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To be Acknowledged as Citizens

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To Be Acknowledged As Citizens

By

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Thesis

Submitted to the Department of Women's and Gender Studies

Eastern Michigan University

in partial fulfillment of the requirements

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MASTERS IN LIBERAL STUDIES

Women's and Gender Studies

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November 15, 2006

Ypsilanti, Michigan

DEDICATION

This paper is dedicated to my parents, Sue and Tony Troia. Their unending love and sacrifice is the cornerstone to my success.

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I would like to give special thanks to my sister Krystle, Lindsay Fisher, and Rae Stumpf for all of the moral support they have provided me during this process.

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ABSTRACT

This paper takes another look at the displacement of lesbians and gays from civic society by being prohibited from accessing marriage rights. First, certain events in anti-gay discrimination and marriage history that contributed to the second-class citizenship of lesbians and gays are reviewed. Second, a look at how the second-class citizenship is unique to lesbians and gays is examined. Finally, this paper looks at the marriage, fatherhood, and faith-based initiatives under welfare reform and how they reinforce heterosexual marriage and family in American society.

After extensive research, I have found that the roles of the initiatives under welfare reform have in defining marriage and family had been overlooked. Welfare initiatives affect individual state policies that determine services like adoption that many lesbians and gays utilize. Therefore, a closer look at the role of welfare initiatives on the definition of marriage and family is needed by lesbian and gay organizations.

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Introduction

Extending marriage rights to same-sex couples is a controversial debate in American society. Massachusetts, the first state to grant marriage rights to lesbians and gays, is an important milestone in the battle for same-sex marriage rights.¹ Even though it was a state court ruling, it fueled a backlash against same-sex marriages nationwide. This resulted in referendums seeking to adopt state constitutional amendments banning same-sex marriage and potential changes to the Federal Constitution. It also failed to be influential enough to sway the decisions of New York and Washington State courts as they ruled against same-sex marriage rights. But it is important to mention that this backlash has not fomented reactionary politics in all states. A recent ruling from a New Jersey court came to a similar conclusion as Massachusetts did in 2006.² This ruling held that lesbian and gay couples were entitled to the same rights and protections as married heterosexual couples under New Jersey law. However, unlike the Massachusetts ruling, the New Jersey court failed to require that the unions of same-sex couples be legally recognized as “marriage.”

Discrimination against lesbians and gays was historically and continues to be a systematic process and not a series of random acts (Chauncey 5-7). Fifty years ago,

¹ Hillary Goodridge & other n1 v. Department of Public Health, SJC-08860, Supreme Judicial Court of Massachusetts, 18 November 2003.

² Mark Lewis & Denis Winslow, et. al. v. Gwendolyn L. Harris, et. al., A-68-05, Supreme Court of New Jersey, 25 October 2006.

lesbians and gays were prohibited from patronizing public establishments, gay-oriented businesses were illegal, and there was no LGBT movement. The expression of lesbian and gay identity was prohibited and punished by law. Many lesbians and gays assumed heterosexual identities to avoid harassment, violence, job loss, and even arrest and imprisonment. As attitudes concerning gender expectations change, more lesbians and gays started to become more public about their identity. Also, lesbian and gay identity has become more infused in popular culture through television and Broadway plays. Chapter One covers specific events in anti-gay discrimination history that contributed to the second-class citizenship status experienced by lesbians and gays. It covers legal and social changes in the social institution of marriage that made it a possibility for lesbians and gays. Finally, this chapter covers the challenges during the 1980s AIDS epidemic and child custody battles that made obtaining marriage rights a necessity for lesbian and gay couples.

Presently, lesbian and gay identity is more socially accepted and infused into popular culture than fifty years ago. However, the majority of people still continue to believe that marriage rights should not be extended to same-sex couples (Lehr 18). Therefore having the right to marry has to be much more complex than just gaining certain material benefits and legal rights. It is about who has the right to marry. It also includes the right to influence future generations that will inherit and participate politically in society. Heterosexual couples are still seen as best fit to

enter into marriage and raise children, ignoring that many lesbians and gays are also involved in committed relationships and raising children.

As lesbians and gays became more open about their sexual identity, more and more same-sex couples demand the same citizenship recognition and rights granted to heterosexual couples. Chapter Two examines the displacement of lesbians and gays in civil society and the private sphere. It specifically focuses on the unique second-class citizenship status of lesbians and gays as a result of legal prohibitions to state recognized marriage. Then, the differences in how Cheshire Calhoun and Valerie Lehr present the factors of marriage and family that displace lesbians and gays are examined. Calhoun places particular focus on the role of the Defense of Marriage Act while Lehr looks at the role of abstinence-only-until-marriage education in the displacement of lesbians and gays.

In Chapter Three, I build upon the arguments of Calhoun and Lehr and look at the role of welfare initiatives in defining marriage and family. Calhoun and Lehr look at single pieces of legislation in their examination of the displacement of lesbians and gays through marital status. I expand upon this and specifically the role of the marriage, fatherhood, and faith-based initiatives in the promotion of heterosexual norms and how these initiatives form the definition of marriage and family. While many organizations have examined the implications of the Defense of Marriage Act or abstinence-only-until-marriage education, there has not been much

attention paid towards the other initiatives under welfare reform promoting heterosexual marriage and fatherhood. During the course of my research, the National Gay and Lesbian Taskforce was the only organization to look at how the other welfare initiatives promote heterosexual norms and the implications they could have on lesbian and gay couples and their families. Welfare initiatives do have an effect upon who can adopt children and who is eligible for things like low-interest student loans and Head Start (Sean and Cahill 2). I also look at how these initiatives prioritize and promote heterosexual relationships and maintain the relationship between marital and citizenship status in society. Taking another look at the relationship between marital and citizenship status is important. As seen with the Massachusetts and New Jersey examples, the definition of marriage remains an unsettled issue in American society.

Chapter One

In this chapter, I will look at historical events where state regulated sexuality contributed to lesbians and gays keeping their sexual identity hidden and hence contributing to their second-class citizenship status. First, I will argue that there is a relationship between the regulation of sexual identity in lesbian and gay history and the second-class citizenship experienced by lesbians and gays. Second-class citizenship is particularly unique for lesbians and gays because sexual identity is easier to disguise than race or gender. This makes it easy to dismiss the existence of lesbians and gays amongst the heterosexual majority and the fact that they require special protection of their civil rights. Next, I will explore the historical changes in marriage that made same-sex marriage a possibility not only legally but socially as well. Finally, I will look at two specific social events in the 1980s that made accessing marriage a priority for lesbians and gays. Specifically, I will look at who qualified as next of kin during the AIDS epidemic and who is considered fit to parent in child custody battles.

State regulation of sexuality laid the groundwork for discrimination directed at lesbians and gays. Michel Foucault traces state investment in the regulation of sexuality to the eighteenth century (25-6). The term “population” was used by the state to describe the citizens within the political body. The population was seen as both an economic and political problem, and the heart of that problem was sex

because it resulted in the production of future citizens. The government did not just regulate the sexual relations between people but regulated marriage as well.

Birthrate, legitimate and illegitimate birth, effects of unmarried life, and the impact of contraceptive practices are just some of the aspects related to marriage and reproduction that are monitored closely by the government. Foucault argues that the government's investment in population stemmed from the belief that the wealth and power of a country comes from population growth. To ensure that citizens made the best use of their sex, marriage and sodomy laws were established to help guide citizens towards "state approved" sexuality. By offering certain benefits and special social privileges, marriage laws encouraged the pairing of men and women together in hope that they would establish a family. Sodomy laws, on the other hand, regulated how people should use their sexuality. At first, sodomy was considered any act "contrary to nature" (Foucault 38; Chauncey 13). This included pleasurable and non-procreative acts between two men, men and women, and between human and animal.³ It was not until the 20th century that sodomy laws began to classify and discriminate based on sexual identity alone; specifically these laws were aimed at the behaviors of gay men. Through criminal sanctions, the state is able to directly and coercively regulate how people make use of their sexuality.

³ It did not usually include sexual interaction between two women because female sexuality was defined in relation to male sexuality. They were sexual objects with which men could satisfy their desires. Women were not seen to have the capability for sexual desires of their own.

While discrimination against lesbians and gays is thought to have ancient roots, it really was not until the 20th century that lesbians and gays became particular targets of legal and social discrimination (Chauncey 14). Legal discrimination against lesbians and gays, like the sodomy laws, was not a series of vague, random acts unrelated to one another. It was a systematic and a powerful way to displace lesbians and gays from both public and private life. The policing of the homosexual “lifestyle” left lesbians and gays vulnerable to social hostility, imprisonment, and mandatory psychiatric examination and treatment, if their sexuality were exposed. In their private lives, lesbians and gays faced rejection from family members or were prohibited from visiting children, based on their sexuality. Therefore, many lesbians and gays publicly and privately assumed heterosexual identities to avoid social hostility and legal prosecution. This method of oppression effectively made it difficult for lesbians and gays to meet and form their own community.

To remain hidden, lesbians and gays developed elaborate verbal codes that allowed them to communicate with one another while remaining invisible to outsiders (Chauncey 24-26). For example, before the 1970s, the word “gay” had homosexual meaning but the majority of heterosexuals were unaware of the intended use of the word. Despite the hostility, some drag queens and butch lesbians openly displayed their sexuality, while the majority of lesbians and gays kept their sexuality hidden. Lesbians and gays worked and lived amongst other

people without being noticed and used verbal codes to find and communicate with each other.

Where code words helped lesbians and gays to communicate and identify each other in public, hidden meeting places provided a place for lesbians and gays to socialize and to form communities with one another.⁴ Since it was vital to meet in secrecy, places like lesbian bars were difficult to locate, and for many it felt like an initiation process to find the bars. The threat of violence and police raids kept these bars underground in order to protect the clientele that patronized the establishment. Often, lesbian bars looked like abandoned buildings with back street entrances and female bouncers. In order to keep the doors open and decrease the probability of police inspection, the bars had to become more visible to attract more clientele. The front room allowed heterosexual couples to patronize the bar and to help keep it in business. The back room would allow the privacy for lesbians to meet and interact in secret. More importantly, these bars provided space and privacy for lesbians to celebrate social events usually reserved for heterosexuals like weddings and baby showers. Since their sexual identity was kept hidden, lesbians and gays ordinarily would not be able to celebrate these personal milestones openly. Places like the lesbian bars provided an opportunity for lesbians and gays to meet and form a

⁴ Thorpe, Roey. "The Changing Face of Lesbian Bars in Detroit, 1938-1965," Creating a Place for Ourselves, Ed. Brett Beemyn, (New York: Routledge, 1997) 165-182. Thorpe discussed the lesbian bar life in Detroit during the period between the end of the Second World War and the beginning of the second wave of the feminist movement.

community that reduced the social isolation caused by the intense policing of their sexual identity.

In the 1970s, social changes opened the opportunity for lesbians and gays to become more public about their sexual identity. The feminist movement was a huge influence for the start of the gay liberation movement (Chauncey 30). Attitudes towards sex and gender roles were challenged and transformed the way people thought about what defined men and women. People began seeing sexual freedom as a marker of personal freedom. Men and women began living together before getting married, whereas before this was largely socially unacceptable. These changes in sex and gender roles created social space for lesbians and gays to become more open about their sexuality. As lesbian and gay rights groups began to gain momentum, they developed common goals that included an end to police harassment of gay spaces, ending stigmatization by cultural authorities, and ending discrimination in employment. The decriminalization of gay sexuality allowed for more places for lesbians and gays to congregate, in particular San Francisco and New York (Chauncey 35-37). Even some religious groups began to change their attitudes towards lesbians and gays. For instance, the Protestant denominations condemned legal discrimination against homosexuals. Cities and towns began revising anti-gay laws with East Lansing, Michigan, becoming the first municipality to pass an anti-discrimination ordinance in 1972 (Chauncey 38). Eventually, lesbian

and gay characters began to be infused into popular culture through television and Broadway plays. Presently, lesbians and gays can live, work and patronize local establishments with much more freedom than fifty years ago.

As social changes allowed lesbians and gays to be more public about their identity, ideas about marriage changed as well. George Chauncey identifies four fundamental changes to the definition of marriage that made same-sex marriage possible both legally and socially. First, the freedom to choose one's marital partner became a fundamental civil right (Chauncey 61-62). In colonial America, marriage required only the mutual consent of a couple about their relationship. It was not until the Revolutionary Era that official state recognition of marriage was seen as a necessity. While legitimate marriage contracts needed only the mutual consent from both parties, marriage was not considered a civil right until the slaves were freed after the American Civil War. Since they were property of an owner, slaves had no right to a legal marriage because they did not possess the power to consent to a legally binding contract. After the Civil War, the first thing slaves wanted was to establish the right to have their marriages and families officially recognized by the state. By having official state recognition, slaves were slowly becoming acknowledged as citizens of the United States. The former slaves demanding the right to access a legal marriage probably could be seen as the origin of exposing the legal recognition of marriage as a marker for citizenship status.

However, there were still some legal restrictions on which relationships were acceptable as marriages. Interracial marriages were still prohibited throughout the United States (Chauncey 63-64). But marriage bans were not always restricted to race. For example, the Nazi party banned marriages between Jews and non-Jews during the Second World War. After the war ended, the General Assembly of the United Nations adopted the right to marry as one of the fundamental rights of human-kind into the Universal Declaration of Human Rights. In 1967, the United States Supreme Court overturned bans on interracial marriage in *Loving v. Virginia*.⁵ In *Loving*, marriage was determined to be a basic civil right and fundamental to the existence and survival of man. This ruling also established that the freedom to marry cannot be restricted by the state on the basis of race. New challenges to the law appeared in 2003, and the State of Massachusetts ruled in favor of same-sex marriage rights in *Goodridge et al v. Commissioner of Public Health*.⁶ This ruling held that denying marriage rights to lesbians and gays makes them second-class citizens, which is forbidden by the Massachusetts Constitution. The Court grounded this ruling in the equal protection clause of the State Constitution. It also held that the government may not legitimately intrude upon the personal decisions of consenting adults in the matter of formulating intimate relationships.

⁵ *Loving ET UX v. Virginia*, no. 395, Supreme Ct. of the US, 12 June 1967.

⁶ *Hillary Goodridge & others n1 v. Department of Public Health*, SJC-08860, Supreme Judicial Court of Massachusetts, 18 November 2003.

The second change to marriage was that relationships became more gender-neutral and egalitarian (Chauncey 66-68). Historically, marriage has been a primary social institution that produced gender difference and inequality. For example, 200 years ago marriage was the first and only time a woman could legally give consent on her own. Laws of coverture meant that after the marriage, a woman usually lost her social/civil identity. Her rights as a citizen would be absorbed and lived vicariously through her husband. Hence, the meaning of the pronunciation of man and wife really reflected how little a man's legal status changed compared to a woman's. The subordination of women through marriage became central to the definition of men's freedom.

In the 1970s, changes in marital laws began to require the equal treatment of men and women (Chauncey 69-70). Thanks to feminists filing lawsuits, it became easier for couples to divorce without presumptions regarding who would be the better parent. Matters related to both marriage and divorce such as alimony, child custody and support, and the division of marital property became mutual obligations of both men and women. However, marriage still retained its privileged status, giving married couples collective rights in relation to outsiders. While there are no legally distinct family roles and couples are free to negotiate their own living arrangements, women are still more likely to stay at home to raise the children, do

most of the housework, and earn less income. The difference now is that the inequalities between men and women are no longer structured by law.

The third change to marriage was the distribution of state and private benefits through marriage (Chauncey 71-77). While other industrialized societies have made health care and old-age security a right of citizenship, many similar benefits are contingent on the employment or marital status of citizens in the United States. World War II sparked the growth of the American welfare state through marital relationships based on a male-dominated/female-homemaker household structure (Chauncey 72-73). The GI Bill financed the postwar suburban building boom and provided higher educational opportunities and job training for returning veterans. This channeled people into male-headed, suburban, single-family homes which led to the formulation of the nuclear family pattern in the 1950s.

Private benefits also expanded during World War II (Chauncey 74-75). These benefits allowed American companies to compete for workers while wages were frozen. While other European companies were establishing programs that entitled every citizen and resident to healthcare, large American corporations and medical associations persuaded the United States Congress to reject a national healthcare plan. Therefore, most people had to depend on their employers (or their spouses) for health/life insurance and retirement income. By the 1990s, 30 percent of an employee's overall compensation package was in private benefits. Federal

regulations over private benefit programs serve to compound the disadvantages faced by same-sex couples unable to marry. Lesbian and gay couples cannot access provisions under Employee Retirement Income Security Act of 1974 (ERISA), Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), and the Family and Medical Leave Act of 1994 (FMLA) because of the lack of legal recognition of their relationships from the federal government.

Despite federal regulation that prohibited certain benefits to lesbian and gay couples (and their children) and in order to remain competitive, many private and public companies are offering domestic partnership benefits as part of their compensation packages. Some cities and states require companies to offer these benefits in order to be eligible for government contracts, but they do not provide uniform rules as to how domestic partnership benefits are structured.⁷ Therefore, companies have the discretion to determine who is eligible and when he/she is eligible for benefits. For example, domestic partnership benefits could be offered to all unmarried individuals or just offered to lesbian and gay partners. Domestic partnerships are not regulated by the federal government and are not an option for federal employees. There was an attempt to provide Domestic Partnership benefits for federal employees through the introduction of the Domestic Partnership Benefits

⁷ Fine Law for Small Business. Domestic Partnership Benefits. 28 October 2006
<[http://smallbusiness.findlaw.com/employment-employer/employment-employer-benefits-partner\(1\).html](http://smallbusiness.findlaw.com/employment-employer/employment-employer-benefits-partner(1).html)>

and Obligations Act in July of 2005. This bill would offer benefits to unmarried or same-sex partners of federal employees and require that domestic partners be eligible for the same obligations as federally recognized married couples.⁸ This bill has yet to be passed into law.

The last fundamental change to the institution of marriage is the decline of the influential power religious authorities have over marriage laws (Chauncey 77-86). The common misunderstanding about marriage is that it is a strictly religious matter that only churches should govern. It was fine for same-sex couples to have “civil unions,” but marriage traditionally was a sacred institution subject to regulation by the church. Chauncey points out two problems with this argument. The first problem is that it simplifies the complex history of religious beliefs about marriage. In the 13th century, the Roman Catholic Church developed a consensus about marriage, but it was not ratified as dogmatic truth until a century later. The Catholic Church’s authority over marriage was short-lived. It lost much of its authority during the Reformation and Enlightenment when Martin Luther stated that marriage was not a sacrament but a civil contract (Chauncey 80).

During the American Revolution, all of the states recognized marriage as a civil matter (Chauncey 80). American citizens could voluntarily have their marriages

⁸ Human Rights Campaign. [Human Rights Campaign Hails Introduction of Domestic Partnership Benefits and Obligations Act](http://www.hrc.org/Template.cfm?Section=The_Issues&CONTENTID=34034&TEMPLATE=/ContentManagement/ContentDisplay.cfm). 27 September 2006. 28 October 2006
<http://www.hrc.org/Template.cfm?Section=The_Issues&CONTENTID=34034&TEMPLATE=/ContentManagement/ContentDisplay.cfm>

performed by clergy of their faith and subject themselves to the church's marriage rules without legal specification. However, the clergy lack the authority to grant a marriage contract recognizable by the state. The civil characteristic of marriage is that rules of many churches restricting who may marry have not prevented people from getting married. So, too, the threat of being censured by their church has not prevented people from getting married.

Divorce laws also demonstrate the declining influence of the church over marriage laws (Chauncey 84). Most states allowed couples to end marriages if one spouse proved that the other violated the marriage contract. Many couples had to lie in order to terminate their marriage because the rules that determined the end of marriage were so narrow. In 1934, New York proposed to make desertion grounds for divorce. California added "irreconcilable differences" as a reason for divorce in 1969. Then over the next 15 years, states throughout the country began to adopt "no-fault" divorce laws. No matter how hard churches fought against the increased accessibility of divorce, they still were not powerful enough influences to keep the laws from changing.

The second problem with marriage defined or understood as a strictly religious institution is that churches themselves have not agreed on a unified definition of marriage. For example, when Massachusetts extended marriage rights to lesbians and gays, the Unitarian Universalist Association, Reform Judaism,

Reconstructionist Judaism, and the Metropolitan Christian Church all encouraged and embraced same-sex marriages, while the Roman Catholic Church, Episcopal Church, United Methodist Church, Presbyterian Church, National Baptist Convention, and several Protestant and Orthodox denominations forbid their clergy to officiate over such marriages. This discrepancy about the definition of marriage weakens religious influence over what defines marriage because religious organizations as a whole do not have a uniform consensus of what constitutes a marital union. Presently, there is great diversity in religious doctrines that people follow. This also makes it less likely for any one faith to have power over marital laws.

Regulating how couples structure their marital relationship was not seen as a private matter until 1965 (Chauncey 85). Catholic and Protestant groups lobbied for laws that made the purchase of birth control devices illegal for married couples. The Supreme Court ruling *Griswold v. Connecticut* held that there was a right to privacy concerning marital intimacy (Baer & Goldstein 352). Basically, the ruling established that decisions made by two consenting adults within the institution of marriage fall under the constitutional zone of privacy that is protected from government

intrusion. This decision was extended to same-sex couples when *Lawrence v. Texas* overturned the last of the sodomy laws in 2003.⁹

These changes to the institution of marriage are significant for two reasons. First, regulation of sexuality and how people structure their relationships is decreasing. Heterosexual couples gained increased freedom to structure their relationships outside the traditional gender roles of husband and wife. Sexual regulation of lesbians and gays also decreased as the last of the sodomy laws were struck down with *Lawrence v. Texas*. Second, the distribution of social and legal benefits and rights through marriage is uniquely American. Unlike other European countries that established national healthcare and retirement pensions, American must rely on their employers to receive these benefits. Benefits like healthcare and retirement pensions, and state benefits like Medicare, are easily accessible for married couples. This is why the stakes are higher concerning who has the right to marry here than in other countries. The distribution of benefits also set the stage in how this culture determines next of kin and family. In order to see this, I turn to two social events in the 1980s that made marriage a priority for the lesbian and gay community.

⁹ John Geddes Lawrence and Tyron Garner v Texas, no. 02-102, Supreme Court of the US, 26 June 2003.

By the late 1980s, there were 82,000 people infected with AIDS; 46,000 already had died from the disease and 80 percent died within two years of their diagnosis (Chauncey 96-98). The ability for gay men to cope with the disease was difficult. Since many gay men left their hometowns for major cities with large gay communities, the formation of new extended families was common. While the new families acknowledged a gay couple's relationship, places like hospitals and funeral homes that dealt with the sick and dead did not. Many gay men were unable to take care of or determine burial decisions on behalf of their partner afflicted with AIDS because their relationships did not establish a legitimate next of kin.

More importantly, AIDS raised the question of whom or what constituted family (Chauncey 99-100). Legally recognized marital relationships automatically establish next of kin. However, the same protection is not available to same-sex relationships. As gay families took care of their partners and friends dying from AIDS, the hometown families wanted to take over the burial and funeral services that often excluded the gay partner and extended gay family. Many gay men who became "widowers" found their homes and livelihoods threatened as families of the deceased partner contested wills or claimed legal right to property owned by the gay couple. It was easy for families to contest the estate and invalidate the wills of the deceased gay partner. Many claimed that AIDS-related dementia had incapacitated their son's ability to make decisions concerning their estates. Since gay

couples had no real legal recognition of their relationships, their wills were often invalidated and the surviving partner was left without security. It was not until 1989 that a New York court ruled that functional, informal family relationships deserved recognition as well as those certified by the state (Chauncey 103). This made it more difficult to challenge the will that transferred the deceased gay man's estate to his partner, but it was not the complete guarantee a marriage contract would provide.

The "lesbian baby boom" provided its own set of challenges that same-sex couples faced concerning child custody. Many lesbians (and gay men) had children from previous marriages or heterosexual relationships before coming out about their sexuality. In the 1980s, many women living openly as lesbians no longer felt it was necessary to marry a man in order to have a child (Chauncey 105). However, it was difficult for lesbians to maintain custody of their children after they came out. Courts often removed custody of children from a lesbian mother if an estranged husband called attention to her sexuality (subsequently visitation was denied to gay men (Chauncey 106). Presently, child custody cases around the country are still subject to individual assessment concerning the ability of lesbians and gays to parent. Some courts could be especially disapproving of lesbians and gays who were not hiding their sexuality from children.

Maintaining child custody also was difficult after the death of the biological mother. Courts were forced to figure out where to place the child after a lesbian

biological parent unexpectedly died. Relatives had been able to contest the right of the surviving partner to maintain custody or visitation of the child. Many children have been removed from their second mother's custody despite their own wishes to stay with them. The second mother also had little recourse in establishing child custody when a lesbian couple separated. Eventually, same-sex couples found that second-parent adoptions provide a legal means of securing and maintaining the family unit (Chauncey 109-11). Originally, second-parent adoptions allowed step-parents to establish a legal relationship with the non-biological child. Many states allow same-sex couples to use this method of formulating legal bonds between same-sex parents and their children. By the end of the 1990s, there was growing support for gay adoption but continuing opposition to same-sex marriage, which would stabilize and secure the family unit of a same-sex couple.

So far this paper has looked at certain events in anti-gay discrimination history that contributed to the second-class citizenship of lesbians and gays. In American society, both social institutions of marriage and family determine how benefits like healthcare and retirement pension are distributed. Marriage and family determines next of kin in the event of medical emergencies and estate inheritance. Both the AIDS epidemic and child custody battles demonstrated the specific problems lesbians and gays face from not having access to legalized marriage. While in 2003 the last of the legal statutes that policed same-sex sexuality was overturned

and one state granted legalized marriage contracts, lesbians and gays are still prevented from accessing all the benefits and rights given to married heterosexual couples.

The decrease in both religious influence and cultural gender differences made marriage a social possibility. The increased dependence on the institution of marriage to access spousal benefits like health insurance and establishing next of kin made marriage a necessity for lesbians and gays. More importantly, marriage is a recognizable symbol that defines what counts as a family. Both the AIDS epidemic and child custody battles involving lesbians and gays show the practical importance of having a legally-recognized family. The ability to transfer one's estate, access an employer's healthcare benefits, determine child custody, and make medical decisions is not usually questioned amongst married couples. However, for the unmarried, especially for lesbians and gays, all of the legal documents that could mimic those benefits cannot replace the ones provided through state-sanctioned marriage contracts. The next chapter looks more in-depth into the second-class citizenship status caused by prohibiting marriage rights that is experienced by lesbians and gays. It will also examine the challenges lesbians and gays face in the attempt to change what defines marriage and family.

Chapter Two

Even though lesbians and gays have gained a measure of social acceptance that did not exist 50 years ago, prejudice and discrimination targeting lesbians and gays is still prevalent. Same-sex marriage and parenting are still controversial issues within American society. As was seen with the newly freed slaves after the Civil War, the ability to obtain legally recognized marriages is a social marker that defines citizenship status. Prohibiting lesbians and gays from getting married places them outside of civil society and prevents them from having the opportunity to be a part of the collective culture of American society. This chapter will look at the relationship between civic citizenship and marital status and describe the complex citizenship status that many lesbians and gays experience related to their sexual identity. Next, I will review the arguments of Cheshire Calhoun and Valerie Lehr as they each present a divergent look at the different factors of marriage and family that displace lesbians and gays. Calhoun looks at heterosexual deviance from traditional gender and marriage norms and examines the role of DOMA in protecting heterosexual status that makes lesbians and gays inessential citizens. Lehr expresses the need for lesbians and gays to redefine what constitutes marriage/family rather than attempt to prove that lesbians and gays have the ability to follow heterosexual norms. Lehr examines the role of abstinence-only sex education in the socialization of sexual identity in youth. She also looks at the

implications of lesbians and gays barred from serving as adult role models to the youth who could become a part of the lesbian and gay community.

While citizenship status provides political rights and protections like free speech, it also provides individuals certain protections for their interests and the ability to express those interests as a matter of public concern (Phelan 13). However, an individual's ability to express their interests is dependent on whether their citizenship status is acknowledged. Acknowledgement of citizenship status is both a right and a necessity to establish a political relationship needed to present interests that could influence culture. So in the argument for marriage rights, lesbians and gays need to have a political relationship that will acknowledge their interests in securing marriage rights as a priority for the overall political body. Philosopher Jean-Jacques Rousseau states that an individual's interest remains a private matter until it is made known to the greater political body. He also states that the true foundation of society is dependent upon the majority interest of the political body.¹⁰ Therefore, it is not enough for people to be born into their citizenship status. A person's citizenship status is dependent partly upon their participation within the political body and partly on being acknowledged as citizens by the political body. The distinction between being born into your citizenship and being acknowledged as a citizen helps explain the displacement dynamic lesbians and gays face. Lesbians

¹⁰ Rousseau, Jean-Jacques, On the Social Contract. Translated by Donald A. Cress, (Indianapolis: Hackett Publishing Company, 1987) 23-24.

and gays are citizens in that their rights of free speech, due process, and privacy are protected by the government. However, they lack the ability to express their interest as a legitimate public concern. In other words, lesbians and gays participate within the political body but lack the acknowledgement as essential citizens to establish a political relationship.

The lack of recognition is directly linked to cultural perception of homosexuality. Homosexuality is equated to sexual acts while heterosexuality is not similarly reduced to a set of sexual acts (Calhoun 82-84). So an intimate relationship involving a same sex couple would be seen as a sexual act between two people rather than a loving and committed couple. Assuming that it is improper to speak publicly about sexual acts, the relationships of lesbians and gays should not be discussed publicly let alone be considered legitimate. Since the relationship of lesbians and gays are not to be discussed publicly, they lack the recognition to argue the need for marriage in order to provide stability and security for their relationships and families. The lack of recognition compromises the ability to change how people culturally define marriage (and family). Lesbians and gays participate in private choices such as entering into a committed relationship or parenting, but their relationships are not publicly celebrated and recognized as legitimate by others. When lesbians and gays publicly acknowledge their relationships, they are often

accused of flaunting their sexuality while the same is not said for heterosexual couples who do the same.

While there is greater public acceptance of lesbians and gays, there are laws that still prohibit lesbians and gays from participating in the collective identity of the American political body. Anti same-sex marriage laws demonstrate the systematic displacement of lesbians and gays from participating in the collective identity that partially establishes American citizenship status, since marriage is seen as the foundation of society. Laws that consistently deny a group of people a chance to participate in the collective identity of a political body create what is known as second-class citizens (Phelan 17). Lesbians and gays are best described as second-class citizens because they live as being (formally) equal but being marginalized at the same time (substantively unequal). While second-class citizenship may apply to other groups, the main focus of this paper is how it affects lesbians and gays.

The dynamic of being a second-class citizen ties directly into Calhoun's view of lesbian and gay subordination and displacement from civil society (Calhoun 76). The major characteristic of lesbian and gay displacement is the lack of a legitimate community that affirms their lives. This makes it difficult to prove group-based injustice because most people are unaware of the presence of lesbians and gays everywhere since many lesbians and gays assume heterosexual identities in order to gain full access to the public sphere (Calhoun 77-81). Therefore, lesbians and gays

are displaced both publicly by having to assume heterosexual identities to access civic rights and privately through the lack of recognition of their relationships as anything other than related to sex. This effectively increased social isolation and reducing the possibility to form a community that acknowledges lesbian and gay identity.

In addressing the displacement lesbians and gays experience in the public and private sphere, Cheshire Calhoun argues that prohibiting lesbians and gays from legalized marital unions is what makes them inessential citizens. Calhoun uses a direct equality approach in combination with a positive moral argument while examining popular arguments concerning same-sex marriage. The direct equality approach can be best explained using the following example. It is unconstitutional to prohibit an interracial couple from the practical benefits that marriage provides. Therefore, the same should be applicable for a same-sex couple seeking the same benefits. As Calhoun points out, the problem with using this type of approach alone is that it narrows the question of who has the right to marry. It is necessary to attach a positive moral argument because it is not just a question of who has the right to marry but why a certain group of people should be able to have the right to marry over others. Adding a positive moral argument helps people to understand the significance of extending rights to those who do not already have access to them (Calhoun 109). Using this approach, Calhoun examines how both the normative

ideal and gender-based arguments fall short in getting the significance of same-sex marriage across. The normative ideal emphasizes the long-term commitment and sexual fidelity of a couple, while the gender-based argument focuses on the structure of relationships around men and women gender norms. Then she argues the significance of the Defense of Marriage Act (DOMA) as central to the argument for same-sex marriage.¹¹

Under the normative ideal, the ultimate goal of marriage should encourage the union of a committed couple (Calhoun 110). Monogamy, sexual fidelity, and long-term commitment are desired to sustain a heterosexual marriage. This ideal also reinforces that a stable marital couple creates the ideal environment to raise children and for individuals to create a stable sense of self-identity. The particular emphasis on the need for long-term commitment as a requirement for marriage raises the stakes for any debate surrounding it. Marriage is given a privileged status that should be reserved for certain people since it is supposed to serve as a foundation for creating stable self-identity. The privileged status of marriage ties directly into Foucault's analysis of state investment in marriage. Since the general expectation is that married couples will have children, the state's priority to invest into who can marry indicates its intention to have influence in how future citizens

¹¹ Defense of Marriage Act, 104 Cong. 2D session. HR 3396. 24 June 2006

<<http://www.lectlaw.com/files/leg23.htm>>

DOMA gives individual states the power to not recognize a same-sex union from another state, and defines marriage as a legal union between one man and one woman.

are raised in our society. Since the relationships of lesbians and gays are seen as nothing more than casual sex, they do not fit under the normative ideal and are not believed to be capable of monogamy and long-term commitment. Therefore, under this application of the normative ideal, lesbians and gays are incapable of raising citizens who have a stable sense of self.

Cultural conservatives insist on maintaining the normative ideal (Calhoun 111). Liberalism is seen as the cause of personal choice, self-expression, and lifestyle experimentation that all go against the virtues acquired through marriage. Enforcing the normative ideal (essentially through marriage laws) encourages people to want to obtain a sense of loyalty, self-discipline, and self-sacrifice. Conservatives assume the normative ideal to be important to creating a stable sense of self. They reason that the cost of dissolving a marriage should be harder so that the higher level of commitment between a couple is enforced, guaranteeing an environment in which self-identity is developed. This is where law and state policy plays its role. State policies enforcing marital and familial commitments create the influential power over what is acceptable sexuality to society. The normative ideal may appear to be the most “acceptable” way for couples to organize their private lives. However, the state has actually relaxed the regulation of marriage, which can be seen in no-fault divorce laws and the lack of punishment for those couples cohabiting before marriage. It is interesting to note that North Carolina, Virginia, West Virginia,

Florida, Michigan, Mississippi, and North Dakota still have cohabiting laws in effect. The cohabiting laws of North Carolina were challenged recently when an unmarried 911 dispatcher lost her job because she was living with her boyfriend.¹² It is significant that *Lawrence v. Texas* ruled in favor of the privacy rights of same-sex couples, while cohabitation laws for heterosexual couples still exists in some states.

The lack of enforcement by the state is only part of the problem with using the normative ideal as an argument to prohibit same-sex marriage. Calhoun argues that heterosexuals have already begun to be noncompliant about following the normative ideal (113). More people are cohabiting and marrying later, and many are parenting through joint custody or through blended families. Heterosexual noncompliance also puts less emphasis upon lesbians and gays living an alternative lifestyle outside the heterosexual norm. Lesbians and gays tend to structure their relationships and families differently, outside of the normative ideal, and often rely on an extended network of friends who serve as family and help raise children. So while cultural conservatives rely on laws or social policies to enforce the normative ideal, people are still finding other ways to positively organize intimate relationships.

¹² Judge Rules N.C. Anti-cohabitation Law Unconstitutional. [USA Today](http://www.usatoday.com/news/nation/2006-07-21-cohabitation_x.htm?csp=34). 21 July 2006. 4 November 2006 <http://www.usatoday.com/news/nation/2006-07-21-cohabitation_x.htm?csp=34>

American Civil Liberties Union. [ACLU Wins Challenge to North Carolina's Cohabitation Ban](http://www.aclu.org/womensrights/discrim/26197prs20060720.html). 20 July 2006. 4 November 2006 <<http://www.aclu.org/womensrights/discrim/26197prs20060720.html>>

The gender-based argument focuses on the structure of marital relationships based on traditional husband-wife roles (Calhoun 115-16). The cultural resistance to same-sex marriage derives from lesbian and gay relationships being gender-free and not easy to structure around traditional husband-wife roles. This presumes that there is potential for similar gender deviance by all men and women, including heterosexuals. So the positive moral argument is that same-sex marriage would make gender difference irrelevant and create a gender just society. Therefore, prohibiting same-sex marriage is a form of sex discrimination according to the gender-based argument.

The Hawaii Supreme Court decision, *Baehr v. Lewin*, ruled that prohibiting same-sex marriage is a form of sex discrimination.¹³ The ruling cited the state constitution where everyone is entitled to equal protection of the laws and cannot be discriminated against or be denied their civil rights because of race, religion, sex, or ancestry. The court's ruling placed particular emphasis upon sex when referring to exercising civil rights. Marriage was cited as a fundamental civil right, but the state has statutes to prevent situations like incest. The court ruled that the Department of Health failed to prove why lesbians and gays should be denied their civil right to marry, and it is an unconstitutional form of sex discrimination since there is nothing in the state constitution prohibiting same-sex marriage.

¹³ *Baehr v. Lewin*, no. 15689, Supreme Court of Hawaii, 5 May 1993.

Calhoun points out problems with using gender-based arguments. First, sex discrimination is not a primary factor in prohibiting same-sex marriage (Calhoun 117-18). The gender-based argument provides a better reason for heterosexuals, especially heterosexual women, to make same-sex marriage a priority.

Legitimizing same-sex relationships would allow more flexibility and freedom for heterosexuals to structure their relationships. But marriage is already de-gendered under the law (Calhoun 118; Chauncey 69). Legally, married women are not required to adopt their husband's name or provide domestic services. So the law has become lax in enforcing gender roles within marital relationships. The same cannot be said for lesbians and gays since they are prohibited from accessing marriage rights. Therefore, prohibiting lesbians and gays from marriage has to do more with the regulation of intimate relationships than the enforcement of gender roles.

The other problem is that the oppression of lesbians and gays is linked to their gender deviance (Calhoun 119-120). However, it is simplistic to cite gender deviance as the sole reason to deny same-sex marriage. Lesbians and gays are seen as a uniquely separate gender group from the traditional male and female gender groups. Lesbians and gays are described as dangerous, uncontrolled, predatory, and self-indulgent. They have been also described as a threat to heterosexual adults and children and psychologically unable to maintain stable relationships. Therefore, lesbians and gays are not just gender deviant but also unfit to enter into marriage

and raise children. While the social stigma related to being lesbian and gay still exists, it was not used during the arguments for DOMA (Calhoun 122). In fact, arguments surrounding DOMA did not focus on lesbians' and gays' inability to fulfill husband and wife roles but asserted that a "real" marriage requires one man and one woman.

Calhoun states that the central argument for granting lesbians and gays the right to marry lies with DOMA's role in defending heterosexual status (123). DOMA protects heterosexual norms by determining which citizens are fit to enter into marriage and who is an essential citizen for society. This distinction clearly separates heterosexuals and homosexuals as two different groups. Heterosexuals are viewed as capable of having mature, monogamous, long-term commitments. Homosexuals are viewed as lacking sexual self-control and as unfit for family life. Since heterosexuals and homosexuals are seen as two completely different groups, the conclusion is drawn that they should be treated differently under the law.

Anti-gay policies, like restrictions on marriage, aim to displace lesbians and gays from civil society by not acknowledging them as citizens in both the public and private sphere of society. DOMA is an anti-gay policy because it prohibits lesbians and gays from accessing marriage at a national level. Even though the right to marry is legal in Massachusetts, lesbians and gays still do not have access to all of the rights and benefits on the federal level. Prohibiting same-sex marriage is a powerful way to

displace lesbians and gays from the collective culture of society. Married couples are seen to play a role in sustaining civil society and defining the collective identity that determines citizenship status. The passage of DOMA allows married heterosexual couples to claim privileged societal status over other relationships as well as have special entitlement to control future generations' commitment to heterosexuality (Calhoun 127). Therefore, married couples in our society are not only recognized by the government as special over others but also have been designated as agents of the government to influence the collective identity of the political body. Heterosexual couples thus influence future generations that being heterosexual and married matters.

I now turn to Valerie Lehr's examination of lesbian and gay displacement. Lehr takes a different approach than Calhoun and argues that lesbians and gays need to develop a new political position that encourages a cultural transformation in how society thinks about relationships between adults and children (34). The arguments surrounding same-sex marriage need to shift from legal rights to what type of relationships adults have with children. There needs to be an acceptable sense of individual identity that allows people to commit themselves to relationships voluntarily, without obligation, to follow the traditional reproductive biology (Lehr 41). Dissolving the relationship between sexuality and reproduction would make family more of a choice than an obligation. By separating sexuality

from reproduction, people would have greater freedom to organize their private life and teach future generations a more complex view of sexual identity.

According to Lehr, radical democratic theory helps construct, deconstruct, and reconstruct identities (79). For instance, the nuclear family has been identified as critical for the survival of people. Many identify the family with their material security along with their social identity. If we think about it, the family unit is a safety net for children until they are old enough to enter into marriage. Often, children are not identified as adults until they form committed relationships worthy of marriage. The image of family would need to radically change in order to develop alternative ways of constructing individual identity. If people no longer felt that their individual survival depends upon the family structure, then individual identity could be reconstructed to include other ways of structuring private life outside of the nuclear family unit.

However, anything outside the nuclear family norm is seen as a threat of “family values” and is usually felt by working-class families. The working class is prone to respond to conservative messages about changes in family norms (Lehr 93). The working class is more likely than other economic classes to respond to conservative messages about family because the family unit is perceived as critical for economic survival. This has been a powerful motivator for cultural conservatives during the Presidential and mid-term elections. For example, in the 1996 election

year, 14 states passed anti-same-sex marriage statutes. By 2005, a total of 26 states passed anti-same-sex marriage statutes, and 17 states passed either statutes or constitutional amendments that ban domestic partnerships and civil unions for heterosexual and same-sex couples.¹⁴

Lehr calls for us to look critically at the necessity of family in the construction of identity. She also argues that a structural change to the family unit is necessary to allow greater freedom for people to structure their private lives. The current problem justifying same-sex marriage is that lesbians and gays tend to focus on their worth as citizens based on the ability to copy the nuclear family (Lehr 107). Lehr argues that lesbians and gays need to establish their own culture as a legitimate way of structuring intimate relationships and families. So instead of lesbians and gays trying to prove their ability to copy heterosexual relationships, they need to emphasize the importance of their relationships and family structures as essential to the well-being of society. This is different from Calhoun's argument because she makes the comparison of how lesbians and gays are inessential citizens through the passage of DOMA but did not actively call for redefining structuring intimate relationships. Calhoun argues that granting same-sex marriage rights would acknowledge that lesbians and gays are suitable to participate in a foundational

¹⁴ Anti-Gay Marriage Measures in the U.S. Map. Washington D.C.; National Gay and Lesbian Task Force Resource Library. July 2006. 30 July 2006
<<http://www.thetaskforce.org/reslibrary/list.cfm?pubTypeID=1>>

institution of society. Lehr, on the other hand, is moving away from this by arguing that the relationships between adults and children need to be redefined to include other adult role models outside of the nuclear family.

A significant challenge to traditional family politics is the ability to separate sexuality from reproduction (Lehr 125-28). The capacity to reproduce has been a factor in preventing the recognition of legitimacy of lesbian and gay sexuality and relationships. In other words, it would be unnecessary for lesbians and gays to get married anyway because they are unable to biologically reproduce with one another.¹⁵ This is contrary to the fact that many families are formulated by other means besides biological reproduction between the two spouses. Many families are formed through adoption, foster care, and blended families from divorced parents. There are also many fertility treatments that give women the freedom to have children without having to be a part of a relationship first. While it is legal in many states for lesbians and gays to adopt and foster parent children, it is still difficult to find a private or state adoption agency that sees single lesbians and gays or same-sex couples as desirable parents for most children because the nuclear family is still seen as the preferred way to structure private life. While decisions within the family unit are considered private, it is presumed that those decisions would be guided by

¹⁵ This excludes the use of artificial insemination or surrogate mothers as biological means of starting a family.

an external ethical and moral system that recognizes heterosexual marriage as central for establishing the family unit.

The central focus of Lehr's argument is that lesbians and gays are unlikely to include young people who will contest sexuality and gender norms (139-40). Under the nuclear family norm, parents are seen as best fit to nurture their children. This restricts a youth's ability to formulate other adult role models. Restricting young people from other adult role models prevents the opportunity for lesbians and gays to socialize future members of the lesbian and gay community. While opportunities exist for youth to socialize with other adult role models, the focus is still placed upon the importance of adult care-givers in the up-bringing of children. Lehr argues that the idea of children belonging to their parents needs to be deconstructed in order to open the possibility for other people to help construct their identity. Lehr states that three ideas must be challenged before individuals can have the freedom to structure their private lives. Those ideas are the belief children are best nurtured in the privacy of the heterosexual family, the connection between moral questions and politics, and the appropriateness of "community approved" professionals to answer questions regarding sexuality from youth (Lehr 143).

First, the idea that children are best nurtured within the nuclear family needs to be looked at. The private nature of the nuclear family prevents lesbians and gays from connecting with the next generations of youth that resist the dominant

construction of sexuality by defining themselves as gays, lesbians, bisexuals, or queers. Presently, having children is a way for lesbians and gays to interact with youth without being perceived as “dangerous” to the child’s development (Lehr 143). The lack of other adult role models outside of the family unit further reinforces the expectation that children are best nurtured within the privacy of the home. Lehr proposes that lesbians and gays need to help defend the right of children and youth to interact with other adults outside of their parents. If the current idea of how children and adults relate to one another does not change, then the youth who do not conform to heterosexual identity have to fight through hostile social institutions until they are old enough to choose to establish their own sexual or gender identities.

Questions about sexuality not covered at home are transferred to a disinterested party who is found in the school system. This leads to the second idea concerning that ability to separate moral questions from politics and youth questions about sexuality being answered by a disinterested voice together. Since youth are socially segregated from adults in the public sphere, they have to rely on peers or public professionals to engage in conversation and reflection about sexuality within the school environment (Lehr 154-57). The majority of a child’s socialization while growing up takes place at school. The school environment does not allow discussion about the complexity of sexuality because of the restrictions of

using “community-approved” curriculum about sexuality. In particular, the sex education curriculum in the schools is based on the abstinence-only-until-marriage initiative written into the 1996 welfare reform bill. While some high schools have gay-straight groups, they are met with resistance from school officials and peers.

Any American school system using federal funds as a part of their budget is required to teach abstinence education (Lehr 154). However, there are two major problems with using this standard of education. First, abstinence education assumes that all families fit into the nuclear family unit structure and that all people identify as heterosexual. This creates conflicting and mixed messages for youth. For example, a child may identify him or herself as lesbian, gay, bisexual or transgender, but these youth lack an opportunity to express their own questions about sexuality without being socially rejected by peers and school professionals. This increases feelings of shame and the level of isolation that youth experience while in the school setting.

The second problem with abstinence education is its assumption that all youth and their parents have the ability to discuss issues relating to sexuality. Since the schools are forced to teach a very narrow view concerning sexuality, additional information about sexuality is expected to come from the privacy of their home. It ignores the fact that not all parents are willing to discuss sexuality with their children. This leaves children to get their information from a school professional or their peers. If the privacy of the nuclear family in which youth are socialized were to

be challenged, lesbian and gay sexuality could be seen as an acceptable part of personal identity. This would provide an opportunity for lesbians and gays to socialize with youth as adult role models and increase the possibility that there is a community for lesbian and gay youth to become a part of as they grow into adulthood.

This is why the political participation and the acknowledgment of a person's citizenship are important. It gives citizens the ability to express their interests to the general public and play an influential role in the nurturing of future generations. Calhoun and Lehr agree that lesbians and gays are displaced from civil society through their stigma as being unfit to participate in the social institution of marriage. Since lesbians and gays are not seen as essential citizens in need of marriage rights, it is difficult to convince the heterosexual majority that lesbians and gays are in need of these rights. Calhoun examined the role DOMA plays in protecting heterosexual status in marriage, seen as a foundational status for civil society. Lehr examined the role of abstinence-only-until-marriage in the instruction of youth about sexuality and how the ideals of the nuclear family prevent lesbians and gays from being role models for youth who may eventually become a part of the lesbian and gay community.

In the final chapter, I argue that a more in-depth look at the relationship between the initiatives under welfare reform and the statutes of DOMA is required.

Both Calhoun and Lehr focus on each act separately, but there is a definite relationship in how both work to promote heterosexual status through marriage rights. I plan to examine the rest of the initiatives under welfare reform not covered by Lehr and Calhoun and how they support DOMA. I also look at the potential impact on welfare reform by the federal government's position about same-sex marriage and welfare reform's interference with the right of lesbians and gays at the state and local level.

Chapter Three

While the language in DOMA has been transparent in its intention to displace lesbians and gays by denying federal recognition of same-sex marriage, the initiatives under the Personal Responsibility and Work Opportunity Act (PRWORA) are seen primarily in its impact on poor women. Many overlook its influential power in shaping marriage and family in American culture. DOMA clearly defines the federal government's position towards same-sex marriage, but the initiatives under PRWORA help reinforce the statute of DOMA that defines marriage as a union between one man and one woman. While much attention has been paid toward the legal implications of DOMA, not enough attention is being paid to the social influence and financial support that PRWORA initiatives have over marriage and family norms. A broader view of PRWORA will show its implications beyond its effects on poor women. There are four initiatives under welfare reform: marriage, fatherhood, abstinence-only-until-marriage education, and faith-based or charitable-choice initiatives. Since abstinence-only-until-marriage education was covered in the previous chapter, the focus in this chapter will be on the other three initiatives. I plan to look at the broader implications that marriage, fatherhood, and faith-based initiatives have on the social construction of marriage and family. Welfare initiatives could impact lesbians' and gays' opportunity to be recognized as legitimate couples,

the ability to start families, and the right to protect material assets acquired by the couple.

Welfare reform began with political leaders and cultural conservatives trying to find a solution to the deterioration of America's family values (Lerman 34). Welfare dependency was blamed for high divorce rates and an increase in out-of-wedlock births and single parenting, especially amongst low income individuals. The political goal was to have welfare reform strengthen families without affecting single parent families. However, policy-makers never determined what policies could best be used to limit the impact upon single families while increasing support for married couples with children. It is important to note that lesbians and gays as single parents or in two-parent-led households were not even considered during the planning of welfare reform.

Traditionally, welfare benefits helped single mothers to live independently without assistance from their children's fathers or families by providing the missing income and benefits that would ordinarily be provided by the second parent (Lerman 37-40). Before the passage of welfare reform, funding for welfare programs was distributed through Aid to Families with Dependent Children (AFDC). After the passage of welfare reform, AFDC was replaced with federal block grants known as TANF (Temporary Assistance for Needy Families). The newly created block grants provided financial assistance for individual states to develop programs that

encourage and reinforce traditional marriage and the importance of fatherhood. This continues to support Foucault's point about state regulation of sexuality as a means to economic prosperity. TANF funds have already been used to fund several different programs at the state and local level, like incentives for married couples, responsible fatherhood programs, and marriage counseling. Welfare reform also created opportunities for faith-based organizations to compete for federal funds to promote marriage preparation and fatherhood skill courses.

It is important to note that the use of block grants may increase the influential power of the federal government over state and local governments (Dye & MacManus 69-72). One-fifth of state and local government revenues come from federal block grants. Block grants are primarily designated for Medicaid and TANF. In general, state and local governments have fairly wide discretion in how block grants are spent. However, states may feel pressured to conform to the ideas of the federal government to ensure renewal of the block grant for the next fiscal year. While these block grants are a voluntary option for states to fund programs, the competitiveness in combination with cash-strapped budgets make these block grants seem more like a necessity than an option. It is important to remember this when looking at the initiatives under welfare reform because the initiatives express certain ideals pertaining to marriage and family that the states may feel obligated to follow.

Marriage initiatives under welfare reform prioritize heterosexual couples and their children while excluding other families (Sean and Cahill 19). These initiatives are based on the idea that the decline of marriage is a result of poverty. Therefore, increasing the wealth of the individual two-parent family unit should increase the stability of the marriage. When welfare reform was enacted in 1996 under Clinton, it was unclear whether a “two parent” household meant married or unmarried. So the states had the flexibility of serving married, unmarried, separated, and divorced parents and still fulfilling all the requirements under TANF. However, the reauthorization of welfare reform under the Bush Administration proposed tighter restrictions on TANF funds to ensure that heterosexual marriage and fatherhood are promoted. In the reauthorization of welfare reform, Wade Horn, Director of Health and Human Services, stated that for the improved well-being of children, programs needed to be aimed at encouraging responsible fatherhood and healthy heterosexual marriages.¹⁶ Under this initiative, some suggestions to strengthen heterosexual marriage and families included restricting the accessibility of certain tax-funded benefits, re-stigmatizing divorce and second marriages, and making it harder for couples with children to get a divorce.

Arkansas, Arizona, and Louisiana have passed covenant marriage laws that conform to these ideals to strengthen heterosexual marriage (Sean & Cahill 19).

¹⁶ Committee on Education and the Workforce U.S. Welfare Reform: Reauthorization of Work and Child Care. 109th Cong., 109-4 1st session. Washington: GPO, 2005.

Covenant marriages are different from traditional marriage in that couples have to sign an extra contract stating their commitment to preserving their marital union. Arizona's covenant marriage law is not supposed to serve as a replacement for marriage contracts already available, but it is meant to be an option for couples considering marriage.¹⁷ To qualify for a covenant marriage in Arizona, couples must complete pre-marital counseling from a state-approved official that could be anyone from a licensed marriage counselor to clergy. Next, the couple must sign a special statement on the marriage license application that specifies that the marriage is "a covenant between a man and a woman who agree to live together as husband and wife for as long as they live." It also goes further to establish the couple's commitment to preserve marriage. Entering into a covenant marriage in the state of Arizona makes it extremely difficult for couples to get a divorce. Under the law, divorce or legal separation from a covenant marriage can only be granted by the court if a couple can prove the necessity of the separation based on certain guidelines listed under the state law. Some of the guidelines include proof that a spouse committed adultery. Couples must also be living separately for two years before a divorce complaint could be filed. Even in the instance where adultery was committed, couples will have to attend mandatory counseling before a court will hear their petition for legal separation or divorce because they have signed a

¹⁷ Covenant Marriage in Arizona. 9 September 2006
<<http://supreme.state.az.us/dr/Text/Covenant.htm>>

contract to preserve the marriage. Some of the guidelines specify certain time limits before legal separation could be granted, which could take a couple of years before they could actually be legally divorced. Couples who enter into covenant marriages do not receive any more material benefits than regular marriage, but covenant marriage is presumed to be a higher standard of marriage.

Other states have used funds from welfare reform block grants to create programs promoting marriage. The state of Oklahoma developed a Prevention and Relationship Enhancement Program that provides marriage and relationship education.¹⁸ On the Oklahoma Marriage Initiative Services Website, all workshops are opened to both married and unmarried couples as well as single individuals. It is significant that nowhere does it state on the website that the marriage and relationship education workshops were restricted to just welfare recipients. Therefore, anyone, whether they are on welfare or not, can participate in these workshops. This demonstrates that anyone can be influenced by welfare reform policies promoting the ideals of heterosexual marriage and the nuclear family.

Florida's Marriage Preparation and Preservation Act of 1998 is a good example of how welfare funds are used to promote marriage and how the ideals promoted by the marriage initiative influenced the state's marriage and divorce

¹⁸ Oklahoma Marriage Initiative. Healthier Happier Families In Oklahoma: OMI Services Site. 9 September 2006 <<http://www.okmarriage.org/services/index.asp>>

laws.¹⁹ This Act revised the high school graduation requirements to include a life management skills class that includes marriage and relationship skill-based education. This act also changed marriage and divorce laws for the state. For instance, couples now have to go through a year of mandatory pre-marital counseling with a state approved counselor before applying for a marriage license. Then, in the event married couples with children seek a divorce, there is a mandatory three-month waiting period to allow time for “reconciliation” and attend required parent education courses by a state approved professional. This could be a problem for battered women trying to separate from a spouse with whom they are required to attend marital counseling in order to get a divorce. This Act also gives the courts the power to take any other action it deems necessary that may be in the best interest of the child.

The desirability of heterosexual unions under the marriage initiative may affect the availability of other programs that ordinarily would be accessible to lesbians and gays. For instance, while adoption laws are determined at the state level, the federal government may have influence over who should receive first priority in the adoption of children. Since the federal government promotes the desirability of heterosexual married couples, state agencies could give priority to heterosexual married couples over others when it comes to adoption in hopes to

¹⁹ Marriage Preparation and Preservation Act of 1998. 10 September 2006
<<http://www.smartmarriage.com/florida.marriage.act.html>>

secure funding for next year. This would threaten the ability for lesbian and gay couples to use adoption as an option to start a family. Four states -- Utah, Mississippi, Florida, and Arkansas -- already ban lesbian and gay parents from adoption and foster care (Sean and Cahill 27).

Privileging of heterosexual married couples under marriage initiatives could also restrict the accessibility of certain "limit supply" benefits, like Head Start and low-interest government student loans (Sean & Cahill 24-25). Instead of a first-come-first-served basis, married couples would be given limited supply benefits first over others. Therefore, parents who choose not to marry or lesbians and gays who are denied the right to be married could no longer be able to access these benefits. This further raises the stakes for people to be in married heterosexual relationships. It could also pressure people (including lesbians and gays) to remain or enter into relationships that they ordinarily would not in order to access these benefits. This initiative could force women to be dependent on men in order to access certain state benefits for themselves and their children. This particularly threatens the existence of lesbian relationships since sexuality between two women does not include the role of a father figure. Reinstating the father/husband figure as necessary for healthy and productive marriage and family threatens the possibility for lesbians to be recognized in committed relationships and as family units.

The ideology that certain benefits should only be offered to married couples has gone beyond the guidelines under the marriage initiative. Cultural conservatives that support the marriage initiative moved beyond the distribution of benefits to welfare recipients and now are challenging a public employer's ability to offer domestic partnership benefits. Eastern Michigan University's domestic partnership benefits recently came under fire by cultural conservatives because it supposedly violated the state constitution's definition of marriage between a man and a woman.²⁰ Since Eastern Michigan University is a public institution, the rationale was that it should not be able to offer domestic partnership benefits using state tax dollars because same-sex marriage is illegal under Michigan law. The Governor of Michigan also questioned the legality of public institutions offering domestic partnership benefits because of the state constitution's definition of marriage. In East Lansing, Michigan, Michigan State University employees and other state employees filed a complaint supporting an employer's right to offer domestic partnership benefits. The motion argues that the marriage amendment in Michigan's state constitution does not prohibit public employers from providing benefits to domestic partners.²¹ It also further argues that receiving partnership benefits does not create a new form of marital status or create a new policy concerning marriage. Michigan's

²⁰ Micheal, Jason. Glenn. "AFA charge EMU's DP benefits policy violates state constitution." Between the Lines. 3 March 2005. 17 October 2006

<<http://www.pridesource.com/article.shtml?article=12613§ion=news>>

²¹ American Association of University Professors. Domestic Partner Benefits on Campus. 17 October 2006 <<http://www.aaup.org/AAUP/protectrights/legal/Updaes-speeches/partners.htm>>

marriage amendment also does not specifically prohibit public employers from offering any employment compensation package to domestic partners regardless if same-sex or opposite sex. Even though public universities receive public funding to operate, the funding received does not necessarily come from welfare grants. However, there is nothing preventing the state from restricting funds from public employers that offer domestic partnership benefits if it is contrary to what the federal government endorses.

The fatherhood initiative under welfare reform is related to the marriage initiative in promotion of heterosexual marriage. However, fatherhood initiatives go further to promote the idea that married, heterosexual couple-led families are the only families capable of raising healthy children (Sean & Cahill 29). The primary goal of the fatherhood initiative is to increase the involvement of fathers in the family unit. The origin of the fatherhood initiative came from Vice President Dan Quayle's criticism of the TV character Murphy Brown for deciding to have a child out of wedlock. Those comments founded the National Fatherhood Initiative, whose goal was to counter the growing problem of "fatherlessness."²² The National Fatherhood Initiative rests in four principles: 1. fathers make unique and irreplaceable contributions to the lives of children; 2. father absence produces negative outcomes for the children; 3. societies which fail to reinforce a cultural ideal

²² National Fatherhood Initiative Website. 1994-2006. 2 October 2006
<www.fatherhood.org/history.asp>

of responsible fatherhood get increased amounts of father absence; 4. widespread fatherlessness is the most socially consequential problem of our time. Wade F. Horn was the former director of the National Fatherhood Initiative before being appointed by President Bush to serve as Director of the Health and Human Services Department under the Bush Administration. President Bush's appointment of Horn is significant. The ideals about fatherhood as proposed by the National Fatherhood Initiative are reinforced by Horn as Director of Health and Human Services. As Director, Horn has a key role in implementing several of President Bush's initiatives to strengthen children and families and has direct oversight of how TANF funds are used and distributed. For example, during the reauthorization of welfare reform in 2005, Wade Horn proposed that \$200 million would be spent on programs promoting family formation and healthy marriage. Plus, an additional \$40 million was proposed to support responsible fatherhood and healthy marriage programs in order to "reverse the rise in father absence and its subsequent impact on children."²³ The special priority given to fatherhood and marriage programs reinforces more traditional male/female gender roles. It also reinforces the idea that children cannot become good citizens without being raised by both a mother and a father.

Along with the marriage initiative, the fatherhood initiative can make it harder for people to form relationships and start families outside of the heterosexual

²³ Committee on Education and the Workforce U.S. Welfare Reform: Reauthorization of Work and Child Care. 109th Cong., 109-4 1st session. Washington: GPO, 2005.

norm (Sean & Cahill 30). Lesbians, gays, and even heterosexuals may have problems leaving unhappy marriages. This has been demonstrated through the difficulty of divorcing under Arizona's covenant marriage laws and prohibiting lesbians and gays from adopting children. The ideology of the father figure as a necessity for raising children can affect a lesbian couple's ability to adopt children or try to get pregnant through donor insemination. For instance, lesbians many have difficulty locating doctors and clinics that will provide fertility services.²⁴ Once a clinic or doctor is found, lesbian women often have to pay expensive fees for fertility services because the services are not covered under health insurance plans. Women who are unable to afford the out-of-pocket expense may turn to cheaper alternatives. For example, some women will seek out their own sperm donors and self-inseminate. This creates medical and legal risks that would otherwise be avoided if the fertility services were easily accessible.

When analyzing the fatherhood initiative it is important to view it as part of a complex strategy that is interconnected with marriage promotion, abstinence education, and faith-based initiatives (Sean & Cahill 31). The Bush Administration has made a particular commitment to advancing fatherhood initiatives, which has been demonstrated in Horn's plans to allocate TANF funds during the reauthorization in 2005. Particular emphasis is directed towards the development of

²⁴ Curphey, Shauna, "Lesbian, Single-Mother Families Still Face Hurdles, 14 January 2003, 1 December 2006 <<http://www.womensenews.org/article.cfm./dyn/aid/1181/context/archive>>

programs that promote the importance of fatherhood in order to have healthy marriages. A large portion of this funding is designated for competitive grants aimed towards faith-based organizations. This will help fund programs provided by religious organizations for skill training for marriage, parenting education, job training, and other services that are supposed to help fathers be emotionally and financially supportive of their children.

Chauncey argues that religious influence over marriage has declined over time. While this may have been the case before welfare reform, the faith-based initiatives under welfare reform now help increase the influence of certain religious organizations over marriage norms. The faith-based initiatives allow religious groups to serve as subcontractors to the state in distributing marriage and fatherhood programs. Since the faith-based initiative protects religious organizations from state influence over internal governance and over what types of religious art, icons, or scripture are displayed, it also gives religious organizations the freedom to teach their religious beliefs as a part of the program's curriculum (Chaves 836). The faith-based initiatives could give preference to those religious organizations that fit the ideology promoted through the marriage and fatherhood initiatives. The faith-based initiatives also allow religious organizations to discriminate based on religious beliefs and doctrine. In a booklet published by the federal government under the Bush Administration, it claims that Title VII under the Civil Rights Act

protects the right of religious organizations to hire individuals who are best able to further their organizations' goals and mission.²⁵ Religious organizations can, relative to the relevance of the position of hire to their overall religious mission, use discriminatory hiring practices based on the ability of employees to follow the organization's doctrines of faith.

This is a problem for lesbians and gays who are employed in religious organizations or are seeking assistance from a religious organization that follows an anti-gay doctrine. Those seeking assistance may have faith-based charities as their only option to get the services they need. There are few constraints on religious organizations to prevent them from requiring that recipients follow their religious dogma to receive benefits. The financial funding through the federal grants now increases the influential power of religious organizations over marriage and family. Chauncey also states that part of the decrease in influential power of religious organizations was caused by the different definitions of marriage. The danger of faith-based initiatives is that preference could be given to those religious organizations that share the same ideals as the marriage and fatherhood initiatives. So while some religious groups fully support the legalization of same-sex marriages and the affirmation of their families, opposing religious organizations are in a better position to get a financial boost from the federal government because their teachings

²⁵ Executive Summary from Protecting the Civil Rights and Religious Liberty of Faith-Based Organizations: Why Religious Hiring Rights Must Be Preserved.

coincide with the married heterosexual ideal being promoted under welfare reform. This further displaces lesbians, gays and any others who do not fit into these norms from civil society. It also diminishes their worth and existence as citizens in American society.

The initiatives enforced and funded under welfare reform support the DOMA definition of marriage as a union between one man and one woman. The initiatives under welfare reform and DOMA support one another to promote heterosexual marriage and the ideals of the nuclear family. Both also influence the ideals of individual state governments and subsequently amongst the American population. Marriage and fatherhood initiatives reinforce married heterosexual ideals for couples and argue that the role of a father or a male figure is vital for the proper upbringing of children. By giving priority to heterosexual norms, the government is showing vested interest in maintaining heterosexual identity for civil society. Heterosexual married couples have been designated as capable of teaching heterosexual norms to future generations by the government, reinforcing that heterosexual identity is necessary for children to become productive citizens in society. However, some individual state judicial systems disagree with the heterosexual ideals promoted at the federal level.

Goodridge et al v. Department of Public Health determined that lesbians and gays have a constitutional right to marry. Also, a very recent court decision in New Jersey

established that lesbian and gay couples are entitled to access the rights and benefits given to married couples.²⁶ However, I find this to be a cautionary sense of hope. While some state courts are recognizing that lesbians and gays have a right to access marriage or the rights guaranteed under marriage, these decisions can ultimately be overturned by a state legislature passing an amendment to the state constitution prohibiting same-sex marriage. This has already been seen in Hawaii. After it was ruled that prohibiting lesbians and gays from marriage was a form of sex discrimination, a state amendment to the constitution was passed defining marriage between one man and one woman.

This is why closer examination of the relationship between the initiatives under welfare reform and their role in defining marriage and family is needed. Since the federal government promotes heterosexual ideals and prohibits the recognition of same-sex marriage, state governments are more likely to follow suit to the same ideals in order to ensure the continuance of federal funds. The fight for same-sex marriage needs to occur at the national level. As it has been seen, individual states are showing a willingness to grant same-sex marriage rights, which is demonstrated by court rulings at the state level. However, the policy-makers who have to petition for federal funding to finance state budgets may be more willing to push the ideals set in the initiatives under welfare reform and the statutes of DOMA. Therefore, it

²⁶ Chen, David W. "New Jersey Court Backs Full Rights for Gay Couples: But Justices Direct Legislature to Decide on Issue of Marriage," New York Times 26 October 2006: front page.

would be in the best interest of the lesbian and gay movements to challenge the ideals promoted and funded under welfare reform. If the ideals concerning marriage and family are changed at the federal level, then the individual states may begin to follow suit.

Conclusion

State regulation of sexuality has played a contributing factor in the second-class citizenship experienced by lesbians and gays. The state promoted and privileged heterosexual identity by offering certain rights and benefits through marriage rights. The state also created laws that punished and refused to recognize lesbian and gay identity. Many lesbians and gays conformed to married heterosexual ideals to avoid social hostility and legal consequences for expressing their identity. The ability to disguise sexual identity is what makes the second-class citizenship of lesbians and gays unique. It also makes it easy to dismiss the existence of lesbians and gays in civil society.

The influential role of religious organizations and specific gender expectations over marriage has declined. However, dependence upon this social institution only increased by offering certain benefits and rights that are not otherwise available to unmarried couples. Married couples are usually granted things like inheritance rights and access to a spouse's employment compensation package, which are not easily accessible for those not married. The AIDS epidemic and child custody battles in the 1980s demonstrated how vulnerable lesbian and gay relationships were by not being able to access marriage rights. Many lesbians and gays lost their homes, livelihood, and custody of their children because they lacked the same recognition given to heterosexual married couples.

Even though lesbians and gays have greater social acceptance today than they did 50 years ago, they are still marginalized through the laws that prohibit same-sex marriage. Being second-class citizens further complicates the ability of lesbians and gays to bring concerns related to accessing marriage rights to the political body. Since sexual identity is easy to disguise, it is easy to assume that every citizen is heterosexual. This restricts the opportunity for lesbians and gays to be seen as able to participate in the overall collective identity of society. Being second-class citizens also interferes with the ability of lesbians and gays to have influence over future generations about the positive aspects of lesbian and gay identity. Denying lesbians and gays marriage rights reinforces that they are unfit and inessential citizens.

Calhoun points out that DOMA protects the political status of heterosexual marriage. It defines marriage between one man and one woman and affirms the autonomy of the individual states by granting them the ability to recognize or reject same-sex marriages from other states. Lehr points out that the socialization of children is important in how heterosexual identity maintains its privileged status within the political body. Since children will inherit and participate in the political body when they become adults, it is important how sexual identity is communicated to them. The promotion of heterosexual norms through abstinence-only education in the public schools excludes youth identifying themselves or having family members who identify themselves as lesbian or gay.

Calhoun and Lehr both point out two very significant ways in which the government continues to regulate sexuality and marriage. Calhoun primarily focuses on how DOMA protects heterosexual status by determining who is fit for marriage, while Lehr looks at how abstinence-only education teaches youth about the desirability of heterosexual norms. Both DOMA and abstinence-only education have been transparent in the promotion of heterosexual identity. However, the role of the other welfare initiatives deserves another look. The marriage, fatherhood, and faith-based initiatives under welfare reform provide program guidelines and the financial support to develop services that promote and support heterosexual marriage and the nuclear family.

The relationship between DOMA and the marriage, fatherhood, and faith-based initiatives is often overlooked. This is partly due to the manner in which these initiatives are promoted. Marriage initiatives are seen to help struggling couples get the financial support needed to stabilize the relationship. Fatherhood initiatives are seen as a way to get more men involved with the social and financial responsibilities of their children. Faith-based initiatives are seen as a way to provide more opportunities for people receive services. The marriage, fatherhood, and faith-based initiatives are seen as an opportunity to help impoverished women and their children. However, a closer look at these initiatives reveals the potential for the

federal government to exert influential power over policies that are normally controlled at the individual state level.

Welfare programs are funded primarily through federal block grants. While federal block grants are a voluntary source of income, many state law-makers may see the block grants as a necessity to fund cash-strapped state budgets. In order to secure funds for the next fiscal year, states could feel obligated to restrict services to individuals who match the ideals of the marriage and fatherhood initiatives. This provides an opportunity for the promotion of heterosexual marriage and family norms through the welfare reform initiatives and, subsequently, influences policies created at the individual state level. Marriage and fatherhood initiatives both promote the idea that married, heterosexual-led families are the best suited to raise children. So for example, adoption requirements may give preference to married heterosexual couples and exclude lesbian and gay couples as potential parents. Faith-based initiatives require state agencies to contract with religious organizations to provide services. However, religious organizations have the freedom to discriminate employment and services based on their religious doctrine. Therefore, lesbians and gays could be denied employment because their sexuality identity conflicts with the belief structure of the religious organization.

The ideals promoted under the marriage, fatherhood, and faith-based initiatives reinforce DOMA's definition of marriage. A broader look on the impact

welfare initiatives have on state services and policy is needed. As seen with examples like Arizona's covenant marriages and Florida's Marriage Preparation and Preservation Act, states are adjusting their policies at the state level that reflect the heterosexual norms promoted at the federal level. Also the example from Oklahoma shows that anyone can take advantage of the programs funded by welfare reform; those services are not restricted to individuals receiving welfare benefits. This demonstrates that the actions of the federal government do have an influence upon state policy and the programs that are offered.

While not all states changed their policies to match the ideals of the federal government, there are limitations to the same-sex marriage rights granted in Massachusetts and New Jersey. Same-sex marriages granted at the state level are not eligible to access marital rights and benefits granted by the federal government. While married lesbian and gay couples could access benefits and rights offered at the state level, they still could not access those rights and benefits at the federal level. More important, the marriage, fatherhood, and faith-based initiatives have a broader impact upon how the privileged status of married heterosexual identity is maintained. Therefore the initiatives continue to reinforce the idea that lesbians and gays are inessential citizens and continue to displace lesbian and gay identity from society.

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