sex couples from marriage, opponents are desperate to tie the hands of all future generations, and as many states as possible, now.

This patchwork will be difficult, painful, even ugly, and we will take hits. Indeed, we took many hits this election year in the states where our opponents threw anti-gay measures at us in their effort to deprive our fellow-citizens of the information, the stories of gay couples that would dispel stereotypes and refute right-wing lies, and the lived-

experience of the reality of marriage equality. While it is especially outrageous that the opponents of equality are using constitutions as the vehicles for this division and wave of attacks on American families, in the longer arc, their discrimination will not stand.

LESSONS WE MUST LEARN

Here are a few basic lessons we can cling to in the difficult moments ahead, to help us keep our eye on the prize of the freedom to marry and full equality nationwide, a prize that shimmers within reach.

Wins Trump Losses

While we have lost several battles recently, we must remember that wins trump losses because each state that ends marriage discrimination gives fair-minded Americans the opportunity to see and absorb the reality of families helped and no one hurt when the exclusion of same-sex couples from marriage ends. Nothing is more transformative, nothing moves the middle more, than making it real and making it personal. Seeing other states join Canada and Massachusetts will be the engine of our victory.

Losing Forward

Even where we cannot win a given battle, we can still engage and fight so as to at least *lose forward*, putting us in a better place for the inevitable next battle. Losing forward is a way that all of us can be part of this national campaign, no matter what our state.

In *every* state—even those where we cannot win the present battle—we have the opportunity to enlist more support, build more coalitions, and make it possible for more candidates and non-gay opinion-leaders to move toward fairness. All of this contributes to the creation of a national climate of receptivity in which some states may cross the finish-line before others, but everyone can be better positioned.

California may be our best example of losing forward. In 2000, we took a hit, when the right-wing pushed the so-called Knight Initiative in California and forced an early vote on marriage. We lost the vote, but because there had been some, though not enough, education about our families and the costs of discrimination, polls showed that support for marriage equality actually rose after the election. And the very next year, activists pressed the legislature to enact a partnership law far broader than any that had been on the table in California before then. Our engagement over marriage continued, and within a couple years, legislators voted again, this time in support of an “all but marriage” bill, which took effect in January. And California organizations and the national legal groups continue to engage for what we fully deserve—

pursuing litigation in the California courts and legislation that would end marriage discrimination.

If we do our work right, making room for luck, we may see marriage in California, our largest state, within the year. To go from a defeat in 2000 to partnership and all-but-marriage in 2004 with the possibility of marriage itself in 2005—that's called *winning*.

Grab for the Reachable Middle

The principal reason we took hits in the 2004 election, and lost so many of the state attacks in November, is because our opponents cherry-picked their best targets and deprived the reachable middle of the chance to be reached. They had a head-start, more money, and more infrastructure through their mega-churches and right-wing partners. However, we must remember that historically, it is difficult to win civil rights *votes* at the early stage of a struggle.

The country right now is divided roughly in thirds. One third supports equality for gay people, including the freedom to marry. Another third is not just adamantly against marriage for same-sex couples, but, indeed, opposes gay people and homosexuality, period. This group is against any measure of protection or recognition for lesbians and gay men, whether it be marriage or anything else.

And then there is the “middle” third—the reachable-but-not-yet reached middle. These Americans are genuinely wrestling with this civil rights question and have divided impulses and feelings to sort through. How they frame the question for themselves brings them to different outcomes; their thinking is evolving as they grapple with the need for change to end discrimination in America.

To appeal to the better angels of their nature, we owe it to these friends, neighbors, and fellow citizens to help them understand the question of marriage equality through two truths. First that ending marriage discrimination is, first and foremost, about couples in love who have made a personal commitment to each other, and are doing the hard work of marriage in their lives, caring for one another and their kids, if any. Once the discussion has a human story, face, and voice, fair-minded people are ready to see through a second frame. Second, we need to emphasize that the exclusion of same-sex couples from marriage is discrimination; it is wrong and it is unfair to deny these couples and families marriage and its important tangible and intangible protections and responsibilities. America has had to make changes before to end discrimination and unfair treatment, and government should not be denying any American equality under the law.

When we see lopsided margins in these votes, it means that under the gun in the first wave of electoral attacks, we have not as yet reached this middle. We can't be surprised *not* to win when in so many campaigns, and over so many

opportunities to date, we have failed to give this middle third what they need to come out right. When, in the name of “practicality” or advice from pollsters or political operatives, we fail to put forward compelling stories and explain the realities of what marriage equality does and does not mean, it costs us the one chance we have to do the heavy-lifting that moves people. *We wind up not just not winning, but not even losing forward.*

Generational Momentum

Finally, we have a secret weapon: death. Or to put it more positively, we on the side of justice have generational momentum. Younger people overwhelmingly support ending this discrimination. Americans are seeing more and more same-sex partnerships and families, and realizing, with increasing comfort, that we are part of the American family. The power of the marriage debate moves the center toward us, and as young people come into ascendancy, even the voting will change. This is our opponents' last-ditch chance to pile up as many barricades as possible, but, again, as long as we build that critical mass for equality and move the middle, we win.

THE STAKES ARE HIGH

It is so important that we redouble our outreach, our voices, and our conversations in the vocabulary of marriage equality *now*. In part, because victory is within reach. In part, because we can and must move that middle now to make room for that generational momentum and rise to fairness. In part, because America is listening and allies are increasing. In part, because this is our moment of greatest peril. And, in part, because the stakes are so great.

If this struggle for same-sex couples' freedom to marry were “just” about gay people, it would be important because gay men and lesbians, like bisexuals, transgender people, and our non-gay brothers and sisters are human beings, who share the aspirations for love, companionship, participation, equality, mutual caring and responsibility, protections for loved ones, and choice.

Yes, if this struggle were “just” about gay people, it would be important, but it is not “just” about gay people.

If this struggle were “just” about marriage, it would be important, for marriage is the gateway to a vast and otherwise largely inaccessible array of tangible and intangible protections and responsibilities. It is the vocabulary in which non-gay people talk about love, clarity, security, respect, family, intimacy, dedication, self-sacrifice, and equality. And the debate over marriage is the engine of other advances and the *inescapable* context in which we will be addressing all LGBT needs, the *inescapable* context in which we will be claiming our birthright of equality and enlarging possibilities for ourselves and others.

Yes, if this struggle were “just” about marriage, it would be important, but it is not “just” about marriage.

What is at stake in this struggle is what kind of country we are going to be. Is America indeed to be a nation where we *all*, minorities as well as majorities, popular as well as unpopular, get to make important choices in our lives, or is it to be a land of liberty and justice for some? Is America indeed to be a nation that respects the separation of church and state, where government does not take sides on religious differences but rather respects religious freedom while assuring equality under the law, or is it to be a land governed by one religious ideology imposed on all? Is America to be a nation where two women who build a life together, raise kids or tend to elderly parents, pay taxes, contribute to the community, care for one another, and even fight over who takes out the garbage are free and equal, or is it to be a land where they can be told by their government that they are somehow lesser or incomplete because they do not have a man in their lives?

All of us, gay and non-gay, who share the vision of America as a nation that believes that all people have the right to be both different and equal, and that without real and sufficient justification, government may not compel people to give up their difference in order to be treated equally, all of us committed to holding America to that promise, have a stake in this civil rights/human rights struggle for the freedom to marry.

If we see every state, every methodology, every battle, every victory, and even every defeat as part of a *campaign*—and if we continue to enlist non-gay allies and voices in this

campaign, transforming it into a truly organic *movement* for equality in the grand American tradition, we will move the middle, we will lose forward where necessary, we will empower the supportive, and we will win.

References

1. *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581 (1979) (“[i]nsofar as marriage is within temporal control, the States lay on the guiding hand”). As the Supreme Court explained in *De Sylva v. Ballentine*, 351 U.S. 570, 580 (1956), “The scope of a federal right is, of course, a federal question, but that does not mean its content is not to be determined by state, rather than federal law... This is especially true when a statute deals with a familial relationship; there is no federal law of domestic relations, which is primarily a matter of state concern.”
2. The first constitutional amendment to allow Congress to have authority over domestic relations was proposed (and rejected) in 1884. *Scherrer v. Scherrer*, 334 U.S. 343 (1948) (Frankfurter, J., dissenting). Through 1948, seventy similar amendments were proposed, prompted by a national debate (analogous to today’s) over whether to allow civil divorce. All such proposals failed, and the states and Americans were properly given an opportunity to work out questions of marriage and interstate respect, while the federal government honored the lawful marriages (and divorces). See, e.g., Edward Stein, “Past and Present Proposed Amendments to the United States Constitution Regarding Marriage” *Issues in Legal Scholarship*, Single-Sex Marriage (2004): Article 1 (2004). And, after a period of conversation and experience, and generational shifts as the institution of marriage evolved, the U.S. Supreme Court clarified that lawful determinations as to marital status, through divorce, must be respected.

CALIFORNIA JUDGE DECLARES MARRIAGE LAW UNCONSTITUTIONAL

On March 14, 2005, San Francisco County Superior Court Judge Richard Kramer ruled that withholding marriage licenses from gay and lesbian couples was unconstitutional. This decision paves the way for California to become the second state in the nation to legalize gay marriage.

In his decision, Judge Kramer wrote, “it appears that no rational purpose exists for limiting marriage in this state to opposite-sex partners.”¹ He stated, “simply put, same-sex marriage cannot be prohibited solely because California has always done so before.”² Kramer cited the landmark 1954 decision in *Brown v. Board of Education* and wrote that, “the idea that marriage-like rights without marriage is adequate smacks of a concept long rejected by the courts: separate but equal.”³

The judge’s ruling overturns “Proposition 22,” which was passed by California in 2000 and required that “only

marriage between a man and a woman is valid and recognized in California.” The judge’s ruling will not take effect for 60 days and several conservative organization are planning to appeal. The case will most likely be taken to the California Supreme Court.

References

1. Lisa Leff, “Judge Finds California’s Marriage Law Unconstitutional,” *San Francisco Gate* (CA), 14 March 2005.
2. Associated Press, “Court Upholds California Gay Marriage,” *News 8 Austin*, 15 March 2005; Bob Roehr, “California Court Strikes Down Marriage Ban,” *Windy City Times*, 16 March 2005.
3. Roehr.

TO HAVE AND TO HOLD: CONGRESSIONAL VOWS ON MARRIAGE AND SEX

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Despite some history together, *Marriage First* and *Then Sex* were divorced in 1960, the year the Pill went to market. Traditional marriage has not been the same since. In some measure this is because the effective use of contraceptive technology put women on a more level playing field with men—that is, they could participate in sex without the risk of getting pregnant. The technology trumped, but did not dump, the marriage tradition. Along with other cultural changes, the new contraceptive technology helped transform the institution. Marriage now occurs later (the average age of first marriage has risen significantly), is shorter (divorce is commonplace), and frequently does not happen (cohabiting couples, including those with children, have increased dramatically).

Recently, marriage has moved into the political arena. In 1996, Congress passed a law, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which created welfare block grants for states. PRWORA promotes traditional marriage in two ways. The block grants allow states to choose to spend welfare funds on marriage-related programs for welfare and non-welfare recipients alike. PRWORA also includes separate funding for states for abstinence-unless-married programs that teach *marriage first* and *then sex*.

The 1996 law was scheduled to be reauthorized in 2002, but reauthorization has not yet occurred. Since 2002, the program has been repeatedly extended through a series of stop-gap measures called continuing resolutions. In the first months of 2005, Congress has begun to take up reauthorization so it has a chance to debate these marriage and abstinence education provisions. It will also consider a third way to promote marriage: a set-aside of significant welfare funds for federally defined marriage promotion activities, augmenting what states are already allowed to spend.

Professionals in sexuality education, family planning, reproductive health, family life, and other related fields

face challenges with the politicization of marriage. Increasingly, research is demonstrating that the well-being of children who grow up with two biological parents who are not in conflict exceeds that of children in other living arrangements. Professionals engaged with families should be interested in promoting these benefits.

However, marriage is not necessarily a benefit for everyone, including those who are too young or too immature. Some married couples are better off divorced, particularly those in an abusive or high-conflict relationship. There is a risk, too, that some politicians who are wedded to their ideas of marriage will pass laws that are far from ideal and actually undercut the development of healthy couples and families.

With reauthorization, Congress has an opportunity to pass a law that better recognizes both the benefits and risks of marriage promotion. For many people, the magic of marriage is that it reflects an inherent irrationality; that is, it is serendipity that typically determines whom one meets and might marry. Congress, in promoting the behavior to marry, should not legislate with a wand but rather should foster rational policies and programs for which there is evidence of clear benefit. Further, a fiscally responsible Congress should spend with constraint, particularly in an era when essential services are in competition for diminishing dollars.

This article discusses what the government has already done to promote abstinence-unless-married programs and marriage, and what it proposes to do with the reauthorization of the welfare law. The article then discusses the relationship between marriage and pregnancy prevention, including research findings on the influence of childbearing on marriage. It then concludes with some recommendations on what Congress could do in the reauthorization of PRWORA to ensure that funding for abstinence-unless-married programs and marriage promotion truly meet the needs of the populations for which it is intended.

A PORTRAIT OF AMERICAN COUPLES: MARRIAGE AND COHABITATION

90 percent of women are estimated by Census to marry at some time in their lives; Vital Health Statistics finds that for first marriages:¹

- 8 percent occur by age 18
- 25 percent occur by age 20
- 76 percent occur by age 30
- ***
- 20 percent are disrupted after 5 years
- 33 percent are disrupted after 10 years

50 percent of women by age 30 are estimated to cohabit²; Vital Health Statistics finds that for first premarital cohabiters:³

- 58 percent of those that last 3 years marry
- 70 percent of those that last 5 years marry
- ***
- 39 percent are disrupted within 3 years
- 49 percent are disrupted with 5 years

[Note that cohabitation “disruption” includes cohabitations that made the transition to marriage and then disrupted.]

WHAT’S GOVERNMENT GOT TO DO WITH IT?

The vow “to have and to hold” is often part of religious wedding services. Even with traditional marriages, however, government has played a role. But government’s role has largely been in the arena of issuing licenses and granting divorces (typically the domain of local and state entities such as marriage license bureaus and family court) and establishing how married couples are treated under government programs (e.g., the tax and benefits systems). Only recently has government undertaken a broader role that seeks to increase the marriage rate more directly. And, this role is generally being led by the federal government, not the states.

As described above, PRWORA contained two ways that marriage may be promoted—and funded. In addition, when Congress takes up reauthorization, it will consider a set-aside of significant funds that could only be used for the promotion of marriage. The following provides brief highlights of these three marriage provisions.

Abstinence: Marriage First and Then Sex

PRWORA created a new funding stream for abstinence-unless-married programs—technically section 510 of the Social Security Act. The program is an expansion of the state block grant for maternal and child health. Often called “abstinence-only” or “abstinence-unless-married” programs, the funding stream authorizes \$50 million annually. To receive its allocation, a state must match every four federal dollars with three state dollars. The impetus for the law was a desire to restrict sexual activity outside of marriage. Congressional staff released a paper noting that the program:

...was intended to put Congress on the side of social tradition—never mind that some observers now think the tradition outdated—that sex should be confined to married couples. That both the practices and standards in many communities across the country clash with the standard required by the law is precisely the point.⁴

The federal law stipulates eight points that define what can and cannot be taught in an abstinence-unless-married education program.⁵ Broadly, the funds are for programs that teach that abstinence is the only correct sexual behavior outside of marriage.

The federal abstinence-unless-married focus is not limited to school-age children. Rather, it is about the sexual behavior of all individuals at any age. The statute asserts “that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects.” Thus, an unmarried 16-year-old or a 60-year-old divorced grandparent are each behaving in a harmful manner if either engages in sexual activity. Indeed, a 1999 survey found that nearly one-third of states provide programs that encourage adults to be chaste until marriage.⁶

The federal program’s influence extends beyond its own funding. First, as noted, it requires a state match. This means that state monies that might have been spent on comprehensive sexuality education or in other ways are devoted to the abstinence-unless-married program. In addition, the 1996 law has had an impact on other federally funded programs. Specifically, an earlier program, the Adolescent Family Life Act (AFLA), which is primarily focused on funding services for pregnant and parenting teens, includes a prevention component to address non-

marital births. After the 1996 law passed, the AFLA prevention provision was made to conform with the eight-point definition through Congressional action. Until that point AFLA permitted abstinence programs that included lessons on effective contraception.

Most importantly, a federal competitive grants program called SPRANS-CBAE began to award abstinence-unless-married monies targeted at 12- to 18-year-olds, using the same eight-point definition.⁷ The federal executive branch, not a state, makes all of the decisions about which applicant community groups (or states) will be awarded SPRANS funds. In addition, those SPRANS grantees who receive abstinence-unless-married funds are barred from using their own funds for other messages or education, including information about contraception or safe sex.

More than \$1 billion has been spent in federal and state matching funds through Section 510, AFLA, and SPRANS between 1996 and 2005. The growth in SPRANS grants has been particularly dramatic: rising from \$20 million in its first year, FY 2001 to \$105 million in FY 2005.

The notion that marriage is a central interest of abstinence proponents was recently underscored when responsibility for the abstinence competitive grants program was shifted to a different agency within the Department of Health and Human Services. In 2004 the program was moved from the agency that manages the maternal and child health programs into the Administration for Children and Families (ACF). The ACF Assistant Secretary for Children and Families, Wade Horn, is the Bush Administration's point-person on marriage promotion.

TANF: State Option

The "findings" section of a law sets forth its rationale. The findings section of the 1996 overhaul of the welfare program, Temporary Assistance for Needy Families (TANF), included 10 findings—all of which address teen pregnancy, marriage, and "out-of-wedlock" births, including how these issues relate to government programs such as welfare and child support. It concluded that the new law was needed to address a "crisis in our Nation," the out-of-wedlock births problem.

The "purpose" section of the welfare law determines the ways in which states may spend the \$16.5 billion available each year. TANF funds may be spent to help needy families with welfare cash grants, job training and education, job placement, child care, and other supports designed to help parents obtain and sustain employment. Of the four purposes of TANF, three are about or refer to family formation. As a result, it is permissible for states to spend welfare funds on marriage promotion for welfare recipients as well for families who never have or never will receive welfare.

While few states have chosen to spend funds on explicit marriage promotion programs, six states have dedicated significant amounts of welfare funds specifically to strengthen and promote marriage and couple relationships.⁸ Each of the six, Arizona, Louisiana, Michigan, Oklahoma, Utah, and Virginia approaches marriage promotion differently. For example, The Oklahoma Marriage Initiative (OMI), launched in 1999 has used \$10 million in TANF funds for a statewide initiative to strengthen marriage and reduce divorce. Among its funded activities, OMI has trained state employees to offer relationship skills workshops, conducted a statewide survey on service needs, and piloted a married couples mentoring program. In 2002-2003, Louisiana tapped \$1.4 million in TANF funds for marriage promotion among "fragile families"—unmarried young couples experiencing the birth of their first child. The monies were used to develop handbooks, curricula, a survey, and other resources on marriage and healthy relationships.⁹ Michigan's \$250,000 TANF-funded initiative was primarily focused on parenting skills for custodial parents but included discussion on healthy relationships and marriage. In Virginia, two different initiatives were funded through TANF. The state developed a \$4 million (over 4 years) out-of-wedlock birth reduction effort for 20-year-olds, which focuses on marriage. Virginia also instituted a \$400,000 effort for fathers that is focused on improved parenting and includes a marriage section. In total, the six states have chosen to tap \$18.5 million in TANF funds for explicit marriage promotion.¹⁰

More typically, states have chosen to spend TANF funds on programs which, while not explicitly about marriage, can influence marriage and non-marital child bearing. HHS' report to Congress on TANF expenditures notes that about \$1 billion in federal and state TANF funds were spent in FY 2002 (the most recent year for which data are available) on pregnancy prevention and two-parent family formation programs. The TANF spending on pregnancy prevention is mostly directed at teens. This spending includes programs, such as after school youth development initiatives and community service programs, which might or might not provide information related to pregnancy prevention. It may also include TANF spending on abstinence-unless-married programs. The report notes that most of the two-parent family formation funds were dedicated to engaging absent fathers in the lives of their children.¹¹ Some local programs may seek to engage such fathers by improving their financial capacity to support their children through job training-related activities. It is important to note that an increase in TANF spending may or may not represent an increased investment in pregnancy prevention or two-parent family formation programs. To the extent that a state merely

replaces its own dollars with federal dollars, the investment has not grown, only the source of funding has changed (i.e., state funding has been supplanted, not supplemented).

Proponents of explicit marriage promotion have been disappointed that most states have chosen not to spend more of the available welfare dollars on such programs. For this reason, the Administration and Congressional reauthorization proposals have sought to set aside TANF funds for marriage promotion.

TANF: Proposed Federal Set-Aside

The Administration's welfare reauthorization agenda in early 2002 highlighted its concern that TANF implementation in the states had focused on getting recipients to work but failed to address marriage adequately. By May 2002, the Republican House of Representatives passed a welfare reauthorization measure that included a set of "healthy marriage" promotion initiatives. While the welfare bill was not reauthorized by Congress that year, in February 2003,

the House passed a bill that would have set aside \$1.8 billion over six years for marriage promotion and research.

This bill would have established a new \$200 million annual competitive "Healthy Marriage Promotion Grants" program (this includes \$100 million in federal funds to be matched dollar for dollar with state funds; the state could use federal TANF funds as its "state match"). To get funded, an applicant (state, territory, or tribe) must have a program (not necessarily statewide) that explicitly promotes marriage in accordance with the federal definition of eight allowable activities. (This is distinct from the 8-point abstinence definition. See sidebar.)¹² For example, a state applying to fund a high school teen pregnancy prevention program focusing on community service could not get funded unless it incorporated a marriage education component. In addition, the bill would provide \$100 million annually for federally directed research, primarily in relation to "healthy marriage" promotion. Further, it would authorize, but not fund, \$20 million annually for a responsible fatherhood initiative.

HEALTHY MARRIAGE PROMOTION GRANTS

Funds shall be used to support any of the following activities:

- (1) Public advertising campaigns on the value of marriage and the skills needed to increase marital stability and health.
- (2) Education in high schools on the value of marriage, relationship skills, and budgeting.
- (3) Marriage education, marriage skills, and relationship skills programs, which may include parenting skills, financial management, conflict resolution, and job and career advancement, for non-married pregnant women and non-married expectant fathers.
- (4) Pre-marital education and marriage skills training for engaged couples and for couples or individuals interested in marriage.
- (5) Marriage enhancement and marriage skills training programs for married couples.

- (6) Divorce reduction programs that teach relationship skills.
- (7) Marriage mentoring programs, which use married couples as role models and mentors in at-risk communities.
- (8) Programs to reduce the disincentives to marriage in means-tested aid programs, if offered in conjunction with any activity described in this subparagraph.

* This definition of allowable activities is from the 2003 House-passed bill, H.R. 4. The Senate Finance Committee passed a bill with just a few differences.¹³ Activities that are not on the list would not be eligible to be funded through the grants. For example, item number 3 establishes that funds may be spent for marriage education, marriage skills, and relationship skills programs; however, job and career advancement could only be provided as a component of such programs and only offered to unmarried, expectant parents.

The Senate Finance Committee passed a similar bill in 2003. Differences with the House bill included that the Senate version would have provided five years of marriage promotion (rather than six) and would have made explicit that participation in marriage promotion activities must be voluntary. In addition, this bill specifically addressed domestic

violence, including a requirement that domestic violence experts be consulted in the design of activities.¹⁴

The federal funding for the marriage effort would come from reducing or eliminating two TANF bonuses to states. The proposal would repeal an annual \$100 million out-of-wedlock birth bonus (awarded each year to the five

states with the greatest percentage reduction in out-of-wedlock births—without an increase in abortion rates). It would also cut in half the TANF high performance bonus (awarded annually to states for the highest achievements in various measures intended to further the goals of TANF).

The 109th Congress has begun to take up welfare reauthorization, since action was never completed during the 108th Congress.¹⁵ While the outcome remains unclear, what is clear is that for the Administration, and for many in the Republican-controlled Congress, the marriage proposals are a driving interest.

Administration-Funded Grants

Marriage is “the architecture of families, the basic unit of civilization and the natural means by which the human species creates, protects and instills values in its children.”

Representative Tom DeLay (R-TX)
New York Times, July 23, 2004¹⁶

While Congress has not yet passed a measure to set aside welfare funds for marriage promotion, the Administration in 2002–2004 awarded grants of at least \$95 million for marriage initiatives over a number of years.¹⁷ Specifically, ACF has identified funds from a variety of programs within its domain to spend on a range of marriage promotion activities. For example, the Office of Child Support, the Office of Refugee Resettlement, the Office of Community Services, and the Children’s Bureau have each awarded grants related to marriage. In addition, ACF has awarded research and evaluation grants to a number of research organizations, including \$19 million over nine years to Mathematica Policy Research Inc. for analysis directed at “fragile families,” and \$38.5 million over nine years to MDRC, a social policy research organization, for an eight-site demonstration project for low-income couples who are married or plan to marry. In addition, ACF recently awarded up to \$4.5 million over five years to the National Council on Family Relations to manage, along with a number of partners, The Healthy Marriage Resource Center.¹⁸ Further, ACF’s Capitol Compassion Fund, the Administration’s initiative to help faith-based and community organizations increase their effectiveness, recently announced it will award nearly \$5 million to groups involved in “priority issues,” including healthy marriages.¹⁹

WHAT’S PREGNANCY PREVENTION GOT TO DO WITH MARRIAGE?

Marriage can mean better outcomes for children. According to available research, children growing up with their biological, married parents fare better in a number of ways compared to those growing up in a single-parent household. Growing up in a single-parent family roughly

doubles the risk that a child will drop out of school, have difficulty finding a job, or become a teen parent. About half of these effects appear to be attributable to the reduced income available to single parents, but the other half appears to be due to non-economic factors, such as less parental time and attention given to children.²⁰

Marriage establishes legal rights and responsibilities between couples and any children they may have together. Whether marriage itself influences child well-being can be understood by examining whether children living with cohabiting biological parents have different outcomes than those living with married biological parents. Unfortunately, there is limited research on children in cohabiting families and even less that distinguishes between children living with both biological parents and those living with one parent and that parent’s new partner. In addition, little of the research considers the age of the child, the family’s economic status, or the role of certain parental issues, such as psychological well-being. However, a new study has sought to disentangle these factors. The analysis found that, controlling for economic and parental resources, children (ages 6–11) with married biological parents share similar outcomes, in terms of behavior and emotional well-being, with those whose biological parents are cohabiting. However, children in the cohabiting families are less engaged in school. The reverse is true for adolescents: adolescents (ages 12–17) residing with their cohabiting, biological parents exhibit more behavioral and emotional problems on average than their counterparts in married families, but there is no difference in school engagement.²¹

Divorce can have problematic outcomes for children. This may reflect not only a loss of income but also the family stress before and after a divorce when parents are in conflict (about 30 to 40 percent of divorces among couples with children are preceded by chronic discord, and in these situations children do better when their parents divorce).²² As noted by some researchers, “transitions per se may be the riskiest factor for child development.”²³ Indeed, children in divorced single-parent families show poorer developmental outcomes than children in never-married households, once the effects of family income are controlled.²⁴

Remarriage does not necessarily mean better outcomes for children. Roughly half of all marriages are projected to end in divorce and 60 percent of these couples have children. Many of these parents remarry. Estimates suggest that about one-third of children today may live with step-parents before reaching adulthood. However, children in step-families face many of the same risks as children in single-parent households and fare no better, on average, than children in single-parent families.²⁵ They also tend to have more negative behavioral, health, and educational outcomes than children who grow up with married biological parents.

The effect sizes are small for some of these differences.²⁶ Step-parents face hurdles not only in negotiating relationships with children but also with strengthening the couple relationship, and sometimes these are simultaneous tasks. When an unwanted child is brought to the remarriage, such a marriage dissolves most frequently when compared to a remarriage without children or one with children who are all viewed as wanted.²⁷

These facts suggest that marriage, per se, is not necessarily what sets the stage for more positive child outcomes. If married parents divorce, or a parent remarries, outcomes are not as positive. What really sets the stage for the best child outcomes is a first marriage, then children, all in healthy relationships that last.

A range of policies could increase the rate of lasting first marriages.²⁸ An important consideration is how children (including their timing, spacing, and number) can influence getting and staying married and the related role of family planning and sexuality education.²⁹

Non-marital Childbearing Decreases the Likelihood of Ever Marrying

Women who bear a child without marrying *have a 40 percent lower likelihood of ever marrying*.³⁰ About one-third of all U.S. births are to unmarried women.³¹ Reducing the incidence of non-marital births is clearly an important strategy in increasing the likelihood of marriage.³²

For unmarried couples who are sexually active, contraception is necessary to avoid a non-marital pregnancy. Fully 90 percent of women 15–44 years of age have had premarital intercourse. Recent research indicates great strides in contraceptive use have been made, yet more needs to be done to increase its use. The National Center for Health Statistics reports that in 1980 only 43 percent of women (or their partners) used some method of contraception at first premarital intercourse; by 1999–2002, this rose to 79 percent. Much of this improvement is attributed to the use of condoms.³³ Despite the dramatic improvement, the data also reveal that about one out of every five such couples did not use contraception at first premarital intercourse.

For teenagers, the implications of the failure to use contraception at intercourse, including first intercourse, is notable. Girls who do not use birth control at first intercourse are about twice as likely to become teen mothers as teens who do use a method.³⁴ About 80 percent of all teen births are non-marital. Preventing teen births would reduce the likelihood of non-marital births and could improve the likelihood of marriage.

Mothers Who Marry Can Face Special Challenges

A return to the days when pregnant women married their partners, whether they were prepared for marriage or not, does not seem to be a viable or desirable long-term solution to premarital pregnancy. The key is to reduce unmarried childbearing in the first place.

Daniel Lichter (The Ohio State University)

Marriage as Public Policy

For those confronting a non-marital pregnancy, one option is a shotgun marriage. This would ensure the birth is marital but it might not ensure the marriage is long lasting. Shotgun marriages have declined in all age categories. Among pregnant teens, the marriage rate fell from 69 to 19 percent for whites and 36 to 7 percent for blacks, between the first half of the 1960s and the first half of the 1990s.³⁵

Marrying as a teen mother can improve immediate economic status, and teen marriages can sometimes be long lasting; however, marriage followed by divorce correlates with higher risks of poverty than never marrying.³⁶ And, those who marry younger are more likely to find themselves divorced. For instance, about one-half of older teen marriages (18 and 19 years of age) end in divorce within 15 years, compared to about one-third of marriages for women over age 20.³⁷

Young mothers who marry face other, immediate concerns. Married teen mothers are more likely to have a closely spaced second or subsequent birth, which is linked to worse economic and social outcomes for both the mother and her children. For example, a repeat birth and other factors may contribute to married teen mothers' lower likelihood of school return, compared to teen mothers who did not marry between conception and birth.

Having a child before marriage occurs in all income groups and at all ages but it is more common among couples with lower education. A study that divided the population into three educational tiers found that among couples of all ages who married in 1990, one-tenth of those in the top education category had their first child before marriage, compared with one-third of those in the bottom education category. Further, for more than half of the couples in the bottom education category, the child in the family preceded the marriage by a number of years. With this amount of time between childbirth and marriage, there is an increased likelihood that the father of the child is not the spouse of the wife. This contributes to a more complex family dynamic.³⁸

Teen Pregnancy Prevention Reduces Single Parent Households and Poverty

As previously noted, Congressional findings in the 1996 law identify non-marital births as a crisis for the United States and a root cause of poverty and single parenting. Whether one agrees or disagrees with the Congressional characterization of non-marital births, it is clear that a reduction in teen births can significantly address both poverty and single parenting.

Since 1991 the U.S. teen birth rate has declined by 30 percent. A recent Congressional study found that the drop in the teen birth rate in the 1990s accounts for key improvements in well-being, particularly among young children (under age 6). Between 1995 and 2002, the teen birth rate decline of the 1990s led to:

- 26 percent of the decrease in the number of young children living in poverty; and
- 80 percent of the decline in the number of young children living with a single mother.

According to the analysts, “the downward trend in teen birth rates predates welfare reform and any major federal funding of abstinence education initiatives by at least five years, and cannot be attributed to those efforts. These findings suggest that lawmakers should identify and pursue policies and programs that effectively lower teen birth rates in order to reduce child poverty and single-parent households.”³⁹

Another reason to pursue policies that lower the teen birth rate is to help lower family size, and in turn, family poverty. The poverty rate for a family with two children is 12 percent; the rate more than doubles for families with four children. If a woman starts out as a teen parent, she runs a greater risk of having more children than if she delays parenting.⁴⁰

WHAT SHOULD HAPPEN IN REAUTHORIZATION?

The research informs us that with respect to child outcomes it is not marriage as much as lasting first marriages (and perhaps, to some degree, lasting cohabitation) that best sets the stage. The sequencing of birth and marriage, birth and remarriage, the spacing of birth, and the number of births can all contribute to the likelihood of lasting marriages. Thus, fertility and family planning should go hand-in-hand with the promotion of lasting relationships.

Reauthorization represents a chance to consider these findings and to identify gaps in knowledge. CLASP supports appropriate investments in comprehensive sexuality education and in healthy, stable couples and marriage policies. This includes some level of investment to study what has not been assessed; it also means ensuring that we

utilize evidence-based research to inform funding and policy decisions.

If PRWORA is reauthorized in 2005, it would happen in the context of a budget reality different from when the bill came up for reauthorization in 2002.⁴¹ For both abstinence and marriage promotion, CLASP believes funding levels are too high⁴² in light of the restrictions on the kinds of activities that can be funded. Further, with respect to marriage promotion, the high funding level does not take into account the limited field capacity to design and implement effective programs.

Thus, in the reauthorization of abstinence-unless-married education, CLASP recommends that Congress:

- Allow states to define abstinence education under section 510 so that it can include education about contraception for those who may become sexually active. Under this approach, states could choose to implement the current definition or they could choose to reflect the concerns raised by the virginity pledge research and improve awareness of the benefits of contraception.
- Ensure that abstinence education be medically accurate and not perpetuate stereotypes.
- Require a report to Congress on a comparative evaluation of an abstinence-unless-married education program to a similar abstinence program that includes education about contraception.
- Freeze future funding of SPRANS grants unless results of funded projects or other research can demonstrate that abstinence-unless-married programs can provide benefits without health risks; this action is independent of reauthorization but could occur in 2005.

For any new set-aside of TANF funds for marriage-related activities that may occur in reauthorization, CLASP has developed a set of detailed suggestions⁴³ and broadly recommends that Congress:

- Reduce the amount set aside for such activities.⁴⁴
- Allow the funds that are made available to be spent on a greater range of activities that could positively influence child outcomes through strengthening couples' relationships and enhancing marriage. This would be in keeping with a “Marriage-Plus” approach (see sidebar). A more flexible set of allowable activities would better incorporate fertility issues, as well as other “marriage-plus” issues for unmarried couples with children such as parent cooperation and parenting skills. Among the possible expanded activities:
 - teen pregnancy prevention programs, those that incorporate and those that do not include specific marriage education components;

- family planning counseling, those that incorporate and those that do not include specific marriage education components; and
 - fatherhood services, such as employment and training and parenting, that better enable fathers, inside and outside of marriage, to support their children.
- Ensure that participation in any marriage promotion activity is wholly voluntary.
 - Ensure that grantees are trained and collaborate closely with domestic violence programs to assist and protect domestic violence victims.

Congress may take action in 2005 on reauthorization. However, there is little that Congress has done to date on abstinence education or in marriage promotion that adequately recognizes the role of fertility—except to decry non-marital births. Fertility matters. The presence, prospect, or plan for a child can influence decisions about whether or not to marry. Children can also influence the couple or marriage relationship. As Congress seeks to promote marriage, it should realize that helping couples address fertility is a vital piece of that effort.

References

1. M.D. Bramlett & W.D. Mosher. "Cohabitation, Marriage, Divorce, and Remarriage in the United States," *Vital Health Statistics*, 23.22 (July 2002):11,17, accessed online at <http://www.cdc.gov/nchs/data/series/sr_23/sr23_022.pdf>.
2. *Ibid.*, 103.
3. *Ibid.*, 13-14.
4. R. Haskins, & C. Statuto Bevan, *Implementing the Abstinence Education Provision of the Welfare Reform Legislation*, Presented at American Enterprise Institute Conference on Evaluating Sex Education and Abstinence Programs, Washington DC, October 1996.
5. States may choose which part of the definition to focus on but must not contradict any of the eight points.
6. N.W. Nowak, M.E. Fishman, & M.E. Farrell, *State Experience And Perspectives On Reducing Out-Of-Wedlock Births Final Report*. Prepared for the Assistant Secretary for Planning and Evaluation Department of Health and Human Services. (Washington, D.C: The Lewin Group, Inc., February 2003), 11, accessed online at <<http://www.lewin.com/NR/rdonlyres/eri3nm6iwk5vmxpaai3xt4qafbzz3tgfig5auv5l5tbvble6y4tnnp75xt6xriuejythr3wua3ihwp/NonmaritalBirthsFinal.pdf>>
7. Special Projects of Regional and National Significance (SPRANS) is not new; the abstinence grants called Community-Based Abstinence Education (SPRANS-CBAE) are a new component.
8. Arizona, Florida, Louisiana, Michigan, Oklahoma, Utah, and Virginia are "high-activity" states, which tap a variety of funding sources. T. Ooms, S. Bouchet & M. Parke, *Beyond Marriage Licenses: Efforts in States to Strengthen Marriage and Two-Parent Families. A State-by-State Snapshot*. (Washington, DC: CLASP, April 2004).
9. In Louisiana, in 2002 and 2003 additional funds totaling \$3.8 million were appropriated to promote responsible fatherhood. Ooms et al., 2004.
10. AZ:\$1.5 m.; LA: \$1.4 m.; MI: \$250,000; OK: \$10 m.; UT: \$600,000;VA: \$400,000 and \$4 m.
11. The spending represents an increase of \$623 million over the previous year. The report states that "most pregnancy prevention efforts have focused on teenagers. State approaches to preventing teen pregnancy can be divided into several categories: education curricula on sex, abstinence, and relationships; reproductive health services; youth development programs; media campaigns; efforts to prevent repeat teen births; and multiple component interventions. State initiatives directed toward family formation tend to focus on involvement of non-custodial parents in their children's lives. Other initiatives include parenting education, family crisis counseling, marriage counseling, mentoring, and eliminating eligibility criteria that discourage two-parent families from applying for assistance." *Temporary Assistance for Needy Families Program (TANF) Sixth Annual Report to Congress. Expenditures and Balances*. (Washington, DC: U.S. Department of Health and Human Services, November 2004), accessed online at <<http://www.acf.hhs.gov/programs/ofa/annualreport6/chapter02/chap02.htm#other>>.
12. Efforts to reduce the disincentives to marriage in means-tested programs (such as welfare) could get funded but only if undertaken as a part of an explicit marriage promotion program. Marriage education and skills programs could include job and career advancement. M. Parke, *Marriage-Related Provisions in Welfare Reauthorization Proposals: A Summary*. (Washington, DC: CLASP, 1 March 2004), accessed online at <http://www.clasp.org/publications/marr_prov_upd.pdf>.
13. *Ibid.*; See also V. Turetsky, *Side-by-Side Comparison of Marriage and Fatherhood Provisions in H.R. 4 Passed by Senate Finance Committee and House* (Washington, DC: CLASP, 7 October 2004), accessed online at <http://www.clasp.org/publications/marriage_sbs_100604.pdf>.
14. Turetsky, 2004.
15. On January 4, 2005 H.R. 240, the Personal Responsibility, Work, and Family Promotion Act of 2005, was introduced. It contains marriage provisions that are nearly identical to those that passed the House in 2003. In the Senate, the Finance Committee approved the Personal Responsibility and Individual Development for Everyone (PRIDE) bill on March 7.

16. C. Hulse, "House Backs Bill to Limit Power of Judges: Measure Would Prevent Moves to Recognize Gay Marriages" *The New York Times*, 23 July 2004.
17. T. Ooms, et al., 2004. See also, *Marriage Promotion: What The Administration Is Already Doing* (Washington, DC: Now Legal Defense and Education Fund, January 2005), accessed online at <<http://www.legalmomentum.org/issues/wel/WhatAlready.pdf>>.
18. Federal Register, April 14, 2004, Vol. 69, No. 72. Notices. Administration for Children and Families, Office of Family Assistance Funding Opportunity. Title: Healthy Marriage Resource Center Announcement. Type: Competitive Grant-Initial Funding. Opportunity Number: HHS-2004-ACF-OFA-FM-0001. CFDA Number: 93.647. Accessed online at <<http://www.acf.hhs.gov/grants/open/HHS-2004-ACF-OFA-FM-0001.html>>.
19. Administration for Children and Families Press Office, "President Announces \$43 Million in Grants from Compassion Capital Fund: Faith and Community-Based Groups to Help Youth, Couples, Needy," Press Release published on 3 August 2004, accessed online at <<http://www.hhs.gov/news/press/2004pres/20040803b.html>>.
20. T. Ooms, August 2002. *Marriage and Government: Strange Bedfellows?* CLASP Couples and Marriage Issue Policy Brief No.1. (Washington, DC: CLASP, August 2002), accessed online at <http://www.clasp.org/publications/Marriage_Brief1.pdf>.
21. About 5 percent of children currently reside in cohabiting households; the 3.5 million children living with cohabiting parents in 1998 represents a 50 percent increase since 1990. S. L. Brown, "Family Structure and Child Well-Being: The Significance of Parental Cohabitation," *Journal of Marriage and Family* 66 (May 2004):351-357.
22. M. Parke, *Are Married Parents Really Better for Children? What Research Says About the Effects of Family Structure on Child Well-Being*, CLASP Couples and Marriage Series Policy Brief No. 3, (Washington, DC: CLASP, May 2003). Citing Paul Amato "The Consequences of Divorce for Adults and Children," *Journal of Marriage and the Family* 62.2 (2000): 1269-1287.
23. H.J. Bachman, R. Levine Coley & P.L. Chase-Lansdale, *Marriage or Partnering: Effects of Cohabitation and Family Structure Changes on Early Adolescent Well-Being*. Presented at National Poverty Center Marriage and Family Formation Among Low-Income Couples: What Do We Know From Research? Georgetown University Conference Center, Washington, DC, September 2003, 7.
24. Bachman, et al., 2003.
25. A. Cherlin, citing 1994 study *Stepfamilies in the United States: A Reconsideration* "Assessing the Adequacy of Data on Children and Families for Studying Welfare and Poverty Issues" presented at Counting Couples: Improving Marriage, Divorce, Remarriage, and Cohabitation Data in the Federal Statistical System Conference, 14 December 2001, accessed online at <<http://www.childstats.gov/countingcouples/research/andrew.asp>>.
26. Parke, 2003.
27. After 10 years of remarriage, the probability of disruption is 32 percent for women with no children at remarriage. For women with children, but none of whom were reported as unwanted, the probability is 40 percent, and for women with children, any of whom were reported as unwanted, the probability is 44 percent. Bramlett, & Mosher, 2002.
28. For example, lasting marriages may be influenced by such factors as the availability of child care, non-traditional work hours, or income instability. Child care subsidies, time-off or higher wages for non-traditional work hours, and improved unemployment insurance schemes are among the related policies that could help marriage.
29. C. Dailard, *Marriage Is No Immunity From Problems with Planning Pregnancies: The Guttmacher Report on Public Policy*. (New York: Alan Guttmacher Institute, May 2003), accessed online at <<http://www.guttmacher.org/pubs/tgr/06/2/gr060210.pdf>>.
30. D.T. Lichter, & D. Roempke Graefe, "Finding a Mate? The Marital and Cohabitation Histories of Unwed Mothers," in Lawrence Wu and Barbara Wolfe (Eds.). *Out of Wedlock: Trends, Causes and Consequences of Non-marital Fertility* (New York: Russell Sage Foundation, 2001).
31. 34.6 percent in 2003. B.E. Hamilton, J.A. Martin, & P.D. Sutton "Births: Preliminary Data for 2003," *National Vital Statistics Report*, 53.9 (23 November 2004), accessed online at <http://www.cdc.gov/nchs/data/nvsr/nvsr53/nvsr53_09.pdf>.
32. Emergency contraception also helps prevent unintended births. New research demonstrates that ready access to emergency contraception does not lead to increased risky behaviors, even among teens and young women. "Women With Easy Access to Emergency Contraception Not More Likely To Engage in Unprotected Sex, Study Says," *Kaiser Daily Reproductive Health Reports*, 5 January 2005, accessed online at <http://www.kaiser-network.org/daily_reports/rep_index.cfm?DR_ID=27481>.
33. While the improvements with respect to first-time sex are impressive, there is a new concern that contraceptive use may be declining more generally. It is difficult to know at this point whether this is an aberration or a trend. The researchers found that the percentage of those women ages 20 and older who were sexually active in the three months prior to the interview but who did not use contraceptives rose from 5.2 percent in 1995 to 7.4 percent in 2002. W.D. Mosher, et al., *Use of Contraception and Use of Family Planning Services in the United States: 1982-2002*, (Washington, DC: Centers for Disease Control and Prevention, National Center for Health Statistics, Division of Vital Statistics, 10 December 2004), accessed online at <<http://www.cdc.gov/nchs/data/ad/ad350.pdf>>.
34. Bramlett & Mosher, 2002.

35. N. Seiler, *Is Teen Marriage a Solution?* (Washington, DC: CLASP, April 2002), accessed online at <<http://www.clasp.org/publications/teenmarriage02-20.pdf>>; *Teen Pregnancy Prevention: A Key Strategy in The Family Formation Debate*, (Washington, DC: CLASP, 2001), accessed online at <http://clasp.vmtdev.com/publications/teen_pregnancy_a_key_strategy.pdf>.
36. The data on poverty among divorced and never-married mothers cover unwed mothers of all ages; it has not been separately calculated for teen mothers. Seiler, 2002.
37. Seiler, 2002.
38. D. J. Fein, *Married and Poor: Basic Characteristics of Economically Disadvantaged Married Couples in the U.S.* Working Paper SHM-01 Supporting Healthy Marriage, Evaluation Abt Associates. New York: MDRC, accessed online at <<http://www.mdrc.org/publications/393/workpaper.pdf>>.
39. *Steep Decline In Teen Birth Rate Significantly Responsible For Reducing Child Poverty And Single-Parent Families*. Issue Brief. (Washington, DC: U.S. House of Representatives Ways and Means Democrats, 23 April 2004), accessed online at <http://www.house.gov/waysandmeans_democrats/welfare/teen_birth1.pdf>.
40. The 1999 rate for four children was over 29 percent. Center on Budget and Policy Priorities unpublished data.
41. When the Administration proposed a set-aside of TANF funds, the year was 2002, the budget had been in surplus and was entering the era of new fiscal constraints. At the close of 2004, we face the new reality: growing deficits. The deficit in 2004 totaled \$413 billion—\$36 billion higher than the 2003 deficit of \$377 billion.
42. The Administration, in past budgets, has emphasized performance and accountability and has asserted that “the assumption that more government spending gets more results is not generally true and is seldom tested.” Fiscal Year 2003 Budget of the U.S. Government. Office of Management and Budget U. S. GPO 2002, 43.
43. J. Levin-Epstein, et al., *Spending Too Much, Accomplishing Too Little: An Analysis of the Family Formation Provisions of H.R. 4737 and Recommendations for Change*, (Washington, DC: CLASP, 11 June 2002), accessed online at <http://www.clasp.org/publications/HR_4737_family_form_analysis_061102.pdf>; N. Patel & T. Turetsky, *Safety in the Safety Net: TANF Reauthorization Provisions Relevant to Domestic Violence* (Washington, DC: CLASP, 22 October 2004), accessed online at <http://www.clasp.org/publications/DV_TANF.pdf>; J. Levin-Epstein, et al., *Comments to the U.S. Department of Health and Human Services Regarding Teen Pregnancy Prevention and Teens Parents Provisions in the Temporary Assistance for Needy Families (TANF) Block Grant*. (Washington, DC: CLASP, 30 November 2001), accessed online at <http://www.clasp.org/publications/comments_regarding_teen_pregnancy.pdf>.
44. Levin-Epstein, et al., 2002.

SIECUS ANNOUNCES THE RELEASE OF:

**SIECUS STATE PROFILES:
A PORTRAIT OF SEXUALITY EDUCATION AND
ABSTINENCE-ONLY-UNTIL-MARRIAGE PROGRAMS IN THE STATES
FISCAL YEAR 2004 EDITION**

This is the second year that SIECUS has produced the *SIECUS State Profiles*, the most comprehensive document of its kind detailing sexuality education and abstinence-only-until-marriage programs in states and communities across the country. The second edition contains information on each state’s law(s), currently proposed legislation, and recent events related to sexuality education. It goes on to detail the amount of money the state and other state-based entities

receive for abstinence-only-until-marriage programs and how these funds are used.

We encourage colleague organizations and supporters of sexuality education to use these *State Profiles* in advocacy efforts geared toward legislators and policymakers on the national, state, and local levels.

View the *SIECUS State Profiles* online at www.siecus.org.

SAYING "I DON'T"

Jennifer Gaboury

New York, NY

When I was a sophomore in college, I realized that marriage was not for me. I can recall the moment when this idea crystallized: I was having a conversation with a friend who was struggling with how to come out to her family. She was upset, anticipating her mother's disappointment that her only daughter would not one day get (legally, properly) married in a gown and a church. I remember feeling that it would be wrong for me to marry when she could not do so, like sitting at a segregated lunch counter.

Last year, my partner Jacob and I chose to hold a commitment ceremony to celebrate our partnership before friends and family, rather than join an exclusively heterosexual society. When I talk about our decision, I'm frequently met with a befuddled look. After fumbling around a bit, I sometimes offer this scenario to make my point: "If white-supremacists seized your state legislature and interracial marriage was suddenly forbidden, assuming you could still get married, would you?" I have watched friends squirm at this question. Some respond, "Well, that's different." In most cases, I think they know better.

I've often wondered why so many progressive couples of my generation choose to enter into a union reserved for straights only. At the height of media frenzy over the *Lawrence v. Texas* sodomy case, Michael Kinsley, then-editor of *Slate.com* and a poster boy for moderate Democrats, argued that state recognition of marriage should be abolished allowing it to become a personal affair that doesn't need the seal of approval from government. If Kinsley gets it, why don't so many bona fide leftists?

MARRIAGE IS DISCRIMINATORY

Campaigns for gay marriage reveal an array of intersecting ideas, among them the argument that straight people should boycott marriage as discriminatory. Although I still might be alone in this view at most dinner parties, I feel increasingly less isolated in the world as more people discuss the idea that civil marriage ought to be rejected.

The organization Boycott Marriage sprang up in 2003, calling for straight couples to refuse to take vows as long as their gay and lesbian brothers and sisters could not. Several years ago, I became active with Alternatives to Marriage

Project, an organization that advocates for fairness and equality for unmarried folks.¹ And all one has to do is look at the generational shifts in polling data across age groups on the issue of gay rights to be able to predict the future.² Macalester College student Brandi Sperry put it this way in the student paper *The Mac Weekly*:

Straight supporters of gay marriage must do something to show their support. The way to do this is not by pinning a button to your messenger bag. It is by refusing to show your support for the institution of marriage as it exists in contemporary U.S. society. If you want to have a big wedding and declare your undying love, devotion and commitment to another person, go ahead. Just don't actually get married. That's what your gay friends will have to do as things stand now. Make yourself experience the inconvenience of having no legal connection to the person with whom you are trying to share your life. Declare loudly to everyone who will listen what you are doing. Get other people to do the same thing. Make the government hear you, make them know that you will not stand to be ruled by prejudicial ideology and you will not have oppressive morality be a part of your constitution. Let them know that if marriage is going to stay an exclusive convention, like a nationwide no-queers-allowed country club, then you don't want to have any part of it.³

Even if few of Sperry's peers are willing to refuse marriage, equal rights for gay people are increasingly considered obvious among college students. It's only a matter of time until same sex marriage is legalized.

BEYOND SAME-SEX MARRIAGE RIGHTS

When that day comes, however, I still won't be applying for a marriage license. At the heart of the matter, I don't believe that the state should have the power to say who is and who is not a proper family and distribute public benefits accordingly. To insist that there is one proper shape that forms the building blocks of society, and anything that differs is, then,

a deviation from the norm defies the heterogeneity of actual families as they have always existed. Despite the pro-family rhetoric around saving the institution of marriage from lesbian infidels or hypersexualized moral decay, it is a profoundly anti-family idea to insist that all families ought to be composed of two parents—one male, one female—sanctioned by law, plus their offspring.

A decade ago, I met a woman named Sylvie who had, with her sister, inherited a large, rambling house from their parents in Westchester, New York. It had been in the family for generations and the sisters lived there on and off, through marriages and divorces, and while caring for their parents and a great aunt. At the time, both were content to be single. The sisters decided to raise their five children together; Sylvie earned a good living and her sister worked at home, caring for their kids. While Sylvie’s own two children enjoyed the benefits of her health insurance, they had to purchase coverage for her sister, niece, and nephews, as they were not eligible for coverage on her family plan. It is this sort of arrangement that highlights the problems of narrowly defining families and tying benefits such as health insurance to marriage.

Critics have warned that should the institution of marriage be amended, we would slide down a slippery slope that would destroy the very structure of family and society. In one way, this defensive posture is reminiscent of state bans on interracial marriage. It was only 38 years ago, following the Supreme Court decision in *Loving v. Virginia*, that states were forced to abandon the “corruption of blood” rationale against interracial marriage, premised on the argument that if God intended the races to mix, he wouldn’t have placed them on separate continents.

The state should support two (or more) women raising their children together the same way it does for married, heterosexual couples. The status of their relationship, whether sisters, friends or lovers, should not make any difference to the government. While the state does have an obligation to make sure that children are not neglected or abused, in many cases parents fashion such family arrangements specifically to improve their children’s care and stability. Their lives should not be considered cheap imitations of an original form.⁴

MUST MARRIAGE BE A CIVIL MATTER?

While marriage has been, for millennia, recognized by an often intermingled set of religious and state authorities, there is nothing about marriage that requires it to be a civil matter in its present incarnation. In the name of separation between church and state, it has been argued that all such relations could be designated “civil unions” while the term “marriage” would signify a strictly religious affair. Legal scholar Martha Fineman has made this case, arguing that state-sponsored marriage ought to be replaced with contracts between two or more individuals whose relations would be governed on their own legally binding needs and desires.⁵

Criticisms of marriage as a civil institution are a tricky thing given the political environment in the United States. I feel about marriage the same way I do about the military: It isn’t an institution I wish to join, but if it exists, it ought to be open to everyone. Following November’s election, in which 11 states voted to define marriage as between “one man and one woman,” advocating for the protection of domestic partnership rights takes on a defensive tone. In no

Oprah Winfrey: ...I remember when you got married, you said you really didn’t want to be married or didn’t want to get married.

Sharon Stone: Well, you know, I’m kind of a hippie.

Winfrey: Yeah.

Stone: So I never was into that whole like government gets your like...

Winfrey: Yeah.

Stone: ...`Hello, government, I’m signing up for this with this person and aren’t you glad?’

Winfrey: Yeah. Yeah.

Stone: It wasn’t my—I never got that as the—that makes you committed to a person.

Winfrey: Then why did you do it?

Stone: I think you’re committed in your heart.

Winfrey: I think you either are or not.

Stone: Right.

Winfrey: Yes.

Stone: I mean...

Winfrey: And no piece of paper can...

Stone: And I know you’re into that with Stedman.

Winfrey: Yes!

Stone: It’s like you’re...

Winfrey: You’re talking to the choir leader. Yeah.

Stone: They’re either—it’s either you commit to that person innately...

Winfrey: Yes.

Stone: ...or you don’t.

Winfrey: And no piece of paper can make it otherwise.

Stone: Right.

Winfrey: Yeah.

— The Oprah Winfrey Show
May 27, 2004

way should these efforts be misconstrued as a compromise—the creation of legally inferior “marriage lite.” Activists have long argued that full civil marriage must be granted to gay and lesbian couples to prevent the development of a separate and inevitably unequal parallel track in the law.⁶

When gay marriage is realized, many couples will, of course, opt not to marry. The argument against embracing marriage as a conservatizing force is as old as the idea of gay liberation itself. Judith Levine put it this way in *The Village Voice*:

But marriage—forget the ‘gay’ for a moment—is intrinsically conservative. It does not just normalize, it requires normality as the ticket in. Assimilating another ‘virtually normal’ constituency, namely monogamous, long-term, homosexual couples, marriage pushes the queerer queers of all sexual persuasions—drag queens, club-crawlers, polyamorists, even ordinary single mothers or teenage lovers—further to the margins. “Marriage sanctifies some couples at the expense of others,” wrote cultural critic Michael Warner. “It is selective legitimacy.”⁷

At the same time, it’s perfectly understandable why many queer couples would desire marriage—to achieve the mark of normality that they’ve been denied. Andrew Sullivan’s desire to be legally wed is perfectly consistent with the rest of his conservative politics. (Unless you think that the true conservative position would be to get “big government” out of couplehood.) Sullivan does not want to be a sexual radical or a member of a so-called alternative family. He wants to be a husband.⁸

The notion of couples “making it legal” goes beyond access to resources to the central issue of recognition: to provide a forum for the acknowledgement by others of one’s declaration of love to another and the forging of a new family. At most weddings, guests don’t witness the state-sponsored, bureaucratic moment where the license is signed. So what, then, makes the couple legitimate? Marriage has always constituted, as scholars like Priscilla Yamin have argued, a form of civic membership.⁹

This raises the question of what creates and constitutes commitment—what is the stuff that binds people together? Does the law produce this relation—the formal recognition granted by external authority—which then garners legitimacy? Or is one’s status as married the reflection of existing bonds? Is some measure of togetherness fashioned in the ceremony of putting on expensive attire and standing before one’s family and friends? Does this relation already exist and the ceremony is the excuse for the acquisition of flatware? Or is it, perhaps, love?

Jacob and I decided to have a commitment ceremony because the recognition—the celebration and formal

intermingling of our families and friends—mattered to both of us. And as our big day neared, all the fuss about us not getting married felt ridiculous. We spent thousands of our parents’ dollars on a party for 150 family and friends. We registered for gifts and at last have a good set of knives and matching flatware. At the reception, people confessed that they hadn’t known what to expect but that the event seemed so, well, normal.

IS IT MARRIAGE THAT PROVIDES THE BENEFITS?

Jacob and I also opted to register as domestic partners, even though this tie to the city of New York makes me uncomfortable. Sometimes I lay in bed at night, thinking about that piece of paper and how it represents the very thing I wanted to avoid when we decided on a commitment ceremony. I have had to stop myself from going down to City Hall to start the process of undoing it, even though I may need some of the benefits it provides. Recently, I’ve considered changing jobs to join a not-for-profit that is not currently able to offer health insurance. As domestic partners, I qualify for Jacob’s health insurance plan. But as our couplehood is not recognized by the federal government, Jacob would be required to pay tax on any benefits I receive. As useful as domestic partnerships have been, carving out limited protections in some states, they fall short of providing the benefits that married couples enjoy. When we submitted our application at City Hall, Jacob noticed that our certificate cost \$20, while a marriage license cost \$30. It would be nice to enjoy two-thirds of the rights.

Nonetheless, through a patchwork of paper, we have sorted out some of the most critical rights that would have been granted to us had we wed, such as power of attorney for healthcare and financial matters. Someday, when student loan companies no longer have a claim on all of our assets, we’ll draw up wills.

According to the U.S. General Accounting Office, there are more than 1,000 legal benefits and protections bestowed upon couples when they marry, rules that effect Social Security, veterans’ benefits, Medicaid, pensions, estate taxes, family leave, and immigration. When discussing marriage, some have lectured us by listing the legal perks of marriage which we are now denied, as if we weren’t precisely aware of what was being offered to some and denied to others. I have been drawn into prolonged conversations about how we will handle our taxes, health insurance, and hospital visitation rights. But my favorite reason that people cite for marriage was a vague concern “for the children.”

While the last legal vestiges of illegitimacy were swept away three decades ago with the “laws of uniformity,” its stigma is stronger than I would have suspected among progressives. As the identification of a biological father on a

birth certificate is good enough for the state to enforce laws against “deadbeat dads,” I was surprised by the number of people who asked me if Jacob would have to adopt our potential, future children to solidify his legal relationship with them.

Second wave feminism fashioned a critique of marriage based largely upon the rejection of traditional gender roles that accompanied becoming man and wife. Drawing upon the example of radical women who preceded them, such as Simone de Beauvoir and Emma Goldman, feminists like Gloria Steinem refused an institution that trapped wives—in particular—in an outmoded contract, calling it “an arrangement for one and a half people.”¹⁰ Steinem’s decision to get married in 2000, which continues to generate comment, has been cited as both a hypocritical betrayal and a sign of feminist victory. Some suggest that it signals success, and lets us know that times have changed and what it means to be married is not the same as it once was. A generation of feminists just coming of marriage age has argued for and attested to its transformation. Lisa Miya-Jervis, co-editor of the feminist magazine *Bitch*, assembled a collection of essays called *Young Wives’ Tales: New Adventures in Love and Partnership*, featuring the voices of those seeking to alter marriage socially. Websites like indiebride.com, or the popular manual *The Anti-Bride Guide: Tying The Knot Outside The Box*, insist that women should not have to choose between a big, white poofy dress and their feminist credentials.¹¹ For those who study long-term cohabitation, it is the challenging of traditional gender roles that people often cite when arguing against marriage.¹² What these debates have tended to ignore is the relation to the marriage certificate.

When people define marriage exclusively, as a relation of one man and one woman, it’s clear what they are defending. They—a group that spans the political spectrum from George W. Bush to the late Paul Wellstone—are using religious tradition to inform public policy. This position combines a breach of the separation of church and state with sometimes unvarnished homophobia, in the name of defending traditional marriage. Gay-friendly defenders of civil marriage tend to rally around the stability of households and the connection of children to their (biological) fathers. It has become common in sociological literature for marriage and cohabitation to be studied, side by side, and compared in different kinds of cost-benefit analyses. Conservative critics, like Stanley Kurtz of the Hoover Institution, attribute plummeting rates of marriage in Scandinavian countries to their recognition of civil unions and cohabitation. He argues that legal recognition of domestic partnerships in the United States would lead to fewer marriages, which would then mean a weakened commitment between parents, which would in turn produce high poverty rates among children

raised in single-parent households. Others, like Barbara Dafoe Whitehead, of the National Marriage Project at Rutgers University, emphasize the positive benefits of marriage, like increased savings rates and better health, when arguing that these arrangements, unique to marriage, ought to be available to gay and lesbian couples.

Marriage does produce benefits. We are organized financially and culturally around the institution, so why should it be a surprise that there are positive attributes associated with it? It should not, then, be formally compared to long-term cohabitation, which is not recognized and fostered in the same way. Absent from much of this literature is the question of what ought to be? Is marriage as it is currently legally and socially defined the best way that we can achieve or imagine these results? Why doesn’t cohabitation produce these same results?

In fact, it is access to resources that often drives couples’ decisions to marry. Isn’t the real point of the Scandinavian cases that people need not choose marriage because they already have things like health insurance regardless of marital status? The decision to marry can be a choice more freely made by U.S. citizens when access to health insurance is universally guaranteed.

A CONSCIOUS CHOICE

While I’d like to see folks opt out of civil marriage, obviously many people are dependent upon the protections it provides. Jacob and I were lucky to live in one of the 70 or so municipalities that not only recognizes domestic partnership, but extends this option to heterosexual couples. In some places, like Seattle, only gay and lesbian couples qualify for domestic partnerships. I know that our choice is a luxury as the penalties we face are not severe. If one of us were not from the United States, we would be compelled by immigration law to marry in order to stay together. Despite the same politics on this issue, my sister, whose access to healthcare is more precarious in her profession, decided to marry.

Her decision reminds me that people are not always opting freely to marry—they are doing so for the goods. My refusal to marry has everything to do with how I feel about issues like access to health insurance and the institution of a fair tax code—matters that should not depend upon the status of one’s romantic relationships.

I believe that intimate relations should be freely chosen, without social and economic coercion. Life outside of marriage emphasizes that a romantic relation is, ultimately, a conscious choice that is renewed each day you are together.

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References

1. To learn more about Alternatives to Marriage Project visit, <http://www.unmarried.org>.
2. See, for example, the data on attitudes toward gay marriage in *Religious Beliefs Underpin Opposition to Homosexuality* (Washington, DC: Pew Forum on Religion and Public Life, November 2003), accessed 16 February 2005, < <http://pewforum.org/publications/surveys/religion-homosexuality.pdf>>.
3. Brandi Sperry, *The Mac Weekly*, Volume 97, Number 11, 5 December 2003.
4. Judith Levine points out that this is not the case in Vermont which allows civil unions for “non-sexual pairs.” To counter the argument that lesbian and gay couples would be awarded “special rights” denied to people like “maiden aunts,” the authors created a class of “less extensive class of mutual rights and responsibilities for cohabiting kin, called ‘reciprocal benefits.’” See, “Stop the Wedding! Why Gay Marriage Isn’t Radical Enough,” *Village Voice*, 23–29 July 2003, accessed 16 February 2005, <<http://www.villagevoice.com/news/0330,levine,45704,1.html>>.
5. Martha Fineman, *The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies*, (New York: Routledge, 1995).
6. This argument has also been made in human rights terms. See, for example, *Non-Discrimination in Civil Marriage: Perspectives from International Human Rights Law and Practice, A Human Rights Watch Briefing Paper* (New York: HRW, 2004), accessed 16 February 2005, <<http://hrw.org/backgroundunder/lgbt/civil-marriage.htm>>.
7. Levine, 2003.
8. Andrew Sullivan, *Homosexuality*, andrewsullivan.com, accessed 28 February 2005, <www.andrewsullivan.com/homosexuality.php>.
9. Priscilla Yamin, “Nuptial Nation: Marriage and the Politics of Civic Membership in the United States,” Doctoral Dissertation, New School University, 2003.
10. Melissa Denes, “Feminism, It’s Hardly Begun,” *The Guardian*, 17 January 2005, accessed 16 February 2005, <<http://www.guardian.co.uk/g2/story/0,3604,1391841,00.html>>
11. See: <http://www.indiebride.com/>; Carolyn Gerin and Kathleen Huges, *The Anti-Bride Guide: Tying The Knot Outside The Box*, (New York: Chronicle Books, 2001).
12. Vivienne Elizabeth, “Cohabitation, Marriage and the Unruly Consequences of Difference,” *Gender and Society* 14.1 (February 2000): 87–110.

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