

**SAME-SEX MARRIAGE IN THE UNITED STATES:
CHALLENGING THE NATIONAL SECURITY IMAGINARY**

by Naomi J. Pinion

A Dissertation

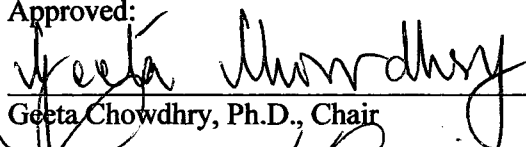
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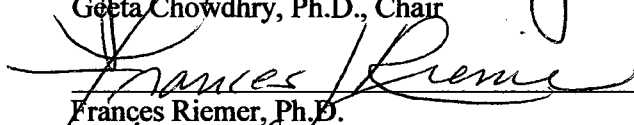
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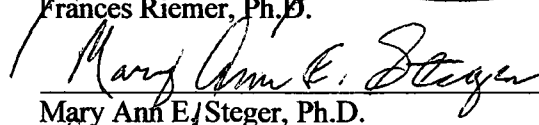
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ABSTRACT

SAME-SEX MARRIAGE IN THE UNITED STATES: CHALLENGING THE NATIONAL SECURITY IMAGINARY

NAOMI J. PINION

This research is an interrogation of the movement for same-sex marriage equality in the United States and the challenges it represents to the security of the nation. In order to examine why and in what ways same-sex marriage is interpreted as a danger or threat to the nation and its security, I draw upon critical feminist IR theory, including theories of nation and nationalism, queer theory, and feminist theories on marriage and heteronormativity to frame my research. The national security imaginary with its gendered, sexualized and racialized constructions of “danger” and insecurity suggests that gay marriage is perceived as threatening to the reproduction of the heteropatriarchal, capitalist nation. While the U.S. nation-state is founded on myths of white, heteropatriarchal, christian, capitalist norms, it also sees itself as a liberal democratic nation in which the equal rights of all are respected. It is this tension between these two contradictory “myths” of the nation that provide an *apertura* for same-sex equality claims and victories.

Feminist discourse analysis is utilized to examine primary and secondary data, including senate and congressional hearings, legal cases, state and federal amendments, the Defense of Marriage Act (DOMA), and the proposed Federal Marriage Amendment, as well as interviews, the efforts of LGBTQ organizations, and a variety of cultural documents. Arizona and Massachusetts are used as two very dissimilar case studies in this dissertation to explore the “politics” and the history of the same-sex marriage debate

in each state. My findings indicate that because heteronormative marriage in the U.S. functions as a tool of the state to reproduce the gendered, racial and sexual configurations of the nation and its citizenry, the same-sex movement is facing serious obstacles. It also demonstrates that the use of civil rights language and liberal equality claims may further the aims of the same-sex marriage movement.

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*This work, this accomplishment, is dedicated with all my heart ~
to Bailey, Drake, Kyren, Esabella, Anna, and Kyah*

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~ Chapter One ~

Introduction

One of the most controversial issues currently in the United States is the national debate over marriage. The “fight” for legalizing same-sex marriage and making it available to all citizens of the United States has once again brought marriage into the forefront of the political agenda. Marriage and the trope of the family touches such deep chords in the “American” heart that any deviations from the norm seems to evoke fears of social anarchy and is interpreted as destabilizing to the nation. In response to the challenge of same-sex marriage to the nation’s security we have seen the development of DOMA – the Defense of Marriage Act, and president George W. Bush’s Healthy Marriage Initiative, as well as literally countless organizations (many are government funded) that have been created to protect traditional marriage and comprise what has come to be known as the Pro Marriage Movement.¹ Forty-five out of fifty states have passed laws or amended their constitutions to effectively prohibit same-sex marriages, with only Massachusetts and now Connecticut allowing full legal same-sex civil marriage (<http://www.newsvote.bbc> 2008).

Making the debate even more heated, in February of 2007 the U.S. Senate voted, by 49 – 48, to block gay marriage bans. Although at the time President Bush commented on his disappointment, he called it a “new chapter in the national debate” and declared

¹ The Pro Marriage Movement consists of a coalition of organizations that have joined together to encourage and strengthen marriage. The Statement of Principles details the current “marriage crisis,” refutes arguments against marriage, defines marriage, explains the importance of marriage and the costs of divorce, describes several ongoing pro-marriage movements, and outlines a call to action for government entities, married couples, and others. See <http://www.marriage-movement.org/html/report.html> (December 16, 2002). The Pro-Marriage Movement includes such organizations as the National Marriage Coalition, Arizona Together, The Center for Arizona Policy, and Project Marriage Arizona.

that “an amendment to the constitution is necessary because activist courts have left our nation with no other choice” (<http://www.newsvote.bbc> 2007). Civil unions and domestic partnerships are recognized in only seven states, which offer same-sex couples some of the legal benefits of marriage but without the title. In 2006, 26 states passed constitutional amendments and 19 states passed laws restricting marriage to one man and one woman. And, when Barack Obama was elected president on November 4, 2008, gay marriage was on the ballot in three states. In all three states – California, Arizona and Florida – voters approved measures defining marriage only as a union between a man and a woman, and won 52% of the vote in California, 56% in Arizona, and 62% in Florida (*USA Today* 11/11/08). Consequently, one must wonder why deviations from traditional marriage appear to be perceived as such a threat to the security of the nation as to compel almost the entire country to instigate laws and constitutional amendments that limit marriage to the heterosexual couple? The role of traditional heteronormative marriage in the national security imaginary may provide some clues to this puzzle.

In 2006 President Bush stated that “marriage is the most fundamental institution of our society” (<http://www.newsvote.bbc> 2007). Unknowingly, Bush seems to be reiterating the feminist analysis of marriage in the U.S. which suggests that heteronormative marriage is the foundation for reproducing the nation. Marriage, it appears, is the touchstone for an orderly reproduction of the nation. Any departure from such an order, reproduces the anarchy of the state of nature and hence is seen as inherently destabilizing to its security. Security discourses in International Relations (IR) narrate a particular view of the world from the perspective of various IR traditions and an IR “myth” is what helps make a particular view of the world appear to be true, such as

IR's assumption that anarchy is the state of nature. This process naturalizes meanings, making them into common sense and into the products of cultural practices (Weber 2001). Put another way, the myth function in the IR security imaginary is making a 'fact' out of an interpretation. This process of making what is cultural and disputed into what is natural and therefore goes without saying (fact), is the work or function IR assumptions/myths perform in IR security theory or its constructed "security imaginary."

A crucial aspect of "security" is securing the homeland, by which is meant the protection of the nation as "an imagined community" from any threats, including those to its identity (Anderson, 1991). In conventional IR, a nation's security is closely tied to the construction of territorial and indentitarian boundaries. Gender, race, class, religion, sexuality and other such axes of identity, play an integral role in the construction of the nation and its boundaries (*See* Peterson 2000; Collins 2006; Chowdhry and Rai 2009; Alexander 1994; BhaBha 1990). The concept of citizenship is also a cornerstone for determining who will be reproducing both citizens and the nation (*see* Brandzel 2005; Yuval-Davis 1997; Ferguson 2007). It appears that mainstream state security discourses suggest that same-sex marriage and homosexuality in general are security risks, which "threaten the security of an internal and domestic society as well as the external security of the nation-state" (Campbell 1999:15). Hence, homosexuality is interpreted as a weakness and is perceived as a threat to the power or "manly" identity of the U.S. For this reason, marriage, its ties to the institution of marriage, and the traditional nuclear family will be interrogated as possible cornerstones for (re)producing the nation and maintaining its security imaginary.

Conventional/historical notions of security have been inextricably tied to militarism and more recently to economics, invisibilizing other powerful and significant aspects of “security” linked to the private sphere - connecting marriage/home/family to the nation’s imagined security. Feminist IR scholars argue that a truly comprehensive security cannot be achieved until gender relations of domination and subordination are eliminated, illuminating the connections or intersections between security and the gender roles reproduced through the practice of marriage and family. Heteropatriarchy² refers to sex/gender systems inherent to patriarchal ideology which naturalize male domination and normalize/institutionalize heterosexual family forms and heterosexist practices (Peterson 2000:77). According to critical feminist literature, marriage and the legitimate family’s main role is to perpetuate heteropatriarchal relations and function as a normalizing mechanism to reproduce the nation. Iris Marion Young argues that appeals to the family evoke visceral feelings of comfort and security (1997) and draw a clear boundary between legitimate and illegitimate, with an understanding that it is state sanctioned, heterosexual marriage that confers legitimacy, not only on the family structure, but the children born into it (Anderson 1991).

This dissertation utilizes critical feminist and queer literature which suggests the nation plays a fundamental role in maintaining the institution of marriage as the primary

² Patriarchy as an ideology encompasses all aspects. It is a belief system and a practice, or mythos and ethos which mutually support each other. “Patriarchy” refers to the system of oppression/exploitation characterized by unequal man/woman relations supported by direct and structural violence (Mies 1986). In addition, patriarchy also represents, on the macro or systemic level – an imposed hierarchical or stratified structure which ranks all things and as such is oppressive to all beings as well as animals and the earth. Above all patriarchal culture is about the core values of power (as power-over) and dominance (Johnson 2005). “Racialized patriarchy” speaks to the racial stratification of society - the inequality based on racism inherent to a patriarchal (capitalist) ideology (Collins 2006; hooks 2000). Jacqui Alexander credits Lynda hart (1994) as the originator of the term **heteropatriarchy** and used it to “combine the twin processes of the heterosexualization and patriarchy” (1997:65). I use heteropatriarchy more in the way it is employed by V. Spike Peterson where she uses it to refer to “sex/gender systems that naturalize masculinist domination and institutionalize/normalize heterosexual family forms and corollary heterosexist identities and practices” (Peterson 2000:77).

site for the production and maintenance of a white normative citizenry (Brandzel 2005; Walters 2006; Ferguson 2007). This project thus examines the state's role in regulating citizenship and human relationships through the exclusivity of marriage laws. As a site of citizenship production the institution of marriage is critical to maintaining the security of the nation and to the formation of a properly gendered, properly racialized, and properly heterosexual America – *where the state produces itself and its imagined community* (Brandzel 2005; Walters 2006).

This dissertation explores how by promoting and naturalizing heteronormative marriage as the primary institution of American domestic life, the state not only produces heterosexuality as the norm, but also links heteropatriarchy to a gendered, racialized, sexualized, christianized, and “secure” citizenry. At the center of the marriage debate is also an imagined traditional family ideal consisting of heterosexual couples that produce their own biological offspring (Collins 2000; Mosse 1985; Brandzel 2005).

Consequently, this dissertation examines the ways in which the national body requires a relatively fixed gender hierarchy maintained through the practice of traditional marriage, and, how the heteropatriarchal family provides the fundamental principles for security in the nations' imagination.

Statement of the Problem

The central question I seek to address is, why and in what ways does same-sex marriage constitute a danger to the security of the nation? Mainstream IR has traditionally defined danger to the nation in terms of the inside/outside dichotomy. The security of the nation depends on how the territorial space of the nation is protected from external threats.

Feminists and other critical scholars suggest that the national security imaginary is dependent upon the reproduction of this dualism as well as hierarchical gender, sexual, and racial systems. As Campbell (1998) suggests, the construction of nation and national identity with its exclusions and inclusions determines the ways in which threats to the nation-state are constructed. Therefore, danger is not an objective condition. “Anything *can* be a risk, it all depends on how one analyzes the danger and considers the event – danger is an effect of interpretation” (Campbell 1998:2). This understanding of the necessarily interpretive basis of danger has important implications for International Relations. The events or factors that are identified as dangerous come to be ascribed as such only through an interpretation of their various dimensions of dangerousness. In this dissertation I interrogate the ways in which same-sex marriage is perceived of and represented as “alien, subversive, dirty or sick,” and as such is “pivotal to the articulation of danger in the American experience” (Campbell 1998:2).

This project investigates the struggle for same-sex marriage equality in the United States and the challenge to the nation’s security imaginary. The research includes a historical survey of the nation and its intersections with gender, and marriage as well as the contemporary movement to legalize same-sex marriage in the United States. I use Arizona and Massachusetts as case studies to examine the pros and cons of the debate, state laws and legislation, policy, constitutional amendments and the ways in which the “marriage equality” movement is interpreted as destabilizing. Domestic Partnership and Registered Partnership rights will also be examined in comparison to the rights and benefits of legal civil marriage. Federal legislation concerning the opposition to same-sex marriage is then explored: the Defense of Marriage Act (DOMA), the Healthy

Marriage Initiative (HMI), the proposed Federal Marriage Amendment, and the Pro-Marriage Movement, in an effort to deconstruct how and why gay marriage is perceived of and constructed as a danger to the national security imaginary.

The intersecting and overlapping literature on security, same-sex marriage, the nation, International Relations, marriage, gender, and heteropatriarchy suggests that the nation depends on marriage to defend its identity as heterosexual by reproducing gendered systems of dominant/subordinate and the consequent dualistic organization of society. Heteronormative marriage also appears to function to naturalize hierarchies, perpetuate a stratified society and a white heteronormative citizenry, and to reproduce an assumed biological unity (Brandzel 2005; Collins 2000). Through marriage, it is argued, the nation-state can police the gender, racial, ethnic, sexual, and even religious configurations of the U.S. citizenry. According to the relevant literature, the nation's demarcation of good citizen bodies (married, heterosexual, reproductive, and white) is drawn in direct opposition to noncitizen bodies (nonheterosexual, nonreproductive, engaging in sex for pleasure, and nonwhite). This dissertation will interrogate the ways in which nationalism assigns everyone a place, and how a perceived confusion between categories of man and woman threaten the order and indicate a loss of control/security. State control relies on fixed and unchanging sex roles as part of the fabric of the nation and is inextricably tied to the ideological work of (re)producing the patriarchal order/security of the nation-state (Mosse 1985; Foucault 1976, 1978). Consequently, it appears that perpetuating heterosexual marriage norms and corresponding hierarchies are fundamental to how the nation imagines its security.

Before I discuss the literature utilized in this dissertation, I would like to make some points of clarification here about why I situate the question of same-sex marriage in the context of International Relations and its security imaginary and not, for example, within the context of religious intolerance or American politics. First, while the struggle for same-sex equality can be treated as being situated only in the realm of domestic American politics, many critical scholars including feminist scholars have critiqued the internal/external dichotomy in IR (*see* Campbell 1999; Tickner 2002; Peterson 2000). According to them, the domain of IR is not just “out there,” IR is also constructed by the internal dynamics of a society. Since the discourse around same-sex marriage has addressed issues of national security and stability it is only appropriate that this issue is discussed in the context of IR. Second, the discussion of same-sex marriage focuses on the nation-state and national identity. As stated earlier, the U.S. nation-state has been imagined as a white, heteropatriarchal, capitalist, and christian nation. Hence, discourses of nation and security cannot be placed solely within American politics since, as stated earlier, critical IR, including feminist IR, has challenged the insider/outsider dichotomy. In addition, religion has played a critical role in international relations and therefore cannot be separated from the construction of the U.S. nation and its roots in christian heteronormativity. Finally, since the military’s anti-gay “Don’t Ask, Don’t Tell” policy was the arena in which public discussions linked homosexuality to security issues, it is appropriate that I use the national security imaginary and IR to discuss the same-sex movement.

Literature Review

Stemming from critical feminist political theory, there are several interrelated and overlapping literatures that I draw upon to frame my research. The first group of literature to be explored is mainstream International Relations theory and its conceptualization of the security imaginary, including feminist perspectives. Following this critical examination of IR and security, I discuss the relevant literature on the nation and intersections of gender, sexuality and race. Feminist/queer political theory on same-sex marriage and citizenship is then explored. And last I examine the feminist literature on marriage and heteropatriarchy.

International Relations and its Conceptualization of the Security Imaginary

The security of the nation-state is perceived as a core value that is generally supported unquestioningly by most citizens. However, in mainstream IR and in traditional studies of international politics, security is tied to conventional ideas of power, specifically military power (Carr 1939; Waltz 1959), and “every aspect of the state, in its power aspect, is directed to war” (Carr 1939:109). The state serves as the sovereign, autonomous and independent power to make the rules and enforce them, and accordingly, each state acts to provide its own security in protection of its own self-interests. National security policies are determined by each state’s military power - the ratio of its strength when compared to that of other countries. So although states are seen in anarchical relationship to each other, they are hierarchized dependent upon their relative capabilities. Tension grows as states build their own capabilities and thereby appear threatening. The result is either a balance of power or an outbreak of conflict - a

reoccurring phenomena and the central concern for international politics - although in mainstream IR peace is not really possible except as the absence of war (Waltz 1959). Military power is the ultimate power of the state, to control and coerce others to do what they might not otherwise do, and is the foundation for national security discourse and policy. Therefore, economic power becomes essential for financing a larger and more powerful military and the pursuit of wealth becomes the ultimate goal of every state (Carr 1939).

Consequently, the parable of man's amoral, self-interested behavior in the state of nature, made necessary by the lack of restraint on the behavior of others, is taken by Realists to be a universal model for explaining states' behavior in an international anarchical system (Tickner 2001:51). These myths/assumptions/stories play a central role in constructing the mainstream IR security imaginary. In traditional International Relations, anarchy is assumed to be the central organizing principle. The one that is best known and most widely accepted is Kenneth Waltz's (1959) myth that 'international anarchy is the permissive cause of war'. These anarchical relations make security issues central to the IR imaginary. As a result of anarchy and human nature, individual wars may be stopped from time to time, but war itself cannot be transcended. According to critical feminist and IR theory, it is these assumptions or "myths" which are responsible for constructing and maintaining the IR security imaginary. Therefore, marriage, home, and family are protected by the state and represent "security" in the face of anarchy.

In international politics the Body Politic or "trope of the body" is central to the moral space of identity and hence, the security of the state: it is implicated in the gendered discourses of power, and can be easily observed in any number of

representations concerned with threats to order in society (such as gay marriage). A discursive economy³ provides resources for representing difference as a danger to the social, where the social is understood as a (naturally healthy male) body. For that reason, “the Body Politic as a trope for the social order is a figuration that authorizes and empowers the representation of danger to the social body in terms associated with the representation of danger to the physiological” (Campbell 1998:75). Therefore, in the IR security imaginary homosexuality in general and especially gay marriage, is interpreted as a danger to the national body. This is demonstrated by the interventions of the Defense of Marriage Act, the Healthy Marriage Initiative, the proposed Federal Marriage Amendment, and the Pro Marriage Movement, as “interventions are only constructed and put into play when danger is perceived” (Weldes, Laffey, Gusterson & Duvall 1999:15).

IR security discourse is replete with statements about the fulfillment of the republic, the fundamental purpose of the nation, God given rights, moral codes, the principles of European civilization, fear of cultural and spiritual loss, and the responsibilities and duties thrust upon the gleaming example of America (Campbell 1998:31). In this sense, the *text* or *discourse* that guided national security policy did more than simply offer strategic analyses of the reality they confronted: they actively concerned themselves with the scripting of a particular American identity founded on an unequal gender system and reproduced through the traditional institution of marriage. State security discourse has traditionally interpreted homosexuality as a threat to the nation, exhibiting how systemic heterosexism is within IR’s security imaginary. For example, in the United States Military, gays and lesbians have historically been classified

³ A discursive economy – “whereby discourse (the representation and constitution of the “real”) is a managed space in which some statements and depictions come to have greater value than others” (Campbell 1998:7).

as a security risk, where just demonstrating a propensity for homosexuality is grounds for discharge (Halley 1999).

Critical feminist scholarship in IR argues that although the role of the state has expanded, national security often takes precedence over the security of individuals, and the task of defining, defending, and advancing the security of the state has traditionally been a man's affair.⁴ For mainstream IR, security is tied to the military security of the state, and the assumptions IR scholars use when analyzing states and explaining their behavior in the international system are heavily dependent on characteristics which we in the west associate with masculinity (Tickner 2005). Hegemonic masculinity depends on constructing women as passive victims in need of protection and the protector/protected gender myth contributes to a militarized version of security and citizenship that results in unequal gender relations that can precipitate violence against women.⁵ Although critical feminist and queer analysis (among others) expose the state as a vehicle of "masculine" domination, the ways in which "national security" is used as a technique or mechanism of domination by the nation-state is often ignored, casting the state as "neutral arbiter of injury rather than as invested with the power to injure" (Brown 1995:27). Feminist perspectives on security grow out of quite different assumptions about individuals, the state and international system. Feminists call attention to the particular vulnerabilities of women within states, vulnerabilities that grow out of hierarchical gender relations that are also related to IR (Tickner 1992; 2001; 2005). Women from around the world define security in various ways: as safe working conditions, freedom from the threat of war,

⁴ See Tickner 2005, Pettman 1996, Peterson 1992, Eisenstein 1999, MacClintock 1995, Weber 2002, Sylvester 1994, Brown 1995, and Holland 2001.

⁵ See Connell 1997, Kimmel 2000, Tickner 1992, 2002, Enloe 1993, Christ 1982, 1997, and C. Weber 2002.

unemployment, debt, and from structural violence. Yet the elimination of structural violence related to the violence embedded in gender hierarchies is a central theme.

With war and masculinity being strongly associated, peace has been feminized and hence the position of peace has been imposed on women by their disarmed condition, which in the west, came from a Victorian ideology of female moral superiority and glorification of motherhood (Enloe 1993; Ruddick 1989; Mosse 1985; McClintock 1995). Feminist scholarship suggests that it is dangerous and oppressive to continue these essentializing myths which can only result in the perpetuation of women's subordination and reinforce dualisms that serve to make men more powerful and perpetuate patriarchy as an ideology, structure and practice. Accordingly, domestic violence must be seen in the context of wider power relations and as it occurs in patriarchal, gendered societies where male power dominates. Feminist definitions of security may therefore include the elimination of all types of violence, including the violence produced by unequal gender relations inherent to IR's security imaginary.

The Nation and Intersections of Gender, Sexuality and Race

All nations depend on powerful constructions of gender. Despite many nationalists' ideological investment on the idea of popular *unity*, nations have historically amounted to the sanctioned institutionalization of gender *difference*. No nation in the world gives women and men the same access to the rights and resources of the nation-state. (Anne McClintock 1995:353)

Imagined communities rely on gender, race, and sexuality to maintain their national heteronormative⁶ identity, and nowhere in the public realm are the stereotypical gender

⁶ Heteronormativity is a term describing the marginalization of non-heterosexual lifestyles and the view that heterosexuality is the normal sexual orientation. Instances of this include the idea that people fall into two distinct and complementary categories (male and female), that sexual and marital relations are normal only when between people of different sexes, and that each sex has certain natural roles in life. The

images more apparent than in the realm of International Relations where the characteristics associated with hegemonic masculinity are projected onto the behavior of states; whose success as international actors is measured phallogcentrically in terms of their power capabilities and capacity for self-help and autonomy. Hegemonic masculinity functions to sustain, perpetuate and legitimize patriarchal authority as well as the political and social order. Consequently, socially constructed gender differences are based on nationally sanctioned unequal relationships between women and men that reinforce compliance with men's assumed and stated superiority. Gender differences take the form of fixed binary oppositions that categorically assert the meaning of masculine and feminine and hence legitimize a set of unequal power relations (Tickner 2005). Through our patriarchal ideology, language, discourse, and practice, we come to perceive the world through these binary oppositions. Framed in its own set of binary distinctions, IR also assumes similar gendered hierarchical relationships (Tickner 2005; Peterson 2000). This dissertation seeks to illuminate and ultimately disrupt and displace these gendered hierarchical distinctions. "If nationalism is not transformed by analyses of gender power, the nation-state will remain a repository of male hopes, male aspirations, and male privilege" (McClintock 1995:385).

The national body, represented by the 'body politic' of the United States, is associated with male bodies, specifically, white heterosexual male bodies. Excluded from direct action as national citizens, women are subsumed symbolically into the national body politic and are typically constructed as the symbolic bearers of the nation, but are denied any direct access in relation to national agency (McClintock 1995; Mosse

heteronormative view is that physical sex, gender identity, and gender roles, should, in any given person, align to either all-male or all-female cultural norms (Lovaas, Karen, and Mercilee M. Jenkins 2006).

1985; Pettman 1996). States also homogenize political identities in ways that disguise differences within the state (including gender, sexual, and racial differences) and create instead, differences between the states. Consequently, “borderlines are drawn along bounded spaces and the state is charged with policing these boundaries, to keep the right people in and the wrong people out” (Pettman 1996:4). Therefore according to critical feminist theory, the national security imaginary of the nation-state is dependent upon the (re)production of hierarchical gender, sexual and racial systems.

In regards to sexuality, in an effort to ensure national security the notion and practice of *respectability*, during the rise of the nation-state and national identity, was based on a consistent attitude toward the body and referred to modesty, purity and the practice of virtue. In order to impose restraint and moderation, society needed a way to support normalcy and contain sexual passions. Nationalism came to the rescue. It absorbed and sanctioned middle class Victorian morals and spread respectability throughout the classes (Mosse 1985:9). Hence any non-heteronormative behavior was seen as “abnormal” and in conflict with the demands of society. As a consequence it was understood that “the foundation of the legal and moral systems would cease to exist” (Mosse 1985:11). Abnormal passions were considered an antisocial act by the developing nation and perceived of as a danger and threat to the “imagined” order and security of the nation.

Group reproduction, both biological and social, is fundamental to nationalist practice, process, and politics. Although virtually all feminist scholarship on nation(alism) recognizes this fact, it is typically taken for granted that it is heterosexist. The state based ideological codification of the national security imaginary, “naturalizes

heterosexuality as the only 'normal' mode of sexual identity, sexual practice, and social relation" (Peterson 2000:59), making homosexuality "abnormal" and a risk to the nation's security. Heterosexist masculinity is mobilized to sustain gender hierarchy *within* groups (e.g. domestic violence in "private" and the threat/reality of rape in "public") and to enact masculinist violence *between* groups (e.g. castration of 'Other' males, forced prostitution, and mass rapes in war) (Peterson 2000:60). Feminists argue that the domination of women, homosexuality, people of color, and all who are constructed as 'other', are not done so as a consequence of "essential" qualities, but must be understood in the context of socially constructed, historically contingent practices of the state.

According to the literature, nationalism is not only dependent upon gender distinctions and sexual hierarchies, but also on powerful constructions of racial difference. A racial/gendered division of national creation prevails; whereby, white heterosexual men are seen to embody the political and economic agency, while women are the unpaid keepers of tradition and morality (McClintock 1995). The security imaginary of the nation is usually bound to a 'fictive ethnicity', organized around the homogenizing effect of race and nation (Radcliff and Westwood 1996).

'Black' and 'White', which represent so crudely the differences in the shade of skin between groups of human beings – are used to symbolize distinctions between vice and virtue, hell and heaven, devils and angels, contamination and purity. (Tajfel 1965:130, cited in Yuval-Davis 1997:49)

Similar sexualized demonologies which combine fear and envy towards racialized objects have existed not only in relation to blacks but also in most other racialized images of the 'other'. The embodiment dimension of the 'racialized other' puts sexuality at the heart of the racialized imagery which projects dreams of forbidden pleasures and fears of

impotency onto the 'other' (Yuval-Davis 1997). The national construction of African-American women as "like one of the family" – that is, as legally part of the American nation-state but holding second class citizenship within it – fosters our understanding of the intersections among race, ethnicity, and American national identity (Collins 2006:31), suggesting that systems and hierarchies of gender, sexuality, and race are conceptually, systemically, and structurally linked to state-making.

The seduction of nationalism and national identities are, in part, an affair of the heart, what Anderson has called a 'political love' (Anderson 1991), but are still bound to the ideological work of nation-building. Therefore, the overlapping literature on the nation and gender, sexuality and race, reveals that the national security imaginary is constructed upon dominant/subordinate, male/female, insider/outsider boundaries as well as gender, sex, and racial hierarchies. In contrast, nationalist representations are also highly unstable and fragile constructions which cannot ever produce the unity they promise (Bhabha 1990). This is because, Bhabha argues, they become "split by similar kinds of ambivalence" to those that threaten the coherence of the nation. It is the aim of nationalist discourses to create community out of difference, to convert the 'many' into the 'one'. Therefore, the two contradictory modes of representation, which Bhabha calls the *pedagogic* and *performative*, are critical in the construction of national identity. On the one hand, nationalism is a 'pedagogic' discourse and claims a fixed origin for the nation. On the other hand, nationalist discourses are simultaneously 'performative', referring to the ways in which nationalist representations must be continually practiced in order to reproduce the nation (Bhabha 1990:145).

Those placed on the margins, for example homosexuals, *challenge* the dominant representations with counter-narratives of their own. Difference returns *from within* to challenge the heteronormative nation (Bhabha 1990). Counter-narratives interrupt the nation's smooth self-generation at the level of the performative, revealing different experiences, histories and representations which nationalist discourses depend on excluding (McLeod 2007). While the U.S. nation-state is founded on myths of white, heteropatriarchal, christian, capitalist norms, it also sees itself as a liberal democratic nation in which the equal rights of all are respected. It is this tension between these two contradictory "myths" of the nation that provide an *apertura* for same-sex equality claims and victories.

Feminist/Queer Political Theory on Same-sex Marriage and Citizenship

Gay marriage highlights a contradiction in American national identity: if gay marriage is supported, the normative status of the heterosexual nuclear family is undermined, while if not, the civil rights of homosexuals are undermined. (Ferguson 2007:39)

In an era when both the feminist and gay movements have challenged the centrality and desirability of heteronormative marriage, it continues to remain a highly charged topic in the current political climate. While most of my friends have a history of political activism and even a decade ago would have been dead set against looking for the states approval of their intimate relationships, many of them are rushing to the altar. Despite their counter cultural politics and commitment to feminist, lesbian and gay liberation, these friends seem to have a deep-seated, sentimental attachment to marriage. And according to the literature when it comes to marriage, both well-meaning mainstream

gays and heterosexuals seem to stress gay sameness to straights.⁷ Yet the push to present homosexual relationships, desires, parenting and so on as replicas of heterosexual patterns in the hope for public acceptance is presented by the media to the general public as though the gay community speaks with one voice concerning the struggle for gay marriage rights. The common argument for gay marriage is that the government denial of the legal right to marriage deprives gays and lesbians access to the social sanction and status that marriage confers, hence to full adulthood, and full citizenship (Rauch 1997, cited in Ferguson 2007:40). Conservative supporters of gay marriage side with conservative critics against gay promiscuity and agree with the need for the marriage institution to rein in the inherent aggression in all men, straight or gay to presumably make them more responsible citizens (Sullivan 1997).⁸

According to Amy Brandzel, a queer, feminist analysis reveals how heteronormativity also functions through marriage and the production and taxonomy of gendered, racialized, sexualized and class behavior (2005). Also, as a site for citizenship production, given the gendered and racialized histories of marriage law and practice, Brandzel suggests that “citizenship itself is necessarily exclusive, privileged and

⁷ See Walters 2004; Brandzel 2005; Bronski 2004; Kilpinis 2004; Butler 2004; Ferguson 2007.

⁸ Queer scholarship/literature also suggests that the (re)production and maintenance of heteronormativity, hyper-masculinity, and hierarchical gender relations is evident in the military’s “Don’t Ask, Don’t Tell, Don’t Pursue” anti-gay policy. Congress wrote the policy into law in 1993 with White House compliance (McFeeley 2000:249). In essence, the new policy makes the lives of gay, lesbian, and bisexual armed forces personnel no better, and continues to devalue their contributions to our country. The Clinton reforms were supposed to switch the focus of the policy from status to conduct - not what they are, but what they do - literally making same-sex marriage grounds for discharge. Discharges for homosexuality will be grounded on conduct that would manifest, to a reasonable person, a propensity to engage in homosexual acts. “Telling isn’t speech in this formulation: it is an act that manifests a propensity” (Halley 1999:4). Moreover, the Defense Department has done a poor job in enforcing the new policy and thereby protecting homosexuals in the armed services from harassment. The privately funded Service-members Legal Defense Network has uncovered a disturbing pattern of failure by the DOD to enforce the prohibitions on asking and pursuing and has shown that the rate of discharge for homosexuality has in fact increased since 1994 (McFeeley 2000:250).

normative and that advocacy for same-sex marriage only reifies and produces these effects” (Brandzel 2005:2). Accordingly, scholar Michael Bronski argues that “from my vantage, the fight for same-sex marriage is as much, if not more, about the brainwashing of Americans by the \$70 billion a year Wedding Industry” (Bronski 2004:22). Along these lines, it seems the wedding industry could not disagree more with the past Bush administration’s stringent anti-gay marriage stance, when grabbing a piece of the gay wedding cake translates into such huge revenues. Forbes.com recently calculated a \$16.8 billion annual “gay-marriage windfall” if laws were changed to legalize same-sex marriages (Morrison 2006). Nevertheless, the literature suggests that the national security imaginary is maintained by perpetuating heteronormative marriage and by denying homosexual couples full rights to citizenship, regardless of the possible future revenues for the state.

Marriage and Heteropatriarchy

Although marriage has traditionally been considered a “private” affair, it is very much a public institution and configuration of state power. For example, the history of marriage demonstrates the ways in which it has been used a tool of “cultural regulation” and is not only a vehicle for public policy but *the* vehicle by which the patriarchal nation-state shapes the public order into a gendered and hierarchical order (Brandzel 2005). Hence, “heteropatriarchy” is a system where the well-being, interests, and needs of members of the system are undermined, denied, and disregarded. It is a highly rigid and closed system where rules and roles are determined by power-over hierarchies and a high value is placed on control and exaggerated concepts of rationality. According to Karen

Warren, the use of human power is inappropriate or morally impermissible when it exercises, creates or maintains (or is intended to create or maintain) unjustified relationships of domination and subordination. Since patriarchy sanctions, perpetuates, and justifies oppressive power-over relationships of dominant/subordinate, it involves illegitimate uses of power (Warren 2004:199).

However, transforming power relations is core to feminist political theorizing and to the construction of alternative ideologies to patriarchy, where power is reformulated and related to energy, capacity, potential, and ability (Hartsock 1996). Zillah Eisenstein argues that we need a socialist feminist analysis to understand power in terms of its class origins as well as its patriarchal roots; that exploitation speaks to economic reality of capitalist class relations (socialism) and oppression refers to power within patriarchal relations (radical feminism). All of these concepts are manifested through both the material and ideological dimensions of patriarchy (Eisenstein 1999). Certain practices contest or transform existing social relations, while others codify, entrench and perpetuate them. “States are an expression of patriarchal power” (Youngs 2004:83), and the patriarchal state and the issues of violence associated with it, are central to the concept of security in International Relations (Youngs 2004).

Marriage is also a central way of defining the operation of heteropatriarchy in the United States as a regulated, ritualized, and organized practice. The institution of heteropatriarchal marriage is an established order made up of rule-bound and standardized behavior patterns (Ingraham 1999). Judith Butler’s theory on the “performativity of gender,” using Foucault’s notion of disciplinary power, provides a powerful discourse which supports/reflects the notion of the practice of marriage as

disciplinary or normalizing mechanism of the state (Butler 1993). Essentially, Butler argues that the performativity of gender functions as a regulatory “practice” which materializes sex as an “ideal” construct – forcibly and over time. It is not a single or deliberate act, but “is a result of the reiterative and citational practices by which discourse produces the effects that it names” (Butler 1993). This suggests that it is our practices, what we “do,” which maintains, perpetuates, and materializes patriarchal ideology, not only on an individual level but structurally as well (Jackson 1999). It is the practice of the institution of marriage which perpetuates gender/sex systems and the gendered division of labor - socially, structurally and systemically. Civil society and the state cannot come into being without a sexual contract that subordinates women in marriage (Pateman 1988). Critical feminist IR literature suggests that this is one of the central reasons why the IR security imaginary will defend and protect the heteronormative, patriarchal institution of marriage.

Theoretical Framework

The theoretical framework for this research project is grounded in feminist (political and IR) critical theory, as it challenges the tenets and assumptions of positivist scientific methods and invites observers to reflect upon the social construction and effects of knowledge. Critical theory assumes that human beings make their own history and can in principle make it differently. Feminist critical research also challenges the boundaries between the public sphere of economics, production, and politics – and the private sphere of families, reproduction, and domestic labor (Tickner 2005; Hesse-Biber & Yaiser 2004). Feminist post-positivist/critical theory is founded on the assumption that research

should be transformative, facilitate social change, empower individuals, be attentive to issues of difference, illuminate intersections of gender/race/sexuality/class, and challenge hierarchical modes of creating and distributing knowledge (Hesse-Biber & Yaiser 2004; Young 1997). This dissertation is founded on a radical feminist epistemology; challenging the basic tenet of liberal feminism that asserts that the “system” is *fundamentally sound*. Rather, this project assumes the system is patriarchal, capitalist, and Christian in its ideology, structure and practice and is therefore understood as *fundamentally flawed*. Consequently, this dissertation challenges the naturalization of heteropatriarchy as an ideology, structure and practice.

The scholarship on the intersecting literatures concerning security, the nation, marriage, and heteropatriarchy, thus provide the theoretical framework for interrogating the question of why same-sex marriage is perceived as a danger to national security. Feminist political theory as a framework for this project is crucial as it employs gender as a central category of analysis. As Spike Peterson argues, “taking gender seriously is essential for more accurate and realistic knowledge claims and especially for emancipatory praxis” (Peterson 1992:42). Gender hierarchy is a system/structure of patriarchy which is not reducible to some other form, it reflects and emphasizes that our construction as feminine and masculine is an ongoing, complex, and often contradictory process. In particular, feminist critical theorists have documented that gender constructed hierarchies, within a dualistic structure, are so much a part of patriarchal ideology that they go unquestioned. By examining systems of interaction at a systemic level it is possible to illuminate the everyday practices of women and men and understand the

structural relations within which they are situated. Feminist IR theorists⁹ also challenge the fundamental masculine biases of mainstream IR, and in so doing, provide some tools for examining gender as a category of analysis within the context of heteropatriarchal marriage and its relationship to the national security imaginary. In addition, the counter-narrative movement (Bhabha 1990) discussed earlier is also utilized to explain the ‘exploitation’ of opportunity structures by the same-sex equality struggle.

Methodology

The methodology utilized in this dissertation relies heavily on interpretive/discursive analysis to interrogate how and why same-sex marriage constitutes a danger to the security of the nation. Campbell’s (1998) discussion of interpretive and discursive “tools” is essential for such an interrogation. According to Campbell, the aspiration to rethink security is a desire most often expressed in terms of how to expand the “old register of hazards” to incorporate what are perceived as the *newly emergent dangers* that threaten traditional modes of life, and suggests that a discursive analysis is crucial for interpreting these newly emergent dangers (Campbell 1998:IX).

An interpretive and discursive analysis reveals that the world exists independently of language, but we can never *know* that, because the experience/reality/existence of the world is literally inconceivable outside of language and our traditions of interpretation.

If we think in terms of a discursive economy – whereby discourse (the representation and constitution of the “real”) is a managed space in which some statements and depictions come to have greater value than others. The idea of “external reality” has a particular currency that is internal to discourse. (Campbell 1998:7)

⁹ See Tickner 1992, 1994, 2001, 2005; Sylvester 1994; Peterson 1992, 2000; Pettman 1996; and Chowdhry & Nair 2002.

In a discursive economy, investments have been made in certain interpretations and dividends can be drawn by those parties that have made the investments. Consequently, participation in the discursive economy is through social relations that embody an unequal distribution of power, such as the investments made in heteronormative marriage and hierarchical gender relations. “Discourse” generates “the categories of meaning by which reality can be understood and explained – it makes real that which it prescribes as meaningful”; it is not simply language, but the “matrix of social practices that give meaning to the way that people understand themselves and their behavior” (George 1994:29, 30). Discourse, by definition is “an ordering of terms, meanings and practices that form the background presuppositions and taken-for-granted understandings that enable people’s actions and interpretations” (Milliken 1999:92). A feminist discourse analysis is used as a manner of questioning the underlying assumptions of the pro-marriage discourse in an effort to reveal the hidden agendas and motivations behind a text and illuminate the underlying patterns and connections (gslis.utexas.edu/~palmquis/courses/discourse.htm 9/19/07).

I utilize a feminist discourse analysis to interrogate the legal rights to same-sex marriage and the interventions put in play to confront these perceived “dangers,” in the form of historical documents regarding the development of the legal institution of marriage in the United States, including racist/classist national policies and practices such as miscegenation laws and citizenship regulations. I use Massachusetts and Arizona as case studies to explore the same-sex marriage movement. The primary documentation I examine includes public documents regarding legislation, senate and congressional hearings, legal cases, state law, state and federal amendments, as well as the Pro Marriage

Movement text/discourse. In addition, the Defense of Marriage Act, the Healthy Marriage Initiative, and the proposed Federal Marriage Amendment, provide a window into ideological (re)production of the nation as it unfolds in both political discourse and everyday practices.

In addition, secondary data is also utilized. It includes, but is not limited to, cultural documents, specifically newspaper and journal articles which discuss how and why same-sex marriage challenges the national security imaginary. I explore primary and secondary data including organizational documents in support of legalizing gay marriage, such as GLAD (gay and lesbian advocates and defenders), Lambda, Equality Arizona and MassEquality LBBTQ organizations, among many others. For addressing questions regarding the possible mutual construction of heterosexual marriage and citizenship as a mechanism of the state for (re)producing a white heteronormative citizenry, I explore U.S. citizenship laws/policies as they relate to heterosexual marriage norms, as well as the militaries “Don’t Ask, Don’t Tell” anti-gay policy. In addition, I examine both primary and secondary documents regarding Civil Unions and Domestic Partnership rights and benefits, and compare them to those of legal marriage.

The cultural documents/texts/artifacts that are interrogated, shape and construct social norms, not just reflect them. Post-structuralism advocates the view that “historical facts” or “legal facts” are discursive constructions; therefore, dominant readings need to be deconstructed in order to reveal what is hidden. Since the dominant discourse on marriage is that of “one man and woman,” it is timely and relevant to “uncover” the hidden meanings of the state if it does indeed construct heterosexual marriage as way of maintaining gendered systems of domination as well as outmoded structures and

practices that perpetuate heteropatriarchy. These significant reasons demonstrate why a feminist discourse analysis is the methodology best suited for this research project.

In employing a feminist discourse analysis, reliability and validity are a matter of interpretation (gslis.utexas.edu/~palmquis/courses/discourse.htm 9/19/07). Therefore, the following set of questions (designed to reveal the subtext) will function as “indicators” to interrogate, deconstruct and interpret the relevant primary and secondary documents as well as other significant archival material and cultural artifacts.

- What does the data reveal about why and in what ways same-sex marriage challenges the national security imaginary in the United States?
- What does the evidence suggest about mainstream IR and how its assumptions about the state and security function as a “fact” rather than an interpretation?
- What does the data indicate about the national security imaginary of the U.S. as white and heteronormative?
- What do the findings suggest about the understandings of traditional marriage and the ways it is linked to the reproduction of the nation?
- What does the data reveal about the assumption of heteronormative marriage as a foundational principle of national identity and security, and how does it relate to the debates over gay marriage?
- What does the data indicate concerning patriarchal structures of domination and how they are (re)produced through marriage law and policy, and why they are threatened by same-sex marriage?

From these questions, a feminist discourse analysis can illuminate the privileging and (re)production of heterosexuality and heteronormativity. Since managing anarchy has always been a main concern in IR, homosexuality, alternative relationships and family structures, or anything that is “not,” is devalued and delegitimized by perceiving/interpreting/constructing it as a danger, risk, or threat to the national security imaginary.

Significance

Exploring the question of why the challenge of same-sex marriage in the United States is threatening to the national security imaginary is significant for several reasons. This dissertation is theoretically significant as it addresses feminist political and IR theory, particularly the focus on security and what has traditionally been identified as the private sphere. It interrogates the opposition to same-sex marriage and thus may also contribute to queer theory. Specifically, it addresses a gap in scholarship that speaks to national security discourse and the legal institution of marriage. Although much excellent feminist work has been done on nation, gender and sexuality, most of the scholarship has focused on the patriarchal family and women's role in it, not on legal heteronormative marriage as a prerequisite to the reproduction of the nation and its imagined security.

Therefore, this project is significant in that its objective is to highlight not only the ways in which heterosexual marriage may function as a normalizing or disciplinary mechanism in an effort to "stabilize" security; it also provides an important analysis of the ways in which in the institution of marriage appears to perpetuate heteropatriarchy by instituting policies such as the Defense of Marriage Act, the Healthy Marriage Initiative, and the proposed Federal Marriage Amendment. As Ann Ferguson states:

Marriage is supposed to be the private institution that establishes kinship relations in the family. As such, we should see it as a contract chosen in the private arena. Nonetheless, marriage is regulated by the state and the campaign to change the requirements of legal marriage to allow lesbians and gays to marry created the greatest controversy among all the public policy questions raised in the last U. S. Presidential election. (Ferguson 2007:39)

Consequently, by exploring the questions raised in this project the possibilities for the contributions to policy are many. The movement for same-sex marriage equality in the U.S. is gaining in strength, acceptance and popularity, and although the opposition is

great, what may happen in the future is still uncertain. Threats to traditional gender roles, sex/gender systems, and in particular, heteronormativity and the patriarchal dualistic system/organization it supports, will undoubtedly continue to raise heated controversy and bring about many policy changes as a result.

In addition to the theoretical and policy contributions possible, this research is significant in that it responds to traditional notions of IR and security by recognizing the ways in which security is employed as a technique of domination (Brown 1995). By illuminating the ways in which same-sex marriage threatens the nation's security, it can expose traditional marriage as a tool of a patriarchy for stabilizing the national body and maintaining order. The "destabilizing" effects that recent challenges to traditional marriage have entailed, specifically the struggle for gay rights to same-sex marriage, are highlighted and problematized in an effort to motivate change and for transforming hierarchies and structures of domination.

Overview of Chapters

Chapter Two, "International Relations and the Security Imaginary: Nation, Gender, and Heteronormativity" explores the scholarship on the intersecting literatures of IR and the national security imaginary, gender, (same-sex) marriage, sexuality, and heteronormativity. The chapter discusses the centrality of the nation to the security imaginary in IR, the way heteropatriarchal marriage provides order for the nation, and why same-sex marriage threatens to de-stabilize that order. The role traditional marriage plays in (re)producing gender hierarchies is also explored and the ways in which it is used as a normalizing mechanism to construct and perpetuate a white normative citizenry

is highlighted. Hence, chapter two is a theoretical examination of the ways in which the nation depends on marriage to reproduce heteropatriarchy in ideology, structure and practice as a means of rescuing the security of the nation from a state of anarchy.

An historical examination of the mutual construction of the emerging state, marriage and the U.S. national security imaginary is the focus of Chapter Three. First the mutual construction of the state and marriage is explored, highlighting the gendered, as well as the racial, constructions of the nation and its imagined security. As a way to construct a white heteronormative citizenry – the mutual construction of immigration, citizenship and marriage laws are interrogated, as well as the impact of The New Deal, the Civil Rights and Women’s Rights Movements, and so on, have had on traditional marriage and the imagined security of the nation. Chapter Four, “Stabilizing the Nation? The Struggle for Same-sex Marriage Equality in the U.S.,” explores the state of discourse on same-sex marriage through a critical analysis of the background/history of the movement and the pro’s and con’s of the debate. The arguments against gay marriage come not only from the conservative right, but also from the “radical” gay/feminist/liberationist standpoint which sees traditional heteropatriarchal marriage as a tool of assimilation – where gay and lesbian couples are portrayed as replicas of heterosexual relationships. In addition, state sanctioned alternatives to legal marriage, specifically Civil Unions and Registered Domestic Partnerships are examined.

Arizona’s journey toward same-sex marriage equality is examined in Chapter Five. In this chapter, through the use of LGBTQ organizations such as Equality Arizona and Wingspan, as well as groups opposed to gay marriage – mainly the Center for Arizona Policy (CAP), interviews, legal cases such as *Standhardt v Arizona* (2003), state

legislation, and newspaper documentation, I critically examine Arizona's road toward same-sex legal marriage within the context of the national security imaginary. In Chapter Six, in contrast to Arizona, Massachusetts' road to legalizing same-sex marriage is investigated. Massachusetts' state legislative debates; LGBTQ organizations such as MassEquality, as well as organizations in opposition to same-sex marriage; legal cases, particularly *Goodridge v Department of Health* (2001); GLAD, Gay and Lesbian Advocates and Defenders; and, newspaper documentation, is utilized in an effort to address the central research question of why same-sex marriage is interpreted as a danger to the stability of the national security imaginary.

Chapter Seven delves into the federal debates over same-sex marriage and the ways in which the nation protects and defends marriage in an effort to re-stabilize the security of the nation. As a consequence of the small victories won by the same-sex Marriage Equality Movement, there has been a response on a national level to protect and maintain traditional marriage and the security imaginary. The Defense of Marriage Act (DOMA), the Healthy Marriage Initiative (HMI), the proposed Federal Marriage Amendment (FMA), and the Pro-Marriage Movement all demonstrate the extent to which same-sex marriage is interpreted as de-stabilizing to the nation and its security imaginary, and works to re-stabilize, defend and protect heteronormative marriage. Therefore, this chapter explores the ways in which DOMA, the HMI, the FMA, and the Pro-Marriage Movement function to re-claim and protect heteronormative marriage from the advances made by the gay and lesbian community concerning same-sex marriage equality and equal rights.

The final chapter “Drawing Conclusions,” is a critical examination of the research data on same-sex marriage and heteronormativity within the national security imaginary. I analyze the data collected throughout the previous chapters and draw conclusions from a synthesis of the material. By examining the data from each chapter, the significance of the possible theoretical contributions to feminist, queer and IR theory as well as the possible impact on state and federal policies are illuminated. Implications for the security of the nation in IR will be given special attention here and previously marginalized/invisiblized aspects of marriage, patriarchy, and national security issues are highlighted in an effort to discover (or uncover) the answers as to how same-sex marriage in the United States is interpreted as a danger to the nation’s “imagined” security. The last portion of chapter eight focuses on contributions to feminist activism and social justice by discussing future directions and alternatives.

*International Relations and the National Security Imaginary:
Engendering the Nation, Marriage and Heteronormativity*

The intersecting literatures on International Relations (IR) and the national security imaginary, the nation, gender, marriage, sexuality, and heteronormativity provide the theoretical framework with which to examine the central research question of why same-sex marriage is interpreted as a “danger” or threat to the security of the nation. In mainstream International Relations anarchy is assumed to be the central organizing principle of security. Therefore, in the construction of IR’s “national security imaginary” the nation is imagined as central for providing security, safety and stability in a world of international anarchy. In IR, the nation functions to bring order to anarchy, and the “gender order” is foundational to that security. Consequently, homosexuality has historically been interpreted by the state as a security risk, and currently it is same-sex marriage which is perceived as a threat/danger to the ways in which security is imagined by the nation. Therefore the assumptions or myths of IR and the national security imaginary function to codify and naturalize heterosexuality as the only “normal” mode of sexual identity, sexual practice, and social relation (Peterson 2000).

This chapter interrogates IR and its construction of the security imaginary through an examination of mainstream, critical and feminist IR, and addresses the ways in which gender and sexual hierarchies are embedded into the foundations of IR’s national security imaginary. Following an examination of the construction of the IR national security imaginary and its critical interventions, the centrality of the nation to International Relations and its imagined security is interrogated. The rich literature on the nation

illuminates how gender and heteronormativity are foundational to its own construction and hence, and how changes to the gender order or to the institutions which perpetuate it, such as marriage and heterosexuality, threaten to destabilize the nation and its security imaginary. And last, the role that marriage plays in (re)producing heterosexism, heteronormativity, and heteropatriarchy for securing the nation is explored. This chapter is thus a theoretical examination of the intersecting and overlapping literature on the ways in which the nation appears to depend on the institution of marriage to reproduce itself as a means of maintaining the security of the nation from a state of international anarchy.

Constructing the Security Imaginary in International Relations

IR theory is a site of cultural practice in which conscious and unconscious ideologies are circulated through stories that *appear* to be true. Donna Haraway claims that all scientific theories are embedded in particular kinds of stories, or what she terms “fictions of science” (cited in Tickner 2001:51). Realism and neorealism base their prescriptions for states’ national-security behavior on the fiction or stories of IR’s “anarchy myth.” Reanalysis of the so-called “creation myths of IR, on which realist assumptions about states’ behavior are built, reveals stories built on representations of how individuals function in society. The parable of man’s amoral, self-interested behavior in the state of nature is also taken by realists to be a universal model for explaining states’ behavior in an international anarchical system (Tickner 2001:51). These assumptions/myths/stories play a central role in creating an IRs “imaginary.”

The function that these myths perform in constructing the IR imaginary is, “the transformation of what is particular, cultural, and ideological (like a story told by IR tradition) into what *appears* to be universal, natural, and purely empirical” (C. Weber 2001:6). IR theory/discourse narrates a particular view of the world from the perspective of various IR traditions and an IR myth is what helps make a particular view of the world appear to be true. It naturalizes meanings – making them into common sense and into the products of cultural practices (Weber 2001). Put another way, the myth function in the IR imaginary is making a ‘fact’ out of an interpretation. This process of making what is cultural and disputed into what is natural and therefore goes without saying (fact), is the work or function IR assumptions/myths perform in IR theory or the IR imaginary.

In mainstream IR, anarchy is assumed to be the central organizing principle of security. According to Cynthia Weber, there are three assumptions that construct the international anarchy myth: “1) International politics is composed of sovereign nation-states, 2) There is no world government, which means there is no international order or leader, and 3) The absence of a world government or order by definition means that international politics is anarchical” (Weber 2001:14). Consequently, these anarchical relations make security issues central to the IR imaginary. From these three assumptions, realists and neo-realists both predict that sovereign nation-states in a system of international anarchy will behave conflictually. Therefore the sovereignty of the state is central for bringing order and stability in a world of international anarchy. As a result of anarchy and human nature, securing the nation is fundamental to the construction of IR’s national security imaginary. It is unrealistic (immature according to Morgenthau, 1991) to think that a world government could be formed because states would never be *secure*

enough to give up their power to a world government. The IR security imaginary is thus a political/cultural/social construction which functions to transform what *appears* to be true – into fact. Hence, the nation and its security is central to IR's imaginary.

Mainstream IR and the Security Imaginary

The assumptions of mainstream IR are fundamental to the construction of the IR security imaginary. For example, war and conflict have been fundamental to a discipline whose founding texts include Thucydides' *History of the Peloponnesian War* and Machiavelli's *Prince*. Motivated by the devastation of two world wars in the first half of the twentieth century, the contemporary discipline of International Relations (IR) was founded by scholars searching for explanations for the causes of war and prescriptions for its avoidance in an effort to improve "mankind." Consequently, issues of national security were, and continue to be, central to the field of IR. As Jean Elshtain suggests, "societies are, in some sense, the sum total of their war stories" (1987:166). The realist (see Carr 1939; Hobbes 1651; Morgenthau 1948,1991; Bull 1977, 1995), neo-realist (Waltz 1959; Krasner 1978), and to a lesser extent, the pluralist or liberal institutionalist schools (Keohane and Nye 1977; Keohane 1986; Kegley 1993; McMillan 1997) came to dominate the field of IR and continue to comprise what is considered "mainstream" IR. It was assumed in the study of International Relations that scientific/positivist research and a "hard and ruthless analysis" (Carr 1939:9) would provide the answers to war and peace.

In mainstream IR, Realist theory continues to hold a place of privilege, and since 1945, the Realist school has dominated IR, particularly with respect to analyses of issues

related to the nation, conflict and security. In Realist IR the “state of nature” is assumed to be anarchical. Realist theory assumes that within this anarchical system states are sovereign, rational, unitary actors, as well as the primary units of analysis. Sovereignty, it is then assumed, is the organizing principle among states which exist in a natural state of anarchy. Consequently it is the states which bring order to this anarchical system, and “seek to ensure that life will be in some measure secure against violence resulting in death or bodily harm” (Bull 1995:4). The security of the states in the anarchical and conflictual international realm is the most important consideration in Realism, and hence to the IR security imaginary.

Generally associated with mainstream IR is a Hobbesian construction of human nature, where it is assumed that humans are inherently selfish, untrustworthy, and conflictual (Hobbes 1962). Realist scholars assume that all free persons are motivated by self-interest and share the capacity for reason – defined as the ability to maximize benefits. Therefore, power is understood and practiced as ‘power over’ or domination. With war/conflict threatening the security of the nation-state, power is then assumed to be military as well as economic (as wealth affords the strongest military); which is why, according to Carr, “every government is compelled to pursue policies designed to further the acquisition of wealth” (Carr 1939:18). Consequently, in the IR security imaginary – the more power the more security. These key arguments in realist theory reflect particular assumptions about the ‘state of nature’ which function to transform what appears to be true – into fact.

In contrast, the level of analysis for neo-realists (structural realist) scholars shifts from the state to state systems (see Waltz 1959; Krasner 1978). Waltz, perhaps the best

known structural realist, suggests that the international system is shaped by, and shapes, state behavior (Keohane 1999:164). Keohane, a pluralist/interdependence scholar (and critic of neo-realism), claims that Neo-Realists reject the assumption that states seek power over all other interests, believing that different systemic conditions force states to define their self-interests in different ways (Keohane 1999:175). Unlike the realist emphasis on power as an end in itself, neo-realists consider security the highest end (Schweller and Priess 1997:11). Nevertheless, this still refers to security between states, which like realism is primarily predicated on power as military might and the assumption that power brings security. According to Keohane, neo-realism presents a historically homogeneous view of world history, trivializes alternative conceptions of world order, and dismisses the possibilities of fundamental change and peaceful transformation of the international system (Keohane 1986). In both classical and neo-realism, power is defined as domination or 'power over', and states are assumed to be the primary actors. Consequently, the fundamental assumptions of classical realism remain largely the same in neo-realist theory and are the foundation of the IR security imaginary.

Mainstream IR also includes the Pluralists or Liberal Institutional school of thought which recognizes state as well as non-state actors (NGOs, MNCs, IGOs, and regimes¹⁰) in the international arena (*see* Keohane and Nye 1977; Keohane 1986, 1999; Kegley 1993; McMillan 1997). Unlike realism, adherents to this theoretical framework assume human nature is potentially cooperative rather than motivated by self-interest, and they challenge the state as a unitary and rational actor. In addition, unlike realists,

¹⁰ International regimes refer to sets of rules, procedures and institutions that guide interactions between and among actors, thus providing a degree of order in the international realm and, ideally, greater opportunity for cooperation (Viotti and Kauppi 1999:215).

pluralists suggest that international politics includes not simply national security issues (“high politics”), but a host of other security concerns including social welfare issues, human rights, the environment, and so on – considered “low politics” in mainstream IR. Therefore, conflict is not necessarily assumed to be the defining characteristic of international politics (D’Amico 1994). Hence, it is assumed in pluralist thought that cooperation and interdependence between states may lessen the potential for international conflict (McMillan 1997). Similarly, interdependence theorists within the pluralist school emphasize the multiple channels that connect society and international regimes (Keohane and Nye 1977).

Yet for mainstream IR theorists, realist and neo-realist understandings of the state and national interest have historically reigned supreme as theoretical concerns. Broadly speaking, pluralism challenges the boundaries of the field by highlighting the importance of “low politics” and by challenging the assumption that the state is the only actor worth examining in IR scholarship. Despite its contributions, the pluralist school still tends to accept the basic world view of the realist IR security imaginary. Further, definitions of security, although broadened, remain fundamentally the same, as the security of the nation remains paramount. Security through military power remains central, even though pluralists do attend to negotiation, diplomacy and international law in maintaining security. Therefore, rather than changing the (realist) IR security imaginary on a fundamental level, pluralist’s simply expand or add to it. In sum, despite the strides made by pluralists or liberal institutionalist scholars (Keohane and Nye 1977; Keohane 1986; Kegley 1993; McMillan 1997), few of the assumptions, essential concepts and definitions privileged in realist theories have fundamentally changed within mainstream IR.

Consequently, the assumptions/“myths” of mainstream IR are transformed into what is thought of as “natural” through the IR security imaginary. The “common-sense” of International Relations thus places a high value on the myth of anarchy and the security that the sovereign state provides.

All three of the frameworks, Realist, Neo-Realist, and Pluralist/Liberal Institutionalism, which mutually construct the IR Security Imaginary, fail to examine gender, race, class, sexuality, historical locations, and so on, in their research, analysis or theory. Mainstream IR turns a blind eye to the masculinist construction of its assumptions about “the state of nature” and takes them as fact. By assuming the state to be a unitary actor in the anarchical international system, it neglects to interrogate the gendered and racial constructions of the nation-state and the ways in which the state creates order out of anarchy. Mainstream IR also ignores the ways in which the gender order functions to maintain the security of the nation-state. As a result, not only women, but issues of women’s security, both internally and internationally, are absent in the IR security imaginary, as well as the rights and security of the LGBT community and many other marginalized groups. These “omissions” in mainstream IR have not gone unnoticed and as a result there is a rich and unprecedented amount of literature created by the post or “critical” scholars in the field of IR.

Critical Interventions into International Relations’ National Security Imaginary

Despite the popularity of mainstream IR, it has not gone unchallenged. Critical scholarship has challenged the traditional boundaries and assumptions of IR, offering new and alternative strategies with which to understand, engage and recreate the national

security imaginary. Feminist IR theory, in all its variations, focuses on the intersections of gender, race, class, patriarchal systems, sexuality, security, and the nation in order to interrogate the heteronormative construction of IR and the ways it imagines security. These critical interventions (to varying degrees) speak to the assumptions or myths of IR's national security imaginary.

For example, a Marxian analysis of the state shows the state playing an important role in the expansion of capital, the creation of monopolies and the development of imperialism (*see* Marx, Brewer, Hilferding, Bukharin, and Hobson). According to Marx (1848) the role of the state is to preserve the interests of the ruling class and works to perpetuate the existing social and economic system. A Marxian and Gramscian analysis has the potential to illuminate the ways in which the "extended state," for example – family, schools, media, government, religion, and other institutions that regulate and reproduce social norms (Gramsci 1971), reinforces the ideology and construction of IR's national security imaginary. However, IR feminists argue that the state is gendered as well as classed, and what is not addressed in a Marxian and Gramscian analysis are the ways in which the male dominated public sphere of state and market are parasitical upon a feminized domestic space.

Critical constructivism in IR is a post-positivist approach in which culture, individuals, reality, and the state are all viewed as a human construct (*see* Weldes, Laffey, Gusterson, and Duvall 1999; Keck and Sikkink 1998). Critical constructivist theory denaturalizes dominant constructions of the state and human nature. It asserts that the world is constituted through powerful and meaningful practices – and that people act on these meanings. It argues that the state and its subjects are mutually constituted

creating hegemonic discourses, such as the IR security imaginary, that go unchallenged and therefore have the power to create and define the world. “The state as actor and states’ insecurities are naturalized in traditional IR and taken as fact; however, constructivism seeks to ‘denaturalize’ the state and its (in)securities, by demonstrating how insecurity, security and actors are culturally produced” (Weldes et. al. 1999:18). As an emancipatory project, critical constructivism offers guidelines for the transformation of what ‘goes unquestioned’, perceived of as ‘natural’, and hence ‘taken as fact’. However, a critical feminist analysis highlights the ways in which critical constructivism does not address gendered constructs of IR’s national security imaginary.

Feminist IR Theory and the National Security Imaginary

Feminist IR theorists challenge the fundamental biases of mainstream IR. Within the framework of liberal and radical feminist epistemologies – feminist standpoint theory, Marxist/socialist feminism, ecofeminism, and feminist postmodern and postcolonial theories intersect and provide some of the necessary tools with which to examine the use of gender in the construction of the IR national security imaginary.¹¹

Part of a feminist critical analysis of the IR security imaginary would include an analysis which would begin with liberal feminist ideology. A liberal feminist epistemology believes the ‘system’ to be fundamentally sound and consequently would seek equality for women and marginalized peoples within the structure/system of the IR security imaginary; it would not seek to transform the gendered structure or patriarchal ideologies it is built upon. The Marriage Equality movement is an excellent current

¹¹ See Tickner 1992, 1994, 2001, 2005; Peterson 1992, 1995, 1998, 2000, 2003; Pateman 1988; Pettman 1996; Eisenstein 1979, 1999, 2000, 2004, 2007; Enloe 1993; Sylvester 1994; Chowdhry and Nair 2002; Yuval-Davis 1997; Mohanty 1991, 2003; Marchand and Parpart 1995; Prakash 1995; etc.

example of a liberal argument/action for equal rights for gays and lesbians within the traditional institution of marriage. In contrast to liberal feminist theory and praxis, a radical feminist epistemology does seek to challenge, transform, and liberate society/individuals from patriarchal structures, ideologies and practices as it sees the 'system' as fundamentally flawed (*see* Firestone 1979; Frye 1981). Radical feminist scholarship challenges biological determinism and sees gender as a social construct, something which can be changed. Consequently, a radical feminist critical analysis expands on liberal feminism and can work to redefine, reorganize, and transform the IR national security imaginary from a feminist standpoint.

Feminist Stand Point theory emerged from the subordinated and marginalized position of women. Patricia Hill Collins explains how in one way standpoint theory came from the oppression and marginalization of African women as a result of what she calls, controlling images (representations of African American women as mummies, welfare queens, jezebels, etc.). Their 'subjugated knowledge' or marginalized position gives them a unique perspective – or stand point – from which to challenge dominant hegemonic constructions (Collins 1995). Maternal thinking or mother's voices have also been silenced, distorted, and sentimentalized in IR's national security imaginary, their knowledge subjugated (Ruddick 1998). This perspective gives "maternal thinking" a unique and powerful stand point and illuminates the ways in which peace is feminized and masculinity is associated with war and violence. Therefore, feminist stand point theory provides critical insights into the patriarchal, gendered, racial, and class constructions of the IR national security imaginary.

The transformation of patriarchal ideology is also significant for Marxist/socialist feminism which addresses many of the neglected areas of the IR national security imaginary (*see* Eisenstein 1999; Jackson 1998; Hartmann 1981). For example, Hartmann argues that both Marxist analysis, particularly its historical and materialist method, and a radical feminist analysis, especially the identification of patriarchy as a social and historical structure, must be drawn upon to understand the development of capitalist societies and the “predicament of women” (Hartmann 1981). Eisenstein argues that the family through its patriarchal structure and ideology – structures society and that the biological family, gender roles, and gender divisions, must be fundamentally reorganized (1999). For Marxist/socialist feminism the “stories” or assumptions which created the IR national security imaginary are brought out of their hegemonic place of privilege, critically examined, and ultimately transformed.

Ecofeminist epistemology suggests there are important connections – material, ideological, and symbolic – between the domination of women and the domination of nature (Warren 2000). An ecofeminist analysis would reveal the IR security imaginary to be to be a part of a “logic of domination” which functions to (re)produce and maintain a patriarchal ideology. Ecofeminism challenges the logic of domination and the interconnections between all systems of oppression (*see* Warren 2004, Tickner 1993; Shiva 1998). Further, Ann Tickner argues that ecofeminist theory posits an interrelationship between the evolution of the modern nation-state and the exploitation of nature and women. She suggest that there is a connection between ecological constraints and the accumulation of power and wealth and argues that the hierarchical relationship between humans and nature must be transformed (Tickner 1993). Ecofeminist analysis

challenges the ideology of a patriarchal IR national security imaginary and its masculinist ethics. It also contributes to an alternative “relational” ideology based on an ethics of care rather than a logic of domination.

Postmodern IR theory and postmodern feminist IR theory connects epistemology and ontology – and unlike the liberal feminist agenda, postmodern feminism does not seek to simply ‘add women and stir’, but instead challenges the modes of thought and the metanarratives/myths/stories associated with western civilization which in general relegate women and other “others” to subordinate/inferior or even invisible positions. Postmodern feminist IR “denaturalizes” the concepts of anarchy, sovereignty, order and power (concepts intrinsic to the IR national security imaginary) and employ an “intertextual strategy” to understand why or how “one theory comes to stand above and silence other theories” (Chowdhry and Nair 2002:8). Postcolonial feminism, which derives its core assumption from postcolonial theory, in general argues that although the era of direct territorial occupation under colonization may be largely over, current international hierarchies, relations of power and geographical boundaries are still presently determined by characteristics of colonialism (Pettman 1996:26). Based on current understandings of international power relations, postcolonial scholars seek to unravel the metanarratives of western civilization and expose the links between (neo)colonization and the western pursuit of “truth and racist power and cultural supremacy” (Prakash 1995:202). Chowdhry and Nair similarly explain that Realist theory “pays no attention to the ways in which power is constituted and produced, or the role of history, ideology, and culture in shaping state power or practices in international relations” (2002:4). Feminist postcolonial scholars argue that conventional IR too often

fails to address some of the erasures of the intersectionality of gender, race, class, sexuality, and location in the production of power in IR and its national security imaginary. All of these various feminist epistemologies intersect to provide the tools necessary to explore the question of why same-sex marriage is interpreted as a danger to the imagined security of the nation.

Gender, Sexuality and IR's National Security Imaginary

For Realists, security is tied to the military security of the state. Since the beginning of the state systems, the security function of the state has been passed down to us through gendered images that privilege masculinity (Peterson 1992:42), and the “propagation of the military and military violence has always been a resolutely male affair” (Giddens 1994, cited in Tickner 2004:43). The public and political life of individual citizens takes on masculine characteristics that associate men with war and ruling. As stated earlier, the political man, often equated with the *body politic*, is constructed as independent, disconnected, rational, and impartial – unlike the private female who is connected, (inter)dependent, nurturing, relational, sexual, and “disorderly.” This dichotomy facilitates the definition of the political as a space/realm where the female and femininity are absent, and constitutes the male with authority, subjectivity and reason – embracing the Greek model of the heroic citizen-warrior associated with manliness, patriotism and citizenship. Therefore, within national security discourse manliness is equated not only with the ability to win a war, but also with willingness to threaten and use force. This gendered heritage informs IRs’ construction of states and international politics. Hence, in IR’s national security imaginary, “categories of self-versus-them are used to construct

power relationships along a variety of parallel and intersecting axes, including the ways in which sovereignty implies relations of domination and subordination at the level of the state and also within households and communities” (Ranchod-Nilsson and Tetreault 2000:1).

Dichotomies and oppositional binaries reign in IR, and as feminists have persuasively argued, these binaries are gendered and hierarchical. “Feminist authors highlight ways in which gender differences are ‘naturalized’ as codes guiding processes of constructing and reconstructing nations (Ranchod-Nilsson and Tetreault 2000:11).¹² In addition, the following are conceptually and structurally linked in early western state-making: the codification of sex/gender binaries as foundational to symbolic order; the production of oppositional gender identities in service to state-centric heterosexist reproduction and hierarchical relations (patriarchal families/households; state regulations of productive sexual activities – i.e. marriage); and, the conceptual and material constitutions of gendered spheres of social activity that structure hierarchical divisions, ideologically and concretely (Peterson 2000). For example, national security paradigms and policies are shaped and distorted by the devaluation and exclusion of “the feminine.” Once the devaluation of the feminine takes place, it becomes extremely difficult for anyone, female or male, to take the devalued position – to express concerns or ideas marked as feminine (Cohn 1987). Power, autonomy, self-reliance, and rationality are all attributes that Realism, the approach in IR that has had the most influence on security studies, deems desirable for the state. Therefore, the IR national security imaginary is grounded in a system of gender hierarchy which also provides a familiar set of

¹² See also, Peterson 1992, 2000; Cohn 1987, 2007; Pettman 1996; Tickner 1992, 2004.

metaphors, dichotomies and values that structure ways of thinking about other aspects of the world, including war and security (Cohn 2007).

Carol Cohn explores gender discourse and its role in shaping national security, the ways in which gender discourse intertwines with and permeates defense/security analysts, and the ways in which they think and talk about war and security. In the U.S., nuclear defense intellectuals and security affairs analysts create a community comprised almost entirely white men who, in short, create the discourse that underwrites American national security policy. The impact of gender discourse on U.S. national security policy is that certain ideas, concerns, interests, meanings, feelings, and information marked in national security discourse as feminine, are devalued and consequently left out and delegitimated (Cohn 1987, 2007). Such invisibilized concerns with national security include, structural violence which is used to denote the economic, domestic and ecological security and insecurity of individuals where life expectancy is reduced, not by the direct violence of war but by domestic and international structures of social, political and economic oppression (Tickner 1992, 2004).

Hence, gender discourse informs and shapes the IR security imaginary, and in doing so creates silences and absences. To borrow a term from defense intellectuals, gender discourse becomes a “preemptive deterrent” to certain kinds of thought (Cohn 1987:235). If not more damagingly however, is the way in which this interpretive coding not only limits what is said, but also limits what is thought.

The problem is not that the “female” position is totally absent from the discourse; parts of it at least, albeit in a degraded and undeveloped form, are already present, named, delegitimated, and silenced, all in one fell swoop. The inclusion and denigration marked as “feminine” acts as a more powerful censor than the total absence of “feminine” ideas would be. (Cohn 1987:239)

Consequently, in a security discourse which valorizes the masculine, it is only “feminine” emotions that are noticed and labeled as emotions. However, “masculine” emotions such as feelings of aggression, competition, and macho pride, are not so easily identified as emotions, and are instead invisibly folded into “self-evident” so called realist paradigm and analysis (Cohn 1987:242). We see the devaluation/exclusion of the ‘feminine’ as shaping and distorting basic national security paradigms and policies. It is crucial to understand that gender discourse is interwoven throughout the IR security imaginary – and it matters. It sets fixed boundaries and thereby limits and skews not only what is discussed but how it is thought about. As long as those who adhere to this position continue to probe no further, then ontological, epistemological and ideological limitations will continue to be reproduced not only by the study of international relations but by national security elites, intellectuals, and decision makers (Cohn 1987, 2007).

Feminist perspectives on security (or a feminist security imaginary) grow out of quite different assumptions about individuals, the state and international systems than mainstream IR. Feminists call attention to the particular vulnerabilities of women within states, vulnerabilities that grow out of hierarchical gender relations that are also related to IR (Tickner 1992, 2001, 2005). Women from around the world define security in various ways: as safe working conditions, freedom from the threat of war, unemployment, debt, and from structural violence; yet the elimination of structural violence related to the violence embedded in gender hierarchies continues to be a central theme. Feminist perspectives on security would assume that violence, whether national or international, public or in the private sphere of home and family, are interconnected (Collins 2000; Tickner 1992, 2001, Young 1997; McClintock 1997; Mufti & Shohat 1997). Feminist IR

scholarship has contributed to IR and has also been invaluable in challenging mainstream IR and its national security imaginary; however, it continues to be marginalized in an international political community primarily dominated by males and masculine epistemologies. Consequently, IR's security imaginary is founded on gendered constructions of the nation which functions to maintain order in the face of international anarchy.

***The NATION:
Gender, Heteronormativity and the National Security Imaginary***

Zillah Eisenstein asks “you to see the nation as a complete invention, as completely mythic and unnatural. National identities and geographies shift and change. The idea of nation is a fantasmatic imagining that misrepresents the diversity that exists within the borders it names” (Eisenstein 2000:35). Yuval-Davis argues that “the concept of the ‘nation-state’ assumes a complete correspondence between the boundaries of the nation and the boundaries of those who live in a specific state. This, of course, is virtually everywhere a fiction” (Yuval-Davis 1997:11). The effect of this fiction, she argues, “is to naturalize the hegemony of one collectivity and its access to the ideological apparatuses of both state and civil society (Yuval-Davis 1997:11). While Realism and Neo-realism take the state as a given, feminist and other critical scholars have interrogated the make-up of the nation-state, suggesting that the ways in which the state is imagined has deep impacts on the construction of the national security imaginary. Therefore, this section examines the intersecting literature on the nation and its imagined community, its construction of insider/outsider boundaries, and the ways in which the

traditional family and its assigned gender order function to reflect and reproduce the nation and its imagined security.

Perhaps the most widely accepted notion of nation comes from Benedict Anderson, when he created/popularized the myth of the “imagined community” (1983). He proposed the following definition of nation as “an imagined political community – imagined as both inherently limited and sovereign” (Anderson 1983:6). It is imagined because the members will never know most of their “fellow” members, meet them or even hear of them, yet in the minds of each lives the image of the ‘fictional’ or ‘imagined’ homogeneous community. Anderson states that,

It is an imagined as a community, because, regardless of the actual inequality and exploitation that may prevail in each, the nation is always conceived as a deep, horizontal comradeship. Ultimately it is the fraternity that makes it possible, over the past two centuries, for so many million of people, not so much to kill, as willingly to die for such limited imaginings. (Anderson 1983:6)

However, this “imagined community” is a fantasy world with women present, but silenced. They are absent from the fraternity which is masculine (Eisenstein 2000). The nation is spoken of as “the fatherland,” as it also imagines “the brotherhood” of fraternity. This is not the case for “the mother” country – a country which imagines the nation as a fraternity, not as a sisterhood. Nationalism reduces women to their motherhood. Nowhere in the symbolism/iconography of the nation is there space for women as sisters or a sisterhood. Anderson’s (1991) community is made up of men and their devotion to a deep, horizontal comradeship, a passionate brotherhood. He does not recognize that nationalism is an instance of phallographic construction, with brotherhood, rather than sisterhood at its core. Nor does he recognize racism as part of the historical articulation of the nation (Eisenstein 2000:42).

Regardless, a possible nation would have to gain this sense of shared destiny as collectivities are organized around boundaries which divide the world into ‘us’ and ‘them’ (Yuval-Davis 1997). Nationality provides an identity that exists outside the self at the same time as it constructs a nation of self that is exclusionary of other identities. The notion of likeness can be dangerous if it is used to exclude, and silence, and punish. The nation implies borders and boundaries that bespeak both openings and closings. A nation requires an inside and an outside, natives and foreigners. Hence, the ‘stories’ told in the construction of nation-building function to naturalize “minorities” into assumed deviants from the “normal.”

Nation-states draw borderlines along bounded spaces containing people, and charge the state with policing those boundaries (Mosse 1985). The boundaries, however, are not just geographic, but are also boundaries around legitimated behaviors and practices – erected to keep the right people in and the wrong people out. To do this, the state requires a disciplinary power, bureaucracy and centralized authority, the means of organized violence and of manufacturing consent, and, a citizenry that it both disciplines and represents (Peterson 1992, Pettman 1996). Constructions of national identities around the notion of a safe, or “civilized,” space “inside” depends on the construction of an “outside” whose identity often appears “strange” or threatening. However, it is not only threats from the outside against which nationalist ideologies are created. “The threats that states pose to their own citizens, issues of importance on the new security agenda, are often exacerbated by the manipulation of nationalist ideologies that pits ruling groups against “outsiders” within their own territory” (Tickner 2001:56), as exemplified by the struggle for gay rights and same-sex marriage in the United States.

From the time of their foundation, states have sought to control the right to define their political identity, and often these identities have depended on the manipulation of gendered and racial representations that are constructed and reconstructed over time.

The ideology of the family is also inextricably connected to the construction of the nation and the ways it imagines security. It also provides a powerful symbol for individuals in need of community – to ‘fit in’. Nevertheless, the sense of community implicit in family metaphors is deeply gendered in ways that not only legitimate foreign-policy practices but also reinforce inequalities between women and men (Tickner 2001:54). National security containment doctrine was articulated/constructed through the white middle class family – consisting of a male breadwinner and female housewife and mother. Hence, female domesticity was seen as serving the nation and women were encouraged to stay at home, plan meals, tend to children, and take care of their husbands. As a result, it appears the nation’s security, its roots, are inextricably tied to the conventional, heteronormative hierarchical institution of marriage for reproducing the “ideal” family. The heteronormative family then functions as a disciplinary mechanism or practice to maintain and reproduce the nation and its security.

As part of the national imagined community, Pettman (1996) argues that all states are engaged in the construction of the public/private, male/female divide. They are, in fact, dependent upon this dualistic gender ordering which the institution of marriage maintains. Nation-building is already then, encoded with a series of sexualized, gendered and racialized silences. Those with the capacity to do so, intervene in the private to regulate gender relations. “The growth of the welfare state in the west and the provision of particular kinds of support to women, especially to mothers, has been characterized as

a shift from private to public patriarchy – as the state replaces individual men” (Pettman 1996:11). While some feminists direct demands at the state for more services or more protection, many are profoundly suspicious of the state and its implications in the reproduction of unequal gender relations. In the very construction of the nation the territory of “woman” is in effect denied agency. Rather, “she” is man’s possession, and like other enabling vessels is valued as a means for achieving male defined ends (Peterson 2000:59).

The nation-state is now understood to be one of the most significant contemporary domains of disciplinary power and since its conception has been constructed upon gendered and racialized hierarchies of domination. The nation constructs gender, sexuality, and their racialized meanings through processes of nation-building, like the Gulf War “when the nation becomes a family,” or the video beating of Rodney King, when the nation becomes white (Eisenstein 2000:35). The National Security Imaginary is constructed through the myths and stories that institutionalize “difference.” When women are absent from these foundational myths, a source of gender bias is created that extends into IR theory; and the theories or myths of IR cannot be separated from political practice (Tickner 2001). Similarly, when people of color or homosexuals are absent from national ‘stories’, racism and sexism are created as part of the national security imaginary from its conception. This means that challenges to gender ordering may appear to threaten a personal and national identity in which we are deeply invested. A fear of loss or destabilization from challenging gender hierarchies may then fuel resistance to the analysis and deconstruction of gender norms which function to maintain the security and stability of the nation and its imagined community.

Romancing Heterosexuality in the National Security Imaginary

The national security imaginary of the U.S., like most other nations in the world, is based on a heterosexual norm of the rights and obligations of the heterosexual family with its kinship ties legalized by marriage. The heterosexual family is key to national security for two main reasons: first, it organizes obligations of biological reproduction and creates legitimate kinship; and second, it perpetuates the traditional sexual division of labor (Ferguson 2007:43). In the U.S., the current administration clearly seeks to enshrine heterosexual marriage as the norm for civilization. However, little work has been done on elaborating the process of heterosexualization at work within the state apparatus or how heterosexuality is at once necessary to the states ability to continue, imagine and reproduce itself, while simultaneously marking a site of its own instability (Peterson 2000:54). Hence, this section explores and defines heterosexuality, heterosexism, heteronormativity, and heteropatriarchy and how they are foundational to the construction of the national security imaginary.

Heterosexuality is a highly regulated, ritualized and organized practice. It is an established order made up of rule-bound standardized behavior patterns. Weddings are one of the major events (rituals) that signal readiness and prepare individuals for membership in the institution of heterosexuality. The “heterosexual imaginary” is a way of thinking that conceals the operation of heterosexuality in structuring gender across race, class and sexuality and blocks critical analysis of heterosexuality as an organizing institution (Ingraham 1999:3,4,16). Above all, the heterosexual imaginary naturalizes the regulation of sexuality through the institution of marriage. Also, through moves designed to discredit any practices that do not privilege this arrangement while reclaiming and

rewarding those that honor it, these interests have launched a full-scale national attack on any group – whether it be lesbians, gays, single mothers, domestic partners, transgender or transsexual people – which do not subscribe to the dominant heterosexual arrangement (Ingraham 1999).

Related to heterosexuality is heterosexism, which refers to the institutionalization and normalization of heterosexuality and the related exclusion of non-heterosexual identities, practices, and ideologies. It is based on a binary coding of oppositional and hierarchical male/masculine and female/feminine which denies all but hetero coupling as the foundation of sexual intimacy, family life, and group reproduction. Heterosexism is naturalized through multiple discourses and practices such as marriage, family and national security discourses (Peterson 2000:59). Heterosexist practice means that women should be loyal to male-led (reproductive) groups and view loyalty among women as secondary. It insists that women place their child-bearing capacities into the hands of dominant male elites, in service to group reproduction through heteropatriarchal family forms and social relations. “The heteropatriarchal family is decisive in these arrangements, exemplifying, naturalizing and reproducing the heterosexist symbolic order, binary gender identities, and heterosexist practice” (Peterson 2000:75).

Heterosexism refers to a whole ensemble of social, political and cultural forces that naturalize and uphold heterosexuality as an entitlement and a privilege, while threatening the social and existential survival of anyone who deviates from the hetero norm (Miriam 2007).

Heteronormativity is more than heterosexism and compulsory heterosexuality in that it promotes the idea/ideology that life is not only heterosexual – but married,

monogamous, white, upper-middle-class, and synonymous with American values (Brandzel 2005). It is the view/belief that institutionalized heterosexuality constitutes the standard for the only expected and legitimate social and sexual relations. For example, questionnaires still usually only offer options referring to marital status: single, married, divorced, separated, or widowed – implying that the organization of identity in relation to marriage is universal and not in need of explanation. According to Ingraham (1999), the study of marriage and heteronormativity interrupts and disrupts the “social imaginary,” and the ways in which the imagined community perceives security. Radical feminism claims that normative heterosexuality is crucial for the maintenance of female subordination, and that heterosexist bigotry, or the heterosexual norm, cannot be fully understood without (re)theorizing the connections between heteronormativity and male supremacy (Miriam 2007). Addressing the central research question of why same-sex marriage is interpreted as a danger to the security of the nation, illuminates how attention to heterosexism and heteronormativity deepens our understanding of heteropatriarchal group reproduction and the gendered hierarchical social relations of the national security imaginary.

Further, *heteropatriarchy* as an ideology, structure and practice functions to provide the foundation, context, shape and form to the national security imaginary. In patriarchy, hierarchical structuring is so pervasive it appears natural and goes unquestioned as though it is the only possibility. What makes the structure so central to the oppression experienced in patriarchy is the incredible amount of force it takes to maintain these unequal relationships (Collins 2000). Consequently, heteropatriarchy is based on systems and practices rooted in domination, fear and violence, and founded on a

“logic of domination” (Warren 2000). Heteropatriarchy structures and transforms the social practices that it represents into what is natural and universal – and is reinforced by organizing institutions and rituals such as marriage and the family. Patriarchal ideology and practice is central/foundational to the reproduction of a social and national security imaginary. What heteropatriarchal marriage keeps in place is nothing short of a racist, classist, and heterosexual social order (Ingraham 1999:23), which is inextricably connected to the construction and reproduction of a heterosexist, heteronormative, and heteropatriarchal national security imaginary.

Heteronormative Marriage as a Normalizing Mechanism for Reproducing the Nation

The security of the nation is not only based upon a system of gendered meanings, but it also relies upon the institution of marriage as a normalizing mechanism to maintain and reproduce gender dichotomies of dominance and subordination – naturalizing all human imposed hierarchies (Collins 2000, 2006). And although marriage is thought of as private contract between individuals, in reality, it is public state law that anchors and frames this relationship (Fineman 2004). Western feminists have long identified marriage and the family as an important site of women’s oppression – yet broadening these understandings to see marriage/family as heteropatriarchal and as a site of social, cultural and economic reproduction, as well as an ideological site where groups and individuals are socialized into their appropriate places in the social order/structure – makes heterosexual marriage and family a crucial template for conceptualizing the nation and its security (Collins 2006). The institution of marriage and the laws surrounding it have been a primary site for the production of normative behavior and citizenship.

Marriage is used by the state as a tool of “cultural regulation” and is not only a vehicle for public policy, but *the* vehicle through which the nation-state shapes the public order into a gendered, racialized, and heterosexist hierarchical structure (Eisenstein 1999).

Marriage law and practice, as well as the corresponding gender roles are a primary means of controlling women’s access to the public world of paid labor and full rights of citizenship. Socialist feminism claims that gender divisions develop from procreation and through this act the first appearance of property arises within the family. The slavery of women in the family, legitimated through marriage, derives from gendered heteropatriarchal unequal power relations (Eisenstein 1999). Consequently, the family, through its patriarchal structure and ideology, functions systemically as a normalizing mechanism to structure society and the nation, and hence, the national security imaginary. As an effect of heteropatriarchal households and the family wage model, women are linked to the nation-state through their fathers and husbands; and women are expected to bond only through and with “their men” (Peterson 2000). Therefore, the sexual division of labor, or gender order, becomes the most fundamental hierarchical division in our society (Eisenstein 1999).

The literature suggests that marriage in the United States functions as a normalizing mechanism for reproducing the nation. And, at the center of heteronormative marriage is the imagined “family ideal” consisting of heterosexual couples that produce their own biological offspring – constituting the fundamental principle of social organization and the primary site of belonging, as in Anderson’s “imagined community.” Because it is so closely linked to issues of gender identity and reproduction, sexuality remains significant in constructions of family, and actual families

remain deeply implicated in reproducing heterosexism (Collins 2000:157-158).

However, the nation has long supported and recognized only certain kinds of family and heterosexual sex. This is part of the nation disciplining its citizen body, by constructing deviant forms of family, marriage, sexuality and sexual minorities as somehow disloyal to the nation (Pettman 1996:20) and thereby interpreted as a threat to its stability and security.

Blood ties reflect another dimension of how marriage/family operates as a normalizing mechanism – as concepts of family and kinship draw strength from the flow of blood as a substance that regulates the spread of rights (such as inheritance, tax and insurance breaks or state welfare benefits). In addition, through blood lines marriage and family hierarchies also naturalize and articulate economic and class hierarchies. Families constitute important sites of inheritance/property, and wealth matters because, if one adheres to rules of marriage and childbearing, it is directly transferable from generation to generation (Collins 2000, 2006). This notion of naturalized hierarchy learned from traditional marriage and family frames the national security imaginary in particular ways. If the nation-state is conceptualized and represented as a “national family,” the state/condition of marriage and the heteropatriarchal family is then central to reproducing the nation and its security (Collins 2000).

Conclusion

For women, motherhood is often the only legitimated female role in the heteronormative IR national security imaginary, demonstrating the investment in marriage and family as a normalizing mechanism charged with the reproduction of heteronormativity for the

nation. The practice then of heteronormative marriage, is “part of the state disciplining its citizen body by constructing deviant forms of sexuality or family, and sexual minorities as somehow disloyal” (Pettman 1996:20). These stories/myths of the IR national security imaginary naturalize and reproduce heterosexism, heteronormativity, and a heteropatriarchal ideology. These IR myths thereby function, as all accepted and unquestioned myths do, to transform what is an interpretation – into fact, into what is perceived of as “natural.”

The foundational assumptions or myths of IR’s national security imaginary “naturalize” (in)securities. The traditional stories of IR are “treated as facts and taken for granted – creating a ‘security dilemma’, the inevitable, perpetual, and inherently unstable competition of power and security” (Weldes, Laffey, Gusterson and Duvall 1999:9). Critical feminist theory seeks to “denaturalize” the state, other communities, and their (in)securities, by demonstrating how both (in)securities and actors are culturally produced. Insecurity is itself the product of processes of the construction of danger in which the self and the other, or multiple others, are constituted and “established in relation to a series of differences which have become socially recognized” (Weldes, Laffey, Gusterson, and Duvall 1999:11). In IRs’ national security imaginary, discursive articulations, including the construction of (in)securities, are always materialized in concrete practices and rituals which operate through specific state (and other) apparatuses or mechanisms such as the institution of marriage.

Within the realist IR national security imaginary, constructions of gender, race, and class are central to the conception of the nation as well as to nation-building and reproduction. Indeed, in mainstream-heteronormative security discourse, anyone who

does not fit the constructed norms of the “imagined community” is seen as deviant, interpreted as a danger and represented as a threat to the security of the nation – representations which themselves hinge upon definitions/constructions of national citizenship/membership, or insider/outsider status – and are played out within the construction, maintenance, and reproduction of the nation. Feminist and critical-security studies challenge realism on both ontological and epistemological grounds (Tickner 2005). Many of its adherents argue for a broader definition of security, linked to justice and emancipation. A concept of security that starts with the individual allows for a global definition of security and moves beyond the heteronormative, hierarchical binary distinctions between order and anarchy, insider and outsider, and male and female that exists within the IR national security imaginary. In contrast, the feminist definitions of security grow out of the centrality of social relations. Feminists claim that structural inequalities, which are central contributors to the insecurity of individuals, are built into the historical legacy of the modern state and the international system of which it is a part (Tickner 2001:62). Calling into question realist assumptions about the boundaries between anarchy and danger on the ‘outside’ and order and security on the ‘inside’ – feminists point out that state-centric and structural analyses miss the intersections/interrelationships of (in)security.

Since “women’s space” inside households has also been beyond the reach of law historically – in most societies, feminists are often quite suspicious of boundaries that mark states as security providers (Tickner 2001:63). However, one of the results of critical and feminist IR scholarship and examination of the national IR security imaginary, is the expanded notion of security in IR studies and policy. In 1994, the

UNDP Human Development Report identified seven broad categories of security: economic, food, health, environmental, personal, community, and political.¹³ Hoogensen (2006) states that the dominance of traditional, state-based security thinking is a manifestation of masculinist, patriarchal structures, demanding that security only defined from this position of privilege. Gender security research is only now starting to permeate the mainstream security imaginary – but it is still definitely the exception. Gender/racial/class analyses of the security imaginary exposes empowering aspects to expanded notions of security – enabling/capacity building component to a more “human” security. According to Hoogensen, “Human security is achieved when individuals and communities have the freedom to identify risks and threats to their well-being and the capacity to determine ways to end, mitigate or adapt to those risks and threats” (Hoogensen 2006:xvii).

Feminist’s commitment to the emancipatory goal of ending women’s subordination is consistent with a broad definition of security that takes the individual, situated in broader social structures, as its starting point. By crossing what many feminists believe to be mutually constitutive levels of analysis, we get a better understanding of the interrelationship between all forms of insecurity or ‘danger’ and the extent to which unjust social relations, including gender hierarchies, contribute to insecurity when more broadly defined. Starting at the micro level and listening to the experiences of women, feminists base their understanding of security on situated knowledge, rather than knowledge that is decontextualized and universalized (Tickner 2001:64). Speaking from the experiences of those on the margins of the IR national

¹³ See Gunhild Hoogensen, Ph.D., Associate Professor. Department of Political Science, University of Tromsø, Tromsø, Norway. Research Associate, GECHS. “Gender and Security.” 16 March 2006.

security imaginary, feminists have a unique “stand point,” making them sensitive to the various ways in which gendered social hierarchies are constructed. Striving for security involves exposing these naturalized hierarchies, understanding how they construct and are constructed by the IR national security imaginary, and working on strategies to dismantle, denaturalize, and recreate the ways in which the nation imagines security.

Within the IR national security imaginary the nation functions to provide security in a world of international anarchy. Critical interventions such as feminist IR scholarship bring to light gender and heterosexist hierarchies embedded in the construction of the nation, demonstrating the ways in which heteronormative marriage functions to reproduce the nation and its imagined security. This theoretical interrogation of the intersecting literature suggests that challenges to heteronormativity and heteropatriarchy, such as same-sex marriage, pose a “danger” to the reproduction of the nation and hence, to the IR national security imaginary.

~ Chapter Three ~

*An Historical Examination of
The Mutual Construction of the Emerging State,
Marriage, and the U.S. National Security Imaginary*

Securing the homeland means to protect the nation as an “imagined community” from any threats to its identity (Anderson 1991). Consequently, the national security imaginary suggests that the challenges to heterosexual marriage have been interpreted as dangers which threaten the security of an internal and domestic society (Campbell 1998). Much of the IR feminist literature on nation and security suggests that the US has been imagined as a white heteronormative nation. Marriage and the legitimate family’s central function then, according to the literature, is to reproduce heteronormative patriarchal relations; and is also intended to work as a normalizing mechanism to reflect the identity of the nation. Therefore, by exploring the history of the mutual construction of marriage and the newly developing nation can illuminate many of the ways challenges to the heterosexual imperative of marriage constitutes a danger to the security of the nation.

The chapter offers an account of danger that highlights the domains of male/female, dominant/subordinate, insider/outsider, legitimate/illegitimate, and so on. As Campbell suggests, the construction of nation with its exclusions and inclusions, as well as the territorial boundaries of the state, determine the ways in which threats to the nation-state are constructed. “Anything can be a risk, it all depends on how one analyzes the danger and considers the event – danger is an effect of interpretation” (Campbell 1998:2). Therefore, the history of marriage in the US reveals how marriage functions as a tool for the state to police the gender, racial, and sexual configurations of the citizenry.

It is believed by scholars that as a consequence of conquest, civilization and industrialization, the extended family or earlier kinship systems gave way to what we know as the traditional nuclear family (Nicholson 1986:109). Moreover, antithetical to kinship, is the fact that families and states originated together and contain common features as a function of their common origins. Analysis also suggests a mutual emergence of the state and the institution of marriage and family (Nicholson 1986:117). Historically, there appears to be an opposition between kinship or tribal forms of social organization and the state. For example, Hannah Arendt pointed out that the foundation of the polis was preceded by the destruction of all organized units resting on kinship (Arendt 1958:24). It is also suggested that “the modern state is a natural enemy to the values of the clan, of kinship, of good lordship, and clientage links among the upper classes - for at this social and political level they are a direct threat to the state’s own claim to prior loyalty” (Stone 1979:58). As Stone notes, one of the tools used by the emerging state in its battle for imperial power was to transfer the idea of good lordship from its association with the heads of an extended kinship and clientage unit to the individual male head of household. The new state thus encouraged patriarchy within the family – claiming the allegiances within it were analogous to allegiances of all to the king (Stone 1979). The very growth of the state in conjunction with the emergence of marriage and the modern family attests to the central reasons as to why a threat to marriage is a threat to the security of the nation.

In the past, a crucial aspect of conquering the American West were the ways in which it was imagined. According to Theodore Roosevelt, who’s actions and the actions of those he influenced helped produce modern ideologies of powerful American

manhood, imperialism, and nation – claimed that the establishment of a new empire was an extended act of racial conquest (Bederman 1995:215). According to Roosevelt, this was an act of “manly” conquest, which established the American race as apart from the rest of the world because it occurred during the act of winning a new and virgin continent. Consequently, imperialism was construed as a manly duty for both man and race. “In its imperial glory, the virile American race would embody a warlike manliness. If any Americans were scared by this, they would show themselves, as Roosevelt put it, to be weaklings” (Bederman 1995:188). Racial health and civilized advancement implied both manhood and imperialism. An effeminate race was a decadent race; and a decadent race was too weak to advance civilization. Imperialism was considered a question of both racial and individual manhood through discourses of civilization (Bederman 1995:214).

Therefore, an historical examination of the mutual construction of marriage and the nation reveals how both are constructed on notions of “manly” virtues, and that virile masculinity under-girds the very foundations of not only the nation and heteronormative marriage, but of the security imaginary as well. What is illuminated through a feminist analysis is how not only gay marriage, but homosexuality in general – is seen as a danger to the security of the nation. Therefore, challenges to heteronormative marriage, such as same-sex marriage, threatens the nation as it strikes at the very heart of American manliness – and hence the strength of the nation.

This chapter is organized into four sections. First is an examination of the mutual construction of marriage, nation and the security imaginary. Through ideologies and practices of consent, traditional marriage was seen as foundational to the ideals of the

emerging nation in the U.S. demonstrating aspects of their common origins. It also follows the development of patriarchy within the structures, ideologies and practices of the nation, security and marriage. This included divorce laws to establish paternity and strengthen the growing patriarchal empire. Woman's place within heteronormative marriage and the developing state are also highlighted. The second section explores the historical racial constructions of marriage and the emerging nation through antimiscegenation laws - which were finally struck down in the historic case *Loving v Virginia* in 1967. The third portion of this chapter illuminates the ways in which citizenship is mutually constructed with marriage, the nation and the security imaginary. As romantic love became the norm, it highlighted differences between Western imperial civilization and Eastern traditions. As immigration swelled, it became linked to marriage law and functioned to secure the nation and the (re)production of a white normative citizenry. The fourth section explores the ways in which, how in the twentieth and twenty-first centuries as U.S. history unfolded, the Depression, New Deal policies, the Social Security Act, WWII, the War Brides Act, court cases such as *Perez v Sharp* (1948) and *Loving v. Virginia* (1967), the Civil Rights Movement, Women's Rights, Gay Liberation, hippies, the Defense of Marriage Act, and the proposed Federal Marriage Amendment – all had an impact on the mutual construction of marriage, the nation and the security imaginary.

The Mutual Construction of Marriage, the Nation and the Security Imaginary

In 1792, James Wilson, a preeminent statesman and legal philosopher, saw *mutual consent* as the hallmark of marriage in the developing democracy of the United States

(Cott 2000:10). The newly emerging empire was constructed on the same patriarchal foundations as the “modern” heteronormative family and mutual consent symbolized civilization - the manly and virile nation - in stark contrast to the Eastern world and to the indigenous people who had previously inhabited this newly conquered territory.

Consequently, the marriage contract was popular in the early U.S.; yet, as a contract it was unique, for the parties – even though consenting – did not set their own terms.

Instead public authorities set the terms of marriage so that it brought predictable rewards to the developing nation based on prescribed gender roles of husband/father and wife/mother. As Wilson emphasized, the common law turned the married couple legally into one person – the husband. The husband’s rights or citizenship were enlarged, so to speak, by marriage, while the wife’s actions of giving up her own name and being called by “his” - symbolized the relinquishing of her identity and property. Under the common law, a woman was absorbed into her husband’s legal and economic persona upon marrying, and her husband gained the civic presence she lost (Pateman 1988). This legal doctrine of marital unity was called *coverture*.

Coverture in its strictest sense, meant that a wife could not use legal avenues such as suits or contracts, own assets, or execute legal documents without her husband’s approval and collaboration; nor, was she responsible for herself in criminal or civil law – he was. The husband became the political as well as the legal representative of his wife, disenfranchising her. He became the one *full* citizen. The legal meaning of coverture pervaded the economic realm as well. Upon marriage a woman’s assets became her husband’s property and so did her labor and future earnings. This was basic to the economic bargain of marriage and what both “consented” to.

Under the common law, a married woman (fem covert) could not own property, either real or personal. All personality a woman brought to marriage became her husband's. He could spend her money, sell her stock or slaves, and appropriate her clothing and jewelry. He gained managerial rights to her lands, houses and tenements and decided if land was to be farmed by the family or leased. He also controlled the rents and profits from all real estate. (Salmon 1982:655)

As a result, the political and gendered order of society began in the household and influenced all structures and systems of the emerging nation – inside the household and out. A man's headship of the family qualified him to be a participating member of the state (Okin 1979). Use of analogy between marriage and government in the political atmosphere of 1776 stressed an assumed or constructed symmetry between husband and wife in order to highlight "consent." By consenting, the citizens delegated authority to their elected representatives, as the wife gave authority to the husband. Once the transfer of the idea of "good lordship" (from its association with the head of an extended kinship and clientage), to the individual male head of household occurred – the state essentially proclaimed the subordination of the wife to her husband as a principle "guarantee of law and order in the body politic" (Stone 1979:141). Consent then, is a symbol of the mutual emergence of marriage and national identity.

As part of the shift from kinship systems to the heteronormative nuclear family, all colonies in the early U.S. placed in their statutes laws regulating marriage. This reflected a concern that marriage be celebrated publicly in order to guard against bigamy, polygamy, etc., and to publicly identify legitimate/acceptable forms of marriage and family and one's that properly reflected the patriarchal structure and ideologies of the emerging nation. Just as important as constructing these marriage and family ideals, was the resulting construction of the deviant and unacceptable relationship. For example, from the perspective of the American public, stark contrasts between monogamy and

polygamy not only illustrated the superiority of christian morality over the “heathen” Orient or *Eastern* ways and reassured christian monogamists in their minority position – when speaking world wide – but also staked a political claim. The harem stood for tyrannical rule, political corruption, coercion, elevation of the passions over reason, selfishness, and hypocrisy – all the evils that the newly emerging nation wanted to avoid – to be protected from, an important aspect to the developing security imaginary – while monogamy, in contrast, stood for a government based on consent, moderation, and political liberty (Cott 2000:22), practices which connect traditional marriage and nation to their common origins and purpose.

Consequently, the publication of intent to marry is one of the earliest passed in the colonies – 1640 in Connecticut (Hartford 1808:525), and most colonies followed the British practice of treating marriage as a moral obligation for life. Colonial Connecticut was unusual in treating marriage as a civil contract, which might be broken if its terms were not carried out. For example, Connecticut enacted the earliest divorce law in the colonies. It made divorce available after a simple petition to the superior court under certain circumstances (Hartford 1808).

If any man shall hereafter marry or have carnal copulation with any woman – every such marriage will be null and void; and all children that shall hereafter be born of such incestuous marriage or copulation, shall be forever disabled to inherit by descent. (An Act for Regulating and Orderly Celebrating of Marriages, 1640)

Inheritance by descent reflects another important aspect of the emerging security imaginary and the nation’s dependence on paternal hierarchies and patriarchal structure. Legal divorce by the nineteenth century reflected the character of marriage as a unique contract in which husband and wife consented to terms set by a third party, the state.

Between 1820 and 1860, state legislatures boomed with activity, and they repeatedly revised and enhanced their divorce statutes. By declaring what behavior broke the bargain of marriage, states were reiterating what composed it. They intended to keep the marriage bargain static: marriage was built on heteronormativity and sexual fidelity was required – especially by the female in order to be able to prove paternity. “State legislators’ refinements of the grounds for divorce announced their own role in constructing marriage, as did their contemporaneous revision of coverture – marriage was their political creation” (Cott 2000:52). As the north and south contended for dominance, marriage definitions and practices became both means and ends in political debate. As the developing empire was “winning the West,” new states were being formed from western territories, and marriage values and practices were meant to reflect the ideas of the patriarchal, civilized, and virile nation.

What we regard as normal or abnormal, insider or outsider, etc., is a product of historical development, and behavior, sexual or otherwise, was kept in line through socially constructed concepts of virtue, particularly in the nineteenth century. Virtue meant not only moral integrity but public-spiritedness, a Victorian morality. Selfish individuals narrowly seeking their own advancement would not do; citizens in the new nation had to recognize civic obligation, to see the social good of the polity among their own responsibilities. How would the nation make sure the citizens would appear and be suitably virtuous? “In order to impose restraint and moderation, the growing nation-state needed the support of doctors, educators, police, the courts, and religion, whose methods were informed by a national *ideal* – one to support normality and contain sexual passions – and marriage came to the rescue” (Mosse 1985:9). It was believed, and often still is,

that marriage tames and civilizes the wild beast that is man – without it, we would be awash in a sea of sexual depravity (Walters 289:2006). Consequently, marriage supplied an important part of the answer at the same time that it offered a model of consensual juncture, voluntary allegiance, and mutual benefit. “This set the stage for the American public to see marriage as a training ground of citizenly virtue” (Cott 2000:18), and demonstrates the mutual construction, origins, and emergence of marriage and the nation.

As a disciplinary tool of the developing nation, Victorian morality was inextricably connected to “respectability” and manners. Manners were related to attitudes concerning sexuality, and respectability ruled behaviors in all areas based on a consistent attitude toward the body. Respectability referred to everything from table manners and decorum, to modesty, purity, and of course, the practice of virtue (Mosse 1985). Manners and morals cannot be separated from morality, as both are intrinsic aspects of man’s control over his passions. It was also through respectability that the middle-class sought to maintain their status and self-respect. For example, at the time manners referred not simply to deportment, but to habits and values, including morality, bearing, and character, which were conveyed by patterns of behavior and expression. The presence of refined women promised to benefit male citizens (Cott 2000). “The gentle and insinuating manners of the female sex tend to soften the roughness of the other sex,” as Lord Kames so noted in his *Six Sketches on the History of Man*, published in 1776. Masculinity denoted protection of the respectable lady and respectable, ladylike behavior was one of the mainstays of imperialist civilization. John Adams reasoned that “the manners of women were the most infallible barometer to ascertain the degree of

morality and virtue in a nation” (Butterfield 1962).¹⁴ And Theodore Roosevelt was also “awestruck at the veneration of mothers’ goodness – far purer than any carnal man could understand” (Bederman 1995:205). This illuminates the ways in which the nation supports from above that which the family supports from below. In this way, marriage and the nation can literally be understood as two sides of the same coin – each mutually constructing and reflecting the other. If you threaten one, you threaten the other – hence, the creation of the national security imaginary is based on the security of sustaining heteronormative, traditional marriage, family structure and practice.

Consequently, the two histories of nationalism and marriage intersect, merge, and become enmeshed. “Nationalism employed marriage as a tool to control new and emerging ideas of modern sexuality, where changing sexual attitudes were absorbed and tamed into respectability” (Mosse 1985:10). The distinction between normal and abnormal was basic to modern ideas and practices of respectability. It provided the “mechanism” that enforced control and ensured security – and was inextricably tied to marriage. If one couldn’t control/master their sexual urges they were in conflict with the demands of the nation and society, and the consequence was that the very foundations of the moral and legal order of the nation would cease to exist (Mosse 1985:11). The triumph of the heteronormative nuclear family went along with nationalism and respectability – superseding older ideas of kinship and defining it as antithetical to the newly developing nation. The disciplinary function of the father was central to the maintenance of hierarchy and order of the nation, and constructed on a patriarchal ideology. The family functioned as one of society’s policeman of sexuality – geared to

¹⁴ Entry of June 2, 1778 in *Diary and Autobiography of John Adams*, ed. Lyman H. Butterfield (Cambridge, 1962), 4:123.

teaching virtue and avoidance of vice. This type of character building was considered at the time, more important than school. The nation enforced from above what the family supported from below. Any threat to the family endangered the nation's survival (Mosse 1985).

Woman's Place within Marriage and the Emerging Patriarchal Nation

Throughout the colonial era, states began to institute laws outlining whom one could marry, which marriages were invalid and which were legitimate. And for the developing new nation, domesticity characterized the ideal family and the distance between home and work became a sign of prestige. "Woman" was seen as a national symbol – symbolized as the guardian of the continuity and immutability of the nation and the embodiment of its respectability (Mosse 1985). The glorification of wife and motherhood was at the heart of one of the most compelling and widely shared belief systems of the early nineteenth century – the ideology of gender spheres. An elaborate set of intellectual and behavioral conventions – a world view in which both the orderliness of daily social relations and the larger organization of society derived from and depended on the preservation of the all encompassing gendered division of labor. Females and males existed as creatures of naturally and essentially different capacities and nuanced through a Victorian morality.¹⁵ These supposed "natural" differences, (then

¹⁵ For example, it is interesting to see that the list of gender stereotypes from the "Ladies Museum" in 1825:

Man - Woman
strong - beautiful
daring and confident - diffident and unassuming
great in action - great in suffering
shines abroad - shines at home
talks to convince - talks to persuade and please
has a rugged heart - has a soft and tender heart
prevents misery - relieves misery
has science - has taste
has judgment - has sensibility

and now), were presumed to translate into different social roles and responsibilities for men and women. Woman was the embodiment of all that was contrary to the values and behaviors of men in the public sphere and as symbols of the “manly” and virile nation. This contrast melted easily into a contrast between “workplace” and “home.”

Marriage and the family was seen as crucial for developing empire because it offered a “natural” figure or structure for the sanctioning of national hierarchy. Women were incorporated directly into the nation-state not directly as citizens, but only indirectly through men, as dependent members of the family (MacClintock 1997). Reverend Jesse Peck in 1857 stated that “We fully accord the supremacy of domestic bliss to the wife and mother” (Peck 1857:245). The symbol of woman’s relation to the nation was indirectly mediated through her social relation to men, her national identity lying in her unpaid services and sacrifices through husband and family. Women’s potential militancy was muted and their political agency domesticated by the language of familial service and subordination. Women’s national mission was trivialized and domesticated (MacClintock 1997:358,380).

In the early nineteenth century, the free-labor ideology in the north, the inheritor of eighteenth century liberal ideas, assumed self-ownership to be a basic natural right. Even John Locke defined the individual as “proprietor of his own person” (Macpherson 1962:19). Not only did this spark an anti-slavery movement, but women’s rights

is a being of justice - woman of mercy
looks almost the same as the list my “Introduction to Women and Gender Studies” students constructed on the board last week (2008)
in class: (almost 200 years later...)
Man - Woman
strong - weak
mind - body
independent - dependent
rational - emotional
public (paid labor) - private (unpaid labor)
dominant - subordinate
aggressive - passive
independence - intimacy
aggression - dependency

advocacy bloomed during this time. Elizabeth Cady Stanton and several Quaker friends called the first women's rights meeting in the United States, in 1848 in Seneca Falls, New York, and although asking for the right to vote was the most radical demand, resentment of wives' subordination within marriage sounded more often during these conventions (Cott 2000:64). Suffragette Lucy Stone argued that "Marriage is to woman a state of slavery. It takes from her the right to her own property and makes her submissive in all things to her husband" (cited in Basch 1986:22). The convergence of proslavery and antislavery rhetoric's on marriage gave renewed prominence to the comparison between the wife and the slave. Lydia Maria Child and Sarah Grimke each published books in the 1830s examining the history and condition of women worldwide, noting the many cultures in which wives were equated with property or slaves.¹⁶ And when Stanton wrote to Susan B. Anthony in 1853 she argued: "I feel as never before that this whole question of women's rights turns on the pivot of the marriage relation" (quoted in Hoff 1991:9).

Materially, the Civil War had an enormous impact on both existing marriages and future ones. The Civil War killed more Americans than any other war the nation had ever entered: 182 deaths for every 10,000 – where WWII by comparison, caused 30 for every 10,000 in the U.S. (Cott 2000:77). On both sides, husbands, fathers, sweethearts, and sons were dead, and huge numbers were temporarily or permanently disabled. And a generation of women became widows early. Their chances of remarrying, like the chances of young women marrying at all, were significantly reduced because the pool of marriageable men was drastically reduced (Vinovskis 1989:35-39). After the Civil War the federal government was increasingly involved in marriage law, which had generally

¹⁶ Child, Lydia Maria. History of the Condition of Women, In Various Ages and Nations. (New York, 1835). Grimke, Sarah. Letters on the Equality of the Sexes and the Condition of Women. (Boston, 1838).

been considered, and continues to be the states domain, ultimately used to assert national unity and national identity (Bredbenner 1998).

As activists in the nineteenth century discovered, to critically examine the rules and norms of heteronormative marriage was to encounter either legal or social sanctions. For example, marriage reform activists were often censored and jailed under the Comstock Act of 1872 (Ingraham 1999:9). As part of the free thinker movement, activists dedicated themselves to the elimination of church and state control over marriage, arguing that under these rules marriage was a form of “sexual slavery” (Harman 1883). Moses Harman, publisher of a popular free thinker newspaper, printed the letter documenting the death of a woman who had been raped by her husband immediately following childbirth.¹⁷ Because she was the man’s wife, no legal action was taken against them. The husband escaped punishment, but Harman’s newspaper was impounded and he was sentenced to prison for publishing the letter (Ingraham 1999:10). Ezra Heywood published a book entitled Cupid’s Yokes in 1876 (probably coauthored by his wife Angela, but her name was kept out of publishing for fear Comstock would arrest her as well) where he critiqued marriage as a form of legalized prostitution, arguing that women, as the property of men, were forced to provide sexual and reproductive services in exchange for economic support and security (Ingraham 1999).

In 1872, Victoria Woodhull provoked controversy for advocating “free love” – the idea that a man and a woman who loved each other could have a fruitful relationship without being married. She was arrested under the Comstock Act and briefly jailed for transmitting obscene literature in the mail. In her 1874 speech “Tried as by Fire,” Woodhull declares war against marriage, claiming it is a brutal man made invention that

¹⁷ Known as the “Markland Letter” 1883

destroys the potential for genuine love. “Once free love usurps marriage – true brotherhood, justice, and equality will transform society” (Woodhull 1874, cited in Williams 2002:56). The chilling effects these acts of censorship had on free thinkers and the marriage reform movements were significant enough to silence these debates for decades. For the nation, those debates were clearly interpreted as a “danger” or threat to the security of the nation, because of the mutual construction and enmeshed origins and foundations of marriage and the nation. If you threaten marriage, then you threaten the state. They are inextricably connected.

Racialized Constructions of the Nation, Marriage, and the Security Imaginary

The nation was not only constructed as manly, virile, violent, dominant, and tough, it was also racially bound. The separate states have the power to regulate marital institutions as part of the authority over the local health, safety, and welfare, and as such, determine who gains admittance and who does not. Consequently, marriage has also been instrumental in articulating and structuring racial hierarchy and discrimination. In slaveholding states before the Civil War, slaves had no access to legal marriage, just as they had no other civil rights; this deprivation was one of the things that made them “racially” different. Hence, marriage law constructed racial difference and punished (or in some cases simply refused to legitimize) “race mixture” (Cott 2000). Prohibiting divergent marriages has been as important in public policy as sustaining the chosen model. Marital regulations have drawn lines among the citizenry and defined what kinds of sexual relations, and which kinds of families, will be legitimate. Excluded or policed

groups such as same-sex couples have always understood that historically, as minorities, they have to struggle for equal status when it comes to the terrain of marital regulation.

One theme that has been pervasive in U.S. history and literature and that has been accompanied by a 300-year-long tradition of legislation, jurisdiction, protest, and defiance is the deep concern about, and the attempt to prohibit, contain, or deny, the presence of black-white interracial sexual relations, interracial marriage and interracial descent, and other family relations across the powerful back-white divide. While many countries have practiced brutal forms of ethnic discrimination, accompanied by hate literature and inhumane laws (including marriage prohibitions), few people around the world have shared the peculiar ways in which *black-white marital* relations were prohibited since the beginning of the seventeenth century in America. Many experts and historians consider the fear of miscegenation the strongest reason for the desire of whites to keep the negro permanently segregated (Sollors 2000:4). For example, this Maryland statute of 1661 is generally considered the first miscegenation law in America,

And forasmuch as freeborn English women do intermarry with negro slaves by which a great damage doth befall the master of such negroes, the Maryland statute was passed to stop such marriages by making the female miscegenator a slave for the lifetime of her husband and all children of such marriages “slaves as their fathers were.” (Zabel 1965:76)

Children of interracial couples were, consequently, also deemed illegitimate. This focus on marriage, children, legitimacy, property, and family created a paradox in the American society, idealizing one concept of family while destroying others. Imagining the nation as white and heterosexual created certain marriages as legitimate and “others” as not.

Antimiscegenation laws came to include, in various states, American Indians, Chinese, Japanese, Hawaiians, Filipinos, and other groups – but all such laws restricted marriage

choices of blacks and whites, making the black-white divide the deepest and historically most pervasive of all American color lines (Sollors 2000:3).

Although states were more in the position of exerting power over such vast spaces, the federal government could exert an impact on marriage through some policy pronouncements. American Indian policy was one. Groups practicing other marital systems on American soil might threaten the polity's soundness (Cott 2000:25). However, the Iroquois and other American Indian tribes such as the Hopi, Havasupai, and Dene (Navaho) tribes did not see the nuclear family as fundamental – heterosexual couples were important, but they married within complex kinship systems that accepted premarital sex, expected wives to be economic actors, often embraced matrilineal residence and matrilineal descent, and easily allowed both polygamy and divorce with remarriage – and, most dramatically, their sexual division of labor greatly differed from what white heteronormative Americans expected and were accustomed to. Consequently, these differences were interpreted as a threat to the security of the developing nation – kinship structures, etc., were drawn in direct opposition to the nation – antithetical to the newly emerging empire.

To christian settlers, missionaries, puritans, and government officials, Indian practices amounted to promiscuity and were in direct conflict with civilized marriage practices (Coontz 1988:41-72). If natives were to be regarded as trustworthy in negotiation over lands and trade, then their behaviors could not be in direct contradiction to American morality. Prohibiting polygamy, valuing premarital chastity, reorienting the sexual division of labor and property-ownership and consequent inheritance patterns – all these behaviors, and their reproduction, depended on the institution of marriage and

forced the indigenous peoples to adopt christian models of gender and monogamy. The institution of marriage, in its “purity,” would serve as a vehicle of civilization and would function to create the national imaginary as manly, heteronormative and white.

The federal government could pronounce what Native Americans should do, but state legislatures regulated access to legal marriage. The state had the formal power to say who could marry whom and how, what marriages were invalid, what composed marital obligations, how a marriage could be terminated, and what were the consequences for divorce or widowed partners. However, no state operated in isolation. Differ as they might, they composed a recognizably national system, and not surprisingly, “prevailing marriage patterns were seen as evidence of national character” (Cott 2000:27).

Interracial Marriage and the National Security Imaginary

In the early U.S., the costs of licenses and ceremonies were purposely low and many states empowered a wider range of officials to solemnize marriages in an effort to support the legal contract of marriage. Yet as Americans and immigrants settled farther west and south in new of the continent, informal marriages continued to dot the landscape. The marriages between Anglo fur trappers or other adventurers and Mexican or Native American women in former Spanish territory frequently were informal. Testimony from lawsuits clearly shows that when marriages generated conflict, neighbors and extended kin were often the ones to give advice, urge better behavior, or defend a victimized spouse. This form of community self-policing was generally effective (Smith 1991). However, local control and flexibility did not mean that there were no standards, or that the community would never invoke the punitive authority of the state. Open adultery was

ordinarily an affront in all communities and interpreted as non-support to the developing nation. But the most conspicuous affront which most often mobilized community to resort to the law – was marriage across the color line. “A marriage between a person of free condition and a slave, or between a white person and a negro, or between a white person and a mulatto, shall be null” (Jefferson 1786).¹⁸

Intermarriage bans, penalties, and anti-miscegenation laws echoed each other from state to state, north and south, east and west, together composing an American system and further demonstrating the mutual emergence of marriage and the state. They confirmed the rightness of the social structure and state structure in subordinating blacks to whites, making intermarriage more than just inappropriate. The generous consideration usually given to informal marriage did not extend to couples transgressing the color barrier (Cott 2000).

The miscegenation of the whites and blacks extended so widely that it became a matter of concern to the colonies farther north where the Negro population was not considerable. Seeking also to prevent the “spurious mist issue” Massachusetts enacted in 1705 that “a Negro or mulatto man committing fornication with an “English” woman, or a woman of any other Christian nation, should be sold out of the province.” And English man, or man of any other Christian nation committing fornication with a Negro or mulatto woman, should be whipped, and the woman sold out of the province. (*Massachusetts Charters, etc.*, p. 747; Hurd, *Law of Freedom and Bondage*, VI, p. 262)

For example, in an effort to maintain their superior status white southerners were eager to observe the legal niceties of matrimony in an effort to distinguish themselves from slaves and to maintain the racial hierarchy. African American slaves could not marry legally: their unions received no protection from state authorities. Any master could override a slave’s marital commitment (Burnham 1987:5). The denial of legal marriage to slaves quintessentially expressed their lack of civil rights. To marry meant to consent (a

¹⁸ 1786 Virginia bill, drafted by Thomas Jefferson – Jefferson 557, bill 86.

cornerstone to the developing nation), as slaves could not exercise the fundamental capacity to consent, they were not considered citizens – not part of the “imagined community.” It was, however, to the advantage of masters to have slaves reproduce themselves and nurture their young, which became all the more indispensable after the national ban on importation of slaves in 1808 – as a slave woman’s offspring became the property of her owner (Cott 2000:34).

The domestic emphasis of the time, imported through Victorian morality, remade slavery as a set of relationships intended to foster qualities desirable in family members. Parental wisdom, protection, support, and discipline were expected from masters and cheerful, childlike obedience from slaves. Just as women were created by nature and god to conform to their place as wives, enslaved African Americans were suited for slavery; and slavery, like marriage, was a relationship of unequal benefits. It was assumed that both women and blacks flourished best where they were guided and protected in a paternal sense (Cott 2000). If the subordination of wives was for their own good, so was the subordination of blacks for their own best interests. Both scientific and political discourse at the time abounded with new details on the “natural” differences between women and men, and between blacks and whites (Stepan 1998). The Anglo-American legal tradition supported this approach because both slavery and marriage were called domestic relations under the law. Both master-servant and husband-wife relations were categorized together as domestic relations because the authority vested in the head of household determined them all (Cott 2000:62). Whites ruled over blacks, in the way that women and children were subordinated within the domestic sphere (McClintock 1997). Structurally, conceptually and legally the relations of husband to wife and master to

slave, were parallel – with the very important differentiation that marriage was joined voluntarily, by consent, and slavery was an inherited condition. The most important commonality between them was the master and husband’s power to command the dependent (for their own good). Justification of slavery in these terms clothed all white men, slaveholders or not, with mastership over their households, reflecting the patriarchal structure and practices of the nation and the marriage relationship.

Indiana’s laws by 1840 prohibited marriage between a white person and a person having as little as one-eighth “Negro blood” – stipulating enormous punishments: fines of \$1,000 - \$5,000 for the offending parties along with ten to twenty years imprisonment; and a fine \$1,000 - \$10,000 for the person officiating, who could also be removed from his job (Montgomery 1972). By 1865, thirty states prohibited and penalized marriage between a white and a negro or mulatto. Neither S. Carolina, Alabama, Mississippi, nor Georgia passed a state law in the antebellum years, while states such as Illinois, Iowa, Maine, Michigan, Nebraska and California did. These southern abstentions can be mostly attributed to the sufficiency of slave codes in maintaining social inequality, not to special tolerance. After emancipation, many southern states (including these four) instituted new bans; several made these marriages felonies and prescribed extremely high penalties. In Mississippi the penalty was life imprisonment. These laws did not concern all mixed marriages. They aimed to keep the white race unmixed – or more exactly, to keep the *legitimate* white race unmixed. Intermarriage bans policed this distinction by announcing that blacks were not worthy to marry whites, again highlighting the mutual construction of marriage and the national security imaginary

Constructing miscegenation laws was a difficult task for lawmakers and judges, even though they invoked a divine or natural order. In *Green v. State* (1877), for example, the Alabama Supreme Court ruled in defense of interracial marriage bans:

Manifestly, it is for the peace and happiness of the black race, as well as of the white, that such laws should exist. And surely there cannot be any tyranny or injustice in requiring both alike, to form this union with those of their own race only, whom God hath joined together by indelible peculiarities, which declare that He has made the two races distinct. (Lombardo 1988:426)

Since the racial difference between the partners alone constituted a crime with such severe punishments, a whole science of drawing the color line and of reading race emerged. As more races entered the range of prohibition, the formulation became more and more complex, and Arizona became famous for passing a law in 1913 that had very curious side effects. As Roger D. Hardaway writes in “Unlawful Love: A History of Arizona’s Miscegenation Law”:

Virginia Judge Leon M. Bazile (who originally sentenced Mildred and Richard Loving in the case that led to the landmark U.S. Supreme court decision of 1967) argued, “Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause of such marriages. The fact that he separated the races shows that he did not intend of the races to mix,” (the verdict is cited and overturned in *Loving v. Commonwealth of Virginia*, 1967). (cited in Sollors 2000:7)

Even the representation of interracial relations was restrained – from Southern states’ disputes about interracial themes in books to the infamous American “Motion Picture Production Code” of 1934 that urged filmmakers to uphold the “sanctity of the institution of marriage and the home,” but simultaneously stated; “Miscegenation is forbidden” (Kydd 1966:55-56). Even the word used to describe interracial sexual and marital relations, *miscegenation*, is an Americanism. The word was coined by two New York

journalists in an 1863 pamphlet - a political hoax designed to hurt abolitionists and Republicans who were invited to endorse it (Sollors 2000:5).

Miscegenation or interracial relations apparently did not constitute a historically deep-seated or pervasive taboo in other nations throughout the world. As Frank Snowden reports in his excellent book *Blacks in Antiquity*, “No laws in the Greco-Roman world prohibited union of blacks and whites” (Snowden 1970:195). Concerning the Muslim world, “The voice of Islamic piety on miscegenation is clear and unequivocal – there are no superior and inferior races and therefore no bar to racial intermarriage” (Lewis 1990:85). George Schuhmann writes explicitly that there “was no prohibition of interracial marriage by common law or by statute in England at the time of the establishment of the American Colonies (Schuhmann 1968:70). “Any prohibition of marriage between white and black at all began in the New World – the United States is the only country in the New World which has carried its law against the marriage of white and black from its colonial period into its national one” (Rogers 1941-1943:3.15). Even the legal prohibition of racially mixed marriages was in effect in the South African Union for less than forty years, from 1949 (when the “Immorality Act” was passed) to 1985 (when Apartheid was officially ended) (Sollors 2000:8). And though growing, the rate of intermarriage between blacks and whites has remained significantly lower than that of other racial minorities. This suggests “that the black-white color line is still with us and that the integration of blacks is going to be a different story than the assimilation of Asians and Hispanics” (Fletcher 1998:2).

After a history of racist miscegenation laws, on April 10, 1967, in *Loving v. Virginia*¹⁹ the Supreme Court of the United States held that laws prohibiting interracial marriage

¹⁹ *Loving v. Virginia*, 388 U.S. 1 (1967), Chief Justice Earl Warren.

violates the equal protection clause and the due process clause of the Fourteenth Amendment. This was a landmark civil rights case in which the United States Supreme Court declared Virginia's anti-miscegenation statute, the "Racial Integrity Act of 1924," unconstitutional, thereby ending all race-based legal restrictions on marriage in the United States.²⁰ Richard Loving, a white man, and Mildred Jeter, an African American woman, were arrested when they returned to Virginia following their marriage in Washington, D.C. They were convicted for violating Virginia's antimiscegenation laws which made the marriage between a white person and colored person a felony. In previous cases the court held that state-mandated racial discrimination, in order to pass constitutional muster, would have to meet a "strict" standard of review. The strict standard of review requires a state to demonstrate that its laws mandating racial discrimination are necessary to the accomplishment of a "permissible state objective."

The Court, in a unanimous opinion written by Chief Earl Warren, found that Virginia's antimiscegenation laws did not pass this strict test. The Court did not accept Virginia's argument that the antimiscegenation laws applied equally among races by punishing both the white and the black person attempting to marry and therefore did not discriminate based on race. The court determined that marriage is a basic civil right in the United States and the denial of this fundamental right on the basis of race violates the Fourteenth Amendment of the Constitution. Chief Justice Warren states in *Loving v. Virginia*, "Marriage is one of the basic civil rights of man, fundamental to our very existence and survival. Under our Constitution, the freedom to marry or not to marry, a person of another race resides with the individual and cannot be infringed upon by the State" (quoted in Sollors 2000:11).

²⁰ www.answers.com/topic/loving-v-virginia 6/20/07.

Soon after *Loving v. Virginia*, most states repealed their own antimiscegenation statutes. Others kept these now unenforceable laws on their books, and some even kept the prohibition in their constitutions. For example, Alabama voted in Nov. of 2000 to remove the section of their constitution that prohibited interracial marriage. Although “mixed-race” couples and their offspring continue to suffer discrimination in the twenty-first century, at least legal statutes prohibiting marriage between people of different races is now a thing of the past (Ferber 1998; Sollors 2000; Williamson 1980). In the twenty-first century however, the US population is still interpreting challenges to traditional, heterosexual marriage as a “danger” or threat to the security of the nation even when faced with constitutional and civil rights’ arguments.

Citizenship becomes Enmeshed with the Construction of Marriage and the Nation

Post Civil War at the turn of the century, there was a change of climate and Americans found themselves committed to marriage founded on romantic love. American rhetoric and popular culture had for some time put love and money on opposite sides of the coin and also ideologically understood that a love relationship sharpened the distinction between Western/civilized society and Eastern traditions as well as bolstering the notion of consent and a democratic society. “True Love,” the crucial requisite, was never more ardently highlighted as new psychologies instigated public discussion of sexual attraction. However, First Wave feminists such as Emma Goldman and Crystal Eastman argued that true love meant simply, love given freely to the lover of one’s choice. Both rejected the notion that love was a limited commodity and that women were love objects to be married into the service and control of men (Cook 1977:318). Regardless, the new

media of the times – the propaganda of the nation, such as movies and graphic advertising, was infusing the notion of consent in marriage with the awareness of the magnetizing power of sex. And in Americanization efforts, it was immigrants' achievements in marriage and domesticity that were taken to measure their ability to adapt to Western ideals and practices. "Virtually all "Americanizers" of the early 1900s, no matter how much they appreciated diversity among cultures, disapproved of familiarly arranged marriage" (Cott 2000:150). An arranged marriage represented coercion – whether brokered by a Jewish matchmaker or by a Japanese go-between, it seemed as un-American as Mormon polygamy. The contrast between a "love marriage" and an arranged one came to stand for the difference between outdated tradition and modernity, Western civilization and Eastern tradition, between falsity and truth, tyranny and freedom (Sollors 1986). It was thought that only marriages based on love (between heteronormative white couples) paralleled the voluntary allegiance or consent that would make a nation of immigrants great.

Almost eighteen million prospective immigrants entered the U.S. between 1890 and 1920, putting new pressure on the relation between marriage and the polity (Cott 2000:132). The vast overflow caused the nation to develop and change its immigration policy dramatically. Restrictions were instituted where none had been before, causing an avalanche of unprecedented federal activities. As a result, the Supreme Court asserted the right of a sovereign nation to exclude or expel aliens for its own safety and independence.²¹ A post-Civil War generation of leaders intended to consolidate the U.S. and make it a power on the world stage, and that required knowing who belonged to the

²¹ *Fong Yue Ting v. U.S.*, 149 U.S. 698 (1893). The Supreme Court asserts the right of a sovereign nation to exclude or expel aliens for its own safety and independence.

nation and who was welcome to join. Restriction asserted national authority to constitute the sovereign people (Cott 2000). Thus, immigration, marriage, and the developing nation were interrelated in several ways. Immigration promised – or risked – “the creation of new citizens, which meant not only taking employment but also marrying and having children” (Quotation from Rep. Richard Bartholdt of Mo., 1896).²² Marriage bore the shape of the body politic (the same patriarchal structure as the nation) just as immigration policy did. Together the two had dynamic potential to create new kinds of citizens for the U.S. The 14th Amendment had announced that anyone born within the jurisdiction of the U.S. was a citizen, and in 1898 the U.S. Supreme Court confirmed this.²³ It was felt in general, that no man was entitled to a right so precious as that of free citizenship by their own argument. The “all-pervading, all conquering Anglo-Saxon ought to set as high a value on American citizenship as the all-conquering Roman placed upon the franchise of his State two thousand years ago” (Chesnutt 1889:694).

The earliest federal legislation directly linking the citizenship of immigrants to marriage required very little debate. It was an act of Congress in 1855 that declared that a woman of any origin or nationality became a citizen of the U.S. upon marrying an American man, so long as she met naturalization requirements – meaning she had to be a “free white person,” in accord with the statute of 1790 (Sapiro 1984).²⁴ The making of both marriages and citizens became pressing as immigration swelled. Just as consent was essential to entering marriage, it had always been considered essential to forming citizenship. The Revolutionary nation welcomed newcomers who came by choice to

²² Quotation from Rep. Richard Bartholdt of Mo., *CR* 54/1, May 19, 1896, 5423-24.

²³ *Wong Kim Ark v. U.S.*, 169 U.S. 649 (1898). Two justices dissented, despite the clarity of the Fourteenth Amendment on this point.

²⁴ *Shanks v. Dupont*, 3 Pet. 242 (1830); Virginia Sapiro, “Women, Citizenship, and Nationality: Immigration and Naturalization Policies in the United States,” *Politics and Society*, 13:1 (1984).

embrace the political and ethical values of the American republic. “Those who were unfree, or who did not understand the value of the work contract or the marriage contract, did not fully belong” (Cott 2000:134).

Historically, women’s ability to immigrate, emigrate, and or naturalize has been linked to their marital status. Consequently, when Congress took the first federal step in U.S. history to restrict immigration, in the Page Act of 1875, it was aimed at women. It prohibited and criminalized the entry or importation of all prostitutes (Hutchinson and Neuman 1996).²⁵ Passed in the wake of the Comstock Act, the Page Act shared its aim to support monogamous heterosexual morality, and took heart from U.S. Supreme Court Justice Stephen Field’s approbation of legislation that would suppress “all lewdness especially when it takes the form of prostitution” (Page 1875).²⁶ The provocation for the Page Act was Chinese female immigrants, who were all typed as prostitutes, but Congress took the opportunity to exclude all “immoral” women and Chinese female immigrants were categorized as such. If immigrants were expected to arrive freely in pursuit of healthy wages, monogamous marriage, household formation, and the achievement of an American standard of living, the prostitute undermined and assaulted this vision. “They were not Christians; their inherited culture accepted polygamy; their livelihoods showed them to be enemies of the civilization embraced by the American nation” (Cott 2000:137).

As someone who contributed to shaping the developing nation at the beginning of the twentieth century, Theodore Roosevelt not only considered imperialism a question of both racial and individual manhood (Bederman 1995:190), he also claimed that “the first

²⁵ See Hutchinson, *Legislative History*, 65-66, and Gerald Neuman, *Strangers to the Constitution: Immigrants, Borders, and fundamental Law* (Princeton, Princeton UP, 1996), esp. 19-51.

²⁶ Quoted in a speech by Horace F. Page, Feb. 10, 1875.

essential for a man's being a good citizen is his possession of the home virtues" (Hagedorn 1956).²⁷ Cultivating "home virtues" fostered moral regulation no less than exclusion of polygamists and prostitutes did. Congress's clearest statement that a husband's citizenship rights trumped his wife's came in the 1907 immigration law, which included the provision "that any American woman who marries a foreigner shall take the nationality of her husband."²⁸ The law meant that the husband's naturalization made his wife a citizen too; but an immigrant wife could not become a citizen herself if her husband did not choose to – demonstrating the ways in which the patriarchal state has constructed women as second class citizens since the emergence of the modern state and the nuclear family.

"Racial nationalism," meaning a commitment to retain numerical domination of the body politics by whites of English and northern European descent, probably works as well as any to indicate the main impetus for narrowing the gates of immigration (Cott 2000), and marriage functioned as a tool to secure the stability of the nation. Rejection of certain nationalities as too foreign to belong to America, highlighted economic, political, and moral reasons, and heteronormative marriage practices helped to frame those reasons. Nonconforming marriages represented all that was "racially" inassimilable in a given group (Divine 1957). The choice and consent embodied in marital union, its legality and monogamous morality – all these could be corrupted, compromising civic participation and governance, as the Mormons once did (and currently same-sex marriage). If marriages produce the polity, then it was considered that wrongfully joined marriages could be fatal – interpreted as a danger or threat to the security of the nation.

²⁷ Theodore Roosevelt. The Citizen: A Summons to Service of the Democratic Ideal. Hermann Hagedorn ed. New York, (Theodore Roosevelt Association, 1956).

²⁸ CR59/2, vol. 41, Jan. 21, 1907, 4116.

The presence of such marriages and their perpetrators might infect the whole body politic. Immigrants inclined toward desirable patterns of love and marriage on the other hand, were seen as voluntarily choosing and contributing to what it meant to be free Americans. In the early twentieth century, amidst wrenching changes in industry, technology, and the very composition of the American people – traditional understandings of marriage were being recreated while – the gender roles, male dominant and hierarchical structure continued to be perpetuated as a reflection of the nation. Popular understandings of marriage were being redesigned and a twentieth century shape for the mutual construction of marriage and nation was coming into focus. Patriarchy had shown its ability to be flexible while leaving the underlying ideologies and hierarchies untouched (Johnson 1997).

Marriage and the Nation in the Twentieth Century

Despite the growing presence of women in the labor force in the twentieth century, the public framework of marriage preserved the husband's role as primary provider and the wife as his dependent. Yet when marriage was rewritten for a growing capitalist society, it was created in the provider/dependent model, and just as in the past, it was a partnership in which the husband carried more dominance. During the Depression the New Deal policy innovations and entitlements lent new support to the old economic underpinning of marital roles (Cott 2000:158). The most important and lasting of these new entitlements was the Social Security Act of 1935 (Nelson 1990:413-35). The shape and spirit of social policy in the U.S. were fatefully ordained by the Social Security Act's inherent differentiation between the male citizen-husband-provider and the female

citizen-mother-dependent. Between family courts and New Deal innovations such as the Social Security Act, public policy perpetuated differing and unequal roles for husband and wife, demonstrating the ways in which marriage and the nation were shaped by historical changes and simultaneously continued to create a security imaginary where heteronormativity needed to be protected.

The impact of WWII on gender relations was also highlighted at the time. Twelve million men went into war service and women's employment – especially for wives and mothers – reached dramatic new heights. As women stepped partway into men's shoes and earned “man-sized” pay, they were constantly reminded to retain their “femininity.” Cultural reinforcements of masculinity and femininity had appeared, especially stressing heterosexual desire. Consequently, marriage thrives as a result of wartime courtships. Related to WWII, Chinese American male citizens' insistence on their right to have their wives with them provoked a further liberalization of marriage policy, embodied in the War Brides Act of 1945 (Shukert and Scibetta 1988). Chinese born men who had become U.S. citizens by serving in the armed forces were allowed to bring their Chinese wives and children into the U.S. outside the usual quota. Although these exceptions had been made, all other Asian immigrants were still prevented from entering the U.S. However, without the War Brides Act, hundreds of American GIs wanting to marry Japanese women when they occupied Japan after victory, would not have been able to bring them home. Consequently, WWII had a powerful impact on the mutual construction of marriage and the nation.

By 1948, however, a historic change had taken place in *Perez v. Sharp*,²⁹ a suit brought by a white woman and black man who were refused a marriage license. As a result, the California Supreme court struck down that state's ban on marriage of a white person with a negro, mulatto, mongolian, or member of the malay race. Because the California court said that the marriage ban violated the fourteenth amendment's guarantee of equal protection of the laws, the decision was a signal precedent, leading about half of the other states with bans on racial intermarriage to revoke them (Cott 2000:185).

In confrontation with the Soviet Union and its socialist allies during the Cold War era, American propaganda and Americans themselves often translated their political economy into private aspirations, linking capitalism and representative democracy to personal choices in marrying, having children, buying a home, and gaining access to a cornucopia of consumer goods (Tyler 1988:16-18). Where mid-nineteenth century judges and other public spokesmen had hardly been able to speak of marriage without mentioning christian morality, mid-twentieth century nationalist discourse - ideologically saw the hallmarks of the institution in liberty and privacy, consent and freedom. Marriage and family and all the emotional and material comforts of home were seen as personally chosen private freedoms and at the same time, public emblems of the nation, and essential to its existence and defense (Cott 2000:197).

The 1960s to the Present

²⁹ The petitioners in California contended that the statute prevented them from receiving the sacrament of marriage and thus invaded freedom of religion. The court, citing a difference between freedom to believe and freedom to act, instead addressed the right to marry as a fundamental right; *Perez v. Sharp*, 32 Cal.2d 711, 198 P.2d 17 (1948).

The 1960s not only saw changes like *Loving v. Virginia*, but drastic eruptions in marriage practices and reorientations: the sexual revolution, women's liberation, The New Left, the anti-war movement, black power, gay liberation, and even hippies – all representing a strong and growing counterculture – fused dissident politics and purposeful cultural disobedience which centered around a defiance of sexual and gender heteronorms. In addition, the mass marketing of the birth control pill also enabled sex to be more decisively separated from pregnancy and marriage than ever before. However, the “sexual revolution” was not unique to the U.S. Extraordinary shifts in sexual and marital practices and in the shape of households were taking place all over the industrialized world. For example, rates of formal marriages and of births tumbled, while divorces and the proportion of births outside of formal wedlock both shot up. In the U.S., the number of unmarried couple households recorded by the Census Bureau multiplied almost ten times from 1960 to 1998 – more than five times as fast as the number of households overall.³⁰ At the end of the twentieth century, marriage could no longer be considered as predictable as it always had been, and yet its underlying hierarchical structure and patriarchal ideologies and practices had barely shifted.

However, these outer transformations in the marital landscape of America have not gone uncontested. There has been political and ideological backlash since the 1970s. The emergence in American politics of a New Right, strongly allied with Protestant fundamentalism and centered simultaneously on traditional family values and the embrace of the free market, have responded in part to these perceived threats to traditional marriage and, consequently, to the nation. This reactionary movement was successful in blocking ratification of the Equal Rights Amendment, in cutting back on

³⁰Statistical Abstract of the United States, 1995, cited in Cott 2000:202.

reproductive rights and freedoms, and for denying government funding to abortion for Medicaid clients (The Hyde Amendment). One of the major ways the New Right mobilized its numbers was by highlighting alarms that conventional gender differences were facing destruction and possible homosexual takeover (Cott 2000:213).

Ever since legislators began altering the terms of marriage in the 1840s with married women's property acts and new grounds for divorce, legislators have jealously guarded their power, yet not wanting to outwardly admit that marriage was "state-conferred" – and that they themselves, rather than nature or God, defined its outlines (Talent 1996). However in 1996, the year DOMA was passed, just as in the past, observance of christian-model monogamy was made to stand for customary boundaries in society, morality, and civilization; the nation's public backing of conventional marriage became again, a symbol for everything valued in the American way of life. These ideas were further cemented into policy through President Bush's Healthy Marriage Initiative. It was considered "vital" to protect "our Nation's traditional understanding of marriage" as the "union for life of one man and one woman in the holy state of matrimony" (Weldon 1996). Those who opposed the Defense of Marriage Act also had American values to marshal on their side; however, they reasoned that marriage was a basic right that should not discriminate on the basis of gender, that the American values of liberty and the pursuit of happiness should apply to couples of the same sex. This did not turn out to be the case. Instead, history and tradition have placed the idea of conventional heterosexual marriage onto individual desires and social ideals. Consequently, heteronormative marriage continues to function as a disciplinary mechanism to produce a white normative citizenry in the U.S.

Conclusion

Marriage and the nation originated together and contain common features as a function of their common origins. An historical examination of their mutual development suggests that the very growth of the state in conjunction with the emergence of marriage and the heteronormative nuclear family attests to why a threat to marriage is a threat to the security of the nation. In IR, the state is taken as a given rather than understood as a product of historical changes, and its security imaginary represents boundaries and borders designed to keep certain families in and others out. Consequently, prohibiting divergent marriages has been as important in public policy as sustaining the chosen model. Thus historically, marital regulations have drawn lines among the citizenry and defined what kinds of sexual relations and which kinds of families will be legitimate.

For instance, a post-Civil War generation of leaders intended to make the U.S. a power on the world stage which required knowing who belonged to the nation, who was welcome to join, and who was not. Therefore, marriage, immigration, citizenship, and the developing nation's security and insecurity became mutually constructed into a racialized nationalism. "Racial nationalism," a commitment to retain numerical domination of the body politic by whites of English and northern European descent, worked as the main impetus for narrowing the gates of immigration – and marriage functioned as a central mechanism to secure the "stability" of the growing empire. Rejection of certain "nationalities" as too foreign to belong to America, highlighted economic, political, and moral reasons – and heteronormative marriage practices helped to frame those reasons.

The mutual construction of the emerging nation and marriage has been instrumental in articulating and structuring racial hierarchy and discrimination since their inception. Black-white marital relations were prohibited since the beginning of the seventeenth century in American and anti-miscegenation laws included, in various states, American Indians, Chinese, Japanese, Hawaiians, Filipinos, and other groups with the black-white divide being the most pervasive (Sollors 2000). These racial, ethnic and cultural differences were interpreted as a threat to the white heteronormative citizenry of the newly developing nation – antithetical to civilization and the growing empire. Consequently, the institution of marriage in its “purity” would function to create the national imaginary and its security, as manly, heteronormative, and white.

As immigration swelled in the U.S. between 1890 and 1920, it put new pressures on the relation between marriage and the polity and it caused the nation to dramatically change its immigration policy. The earliest legislation directly linking the citizenship of immigrants to marriage was an act of Congress in 1855. Hence, it was immigrants’ achievements in marriage and domesticity that were taken to measure their ability to adapt to Western ideals and practices. However, those who were unfree, or who did not understand the value of the marriage contract, did not fully belong – were not considered full citizens. After all, imperialist glory required warlike, aggressive and violent manliness, and civilized advancement implied the creation of a white heteronormative citizenry. An effeminate race was considered soft, antithetical to nation building and too weak to advance civilization. In general, it was feared that the choice and consent embodied in marital union, its legality and monogamous morality – all of these could be corrupted, which would compromise civic participation and governance. If marriages

produce the polity, then it was considered that wrongfully joined marriages could be fatal to the nation.

Thus far, the evidence suggests that the emerging nation is constructed on ideas and practices of white, christian, heteronormativity and as a result the homosexual couple has been generally prohibited, regardless of race or religion, while the married, reproductive heterosexual couple has been designated as the only legitimate relationship. And although anti-miscegenation laws may no longer exist, many legal decisions surrounding interracial marriages have reemerged as possible precedents in debates surrounding same-sex marriages. For example, constitutional arguments, as well as issues of citizenship and civil rights, are being utilized in the debate for same-sex marriage equality.

~ Chapter Four ~

*Stabilizing or Destabilizing the Nation?
The Struggle for Same-sex Marriage Equality in the U. S.*

Foundational to the national security imaginary of the U.S., as previously discussed, is the traditional family with its kinship ties legalized through marriage. The heteronormative family is key to the national imaginary for two main reasons: first, it organizes obligations for the consequences of biological reproduction and creates legitimate kinship; second, it perpetuates the traditional sexual division of labor in which the father and husband acts as male protector, head of household, and potential citizen soldier; while the mother and wife acts as primary care giver, nurturer, and wifely dependent protected and subordinated to the husband and father.³¹ The national security imaginary provides us with a unique vantage point from which to interrogate the intersection between the state, security, heteronormativity, patriarchy, and marriage. In particular, it enables an exploration of the opposition to same-sex marriage from a more structural framework.

When Barack Obama was elected president on November 4, 2008, gay marriage was on the ballot in three states. In all three states, California, Arizona and Florida, voters approved measure defining marriage only as a union between a man and a woman. The bans won 52% of the vote in California, 56% in Arizona, and 62% in Florida (*USA TODAY*, Tuesday, November 11, 2008, Ken Paulson, ed., p.10A). However, Civil Unions and Domestic Partnerships are still recognized in California and seven other

³¹ Many contemporary marriages may differ from this, yet this traditional structure still remains the ideal.

states.³² What happened in California, according to *USA Today*, reflects the kind of backlash that can occur when the courts get too far ahead or disconnected from public opinion on an issue, particularly one fraught with cultural and religious connotations. For example, “Proposition 8 passed in California with the help of costly, fear-mongering campaign mounted by fundamentalist churches, which hold that homosexuality is a sin as defined in the *Bible*” (Paulson 2008:10A). Regardless of the outcomes of the ballot in Arizona, California, and Florida, on October 10, 2008, the Connecticut Supreme Court ruled 4-3 that same-sex couples have the right to wed. And on Wednesday, November 5th the morning after the elections, a lower-court judge in Connecticut entered a final order permitting same-sex marriage (Reitz 11/13/2008), making it the only state other than Massachusetts to have legalized gay marriage.

In Arizona, organizers of the campaign working against Proposition 102 which proposed a constitutional amendment to effectively ban gay marriage, argued that a similar proposal, which included domestic partnerships, was already defeated in 2006. However, opponents of same-sex marriage in Arizona, headed by the Center for Arizona Policy, argued that without a constitutional guarantee, a court in the future could follow in the steps of a California judge who in spring of 2008 ruled that the state’s one-man/one-woman marriage law was unconstitutional (Pitzl 9/28/2008). Cathi Herrod, president of the Center for Arizona Policy which successfully lobbied lawmakers to put the measure on the ballot, stated after the measure passed in November: “I think Prop 102 shows Arizona can unite around a timeless family value” (Pitzl 11/10/2008).

³² States that allow civil unions or domestic partnerships with spousal benefits: California, Hawaii, Maine, New Hampshire, New Jersey, Oregon, Vermont, and Washington (National Conference of State Legislatures).

Both sides of the debate over same-sex marriage argue that their point of view supports the stability of the national body. Both sides argue for the stability that legal marriage bestows on the family, based on traditional values. The liberal/equality argument in favor of same-sex marriage argues that lesbian and gay couples should have the same/equal opportunities under the law (Chambers 2001:326); where all citizens could belong equally to the national body. The conservative Pro-Marriage Movement³³ which supports traditional heteronormative marriage argues that same-sex marriage threatens the stability and security of the nation because it violates the heteronormative basis of marriage. Therefore by maintaining one man, one woman as the only legitimate relationship, traditional marriage remains the norm, which from the Pro-Marriage standpoint stabilizes and secures the national security imaginary.

This chapter addresses the state of discourse on same-sex marriage. First there is an exploration of the background/history of the gay rights movement which is divided periodically: *Before Stonewall (1969)*³⁴; *After Stonewall; the 1990s; and the 21st Century*. After the history/background of same-sex marriage is explored, the second portion of this

³³ The Pro-Marriage Movement consists of a coalition of organizations that have joined together to encourage and strengthen marriage. The Statement of Principles details the current "marriage crisis," refutes arguments against marriage, defines marriage, explains the importance of marriage and the costs of divorce, describes several ongoing pro-marriage movements, and outlines a call to action for government entities, married couples, and others. See <http://www.marriage-movement.org/html/report.html> (December 16, 2002). The Pro-Marriage Movement includes such organizations as the National Marriage Coalition, Arizona Together, The Center for Arizona Policy, and Project Marriage Arizona.

³⁴ The Stonewall riots were a series of spontaneous, violent demonstrations against a police raid that took place in the early morning hours of June 28, 1969 at the Stonewall Inn in the Greenwich Village neighborhood of New York City - are frequently cited as the first instance in American history when gays and lesbians fought back against a government-sponsored system that persecuted homosexuals. Stonewall has become the defining event that marked the start of the modern gay rights movement in the United States and around the world.

chapter examines the pro's and con's of the debate. In this section, the arguments for the stability of the nation, as presented by various sides of the debate, are discussed.

Background/history of Same-Sex Marriage Equality in the U.S.

Before Stonewall

For most of the twentieth century, homosexuals not only were socially and legally disapproved of but were hunted and disciplined by local and military police, civil service agencies, school boards, and universities, and were victims of hate crimes.

Homosexuality has historically been considered a “crime against society.” In addition, aggressive state discrimination also helped establish “the homosexual” as a minority group (Eskridge and Spedale 2006:14). Early congressional action on homosexuality focused on homosexuals as a national security threat (Haider-Markel 2001:358-9), and the very presence of homosexuals was interpreted as a “danger” to the security and stability of the national body. Framing homosexuality in terms of national defense not only gave Congress jurisdiction to address the issue of homosexuality, it also limited what actors could participate and what specific issues could be addressed.

Congress first addressed homosexuality during a 1920 Senate investigation into “immoral conditions’ of a homosexual nature at the naval training station in Newport, Rhode Island” (D’Emilio 1992:64). However, in the 1950s when members of Congress expanded the debate over homosexuality by linking it to the communist threat, it placed homosexuals even further on the wrong side of the nation’s security. The Senate released a report on the security threat homosexuals posed to the federal government in December

of 1950, and the issue was also raised during the 1953 McCarthy hearings (Haider-Markel 2001:359). For example, the McCarthy committee comments,

Most perverts tend to congregate at the same restaurants, night clubs and bars, which places can be identified with comparative ease in any community, making it possible for a recruiting agent to develop clandestine relationships which can be used for espionage purposes. (Miller 1995:261)

Framing homosexuality as a security threat and as immoral created an alliance between cold warriors and evangelical christians in the early 1960s and also limited the ability of homosexual activists to participate in the debate. So, although lesbians and gays had tried to frame homosexuality as a civil rights issue, cold warriors and evangelicals were still in firm control of how the issue was framed (Haider-Markel 2001).

It was also in 1950, when Harry Hay's Mattachine Society³⁵ asserted that homosexuals, like people of color, were entitled to civil and political rights against state discrimination (Hay 1950).³⁶ By 1966, the First National Planning Conference of Homophile Organizations resolved that, "homosexual American citizens should have precise equality with all other citizens before the law and are entitled to social and economic equality of opportunity"³⁷ (Eskridge and Spedale 2006:15), demonstrating a liberal epistemology and ideology of equality within the existing "system." This framed the arguments and objectives of the early homophile movement. By 1967 in *Loving v. Virginia*, the Supreme Court struck down anti-miscegenation laws which refused to recognize different-race marriages. The Court concluded that marriage is a fundamental

³⁵ The Mattachine Society was the earliest lasting homophile organization in the United States, founded in 1950. The Society for Human Rights (1924) in Chicago predated the Mattachine Society, but was shut down by the police after only a few months.

³⁶ Harry Hay, "Preliminary Concepts: International Bachelors' Fraternal Order for Peace and Social Dignity" (1950), reprinted in *Radically Gay: Gay Liberation in the Words of Its Founder.*, Will Roscoe (ed.). Boston; Beacon Press, 1996, 63-76.

³⁷ "U.S. Homophile Movement Gains National Strength," *Ladder* 10, 7 (April 1966).

right of citizenship that cannot be denied because of the different races of the partners. Therefore, it was reasoned that marriage was a fundamental right of citizenship for lesbians and gays as well. Not unlike racial minorities, sexual minorities are citizens, and under the equal protection clause of the U.S. Constitution, homosexuals are entitled to the same rights as heterosexual Americans; among those, is the right to marry. In the years before the changes brought about by the Stonewall Riots, the national security imaginary constructed homosexuality as “deviant” from the norm, and as such framed it as a security risk to the nation. However, laws and attitudes slowly changed surrounding racial “norms” and categories, providing the impetus for homosexuals to insist on equal rights as citizens of the U.S.

After Stonewall (1969)

As a move toward acceptance, gay-liberals and the homophile movement in general embraced the basic American institutions, marriage and the family, the market system, and representative democracy, and argued that gay people should have equal access to those institutions. The role of the liberal was to work for these reforms within the system. In contrast to liberal views, the gay radical/liberationist people of the movement, energized by Stonewall (June 28, 1969), were baby boomers influenced by feminist, Marxist, and other radical theories, ideas and practices. More than anything, for gay “radicals” liberation represented a change in consciousness and they advocated nothing less than the complete transformation of society (Miller 1995:369).

Dennis Altman, one of the most perceptive chroniclers of the early gay radical/liberation movement observed, “No longer is the claim made that gay people can

fit into American society, that they are as decent, as patriotic, as clean-living as anyone else. Rather, it is argued, it is American society itself that needs to change” (Miller 1995:369). To the young radicals, there was no need to create a “favorable” public image, as the liberal homophiles had tried to do. Now Blatant was Beautiful. These were the people, including marriage critic Martha Shelley, who formed the Gay Liberation Front (GLF) in New York within a month of the Stonewall riots (Eskridge and Spedale 2006). Nowhere was the GLF’s radical philosophy more sharply expressed than its attitude toward marriage: “We expose the institution of marriage as one of the most insidious and basic sustainers of the system. The family is the microcosm of oppression,” said GLF’s leaders in July, 1969 (Interview with GLF members, *RAT*, Aug. 12-26, 1969:7).³⁸

The events of that early period of the gay liberationist movement would set the stage for much that would happen in the next thirty some years throughout the United States, such as the emphasis on “coming out,” and the use of political theatre and mainstream media as tactics to achieve visibility and to rally the gay community (Miller 1995:382). However, in the 1980s there is a shift from radical ideas of liberation and the transformation of society, to a movement based on equal rights – because an important aspect of gay equality or the gay rights movement was to be accepted into and allowed equal access to the basic American institutions such as marriage. As a result, gay marriage equality activists began the struggle for legal same-sex marriage. In an effort to preserve “stability” of the security imaginary, several states began enacting laws making it clear that civil marriage was limited to one man and one woman. This ended the initial

³⁸ “Gay Revolution Comes Out,” *Rat* Aug. 12-26, 1969, p.7 (interview with GLF members in counterculture newspaper) (first quotation in text).

gay-liberal movement for same-sex marriage for several years and activists turned to other issues, including antigay violence, job discrimination, and the AIDS epidemic (Eskridge and Spedale 2006:18).

In 1989, the struggle for same-sex marriage seemed all but dead until May of that year when the Danish Parliament voted to enact the Registered Partnership Act. This act accorded almost all the same rights and duties of marriage to registered same-sex partners, and American gay rights leaders started to rethink their position. In the fall of 1989, two top lawyers at Lambda Legal Defense and Education Fund, the leading Lesbian, Gay, Bi-sexual, Transsexual, and Queer (LGBTQ) litigation group, debated the issue in print, stating that the desirability of formal equality required the gay rights movement to press for same-sex marriage. Tom Stoddard, Lambda's executive director, credited the radical critique of marriage and offered a response that was supposed to be appealing to the gay radicals – the notion of *transformational equality*: “marriage may be unattractive and even oppressive as it is currently practiced, but enlarging the concept to embrace same-sex couples would necessarily transform it into something new” (Stoddard 1989:8-12). Nan Hunter, a former ACLU lawyer, would later argue in detail, same-sex marriage would remove the last gendered feature of marriage law and would also create a model in law for a more egalitarian kind of interpersonal relationship. In this view, same-sex marriage would also automatically undermine the gendered roles associated with patriarchal marriage, where only the husband works outside the home. Hunter and Stoddard suggested that this lived experience, multiplied by thousands of couples, would contribute to the feminist project of undermining the sexist features of marriage (Hunter 1991:9-30). Although the idea of “transformational equality” was meant to appease the

radicals, the two different views on marriage are quite contradictory. This creates a “dilemma” where it is agreed that homosexuals should have equal rights to full citizenship, including marriage. Yet, for the gay radicals, marriage represents assimilation into the dominant heteronormative culture. Nonetheless, arguments for equality are more easily embraced by mainstream America than more radical notions of a complete transformation of society. Therefore this period reflected a shift, away from the gay radical/liberationist movement to a liberal movement based on equal rights.

By the late 1980s there were two leading liberal national LGBTQ organizations, the Gay and Lesbian Task Force and the Human Rights Campaign Fund (HRC). As these national groups pushed for AIDS funding, the epidemic provided both national gay organization the visibility and credibility they had never had before. Suddenly, Congress and government departments were paying more attention to the gay rights movement (Miller 1995:453). However it was not all positive attention as homosexuals were often blamed for the epidemic based on their “gay lifestyle,” and AIDS was perceived as contaminating the national body. As more and more gay men became sick, recognized ties became important for preventing a dying man’s assets and possessions from reverting to his parents or other members from his “family of origin.” The changing situation brought new issues to the fore, notably gay parenting and family issues, making the benefits of legal marriage an important issue and placing same-sex marriage rights high on the movements’ agenda (Miller 1995:453).

The 1990s

By the 1990s, a number of cities ranging from Seattle to Minneapolis to New York City permitted gay and lesbian couples to register their partnerships. *Domestic partnership* is defined as a legal or personal relationship between individuals who live together and share a common domestic life but are not joined in a traditional marriage or civil union. The term originated in California when after the death of Harvey Milk in San Francisco, gay rights activist Tom Brougham came up with a definition of domestic partnership that is now universally used and was designed to include everything about marriage except sexual orientation. According to Brougham, the definition stated that the couple must be more than 18 years old and mentally competent to make a contract. In 1982, this definition was adopted and passed by the San Francisco Board of Supervisors, but Dianne Feinstein, mayor of San Francisco at the time, came under intense pressure from the Catholic Church and subsequently vetoed the bill (www.hrc.org). Then in 1985, in the city of West Hollywood, council member John Heilman successfully introduced domestic partner legislation for city residents and employees that was passed by the city council and created the first *domestic partnership registry*. It was not until 1989 that a domestic partnership law was adopted in the city of San Francisco (<http://query.nytimes.com/gst/fullpage.html>).³⁹

³⁹ On September 4, 2003 the California legislature passed an expanded domestic partnership bill, extending nearly all the rights of married couples to people in same-sex partnerships which effectively transformed California domestic partnerships into civil unions. Then in an historic moment, the California Supreme Court upheld the right to marriage for lesbians and gays on May 15, 2008 – which was overturned in the November, 2008 elections/vote. States which currently offer registered partnership rights as of May, 2008 are: Hawaii (1997)(reciprocal beneficiaries), the District of Columbia (2002), Maine (2004), Washington (2007 – expanded in 2008), and in Oregon (2007) where domestic partnership benefits within the state provide all the same rights as spousal rights (effectively a civil union) (www.hrc.org, www.buddybuddy.com).

As a means of perpetuating the second class position of LGBTQ peoples and to serve as a mechanism to secure the heteronormativity of the nation, Domestic Partnership and Civil Unions were created, what many refer to as “separate but (un)equal.” Domestic Partnership rights and benefits do not offer any federal benefits, and research shows that very few heterosexual couples, only about 1% of the workforce, actually directly benefit. In contrast, opposite-sex couples participate at two to three times that percentage when they are offered benefits (Partners Task Force <http://www.buddybuddy.com/d-p-1.html> 4/22/2008). Partner benefits are subject to federal and state income tax, unlike benefits for married couples. And, unlike legal marriage, domestic partnership has little legal precedence and future court cases could be disastrous. For instance, on the basis of an employee’s domestic partnership affidavit, an individual could be held legally responsible for a previous partner’s current debts, whether or not they were jointly incurred. If that happens, one of the major burdens or responsibilities of marriage will be taken on with only a few of the benefits (<http://www.buddybuddy.com/d-p-1.html>). While domestic partnership benefits are a worthy goal, they don’t assure full equality. In addition, they do not address many of the other aspects of marriage (in)equality. The boundaries that secure the heteronormativity of marriage and the nation are protected by the 2nd class status of Registered Partnership, as well as Civil Unions, both which help to secure the national body and maintain its “stability.”

A civil union is considered more similar to legal marriage than domestic partnership. In the United States the term *civil union* connotes a status similar to marriage for same-sex couples; whereas, domestic partnership generally connotes a lesser status with fewer benefits, although this may vary. Civil unions do not, however, grant

any of the more than 1,100 federal benefits of marriage (www.hrc.org/issues/marriage/domestic_partners/1181.htm). The federal government does not recognize civil unions, and under the U.S. Defense of Marriage Act (DOMA) states are also not obliged to recognize these unions, which functions to maintain the heteronormativity of the nation and its security imaginary.⁴⁰

In 1992, “Gays in the military” became a political issue during the Presidential campaign – when Clinton, the Democratic candidate, promised to lift the military’s ban on gays (Human Rights Campaign www.hrc.org 2008; Partners Task Force www.buddybuddy.com 2008; Belkin 2003). By 1993, after winning the election, President Bill Clinton, the U.S. congress, and much of the nation were swept up in a monumental debate on whether or not acknowledged gays and lesbians would be allowed to serve in the U.S. military. Having promised in his campaign to extend this civil right to gays and lesbians, Clinton faced a difficult challenge when he attempted to fulfill his pledge (Belkin 2003:108). For example, an armed forces general (unnamed in document)⁴¹ argued against lifting the ban on gays based on a belief that gays pose a security risk and erode unit cohesion and moral. Interpreted as a “danger” to the security imaginary, homosexuality is seen to weaken the actual and perceived strength of the U.S. military.

⁴⁰ The first civil unions in the United States were enacted by the state of Vermont in 2000,⁴⁰ where parties to a civil union are entitled to all of the state-level spousal rights and responsibilities. By the end of 2006, Connecticut and New Jersey had also enacted civil union laws; and on Jan. 1, 2008, New Hampshire became the fourth state to provide all state-level spousal rights for parties in a civil union (Human Rights Campaign www.hrc.org 6/2/2008). Although domestic partnership benefits and civil unions are definitely a move toward marriage equality – they do not offer any federal benefits, and unlike legal marriage they have such a short history that their legal status is still uncertain.

⁴¹ See the Militaries “Don’t Ask, Don’t Tell, Don’t Pursue” policy.

The Military's "Don't Ask, Don't Tell" Policy

Initiated by President Clinton in 1993, over whether homosexuals could any longer be reasonably excluded from service in the military – the pertinent law currently in constitutional dispute is 10 U.S.C. §654, the popularly known “Don’t Ask, Don’t Tell” (DADT) policy governing the participation of homosexuals in the military service and the accompanying directives issued by the Department of Defense (DOD) and the secretary of transportation (Korb 1996:290-301).

However, before the DADT policy, during the 1970s, there were already several high-profile court challenges to the military’s regulations on homosexuality, but they found little success. In 1981, the DOD issued a new regulation on homosexuality that was designed to ensure withstanding a court challenge by developing uniform and clearly defined regulations and justifications that made homosexual status and conduct grounds for discharge:

Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the armed forces to maintain discipline, good order, and morale; to foster mutual trust and confidence among service members; to insure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of service members who frequently must live and work in close conditions affording minimal privacy; to recruit and retain members of the armed forces; to maintain the public acceptability of military service; and to prevent breaches of security. (DOD Directive 1332.14, Enlisted Administrative Separations, January, 1981)

The intent of the policy had been to treat homosexuality as being akin to a disability discharge and thus ensure that gays and lesbians would be separated with an honorable discharge. The DOD policy has since withstood most court challenges, although the

United States Supreme Court has refused to weigh in on the constitutionality of the policy, preferring to allow lower courts and the United States Congress to settle the matter. However, before the 1981 DOD regulation, many of the Democratic Party presidential candidates had expressed an interest in changing the regulations concerning homosexuality in the armed forces, and, as American society changed, public opinion began to express more sympathy with LGBT individuals in the military and investigations into a service persons sexual orientation were too often interpreted as a “witch-hunt.” “Gays in the military” became a political issue during the 1992 Presidential campaign – when Clinton, the Democratic candidate, promised to lift the military’s ban on gays (Human Rights Campaign www.hrc.org 2008; Partners Task Force www.buddybuddy.com 2008; Belkin 2003).

By 1993, after winning the election, President Bill Clinton, the US congress, and much of the nation were swept up in a monumental debate on whether or not acknowledged gays and lesbians would be allowed to serve in the US military. Having promised in his campaign to extend this civil right to gays and lesbians, Clinton faced a difficult challenge when he attempted to fulfill his pledge (Belkin 2003:108). Congressional opposition to lifting the ban on gays in the armed forces was led by Democratic Senator Sam Nunn of Georgia who organized the Congressional hearings that largely buffed the armed forces position that has remained unchanged since the 1981 directive. This was presented along side an argument by an armed forces general who argued against lifting the ban on gays based on a belief that gays pose a security risk and erode unit cohesion and morale. There was also limited Congressional support for reform which was lead by Democratic Congressmen Barney Frank of Massachusetts, who fought

for a compromise, and retired Republican Senator Barry Goldwater, who argued for a complete repeal of the ban (Richards 1999).

Over the next six months, Congress held numerous hearings on this issue and ultimately included a new policy on homosexual soldiers in the 1994 National Defense Authorization Act, commonly known as “Don’t Ask, Don’t Tell.” Billed by many as a compromise, it has been the subject of much criticism by both experts and activists, who view it as an imperfect solution to the problem it tried to solve over ten years ago (Belkin 2003). In hindsight, then U.S. Senator Hilary Clinton characterized the president’s policy as a “transition” and “an important first step” towards ensuring equality for gays and lesbians in the military. “Yet I have watched how ‘Don’t Ask, Don’t Tell’ has been implemented and I’ve concluded that it’s not the best way for us as a nation to proceed,” said Hillary Clinton. “It has been in many instances implemented in a discriminatory manner.”⁴²

The Department of Defense’s Homosexual Conduct Policy implements Title 10 United States Code, Section 654. This requires the Department of Defense to separate from the armed forces members who engage or attempt to engage in homosexual acts. Officially, the DOD policy dictates that sexual orientation is a personal and private matter and is not a bar to military service unless manifested by homosexual conduct. Military applicants are not asked about sexual preference as part of processing into the armed forces. The policy also states that the services may not initiate investigations solely to determine a member’s sexual orientation. Commanders may initiate an investigation only on receipt of credible information that a service member has engaged in homosexual

⁴² See Edgeboston.com/index.php?ch=news&sc=gibt&sc2=news&sc3=&id=21432 (retrieved 10/8/2007)

conduct such as stating his/her homosexuality, committing a homosexual act or entering into a same-sex marriage.⁴³

Against this background, the policy's focus on public statements of gay and lesbian identity appears constitutionally problematic, targeting "self-identifying" speech acts, rather than sex acts (against which the policy is directed). Circumspection about one's sex life should, under the policy render one immune from separation from the military. Associational acts, highly probative of gay sex – for example, attending gay bars or gay rights demonstrations, are not to be regarded as credible evidence of such acts. The only things that are given such decisive probative weight are: self-identifying speech acts as a gay and lesbian person (Richards 1999:143).⁴⁴ Consequently, participation in same-sex marriage would be grounds for possible discharge. During the early Republican presidential debates in 2008, Mike Hukabee was quoted as saying, "People aren't punished for their attitudes, they're punished if their behavior becomes a problem" (Edgeboston.com/index). The obvious question being, who gets to decide what problematic behavior is?

Consequently, homosexual conduct, as loosely defined by the US Department of Justice, could simply refer to a service member stating his or her sexual orientation, as evidenced recently by a number of high profile discharges of highly trained gay foreign language translators. Former Navy petty officer and Arab linguist Stephen Benjamin was stripped of his position after comments detailing his sexuality were intercepted by his

⁴³ Ermsweb.afis.osd.mil/Scripts/rightnow_DefenseLink.cfg/phpexe/enduser/std_adp.ph. (retrieved 5/19/08)

⁴⁴ See *Able v. United States*, 1996 WL 391210 (2d Cir. 1996) (speech restriction of the policy not unconstitutional, but remanded for consideration of constitutionality of act restriction of policy and reconsideration of speech restriction in light of that analysis). Act restriction held constitutional in 1998. *Thomasson v. Perry*, 80 F.3d 915 (4th Cir. 1998), there is no fundamental right to engage in homosexual acts, and there is legitimate interest in preventing them.

commanding officer during a random review of email exchanges. “Don’t Ask, Don’t Tell’ is actually a misnomer,” Benjamin told CNN. “The law actually says you can’t be gay and serve in the military. It just provides a series of regulations to prevent them from actually asking you. But if they find out you’re gay then they’ll kick you out. The policy is a lot more aggressive than people think” (EdgeBoston.com/index.news). The full title of the law is actually “Don’t Ask, Don’t Tell, Don’t Harass, and Don’t Pursue,” and according to Benjamin,” and it is the ‘pursue’ aspect which is most often broken. Benjamin continues, “there’s so much grey area, that it’s up to the commanding officer how the policy is implemented. If a particular officer happens to be biased against gays and lesbians, then they can start an investigation with a lack of evidence even though they’re not supposed to” (EdgeBoston.com 2007).

Countless gay, lesbian and bisexual Americans have and will continue to serve in the U.S. military with distinction. The only question is whether they will have to lie about their sexual orientation to do so. Since enactment of the “DADT” policy, numerous gay and lesbian troops have served openly while pending discharge with no effect on unit performance, readiness, cohesion or morale. Moreover, U.S. military personnel are already serving side-by-side with openly gay service members, with no identifiable negative effects, in and from countries throughout the world (Human Rights Campaign hrc.org/laws 2008). In addition, the public supports a policy of allowing gays and lesbians to serve openly in the military by a margin of 60% to 32% according to the Pew Research Center for the People and the Press (2006). This represents significantly

broader support than in 1994, when 52% favored allowing gays to serve openly and 45% were opposed (people-press.org/reports/display 2008).⁴⁵

Regardless, nearly 800 specialists with critical skills, including 323 linguists, 55 of whom specialized in Arabic, including aforementioned Stephan Benjamin (Government Accountability Office report), have been fired from the US military under DADT. And, at least 65,000 lesbian, gay and bisexual Americans are already serving (Urban Institute report), although more than 10,000 have been discharged under DADT since the policy was implemented in 1993. In addition, American taxpayers have paid between \$250 million and \$1.2 billion to investigate, eliminate and replace qualified, patriotic service members who want to serve their country, but cannot, because expressing their sexual orientation violates DADT (GAO report).⁴⁶ The militaries “Don’t Ask, Don’t Tell” policy violates the constitutional rights of homosexuals and denies them full citizenship equality. This is an example of the extent to which homosexuality continues to be interpreted as a security risk to the nation.

Many of the great struggles for inclusion of such groups in American citizenship have taken the form of access to military service. Perhaps the best evidence of how constitutive such participation in the military has been of American nationality and citizenship is the African American experience in the Civil War (McPherson 1964:192-220). Under the pressure of abolitionist advocacy and military exigency, Lincoln authorized recruiting African American troops to serve in the war effort, and

⁴⁵ Republicans are divided on the issue according to the Pew Research Center (2006). 46% favor allowing gays to serve openly and 46% are opposed. A majority of conservative republicans oppose such a policy, while moderate and liberal republicans favor it by a wide margin (62%-29%). Democrats of all ideological groups tend to favor allowing gays in the military, though liberal democrats are nearly universal in their support (89%-9%). Independents also favor the policy by a 66%-30% margin.

⁴⁶ Human Rights Campaign hrc.org/laws_and_elction/5659.htm

consequently, they played an important role in the Union victory. Under the moral pressure of such participation, Lincoln gradually came to the view that African Americans should be allowed full inclusion into the American political and moral community of equal rights and responsibilities, which eventually included the right to marry and led to overturning antimiscegenation laws (Richards 1999:134).

The struggle of African Americans to claim their basic rights as Americans was a hard fought argument against a conception of national identity that had historically denationalized them as part of the American people. Such denationalization depended on the dehumanizing abridgment of basic human rights. After slavery, institutions of segregation and antimiscegenation laws maintained their dehumanized image and status by enforcing exclusion from the institutions of American cultural life and the exercise of culture-creating rights. Integration into institutions such as marriage advanced the aims of the civil rights movement and affirmed their rights-based constitutional claims as persons and as citizens of the United States (Richards 199:135). Integration into the military had the focal significance that it did because such participation affirmed the status of African Americans as equal bearers of rights and responsibilities in the role of citizen-soldier (Elshtain 1987). The integration of both African Americans and of women into the military supports the analogous case, on grounds of principle, for inclusion of gays and lesbians into social institutions such as marriage.⁴⁷

By 1996, the backlash against same-sex marriage was evident; gay marriage was being interpreted as a danger to the heteronormativity of the nation. As a result, Congress enacted the Defense of Marriage Act (DOMA), making marriage between one

⁴⁷ See, *Out In Force*, ed. Herek, Jobe, and Carney, has many essays that expand on these ideas: see Kauth and Landis, "Applying Lessons Learned from Minority Integration in the Military"; Patricia J. Thomas and Marie D. Thomas, "Integration of Women in the Military: Parallels to the Progress of Homosexuals?," etc.

man and one woman, to make doubly certain that states would not have to recognize same-sex marriages.⁴⁸ DOMA would also mandate that more than eleven hundred federal statutory and regulatory provisions using the terms “marriage” or “spouse” could never include same-sex couples married under state law, securing the heteronormativity of the national body. The bill was introduced by Representative Robert Barr (R-GA) as part of a Republican package of “family values” legislation.⁴⁹ House Hearings on DOMA contained arguments on morality, civil rights, and gay families. DOMA hearings in the Senate also revolved around the notion of a “normal” family and the decision as to whether that definition could be expanded. However Representative Barr equated same-sex marriage with the downfall of civilization: “The very foundations of our society are in danger of being burned. The flames of narcissism, the flames of self-centered morality are licking at the very foundations of our society: the family unit” (Statement of Rep. Barr, 142 Cong. Rec. H7480, H7482 - daily ed. July 12, 1996). The hearings also included testimony from religious conservatives and gay activists. The bill was passed and signed by President Clinton in 1996 (Haider-Markel 2001:364).

The 21st Century

Ironically, this backlash against gay marriage paved the way for the triumph of the gay-liberal equality position within the gay community. The backlash has not permanently silenced gay-radicals, but has led to a united front among LGBTQ leaders in support of the gay-liberal demand for formal equality (Eskridge and Spedale 2006:20). One of the greatest victories for gay liberals was when the Massachusetts Supreme Judicial Court

⁴⁸ Defense of Marriage Act (DOMA) H.R. 3396 U.S. House Debate. 1996. *Proceedings and Debates of the 104th Congress, Second Session*.

⁴⁹ H.R. 3396 had 105 Republican and 12 Democrat cosponsors. The Senate companion bill was S 1740.

held that the same-sex marriage ban violated the state constitution. This essentially ignored the defense-of-marriage or pro-marriage argument, and the Massachusetts court required the state to issue marriage licenses to same-sex couples starting on May 17, 2004. Coincidentally, it was the fiftieth anniversary of the Supreme Court's opinion in *Brown V. Board of Education* (where the Supreme Court stated that separate was inherently unequal). And, almost four years later to the day, on May 15, 2008, California held a similar decision based on their constitution; however, it was rescinded just a few months later in the November, 2008 elections.

The "danger" represented by gay-marriage was demonstrated by the recent vote in November, 2008, when California decided to again ban gay marriage and rescind its earlier decision, and, when Arizona and Florida voted to amend their constitution effectively banning gay marriage. Same-sex marriage has been interpreted as so threatening to the "American way of life," that early in his presidency George Bush proposed the Federal Marriage Amendment (FMA). The Federal Marriage Amendment reads:

Marriage in the United States shall consist only of the union of a man and woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman. S.J. Res. 30, 108th Cong., 2d Sess. (introduced March 22, 2004) (http://www.hrc.org/laws_and_elections/5662.htm).

However, the FMA was soon defeated on July 14, 2004, when the senate voted 50-48 against the FMA, well short of the two-thirds majority required to propose a Constitutional amendment. Finally, gay issues in Congress have evolved from a focus on security issues or national defense which focused on gays as a "threat" to national security, to possibly redefining marriage to include lesbian and gay conceptions of the

family. The Domestic Partnership Benefits and Obligations Act supports equal treatment in benefits for federal employees and was introduced in the 110th Congress, Senate Bill S. 2521, introduced by Senators Lieberman (D-CT) and Smith (R-OR) in 2007 (http://www.hrc.org/laws_and_elections/5662.htm). Had it passed, this Act would have provided domestic partner benefits to all federal civilian employees on the same basis as spousal benefits as well as for same- and opposite-sex partners of federal employees, and would include participation in applicable retirement programs, compensation for work injuries, and life and health insurance benefits (Human Rights Campaign http://www.hrc.org/laws_and_elections/5662.htm).

Over all, research shows that public acceptance of homosexuality has increased in a number of ways in recent years. In a 2006 poll by the Pew Research Center, even though half of Americans (51%) continue to oppose legalizing gay marriage – the number has significantly declined since 2004 (63%) when opposition spiked following the Massachusetts Supreme Court decision to legalize gay marriage. Some of the findings, conducted among 1,405 adults, found there was also less opposition to gays and lesbians serving openly in the military – where approval was up to 60% from 52% in 1994 (Pew research Center).⁵⁰ Currently, within the U.S. only Massachusetts and Connecticut has legalized gay marriage; nonetheless, Vermont, New Jersey, and now New Hampshire all have civil unions for same-sex partners, allowing the same benefits as spousal rights within the state; however, none of the federal benefits. A growing number of businesses are also adopting domestic partner benefits, which for some, represents a small social recognition of same-sex relationships and helps to create a dialogue within

⁵⁰ See the Pew Research Center for the People and the Press.

the workplace. Regardless of who is winning or losing these issues in Congress, gay family issues are likely to increase their prominence on the congressional agenda (Haider-Markel 2001:376). Consequently, the gay marriage debate in the United States is not likely to end anytime soon.

Same-Sex Marriage and the National Body: The State of Discourse

Arguments in Favor of same-sex marriage are largely drawn on liberal notions of equal rights based on full citizenship and the Constitution of the United States. The argument for gay marriage is fundamentally the same as for heteronormative marriage. Gay activists argue that same-sex marriage supports the stability of the national body by providing equal protection and benefits to all of its citizens. They compare their quest to those of other social movements, particularly the civil rights movement, which sought equal status as citizens before the legal institutions of the state. Comparisons are frequently drawn, for example, between efforts to eliminate state bans on interracial marriage and the quest for same-sex marriage, based on the grounds that it is unconstitutional. The argument now against gay marriage is that sex distinctions are based on supposed “fact” or biology, that they are “natural,” while race differences are based on prejudicial beliefs or “imagined” differences. This means the state only needs to justify sex distinctions according to “reasonable” rationales (Brandzel 2005:10).

Similar to the anti-miscegenation exclusion to marriage, it is argued that the Fourteenth Amendment also applies to same-sex marriage in the U.S. According to the Fourteenth Amendment:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No

State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Fourteenth Amendment of the Constitution of the United States)

However, opponents of same-sex marriage argue that men and women are fundamentally different from one another, whereas interracial couples still fit within the “one man, one woman” definition of marriage. Louisiana State University law professor Katherine Spaht has characterized the debate as follows: “the fundamental understanding of marriage has always been, by definition, a man and a woman. Never did *Webster’s* dictionary define the term marriage in terms of the races. Hence, there is an inherent difference between interracial marriage and same-sex marriage” (www.LSU.edu). Consequently, legal activists for same-sex marriage have had no success at the federal level and only moderate success on the state level employing the constitutional argument. However, proponents of same-sex marriage continue to make comparisons between racial segregation and segregation of homosexual and heterosexual marriage classifications in civil law. They argue that dividing the concept of same-sex marriage and heterosexual marriage is tantamount to “separate but equal” policies (like that overturned in the U.S. Supreme Court case *Brown v. Board of Education*), or anti-miscegenation laws that were also overturned.⁵¹

Although the federal government has taken the lead in protecting many minority groups from discrimination, it has not only failed to do so for lesbian and gay families, but actually penalizes same-sex couples for being unable to marry. For example: lesbian and gay families are denied the same or equal benefits married heterosexual families receive under Social Security; lesbian and gay families are taxed for health benefits

⁵¹ The last anti-miscegenation law in the United States was struck down in 1967 in *Loving v. Virginia*.

provided to their domestic partner while married heterosexual families are not; and, after the loss of employment, lesbian and gay families are not guaranteed the opportunity to purchase continued health coverage for a domestic partner, although married heterosexual couples are (www.hrc.com). From taxes, to health care, to retirement, the federal government offers benefits and policies to help heteronormative American families deal with everyday issues, while it simultaneously denies these benefits to “others,” functioning to secure the heteronormativity of the national body.

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

The exclusion of same-sex partners from free choice in marriage stigmatizes their relationship, and reinforces a caste supremacy of heterosexuality over homosexuality just as laws banning marriages across the color line exhibited and reinforced white supremacy. (Cott 2000:216)

Full status as citizens for all persons marked as sexual “deviants” will require major changes and a wide-ranging conversation that addresses the nature of citizenship.⁵² Jyl Josephson claims that “those who seek to denigrate the citizenship of sexual minorities make their public claims as though there were no other moral position. Such claims must be challenged by those who seek full inclusion for women and sexual minorities in the

⁵² Although the term “citizenship” has often been used in struggles to secure greater dignity and participation of members of marginalized groups, it has often simultaneously functioned to justify the exclusion of other members of the national community (Narayan 1997:49). A person is “vested with rights and duties of citizenship” only to the extent that she or he is “viewed as a member of society” (Brandzel 2005:5). Citizenship functions as a universalizing claim for inclusion and solidarity in forging and maintaining a national polity. And, discriminatory treatment of non-citizens as well as second-class citizens is often justified as a means to safeguard the rights and benefits (privilege) of citizenship as the exclusive property of recognized citizens (Yuval-Davis & Werber 1999).

polity” (Josephson 2005:278). Ultimately, the contest over same-sex marriage is a political contest over citizenship,⁵³ that is, over multiple “stories of peoplehood” for sexual minority communities and for the nation as a whole (Smith 2003).

The symbolic image of the lesbian or gay man has been of someone whose sexual orientation toward a lover is in a non-reproductive role, and thereby who, by their nature is then not considered a full, or proper citizen – highlighting the question of the “naturalness” of gender. Iris Young (2003) argues that the modern nation-state has the symbolic role of male protector over its citizen dependents – and this symbolic role would be undermined if gay marriage were allowed to challenge the symbolic gender roles of heteropatriarchal marriage. However, Brandzel argues that the “reinsertion of heterosexuality as a norm has pointed to a crack in heteronormativity which has placed the gender system itself under a spotlight and exposed the presumption of the ‘naturalness’ of gender and the state’s interest in promoting the reproduction of certain kinds of citizens” (Brandzel 2005:21). Marriage law involves not only gendered and racialized histories but transformations/changes in divorce law, property law, estate law, and tax law – which all revolve around paternity or capitalist-heteropatriarchy. Each of these areas reveals that marriage law is gendered, racialized, classed, and sexualized in terms of who and who is not included in its benefits (and burdens), exposing the ways in which the national body is secured.

⁵³ Citizenship law also describes how U.S. citizenship has demanded certain behaviors, and legal perspectives are one of the most obvious sites for finding exclusions and omissions of citizenship. For example, in 1790 there is the first naturalization law which was limited to “free white persons” – and remained until 1952. In 1882 was the beginning of laws which barred aliens from owning property. And in 1887, Dawes Severalty Act conferred citizenship on Native American men, only if they were property owning heads of households, and Native American women could only earn citizenship if married to a male citizen. In addition, the Dread Scott Decision in 1857, declared descendents of African slaves unworthy of birthright citizenship (Brandzel 2005:4-5). Many segregation laws, as well as infringements on voting rights continued well into the twentieth century. This U.S. history clearly suggests that citizenship has been used as a significant instrument of assimilationist policies.

Phelan argues that the U.S. is a heterosexual regime and suggests that heterosexuality is a necessary characteristic for full citizenship status. For Phelan, this is evident in a number of policies related to citizenship, including the military's "Don't Ask, Don't Tell" policy, heterosexual/heteronormative/heteropatriarchal marriage, and continuing employment discrimination against LGBTQ individuals (Phelan 2001). Jacqui Alexander (1994) argues that citizenship is predicated on the demarcation of homosexual bodies as outside of citizenship. As these scholars suggest, the state has constructed heterosexuality as a prerequisite to citizenship – and as the unspoken norm of full membership in the national family – marginalizing LGBTQ individuals as second-class citizens. Yuval Merin explicitly compares a separate-but-equal discourse to this second-class citizenship:

The fact that domestic partnership and civil unions are “self-consciously” separate from marriage renders them inherently unequal to opposite-sex marriage; “separate but equal” in this context instantiates the same constitutional evil that led the U.S. Supreme Court to condemn this doctrine in the racial domain. This is yet another reason why marriage substitutes constitute second-class marriage. The only remedy for the existing discrimination against same-sex couples would be their inclusion in the institution of marriage. (Merin 2002:279)

As discussed by many scholars, gay rights, the history of marriage law and practice, and U.S. citizenship seem to be inextricably connected. The 2003 majority opinion of the Massachusetts Supreme Judicial Court made this connection between marriage and citizenship explicit, both in its original decision and in its advisory opinion: “The Massachusetts Constitution affirms the dignity and equality of all individuals. It forbids the creation of second-class citizens” (*Goodridge v. Department of Public Health*, SJC-08860, 2003). The court further states that “the dissimilitude between the terms ‘civil marriage’ and ‘civil union’ is not innocuous... It is a considered choice of language

that reflects a demonstrable assigning of same-sex, largely homosexual, couples to second-class status” (Belluck 2004:A1). No matter how you look at it, whether it is advocates of same-sex marriage, LGBTQ skeptics of this quest, or social conservative opponents of same-sex marriage, all agree that fundamental questions of citizenship status are at stake in this marriage debate and the data suggests that questioning or challenging citizenship threatens the stability and heteronormativity of marriage and the national body.

The Opposition: Arguments Against Same-sex Marriage

Transformations in family structures to forms that deviate from the heteronormative family have been seen as marking the decline of “Western values,” as undermining the state, and threatening the stability of the national body. “The conservative far right and Christian organizations, recognizing such transformations, continue their aggressive attack toward the gay agenda and the danger to the American way of life” (Haley 2001:379). The Pro-Marriage movement advocates that marriage should be defined exclusively as the union of one man and one woman and argues that heterosexual unions provide the procreative foundation of the family unit that is the chief social building block of civilization. They contend that the definition proposed by same-sex marriage proponents changes the social importance of marriage from its “natural” function of reproduction into a mere legality or freedom to have sex. Robert Knight asserts that gay marriage would deny the procreative imperative. It would also injure (biological) kinship structure that is necessary for continuity, community and stability (cited in Ferguson 2007:46).

Jean Elshtain, author of *Women and War* (1987) also supports the procreative element and argues “that maintaining marriage as a heterosexual union crucially emphasizes the link between sexual expression and procreative activity which should stand in contrast to unrestrained, public, and commercial sex and the ethos of the “wanting self” so familiar in the world of contract” (Elshtain 1997:93). Although not all families will raise children, “the symbolism of marriage – family as social regensis is fused in our centuries old experience with marriage ritual, regulation, and persistence” (Elshtain 1997:93). Because there is a great social value in preserving the family as an institution framed within a horizon of intergenerationality Elshtain is willing to privilege a restrictive ideal of sexual and intimate relations. However, she does favor ordinances that allow unmarried couples to register as domestic partners and receive recognition as a couple for purposes such as housing and insurance. Nonetheless she would restrict marriage itself to heterosexual couples in order to emphasize that “marriage is not, and never has been, primarily about two people, but about the possibility of generativity” (Elshtain 1997:93).

Consequently, a common objection to same-sex marriage is that it is inherently sterile. However, some same-sex marriage proponents, such as Andrew Sullivan, argue that same-sex marriage is moral enough to support the family centered role marriage plays in society despite the absence of biological children (1997). He also argues, that the institution of marriage would be strengthened by making it available to more people, and that same-sex marriage would encourage gays and lesbians to settle down with one partner and raise families. It is thought that building families would provide LGBTQ families with stability and help to secure the national body just as traditional marriage

does. Others argue that marriage no longer retains the procreative function of the government since many governments offer child tax credits and assistance regardless of marital status, and the fact that couples obtaining a marriage license do not have to provide proof that they will reproduce. Because the law does not prohibit marriage between sterile heterosexual couples or to women past menopause, the procreation argument cannot reasonably be used against same-sex marriage, particularly since technological advances allow gay couples to have their own related biological children. So, “if their argument is about procreation, how many of them are prepared to take a clear stand against marriages between heterosexual couples who are infertile, or who simply have no intention of having children” (Myers 2005).⁵⁴ Finally,

it seems when all else fails, opponents of same-sex marriage tend to resort to boasting about how the majority agrees with them, or how long their view has been the prevailing one – as if either the popularity or longevity of a viewpoint should be sufficient to establish its merit. After all, for most of this country’s history, “the majority” opposed interracial relationships. (Myers 2005)

Regardless of these arguments, it seems that the stability of the nation is dependent upon the ideal of the heteronormative procreative couple. Thus, any challenge to the procreative identity of the heterosexual couple is perceived as destabilizing and a threat to the national security imaginary.

Opponents also claim that extending marriage to same-sex couples will undercut the conventional purpose of marriage as interpreted by cultural, religious, and traditional understanding. Furthermore, opponents not only argue that same-sex marriage cannot fulfill common procreational roles, and also sanctions a partnership that is centered around sexual acts that their respective religions may prohibit. This same point of view

⁵⁴ See Partners Task Force. Bill Myers. “Marriage Opponents Lack Critical Thinking.” Nov. 4, 2005. www.buddybuddy.com/myers.

also contends that same-sex marriage violates freedom of religion because people would have to tolerate as moral, what their religion tells them is immoral. However, “marriage was not even a sacrament in christianity until the thirteenth century and legally it has never been restricted to only procreative couples” (Ferguson 2007:46). Furthermore, evidence shows that when societies have permitted various institutionalized forms of homosexual relationship, it has not undermined heterosexual procreation or the stability of blood (biological) relations. Concerning the decision of the Massachusetts high court, Justice Martha Sosman once argued, that legalizing gay marriage makes a societal argument without specifying the harm that would occur from this change (Walters 2001,2006). Asserting the *a priori* importance of marriage as an institution, she questions whether the burden of proof, that same-sex marriage would be harmless, has been met.

Gay marriage highlights a contradiction in American national identity – if gay marriage is supported, the normative status of the heteropatriarchal nuclear family is undermined as well as the stability of the national body. While if not, the civil rights of homosexuals is undermined (Ferguson 2007). In the long run, it is still not clear that the problems of being gay in a homophobic heteronormative nation will lessen if same-sex marriage is legalized. On the other hand, this tension illuminates what Ferguson calls a “feminist dilemma” concerning gay marriage: first, “feminists have critiqued traditional marriage as part of the system that perpetuates patriarchy; but on the other hand, support rights to reproductive choice and sexual freedom, which includes gay marriage” (Ferguson 2007:39). For radical feminists what needs to be considered is whether gay marriage is a goal that will co-opt gay couples into supporting and perpetuating a patriarchal heteronormative institution. But for others it is more important to support

legal same-sex marriage as part of the movement for equal rights for the LGBTQ community. Even though the two points seem contradictory, it is possible to believe in both. This is the dilemma.

Radical Gay/Feminist/Liberationist Arguments Against Heteronormative Marriage

Because the voices most often heard are the liberal/equality arguments for gay marriage, it is sometimes difficult to hear the more radical gay voices; their standpoint not given much attention within the public discourse of same-sex marriage. Thus, there is a more complex issue that often gets ignored in this highly polarized and acrimonious debate, and that is the differences amongst gays themselves over marriage. Gay understandings about marriage, gay desires, and gay identities are forged not just through some internal logic, but also through the complex negotiations with (heterosexist, hegemonic) popular culture. The emergence of “gay life” in the public view can aid in the process of liberation because, as Suzanna Danuta Walters argues, “surely liberation cannot be won from the space of the closet. Yet the glare of commercial culture can often produce a new kind of invisibility, itself supported by a relentless march toward assimilation” (Walters 2001:340). Since the debates about assimilation are as old as the movement itself, it leads Walters to question, “in reducing homophobia through assimilation, is there a danger of making homosexuality itself invisible again? – straight with a twist” (Walters 2006:292). But whether it is marriage or parenting, both well-meaning (liberal) hetero and mainstream gays seem to stress gay sameness to straights. Gay relationships, gay desires, and gay parenting are all presented as replicas of heterosexual patterns. With respect to this question, Butler (2004) raises the post-structuralist concern that the

discourse of gay marriage is another way of disciplining the queer community so as to create a new hierarchy – the socially acceptable gay marrieds v. the queer abjected Others, whose chosen kin and sexual practices continue to be despised (Ferguson 2007:48).

Andrew Sullivan interprets the Stonewall generation as “washed-out old radicals too blinded by liberation to grow-up and assimilate. Therefore, a need to rebel has quietly ceded to a desire to belong” (cited in Walters 2006:289). Also, Sullivan argued at the subcommittee hearings on DOMA in 1996 that to be in favor of same-sex marriage is to be very pro-family, pro-stability, pro-monogamy, and pro-responsibility, thereby reinforcing the centrality and dominance of marriage as the primary social unit (Walters 2006:289). Participation in this institution not only assimilates lesbians and gays into the dominant hetero way of relating, but gives further credence to an institution that has been built on the backs of sexism and heterosexism. In the liberal/equality (radicals would say conservative) argument for gay marriage, there is an implicit and often explicit denigration of radical attempts to challenge marriage and the family. Nonetheless, liberal views in favor of same-sex marriage, as well as the radical views against heteronormative marriage are both seen as destabilizing to the heteropatriarchal nation and the ways it imagines security.

Central to the marriage critique is the position that patriarchy privileges the institution of marriage as the sole form of relational intimacy that is recognized and rewarded by the state. However, skeptics about marriage believe marriage signifies hierarchy and dominance, subjugation, and the loss of individual identity, and argue to resist this assimilation into an oppressive heterosexual orthodoxy of ascribed gender roles

(Chambers 2001:308). The radical gay/feminist/liberation view suggests that the real victory for couples lies in rejecting the need for government regulation and taking responsibility for their own commitments. For example, *Lawrence v. Texas* (2003)⁵⁵ was a victory for all Americans who consider their private consensual behavior to be beyond the realm of state control. Because as Howley states, “to get married in America is to put oneself at the mercy of state legislators, many of whom believe marriage is a social good, and sacred bond, and that divorce is a threat to social stability and the nation’s sense of security” (Howley 2003).

The radical argument claims that the movement to legalize same-sex marriage is a profoundly conservative one. It is a movement that looks to dated social conventions as a means to acceptance and seeks a static solution to social evolution (Howley 2003). The liberal/equality argument is persuasive and important – that marriage rights would confer benefits, both social and economic, to many lesbians and gays is undeniable. Given the structure of our social and legal system (including our tax structure, inheritance laws, health benefits and responsibilities, as well as childcare, custody, and parenting issues – to name just a few), it is certainly understandable that many gay couples would desire access to the same rights and responsibilities, benefits and assumptions that married heterosexuals receive as a matter of course (Walters 2001, 2006). Yet, the “gay rights argument for marriage equality ignores and downplays the relationship between the institution of marriage to the institutions of male dominance, patriarchy, and gender hierarchies” (Walters 2001:291). Either way, both arguments challenge traditional marriage and are interpreted as a danger to the national security imaginary.

⁵⁵ *Lawrence V. Texas*, 539 U.S. 558 (2003).

It is strangely disconcerting that one of the most public issues identified with lesbian and gay rights has been inclusion in marriage, notorious as a site for the reproduction of some of the most troublesome values and practices around masculinity and violence (Walters 2006:346). Feminists from both the first and second waves have analyzed marriage as one of the central mechanisms for the subordination of women. And some feminist scholars have skillfully revealed the violence at the heart of the marital bond – deeply embedded in the unequal structure of marriage and its sexist ideological underpinnings. Lesbian and gay feminists argue that the institution of marriage has a long and rather ugly history that should mitigate against participation by gay people of conscience. If as many have argued, gay rights and women’s rights are inextricably connected, then “any gay argument for marriage that ignores or downplays the relationship of the marriage institution to institutionalized male dominance is problematic at best” (Walters 2006:346).

In addition, understanding the history of marriage law and citizenship highlights the fact that marriage has been a primary site for the production and maintenance of a white heteronormative citizenry, and if possible, according to Brandzel, LGBTQ individuals “should refuse citizenship and actively subvert the normalization, legitimization, and regulation that it requires” (Brandzel 2005:20). Citizenship and marriage are deeply tied in U.S. political practice. Unfortunately, the focus on marriage and citizenship, by all parties, has shifted too much attention away from the role of the state in marriage and not to the details of the institution. The feminist critique of marriage suggests that there are reasons to be circumspect. In her essay on citizenship, Judith Shklar argues that the discourse on full citizenship equality focuses on what is

denied to certain groups as a means of maintaining their out-group status (Shklar 1991). Whether one argues for the normalcy of same-sex couples or for the inherently disruptive quality of queer identity, both arguments accept the existing framework for thinking about marriage and kinship. This framework yields a non-egalitarian understanding of citizenship by providing those who are in (supposedly) long-term, committed, and state-sanctioned relationships with greater recognition and status than those who are not (Josephson 2005:277).

Uma Narayan argues that feminist visions of equal representation and substantive equal citizenship for women and members of other marginalized groups needs to focus not only on “promoting their political participation and representation, but on their access to and voice within a variety of public institutions within which interests are articulated and promoted” (Narayan 1997:49). However, despite legal and social changes to the institution, marriage is still a central instrument in the denial of women’s status as full citizens. If anti-same-sex marriage is based on the assumption that “man and woman” are discrete, natural and identifiable categories, then the courts’ desire to declare gender unquestionable clearly demonstrates the courts and society’s unwillingness or general refusal to acknowledge the social construction of gender hierarchies as well as ideologies and practices of heteropatriarchy.

For Narayan (1997), citizenship, in its most general sense, refers to the relationships that those who inhabit a nation have to the state, and to the various aspects of collective national life. Given the gendered and racialized histories of marriage and citizenship, Amy Brandzel suggests that “citizenship itself is necessarily exclusive, privileged, and normative – and that advocacy for same-sex marriage reifies and

reproduces these effects” (Brandzel 2005:2). Again the evidence suggests, as a site of citizenship production, the institution of marriage is critical to the formation of a properly gendered, racialized, and heteronormative America.

From a radical gay/feminist/liberationist standpoint: If gay marriage succeeds in sanctifying the couple as the primary social unit, the one that gets financial and legal benefits, will it set up a hierarchy of intimacy that replicates the heterosexual one rather than challenging or altering it? Even if it does grant acceptance, will it challenge homophobia or the heteropatriarchal family? Will it automatically lead to a more desirable state of affairs? Or, may it lead to a worse situation in certain contexts? The point is: the unequal salaries of men and women because of gender divisions of wage labor, the second shift, problems of unpaid housework and childcare for working women, and the lack of automatic state welfare supports for single mothers in the U.S., make marriage, whether hetero or homosexual, an institution that continues to perpetuate gender inequality. “Marriage cannot be assumed to promote equality, freedom, or caring” argues Ferguson (2007:52). In other words, gay access to marriage must be understood in terms of both sexual exclusion and gender domination. If feminists are right, that marriage is one of the cornerstones of the patriarchal family and a central site for the reproduction of gendered hierarchies and patriarchal ideology, then gay inclusion must be seen in that light and examined through a feminist lens (Walters 2006:347-48), as marriage has not only a checkered past, its present is equally troublesome.

Can the political imaginary can be transformed, “reformed” to include gay marriage as an option if other radical revisions are made to our national identity that move us away from a patriarchal society and toward a caring society based on an

alternative feminist relational ideology? “We must create alliances to support our own chosen kinship relations as a part of a set of Radical Democratic Family Values – which directly challenge traditional family ideals!” (Ferguson 2007:39). Is it possible that the “creation of gay families through marriage or commitment ceremonies could be the last nail in the assimilationist coffin? – linking gays irrevocably with mainstream sexuality?” (Walters 2006:295). Or, is it possible that these challenges to heteronormative marriage can shake up heterosexual dominance, gender hierarchies, and the heteropatriarchal family, permanently altering the very definition of marriage and family? In sum, challenging traditional marriage, whether it be through gay marriage or through a critical examination of marriage itself, is interpreted as a “danger” to the stability and security of the nation.

Conclusion

Evidence provided in this chapter strongly suggests that transformations in kinship structures to forms that deviate from the nuclear family have been seen as marking the decline of “western” values and as undermining the state. In American law, the argument for gay rights arises from a shared background of cumulative historical experiences of successful struggles for human rights in different domains – religious tolerance, racial equality, and, most recently, even some gender equality, all of which now importantly appeal to constitutionally guaranteed principles of the U.S. Constitution. “If gay rights are requirements of such basic human rights, failure to recognize such rights speaks to a fundamental injustice in our politics that must or should be intolerable” (Richards 1999:1).

Since the beginning of the early twentieth century, homosexuals have gone from being considered a national security risk, to the movement for equal rights and opportunities to participate in basic American institutions such as marriage. In *Loving v Virginia* in 1967, the Supreme Court struck down anti-miscegenation laws stating that marriage is a fundamental right of citizenship. The prohibition of racial intermarriage was to the cultural construction of racism what the prohibition of same-sex marriage is to sexism and homophobia. “Just as miscegenation was threatening because it called into question the distinctive and superior status of being white, homosexuality is threatening because it calls into question the distinctive and superior status of being male” (Richardson 1998:159-60). The condemnation of same-sex marriage is one of the crucial aspects of the cultural construction of the dehumanization of the homosexual. “Resistance to such imposed hierarchy clarifies and explains the legitimate grounds of contemporary expressions of gay and lesbian identity in the experience of an empowering *choice* and an ethical *demand* of responsibility for self” (Richards 1999:5).

After Stonewall the gay rights movement and its drive for equality in marriage for same-sex couples presented such a threat to the stability of the national security imaginary that in the 1990s there was a backlash from the conservative right, including DOMA – The Defense of Marriage Act (1994), possibly one of the most powerful pieces of legislation to affect the LGBTQ community in U.S. history. However by 2004, Massachusetts, and then Connecticut in 2008, have both claimed bans on gay marriage to be unconstitutional. Advocates of same-sex marriage argue that gay marriage supports the stability of the national body by providing equal protection and benefits to all of its citizens. Central arguments in favor are largely drawn from liberal notions of equal

rights based on full citizenship; whereas, the opposition to gay marriage is focused mostly on the one man/one woman procreative element of heteronormative marriage. Jean Elshtain argues that “maintaining marriage as a heterosexual union crucially emphasizes the link between sexual expression and procreative activity” (1997:93).

In contrast to the conservative Pro-Marriage Movement against gay marriage, the radical gay/feminist/liberationist argument directly challenges the institution of marriage itself and sees marriage as a normalizing mechanism for the production of a heteronormative citizenry and the perpetuation of patriarchal ideology, structure and practice. From a radical standpoint, marriage represents assimilation – where gay relationship, gay desires and gay parenting are all represented as replicas of heterosexual patterns. Critical scholars⁵⁶ suggest, that the institution of marriage is crucial to securing a properly gendered and heteronormative America. Thereby, when marriage is threatened, the security and stability of the national body are also threatened.

As far as how the drive for same-sex marriage presently goes, the election results in California and elsewhere provide valuable insights into where the nation stands on how best to proceed. For now, according to *USA Today*, that points toward Civil Unions which grant the same *state* rights and protections to same-sex couples as to married couples, with Civil Unions having a much broader acceptance than gay marriage in American society (Paulson 11/11/08). The passage of California’s Proposition 8, leaves in limbo the status of some 18,000 weddings that took place from May until November of 2008. Consequently, supporters of same-sex marriage equality say that more legal wrangling is expected (Paulson 2008:10A).

⁵⁶ See Brandzel, Richardson, Narayan, Shaklar, Cott, Ferguson, Butler, Walters, Howley and Josephson.

The current marriage debate raises important questions about the role of the state in the lives of its citizens, democratic participation, and political rights in contemporary democracies. How will gay marriage affect citizenship? the polity? Will it transform heteropatriarchal marriage? or reinforce society's conservative ideas of family? Will citizenship continue to be circumscribed by the state's definition of acceptable and unacceptable relationships, or will the dialogue on same-sex marriage allow a broader understanding of relationships, family, and public life? The evidence suggests that whether the challenge to heteronormative marriage is legalizing same-sex marriage or questioning the institution of marriage in general as a site of patriarchal reproduction – either way, is interpreted as a “danger” to the security of the nation.

~ Chapter Five ~

Arizona's Road toward "Marriage Equality"
Gay Marriage: Stability or Danger?

State security discourse suggests that the challenges to heteronormative marriage and homosexuality in general have been interpreted as “dangers” which threaten the security of an internal and domestic society – the *imagined community* – as well as the external security of the nation-state and its masculinized image. Hence, the central function of marriage for the state is to reproduce heteronormative patriarchal relations. Marriage thereby, is intended to work as a normalizing mechanism to reflect the gendered and hierarchical identity of the heteropatriarchal nation. Consequently, the nation is dependent upon traditional marriage and family to reproduce itself. The heteronormative couple, the family, and society are all constructed to reflect each other and work to reaffirm the notion that patriarchal ideology, structure and practice is the only human possibility. Also, as a site of citizenship production the institution of marriage is critical to maintaining the security of the nation – through the formation of a properly gendered, properly racialized,, properly christian and properly heterosexual America – where the state produces itself and its imagined community (Brandzel 2005; Walters 2006). It is within this context of the national security imaginary that states such as Arizona, despite the investment in heteronormative marriage by the state, have started to forge a path toward same-sex marriage equality. However, the difficulty of using the tension between the constructed white, heteronormative, capitalist, christian identity of the nation and its liberal equality claims, discusses in chapter one, becomes obvious in the case of Arizona. In the context of the historically conservative politics in Arizona, liberal equality claims

have faced tremendous challenges. For example, the conservative politics of Senators Jon Kyle and John McCain represent Arizona's legislative dominance by Republicans. In addition, the domination of the Arizona legislative body by socially conservative Republicans also explains the difficulties liberal equality claims have had in Arizona. In contrast to Massachusetts which will be discussed in the following chapter, the politics of Arizona make it more difficult for the same-sex marriage movement to further its liberal equality goals. Hence, the LGBTQ community in the state has faced many obstacles in the effort to carve out its own counter-narrative (Bhabha 1990).

In the 2006 national and local elections, same-sex marriage became controversial, and Arizona was no exception. Proposition 107, which was on the Arizona ballot that year, sought to ban all civil unions and domestic partnerships in the state. Although the proposition was defeated in 2006 – there was a new resolution (SCR 1042) or Prop 102 that made its way through the Arizona Senate and this time passed on the November 4, 2008 Ballot. Even though similar language defining marriage between a “man and a woman” – already exists in state law, proponents of the resolution believe amending the State Constitution will solidify the position in the courts, thereby preventing situations like the one in Massachusetts, and for a short time, California (Levy 2008:15). Arizona law states:

Marriage between persons of the same sex is void and prohibited. Marriage valid by laws of the place where contracted are valid in this state, except marriages that are void and prohibited by section 25-101. Marriages solemnized in another state or country by parties intending at the time to reside in this state shall have the same legal consequences and effect as if solemnized in this state, except marriages that are void and prohibited by section 25-101. Parties residing in this state may not evade the laws of this state relating to marriage by going to another state or country for solemnization of the marriage. (www.hrc.org/1176.htm)⁵⁷

⁵⁷ Citations: ARIZ. REV. STAT. § 25-101; ARIZ. REV. STAT. § 25-112.

Arizona Senator John McCain and Republican Presidential candidate says same-sex couples should be allowed to enter legal agreements for insurance and other purposes, but he opposes gay marriage and believes in “the unique status of marriage between a man and a woman” (www.ascentral.com/nes/articles/2008/05/22.html).⁵⁸

In Arizona, opponents of same-sex marriage, such as the Center for Arizona Policy (CAP), argue that there “is a trend toward counterfeit marriages. These counterfeits are domestic partnerships and civil unions that are demanding the same recognition bestowed upon married couples.” The Center for Arizona Policy was established in 1995 and according to its website, “is your voice in the legislature and the media for promoting pro-family laws and values in Arizona and acts on your behalf to increase support for the traditional family” (www.azpolicy.org/aboutus.php). CAP supported the new resolution Prop 102 (SCR 1042), which was a slightly trimmed down version of proposition 107, simply stating that marriage is between one man and one woman. Many opponents of this measure questioned whether the legislation should be acting on superfluous issues like this when “real” work – like balancing the budget and dealing with more pressing economic and environmental problems – should have been the focus of the recent legislative sessions (Levy 2008). However, the measure passed in Arizona in November of 2008.

The purpose of this chapter is to examine the ways in which Arizona’s road to marriage equality challenges heteronormative marriage. In addition, the backlash that results from these challenges which have been interpreted as a threat to the stability of the state will be explored. In this chapter, through the use of LGBTQ organizations such as

⁵⁸ “Agreements preferable to gay marriage, McCain says.” *Associated Press*, May 22, 2008 12:00 AM. (www.ascentral.com/nes/articles/2008/05/22.html retrieved 5/22/08).

Equality Arizona and Wingspan, as well as groups opposed to gay marriage – mainly the Center for Arizona Policy (CAP), interviews, legal cases, state legislation, and newspaper documentation, I will critically examine Arizona’s road toward the goal of marriage equality within the context of the national security imaginary. As in most states, such as Massachusetts, Vermont, Connecticut, and Iowa, Arizona’s struggle began with the legal case, *Standhardt v Arizona* (2003), where the then recent U.S. Supreme Court ruling was cited suggesting that disparate treatment homosexuals violates equal protection provisions of the U.S. Constitution. Therefore, this first section of the chapter explores the specifics of the *Standhardt* case as representative of the arguments across the United States for same-sex marriage.

In the following section, both sides of the gay marriage debate make arguments for stability. The LGBTQ “Three Point Action Plan” was executed in 2004 to challenge Arizona’s marriage laws by attempting to obtain marriage licenses, while on the same day, near the State Capitol, the Center for Arizona Policy (CAP) organized a rally they called a “marriage crisis rally,” where they “proclaimed the need to preserve the foundation of society.” Consequently, by 2005 the backlash to Arizona’s Marriage Equality movement coalesced into a proposed amendment to the constitution effectively banning gay marriage. CAP helped to initiate the Protect Marriage campaign to protect the traditional definition of marriage by amending the Arizona constitution. The first effort failed in 2006, however the measure was reworded to state only that marriage is between one man and one woman. This time it passed in Arizona in the November elections of 2008. However, Arizona and other states’ experiences suggest that domestic partnership rights or civil union do not appear to disrupt the heteronormative stability of

the state. Therefore the last portion of this chapter examines Arizona's Domestic Partnership laws. In sum, this chapter offers an account of "danger" that highlights the very domains of the male/female, dominant/subordinate, insider/outsider, legitimate/illegitimate dualistic patriarchal system through a critical exploration of Arizona's road to marriage equality.

The First Step Toward Gay Marriage Equality in Arizona: Standhardt v. Arizona

In the ground breaking case, *Goodrich v The Department of Public Health* (2003), the plaintiffs claimed that "marriage is a vital social institution which brings stability to our society." It is on these grounds that *Standhardt v Arizona* laid the first stone in the path to same-sex marriage equality in Arizona. Although 2006 marked a heightened awareness of gay marriage rights across the nation, it was in the summer of 2003 in Phoenix when things really began in Arizona. On July 1, 2003 the Clerk of the Maricopa County Court refused to issue Mr. Don Standhardt and Mr. Tod Keltner a marriage license. On July 7, 2003, the couple filed a special action in the court of Appeals, challenging the ban on same-sex marriage in Arizona. The special action, a type of appeal, seeks to strike down as unconstitutional the Arizona statute which limits marriage to a man a woman.⁵⁹ In a recent interview, Tod and Don explained how they were approached by attorney Michael S. Ryan, who, being aware of their current situation and strong views, saw them as the perfect couple for this fight, and offered to handle the case pro bono. "He was truly the force behind it all" commented Tod (Interview 2005).⁶⁰

We are fighting for the right of two same sexed partners to enter into a legal

⁵⁹ "For Immediate Release" July, 2003 - provided by Tod Keltner during an interview on May 29, 2008. It was sent out to the local papers - especially the "gay" newspapers/magazines.

⁶⁰ Barkat, Sarah - Northern Arizona University Interview with Tod Keltner and Don Standhardt, 3/17/05.

marriage. (Actually a three part contract between two individuals and the state.) This special right affords the individuals involved special rights that are being denied to a particular segment of society. I've always been one of those who have viewed marriage as just a piece of paper. I mean, the vow and the love between two people is what's truly important in a relationship. It truly goes beyond gender. The desire of meeting a soul mate and growing old together is a universal desire shared by people of all cultures, including gay people. We would be very happy to be 'minding our own business'. The problem is that we are being discriminated against and being denied some very important rights, that, as Arizonans and as Americans, we are entitled to. It's simply a case of constitutional fairness. (Keltner, NAU Interview 3/17/05)

However, Tod and Don were surprised when the gay activist community in Arizona, for example, AHRF the Arizona Human Rights Fund (now Equality Arizona), the ACLU, and Planned Parenthood asked them to withdraw. In recent interviews with Jason Cianciotto, Director of Wingspan in Tucson⁶¹ and Sarah Friedmann of Equality Arizona in Flagstaff, they both explained that filing a case challenging the ban on gay marriage, whether now or then, only sets a negative precedent and will not further the cause.⁶² Don said that he felt that these larger organizations "wanted to bring the case themselves and build a larger case study" (interview 5/29/08). Tod commented that ~

In the beginning, many organizations, both local and national, opposed our lawsuit for various reasons, the ACLU being very much a part of that consensus. Most people believed the timing and place were not to our advantage or not part of their plan. Others feared a backlash. However, we were treated absolutely wonderful by 99.9% of everyone we encountered. Our friends and families were a constant source of support and motivation. The press, with the exception of the *New Times*, treated us fairly and with dignity and respect. We received many emails and letters of support from other Arizona same-sex families and have been continuously involved in the movement to raise public awareness. As sad as it sounds, the only backlash we received was from within our own community. I feel we've all learned from this. (Keltner, NAU interview 2005)

⁶¹ Wingspan, the largest LGBT organization in southern Arizona – focusing mainly on ending violence such as hate crimes and same-sex domestic violence (www.wingspan.org).

⁶² Personal Interviews with Jason Cianciotto, Director of Wingspan, June 30, 2008, and Sarah Friedmann, Equality Arizona Flagstaff, June 2008.

One month after filing, then Democrat Attorney General Terry Goddard sided with a law firm's argument that gays should not be able to marry – at least in part because they cannot have children (Fischer 8/16/03). Assistant Attorney General Kathleen Sweeney said that a recent ruling voiding laws banning homosexual sex did not legitimize same-sex marriage. She argued to the Arizona Court of Appeals that the state has an “interest in encouraging procreation” which she said, gives lawmakers the legal right to limit marriage to a man and a woman “who are the only couples who can create children with one another”; gays have a right to have relationships with each other but the ruling does not require states to formally recognize those relationships. Sweeney commented that the issue of the ability of heterosexuals to create a child “who is biologically related to both of them” also plays a role in the state's defense of its ban on gay marriage. “No other relationship has this potential” she said (Fischer 8/16/03). Ryan, the couple's attorney, cited the recent U.S. Supreme Court ruling that said that states cannot regulate the private acts of individuals and suggested that disparate treatment of gays vs. heterosexuals violates equal protection provisions of the Constitution.⁶³

Before the Arizona Court of Appeals, Ryan argued that the state's ban on same-sex marriage is unconstitutional. Sweeney argued in favor of the ban, saying marriage is based on community morals and has historically been limited to a man and a woman. Ultimately, the Court of Appeal held that same-sex couples did not have a fundamental constitutional right to marry, and that “the State has a legitimate interest in encouraging procreation and childrearing within the marital relationship, and that limiting marriage to

⁶³ Arizona Daily Star, The (Tucson, AZ) – August 16, 2003. Author: Howard Fischer, Capitol Media Services.

opposite-sex couples is rationally related to that interest.” The Arizona Court of Appeals ruled that the ban on same-sex marriage is constitutional and that the state has a reasonable interest in seeing that procreation happens in a marriage between a man and a woman. The plaintiffs said they would file an appeal to the Arizona Supreme court in early December. Ryan said the appeal will be more comprehensive, listing harms to gay couples when marriage is banned and benefits to the state if it is allowed.⁶⁴

The “recent decision in Massachusetts that gays have the right to marry bolsters the case of a Valley couple” stated Judy Nichols of the *Arizona Republic* on Nov. 19, 2003. “It makes it more likely the Arizona court will take the case and more likely they’ll rule favorably,” said James Weinstein, a nationally known constitutional lawyer and law professor at Arizona State University who is consulting pro bono on the Keltner-Standhardt case. However, Arizona Sen. Mark Anderson, R-Mesa, head of the Senate Family Services committee, opposes same-sex marriages. He said state-by-state rulings ensure that the U.S. Supreme Court will have to step in. Alan Sears, president of the Alliance Defense Fund, a group of constitutional lawyers opposed to same-sex marriages, said no state Supreme Court has struck down a law like Arizona’s that defines marriage between a man and a woman. Massachusetts had no such law.⁶⁵

“Paul Bender and James Weinstein, nationally known constitutional lawyers and professors at Arizona State University’s College of Law, are consulting on the case brought by Tod Keltner and Don Standhardt of Phoenix” (Nichols 11/19/03). In a recent interview with Paul Bender (6/19/08) he stated that ~

⁶⁴ *Standhardt v. Superior Court ex rel. County of Maricopa*, 77P.3d 451 (Ariz. Ct. App. Div.1, Oct. 8, 2003).

⁶⁵ Nichols, Judy. “Same-Sex Marriage Advances – Mass. Ruling May Aid Ariz. Couple’s Appeal.” *Arizona Republic, The* (Phoenix, AZ) – November 19, 2003.

The main arguments for the constitutional right of gays and lesbians to marry are: (a) That marriage between two adults who have affection for each other and want to enter into a marriage relationship is a constitutional right, regardless of whether the partners are of the same or different sexes; and (b) That if heterosexual couples are permitted to marry, it is unconstitutional to deny that right to same-sex couples that are, in all relevant respects, similar to heterosexual couples except for their same-sex character. With regard to the federal Constitution, argument (a) is based on the Due Process Clause of the 14th Amendment and argument (b) is based on the Equal Protection Clause of that Amendment. Same-sex couples usually also make similar arguments based on similar clauses of the constitution of the State in which they wish to marry. The state constitutional equal protection argument has succeeded in Massachusetts and California, but was rejected by the Arizona Court of Appeals in the *Standhardt* case.⁶⁶

Based on these constitutional arguments, Standhardt and Keltner petitioned the Arizona Supreme Court to review the Court of Appeals Opinion on Oct. 8, 2003.

The arguments presented in the *Standhardt* case are representative of cases across the U.S. which challenge bans on same-sex marriage. In addition, the issues/arguments are based on the Massachusetts and Vermont cases where gay marriage has been legalized. Consequently, as representative of other cases from across the nation, it is worthwhile to examine discursively the “Issues Presented for Review” from *Standhardt v. Superior Court of the State of Arizona*.⁶⁷

1. Whether excluding same-sex couples from the rights and responsibilities conferred by civil marriage deprives them and their children of the equal privileges and immunities under Article II § 13 of the Arizona Constitution. 2. Whether this exclusion violates same-sex couples’ liberty and privacy in violation of Article II, § § 4 and 8 of the Arizona

⁶⁶ Personal interview with Paul Bender on 6/19/2008.

⁶⁷ IN THE COURT OF APPEALS, STATE OF ARIZONA, DIVISION 1. PETITION FOR REVIEW OF A SPECIAL ACTION DECISION OF THE COURT OF APPEALS. Harold Donald Standhardt, a single man; Tod Alan Keltner, a single man. Petitioners, vs. superior court of the State of Arizona, In and For the County of Maricopa, Michael K. Jeanes, The Clerk of the Court, Respondents, and State of Arizona, Respondent-Real Party in the Interest. Kent & Ryan, P.L.C. 45 W. Jefferson, Ste 220, Luhrs Tower, Phoenix, AZ 85003. Michael S. Ryan Attorneys for Petitioners. Paul Bender, Member of the District of Columbia Bar, James Weinstein, Member of the California Bar., P.O. Box 877906, Tempe, AZ 85287. Attorney’s for Petitioner.

Constitution.⁶⁸ On July 1, 2003, Standhardt and Keltner applied for an Arizona marriage license, but the Clerk of the Superior court refused to accept their application on the grounds that, under A.R.S. § 25-101© and -125(A), marriage licenses may be issued only to couples composed of a male and a female.

Movements for same-sex marriage across the nation look to Massachusetts as a successful role model and Arizona is no exception. As the Supreme Judicial Court of Massachusetts recently noted, marriage “is a vital social institution which brings stability to our society... for those who choose to marry, and for their children, marriage provides an abundance of legal, financial, and social benefits. In return it imposes weighty legal, financial, and social obligations” (*Goodridge v. Department of Public Health*).⁶⁹

Whether excluding an entire class of citizens from this vital institution because of their sexual orientation violates the basic equality and liberty provisions of the Arizona Constitution is an issue of extraordinary statewide importance that should be resolved by this Court. The highest courts of Massachusetts, Vermont, and Hawaii have recently resolved this issuer under similar state constitutional equality guarantees in favor of the right of same-sex couples to marry.⁷⁰ Indeed, no state supreme court in the last ten years has reached a different conclusion.⁷¹

Although denying relief, the Court of Appeals recognized how A.R.S. § 25-101(C) and -125(A) inflict palpable discrimination on couples and their children. The Court of Appeals agreed that same-sex couples and their children would “benefit from

⁶⁸ In addition, federal equal protection and liberty claims were briefed at the Court of Appeals and could be addressed in greater detail should the Court grant review or order further briefing.

⁶⁹ *Goodridge v. Department of Public Health*, 798 N.E. 2d 941, 948 (Mass.2003).

⁷⁰ See *Goodridge, supra*; *Baker v. Vermont*, 744 A.2d 864 (Vt. 1999); *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993).

⁷¹ The question is of international importance as well. The Court of Appeals noted that many jurisdictions such as Canada, the Netherlands, Belgium, Denmark, Norway, Sweden, Iceland, Hungary, Germany, France, and Portugal have recognized some form of civil unions for same-sex couples. Op. ¶ 24, fn. 11.

the stability offered by marriage, and specifically noted the “inequity for children raised by same-sex couples,” if these couples cannot marry. Op. ¶ 39. These rights and responsibilities are available to heterosexual couples regardless of whether they wish to or are able to have children. The exclusion of same-sex couples from this pervasively important status solely because of their sexual orientation amounts to unconstitutional discrimination. The State argued that Arizona’s exclusion of same-sex couples from the benefits and obligation of marriage is justified by the “interest in encouraging procreation and child-rearing within the stable environment traditionally associated with marriage.” Op. ¶ 33. Faced with a nearly identical set of discriminations, the Supreme Courts of Massachusetts and Vermont both held under state constitutional equal protection guarantees similar to Arizona’s privilege and immunities clause, that there was no rational relationship to any legitimate state interest in excluding same-sex couples from civil marriage. Massachusetts rejected with respect to the supposed link between marriage and procreation, the Massachusetts court explained:

General Laws c. 207 contains no requirement that the applicants for a marriage license attest to their ability or intention to conceive children by coitus. Fertility is not a condition of marriage, nor is it grounds for divorce. People who have never consummated their marriage, and never plan to may be and stay married. People who cannot stir from their deathbed may marry. (*Goodridge v. the Department of Public Health*)

The State’s asserted child rearing justification is equally incoherent. As the Supreme Court of Vermont held:

The laudable governmental goal of promoting a commitment between married couples to promote the security of their children and the community as a whole provides no reasonable basis for denying the legal benefits and protections of marriage to same-sex couples, who are no differently situated with respect to this goal than their opposite –sex counterparts. Promoting a link between procreation and rearing similarly fails to support the exclusion. (*Baker v. Vermont* 1999)

Even the Court of Appeals in this case acknowledged that banning same-sex couples and their children from civil marriage does not advance the Legislature's purpose in promoting "strong families" or the legitimate state interest of fostering a "Stable environment" for raising children. Arizona's exclusion of committed same-sex couples living in long term supportive relationships, from the rights and responsibilities of marriage serves no valid purpose and works to destructive discrimination against same-sex couples and their children (*Standhardt v. Superior Court of Arizona*).

Unlike the Arizona Court of Appeals, the Arizona Supreme Court is not obligated to take every case that comes to it. It is required to review death-penalty cases, but other cases come to it as petitions to be sorted through and discussed in conference. It takes only one justice to decide if a petition should be discussed in conference. It takes three of the five to decide if it should be heard (Kiefer 5/25/04).⁷² The personal politics of the justices on the Arizona Supreme Court at the time ran the gamut, from Chief Justice Charles E. Jones, a conservative Republican and elder in the Mormon Church, to Andrew D. Hurwitz, a liberal East Coast Democrat who admits that if he were in the Legislature, he would be "an activist legislator" (Kiefer 5/25/04) They, and the three justices in between – Ruth V. McGregor, Michael D. Ryan, and Rebecca White Berch – are adamant in their shared conviction that politics have no place in their decisions. Ultimately, on May 25, 2004 Arizona's Superior Court did not grant a review or order further briefing of their appeal. Tod Keltner said in the interview, that at that point the only recourse was to take their case to the United States Supreme Court which would not

⁷² Kiefer, Michael. "Justices May Weigh Same-sex Marriage – Arizona's High Court Meets on Case Today." *The Arizona Republic*, May 25, 2004.

only have been a huge expense but also take a long period of time to come to fruition, if indeed it ever did (Personal interview 5/29/08).

Rep. Stephen Tully, who heads the House Judiciary committee, said, “the main problem is this: They make up laws and then they protect them by saying they’re constitutional, and they protect that law from the Legislature’s or the people’s ability to change it” (Kiefer 5/25/04). The opposition felt that the recent ruling by the Massachusetts Supreme Judicial Court allowing same-sex marriage has been held as an example of judicial activism, that is, an instance of courts imposing laws against the will of the majority. “Public-opinion poll after public-opinion poll shows that same-sex marriage is rejected by Arizonans and by Americans. Basically the only way for same-sex marriage to come to the United States is by declaration of judges,” said Peter Gentala, legal counsel for the Center for Arizona Policy. “It’s not going to happen through the ballot box” (Kiefer 5/25/04). Standhardt and Keltner’s attorney Paul Bender states:

I thought the state constitutional equal protection argument should have succeeded in Arizona, as it did in Massachusetts and California. It did not. The only way to carry on the struggle for gay marriage rights in Arizona now would be (a) to try to get the Arizona Supreme Court to take a case in which it would overrule the Court of Appeals decision in *Standhardt* ; (b) to try to get the U.S. Supreme Court to hold that state bans on gay marriage violates the U.S. Constitution; (c) to get Arizona to change its statutory law to permit gay marriage; or (d) to get Arizona to adopt a state constitutional amendment permitting gay marriage. Alternatives (b), (c) and (d) would seem impossible at the present time, and will probably remain impossible for the foreseeable future. Argument (a) is not impossible, but the membership of the Court that denied review of *Standhardt* is not likely to change in the near future. If several additional states joined Massachusetts and California to hold that gay-marriage bans violated equal protection clauses in state constitutions, that might possibly influence the Arizona Supreme Court to consider doing the same thing. If the voters reject SCR 1042, that might also influence the Court to reconsider *Standhardt*. (Interview with Paul Bender 6/08)

Tod Keltner thinks of the Gay Marriage movement as a lot of things coming together simultaneously. It has much more than hope. It is inevitable. “It is unfortunate and truly sad that people turn it in to a religious issue or political issue, when it’s really about people’s lives. I believe that connecting the issues with faces and families of Gay Americans will help bring some clarity and focus to this hugely misunderstood issue” (Barkat NAU interview 3/17/05).

The evidence suggests that the heteronormative, patriarchal family provides the fundamental principles of social organization by assuming the nation’s well-being as a relatively fixed gender hierarchy – and the traditional family asserts the maintenance and perpetuation of this dualistic system. It appears Arizonans feel no different in interpreting same-sex marriage as a “danger” or risk to the stability and security of the state.

***Both sides of the debate rally for stability:
The “Three Point Action Plan” and the “Marriage Crisis Rally”***

Just ten days before *Standhardt v. Arizona Supreme Court*, the nation was preparing for the first legal same-sex marriages in Massachusetts. On Fri., May 14, 2004, “Four Arizona church ministers and a busload of same-sex couples will challenge Arizona’s marriage laws by attempting to get marriage licenses today” (Kiefer 5/14/04). Borrowing a page from the civil rights movement, the couples traveled to courts in Phoenix, Mesa, Chandler, Scottsdale, and Glendale expecting to be denied as Arizona law defines marriage as between one man and one woman (A.R.S. § 25-101(C) and -125(A)). It is also a misdemeanor for a minister or government employee to marry any couple without a marriage license issued by the government. Nonetheless, the ministers will perform

same-sex marriage on Saturday and then confront government officials to see if they will enforce that law.⁷³ It was the first day of the self-described Three Point Action Plan for Marriage Equality, led by Pastor Brad Wishon of Gentle Shepherd Metropolitan Community Church in Phoenix. Wishon and the three other pastors performed ceremonies for over 60 couples on Saturday, May, 15 at a Phoenix resort. As an act of civil disobedience, they then took affidavits confirming the marriages to the clerk of the court to show that they broke the law – however law enforcement officers did not arrest or prosecute. “We don’t make arrests on Class 2 misdemeanors,” said Detective Tony Morales (Kiefer 5/14/04).

Brad Wishon, the protest’s organizer explains:

The law in Arizona says a clergy person cannot perform a marriage ceremony, unless the couple has a valid license issued by the state. We’re trying to point out that here are couples who are ready to pledge their lives and to live as married persons in the state of Arizona and they’re applying for licenses and they’re being denied. We believe that that is unjust. (*Amend This! The Fight for Marriage Equality*. Promotional video on the Three Point Action, May, 2004)

Among Wishon’s parishioners are Don Standhardt and Tod Keltner. “Many, many clergy around the world do perform same-sex weddings, and the clergy here are just stepping up. They’re tired of not being able to practice their First Amendment rights” stated Don Standhardt (Kiefer 5/14/04). Back in 1954 in *Brown v. the Board of Education*, it was understood that “Separate is inherently unequal” (Supreme Court 1954). Another activist on the bus that day commented, “They want to sanction discrimination” (*Amend This!* video, 2004). And one of the minister’s marrying couples exclaimed “This is my right! I pay taxes. I live in harmony with my neighbors. Why can’t my relationship be recognized by the state of Arizona?!” (*Amend This!* video,

⁷³ Kiefer, Michael. “Same-Sex Couples Seek Equal Rights – Challenge to Arizona Marriage Laws Set.” *The Arizona Republic*. May 14, 2004.

2004). As Paul Bender stated, one of the ways to achieve marriage equality is to have an amendment to the federal constitution. “The right of citizens of the United States shall not be denied or abridged on account of sexual orientation” (*Amend This!* video, 2004).

However, near the Capitol... “It was a glorious day for intolerance in Wesley Bolin Memorial Plaza” commented E.J. Montini from *The Arizona Republic* (Tues, May 18, 2004). On the Monday of the LGBTQ Three Point Action, over 3,000 people rallied at the state Capitol and prayed for the Arizona Supreme Court to keep this state and the nation from recognizing same-sex marriages. They had come to participate in what organizers called a “marriage crises rally.”⁷⁴ The gathering took place on the same day Massachusetts began issuing marriage licenses to gay couples. Several speakers at the Arizona event specifically referred to that development and the Massachusetts Supreme Court ruling that paved the way for it. “This redefinition of marriage was not sought for or voted for by the people of Massachusetts or the people of Arizona or the people of the United States of America,” said Len Munsil, president of the Center for Arizona Policy.⁷⁵ “This redefinition has been imposed upon us by four unelected lawyers in black robes in Massachusetts” (Fischer 5/18/04).⁷⁶

While soldiers die in Iraq, a large crowd gathered in Phoenix to protest...love. To protest commitment. To protest two people standing before friends and family and swearing honor and comfort for one another for the rest of their lives. Given the high rate of divorce among married couples in America it would seem that marriage really is in crisis. But rally organizers and participants didn't gather at

⁷⁴ Montini, E.J. “Rally Crowd Takes a Vow to Love, Honor and Abhor.” *The Arizona Republic* 5/18/04.

⁷⁵ The Center for Arizona Policy (CAP) battles organizations like Planned Parenthood, the ACLU and gay rights groups such as Equality Arizona and Wingspan, that seek to destroy traditional families and traditional moral values. CAP has developed strong bonds with friends like Arizona right to Life, Crisis Pregnancy Centers, Arizona Families for Home Education, Alliance Defense Fund and many others including local churches. Although starting later than many other FPC's, CAP has quickly become one of the largest in the United States, and has an unparalleled record of legislative success and cultural influence (www.arizonapolicy.org/aboutus).

⁷⁶ Fischer, Howard. “Thousands Protest at Capitol.” *The Arizona Daily Star* (Tucson, AZ).

the Capitol to prevent divorce, but to prevent marriage – at least when the couple in question happens to be gay. (E.J. Montini May 18, 2004)

Preserving the Foundation of Society: A Constitutional Amendment

A year later, on May 18, 2005, the Protect Marriage Arizona Coalition began a statewide petition drive to have a constitutional amendment banning gay marriage put on the ballot in November 2006 – as it “proclaimed the need to preserve the foundation of society” (Morlock and Everett-Haynes 5/18/05). The rally came one year to the day after 1,000s of Arizonans went to the Capitol in Phoenix to support traditional heterosexual marriage, as well as the LBGTQ Three Point Action. “Arizona citizen’s should have the right to decide how the state defines marriage,” said Lynn Stanley, the coalition’s chairwoman.⁷⁷ Cathi Herrod, a Center for Arizona Policy lobbyist,⁷⁸ said supporters filed the initiative with the Secretary of State’s Office in order to put the measure’s official serial number on petitions to be distributed to supporters today – the first anniversary of same-sex marriages in Massachusetts (Morlock 5/17/05).

Many critics of Arizona’s proposed constitutional amendment said that it would have the biggest effect on unmarried straight couples who receive government-sponsored or domestic partnership benefits (Diaz 5/18/05). However, the LGBTQ organization in Tucson, Wingspan, which organized what they called “No on 107!,” felt that this approach was basically “degaying” the argument.⁷⁹ Jason Cianciotto, the current Director of Wingspan said in a recent interview that southern Arizona took a more

⁷⁷ Morlock, Blake and Everett-Haynes. “Rallies address gay marriages – Sides differ over a proposed constitutional amendment dictating rights. Petition drive seeks to preserve ‘foundation’ of society.” *Tucson Citizen*, May 18, 2005.

⁷⁸ I tried several times to contact Cathi Herrod or a spokesperson at the Center for Arizona Policy and requested a brief interview – however, I never received any response.

⁷⁹ Personal interview with Jason Cianciotto, Director of Wingspan. June 30, 2008.

progressive approach than the rest of the state which focused more on the rights of heterosexuals – seniors in particular, who would lose domestic partnership benefits, or government benefits such as social security. “This is an attack on heterosexual unmarried citizens disguised as a ban on gay marriage,” said Steve May, then co-chairman of the Arizona Human Rights Fund (now Equality Arizona) the LGBTQ advocacy organization.⁸⁰ Cianciotto commented that the proposition was also understood as a move by Republicans to draw out the rightwing evangelical vote in 2006 – and not only in Arizona (personal interview 6/30/08). However, supporters of Prop 107 argued that even though Arizona law prohibits marriages involving same-sex couples, they are not banned by the state Constitution. A supporter said, the goal of the initiative “is to add a constitutional amendment to protect the sanctity of marriage from ‘activist judges’ who might overturn the law” (Diaz 5/18/05).

In 2005, The Center for Arizona Policy helped initiate the Protect Marriage Arizona (PMA) campaign to protect the traditional definition of marriage by amending the Arizona Constitution. The proposed amendment read as follows:

To preserve and protect marriage in this state, only a union between one man and one woman shall be valid or recognized as a marriage by this state or its political subdivisions and no legal status for unmarried persons shall be created or recognized by this state or its political subdivisions that is similar to that of marriage. (www.az.policy.org January 2008)

After filing 307,576 signatures, 200,000 of which were gathered by volunteers, the PMA amendment was placed on the ballot as Proposition 107 in November of 2006 (Center for Arizona Policy www.az.policy.org).

What the measure would have done had it passed, was make it impossible for gay couples to enter into any kind of legal union authorized by the state. Domestic-partner

⁸⁰ Diaz, Elvia. “Arizona Voters May Face Same-Sex Marriage Ban.” *Arizona Republic*, 5/18/05.

benefits now offered by some governments would have been prohibited and Tucson's domestic-partnership registry would also have been voided. Main supporters of the proposition included The Center for Arizona Policy, United Families International, Christian Family Care Agency, all three of the state's Catholic bishops, and Republican Senators John McCain and Jon Kyl (Scarpinato 10/28/06). Opponents included Tucson republican mayor Bob Walkup, the Arizona Democratic Party, Wingspan, the Human Rights Campaign, AHRF (Arizona Human Rights Fund – now Equality Arizona), Republican Congressman Jim Kolbe, Democratic Congressman Raul Grijalva, University of Phoenix owner John Sperling, Tucsonan Stephen Quinlan, and a number of union groups, medical associations and churches.⁸¹

Proposition 107 did not pass in the 2006 vote in Arizona, although similar propositions passed in seven other states. In fact, Prop 107 was the first ballot query of its kind to fail. Political observers say two things worked against the initiative: Arizona's libertarian streak (the "if you're not in the bed or under the bed, it's none of your business" attitude), and a phenomenally disciplined opposition campaign that argued the whole thing had nothing to do with gay marriage (Scarpinato 11/25/06). For some gay activists, it was bittersweet to defeat a same-sex marriage ban by avoiding the subject of homosexuality (Geis www.washingtonpost.com 11/20/06). The National Gay and Lesbian Task Force welcomed the Arizona results, but Arizona State University analyst Bruce Merrill said that in rejecting the ban in Arizona, voters were more likely showing disapproval of outlawing domestic partnership benefits, rather than implicitly approving gay marriage (Haboubi 11/08/06).

⁸¹ Scarpinato, Daniel. "Debate: Wide divide on marriage initiative." Election 2006. *The Arizona Daily Star* (Tucson, AZ). October, 28, 2006.

Merrill, who conducted a survey of 962 registered voters for KAET-TV, the Phoenix PBS affiliate, reported that more than half of those questioned believed the measure was unfair or was improper government involvement in individual rights. Another 30 percent specifically cited provisions barring governments from offering domestic partner benefits. However, only 8 percent of those who voted against the measure said they support same-sex marriage (Fischer 11/22/06).⁸² Cathi Herrod, the spokesperson for Protect Marriage Arizona – Prop 107 stated after the defeat of the measure:

The struggle to protect marriage between one man and one woman is far from over. Proposition 107's defeat is but one skirmish in the battle to preserve and protect marriage. It's a token win for the opposition. On behalf of the Protect Marriage Arizona Coalition, rest assured that we aren't going anywhere.⁸³ We will continue to work to preserve and protect marriage in Arizona. (www.azpolicy.org 11/15/06).

Just two years later, in June of 2008, a similar proposition, also supported by the Center for Arizona Policy – SCR 1042 or Prop 102 – passed in the Arizona State Senate.

In the November 4th, 2008 presidential elections, Arizonans once again got the chance to decide if they wanted to constitutionally define marriage as solely between one man and one woman. With the bare minimum of 16 votes required, the Senate gave final approval on Friday, June 27th, 2008, to SCR 1042 (Fischer 6/28/08).⁸⁴ Article XXX, Constitution of Arizona, is proposed to be added as follows if and when approved by the voters and on proclamation of the Governor:

“Only a union of one man and one woman shall be valid

⁸² Fischer, Howard. “Poll: Voters against government intrusion rejected Prop. 107.” *Arizona Daily Star*. Howard Fischer, November 22, 2006.

⁸³ Forty-eighth Legislature, Second Regular Session. Proposed: House of Representatives Amendments to S.C.R. 1042 (reference to Senate engrossed concurrent resolution). Article XXX. Marriage. 4/8/08.

⁸⁴ Fischer, Howard. “Same-sex Marriage ban sent to voters.” Arizonadailysun.com June 28, 2008.

or recognized as a marriage in this state.”

SCR 1042 was different from Prop 107 in that it had no unclear language which could be employed to abolish domestic partnership benefits in Arizona. During the senate session Sen. Jorge Garcia, D-Tucson, called it unnecessary – “In Arizona there is a law that says marriage is between one man and one woman.” But supporters of the measure noted there also was a law banning gay marriage in California and that did not stop the Supreme Court there from deciding that state’s constitution protected the right of gays to wed. Senator Sylvia Allen, R-Snowflake, argued that putting the provision in the constitution is necessary to “protect traditional families because they are the foundation of this society,” which brought a sharp retort from Senator Paula Aboud, D-Tucson, one of two openly gay senators –“I just don’t see how my relationship threatens anyone in this room” (Fischer 6/28/08). And yet, apparently legalizing gay marriage has been interpreted by Arizonan’s as a threat to stability.

Senator Ken Chevront, D-Phoenix, the other gay legislator, had said he believes the measure is being put on the ballot largely to bring out conservative voters (similar to the comment from Jason Cianciotto from Wingspan) who then will support John McCain’s bid for president as well as other conservative candidates. He also predicted, however, along with Republican Senator Robert Blendu, that courts eventually will declare that gays have a constitutional right to marry, much in the same way that courts overturned laws that banned weddings of people of different races. Ultimately, the 2006 ballot measure would have not only defined marriage as between one man and one woman, but also would have banned lawmakers or courts from recognizing civil unions and, barred governments from offering benefits like health insurance to the domestic

partners of their employees. However, that proposal was narrowly defeated. In fact, it was the only such gay marriage measure on the ballot that year anywhere in the country to be defeated. The new version, SCR 1042 (Prop 102), simply deals with the definition of marriage as one man and one woman.

A report from the senate gallery by Barbara McCullough, Executive Director of Equality Arizona, and Sam Holdren, Public Affairs Director on Friday, June 27, 2008 states:

We just got back from the state Capitol, where the Senate voted to force another constitutional amendment to define marriage on the ballot. What happened tonight was disgraceful, but that doesn't change the fact that we will be facing another anti-LGBT amendment this November. The Arizona Legislature caved to the coercion of a little-known group, the Center for Arizona Policy, led by an extremist fundamentalist – Cathi Herrod. The Legislature ignored the people of Arizona, who already voted down a similar amendment. The Senate approved Senate Concurrent Resolution SCR 1042 tonight, and they broke the rules, along with the sanctity of the Senate, to do so. Senate extremists strategically broke the rules of the senate. During a filibuster-like discussion on another bill during Committee of the Whole, Major Leader Thayer Verschoor (R-22) and Majority Whip John Huppenthal (R-20), among others, devised a scheme with committee chairman Jack Harper (R-4) to outright violate the rules of the Senate and the rights of Senators Aboud and Chevront.

In the middle of the discussion, Senator Harper turned off the microphones of Senators Paula Aboud (D-28) and Ken Chevront (D-15) and called on the Majority Leader to make a motion. Then, when Senators Aboud and Chevront loudly called for a point of order several times, even when walking to the front desk where Senator Harper sat, he deliberately ignored their calls. To add insult to injury, these people attempted to justify their actions, even after the Senate President and other Senators admonished them for deliberately breaking the rules. Tonight's action of these and other Senators have forever tainted that body, and it's important that we all let the people of Arizona know how these individuals acted so unethically. No one can deny this bill was nothing more than a referendum on the LGBT community – a political fundraiser to fuel the anti-gay industry in Arizona. (www.equalityarizona.com 6/27/08)

Regardless of how it happened, the “defenders” of traditional marriage (such as CAP) managed to get SCR 1042 on the ballot for the November 4th, 2008 Presidential elections

where it passed by a majority, changing Arizona's State Constitution to effectively ban same-sex marriage (Reitz 11/13/08) .

Domestic Partnership in Arizona ~ A move toward stability?

The Tucson Domestic Partnership Ordinance is a city law, enacted September 15, 2003 and effective December 1, 2003, that provides a registry for domestic partners who wish to register. This is a means by which unmarried couples who share a relationship of mutual support, caring and commitment may document their relationship. This is the first domestic partner registry law in the State of Arizona.⁸⁵ The city defines a domestic partnership as people:

- Not related by blood closer than would bar marriage.
- Not already in a marriage or recognized domestic partnership
- Age 18 or older.
- Competent to enter into a contract.
- Who declare they are each other's sole domestic partner.
- Who share a primary residence, are in a relationship of mutual support and declare they intend to remain in such for the indefinite future.

To register, couples must fill out a form in the city Finance Department and pay \$50 (Greg and Greg 12/2/05).⁸⁶ The language of the ordinance is gender-neutral. Any individuals who meet the above qualifications may register for domestic partnership. Under this ordinance there is no requirement for residency within the city limits of Tucson. The ordinance lists two rights or benefits for registered partners in the City of Tucson: (1) a right to visitation of one's partner in a health care facility, as long as the patient consents; and (2) extending use of and access to city facilities to a registered domestic partner as if the domestic partner were a spouse. Because Tucson's Domestic

⁸⁵ City of Tucson Domestic Partner Registration Instructions www.tucsonaz.gov

⁸⁶ Marshall, Greg and Gaynor Greg. "City's 2-year-old list gets limited praise." *Tucson Citizen*. December 2, 2005. by

Partnership Ordinance is a city law, it cannot address or create rights, privileges, or responsibilities that might be available to spouses or partners under state or federal law. According to the “Domestic Partner Registration Instructions,” partners should consult an attorney and/or make arrangements for a number of important matters, including but not limited to: wills, medical matters, finances and powers of attorney, children and dependents, and medical and health care employment benefits.

Although domestic partnership often is thought of as the province of same-sex couples, the arrangement can be beneficial for heterosexual couples, said Cathy Busha, spokeswoman for Wingspan, Tucson’s LGBT organization. Heterosexual couples deal with many of the same issues as same-sex couples, including inheritance, medical decisions and asset management, said Marian Lupu, executive director for the Pima Council on Aging. Arizona governments providing medical benefits to domestic partners include Pima County, Pima Community College, the Sunnyside and Tucson unified school districts, as well as Phoenix, Scottsdale, Tempe and Tucson (www.tucsonaz.gov).

Arizona has a relatively short history with the Marriage Equality Movement. But some feel the move toward Domestic Partnership benefits is a start. Before November, it was thought that if Prop 102 was rejected, it may have been possible that the Arizona Supreme Court would again revisit the *Standhardt v. Arizona* case. However, with the measure passing the hopes of the Marriage Equality Movement in Arizona is stalled for the time being.

Conclusion

Arizona is a “typical” case of how difficult it is to challenge/change the basic tenets of the national security imaginary and to construct a counter-narrative. Founded on gendered, hierarchical, and heteropatriarchal norms, the central function of marriage for the state, is as a normalizing mechanism to reproduce heteronormative patriarchal relations. For example, in the *Standhardt* case, even though evidence was provided to argue that banning same-sex marriage was unconstitutional, the issue of the ability of heterosexuals to create a child “who is biologically related to both of them,” played a role in the states’ defense of its ban on gay marriage. Consequently, the Arizona Court of Appeals ruled that the ban on same-sex marriage is constitutional and that the state has reasonable interest in seeing that procreation happens in marriage between a man and a woman. Legal counsel for the Center for Arizona Policy, Peter Gentala stated, “Public-opinion poll after public-opinion poll shows that same-sex marriage is rejected by Arizonans and by Americans. Basically the only way for same-sex marriage to come to the U.S. is by declaration of judges. It’s not going to happen through the ballot box” (Kiefer 5/25/04). So far, Gentala’s statement has turned out to be true.

As the road to marriage equality continued in Arizona – both sides of the debate argued for stability. The LGBTQ community pointed out that there were couples ready to pledge their lives and live as married persons – creating stability for themselves and their children. The opposition to same-sex marriage, led by the Center for Arizona Policy and its Evangelical backers, also argued that keeping marriage between one man and one woman was essential for maintaining the stability and security of the state. However, when Prop 102 passed in November, it was evident that the majority of voting

Arizonan's continued to interpret gay marriage as a "danger" or threat to the security of the nation.⁸⁷

⁸⁷ *On a side note:* On July 28, 2008, the state Senate Ethics Committee voted to investigate Senator Jack Harper, R-Surprise, for turning off the microphones of democratic senators Chevront and Aboud during the last day of the legislative session on June 27th. This event cut short what is being called a Democratic filibuster by Chevront and Aboud and paved the way for lawmakers to refer the same-sex-marriage ban to the fall ballot. Chevront asked the Senate Ethics Committee to issue a formal reprimand against Harper. Chevront accuses Harper of conspiring with other Republican leaders to intentionally break the rules of the Senate by turning off microphones and allowing the Republican majority leader to make a motion in the middle of a debate between Democratic senators. Senate rules generally provide that senators can speak on the subject of a bill as long as they want without interruption once they are recognized. Chevront calls the move an "unconscionable" violation of Senate rules. While Harper makes the comment that "their filibuster was not allowed by Senate rules – they were repeating points, not making new points, and they did not have the right to keep the floor," said Harper, who had helped stage an all-night filibuster to stall the passage of a state budget just a day earlier (Crawford 7/22/08).

Senator Jack Harper said at the time that he "pressed the wrong button." But after the ethics complaint was filed, Harper said he was right to turn off Senators Chevront and Aboud's microphones because their debate was out-of-order (Crawford 7/29/08). Republican Senator Jay Tibshraeny of Chandler, Chairman of the Ethics Committee, broke partisan ranks and joined the committee's two Democrats in voting to continue the investigation. The complaint is now before Tibshraeny who criticized his fellow senators on the floor for a loss of decorum in the final hours of the session, now says that holding another hearing would allow senators to "clear the air" and ask questions about what happened.

~ Chapter Six ~

*Stability Across the Commonwealth?
Massachusetts' Road to Legalizing Same-sex Marriage*

In an historic decision, the Massachusetts Supreme Judicial court ruled on November 18, 2003, that gay and lesbian couples have the right to civil marriage in Massachusetts. The ruling in GLAD's⁸⁸ case, *Goodridge v. Department of Public Health*, is the first of its kind in this country by a state high court. The Massachusetts Supreme Judicial Court (SJC) held that:

Banning gay marriage barred access to the protections, benefits, and obligation of civil marriage, a person who enters into an intimate, exclusive union with another of the same sex is arbitrarily deprived of membership in one of our community's most rewarding and cherished institutions. That exclusion is incompatible with the constitutional principles of respect for individual autonomy and equality under law.⁸⁹

For supporters of same-sex marriage this is a legal and cultural milestone. According to GLAD – “At long last, gay and lesbian families and their children are finally equal families in the Commonwealth of Massachusetts” (www.glad.org).

MassEquality, Massachusetts' leading LGBTQ advocacy organization has successfully created a counter-narrative to heteronormativity and feels strongly that Marriage Equality and the stability that it brings is good for Massachusetts.

⁸⁸ GLAD's Mission Statement: founded in 1978, Gay and Lesbian Advocates & Defenders (GLAD) is New England's leading legal rights organization dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression. Providing litigation, advocacy, and educational work in all areas of gay, lesbian, bisexual and transgender civil rights and the rights of people living with HIV, GLAD has a full-time legal staff and a network of cooperating attorneys across New England.

When we go to court, we go there to win. But regardless of the outcome, each time we argue a case, we make a statement that chips away at outdated laws, challenges stereotypes, and helps further our cause: to ensure equal justice under law for all.

The commitment to individual dignity and freedom is an intrinsic part of the American experience, yet for many of us, the way we are treated by society reflects a very different reality. GLAD has sought to create an American society true to its founding principles that all people are created equal and endowed with certain inalienable rights (www.glad.org).

⁸⁹ *Goodridge v. Mass. Department of Public Health*, 440 Mass, 309, 798 NE2d 941 (Nov. 18, 2003).

It is a significant moment when the three branches of the Massachusetts government stand united on matters of equality. In granting and protecting the rights of same-sex couples to marry, our government sent a powerful message: in this Commonwealth, an individual's sexual orientation has no bearing on their value or rights as a citizen (www.massequality.org).

MassEquality believes that the Commonwealth is better as a result: families and children enjoy greater protection, communities are strengthened, and Massachusetts is a more welcoming place for gay and lesbian couples, their children, and their loved ones.

Families headed by same-sex couples have also gained important benefits and legal protections that non-gay couples in Massachusetts have long enjoyed. As a result, families across the Commonwealth are safer and more secure, both economically and psychologically (www.massequality.org). In a personal interview with Angela and Dorea Vierling-Claassen, a lesbian couple involved in the struggle for equal rights in Massachusetts (they contributed to MassEquality, wrote their legislators, participated in Constitutional Conventions, etc.). The women also stated how they and their daughter have felt the benefits and protections of legal marriage (personal interview 7/9/08).

These benefits include:

- Access to health insurance through a spouse's workplace
 - The right to make medical decisions if one spouse is incapacitated
 - Hospital visitation rights
 - The ability to file joint tax returns in Massachusetts
 - The ability to transfer property between spouses without being penalized by state gift taxes
 - Ability to file for joint home and auto insurance policies
 - The right to determine how and where a spouse is buried
 - Automatic inheritance of shared assets after a spouse's death
 - Access to work leave benefits, such as sick time to care for an ailing spouse or non-biological child, or bereavement leave after the death of a spouse
- www.massequality.org/ourwork/marriage

Advocates of same-sex marriage argue that gay marriage supports the stability of the

national body by providing benefits and protections equally to all of its citizens. Central arguments in favor are largely drawn on liberal notions of equal rights based on full citizenship. The opposition to gay marriage is focused primarily on the one man, one woman procreative aspects of heteronormative marriage. Regardless, both sides believe their point of view provides the stability needed for the security of the national body.

As stated in earlier chapters, the U.S. nation-state is white, capitalist and heteronormative. Yet, it has also claimed the rhetoric of liberal equality for itself. While the struggle for gay marriage may ultimately provide challenges to its former identity, the groups supporting the same-sex movement have based their struggle on liberal equality claims, since in the context of the historically liberal politics of Massachusetts, liberal equality claims have not faced the obstacles that conservative states such as Arizona have. In contrast to Arizona, the politics of Massachusetts make it less difficult for the same-sex marriage movement to further its liberal equality goals.

This chapter explores the road to legal same-sex marriage in Massachusetts. I explore its legislative debates, LGBTQ organizations such as MassEquality, as well as groups in opposition, legal cases, GLAD, and newspaper documentation, in an effort to address the central question of this project. In what ways does challenging the heterosexual imperative of marriage constitute a “danger” or threat to the security of the nation? For that reason, this chapter will examine the years from 2001 through 2008 in Massachusetts’ road to marriage equality beginning with the landmark case of *Goodridge v The Department of Public Health*; the Dangers of Legal Same-sex Marriage – Governor Mitt Romney’s Crusade for a Constitutional Amendment; and the Backlash – “Marriage Destruction Day” and the 1913 law.

Goodridge v Department of Public Health ~ Securing stability for LGBTQ families

Seven gay and lesbian couples from five counties throughout the commonwealth, who had been recently denied marriage licenses at their city or town halls, filed suit on April 11, 2001 in Suffolk Superior Court seeking the right to marry in Massachusetts just days after acting Governor Jane Swift told the *Herald* she would fight such proposals. The plaintiff couples were represented by GLAD, New England's Gay & Lesbian Advocates & Defenders. The defendant was the Department of Public Health (DPH) which has the ultimate responsibility for enforcing all state laws governing marriage and its licensing in municipalities (www.glad.org/News_Room/press38-4-11-01).⁹⁰ "The recognition of marriage is an important institution in our Commonwealth and in our country and should be for heterosexual couples," Swift said. However, Swift said she supported domestic-partner benefits for gay couples (Kibbe 4/12/2001).⁹¹ But GLAD said the opposition from Swift and other politicians should have no bearing on the case in Suffolk Superior Court.

"This case presents an historic opportunity for Massachusetts," said Mary Bonauto, GLAD's Civil Rights Director and co-counsel in the landmark Vermont marriage case. "Marriage is a legal relationship and a social status understood everywhere. Our Commonwealth now has the chance to recognize that same-sex couples have an equal right to civil marriage" (www.glad.org/News_Room/press38-4-11-01). At the time, the seven Massachusetts couples had been in committed relationships between five and thirty years. Four of the couples have young children; others have faced health

⁹⁰ *Press Release*, April 11, 2001. "GLAD Files Suit in Massachusetts Seeking Civil Marriage for Lesbian and Gay Couples."

⁹¹ Kibbe, David. "Gay Couples Contest State Marriage Ban." *Cape Cod Times* (Hyannis, MA) – April 12, 2001.

crises. All were concerned about providing the security for each other and their families which automatically comes with marriage and was not available to them. Many of the couples wanted marriage to make a statement to their families and others about the commitment of their relationship.⁹² “Each of the couples in this case are a part of their community,” said Bonauto. “They share a great deal in common with other families in Massachusetts. Some coach Little League, others volunteer at their children’s schools, while some participate in civic organizations.” They have made a commitment to each other for life like any married couple, yet none of them were fully secure without marriage (www.glad.org/News_Room/press38-4-11-01).

“We were denied an opportunity to just fill out an application,” said Julie Goodridge, 43, who has a 5-year-old daughter with her partner of 14 years – Hillary Goodridge. “We’ve considered ourselves married for most of that time” (Macero Jr. 4/12/01).⁹³ The lawsuit sought a declaratory judgment that the refusal to grant marriage licenses to the plaintiff couples violates the Massachusetts Constitution. Attorney General Tom Reilly, whose office will defend the state in court, said “my office has a duty to defend the state law challenged by this lawsuit, and we intend to do so in a fair and responsible way so that the court can make the most well-informed and legally sound decision,” Reilly said (Macero 4/12/01). A similar lawsuit in Vermont prompted a benchmark court ruling in 1999 that said the protections and benefits of marriage must be

⁹² The plaintiff couples in the case are: Hillary and Julie Goodridge of Boston who are the parents of a 5-year-old daughter; Michael Horgan and Ed Balmelli of Boston, who are both from large families in Central Massachusetts; Maureen Brodoff and Ellen Wade of Newton who have 12-year-old daughter; Gloria Bailey and Linda Davies of Orleans who have been a couple for 30 years; Richard Linnell And Gary Chalmers of Northbridge who are the parents of an eight-year-old daughter; Heidi Norton and Gina Smith of Northampton who have two young sons; and Robert Compton and David Wilson of Boston, who are each parents of grown children. David is also the grandfather of four grandchildren (www.glad.org/News_Room/press38-4-11-01).

⁹³ Macero Jr., Cosmo. “Lawsuit Seeks Gay Unions in Massachusetts.” *Boston Herald*, April 12, 2001.

available to gay and lesbian couples. The ruling prompted a divisive political battle that produced a “civil unions” law, while costing several lawmakers their elected offices (Macero 4/12/01). Bonauto said the Vermont decision “lifted people’s hopes that it is possible.” She said Massachusetts “has a strong track record on civil rights... We sort of feel we are in the right place at the right time” (Kibbe 4/11/01).

Four months later, on August 20th, 2001, GLAD took its next major step in the pending legal suit seeking civil marriage for gay and lesbian couples in Massachusetts by serving a motion for summary judgment with the Attorney General’s Office. The 69-page legal brief specifically argued that any interpretation of the marriage laws as prohibiting civil marriage between same-sex couples is unconstitutional. Furthermore, if the state chooses to discriminate and deny gay and lesbian couples the right to marry, that position violates basic guarantees of equal treatment under the law. It was anticipated that once the Attorney General opposed GLAD’s motion for a summary judgment, the case would be heard in state Superior Court by early the next year

(www.glad.org/News_Room/press45-8-20-01).⁹⁴ And it was – March 12, 2002 when GLAD argued their case before Judge Thomas Connolly in Suffolk Superior Court. Both GLAD and the Attorney General’s office, which defended the law, agreed that no facts were in dispute and the case could therefore be resolved as a matter of law with no trial.

At the hearing GLAD argued:

that civil marriage is a fundamental right under the state constitution that is rendered meaningless if you cannot marry the person you love; that denying civil marriage to gay and lesbian citizens of the Commonwealth violates their right to equal treatment based on sex and sexual orientation; and that the state can offer no justification for the exclusion for same-sex couples from the institution of marriage, nor from its attendant benefits and protections. (“Massachusetts Court

⁹⁴ “GLAD Takes Major Step Toward Resolving Suit Seeking Civil Marriage for Lesbian and Gay Couples.” August 20, 2001.

to Hear Case Seeking Civil Marriage for Same-Sex Couples.” 3/12/02.
www.glad.org/News_Room/press50-3-12-02)

“Marriage is a legal relationship and a social status that is universally understood. These couples ask simply that the Commonwealth fulfill the state constitution’s guarantees of equal treatment” commented Jennifer Levi, GLAD Senior Staff Attorney who argued the case in court (www.glad.org/News_Room/press50-3-12-02).

By May 8th, the Massachusetts trial court had ruled against the seven couples who challenged Massachusetts laws that denied them the fundamental right to marry.

This is just the beginning. We have always known that there will be no final resolution in this case until it is heard by the Supreme Judicial Court. Our objective in this round was primarily to begin the process of making our case for equal treatment of all families in the Commonwealth” remarked Jennifer Levi (www.gald.org/News_Room/press51-5-8-02).

The court based its denial of marriage licenses on a legal conclusion that having and raising children is central to the purpose of marriage, despite acknowledging that 4 of the 7 couples in the case have children and that Massachusetts law allows same-sex couples to jointly adopt.⁹⁵ However, on May 21st GLAD appealed the marriage case for same-sex couples. By the end of the year, on November 8 – an unprecedented number of independent organizations from the Boston Bar Association to the Urban League of Eastern Massachusetts, the Greater Boston Civil Rights Coalition, and a host of child welfare experts joined GLAD in filing its brief along with 10 supporting briefs in the case before the Supreme Judicial Court (SJC) seeking equal marriage rights for gays and lesbians. “The strength of our case – that it’s fundamentally discriminatory to deny these couples and families the same protections as others – is clearly demonstrated in the depth and breadth of those organizations and individuals who are standing with us,” said Mary

⁹⁵ “Massachusetts Superior Court Denies Marriage Licenses: Same-Sex Couples Plan Appeal.” May 8, 2002. www.gald.org/News_Room/press51-5-8-02

Bonauto, lead GLAD attorney on the case. And GLAD's Executive Director remarked that "We hope and expect the court to come to the same conclusions"

(www.glad.org/News_Room/press55-11-8-02). On March 4, 2003 the full bench of the state Supreme Judicial Court gathered to hear arguments on the landmark case, which was ultimately decided in November of that year.

On November 18, 2003, in an historic decision, the Massachusetts Supreme Judicial Court (SJC) ruled that gay and lesbian couples can no longer be excluded from obtaining civil marriages in Massachusetts. The 4-3 ruling in *Goodridge v. Department of Public Health*, filed by GLAD is the first of its kind in the country by a final appellate court (www.glad.org/News_Room/press63-11-18-03). "The Massachusetts Constitution affirms the dignity and equality of all individuals," SJC Chief Justice Margaret Marshall wrote in the majority opinion – "It forbids the creation of second-class citizens" (Beardsley 11/19/03).⁹⁶ Joining Marshall in the majority opinion were Justices John M. Greaney, Roderick L. Ireland and Judith A. Cowin. The dissenters were Justices Francis X. Spina, Robert J. Cordy and Martha B. Sosman. The courts ruling is based on the due process and equality provisions of the State Constitution. The majority based the decision on the equal protection and due process provisions of the Massachusetts Constitution, which held that there is no rational reason for this discrimination (Burge 11/19/03).⁹⁷ As the court put it, "The marriage ban works deep and scarring hardships on a very real segment of the community for no rational reason." Because this ruling is based on the Massachusetts Constitution, there is no appeal to the U.S. Supreme Court

⁹⁶ Beardsley, Elisabeth J. "They Do – Bay State top court says gays have right to marry." *Boston Herald*, 11/19/03.

⁹⁷ Burge, Kathleen. "Gays Have Right to Marry, SJC says in Historic Ruling – Legislature Given 180 Days to Change Law." *Boston Globe*, 11/19/03.

(www.glad.org/News_Room/press63-11-18-03). However, Governor Mitt Romney and other state lawmakers vowed to try to rewrite the Massachusetts Constitution to ban gay marriage. The court gave the Legislature 180 days before its ruling took effect, but amending the constitution would take at least until 2006 (Lewis 11/20/03).⁹⁸

***The Dangers of Same-sex Marriage:
Governor Mitt Romney and the Crusade for a Constitutional Amendment***

Governor Romney lead the charge for civil unions, which would have bestowed certain rights to gay couples but deny marriage licenses, even though advocates and legal analysts say civil unions fall short of the court's ruling. He issued a cease-and-desist order on November 18 to clamp down on local officials who are eager to issue gay marriage licenses right away, notwithstanding the 180 days the SJC gave lawmakers to act – supposedly to revise laws to fit the court's ruling. The governor vowed to push a constitutional amendment⁹⁹ banning gay marriage onto the 2006 ballot, while simultaneously working with lawmakers over the next six months to create a civil union law he claims would satisfy the SJC. The governor indicated he had to hold his nose in voicing support for civil unions, saying he'd rather not provide full benefits to gays at all – but admitting there's no way around it. "I would not provide a, if you will, marriage equivalent through civil unions," Romney said (Beardsley 11/20/03), and stated he would fight for a constitutional amendment. President Bush weighed in as well, saying, "Marriage is a sacred institution between a man and a woman," and charged the Massachusetts ruling with "violating this important principle" (Beardsley 11/20/03).

⁹⁸ Lewis, Raphael. "Groups Muster to Fight Gay Marriage in Mass." *Boston Globe*, 11/20/03.

⁹⁹ Proposed State Constitutional Amendment, Initiative Petition. "When recognizing marriages entered into after the adoption of this amendment by the people, the Commonwealth and its political subdivisions shall define marriage only as the union of one man and one woman."

However, gay rights advocates pointed to the landmark 1954 decision U.S. Supreme Court ruling (*Brown v. Board of Education*), the “separate but equal” doctrine. “The court said separate is inherently unequal,” replied Josh Friedes of the Freedom to Marry Coalition (national marriage equality organization) (Beardsley 11/20/03).

Conservative House Speaker Thomas M. Finneran, a staunch gay marriage opponent and supporter of an amendment, and other leading House lawmakers, rushed to rally in support for the constitutional amendment which would be up for consideration in February of 2004. “The bid to block the SJC’s 4-3 ruling took place as an unprecedented deluge of telephone calls and e-mails denouncing the decision - flooded Beacon Hill offices, apparently the orchestrated campaign of gay marriage opposition groups from coast to coast” (Lewis 11/20/03). Republican Philip Travis, the amendment’s lead sponsor, called the SJC decision “demoralizing in every sense of the word,” and predicted – without elaboration – that no licenses would be issued to gays (Beardsley 11/20/03). Ronald Crews, president of the Massachusetts Family Institute (look up their mission statement) which has been at the forefront of the fight in Massachusetts against gay marriage, said his organization would work with an Arizona-based Alliance Defense Fund, a conservative Christian lawyers group that pledged to offer Crews its legal services (Lewis 11/19/03). Legal experts predicted the court ruling would invite a flood of litigation nationwide – but said Massachusetts is not likely to become a gay marriage destination, since the federal Defense of Marriage Act (DOMA) allows states to not acknowledge other states’ gay marriages (Beardsley 11/20/03).

Some public officials who perform civil marriage are also opposed to allowing gays to marry and may refuse to preside despite the ruling. “A lot of our members are

older people who feel this is something they could not do morally,” said Claire M. Mentus, president of the Massachusetts Justices of the Peace Association (Beardsley 11/20/03). In addition, Roman Catholic Archbishop Sean P. O’Malley issued a stern admonition of the decision. “Since the inception of the Commonwealth and the writing of the Massachusetts Constitution, jurists, public officials and common sense have interpreted marriage as meaning a lifetime covenant between a man and a woman” (Crittenden 11/19/03).¹⁰⁰ Episcopalian bishops, the Rev. Thomas Shaw, the Rev. Bud Cederholm and the Rev. Gayle Harris countered in their statement that they “are encouraged” by the action. The bishops wrote, “Same-sex couples who seek to legalize their commitments to each other strengthen the foundation of our society as they form and care for their families and contribute in diverse ways to their communities” (Crittenden 11/19/03). Reform Rabbi Ronne Friedman of Temple Israel in Boston, who has been performing same-sex ceremonies for more than a decade, called the decision a victory for justice and fairness. However, Orthodox Rabbi Gershon Gewirtz said, “The whole notion of gay marriage is something that is outside the framework of what we understand as marriage.” But the Rev. William G. Sinkford of the Boston-based Unitarian Universalist Association said, “We’re in celebration mode here. It’s my hope that today is a step forward. Equal rights for bisexual, transgendered and gay people are not a matter of majority opinion, they are a matter of moral justice” (Crittenden 11/19/03).

However, many people in Massachusetts and across the nation believe in the *slippery slope argument* which highlights some of the central threats that have been

¹⁰⁰ Crittenden, Jules. “Religious leaders praise, curse court’s gay marriage decision.” *Boston Herald* 11/19/03.

interpreted as dangers to the safety and security of the nation – the end of separate gendered sex-roles, polygamy and incest. As part of the majority opinion, Chief Justice Margaret Marshall stated that same-sex marriage “does not disturb the fundamental value of marriage in our society” (Jacoby 11/20/03). Jeff Jacoby of the *Boston Globe* responded by arguing that the decision is the most radical redefinition of marriage in centuries, and that there were going to be disturbing consequences. He believed that it may take a decade or two until the full impact is evident, but some of the coming changes can already be anticipated. First, he stated that it will become improper to speak of unique sex roles in family life. “The meanings and status associated with words like “husband” and “wife” will be erased from the law; most likely, the words themselves will be replaced with the unisex “spouse,” just as “father” and “mother” will give way to “parent” (Jacoby 11/20/03).¹⁰¹

In addition, the redefinition of marriage will not end with same-sex weddings. In explaining its decision, the court says: “Without the right to marry – or more properly, the right to choose to marry – one is excluded from the full range of human experience and denied full protection of the laws for one’s avowed commitment to an intimate and lasting human relationship.” But, Jacoby argued ~

If that is true for committed gay and lesbian unions, it is just as true for every other committed but nontraditional union. Why shouldn’t a man and two women be permitted to marry? Or two family members – of the same-sex or not? If the opposite-sex limitation must yield to ‘the right to choose to marry,’ by what rational argument can the only-two-spouses or no-close-relatives limitations be sustained?” (Jacoby 11/20/03).

Supporters of same-sex marriage, Jacoby claimed, dismiss concerns about polygamy and incest as slippery-slope nonsense.

¹⁰¹ Jacoby, Jeff. “Down the Slippery Slope.” *Boston Globe*, 11/20/03.

The Massachusetts Supreme Judicial Court's majority ruled that the centuries-old notion of marriage as limited to a man and woman *should* be updated to define the institution as the exclusive, "voluntary union of two persons as spouses." In response, some politicians on Beacon Hill embraced negotiations for civil unions as a way to ban gay marriage. The problem with this kind of compromise, stated John Rogers of the House Ways and Means Committee, is that its time is already passing. If politicians really wanted to strengthen American Families, they'd be better off funding after-school programs and creating jobs. If the Catholic Church is serious about families, it should make sure its new procedures against child abuse are working. Railing about gay marriage in a society where half of straight marriages end in divorce is gutter politics that exploits one of our deepest remaining strains of bigotry. "My consistent philosophy throughout has been that it's not only possible but responsible to erect new foundations of social and economic justice without tearing down a time-honored tradition" (Jacoby 11/19/03).

Clearly, GLAD was very disappointed that elected officials were blocking the doorway to equality. The SJC was clear, they argue, that it is unconstitutional to deny these couples the right to marry (www.glad.org/News_Room/press64-11-21-03).¹⁰² The three dissenting judges actually saw things similarly to GLAD. While each of them objected to the fact that the Court, rather than the legislature, made the decision – they saw it as a marriage ruling. They did not see 'wiggle room' or any option other than marriage. As dissenting Justice Cordy put it, "the majority concluded that a marriage license cannot be denied to an individual who wishes to marry someone of the same sex."

¹⁰² "Statement of Mary L. Bonauto, Attorney for Plaintiff Couples in Marriage Case in Response to Recent Statements of Gov. Romney and Attorney General Reilly." www.glad.org/News_Room/press64-11-21-03

Civil unions, however defined, are not an adequate remedy. By definition they are not marriage, explains Bonauto. The word “marriage” is one of the major “protections” of marriage. Only a legally married couple has the unique legal status marriage confers and which allows marriage to be respected by state and federal governments, other countries, and third parties like banks and employers. Married couples are also protected with over 1000 federal laws. Civil unions cannot provide these protections

(www.glad.org/News_Room/press64-11-21-03).

Bonauto stated that the court has said inequality must end, “and we know that people will support us when they understand the real human consequences of discrimination against these families, and when they realize that is decision only invokes civil marriage licenses and does not affect religious practices or convictions”

(www.glad.org/News_Room/press63-11-18-03). Justice Greaney, in an opinion concurring with the majority, said even opponents of same-sex marriage should do more than offer grudging acknowledgment of the court’s authority. “We share a common humanity and participate together in the social contract that is the foundation of our Commonwealth,” Greaney wrote. “Simple principles of decency dictate that we extend to the plaintiffs and to their new statuses, full acceptance, tolerance, and respect. We should do so because it is the right thing to do” (Burge 11/19/03). On a human level, “this is going to make couples who can now marry legally secure and very happy,” added Gay Buseck, GLAD’s Executive Director. “It won’t change life for anyone else, but it will be a monumental change for those individuals who can finally marry the person they love” (Burge 11/19/030).

Expanding on the prior year's historic decision, on February 4th, 2004, the state's highest court said that civil unions would promote discrimination and gays have a right to marry under the state constitution. The opinion by the state's Supreme Judicial Court clears the way for gay couples to obtain marriage licenses in Massachusetts on May 17, 2004 (Ring 2/5/04). Calling it "a matter of principle and practicality," Mary Bonauto of GLAD praised the Massachusetts SJC for its Opinion of the Justices that a bill proposing a marriage ban along with civil unions would still violate the equality and liberty guarantees of the Constitution (www.glad.org/News_Room/press68-2-04).¹⁰³ However, Governor Romney stated, "This issue is too important to leave to a one-vote majority of the SJC, and the people of Massachusetts should not be excluded from a decision as fundamental to our society as the definition of marriage" (Beardsley 2/5/04).¹⁰⁴

But in a sharply divided 2-3 ruling, the SJC held that Vermont-style civil unions, as outlined in the Senate Bill 2175, amount to "invidious discrimination" by withholding the title of marriage even while conferring the benefits.¹⁰⁵ "The bill maintains an unconstitutional, inferior, and discriminatory status for same-sex couples," SJC Chief Justice Margaret Marshall wrote for the majority (Beardsley 2/5/04). The explosive SJC decision turned the Beacon Hill debate on its head, sending politicians scrambling in advance of the next weeks' constitutional convention where a proposed gay marriage ban would be on the agenda. On February 11, the Massachusetts Legislature opened the Constitutional Convention with a debate on a proposed constitutional ban on gay marriage and adjourned a day later deadlocked, after failing to pass three separate

¹⁰³ "GLAD Praises SJC Opinion that a New Marriage Ban would Reconstitute Unconstitutional Governmental Discrimination Against Same-sex Couples." www.glad.org/News_Room/press68-2-04

¹⁰⁴ Beardsley, Elisabeth J. "Wed Lock – SJC secures rights of gays to marry." *Boston Herald*, 2/5/04.

¹⁰⁵ Silberman, Ellen J. & Jack Meyers. "Same-Sex Marriage Battle – Sides ramp up the pressure – Legislators squarely in the middle." *Boston Herald*, 2/13/04.

proposed bans on same-sex marriage. The convention voted 103 to 94 to reject a constitutional amendment defining marriage as a union between a man and woman (Silberman and Meyers 2/13/04). However, by March 29th, after months of wrangling, the Massachusetts Legislature took one step closer to banning gay marriage by approving a constitutional amendment that defines marriage as one man and one woman and creates civil unions for same-sex couples (Fenn 3/30/04).¹⁰⁶ Immediately after the House and Senate gave final approval to a constitutional amendment, Governor Mitt Romney told reporters he would ask Attorney General Reilly, who acted as the state's lawyer, to seek a legal stay from the court. However, Reilly said he would not honor a request by the governor to try to legally block gay couples from getting married on May 17th. "It is very clear to me as attorney general that the majority of the SJC has made up their minds. Do I agree with their decision? No. Absolutely not. But that is the law of this state," Reilly said (Mehegan 3/30/04).¹⁰⁷ Supporters of the so-called compromise amendment – which passed 105-92 – said the measure reflects the public's desire to keep marriage between a man and a woman, while not denying civil rights to any citizens. An identical version of the proposed amendment would have to be approved again in the 2005-2006 legislative session before it could be placed before voters (Sutner 3/30/04).¹⁰⁸ Only two days later, State Attorney General Reilly said gay marriage will apply to Massachusetts residents only because of an old 1913 state law¹⁰⁹ that prevents couples from out-of-state from

¹⁰⁶ Fenn, Jennifer (*Sun Statehouse Bureau*). "Legislature OKs gay-marriage ban – Vote would create gay civil unions; many on both sides unsatisfied." *The Sun*, 3/30/04.

¹⁰⁷ Mehegan, Julie (*Sun Statehouse Bureau*). "Reilly: Governor's request for a stay has 'no legal basis'." *The Sun*, 3/30/04.

¹⁰⁸ Sutner, Shaun. "Gay marriage, no – civil union, yes Lawmakers forward compromise to '05." *Worcester Telegram & Gazette*, 3/30/04.

¹⁰⁹ Massachusetts General Laws: Chapter 207, section 11: Non-residents; marriages contrary to laws of domiciled state. (Together with section 12, below, commonly referred to as The 1913 Law.) Prohibits contracting a marriage in Massachusetts that would be void in a party's home state. Chapter 207, Section

getting married in Massachusetts if they are ineligible for marriage in the state where they live.

The Backlash ~ The 1913 Law and “Marriage Destruction Day”

Governor Romney jumped on this opportunity, and on May 4, 2004 his top legal advisor warned city and town clerks that issuing marriage licenses to out-of-state gay couples would make the marriages void and could result in legal repercussion for the clerks.

During a closed-door training session at Barnstable Town Hall in Hyannis, members of Governor Romney’s administration advised about 60 town clerks to request evidence of the couple’s intention to move, but said it was not legally necessary (Gershon 5/5/04).¹¹⁰

A sworn affidavit – including the state’s revised Notice of Intention of Marriage form, which now asks about intended residence – would be sufficient. State officials told clerks that “a vague intent of someday having residence in the state is insufficient,” but out-of-state applicants would not have to say exactly when they intended to move (Gershon 5/5/04). Because no other state allows same-sex marriage, the 1913 law would block gay couples from going to Massachusetts to marry if they did not live or intend to live in Massachusetts, Romney contended. The 1913 law, adopted in part to block interracial couples from other states marrying in Massachusetts, prohibits out-of-state couples from marrying if the marriages would be void in their home states. Romney said that the law prohibits residents of all 49 other states from entering a same-sex marriage, since none of those states specifically allows gay marriage. His critics said Romney’s

12: Licensing Officer to ascertain Legal Ability of Nonresidents to Marry. Requires a town clerk to “satisfy himself, by requiring affidavits or otherwise, that such person is not prohibited from intermarrying by the laws of the jurisdiction where he or she resides.

¹¹⁰ Gershon, Eric. “Clerks have final call on gay marriages.” *Cape Cod Times*, 5/5/04.

interpretation of the law is too broad, and that the law is archaic and unevenly applied (Abraham and Greenberger 5/6/04).¹¹¹ Senate Democrats are launching an effort to repeal the 1913 law and are filing an amendment attached to the budget, that would effectively eliminate the residency requirement for same-sex couples seeking marriage licenses. “I believe that my colleagues in the Senate will agree that there is no place for race discrimination, or sexual discrimination, in our statutes, and the time has come to eliminate the 1913 discriminatory law,” said Democratic Senator Jarrett T. Barrios of Cambridge (Abraham and Greenberger 5/6/04).

Just a few days later on May 17, 2004, history was made in Cambridge when the nation’s first-ever same-sex couple with an intention-to-wed certificate left Cambridge City Hall – step one to securing a marriage license. Cambridge opened its City Hall at midnight to take applications for marriage licenses. Boston and the rest of the state followed in the morning, where “more than 1,000 gay and lesbian couples streamed into city and town halls across the state seeking licenses to marry, as Massachusetts marked the first day of legalized same-sex matrimony” (Abraham and Paulson 5/18/04).¹¹² A *Globe* survey of 752 couples in 11 cities and towns found that: Two-thirds of the gays who applied for marriage licenses were women, half of the couples had been together for at last a decade, and an enormous majority were Massachusetts residents (*Boston Globe* 5/18/04).¹¹³ The survey of men and women who waited in line from Provincetown to Springfield and many towns in between found that one-third of the applicants had children living with them. Forty percent of female couples said they had children in their

¹¹¹ Abraham, Yvonne and Scott S. Greenberger. “2 Senators Would Let Gay Outsiders Wed – Amendment Seeks Repeal of 1913 Law.” *Boston Globe*, 5/6/04.

¹¹² Abraham, Yvonne and Michael Paulson. “Wedding Day – First Gays Marry Many Seek Licenses.” *Boston Globe*, 5/18/2004.

¹¹³ *Berkshire Eagle, The* (Pittsfield, MA). “Two-thirds of applicants are women, survey finds.” 5/18/04.

households, compared with 12 percent of the male couples. The median age of those surveyed was 43, and they ranged in age from 19 to 75. The median length of their relationships was 10 years, with the longest being 49 years and the shortest only a few months. Thirty percent of the women, compared with 19 percent of the men, said they had once been in a heterosexual marriage. Twelve percent of the couples said they had been in a civil union together (*Boston Globe* 5/18/04).

Opponents of gay marriage said they were counting on a backlash to the legalization of same-sex marriage in Massachusetts to help them marshal public support, as they fought to get the SJC's ruling overturned. Groups that oppose gay marriage held only scattered protests during the first 24 hour that gay couples could obtain marriage licenses, with leaders saying they wished to avoid ugly conflicts and to show respect for the rule of law. But they made clear that they would try to change the law any way they could – through the courts, the Legislature, and the fall campaigns (Klein 5/18/04).¹¹⁴ However, leaders of the Article 8 Alliance, an organization that worked to persuade the Legislature to remake the state's highest court, held a rally on City Hall Plaza in Boston just a few feet from where couples lined up to apply for marriage licenses. The group said it was protesting “marriage destruction day” and demanded that the four justices who signed on to the legalization of gay marriages be removed (Klein 5/18/04).

By May 19, The Democrat-controlled state senate voted overwhelmingly to repeal the 1913 law that Romney used to bar out-of-state gay couples from marrying in Massachusetts. However, the repeal died after leaving the Senate. “The sole purpose of this 1913 statute was to discriminate based on race,” Senator Dianne Wilkerson, D-Boston, said on the senate floor. “It has not been enforced in 50 or 60 years and for good

¹¹⁴ Klein, Rick. “Groups Hold Out for Public Furor Before Acting.” *Boston Globe*, 5/18/04.

reason. It is so ironic but not surprising that our governor would invoke this” (Sutner 5/20/04).¹¹⁵ The 28-3 vote on an amendment to the Senate budget came as Worcester City Clerk David J. Rushford defied the governor by not immediately turning over the marriage license applications that Mr. Romney demanded on the 17th, when same-sex marriages became legal. Mr. Rushford’s policy of not requiring license applicants to provide proof of residency drew many gay couples to Worcester, where more than 75 couples – including at least 18 from other states – applied for licenses in the first week. Mr. Rushford’s new resistance could trigger legal action against him by the administration, which had threatened to seek a court injunction to stop him and other officials from marrying out-of-state gay couples (Sutner 5/20/04).

A mecca for gays at the tip of Capt Cod, Provincetown was one of the four communities that openly defied Romney’s order not to issue licenses to nonresidents after Attorney General Reilly wrote a letter on May 24th threatening legal action. In the letter sent to Provincetown, Somerville, Worcester, and Springfield, Reilly ordered the municipalities to “cease and desist” issuing licenses to out-of-state gay couples. Gretchen Van Ness, the attorney Provincetown had hired to represent it on the issue of same-sex marriage, said town officials were weighing their legal options. They must first respond to Reilly’s request for an explanation of the town’s policy on out-of-state licenses. The policy, which was adopted by the Board of Selectmen Before May 17, states that the town should not turn away same-sex couples because it has never turned away heterosexual couples (Bennett 5/27/04).¹¹⁶

¹¹⁵ Sutner, Shaun. “Seante vote attacks Romney tactic – Clerk defiant on out-of-state gay couples.” *Worcester Telegram & Gazette (MA)*, 5/20/04.

¹¹⁶ Bennett, Jessica. “P-Town Follows Order, For Now.” *Boston Globe*, 5/27/04.

History suggests that race was the basis for the 1913 law. On March 7, 1913, the 38 year old, Harvard-educated lawyer Senator Harry Ney Stearns from Cambridge, persuaded his Senate Colleagues – future president Calvin Coolidge among them – to approve Senate Bill 234. Simply put, the measure barred out-of-state residents from getting married in Massachusetts if their union would be illegal in their home state. Democratic Governor Eugene N. Foss signed the bill into law three weeks later. Some legal analysts believe that Stearn’s intention may have been to prevent out-of-state interracial couples from marrying in Massachusetts to avoid their home state’s ban. At the time, 29 states prohibited interracial marriage, but Massachusetts had scrapped its antimiscegenation law in 1843. Ninety-one years after Senate Bill 234 became law – and decades after it was last enforced – the law is at the center of the controversy over gay marriage. Governor Romney’s critics accused him of “reviving a vestige of the nation’s racist past for his own purposes” (Greenberger 5/21/04).¹¹⁷

The law was first proposed in 1912 by the National Conference of Commissioners on Uniform State Laws, a body of judges, professors, scholars, and lawyers who wanted to create roughly equal statutes from state to state. “Marriage between a white and a negro” was one of the examples of state-specific prohibitions the group mentioned – but it was not the only one. It also cited marriages with a minor without parental consent, and marriage within a specified time after entry of final decree in divorce. Because no record of the 1913 Massachusetts Senate debate has surfaced, nobody knows for sure what Stearns had in mind when he sponsored the legislation. Still, the racial tenor of the times strongly suggests that Stearns, and the Legislature, had race in mind. Randall Kennedy, a professor at Harvard Law School, noted that the Legislature approved the

¹¹⁷ Greenberger, Scott S. “History Suggests Race was the Basis.” *Boston Globe*, 5/21/04.

law at the height of the scandal over black heavy weight boxer Jack Johnson's marriage to Lucille Cameron, an 18 year old white prostitute (Greenberger 5/21/04).

A GLAD Press Release on June 17, 2004 reported that after an emergency ruling on May 14 that had found no merit to a federal lawsuit that sought to stop the issuance of marriage licenses to lesbian and gay couples, the United States Court of Appeals heard arguments in the full appeal of the case. The case is Robert Largess et al. v. Supreme Judicial Court of Massachusetts et al. GLAD intervened in the case on behalf of the seven same-sex couples who were plaintiffs in the Goodridge case (www.gald.org/News_Room/press77-6-7-04).¹¹⁸ "This lawsuit was one of several last ditch attempts to stop marriage for lesbian and gay couples that were all resoundingly rejected by the courts," stated Bonauto.

This case had no merit before May 17 and it has no merit after May 17. The plaintiffs' claims here simply dress up state law arguments against Goodridge that were rejected by the Supreme Judicial Court and attempt to masquerade them in federal court as new federal claims. The federal courts have not been fooled by this. (www.gald.org/News_Room/press77-6-7-04)¹¹⁹

On the one month anniversary of the marriage licenses granted to gay and lesbian couples, two lawsuits were announced on June 17, 2004 challenging the constitutionality and discriminatory enforcement under Massachusetts Laws, Chapter 207 Section 11 (the 1913 reverse Evasion statute). Both suits sought declaratory and injunctive relief from the cease and desist order issued by the Attorney General on May 21, and charge that

¹¹⁸ "GLAD Optimistic After Federal Appeals Court Hearing Today: GLAD Attorneys Anticipate Suit to Stop Issuance of Marriage Licenses to Lesbian and Gay Couples Will Fail Again," 6/7/04. www.gald.org/News_Room/press77-6-7-04

¹¹⁹ The week before Massachusetts began issuing marriage licenses to lesbian and gay couples on May 17, 2004, the United States District Court, the U.S. Court of Appeals for the First Circuit, and the United States Supreme Court, all rejected Largess's request for an emergency injunction to stop the implementation of Goodridge. In its emergency ruling on May 14, the U.S. Court of Appeals easily discarded the argument that the Goodridge violated the Guarantee Clause of the U.S. constitution, ruling that "Goodridge does not establish permanent martial law or declare the Commonwealth a monarchy." www.gald.org/News_Room/press77-6-7-04.

Section 11 is unconstitutional as applied to gay and lesbian couples. The suits were filed in Suffolk County Superior Court on June 18, 2004. One law suit represented 12 cities and town and the other, filed by GLAD, represented eight out-of-state couples.

According to the legal action, the state directive issued to clerks as well as the Attorney General's cease and desist order are unenforceable because the law is invalid as to same-sex couples and because it is being discriminatorily enforced against those couples

(www.glad.org/News_Room/press78-6/17/04).¹²⁰

The first legal skirmish over the law took place on July 13, 2004 in Suffolk Superior Court, where the plaintiffs asked a judge to temporarily allow out-of-state gay couples to get married pending a final ruling. In an 87-page legal brief he submitted, Reilly rejects the plaintiffs' contention that the residency law was discriminatory, pointing out that it is not being applied to all couples seeking marriage licenses, whether they are gay or straight. But he also argued that the 91 year old statute would blunt support for a federal constitutional amendment banning gay marriage, which the U.S. Senate was scheduled for debate in July. Romney testified on Capital Hill in favor of the amendment (Greenberger 7/13/04).¹²¹ Judge Carol Ball gave lawyers for the plaintiffs until later this month to file reply briefs and forward all material to her by Aug. 2. Ball did not indicate when she would rule on the case (Berry *Cape Cod Times* 7/14/04).¹²²

¹²⁰ Press Release: "Injunction Sought Against Commonwealth for Discriminatory Enforcement of 1913 "Reverse Evasion" Law Denying Marriage Licenses to Out-of-State Couples: Two Lawsuits Seek Immediate Relief from Governor's Edict." Somerville, Provincetown, Worcester, Cambridge, Plymouth, Acton, Burlington, Marblehead, Nantucket, Sherborn, Northampton, and Westford filed a complaint seeking declaratory and injunctive relief against Attorney General Thomas Reilly, the Commissioner of the Department of Public Health and Stanley E. Nyberg in his capacity as the Registrar of Vital Records and Statistics. The cities and towns, with the exception of Provincetown, which was represented by Gretchen Van Ness, were represented pro bono by the ACLU and Palmer & Dodge.

www.glad.org/News_Room/press78-6-17-04.

¹²¹ Greenberger, Scott S. "Reilly Says Curb on Gay Marriage Blunts Backlash." *Boston Globe*, 7/13/04.

¹²² Berry, Conor. "Judge hears P'town suit on 1913 law." *Cape Cod Times*, 7/14/04.

However, on August 18, 2004, Suffolk Superior Court Judge Carol S. Ball denied the couples' and the clerks' request for immediate relief but made no final determination on the merits of the pending lawsuits. "We are not discouraged," said Michele Granda, an attorney with GLAD. "In fact, the decision provides us with validation of our core argument: that the law violates the spirit of the Goodridge decision, and that Massachusetts should not be in the business of discriminating against gay and lesbian families" (www.glad.org/News_Room/press79-8-18).

In 2005, according to a nationwide survey conducted for the *Globe*, nearly a year after same-sex couples were legally allowed to marry in Massachusetts, half of Americans polled said they do not want their states to recognize Massachusetts gay marriages, reflecting a continuing uneasiness or outright opposition to same-sex marriage that is especially strong in the South and in states that backed George W. Bush in 2004. Fifty percent of respondents said they opposed recognizing gay marriage from Massachusetts "as legal in all 50 states," and lesbian couples being allowed to get married" by 50% to 37%. Forty-six percent of respondents backed civil unions that would give gay couples "some, but not all, of the legal rights of married couples" while 41% said they were opposed. Overall, the poll suggested that attitudes toward gays and lesbians have been softening (Greenberger 5/15/05).¹²³

GLAD filed on lawsuit on January 3, 2006 to challenge the Attorney General's decision that a proposed ballot question that would once again exclude same-sex couples from marriage. "The Attorney General simply got it wrong," said Gary Buseck, GLAD's legal director. "Our state constitution says there can be no citizen-initiated constitutional

¹²³ Greenberger, Scott S. "One year later, nation divided on gay marriage: Split seen by region, age, *Globe* poll finds." *Boston Globe*, 5/15/05.

amendment that ‘relates to the reversal of a judicial decision.’ This proposed anti-gay, anti-marriage amendment is meant squarely and solely to reverse the decision in *Goodridge v. Dept. of Public Health*”(www.glad.org/News_Room/press106-01-03-06).¹²⁴ GLAD’s lawsuit, *Johanna Schulman v. Thomas Reilly*, asserts that the state constitution empowers only the legislature to seek to amend the constitution in response to a decision by the Supreme Judicial Court. “Let the people vote” is not always the answer to every question that confronts our democracy,” said Buseck.

The citizens of Massachusetts, who ratified the creation of the Initiative and Referendum process in 1918, recognized that putting basic human rights to vote was undemocratic; and it is the Attorney General’s responsibility to enforce that policy. Moreover, the Legislature – the people’s representatives – has now repeatedly spoken on this question and rejected discrimination in marriage. www.glad.org/News_Room/press106-01-03-06

The Massachusetts Supreme Judicial Court ruled on March 30, 2006 that Governor Mitt Romney and Attorney General Thomas F. Reilly had the authority to use the 1913 law to block out-of-state gay couples from marrying if the marriage is prohibited in their home state. The SJC said the obscure law passed the constitutional muster. However, the court said state officials had applied the law too broadly when they refused to allow the marriage of three couples from New York and Rhode Island, because same-sex marriage is not explicitly prohibited in those states. The high court sent the case of those three couples back to Superior Court Judge Carol Ball to quickly determine whether same-sex marriage is prohibited in those states, and no time frame was set. The ruling was issued in an unusual one-paragraph summary approved by an unnamed majority of the seven-member court (Saltzman 3/31/06).¹²⁵ Carissa Cunningham,

¹²⁴ Press Release: “GLAD Files Suit Asserting Anti-Marriage Ballot Question is Unconstitutional.” www.glad.org/News_Room/press106-01-03-06.

¹²⁵ Saltzman, Jonathan. “Mass. can bar marriage for nonresident gay couples.” *Boston Globe*, 3/31/06.

spokeswoman for Boston-based Gay and Lesbian Advocates and Defenders who represented the clerks and couples, said her organization was disappointed in the SJC ruling but that it still left the “door ajar” for the New York and Rhode Island couples (Williams 3/31/06).¹²⁶ Romney applauded the decision as “an important victory for those who want to preserve traditional marriage.” The SJC, he said, was wrong to legalize same-sex marriage in Massachusetts and “spreading it beyond our borders would only be compounding Massachusetts’ error. We don’t want Massachusetts to become the Las Vegas of same-sex marriage” (Saltzman 3/31/06).

On July 10, 2006, GLAD expressed dismay with the decision by the SJC perpetuating a ballot measure challenging marriage equality in Massachusetts. The ruling came in *Schulman v. Reilly*, a lawsuit filed by GLAD in January. The suit challenged Reilly’s certification of a proposed ballot question seeking to reverse *Goodridge v. Department of Public Health*. The proposed amendment then went to the Constitutional Convention on July 12, where it needed to receive the votes of only 50 legislators to send it to a second Convention in 2007. There, the same 50-vote threshold would apply. If approved in both 2006 and 2007, the question would appear on the ballot in November 2008. Since marriage equality came to Massachusetts in May 2004, more than 8,000 same sex couples have married. According to GLAD, despite opponents’ challenges through lawsuits and ballot initiatives, support for marriage equality has grown both in the legislature and in public opinion (www.glad.org/News_Room/press117-07-10-06).¹²⁷

In a major victory for gay rights, Superior Court Judge Thomas Connelly ruled on September 29, 2006, that same-sex couples from Rhode Island could marry in

¹²⁶ Williams, Eric. “Justices ‘un-marry’ gays from out of state.” *Cape Cod Times*, 3/31/06.

¹²⁷ Press Release: “GLAD Faults Decision Perpetuating Marriage Equality Challenge: Focus Turns to Legislature and Constitutional Convention.” www.glad.org/News_Room/press117-07-10-06.

Massachusetts, saying that Rhode Island does not explicitly ban same-sex marriage. Romney asked Attorney General Reilly to appeal, but Reilly refused, saying it would be a waste of time and money. Judge Connelly sided with the Rhode Island couple. “No evidence was introduced before this court of a constitutional amendment, statute, or controlling appellate decision from Rhode Island that explicitly deems void or otherwise expressly forbids same-sex marriage,” he wrote in his nine-page decision (Ring 9/29/06).¹²⁸ GLAD hailed it as another step toward marriage equality. “At last the fence of discrimination has been removed at the border of Massachusetts and Rhode Island,” said Granda, attorney for GLAD (www.glad.org/News_Room/press124-9-29-06).

On Friday, November 9th in Boston, the Legislature again ducked the same-sex marriage question by voting 109-87 to recess until Jan. 2, 2007, the last day of the legislative session, effectively stonewalling proponents of a ballot initiative to ban gay marriage (Fater and Heller 11/10/06).¹²⁹ The Legislature’s vote signaled the demise of an anti-gay citizen petition. The petition sought to put before voters a question about amending the Commonwealth’s constitution to ban marriages between same-sex couples (www.glad.org/News_Room/press126-11-09-06). By Governor Romney’s own admission, the chances of forcing the Legislature to vote on putting the ban on the state ballot in 2008 appeared slim. Both Romney and Lisa Barstow, a spokeswoman for VoteOnMarriage.org, had no new developments to announce, however Kris Mineau, president of the Massachusetts Family Institute and a spokesman for VoteOnMarriage.org, said that gay marriage opponents were prepared to start the

¹²⁸ Ring, Dan. “Rhode Island gay couples can wed in Massachusetts, judge rules.” *The Republican*, 9/29/06.

¹²⁹ Fater, Rebecca and Rick Heller. “Gay union issue delayed.” *Berkshire Eagle, The* (Pittsfield, MA), 11/10/06.

constitutional amendment process over if necessary next legislative session. To restart the process, gay marriage opponents would have to gather thousands more signatures and try to put the gay marriage ban on the ballot in 2010 (Kibbe 11/11/06).¹³⁰

At the end of 2006, on December 27, the Massachusetts Supreme Judicial Court ruled in *Doyle v. Secretary of the Commonwealth*, in which Governor Romney asked the court to force the Massachusetts legislature to vote on a citizen-initiated constitutional amendment to ban marriage equality in the state (www.glad.org/News_Room/press130-12-27-06).¹³¹ However, the justices said they had no legal authority to force a vote. “The members of the General Court are the people’s elected representatives, and each of them has taken an oath to uphold the Constitution of the Commonwealth,” wrote Justice John Greaney for the SJC majority (Kibbe 12/28/06).¹³² The court’s strongly worded decision put heat on the Legislature as the members planned to convene at the Statehouse on January 2nd for a climactic Constitutional Convention on the last official day of the 2005-2006 session.

By 2007, more than 8,000 same-sex couples had married in Massachusetts since the SJC’s 4 to 3, first-in-the-nation ruling went into effect on May 17, 2004 (Kibbe 1/2/07).¹³³ However, on January 2nd at the Massachusetts Constitutional Convention, a proposed constitutional amendment to ban same-sex marriage got the needed votes to get the go-ahead from state legislators. It was a step toward putting the measure on the statewide ballot in 2008. The vote dealt a major blow to supporters of same-sex marriage

¹³⁰ Kibbe, David. “Same-sex marriage opponents vow to fight.” *Cape Cod Times* (Hyannis, MA), 11/11/06.

¹³¹ Press Release: “Legislature Free to Vote on Conscience: SJC Rules on Romney Lawsuit.” www.glad.org/News_Room/press130-12-27-06.

¹³² Kibbe, David. “SJC won’t force vote on gay marriage.” *Cape Cod Times*, 12/28/06.

¹³³ Kibbe, David. “Vote on marriage definition looms.” *Cape Cod Times*, 1/2/07.

and somewhat dispelled the fears of many opponents. The amendment, which needed only 50 votes to be approved, passed by a vote of 62-134. The petition had to be passed again, by only 50 votes, during their next legislative session in order to be placed on the 2008 ballot (Murphy and Chabot 1/3/07).¹³⁴

The May 9th Constitutional Convention was supposed to consider and vote on a citizen petition to allow Massachusetts voters to decide whether same-sex marriage would be legal in the state. However, first thing on the agenda for the lawmakers was the state budget. Consequently, Senate President Therese Murray adjourned the Constitutional Convention in under two minutes (Murphy 5/9/07).¹³⁵ It happened on a voice vote with no debate – the legislators approved a motion by Senator Joan M. Menard, D-Fall River, to adjourn until June 14.

House Speaker Salvatore F. DiMasi, Senate President Therese Murray, and the current Governor (as of 2007) Deval Patrick (a big change from republican Mitt Romney), all strong supporters of gay marriage, spent the last few days before the June 14th Constitutional Convention lobbying wavering lawmakers who previously supported the measure at the January convention. The razor-thin margin predicted a tense and emotional showdown, and the night before – these three gay marriage activists were within one or two votes of blocking the proposal from reaching the 2008 ballot (Phillips 6/14/07).¹³⁶ But the next day ~ as John Monahan from the *Worcester Telegram and Gazette* wrote, “Drawing roars of approval and screams of victory from gay marriage supporters, the Legislature rejected a constitutional amendment that would have let voters

¹³⁴ Murphy, Matt and Hillary Chabot. “Same-sex marriage set back.” *Berkshire Eagle, The*, 1/3/07.

¹³⁵ Murphy, Matt. “Vote on same-sex marriage delayed.” *The Sun*, 5/9/07.

¹³⁶ Phillips, Frank. “Tight vote looms on same-sex marriage – Lobbying intense on both sides.” *Boston Globe*, 6/14/07.

decide gay marriage, as it failed to get the required 25 percent support (or 50 votes needed) to go to the 2008 ballot (Monahan 6/15/07).¹³⁷ In a personal interview, Angela and Dorea remember attending the celebration afterwards – “just an all round feel of jubilation and great relief.” Its failure means that gay marriage has hopefully survived its final challenge, unless a new campaign is mounted starting in 2010.

On Thursday, June 14, 2007, for the first time, gay marriage advocates had defeated the amendment, holding their opponents to just 45 votes. What happened between 2001 and 2007 was nothing less than a transformation on Beacon Hill, and in the state beyond. Advocates feel that the vote was the result of gradual, subtle changes: public opinion polls inching up year by year in favor of gay marriage; the rising visibility of same-sex couples in neighborhoods and in State House hallways; and legislators grappling with the issue and changing their minds one by one. “I said from the beginning, time will be our friend on this,” said Stanley C. Rosenberg, a Northampton senator who has supported gay marriage since the first pitched battles on Beacon Hill, two years before the SJC decision. “We had to build a majority where there was none. People had to get their minds around this” (Abraham 6/17/07).¹³⁸ “This didn’t happen over years,” replied Kris Mineau, president of the Massachusetts Family Institute, which led the fight for the amendment. “This was over the last few days. We were absolutely outgunned with financial resources.” Both sides agree that Governor Deval Patrick, Speaker Alvarado F. DiMasi, and Senate President Therese Murray were largely responsible for the outcome, having placed their considerable combined heft behind the

¹³⁷ Monahan, John J. “Gay nuptials kept – Marriage amendment fails 151 – 45.” *Worcester Telegram and Gazette*, 6/15/07.

¹³⁸ Abraham, Yvonne. “Waves of change swept away bid vs. gay nuptials.” *Boston Globe*, 6/17/07.

gay marriage advocates (Abraham 6/17/07). In a letter to the *Cape Cod Times* Jim Hinkle wrote,

The Supreme Judicial Court affirmed the right of gays to marry in 2003 and almost 10,000 same sex couples have done so. As a result, I'm not aware that Massachusetts has become a less desirable place. If anything it has affirmed its long tradition of tolerance and compassion. In our history we were among the first states to eliminate slavery, to end school segregation, and to allow interracial marriage. Once again we are on the correct side of history in affirming marriage equality. (Hinkle 6/19/07)

The End of the 1913 Law

Finally, the state Senate voted swiftly and unanimously on July 15, 2008, to strike down the 95-year-old 1913 Law that blocked gay and lesbian couples from other states from being married in Massachusetts, drawing condemnation from Catholic Church leaders and others but delivering a victory for advocates who have fought for the repeal and who say that same-sex marriage has become an accepted part of the state's culture (Moskowitz 7/16/08).¹³⁹ Dianne Wilkerson, D-Boston, Massachusetts Senate's one black member, said the vote was long overdue. "This is one of the most pernicious statutes on our books, said Wilkerson. "In some respects this bill puts the final nail in the coffin of those dark days" (The Lowell Sun 7/15/08).¹⁴⁰ The senate approved repeal of the 1913 law by a voice vote, with no objection. The repeal now goes to the House, where gay rights supporters predict it will pass (Kibbe 7/16/08).¹⁴¹

The atmosphere during Senate deliberations lacked most of the dramas of the previous Beacon Hill debate over gay marriage. It was reported that there were no chanting protesters outside, and not a voice was raised on the Senate floor against the

¹³⁹ Moskowitz, Eric. "Senate – votes to – repeal – 1913 law – Bill to OK wedding – of nonresident gays – now goes to House." *Boston Globe*, 7/16/08.

¹⁴⁰ The Lowell Sun. "Mass. Senate votes to let out-of-state gays marry." *The Sun* (Lowell, MA), 7/15/08.

¹⁴¹ Kibbe, David. "Out-of-state, same-sex couples can now marry in Mass." *Cape Cod Times*, 7/16/08.

repeal. Advocates of same-sex marriage rights are hopeful the repeal will pass the House and be signed by Governor Patrick before the end of July, of 2009. Patrick has said he will sign the repeal if it reaches his desk. If and when that happens, the last obstacle to same-sex marriage in Massachusetts for nonresidents will be removed, making the state the second after California to allow gay and lesbian couples to marry regardless of their place of residence (Moskowitz 7/16/08).¹⁴² Opponents of same-sex marriage said the proposed repeal would invite court challenges to marriage laws all over the country. Advocates of unrestricted same-sex marriage have described the possible economic benefits for the state. A recent study commission by the Executive Office Of Housing and Economic Development predicted that Massachusetts would receive \$111 million in wedding and travel spending and \$5 million in taxes and marriage-license fees in the first three years alone (Moskowitz 7/16/08).¹⁴³ This is an interesting benefit for states that legalize same-sex marriage, one that many economists are now investigating.

Only time will tell as to what affects gay marriage will have on the institution of marriage. Will it move things beyond gender – changing not only the language to gender neutral forms, such as wife/husband to spouse, mother/father to parent? Will it transform/disrupt the status that has been attributed to male dominance in the patriarchal nuclear family? Would these be positive changes for society and work to challenge and transform patriarchy? Does this challenge/threaten the nation's security? And why in the 21st Century would such a powerful nation still feel the need to cling to such old, and

¹⁴² Governor Deval Patrick signed the repeal which officially ended the residency requirement in Massachusetts on July 31, 2008. *Associated Press*, August 1, 2008.

¹⁴³ It is estimated that California, as a result of the May court decision legalizing gay marriage there regardless of residency, would reap nearly \$700 million in same-sex wedding travel and tourism. Along whose lines, Governor Arnold Schwarzenegger invited same-sex couples two months ago to visit California and bolster its tourism economy (Moskowitz *Boston Globe* 7/16/08).

possibly in many ways, outmoded static institutions such as heteronormative marriage? As to whether gay marriage will eventually be legalized in more states across the country and what effects it will have... The evidence suggests that most states are not yet in favor of same-sex marriage. And in Massachusetts statistics show that the number of gay marriages has been declining since 2004 (Massachusetts Department of Public Health 2007).

As of May 17, 2007, three years after the first gay marriages were legal in Massachusetts, the state released statistics showing the number of gay marriages had dropped sharply since 2004. According to the state Department of Public Health, 6,121 gay couples married in the first seven months. In 2005, 2,060 gay couples married, and in 2006 the number declined to 1,427, down 31 percent from 2005. During 2007, only 87 gay couples tied the knot (Ring 5/17/07).¹⁴⁴ Patricia Griffin, of Belshertown, a retired professor from the University of Massachusetts at Amherst, said it makes sense that most gay people would marry in the first year. When a right is denied and then suddenly granted, people tend to take advantage of it, she commented. "People are now getting married at a more normal rate, it's kind of settling down" (Ring 5/17/07). The statistics also show that 9,695 gay couples have married in Massachusetts as of May 2007 (it is currently over 10,000). Of that total, 6,209 marriages, or 64 percent, consist of women. Kristen Mineau, one of the leaders of the fight for a constitutional amendment, suggests that if there is such a great need for same-sex marriage, then the number of married gay couples should be increasing. "The numbers are relatively small and dwindling rapidly" Mineau said, "the actual institution of marriage is not being sought after by the gay

¹⁴⁴ Ring, Dan. "Same-sex marriages on decline." *The Republican* (Springfield, MA), 5/17/07.

community” (Ring 5/17/07).¹⁴⁵ As to whether this is true is not known. But it is clear that there is much more future research to be done.

Comparing Arizona and Massachusetts ~

Both Arizona and Massachusetts began their road to marriage equality based on constitutional arguments – grounded in equal rights. Accordingly, the basis for marriage equality is founded within the liberal side of the same-sex marriage, not the gay radical/feminist/liberationist. Both states’ arguments for stability and security through marriage are generally the same as the ideology behind the traditional “Pro-Marriage Movement.” Other similarities between Arizona and Massachusetts are that both states point to the 1954 Supreme Court Decision, *Brown v. the Board of Education*, where the court stated that “separate is inherently unequal.” They also both address the procreation argument against same-sex marriage as invalid, since procreation is not required for heterosexual couples. Other areas that Arizona and Massachusetts have in common is that they both have two major LGBTQ organizations – Arizona’s Equality Arizona and Wingspan; and Massachusetts’ Massachusetts Equality and the Massachusetts Gay and Lesbian Political Caucus. Both states had a strong anti-marriage equality organization – Arizona’s Center for Arizona Policy and Massachusetts’ Massachusetts Family Institute, each one based in Evangelical doctrines. Both states also had religious supporters. However, most of the similarities end there.

One of the major differences between Arizona and Massachusetts is exemplified by the different amount of data and information available for each state. For example, for

¹⁴⁵ According to the state, 530 certificates for gay marriages have been issued in Northampton in 2004-2006; 127 in Springfield; 78 in Easthampton; 81 in Amherst; 43 in Chicopee; 65 in Greenfield; 24 in Westfield; 21 in Belchertown; and 20 in Ludlow (Ring *The Republican* 5/17/07).

just the years 2005-2008 Massachusetts newspapers contained 6,199 articles on same-sex marriage, with over 2,400 for the year 2004 alone. They also have over a dozen main newspapers throughout the state, while Arizona has only three and by comparison, just a few articles on same-sex marriage since the *Standhardt* case in 2003. This evidence indicates that activist groups in Massachusetts were able to draw sympathetic media attention to their cause.

Even though both states began their road to Marriage Equality with lawsuits, the lawsuits were significantly different, with the *Standhardt* case having one couple as the plaintiff, while in the *Goodridge* case in Massachusetts there were seven couples as plaintiffs. They also had the backing of GLAD as their legal team who had the experience from Vermont and Connecticut's marriage equality legal struggles to bring to the table, as well as the total support of MassEquality, unlike the *Standhardt* case in Arizona – which was not supported by Equality Arizona (then the Arizona Human Rights Fund). In addition, the LGBTQ movement for legalizing gay marriage failed to create a winning counter-narrative and coalition to the heteronormative security imaginary in Arizona.

Another significant difference between Arizona and Massachusetts comes within their laws. Unlike Massachusetts, Arizona has a law, ARIZ. REV. STAT. § 25-101; ARIZ. REV. STAT. § 25-112, which states “Marriage of the same sex is void and prohibited,” Massachusetts had no such law. Ultimately, the main difference lies in the fact that Massachusetts has attained legal same-sex marriage, while Arizona is still working toward more expanded Domestic Partnership benefits, but most importantly, has voted for a constitutional amendment (11/4/2008) effectively banning same-sex marriage

(even though the then Governor, Janet Napolitano was not in support of changing the constitution). Although Governor Mitt Romney was the leader/instigator of a constitutional amendment in Massachusetts and publicly against same-sex marriage, equal rights advocates for the LGBTQ community were still able to prevail.

Conclusion

Massachusetts has had legal same-sex marriage for over four years now, from 2004 through 2008. Gay marriage advocates, GLAD, MassEquality, and a united LGBTQ community in Massachusetts have faced many challenges, such as Romney's crusade for a Constitutional amendment and the 1913 law, and have still succeeded at creating an effective counter strategy including a counter-narrative to the heteronormative nation. The findings suggest that the liberal equality claims have succeeded, at least partially, because of the liberal politics of Massachusetts. It is important to note that the organizational skills of movement activists, their ability to build supportive networks and engage in coalition politics, and the skillful use of media, among other things, contributed to their successes in Massachusetts.

Still, the questions of whether legal same-sex marriage has changed heteronormativity or reduced heterosexism are yet unanswered. The evidence provided suggests that gay marriage brings stability and security to gay and lesbian couples and families as well as financial benefits/stability to the state. However, Spike Peterson argues that heterosexism invokes the normalization of exclusively heterosexual desire, intimacy, and family life. "Historically, this normalization is inextricable from the states' interest in regulating sexual reproduction, undertaken primarily through controlling

women's bodies, policing sexual activities, and instituting the heteropatriarchal family/household as the basic socio-economic unit" (Peterson 2000:68).

For that reason, many questions still remain: will the national security imaginary be impacted by Massachusetts' new marriage laws; will this be destabilizing to the security of the national body; or will marriage continue to function as a normalizing mechanism where same-sex families will be assimilated into heteronormative culture? So far, the evidence suggests that same-sex marriage in one or two states has not had a significant impact on the stability of the nation – nonetheless, it has motivated the majority of the rest of the states in the U.S. to establish laws or constitutional amendments effectively banning gay marriage – implying that same-sex marriage is still considered by most voting Americans to be a threat to the stability and security of the nation.

~ Chapter Seven ~

*Protecting Marriage and Maintaining the Security Imaginary:
National and Federal Actions Opposing Same-sex Marriage*

Over the course of the Clinton and Bush Administrations in the United States, we have seen a complex, sometimes contradictory and yet wide-ranging tendency towards the promotion of patriarchal heterosexuality and the heteronormative nuclear family in various public policy sites, court decisions, and right-wing social movements' activism. But at the same time, we have also seen the flourishing of an increasingly differentiated lesbian and gay rights movement, uneven trends with respect to the development of non-traditional family units, and some sexual and LGBTQ liberation victories in American legislative bodies and courts (Smith 2001:303). As a consequence of these small victories, there has been a response on a national level to protect and maintain traditional marriage and the security imaginary. The Defense of Marriage Act (DOMA), the Healthy Marriage Initiative (HMI), the proposed Federal Marriage Amendment (FMA), and the Pro-Marriage Movement all demonstrate the extent to which same-sex marriage is interpreted as de-stabilizing to the nation and its security imaginary – and work to re-stabilize, defend and protect heteronormative marriage. This chapter explores the ways in which DOMA, the HMI, the FMA, and the Pro-Marriage Movement function to re-claim and protect heteronormative marriage from the advances made by the gay and lesbian community concerning same-sex marriage equality and equal rights.

Chapter Seven begins with an examination of DOMA, the Defense of Marriage Act which was signed into law in 1996 declaring on a national level that marriage is between one man and one woman. This chapter will explore the ways in which DOMA

functions as a normalizing mechanism for stabilizing the national security imaginary and how it was result of the concerns over the threat of gay marriage to the heteronormative imperative of the nation. For many DOMA supporters, equality in marriage for LGBTQ American's was equated with the downfall of civilization (Rep Barr 142nd Congress, 1996). Those in opposition claim that DOMA is legally unsound and violates equal protection as well as the full faith and credit clause of the United States Constitution.

Just four years later, when President George W. Bush was first elected, he established the Healthy Marriage Initiative (HMI) – pouring billions of dollars into promoting traditional marriage for welfare and possible future welfare recipients. It is believed by supporters of the HMI that by fostering better life decisions and stronger relationship skills, marriage programs can increase child well-being and adult happiness, and reduce child poverty and welfare dependence. Yet, critics of the HMI question; does it follow that getting married is a ticket out of poverty or that children of single parents are doomed? They argue that it penalizes non-traditional relationships and families, discriminates against LGBTQ youth, promotes traditional patriarchal male and female roles, and is an act of social engineering.

Regardless, it was also President Bush in 2004 who then led the march for a Federal Marriage Amendment (FMA) to ban same-sex partners from legal marriage by amending the United States Constitution. The proposed FMA suggests there is a need to re-stabilize the national security imaginary by protecting heteropatriarchal marriage. The FMA, also referred to as the Marriage Protection Amendment, would define marriage in the U.S. Constitution as a union of one man and one woman. Those in support claim that marriage has been the foundation of our society and of societies and cultures throughout

history and has always been defined as the union of one man and one woman. Yet, the Human Rights Campaign stated that the FMA is discriminatory and that it is wrong to single-out a group of Americans for second-class status.

These federal legislative debates and actions are the topics of examination in this chapter which concludes with an investigation into the organizations of the Pro-Marriage Movement in the U.S. – their actions, goals and underlying values. The Pro-Marriage Movement believes that our nation cannot remain great if we do away with the traditional (hetero)normal values that our country was founded on. The small victories of same-sex marriage appear to have been interpreted as destabilizing to the national body. Therefore, this chapter explores the ways in which DOMA, the HMI, the proposed FMA, as well as the Pro-Marriage Movement – all function to protect and maintain heteronormative marriage and the national security imaginary.

***Defending Heteronormative Marriage to Secure the Nation:
DOMA – The Defense of Marriage Act***

Driven by the concerns over same-sex marriage litigation in Hawaii (and around the world) and in an effort to defend traditional marriage and maintain the stability of the national security imaginary, the 104th Congress passed the Defense of Marriage Act (DOMA) during the summer and fall of 1996.¹⁴⁶ The law defines marriage as the union between a man and a woman, which prevents same-sex married couples from receiving federal benefits, and allows states to refuse to recognize same-sex marriages from other

¹⁴⁶ Defense of Marriage Act – H.R.3396. Title: To define and protect the institution of marriage. Sponsor: Rep Barr, Bob [GA-7] (introduced 5/7/1996) Cosponsors (117). Related Bills: H.RES.474, S.1740, S.1999. Latest Major Action: Became Public Law No: 104-99 [GPO: Text, PDF]. House Reports: 104-664 (<http://thomas.loc.gov/cgi-bin/bdquery/a?d104:HR03396:@@L&summ2=m&>). The Library of Congress.

states. The bill was introduced by Representative Robert Barr (R-GA) as part of a Republican package of “family-values.” The house hearings on DOMA contained arguments on morality, civil rights, and gay families, but also around the notion of a “normal” family and the decision as to whether that definition could or should be expanded. Most scholars and lawmakers agree it is the most important piece of U.S. legislation to date affecting the lives of lesbians, gays, and their families (Haider-Markel 2001:358). Consequently, besides preventing same-sex couples from civil marriage; does the Defense of Marriage Act also function as a normalizing mechanism to maintain traditional marriage and to re-stabilize the heteronormativity of the nation and its security imaginary?

According to GLAD, Gay & Lesbian Advocates & Defenders, DOMA consists of two main parts. First, as to states, DOMA attempts to exempt states from their legal obligation to respect marriages of same-sex couples under the constitutional rules of full faith and credit. Many constitutional scholars believe the full faith and credit clause mandates interstate recognition of marriages from state to state. Even further, DOMA discredits any same-sex relationship “that is treated as a marriage” under state laws, as well as any “right or claim arising from such a relationship.”¹⁴⁷ Ever since its enactment in 1996, this portion of DOMA has been interpreted by some state legislatures as an invitation to create new laws containing a “public policy” against marriage and other rights for same-sex couples (www.glad.org 2001). Under the Constitution, states are

¹⁴⁷ This is codified at 29 United States Code section 1738C. The Defense of Marriage Act amends the Federal judicial code to provide that:

No State, or territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession of tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

required to recognize legal proceedings in other states. Yet the so-called Full Faith and Credit clause has stirred very little controversy over the years. For this reason, DOMA poses one of the greatest challenges to its interpretation (Lochhead 9/11/96).¹⁴⁸

Second, DOMA creates a federal definition of marriage for the first time in U.S. history – effectively functioning to perpetuate patriarchal heteronormative marriage on a national/federal level. Specifically, under DOMA, “the word ‘marriage’ means only – a legal union between one man and one woman, and the term ‘spouse’ can refer only to a person of the opposite sex who is a husband or a wife.”¹⁴⁹ As practical matter, DOMA states that the families of gay men and lesbians – even when given some measure of protection under the laws of one state – merit no respect or protection from the federal government of other states (www.glad.org 2001). So, when some states begin to license and certify marriages of same-sex couples, as in Massachusetts and California, DOMA purports – at least as far as the federal government is concerned – to make those marriage meaningless for purposes of all federal laws and benefits. Twenty-six of the Senate’s 47 Democrats joined Republicans in voting for the marriage bill, underscoring the predicament faced by senators who have historically supported gay rights. Supporters called the bill a pre-emptive strike against a lawsuit that went to trial in Hawaii, threatening to legalize gay marriage in that state. Interestingly, Arizona Republicans Jon Kyle and John McCain both voted for the marriage bill.

¹⁴⁸ Lochhead, Carolyn. “Senate OKs Gay Marriage Restrictions – Job discrimination bill fails by one vote.” *The San Francisco Chronicle*, 9/11/96.

¹⁴⁹ This is codified at 1 United States Code section 7. This is the part of the U.S. Code where terms commonly found in federal statutes and regulations are officially defined for interpretative purposes. It provides:

In determining the meaning of any act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies in the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.

During the Federal Congressional debates on DOMA, many of the elected officials stated their understanding of existing law: that marriages' of one state are required to be respected by other states. But what predominated in the debate was the desire of some members to evade that rule of law based on their (mis)understanding of gay people, according to GLAD spokesperson. For example, for some DOMA supporters, equality in civil marriage for gay and lesbian Americans was equated with the downfall of civilization: "The very foundations of our society are in danger of being burned. The flames of narcissism, the flames of self-centered morality are licking at the very foundations of our society: the family unit" (Statement of Rep. Barr, 142 Cong. Rec. H7480, H7482 - daily ed. July 12, 1996). And Rep. Stearns argued that gay people "threaten the moral fiber that keeps this nation together, and the future of families which have traditional marriage at their heart; and children will suffer because family will lose its very essence" (Id., at H7488). And here is a statement from the Congressional DOMA debates from Rep. Hyde,

It is appropriate that Congress define marriage. You may not like the definition the majority of us want, but most people do not approve of homosexual conduct. They do not approve of incest. They do not approve of polygamy, and they express their disapprobation through the law. It is that simple. It is not mean-spirited. It is not bigoted. It is the way it is, the only way possible to express disapprobation. (Id. At H7501)¹⁵⁰

California's two Democratic senators, Diane Feinstein and Barbara Boxer, voted against the gay-marriage bill, but were abandoned by some of the nations most liberal Democrats, including Maryland's Barbara Mikulski, Iowa's Tom Harkin and Minnesota's Paul Wellstone (Lochhead *San Francisco Chronicle*, 9/11/96).

¹⁵⁰ Representative Henry Hyde of Illinois publicly acknowledged having an extramarital affair during the impeachment trial of President Clinton. See Howard Kurtz, "Report of Hyde affair stirs anger." *Washington Post*, September 17, 1998. A15.

After DOMA became law, Representative Hyde asked the General Accounting Office (GAO) to detail how DOMA affected federal law. The GAO issued a report in March, 1997, detailing the federal laws in which obligations, benefits, rights and privileges are contingent upon marital status. Based on a computer search, the GAO concluded there are *at least* 1,049 ways in which marital status is a factor.¹⁵¹ In other words the government admitted that it discriminates against same-sex couples in at least 1,049 ways. In addition, argues GLAD, the Defense of Marriage Act is legally unsound. For example, DOMA has unleashed a steady stream of law review commentary questioning its constitutionality. According to law professor Andre Koppelman:

No group whose marriages were prohibited by some states – not married first cousins, not members of polygamous marriages, not even interracial couples whose marriages were punishable as felonies in the Jim Crow states – has ever had its marriages, validly recognized in one jurisdiction, subjected to the degree of ostracism by others that DOMA licenses. (Koppleman 1997)¹⁵²

DOMA also violates equal protection – with the enactment of DOMA, the federal government has declared it will not recognize a whole group of lawful marriages, namely, those of same-sex couples nor any other marriage-like relationship of same-sex couples. It claims it will *not* honor a state’s determination of who is a “spouse” – as with Massachusetts’ marriage laws. Such vast discrimination was condemned by the United States Supreme Court in *Romer v. Evans* (116 s. Ct. 1620, 1996). In that case, the Court invalidated a popularly-initiated state constitutional amendment barring claims of discrimination based on “homosexual, lesbian or bisexual orientation, conduct, practices or relationships.” The Court condemned such sweeping discrimination, ruling that it was

¹⁵¹ Rep. NO. GAO1, OGC-97-16 (31 Jan. 1997) www.gao.gov/archive/1997/og97016.pdf. See 29 U.S.C. § 1738C; 1 U.S.C. § 7.

¹⁵² “Dumb and DOMA: Why the Defense of Marriage Act is Unconstitutional.” 83 *Iowa Law Review* 1 (1997).

improperly based on anti-gay animus and disapproval and could not be considered legitimate lawmaking (www.glad.org).¹⁵³ Like the constitutional amendment at issues in *Romer*, DOMA's exclusion of the lawful marriages and other marital-like relationships of same-sex couples from federal law is sweeping discrimination in that it denies any access to the 1,049 federal protections and responsibilities which accompany marriage.¹⁵⁴

DOMA also violates the Full Faith and Credit clause. The Constitution provides: "Full Faith and credit shall be given in each state to the public acts, records, and judicial proceeding of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof" (U.S. Constitution, Article IV, Section 1). According to GLAD's legal analysis, marriage arguably qualifies under each prong of the clause:

A public "act" because it is performed by a public official or agent and occurs pursuant to a statutory scheme; a "record" because marriage certificates are public records; and a "judicial proceeding" because marriages are a great deal like other legal judgments in seeing a person's status and responsibilities to other persons and the state and also because in some states marriages are performed by judicial official or agents. (www.glad.org)

Congress has no power – as it purports to do in DOMA's second part – to re-write the

¹⁵³ Discrimination based on sexual orientation is particularly problematic when "the disadvantage imposed is born of animosity toward the class of persons affected" (*Romer v. Evans*, 517 U.S. 620 (1996)). The Congressional Record amply demonstrates such improper animosity toward gay people and their families. In addition, the *Romer* case also held that a Colorado constitutional amendment was invalid because "a law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection in the most literal sense" (*Id.* At 633).

¹⁵⁴ By attempting to eliminate the constitutional means of assuring interstate recognition of lawful marriage, DOMA would place a direct and tangible obstacle in the path of the established constitutional right of interstate travel. See *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969) (unconstitutional to "unduly interfere with the right to 'migrate, resettle, find a new job, and start a new life'"). It may also violate the privileges and immunities clause by denying a right of national citizenship. *Saenz v. Roe*, 119 S. Ct. 1518 (1999). (www.glad.org).

scope of the full faith and credit clause. The role for Congress with respect to the clause is to assure faith and credit, not to pick and choose what gets faith and credit. As Harvard Law School Professor and constitutional scholar Laurence Tribe has written,

DOMA is a clear violation of the Constitution's requirement that states give "full faith and credit" to the "public acts, records, and judicial proceedings" of every other state. Even opponents of same-sex marriage should be offended by an attempt to carve a statutory exception to a vital constitutional provision that unites 50 independent states into one nation, something Congress has no authority to do. (Laurence Tribe, "Constitution Bashing," *New York Times*, July 29, 1996)

In addition, DOMA improperly nationalizes domestic relations law and does not relate to Congress's enumerated powers. GLAD argues the DOMA's purported federal definition of marriage should be given no legal effect because the federal government must give way to state law on the issue of what constitutes a marriage. Since the founding of the U.S., domestic relations law has been a matter of state concern and control. Both the Constitution and our history place the definition of civil marriage with the states, and the federal government defers to those definitions. There is no federal divorce law and Congress has never before passed legislation dealing purely with domestic relations issues. As a federal District Court Judge states,

We start with the proposition that the delicate relationships of husband-wife, parent-child and family-property arrangements are traditionally a matter of exclusively state concern. No provision of Article I of the Constitution confers power on the Congress to legislate in these sensitive state fields. Any general federal law attempting to regulate such relationships would be constitutionally infirm. (*United Association of Journeymen Local 198 AFL-CIO Pension Plan v. Myers*, 488 F.Supp. 704, 707, M.D. La. 1980)¹⁵⁵

On September 10, 1996, the Senate approved the Defense of Marriage Act, 85-14.

The House approved the same bill overwhelmingly earlier in July of that year. It was

¹⁵⁵ While the federal government lacks the power to create or destroy the underlying status of marriage in itself, federal law may (subject to other constitutional limitations) decide how a marriage or state-created interest is treated, for example, in taxation. But in so doing, it cannot favor some types of marriages over others (www.glad.org).

signed into law on September 21, 1996 by President Clinton.¹⁵⁶ In addition, the Employment Non-Discrimination Act, or ENDA (this Act would have protected LGBTQ individual's from discrimination in the workplace), fell a single vote short, 49-50. The bill would have passed except for the absence of Arkansas Democrat David Pryor, who had indicated support for it but was away from the vote because of his son's surgery (Lochhead 9/11/1996). Ralph Reed, leader of the Christian Coalition said in 1996, "This is a string of major victories for the pro-family movement that demonstrates on the threshold of a major presidential election that the political debate is moving in our direction" (*Associated Press* 9/11/96). Over all, the Defense of Marriage Act is one of the most powerful pieces of legislation to date affecting the lives of LGBTQ couples and their families; functioning to reclaim and defend heteronormative marriage in an effort to protect and stabilize the national security imaginary.

***Reclaiming Marriage as the Foundation of a Successful Society:
President Bush's Healthy Marriage Initiative (HMI)***

With the struggle for same-sex marriage rights making its way to the ballot on state and national levels for over a decade now, the institution of marriage itself has become an increasingly important topic in academic and policy research. As a result, there is a burgeoning literature which suggests that marriage has a wide range of benefits,

¹⁵⁶ 5/7/1996 Introduced into the House
7/9/1996 Reported by the Committee on Judiciary. J. Rept. 104-664
7/12/1996 Passed/agreed to in House: On passage Passed by the Yeas and Nays: 342 – 67, 2 Present (Roll No. 316)
9/10/1996 Passed/agreed to in Senate: Passed Senate without amendment by Yea-Nay vote: 85-14
9/10/1996 Cleared for White House
9/20/1996 Presented to President
9/21/1996 Signed by President
9/21/1996 Became Public Law No: 104-199 [Text, PDF] (<http://thomas.loc.gov/cgi-bin/bdquery/z?d104:HR03396:@@L&summ2=m&>)

including improvements in individuals' economic well-being, mental and physical health, as well as the well-being of their children (Lerman 2002; Ross et al. 1990; Waite and Gallagher 2000; Wilson and Oswald 2005). Inspired in part by these potential benefits of marriage, several large-scale federal initiatives have been launched in recent years that aim to encourage and support marriage (Department of Health and Human Services <http://aspe.hhs.gov/topic/subtopic.cfm?subtopic=377>).¹⁵⁷ According to the Policy Research & Analysis Department of the Heritage Foundation,¹⁵⁸ there has been an erosion of marriage during the past four decades that has had large-scale negative effects on both children and adults and lies at the heart of many of the social problems with which the government currently grapples. In response, President George W. Bush proposed in 2001, as part of welfare reform reauthorization (and in an effort to reclaim marriage and to re-stabilize the national security imaginary), the creation of a pilot program to promote healthy and stable heterosexual marriages, called the Healthy Marriage Initiative (HMI) (www.heritage.org/Research/family/bg1741.cfm).¹⁵⁹

The Administration for Children & Families (ACF), a division of the U.S. Department of Health & Human Services, states that Congress acknowledged the

¹⁵⁷ "The Effects of Marriage on Health: A Synthesis of Recent Research Evidence." Prepared for: Department of Health and Human Services, Office of Assistant Secretary for Planning and Evaluation, Office of Human Services Policy, Contract Number 233-02-0086, Task Order Number 9. By Robert G. Wood, Brian Goesling, Sarah Avellar – Mathematica Policy Research, Inc.

¹⁵⁸ The Heritage Foundation is an American conservative think tank based in Washington, D.C. The foundation took a leading role in the conservative movement during the presidency of Ronald Regan, whose policies drew significantly from Heritage's policy study *Mandate for Leadership* (Weisberg 1/9/98). Heritage has since continued to play a significant role in U.S. public policy debate and is widely considered to be one of the most influential research organizations in the United States (Berkowitz, Bill., *Media Transparency*, 3/3/08). Heritage's stated mission is to "formulate and promote conservative public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense" (*Heritage Foundation, About*).

¹⁵⁹ Rector, Robert E. and Melissa G. Pardue. "Understanding the President's Healthy Marriage Initiative." Backgrounder #1741. *The Heritage Foundation – Policy Research and Analysis* (March 16, 2004).

importance of married-couple families when it reformed the welfare system in 1996. The 1996 legislation stipulated that three out of the four purposes of the Temporary Assistance for Needy Families (TANF) program either directly or indirectly promote healthy marriages. President Bush echoed this sentiment when he indicated that healthy marriages would be a focus of his administration. In proclaiming National Family Week in November 2001, he noted:

My Administration is committed to strengthening the American family. Many one-parent families are also a source of comfort and reassurance, yet a family with a mom and dad who are committed to marriage and devote themselves to their children helps provide children a sound foundation for success. Government can support families by promoting policies that help strengthen the institution of marriage and help parents rear their children in positive and healthy environments.

www.acf.hhs.gov/healthymarriage/about/factsheets_hm_matters.html

The Administration of Children and Families' Healthy Marriage Initiative mission statement is to help couples, who have chosen marriage for themselves, gain greater access to marriage education services, on a voluntary basis, where they can acquire the skills and knowledge necessary to form and sustain a healthy marriage. In practical terms, it involves:

- Implementing demonstration projects. In consultation with states and local communities, ACF is working to implement healthy marriage demonstration projects. These are broad-based efforts to work with key community sectors (e.g. local governments, businesses, civic organizations, non-profits) to strengthen marriages.
- Emphasizing marriage in Federal programs. ACF's program offices are promoting enrichment services are being provided, alongside existing services, to low-income couples who utilize Refugee Resettlement, Children's Bureau, Community Services, or TANF services.
- Conducting research. This initiative is using existing funds to explore the types of marriage strengthening services that exist and their effectiveness, so that future resources can be targeted more wisely.
- Training. The initiative is providing training about healthy marriage issues to interested Federal ACF staff.

www.acf.hhs.gov/healthymarriage/about/factsheets_hm_matters.html

According to the ACF, this initiative is not about:

- Trapping anyone in an abusive or violent relationship.
- Forcing anyone to get or stay married.
- Running a federal dating service.
- Withdrawing supports from or diminishing in any way, either directly or indirectly, the important work of single parents.
(www.acf.hhs.gov/healthymarriage/about/factsheets_hm_matters.html)¹⁶⁰

The Administration for Children & Families believes that there are two characteristics that all healthy marriages have in common. First, they are mutually enriching, and second, both *spouses* (declared by DOMA to mean only one man and one woman) have a deep respect for each other. Healthy marriage is a mutually satisfying relationship that is beneficial to the husband, wife and children (if present). And, it is a relationship that is committed to ongoing growth, the use of effective communication skills and the use of successful conflict management skills. The pronounced goals of the HMI are to:

- Increase the percentage of children who are raised by two parents in a healthy marriage.
- Increase the percentage of married couples who are in healthy marriages.
- Increase the percentage of premarital couples who are equipped with the skills and knowledge necessary to form and sustain a healthy marriage.
- Increase the percentage of youth and young adults who have the skills and knowledge to make informed decisions about healthy relationships including skills that can help them eventually form and sustain a healthy marriage.
- Increase public awareness about the value of healthy marriages and the skills and knowledge that can help couples form and sustain healthy marriages.
- Encourage and support research on healthy marriages and healthy marriage education.

¹⁶⁰ Funds may be used for competitive research and demonstration projects to test promising approaches to encourage healthy marriages and promote involved, committed, and responsible fatherhood by public and private entities and also for providing technical assistance to States and Tribes. Applicants for funds must commit to consult with experts in domestic violence; applications must describe how programs will address issues of domestic violence and ensure that participation is voluntary. Healthy marriage promotion awards must be used for eight specified activities, including marriage education, marriage skills training, public advertising campaigns, high school education on the value of marriage and marriage mentoring programs. Not more than \$50 million each year may be used for activities promoting fatherhood, such as counseling, mentoring, marriage education, enhancing relationship skills, parenting and activities to foster economic stability (www.acf.hhs.gov/healthymarriage/about/mission.html).

- Increase the percentage of women, men and children in homes that are free of domestic violence. (www.acf.hhs.gov/healthymarriage/about/mission.html)

In 1996, Congress claimed that marriage is the foundation of a successful society and an essential institution of a successful society which promotes the interests of children. In order to encourage States to strengthen marriages, the Deficit Reduction Act of 2005 provides funding of \$150 million each year for healthy marriage promotion and fatherhood. President Bush's Healthy Marriage Mission statement is:

To encourage marriage and promote the well-being of children, I have proposed a healthy marriage initiative to help couples develop the skills and knowledge to form and sustain healthy marriages. Research has shown that, on average, children raised in households headed by married parents fare better than children who grow up in. Through education and counseling programs, faith-based, community, and government organizations promote healthy marriages and a better quality of life for children. By supporting responsible child-rearing and strong families, my Administration is seeking to ensure that every child can grow up in a safe and loving home.
(www.acf.hhs.gov/healthymarriage/about/mission.html)

In recognition of the widespread benefits of marriage to individuals and society, the federal welfare reform legislation enacted in 1996 set forth clear goals: to increase the number of two-parent families and to reduce out-of-wedlock childbearing. Regrettably, according to the Heritage Foundation, in the years since the reform, most states have done very little to advance these objectives directly. Out of more than \$100 billion in federal TANF funds disbursed over the last seven year period, only about \$20 million has been spent on promoting marriage). Recognizing this shortcoming, President Bush has sought to meet the original goals of welfare reform by proposing the HMI as part of welfare reauthorization. The President's Healthy Marriage Initiative has been included in the two major TANF reauthorization bills. One of these is the Personal Responsibility, Work, and Family Promotion Act of 2003 (H.R. 4) that was passed by the U.S. House of

Representatives in May 2002 and again in February 2003

(www.heritage.org/Research/Family/bg1741.cfm).

Based on their own research, the Heritage Foundation claims that the growth of single-parent families has had an enormous negative impact on government. The welfare system for children is overwhelmingly a subsidy system for single-parent families. Some three-quarters of the aid to children – given through programs such as food stamps, Medicaid, public housing, Temporary Assistance to Needy Families (TANF), and the Earned Income Tax Credit – goes to single-parent families (www.heritage.org/Research/Family/bg1741.cfm). In addition, according to the Heritage Foundation, growing up without a father in the home has harmful long-term effects on children. Compared with similar children from intact families, children raised in single-parent homes are more likely to become involved in crime, to have emotional and behavioral problems, to fail in school, to abuse drugs, and to end up on welfare as adults (Fagan, Johnson, and Peterson 2002).¹⁶¹ Finally, marriage also brings benefits to adults. Extensive research shows that married adults are happier, are more productive on the job, earn more, have better physical and mental health, and live longer than their unmarried counterparts. Marriage also brings safety to women. According to the Heritage Foundation, mothers who have married are half as likely to suffer from domestic violence as are never-married mothers (Rector, Fagan & Johnson 2004).¹⁶² Over all, the Healthy Marriage Initiative protects the stability and security of heteronormative couples and families, as well as functioning to reaffirm the nations' heteropatriarchal ideology, structure, and practice.

¹⁶¹ Patrick Fagan, Robert Rector, Kirk Johnson, and America Peterson. *The Positive Effects of Marriage: A Book of Charts*. Washington D.C.: The Heritage Foundation, April 2002.

www.heritage.org/Research/Features/Marriage/index.cfm

¹⁶² Robert E. Rector, Patrick F. Fagan, and Kirk A. Johnson. "Marriage: Still the Safest Place for Women and Children." Heritage Foundation Backgrounder No. 1732, March 9, 2004.

The President's Healthy Marriage Initiative is often characterized as seeking to increase marriage among welfare (TANF) recipients. This is somewhat inaccurate according to the Heritage Foundation. Most welfare mothers have poor relationships with their children's father. In many cases, the relationship disintegrated long ago. By contrast, a well-designed marriage initiative would target women and men earlier in their lives when attitudes and relationships were initially being formed. It would also seek to strengthen existing marriages to reduce divorce. The primary focus of marriage programs would be preventative – not reparative. The programs would seek to prevent the isolation and poverty of welfare mothers by intervening at an early point before a pattern of broken relationships and welfare dependence had emerged. By fostering better life decisions and stronger relationship skills, marriage programs can increase child well-being and adult happiness, and reduce child poverty and welfare dependence (www.heritage.org/Research/Family/bg1741.cfm).

According to the White House, the Healthy Marriage Initiative at Health and Human Services (HHS') Administration for Children and Families provides couples with knowledge and guidance on sustaining healthy marriages and parenting relationships. Evidence suggests that the health of marriage in America will play a key role in determining the future of our children, families and society itself. A study released by the Institute for American Values titled, *The Taxpayer Costs of Divorce and Unwed Childbearing*, reveals the cost of family fragmentation to taxpayers and concludes that “unnecessary divorce and unmarried childbearing carry profound public policy implications.” The study also examines positive personal and societal impacts of healthy

marriages and child rearing, which lead to decreased need for publicly-funded social programs.

For this reason, President Bush's Faith Based and Community Initiative (FBCI) convened monthly since January of 2007 in *Compassion in Action* policy roundtables to discuss issues of interest to faith and community based organizations. The roundtables facilitated discussion between key government and private sector players around targeted issues such as marriage and the HMI. Bush's FBCI was built from the conviction that the most effective way to address our communities' great needs is to draw upon the unique strengths of every willing community and faith-based partner. The President launched the FBCI in January of 2001, at least partly in response to the advances made by the Marriage Equality and the Gay Rights Movements.

According to the Heritage Foundation, the President's Healthy Marriage Initiative is a future oriented, preventative policy that will foster better life-planning skills – encouraging couples to develop loving, committed marriage. The marriage initiative provides marriage-skills education to married (heterosexual) couples to improve their relationships and reduce their dependence on state and federal welfare. However, the evidence suggests that the Healthy Marriage Initiative functions to reclaim heteronormative marriage, including the traditional male roles as of head of household, husband and father. This federally funded initiative is based on the belief that traditional heteronormative, patriarchal marriage is the foundation of a successful society and works to stabilize the national body. However, the opposition to the HMI suggests that we

could seek to change and broaden the system to support more types of families, rather than seeking to change families themselves (Brett 2004).¹⁶³

Criticisms of President Bush's Healthy Marriage Initiative

The brides took to downtown San Diego streets yesterday to protest President Bush's plan to spend \$1.5 billion to promote marriage. The brides marched near the federal building, chanted and even sang wedding songs, with lyrics spoofing the so-called healthy marriage initiative. Members and supporters of the Old Women's Project – a local activist group – were dressed as brides to get their point across. They argue that the government money should go to women in the form of child care, health care and job training. It shouldn't encourage them, particularly poor ones, to get married. (Stetz 3/9/04)

The drumbeat of the “promoting marriage” campaign, driven by statistical evidence, produced mainly by the social sciences (rather than feminist, queer, or individual/constitutional rights theories for example), can make it easy for some advocates to overstate the ability of marriage to cure society's ills. So, does it follow that getting married is a ticket out of poverty or that children of single parents are doomed? Part of the concern stems from the language chosen by the administration – “promoting marriage” which for the critics conjures everything from a draconian social experiment to simple big-government meddling. Kim Gandy, president of the National Organization for Women in 2004, has called the initiative “thinly disguised social engineering.” Michael Tanner of the libertarian Cato Institute refers to it as “1965-style Great Society liberalism” (Zellar 1/18/04).¹⁶⁴

In 2001, President Bush nominated Dr. Wade F. Horn to the top position in the Department of Health and Human Services. Dr. Horn's nomination to this top position

¹⁶³ See Appendix C for “Examples of the Healthy Marriage Initiative.”

¹⁶⁴ Zellar, Tom. “The Nation – Two Fronts: Promoting Marriage, Fighting Poverty.” *New York Times*, 1/18/04.

has drawn fire from feminists because he says the government should aggressively promote marriage as an ideal, especially for low-income families.¹⁶⁵ “I have spent much of the last four years traveling around the country exhorting state officials to spend some of their welfare dollars on activities that promote marriage,” said Dr. Horn. “Married fatherhood is the ideal. Radical feminists trumpet the demise of in-the-home fatherhood as a victory for the independence of the modern woman, but fathers make unique and irreplaceable contributions to the well-being of children” (Pear 6/7/01).¹⁶⁶ In many ways, such views would not seem to invite controversy. However, many recent scholarly works and psychological studies embrace the view that stable families with two parents are critical to healthy child development. But some feminists, including some in the National Organization for Women, worry that Dr. Horn’s emphasis on marriage and his preference for traditional two-parent heteronormative families could divert money from single mothers and children – to fathers and/or married couples, thereby penalizing non-traditional relationships and families. They also worry that such views could pressure women to stay married to men who abuse them (Pear 6/7/01).

In addition, the Pro Marriage Movement makes no effort to conceal its connection with the extremist (evangelical) fathers’ rights agenda – promoting heteropatriarchal values and traditional gendered male roles of breadwinner and head of the family; in fact, supporters consider it one of their strengths (Peterson 2001).¹⁶⁷ The movement’s Statement of Principles claims, “The empirical evidence is quite clear: marriage is our best hope of fostering involved, effective, nurturing fathers.” It goes on to cite the same

¹⁶⁵ Dr. Horn has a Ph.D. in clinical child psychology from Southern Illinois University. In the first Bush administration, he was commissioner for children, youth and families (Pear *New York Times* 6/7/01).

¹⁶⁶ Pear, Robert. “Human Services Nominee’s Focus on Married Fatherhood Draws Both Praise and Fire.” *New York Times*, 6/7/01.

¹⁶⁷ Peterson, Megan. “Marriage Movement Announces Itself.” *National NOW Times*, Summer 2000.

faulty research used in congressional fatherhood bills that suggests that “fatherlessness” is at the root of a myriad of social problems, ignoring evidence that the presence of consistent, loving caregivers is more important in a child’s development than the number, sex or marital status of the caregiver(s) (Peterson, M. 2001). Kathy Rodgers, president in 2001 of the NOW Legal Defense and Education Fund, said “Dr. Horn would ostracize any family that doesn’t fit the mythical norm of a married mother and father, one daughter, one son, a dog and a cat. He’s trying to teach moral lessons to adults, but in the process, children would be punished” (Pear 6/7/01).

Back in 2001, when President Bush first announced his plan for the Healthy Marriage Initiative, Arizona’s state Department of Economic Security rolled out a new program that offered marriage skills workshops at discounts for free to low-income couples who planed to wed or had recently done so. The program money, generated by federal welfare savings, will also pay for complimentary “marriage handbooks” to be handed out when people apply for licenses. The marriage education program was headed up by Mesa Republican Mark Anderson, who originally sought about \$6 million for the effort, including \$2.9 million for a “media campaign to promote the health and societal benefits of marriage” (*The Arizona Daily Star Editorials* 9/10/01). The scaled down version was approved by legislators despite then Governor Jane Hull’s concern that the state might be sticking its nose a little too far into peoples’ private lives. Francie Noyes, a spokesperson for Hull, said the governor objected to this plan and thought the money might be better spent on getting the economy going, job training and other economic aid. *The Arizona Daily Star* agreed, stating that “besides sticking the state’s nose where it doesn’t belong, the new program is tantamount to the legislature endorsing heterosexual

marriage as its preferred lifestyle option, reinforcing the 1930s notion that traditional marriage deserves a higher degree of public respectability than other living arrangements” (9/10/01). The plan does nothing to help unmarried couples raising kids and ignores the reality that only about one-quarter of Americans now live in so-called “nuclear families” made up of two married parents and their offspring (*Arizona Daily Star Editorial* 9/10/01).

In 2004, President Bush made five trips to the politically crucial state of Ohio, where he collected \$2.5 million for the Republican Party and promoted his Healthy Marriage Initiative.¹⁶⁸ Under the President’s proposal, federal money could be used for specific activities like advertising to publicize the value of marriage, instruction in marriage skills and mentoring programs that use married couples as role models. In response to President Bush’s “promote marriage” campaign – in November 2007, *SIECUS Developments* released “Legalized Discrimination: the Rise of the Marriage-promotion Industry and How Federally Funded Programs Discriminate Against Lesbian, Gay, Bisexual, and Transgender Youth and Families.” The SIECUS report states that:

With the unwavering support of the Bush administration and more than two billion federal and state dollars over the past quarter century distributed through programs such as the Healthy Marriage Initiative, groups dedicated to promoting marriage have become more than a community of individual organizations with a shared goal. Well-funded marriage-promotion and abstinence-only-until-marriage programs have become a full-fledged industry that is ostensibly aimed at preventing teen pregnancy and reducing poverty, but in reality promotes idealized notions of heterosexual marriage as the cure for all of society’s ills in schools,

¹⁶⁸ President Bush left the marriage event quickly and was off to the expensive suburb of Indian Hill, for a \$25,000 per person fundraiser at the home of William O. DeWitt Jr., an investor and a business partner of Mercer Reynolds of Cincinnati, national finance chairman of Mr. Bush’s re-election campaign. Mr. DeWitt was a principal of the Spectrum 7 Energy Corporation that merged with Mr. Bush’s struggling Texas oil company in 1984, and he was one of the major investors who bought the Texas Rangers and set up Mr. Bush as managing partner. The fund-raiser, to pay for Republican campaigning, was closed to the press. Pairing it with a policy event like the marriage event, let the campaign charge taxpayers for part of the trip (Bumiller, Elisabeth. “President Makes A Dual-Purpose Trip to Ohio.” *New York Times*, 6/22/04).

stigmatizes and demeans LGBT youth, and leaves all youth unprepared to make healthy decisions in their lives.¹⁶⁹

The special report examines the rise of the federal government's involvement in promoting heterosexual marriage as the only morally acceptable life choice and discriminating against individuals who do not fit into that mold. Promoting heteronormativity is just "another example of George Bush's talking about strengthening families when he has pursued an overall agenda to undermine them," said Phil Singer, who was a spokesman for the campaign for Senator John Kerry, the Democratic presidential nominee in 2004 (Bumiller 6/22/04).

The Bush administration has heralded its initiative to spend \$1.5 billion to promote marriage, particularly among low-income couples. In response, some social and religious conservatives worry that the gesture, is a weak substitute for their larger goal: support from the White House for a constitutional amendment banning gay marriage. Ironically, it was only a matter of days before President Bush announced the Federal Marriage Amendment. But the \$1.5 billion (\$3 million to be spent annually over five years) has been stirring debate at a more academic, rather than public, level since it first appeared in the welfare reauthorization bill in 2002. And although certain research has shown that marriage is good for society, the projects of the HMI again raise questions about what role the government should play in supporting it, and whether marriage should be seen as a cure for poverty (Zellar *New York Times* 1/18/04). However, as NOW's Action Vice President Loreta Kane once said, "If marriage were the solution to

¹⁶⁹ The SIECUS report sheds light on how these programs stand in direct opposition to the basic American values of tolerance and diversity. It outlines the history of the marriage-promotion industry, the funding streams which support it, the messages it is giving to youth, the conservative agenda that motivates it, and also gives policy recommendations based on the findings. "Legalized discrimination: the rise of the marriage-promotion industry and how federally funded programs discriminate against lesbian, gay, bisexual, and transgender youth and families." *SIECUS Developments* (Winter-Spring 2008): 3(1).

poverty, it wouldn't take an act of Congress to promote it" (Peterson 2000). Critics of the HMI see it as social engineering by conservatives who profess to dislike government intrusion.

The dominance of social science research in the debate over the Bush Administration's Healthy Marriage Initiative may explain why question regarding the proper role of government in regulating adult intimacy have received little attention. Social science research focuses on outcomes such as well-being and health. In contrast, rights-based legal theory considers whether state action promoting marriage undermines the rights of individuals; do individuals have a liberty interest in making their own choices about intimate relationships, such as marriage?; do federally-financed (and frequently state-run) marriage programs compromise this liberty interest?; and, are there any constitutional grounds for objecting to marriage promotion policy? (Struening 2007).¹⁷⁰ In a study published last February in the journal *Social Problems*, Daniel T. Lichter, a professor of sociology at Ohio State University, found that while women from disadvantaged families reaped some economic benefits from marriage, those women who married and then divorced experienced higher poverty rates than those who never married at all (Zellar 2004). Other researchers, like Leslie J. Brett, the executive director of Connecticut's Permanent Commission on the Status of Women, have argued that other influences, like work hours, the availability of child care and access to health care, are set up to favor two-parent nuclear families, and therefore families that don't fit that model are discriminated against. "In order to improve the outcomes for families that do not fit the 'ideal' type," Ms. Brett wrote, "we can seek to change and broaden the systems to

¹⁷⁰ Struening, Karen. "Do Government Sponsored Marriage Promotion Policies Place Undue Pressure on Individual Rights?" *Policy Sciences* 40.3 (Sept. 2007): p241 (19).

support more types of families, rather than seeking to change the families themselves” (Zellar 2004).

In sum, it is not an easy task to turn a critical eye on the idea of helping to create healthier relationships. However, the language used in the Initiative, such as the specific choice of healthy marriage rather than healthy relationships, discriminates against any couple, relationship or family that does not fit the heteronormative definition of marriage as dictated by the Defense of Marriage Act. Also, one has to question the real motivation behind the HMI. Since it is designed to assist low-income couples, is the motivation to create healthy marriage for all of society, or is it mainly to reduce welfare dependence – as well as perpetuate a heteronormative structure, thereby protecting the security of the nation from the internal threat of changing social norms.

Interestingly, the liberal/equality arguments presented by the LGBTQ community for same-sex marriage are practically identical to the HMI arguments for promoting healthy marriage. Children are happier and healthier, adults are more productive at work, and according to the Heritage Foundation, marriage also brings safety to women. Yet, if these HMI arguments are true about the benefits of healthy marriage for the nation: then it would make more sense to also offer these beneficial programs to LGBTQ couples as well. Also, the promotion of “fatherhood” perpetuates traditional male roles of breadwinner and head-of-household – and are clearly not based on progressive or feminist ideas of gender equality in the home. And to reiterate – “it is important not to ignore the evidence that the presence of consistent, loving caregivers is more important in a child’s development than the numbers, sex or marital status of the caregiver(s)” (Peterson, M. 2001). The evidence suggests that maintaining traditional marriage plays a

key role in the future heteronormative stability of the United States. For this reason, the national security imaginary is dependent upon marriage for maintaining heteronormativity as the foundation for a successful society.

***Protecting Traditional Marriage and the National Security Imaginary:
The Proposed Federal Marriage Amendment (FMA)***

In 2004, President Bush stated that “there is an overwhelming concern in our country for protecting the institution of marriage.” In response to this, the Federal Marriage Amendment (FMA) was created. The FMA, also referred to as the Marriage Protection Amendment, is a proposed amendment to the United States Constitution which would re-define marriage across the United States as a union of one man and one woman. The proposed Federal Marriage Amendment suggests that the struggle for same-sex marriage and the small victories attained by the gay rights movement have been interpreted as a threat to the stability to the national body and its security imaginary. Consequently, the Federal Marriage Amendment has been introduced in the United States Congress four times: in 2003, 2004, 2005/06, and 2008.

In the United States, civil marriage is governed by state law. Each state is free to set the conditions for a valid marriage, subject to limits set by the state’s own constitution and the U.S. Constitution. In fact, “The State has absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved” (*Pennoyer v. Neff*, 95 U.S. 714 (1877)). Traditionally, a marriage was considered valid if the requirements of the marriage laws of the state where the marriage took place were fulfilled (First Restatement of Conflicts on Marriage and Legitimacy § 121, 1934). However, a state can refuse to recognize a

marriage if the marriage violates a strong public policy, even if the marriage was legal in the state where it was performed (Second Restatement of Conflicts on Marriage and Legitimacy § 283(2) 1971). States historically exercised this “public policy exception” by refusing to recognize out-of-state polygamous marriages, underage marriages, incestuous marriages, and interracial marriage. Following these precedents, nearly all courts that have addressed the issue have held that states with laws against same-sex marriage can refuse to recognize same-sex marriages that were legally performed elsewhere.

However, on February 24, 2004, President Bush called for a Constitutional Amendment protecting marriage. It goes as follows:

Eight years ago, Congress passed, and President Clinton signed, the Defense of Marriage Act, which defined marriage for purposes of federal law as the legal union between one man and one woman as husband and wife. The Act passed the House of Representatives by a vote of 342 to 67, and the Senate by a vote of 85 to 14. Those congressional votes and the passage of similar defensive marriage laws in 38 states express an overwhelming consensus in our country for protecting the institution of marriage. In recent months, however, some activist judges and local officials have made an aggressive attempt to redefine marriage. In Massachusetts, four judges on the highest court have indicated they will order the issuance of marriage licenses to applicants of the same gender in May of this year. In San Francisco, city officials have issued thousands of marriage licenses to people of the same gender, contrary to the California family code. That code, which clearly defines marriage as the union of a man and a woman, was approved overwhelmingly by the voters of California. A county in New Mexico has also issued marriage licenses to applicants of the same gender. And unless action is taken, we can expect more arbitrary court decisions, more litigation, more defiance of the law by local officials, all of which adds to uncertainty.

After more than two centuries of American jurisprudence, and millennia of human experience, a few judges and local authorities are presuming to change the most fundamental institution of civilization. Their actions have created confusion on an issue that requires clarity. On a matter of such importance, the voice of the people must be heard. Activist courts have left the people with one recourse. If we are to prevent the meaning of marriage from being changed forever, our nation must enact a constitutional amendment to protect marriage in America. Decisive and democratic action is needed, because attempts to redefine marriage in a single

state or city could have serious consequences throughout the country. The Constitution says that full faith and credit shall be given in each state to the public acts and records and judicial proceedings of every other state. Those who want to change the meaning of marriage will claim that this provision requires all states and cities to recognize same-sex marriages performed anywhere in America. Congress attempted to address this problem in the Defense of Marriage Act, by declaring that no state must accept another state's definition of marriage. My administration will vigorously defend this act of Congress.

Yet there is no assurance that the Defense of Marriage Act will not, itself, be struck down by activist courts. In that event, every state would be forced to recognize any relationship that judges in Boston or officials in San Francisco choose to call a marriage. Furthermore, even if the Defense of Marriage Act is upheld, the law does not protect marriage within any state or city. For all these reasons, the Defense of Marriage requires a constitutional amendment. An amendment to the Constitution is never to be undertaken lightly. The amendment process has addressed many serious matters of national concern. And the preservation of marriage rises to this level of national importance. The union of a man and woman is the most enduring human institution, honoring -- honored and encouraged in all cultures and by every religious faith. Ages of experience have taught humanity that the commitment of a husband and wife to love and to serve one another promotes the welfare of children and the stability of society.

Marriage cannot be severed from its cultural, religious and natural roots without weakening the good influence of society. Government, by recognizing and protecting marriage, serves the interests of all. Today I call upon the Congress to promptly pass, and to send to the states for ratification, an amendment to our Constitution defining and protecting marriage as a union of man and woman as husband and wife. The amendment should fully protect marriage, while leaving the state legislatures free to make their own choices in defining legal arrangements other than marriage. America is a free society, which limits the role of government in the lives of our citizens. This commitment of freedom, however, does not require the redefinition of one of our most basic social institutions. Our government should respect every person, and protect the institution of marriage. There is no contradiction between these responsibilities. We should also conduct this difficult debate in a manner worthy of our country, without bitterness or anger. In all that lies ahead, let us match strong convictions with kindness and goodwill and decency. (President George W. Bush, www.whitehouse.gov/news/releases/2004/02/20040224-2.html)

The Federal Marriage Amendment, written by the Alliance for Marriage,¹⁷¹ was first introduced in the 107th Congress in the House of Representatives by democratic Representative Ronnie Shows (D-MS) with 22 co-sponsors in 2003. “Ultimately, only our Federal Marriage Amendment will protect marriage,” said Matt Daniels, president of the Alliance for Marriage. “AFM believes this centrist approach embodied in our amendment offers hope of a democratic solution to the debate that has been forced on America as a result of activist judges” (www.allianceformarriage.org).¹⁷² The FMA was written with the assistance of Judge Robert Bork, Professor Robert P. George of Princeton University, and Professor Gerard V. Bradley of Notre Dame Law School (Cooperman 2/14/04).¹⁷³ It was first introduced in the House of Representatives by Rep. Marilyn Musgrave (R-Colo.) on May 21, 2003 and consisted of two sentences:

Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution or the constitution of any State, nor state or federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups. (Federal Marriage Amendment to the U.S. Constitution)

When the 2003 version of the FMA failed to advance in the legislature, Senator Allard re-introduced the Amendment on May 22, 2004 with a revised second sentence. Rep. Musgrave re-introduced the Amendment in the House on September 23, 2004 with the same revision. The 2004 version of the Federal Marriage Amendment stated:

¹⁷¹ The Alliance for Marriage (AFM) is a 501(c)(3) non-profit research and education organization dedicated to promoting marriage and addressing the epidemic of fatherless families in the U.S. AFM exists to educate the public, the media, elected officials, and civil society leaders on the benefits of marriage for children, adults and society. AFM also exists to promote reforms designed to strengthen the institution of marriage and restore a culture of married fatherhood in American society (www.allianceformarriage.org/site).

¹⁷² Alliance for Marriage – For Immediate Release: “Bush Victory Reflects Public Support for Federal Marriage Amendment Across Party Lines.” (www.allianceformarriage.org/site)

¹⁷³ Cooperman, Alan. “Little Consensus on Marriage Amendment: Even Authors Disagree on the Meaning of Its Text.” *Washington Post*. (Accessed 8/18/07).

Marriage in the United States shall consist solely of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman. (Federal Marriage Amendment to the U.S. Constitution)

GLAD's response to the proposed FMA was, "The President's position, while not unexpected, is deeply disturbing. The leader of our country wants to enshrine direct discrimination into the United States Constitution," said Margaret Williams, Interim Executive Director of Gay and Lesbian Advocates and Defenders. "By endorsing the amendment Bush is calling for permanent unequal status for a group of American citizens. Equal justice under the law is what I thought this country is about." According to GLAD, the federal anti-gay amendment would have the potential to deny over 1,000 protections and rights to same-sex couples, and leave thousands of children vulnerable because their parents are not protected under the law, and would write discrimination into our Constitution by treating gay and lesbian citizens differently (www.glad.org/News_Room/press69-2-24-04). "This is really a declaration of war on gay and lesbian families," said Patrick Guerriero, executive director of the Log Cabin Republicans, the nation's largest gay republican group (Sandalow 2/25/04).¹⁷⁴ The Human Rights Campaign stated that the FMA is discriminatory – that it is wrong to single out a group of Americans for second-class status; and that the Constitution should expand freedoms for Americans, not limit them (www.hrc.org/issues/5476.htm).

However, on July 12, 2004 in a Statement of Administration Policy from the Executive Office of the President in Washington D.C. (S.J.Res. 40 – Federal Marriage Amendment) stated:

¹⁷⁴ Sandalow, Marc. "Same-sex marriage Ban of National Importance – Bush Digs In: He calls for constitutional amendment." *The San Francisco Chronicle*, 2/25/04.

The Administration strongly supports passage of S.J.Res. 40. Marriage has been the foundation of our society and of societies and cultures throughout history and has always been defined as the union between a man and a woman. Yet today a few activist judges and local officials have made an aggressive effort to redefine the fundamental meaning of marriage. Without a constitutional amendment, these judges and local officials can continue to attempt to force States to accept same-sex marriages against the wishes of their own citizens. The future of marriage in America should be decided through the democratic process rather than by the court orders of a few. The Administration urges members of the House and Senate to promptly pass, and to send to the States for ratification, an amendment to protect marriage. (www.whitehouse.gov)

A year earlier, a paper entitled “The Threat to Marriage From the Courts,” written by Arizona’s Republican Senator Jon Kyl, provided a roadmap for a GOP strategy to ban same-sex marriages. The Senate Republican Policy Committee, chaired by Kyl, asserted that a constitutional amendment banning such marriages is the way to counter a “willingness” of law school professors, the legal profession, judges, and even the U.S. Supreme Court to take “pro-same-sex” marriage positions (House 7/11/04).¹⁷⁵ However, just a few days before the vote, Kyl was among just 18 co-sponsors – and not among them was Senator John McCain (R-AZ). McCain does not believe Congress should be tampering with the constitution – at least not yet... McCain’s aide Marshall Wittmann said each state should be given a chance to address the issue as it pleases (Fischer 7/13/04).¹⁷⁶

On July 14th, 2004, President Bush and supporters of the FMA banning gay marriage suffered an embarrassing defeat when the proposal failed to get even a simple majority in the Republican-controlled Senate. The amendment lost with 50 senators voting to block it and 48 voting to advance it on a procedural vote, leaving backers 19 votes shy of the two-thirds majority they eventually would need to pass a constitutional

¹⁷⁵ House, Billy. “AZ in DC.” *The Arizona Republic* 7/11/04.

¹⁷⁶ Fischer, Howard. “Kyl Favors Marriage Amendment.” *The Arizona Daily Star* (Tucson, AZ) 7/13/04.

amendment (Puzzanghera 7/15/04).¹⁷⁷ Then on January 24, 2005, Senator Allard introduced the Marriage Protection Amendment, which was the 2004 version of the Federal Marriage Amendment verbatim, with 21 Republican co-sponsors. Then in 2006, Rep. Musgrave introduced the Marriage Protection Amendment in the House. This version had the same language as the 2004 proposal, except the word “solely” in the first sentence was replaced by the word “only.”¹⁷⁸ On June 5, 2006 the *Washington Post* writes: The FMA, has virtually no chance of passage in the Senate. But that – and the failure of similar legislation back in 2004 – won’t stop the legislation from dominating the chamber at the start of the week where Republicans hope to rally a disillusioned base around a key social issue for conservatives (*Washington Post* 6/5/06). Twenty-seven Republican representatives opposed the FMA and thirty-four Democrats voted in favor of the FMA on July 18, 2006 in the House.¹⁷⁹ And finally, on June 25, 2008 Senator Roger Wicker (R-MS) again introduced the Marriage Protection Amendment, which was the 2004 version of the FMA verbatim.

Opponents of the FMA argue that it would violate the states’ rights to regulate marriage by federalizing the issue, which they say would be left to the states. Constitutionally defining marriage would not only remove the states’ choice, but it would reverse the choices already made in some states. It also would be only the second amendment to restrict, rather than expand, the civil rights of individuals. (The first was

¹⁷⁷ Puzzanghera, Jim. “Senate Blocks Constitutional Effort on Gay Marriage.” *The Times Argus* (Montpelier-Barre, VT) 7/15/04.

¹⁷⁸ Allard, Wayne, et al. (1/24/05) S.J.RES.1 Proposing an amendment to the Constitution of the United States relating to marriage United States Senate, Library of Congress. Accessed 8/19/07.
Musgrave, Marilyn, et al. (6/6/06) H.J.RES.88 Proposing an amendment to the Constitution of the United States relating to marriage United States House of Representatives, Library of Congress. Accessed 8/19/07.

¹⁷⁹ Clerk of the House (7/18/06). Final Vote Results For Roll Call 378 U.S. House of Representatives. Accessed 8/22/07.

the 18th Amendment on prohibition which was later repealed by the 21st Amendment.) In addition, some opponents of the FMA argue that it may complicate efforts to enforce laws against domestic abuse in non-married heterosexual relationships. There are also questions regarding right to privacy; separation of church and state; and freedom of religion.

Protecting traditional marriage as well as re-stabilizing the national security imaginary is the impetus behind the proposed Federal Marriage Amendment. For according to our administration, “Marriage has been the foundation of our society and of societies and cultures throughout history and has always been defined as the union of one man and one woman.”¹⁸⁰ However, opponents such as the Human Rights Campaign, argue that the FMA is discriminatory and that it is wrong to single-out a group of Americans for second-class status.

***Working to Maintain the Heteronormative Imperative of Marriage:
The Pro-Marriage Movement***

In the year 2000, one-hundred and thirteen original signatories to The Marriage Movement came together to proclaim “A Statement of Principles”:

We come together to pledge that in this decade we will turn the tide on marriage and reduce divorce and unmarried childbearing, so that each year more children will grow up protected by their own two happily married parents, and so that each year more adults’ marriage dreams will come true. (www.americanvalues.org, www.marriagemovement.org)

According to the Marriage Movement this is a time of crisis, a crisis which concerns marriage law on two fronts. First, they feel that many leading voices in the field of family law, including the American Law Institute, are calling for changes intended to blur

¹⁸⁰ See Statement of Administration Policy from the Executive Office of the President in Washington D.C. (S.J. Res. 40).

or eliminate many of the legal distinctions between married and unmarried couples. “We know that healthy marriages generate important benefits for adults, children, and society as a whole. For these reasons, we believe that family law should aim to recognize and strengthen, rather than ignore and weaken, marriage’s vital public purposes”

(www.marriagemovement.org). The second challenge for the Marriage Movement is today’s great debate over whether or not to permit same-sex couples to legally marry. From their perspective, the current controversy over equal marriage rights for same-sex couples is the most important social policy debate of our generation.¹⁸¹ Consequently, because of their ideology – founded on beliefs and practices of heteronormativity, the Pro-Marriage Movement serves to maintain and protect traditional marriage and its heterosexual imperative by serving as a powerful opposition to same-sex marriage.

One of the largest and most powerful pro-marriage national organizations is the AFM or Alliance for Marriage, the first architects of the Federal Marriage Amendment. The AFM is a non-profit research and education organization dedicated to promoting marriage. AFM exists to educate the public, the media, elected officials, and civil society leaders on the benefits of marriage, and to promote reforms designed to strengthen the institution of marriage (www.allianceformarriage.org). Public policy reforms are:

- Reduce the tax burden on married families with children.
- Make adoption affordable for more married couples by providing increased tax incentives for adoption.
- Require counseling directed at marital reconciliation for wives and husbands considering a divorce in families with children.
- Eliminate all federal and state welfare policies which penalize welfare recipients who are married.
- Fund public education campaigns emphasizing the importance of marriage and married fatherhood to the well-being of both children and adults.

¹⁸¹ The Marriage Movement’s Mission Statement: We unite around a vision of America where more children are raised in nurturing homes by their married mother and father, and where more adults enjoy mutually fulfilling and lifelong marriages. (www.marriagemovement.org, www.americanvalues.com)

- Support community efforts that encourage fathers to commit to their children and families through marriage.

Civil Society Reforms:

- The media should offer more positive portrayals of marriage and married fatherhood which accurately reflects the positive influence of marriage on the lives of adults and children.
- Educational institutions, including secondary schools and colleges, should adopt curricula and textbooks which accurately describe the benefits of marriage.
- Clergy should voluntarily enter into agreements to require a minimum level of pre-marital counseling prior to performing a wedding. When adopted by clergy in a given geographic area, such agreements tend to increase the percentage of couples who participate in pre-marital counseling.
- Businesses should do more to voluntarily help strengthen their employees' marriages, including offering flex-time, job-sharing, and home-based work options.

Matt Daniels, an attorney and political scientist who serves as founder and president of the Alliance for Marriage – wrote in an article for the *Washington Times* (4/15/2004),

“Healthy Marriages are Good Social Policy”:

Have you heard anyone say: “Marriage is not the business of government?” This sounds great until one considers that the disintegration of the family, built upon marriage, is the driving engine behind many of our most serious social problems. No one would argue that crime and child poverty in America are not the business of government. And no one wants to see the government turn a blind eye to the social trends that are doing the most damage to American children. Therein lies the problem with the fantasy that the health of the legal and social institution of marriage is an exclusively private matter.

The reality is that our government is permanently in the business of dealing with the social fallout of marital and family decline whether we acknowledge that fact or not. This is because decades of social science studies have proven that most of our nation’s most daunting social problems are driven more by family breakdown than any other social variable including race and economics. So, the time has come to recognize that marriage is a public social good. The health of American families built upon marriage affects us all. Investing in building stronger marriages in America is good social policy. (www.allianceformarriage.org)

Another national organization, the Coalition for Marriage, Family and Couples Education (or SmartMarriages.com) is dedicated to making marriage education widely available, to getting the information couples need to create successful marriages out of the research

labs and clinical offices and out to the public. Their goal is to make promarriage information user friendly, affordable, and accessible.¹⁸²

Within the Institute for American Values, the base of the Pro-Marriage Movement, is The Center of Marriage and Families which issues research briefs, fact sheets, and other material related to marriage, families, and children.¹⁸³ An example of the research issued by the Center for Marriage and Families was a new study in 2005 called, “The Consequences of Marriage for African Americans.” This study was done by a team of family scholars that estimated that marriage typically brings a host of important benefits to African American men, women, and children. The study states that on average, married African Americans are wealthier, happier, and choose healthier behaviors than their unmarried peers, and that their children typically fare better in life. At the same time, however, African American women tend to benefit less than men and whites. These were among the key findings presented in “Consequences of Marriage for African Americans,” touted as the first-of-its-kind report based on reviews of 125 social science articles and a new statistical analysis of national survey data. The study was conducted under the auspices of the Institute for American Values.¹⁸⁴

Virtually every state has a central pro Marriage Movement organization. In Arizona, it is the Center for Arizona Policy. In Tarrant County, Texas it is called the Healthy Marriage Healthy Families Coalition which is a growing collaboration of more

¹⁸² The Coalition for Marriage, Family and Couples Education (CMFCE), LLC, 5310 Belt Rd. NW, Washington DC 20015 (www.smartmarriages.com Retrieved 9/2/08).

¹⁸³ Center for Marriage and Families at the Institute for American Values
1841 Broadway, Suite 211.

New York, NY 10023 (www.center.americanvalues.org / Email:info@americanvalues.org).

¹⁸⁴ *The Consequences of Marriage for African Americans* was written by Lorraine Blackman of Indiana University; Obie Clayton of Morehouse College, Norval Glenn of the University of Texas at Austin, Linda Malone-Colon of Hampton University and the National Healthy Marriage Resource Center, and Alex Roberts of the Institute for American Values.

than 40 social service agencies, faith based organizations and community leaders dedicated to supporting healthy marriages in their community. The coalition offers monthly marriage education workshops so that those who choose marriage have the tools needed to make the marriage successful. Coalition members provide an array of supportive services to Tarrant area families – child development, parenting, financial classes, and health education (www.healthymarriageetc.org). The majority of promarriage movement organizations are faith based, funded at least in part by the Healthy Marriage Initiative through grants, etc., and most advocate for the people’s right to vote on civil rights issues – such as constitutional amendments limiting marriage to one man and one woman. For example, in Massachusetts the Coalition for Marriage and Family (Massachusetts’ central promarriage advocacy group), is “particularly committed to ensuring that the people of Massachusetts have the opportunity to vote on the definition of marriage” (<http://coalitionformarriage.org/about-us.aspx>). The Coalition for Marriage and Family is a group of organizations and individuals dedicated to important issues impacting families. On the “about us” page they state that:

With the assistance of VoteOnMarriage.org, the Coalition for Marriage and Family has helped build dozens of Marriage and Family Chapters of grassroots activists across the state. There are thousands of citizens who have expressed their willingness to volunteer in support of traditional values. Others have expressed a desire to run for office to defeat legislators who opposed the people’s right to vote. Our grassroots army is ready and willing to enter the next stage of the fight. (<http://coalitionformarriage.org/about-us.aspx>)

However, research from The Institute for Gay and Lesbian Strategic Studies provides evidence which questions the appropriateness of people voting on civil rights issues. According to G. Russell, author of “The Dangers of a Same-Sex Referendum for Community and Individual Well-Being: A Summary of Research Findings,” some

legislators and citizens across the state, have called for a voter referendum on the question of same-sex marriage. To those favoring a referendum, voters should be able to change state laws or to amend a state constitution to explicitly deny gay and lesbian people the right to legally marry. Russell argues that while a referendum might seem like a democratic way to decide a highly controversial issue, experience with past referenda on gay issues in other states shows a clear and disturbing downside to the process of voting on a group's civil rights. Both formal research and journalistic reports from states including California, Colorado, Florida, Hawaii, Oregon, Idaho, Maine, and Nebraska, offer a cautionary note to the idea of a referendum on this issue.

Rather than uniting community members in democratic debate and mutual respect, referenda often leaves communities even more divided. Voting on civil rights issues does not create a common understanding, but tends to erode a sense of community and damage the mental and physical health of vulnerable community members. (Russell 2004)¹⁸⁵

In addition, faith-based organizations comprise a majority of Pro-Marriage Movement organizations, groups and coalitions. For example, California's Healthy Marriage Coalition (CHMC) is a subdivision of a national non-profit religious corporation called "Married 4 Keeps" (www.married4keeps.org/CaliforniaHealthyMarriage.htm). The CHMC goal is to empower marriage and to support promarriage coalitions throughout the state of California. The mission of the CHMC is to build a coalition of coalitions that will forge the capacity needed for families throughout California to have greater access to Relationship Skills Training (RST) programs. According to the CHMC, RST programs equip families with the skills and knowledge necessary to form and sustain a healthy marriage and family, overcome the risk of gang influence and

¹⁸⁵ Russell, Glenda M. "The Dangers of a Same-Sex Marriage Referendum for Individual and Community Well-Being: A Summary of Research Findings." *Angles: The Policy Journal of The Institute for Gay and Lesbian Strategic Studies*, June 2004, Vol.7 Issue 1 (www.iglss.org).

involvement, and make the transition from welfare to work

(www.married4keeps.org/CaliforniaHealthyMarriage.htm).

Married 4 Keeps is a national faith based national promarriage religious corporation based out of Orange County, California. Their vision is to strive to make divorces among Christians almost non-existent and instead replace them with vibrant healthy marriages starting with their county and expanding to the state and country. The Married 4 Keeps corporation believes that,

The importance of marriage and family is evident throughout the New Testament's description of both the Godhead (Jesus as the Son of God and God the Father) and the church (the bride of Christ). We believe marriages and families should be glorifying to God to the extent that others desire to know God and want a similar relationship with their spouse and family. Married 4 Keeps trains teenagers, single adults, married adults, pastors, and leaders how to form, enrich, sustain, and protect relationships so that their marriages or their congregation's marriages will be happy, healthy marriages. Above, all, we want relationships and families that glorify God and are godly examples to others. (<http://marriedforkeeps.org/>)

Another national promarriage organization is the Religious Coalition for Marriage which is an ad hoc, interfaith committee of America's Religious Leaders who share a common concern for the well-being of marriage in our nation. According to this religious coalition, in America marriage is under attack like it has never been before. As the leaders of America's faithful, we accept our grave responsibility for the protection of marriage, and although we do not share full unity on a host of important theological beliefs, we can all agree and affirm with one united voice the definition, nature and purpose of marriage. Marriage is the permanent and exclusive union of the one man and one woman pledging mutual support and love for each other and for any children their marital bond may produce (www.religiouscoalitionformarriage.org/html/about_rcm.php). The majority of Christian based promarriage organizations are also anti same-sex marriage.

The Religious Coalition for Marriage has released the “Top Ten Social Scientific Arguments Against Same-Sex Marriage”:

1. **Children hunger for their biological parents:** Same-sex couples using IVG or surrogate mothers deliberately create a class of children who will live apart from their mother or father.
2. **Children need fathers:** If same-sex becomes common, most same-sex couples with children would be lesbians. This means that we would have yet more children being raised apart from fathers.
3. **Children need mothers:** Although gay men are less likely to have children than lesbians, there will be and are gay men raising children. There will be even more if same-sex marriage is legalized. These households deny children a mother. Among other things, mothers excel in providing children with emotional security and in reading the physical and emotional cause of infants.
4. **Inadequate evidence of same-sex couple parenting:** A number of leading professional associations have asserted that there are “not effects” of same-sex couple parenting on children. But the research in this area is quite preliminary; most of the studies are done by advocates and most suffer from serious methodological problems.
5. **Children raised in same-sex homes experience gender and sexual disorders:** Although the evidence on child outcomes is sketchy, the evidence does suggest that children raised by lesbians or gay men are more likely to experience gender and sexual disorders.
6. **Vive la difference:** If same-sex is institutionalized, our society would take yet another step down the road of de-gendering marriage.
7. **Sexual fidelity:** One of the biggest threats that same-sex poses to marriage is that it would probably undercut the norm of sexual fidelity in marriage.
8. **Marriage, procreation, and the fertility implosion:** Traditionally, marriage and procreation have been tightly connected to one another. Indeed, from a sociological perspective, the primary purpose that marriage serves is to secure a mother and father for each child who is born into society.
9. **For the sake of the children:** The divorce and sexual revolutions of the last four decades has seriously undercut the norm that couples should get and stay married if they intend to have children, are expecting a child, or already have children.
10. **Women & marriage domesticate men:** Men who are married earn more, work harder, drink less, live longer, spend more time attending religious services, and are more sexually faithful.

We, the leaders of the nation’s Jewish and Christian, Anglican, African-American, Catholic, Evangelical, Latter-day Saints, Lutheran, Orthodox, and Presbyterian communities commit ourselves to working together to preserve, promote, and protect this central institution of personal and communal life. It is

for the good of children, spouses, and society as a whole that we undertake this task (www.religiouscoalitionformarriage.org/html/top_ten.php).

The evidence suggests religious based pro-marriage organizations are not only anti-gay but are also pro-life and anti-choice. For example, Florida's Christian Family Coalition (CFC) was founded with the purpose of serving as a voice for the pro-family citizens of Florida to ensure that religious liberties are protected from government intrusion. The CFC works to introduce pro-family legislation at the state and local levels of government and to educate citizens on where candidates stand on the issues that affect the traditional family (www.mdccc.org/pages/aboutus.asp). Some of the issues the Christian Family Coalition has supported and lobbied for include:

- the CFC supported vetoing Senate Bill 900 which would have jeopardized the success of the Florida Marriage Protection Amendment
- CFC leaders support Florida's constitutionally upheld law protecting abandoned/orphaned children from adoption by homosexuals; the Florida State Senate Committee approves CFC pro-life bill
- the CFC upholds the right of the people from "partial birth abortion"
- the CFC denounces U.S. Senator from Florida, Bill Nelson, for supporting homosexual marriage and not endorsing the Florida Marriage Protection Amendment
- the Christian Family Coalition also blames Planned Parenthood, NOW, NARAL and the ACLU of Florida for wanting to make first contact with women and young girls who may be pregnant and talking them into having abortions (www.mdccc.org).

Overall, the Pro-Marriage Movement considers themselves necessary for the sake of the stability and the survival of our nation and of the American people. They believe that our nation cannot remain great if we do away with the traditional moral values upon which our country was built. They argue that in Northern European countries the legalization of same-sex marriage has watered down the institution of marriage and has dismissed marriage as archaic and irrelevant.

Just as counterfeiting money will bankrupt an economy, counterfeiting marriage will cheapen, weaken, and detach the fundamental building block of society. The

concept of same-sex marriage is at war with family values. There can be no reconciliation. (www.citycovenant.com/dom/july25jmatterspeech.htm)¹⁸⁶

However, research findings prepared for the *Council on Contemporary Families*, and for the *Institute for Gay and Lesbian Strategic Studies* concerning whether providing marriage rights to same-sex couples will undermine heterosexual/normative marriage – does not demonstrate that gay marriage has any impact on heterosexual marriage. The research suggests that in the Scandinavian and Dutch experience there is little reason to worry that heterosexual people will flee marriage if gay and lesbian couples get the same rights. The conclusion, claims author M.V. Lee Badgett, is even stronger when looking at the United States where couples have many more tangible incentives to marry. For example, scholars of social welfare programs have noted that the U.S. relies heavily on the labor market and families to provide income and support for individuals. In the U.S., unlike Scandinavia, marriage is often the only route to survivor coverage in pensions and social security, and many people have access to health care only through their spouse's employment.¹⁸⁷ Scandinavian states, on the other hand, are much more financially supportive of families and individuals, regardless of their family or marital status (Esping-Anderson 1999).

Overall, there is no evidence that giving partnership rights to same-sex couples has had any impact on heterosexual marriage or heteronormativity in general in Scandinavian countries and the Netherlands. Marriage rates, divorce rates, and non-marital birth rates have been changing in Scandinavia, Europe, and the United States for

¹⁸⁶ Joseph Mattera, City Covenant Coalition – speech for Traditional Marriage Renewal Day, New York, N.Y.

¹⁸⁷ Over 60% of insured people get insurance through their own employer or a family member's employer. U.S. Bureau of the Census. *Health Insurance Coverage: 2001*. Current Population Reports P60-220, 2002, www.census.gov/prod/2002pubs/p60-220.pdf.

the past thirty years. But those changes have occurred in all countries, regardless of whether or not they adopted same-sex partnership laws, and these trends were underway well before the passage of laws that gave same-sex couples rights, argues Badgett. Furthermore, the legal and cultural context in the United States gives many more incentives for heterosexual couples to marry than in Europe, and those incentives will still exist even if same-sex couples can marry. “Giving same-sex couples marriage or marriage like rights has not undermined heterosexual marriage in Europe, and it is not likely to do so in the United States” (Badgett 2004).¹⁸⁸ This suggests that it could be a misinterpretation to see same-sex marriage as a threat or danger to the security of the national body.

Conclusion

In 1996, the United States Congress claimed that the marriage and family unit are the foundations of our society. Consequently, the struggle for same-sex marriage in the U.S., according to some, has threatened the moral fiber that keeps this nation together. For this reason, the evidence provided in this chapter suggests that the Defense of Marriage Act, the Healthy Marriage Initiative, the proposed Federal Marriage Amendment, as well as the Pro-Marriage Movements’ organizations and corporations, function to defend, protect and maintain the national security imaginary by reclaiming traditional marriage.

On a national level, DOMA defines marriage as the union between a man and a woman which prevents same-sex married couples from receiving federal benefits, and

¹⁸⁸ Badgett, M.V. Lee. “Will Providing Marriage Rights to Same-Sex Couples Undermine Heterosexual Marriage?; Evidence from Scandinavia and the Netherlands.” University of Massachusetts Amherst. Prepared for the *Council on Contemporary Families*, and the *Institute for Gay and Lesbian Strategic Studies*, July, 2004.

allows states to refuse to recognize same-sex marriages from other states. The data indicates that DOMA works to defend traditional marriage and re-stabilize the nation's security imaginary. In addition, President Bush's Healthy Marriage Initiative was also created to promote healthy and stable marriages, however, mainly among low-income families. Nevertheless, critics of the HMI claim that well funded traditional marriage and abstinence only-until-marriage programs have become a full-fledged industry that promotes patriarchal idealized notions of heterosexual marriage as the cure for all of society's ills. And different from social science research, rights based legal theory suggests that federally funded and frequently state-run marriage programs compromise/undermine the rights of individuals. Conversely, according to the Heritage Foundation, the HMI is a future oriented, preventative policy that will foster better life-planning skills – encouraging couples to develop loving, committed marriages. However, is the goal to create healthier relationships for American citizens, or is its underlying purpose to reduce welfare dependence while promoting and protecting heteropatriarchal marriage? NOW, the National Organization for Women, calls the Initiative “thinly disguised social engineering.” And Connecticut's' Commission on the Status of Women has argued that other influences, like work hours, availability of child care and access to health care are all set up to favor two-parent nuclear families, and therefore families that don't fit that model are discriminated against.

The power of the proposed Federal Marriage Amendment would go beyond that of DOMA and would redefine marriage in the United States Constitution as the union of one man and one woman, preventing judicial extension of marriage rights to same-sex or other unmarried couples. If the amendment were to pass, it would effectively function

like the Defense of Marriage Act and the Healthy Marriage Initiative to protect and maintain traditional marriage in an effort to re-stabilize and re-solidify the national security imaginary. Organizations such the Alliance for Marriage, the Heritage Foundation, the Institute for American Values, the Coalition for Marriage and Family, Married 4 Keeps, the Religious Coalition for Marriage, and on a state level in Arizona – the Center for Arizona Policy, are a just a few of the many organizations that are the key “defenders” of traditional marriage as well as major contributors to and supporters of the Federal Marriage Amendment; ultimately the Pro-Marriage Movement’s main goal. As Matt Daniels, the President of the national organization Alliance for Marriage stated, “Ultimately, only a Federal Marriage Amendment will protect marriage.”

The evidence provided in this chapter suggests that DOMA, the HMI, the FMA, and the Pro-Marriage Movement, discriminate against the LGBT community (and other unmarried or non-traditional relationships) and perpetuate inequality among U.S. citizens. The evidence also demonstrates the extent to which same-sex marriage is interpreted as a threat or danger to the security of the nation. For some, such as Republican Representative Henry Hyde who employ the slippery slope argument, relate the legalizing of same-sex marriage to (the inevitable legalizing of) incest and polygamy. DOMA, the HMI, the FMA, and the Pro-Marriage Movement protect and maintain traditional marriage and present it as an ideal to lower-income families, as well as teenagers. This promarriage ideology promotes abstinence until marriage in place of sex education, and backs pro-life/anti-choice policies – which consequently penalize and discriminate against non-traditional relationships, families, and women’s rights. Well funded marriage promotion and abstinence-only-until-marriage programs have become a

full-fledged industry that is ostensibly aimed at preventing teen pregnancy and reducing poverty, but in reality promotes idealized notions and practices of heteropatriarchal marriage which then function as a normalizing mechanism to re-stabilize the national security imaginary.

The need to re-stabilize the security imaginary by protecting traditional marriage reflects on the construction of the state and how crucial the perpetuation of patriarchal ideology, structure, and practice is to the security of the nation and why same-sex marriage is interpreted as threat or danger to its stability. The Defense of Marriage Act, the Healthy Marriage Initiative, the proposed Federal Marriage Amendment, and the Marriage Movement all insist that children's welfare is at the heart of their mission. However, is a married heterosexual mother and father the only way for a child to benefit? Or, could the presence of consistent, loving caregiver(s) be more important to a child's welfare than the numbers, sex, or marital status of the caregiver(s)? As Leslie J. Brett suggests, "We can seek to change and broaden the systems to support more types of families, rather than seeking to change families themselves" (Connecticut's Commission on the Status of Women 2004).

~ Chapter Eight ~

*Same-sex Marriage and the National Security Imaginary:
Drawing Conclusions*

This dissertation has been a critical examination and analysis of same-sex marriage and the ways in which it threatens the stability of the national security imaginary.

Scholarship on intersections of nation and security, same-sex marriage, heteronormativity and traditional marriage, International Relations (IR), heteropatriarchy, and the “national security imaginary” have provided the theoretical framework with which to examine the central research question of why challenging the heteronormative imperative of marriage is interpreted as a “danger” or threat to the security of the nation. The evidence and research data strongly suggests that the national security imaginary depends on, defends and protects traditional marriage as a means to prevent the acceptance and legalizing of gay marriage. This project has offered an account of an expanded definition of danger that is based on the construction and maintenance of dualistic identities such as male/female, dominant/ subordinate, insider/outsider, legitimate/illegitimate, and so on. As David Campbell (1998) suggests, the construction of nation and national identity with its exclusions and inclusions, as well as the territorial boundaries of the state, determine the ways in which threats to the nation are constructed. Therefore, since danger is not an objective condition within the national body, the evidence suggests that same-sex marriage has been perceived as destabilizing and hence a danger to the security of the nation.

Within the national imagined community: “Anything can be a risk, it all depends on how one analyzes the danger and considers the event – danger is an effect of interpretation” (Campbell 1998:2). Thus, the ability to present same-sex marriage as alien, subversive, dirty or sick has contributed to more than forty states adopting laws or constitutional amendments effectively banning gay marriage in the United States. The necessarily interpretive basis of danger has important implications for analyzing the evidence provided concerning the national security imaginary and the challenges of same-sex marriage. Based on this information, the findings demonstrate that marriage and the nation emerged together, giving them common features as a function of their common origins – making them interdependent; hence, a threat to one is a threat to the other. Therefore, same-sex marriage is seen as a danger to the nation’s security. The data suggests that same-sex marriage threatens: the “manly” or masculine construction of the nation and its heteropatriarchal origins; traditional gender roles; the nuclear family; socially constructed ideals of “morals” and “respectability”; and, the sanctioning or naturalizing of hierarchies – gender, racial, class, sexual, and so on.

This project provides many possible contributions to political feminist, queer and IR theory, state and federal policies, as well as inspiring activism and social justice. Most central, are that it highlights and hence questions and challenges the heteronormative, patriarchal construction of the nation’s security and its connection to and protection of traditional marriage. It challenges heteronormative marriage/family and the ways in which it functions as a normalizing mechanism to create boundaries of insider/outsider status and second class citizenship. It illuminates the gendered construction of the nation and the ways in which heteronormative marriage is foundational to its structure,

challenging the traditional roles of husband and wife, father and mother. It sheds light on how same-sex marriage is interpreted as a threat and the ways in which it challenges heteronormativity. The findings have important implications not only for IR theory, but also for local, state and federal policies.

In this final chapter, I will first summarize the findings from the research and evidence provided throughout the previous chapters. Next, I will consider the implications of my research for the field of International Relations, as well as for policy and activism. The findings from this dissertation may contribute to several areas in IR, including IR's construction of the national security imaginary, as well as the nation and the ways in which it intersects with same-sex marriage, heteronormative marriage, gender, citizenship, and race. In the last section, I explore future directions and alternatives.

Summary of the Findings

The findings of my research corroborate already existing scholarship on marriage and the nation, indicating that there was a mutual emergence and construction of the nation and marriage in the U.S. Patriarchy was also encouraged by the state within marriage and its correlating hierarchical gender order. According to Foucault (1979), the family is meant to mirror the patriarchal structure and practices of the state. Therefore, it appears that through the mutual origins of marriage and the nation in the U.S., that the white, heteronormative, christian, monogamous, procreative family ideal emerged. The history of marriage in the United States also reveals how marriage functions as a tool of the state to police the gendered, racial and sexual configurations of its citizenry (Mosse 1985).

This implies that the nation's security is dependent upon the perpetuation of traditional heteronormative marriage. Constructing a white heteronormative citizenry was a crucial aspect of civilization and progress, for building an imperial power. An "effeminate" race was considered too weak to advance civilization and rules against miscegenation were created.

In addition, marriage – as part of its function, has always played a central role in regards to who gains admittance to citizenship and who does not. Similar to the ways in which race, gender and class worked historically to deny citizenship rights, the heteronormative imperative of marriage has worked to construct heterosexuality as a prerequisite to full citizenship rights. For example, it is suggested that the U.S. is a heterosexual regime and that heterosexuality is necessary characteristic of full citizenship status (Phelan 2001). And, that citizenship is predicated on the demarcation of homosexual bodies as outside of citizenship (Alexander 1994). Consequently, the findings suggest full status as citizens for persons marked as sexual 'deviants' will require major changes and a wide ranging conversation that addresses the nature of citizenship, its partnership with marriage and the national security imaginary.

There is also a more radical part of the LGBTQ community whose voice is seldom heard which does not support legalizing gay marriage or the institution of marriage in general. For example, they argue marriage is a tool of assimilation for the white heteropatriarchal nation and is nothing but a push to create homosexual relationships, desires, parenting and so on as replicas of heterosexual patterns. On the one hand, whether the nation's security is challenged by same-sex marriage or by arguments against traditional marriage as a normalizing mechanism and tool of

assimilation, they *both are interpreted as threats* to the national security imaginary. On the other hand, the evidence indicates that gay marriage brings stability and security to gay and lesbian couples and families as well as financial benefits/stability to the state. This is demonstrated in part, by the legalizing of same-sex marriage in Massachusetts, where early studies suggest that the over one-thousand benefits provided by legal civil marriage have brought a certain level of stability to gay couples and families that they did not previously enjoy. In turn, the state benefits from the prosperity and security of its citizenry, i.e. there is less of a burden on state welfare and health services, a boosted economy, and so forth. However, questions of whether same-sex marriage has effected heteronormativity or reduced heterosexism still remain unanswered. Whatever the argument, the security and (in)security of the nation still remain at the center of the same-sex marriage debate.

As stated previously the U.S. nation-state is founded on myths of white, heteropatriarchal, christian, capitalist norms, it also sees itself as a liberal democratic nation in which the equal rights of all are respected. It is this tension between these two contradictory “myths” of the nation that provide an opening for same-sex equality claims and victories. This was exemplified by the success of the movement in Massachusetts and not Arizona. Evidence from Massachusetts demonstrates that the legal experience and financial backing in Massachusetts of many organizations including GLAD – Gay and Lesbian Advocates and Defenders, as well as the support of the well organized and well funded LGBTQ organization MassEquality had a significant impact on the success of the movement. Further, a unified coalition and a politically liberal state, made a

significant difference in Massachusetts' ability to use liberal equality claims and a counter-narrative to gain legal access to same-sex marriage.

In contrast, it has been difficult for the same-sex marriage equality movement in Arizona and other states, to create a successful counter-narrative. The data suggests that the Defense of Marriage Act, the Healthy Marriage Initiative, the Federal Marriage Amendment, and the Pro-Marriage Movement also have had a deep impact on policy in the U.S. by protecting and maintaining heteronormative marriage and by deligitimizing other forms of relationships. Hence, DOMA, the HMI, and the FMA were established because of the same-sex marriage movement to protect, defend, and secure the heteronormativity of the nation. The militaries "Don't Ask, Don't Tell" policy also functions to maintain heterosexual norms. Arizona, as well as many other states, in their resistance to gay marriage have amended their constitution to effectively ban gay marriage. It is for these aforementioned reasons, that the findings strongly suggest that same-sex marriage has been perceived as destabilizing and hence a danger to the security of the nation.

Theoretical Implications for the Field of International Relations

In the following section I discuss the implications of my research for the field of International Relations and security studies, as well as for understanding the nation-state.

IR and Security Studies

As stated earlier, the IR security imaginary is a political/cultural/social construction which works to transform what *appears* to be true – into fact. This dissertation draws on the rich feminist and critical IR literature to unveil the construction of danger and

stability in International Relations. The evidence from this project suggests that gendered, racial, sexual, and heteronormative ideologies and practices shape and inform the IR security imaginary. The discourse on security in mainstream International Relations constructs a “way of thinking” that conceals the operation of heterosexuality in structuring gender across race, class and sexuality systemically. While feminist and critical IR scholars have pointed to the links between heteronormativity, the nation and its security imaginary, there is little available on the intersections of nation, marriage and security. By addressing these intersections in the light of the same-sex marriage movement, this dissertation contributes to the already existing literature by suggesting that heteronormative marriage (like intraracial marriage in earlier history) is importantly linked to national security and the reproduction of the nation. It is within this context that the opposition to gay marriage secures its historical and national support.

After critically analyzing the data, the evidence demonstrates that what heteropatriarchal marriage keeps in place is a sexist, racist, classist, and heteronormative social order inextricably connected to the construction and reproduction of the nation and its security imaginary. This project has sought to “denaturalize” assumptions in IR about the state and its “imagined” securities. This implies that the “practice” of traditional marriage, and the ways in which gender hierarchies are reproduced through the heteropatriarchal family are foundational to the imagined security created in International Relations. By highlighting the intersections of the nation, security, same-sex marriage, heteronormativity, and patriarchy, this project demonstrates a mutually constitutive level of analysis which allows for a better understanding of the interrelationships between all forms of (in)security. The stories told and repeated through IR theory, including the

assumption that the nation requires a heteronormative patriarchal foundation to maintain its security, are only a fiction, and only one way to imagine (in)security.

Intersections of the Nation with Same-sex Marriage, Gender, Citizenship, and Race

Despite the fact that the nation-state is a central construct, it is usually treated as a given and rarely interrogated in mainstream international relations. However, critical IR including feminist IR, has examined the construction of the nation-state and its intersections with same-sex marriage, gender, citizenship, and race. According to IR feminists, the nation is constructed, along with marriage, on notions of “manly” virtues, and it is that virile masculinity that undergirds the foundations of the heteropatriarchal nation, marriage and the security imaginary. Same-sex marriage and homosexuality are interpreted as a weakness in contrast to the “manly” nation. My findings indicate that it is within this patriarchal ideology that understandings of what we regard as normal or abnormal, or insider/outsider status, and so on are constructed as a product of historical development; and behavior, sexual or otherwise, has been kept in line through the disciplinary mechanisms of both marriage and security. Thus, the history of marriage in the United States reveals how marriage functions as a tool of the state to police the gendered, racial, sexual, and christian configurations of its citizenry, implying that the nation’s security is dependent upon the continuation of traditional heteronormative marriage.

The evidence collected suggests that same-sex marriage is interpreted as a danger to the stability of heteronormative marriage, the nation, and its socially constructed gender roles in the U.S. For the emerging nation, domesticity characterized marriage and

corresponding hierarchical gender roles. Because of the interdependence of marriage and the nation, it is suggested that women's changing roles outside of heteronormative marriage have always been threatening to the security of the national body and its stability. For that reason, historically heteronormative marriage was seen as crucial to the developing empire because it offered a "natural" symbol and structure for the sanctioning of national hierarchy. White, heteronormative marriage was seen as the exemplar of a "civilized" people and nation. Other arrangements were described as base or unnatural. Thus, the heteronormative couple/family was so crucial to security and stability that during the nineteenth century marriage reform activists were censored and jailed, demonstrating the extent to which traditional marriage was (and is) protected by the state. Because of the mutual construction of the nation and marriage, it appears that when same-sex marriage threatens traditional gender roles, in turn, the nation and its security are also considered at risk.

Arguments in favor of same-sex marriage are largely drawn on liberal notions of equality, based on full citizenship rights and the Constitution. Many advocates in favor of gay marriage compare their quest to the civil rights movement which sought for equal status as citizens. Comparisons are frequently drawn, for example, between efforts to eliminate state bans on interracial marriage and the quest for same-sex marriage. Many opponents of same-sex marriage argue that marriage is between one man and one woman and gay marriage directly challenges this gender ideology; whereas, interracial couples still fit the heterosexual/procreative norm. The claim is that there is a fundamental difference in the challenges between interracial marriage and same-sex marriage. While interracial marriage was also seen as subversive to the white heteronormative nation, one

of the different aspects of gay marriage is the subversion of the hierarchal gender roles founded in the patriarchal family and the nation. Although same-sex marriage will help to transform roles of husband/wife and father/mother within the home, the evidence argues that there is a possibility that marriage may still continue to function as a normalizing mechanism for the nation.

The evidence further indicates that full status as citizens for persons marked as sexual “deviants” will require major changes and a wide ranging conversation that addresses the nature of citizenship, its partnership with marriage and the national security imaginary. As Amy Brandzel argues,

The reinsertion of heterosexuality as a norm has pointed to a crack in heteronormativity which has placed the gender system itself under a spotlight and exposed the presumption of the “naturalness” of gender and the states’ interest in promoting the reproduction of certain kinds of citizens. (Brandzel 2005:21)

Phelan argues that the United States is a heterosexual regime and suggests that heterosexuality is a necessary characteristic of full citizenship status (2001). Jacqui Alexander argues that citizenship is predicated on the demarcation of homosexual bodies as outside of citizenship (1994). As these scholars and the data suggest, the state has constructed heterosexuality as a prerequisite to full citizenship rights. Advocates of same-sex marriage, skeptics, and social conservative opponents all agree that questions of citizenship status are at stake in the same-sex marriage debate. The findings indicate that the argument for gay marriage appeals to constitutionally guaranteed principles of the U.S. Constitution. And, a “failure to recognize such rights speaks to a fundamental injustice in our politics that must or should be intolerable” (Richards 1999:1). If the opposition’s arguments against same-sex marriage are based on the assumption that “man and woman” are discrete, natural and identifiable categories, then this implies that the

courts desire to declare gender unquestionable demonstrates the courts and society's unwillingness to acknowledge the social construction of gender hierarchies as well as ideologies and practices of heteropatriarchy.

As previously stated, marriage functions as a normalizing mechanism of the nation-state and is also instrumental in articulating and structuring racial hierarchy and discrimination. The prohibition of especially black/white interracial marriage and the consequent struggle to overcome anti-miscegenation laws demonstrates one of the first "dangers" or threats to white heteronormative marriage and the nation's security. The findings indicate that it was the challenge to socially accepted racial hierarchies within the national security imaginary which was threatened by miscegenation; however, it did not threaten gender roles, procreation or heteronormativity in the same ways as the challenge of same-sex marriage now does. Nevertheless, a significant aspect of ending anti-miscegenation laws is that interracial marriage became perceived as less threatening to the status-quo as changes to white heteronormative marriage and citizenship status were incorporated into the national security imaginary.

As same-sex marriage is legalized in more states, it may come to be perceived as less threatening to the nation-state. The research indicates that the movement for same-sex marriage may also continue to function as a normalizing mechanism without much noticeable disruption over time to the national security imaginary. The implications of these changes for the heteronormative nation could be significant. While the tenacity of patriarchal structures appear to accommodate difference, its ideological structures remain secure as demonstrated by the history of marriage in the U.S. Although marriage can no

longer be considered as static and predictable as it had once been, its underlying hierarchical structure and patriarchal ideologies and practices have barely shifted.

Whether the nation's security is challenged by same-sex marriage or by arguments against traditional marriage as a normalizing mechanism and tool of assimilation, it is important to note that both are interpreted as threats to the national security imaginary. The paradox is, that even as gay marriage challenges gender roles and the national security imaginary, it also reinforces the centrality of marriage in the national imagination. For this reason, I suggest that there has not been enough attention paid to the role of the state in marriage, as well as the role of marriage in the reproduction of the national security imaginary.

Implications for Policy

Overall, research shows that public acceptance of homosexuality has increased in a number of ways in recent years (Pew Research Center 2006). As marriage equality activists continue to push for legal same-sex marriage, several states have enacted laws making it clear that civil marriage is limited to one man and one woman. It was and still is believed that same-sex marriage will automatically undermine the gendered roles and procreative element associated with patriarchal marriage. It was for these reasons that between 1995 and 2005, 43 states adopted statutes or constitutional amendments banning same-sex marriage (Koppleman 2005:143). However, as the movement grew, Domestic Partnerships and Civil Unions were created, which ultimately perpetuated the second class status of LGBTQ peoples by ignoring the *Brown v Department of Education* (1959) Supreme Court decision that “separate is inherently unequal,” as neither Domestic

Partnership or Civil Unions offer any of the over 1,100 federal marriage benefits. While Domestic Partnership and Civil Union benefits are a worthy goal for some, they do not provide full equality. And as the evidence indicates, the boundaries that secure the heteronormativity of marriage and the nation are protected by the second class status of Domestic Partnership and Civil Unions as both help to secure the heterosexual foundations of the national body.

The evidence provided from Arizona and Massachusetts' same-sex marriage movements has several policy implications for gay marriage and the national security imaginary. First it suggests that the heteronormative, patriarchal family provides the fundamental principles of social organization by assuming the nation's well-being as a relatively fixed gender hierarchy – and the traditional family asserts the maintenance and perpetuation of this dualistic system. Arizona, as the data demonstrates, is no exception. And now with Proposition 102 passing in November of 2008, the state has officially amended its constitution to ban same-sex marriage. Arizona has a relatively short history with the Marriage Equality Movement, but some feel the move toward Domestic Partnership benefits is a start. Before November, it was thought that if Prop 102 was rejected, it may have been possible that the Arizona Supreme Court would again revisit the *Standhardt v. Arizona* case. However, with the measure passing the hopes of the Marriage Equality Movement in Arizona are stalled for the time being. Although both sides of the marriage debate in Arizona claim that marriage brings stability, the majority of Arizonan's still interpret same-sex marriage as a "danger." However, the paradox that policy makers need to recognize is that second class citizenship to any group within the nation may ultimately create possibilities for destabilizing the nation.

Implications for Activism

Massachusetts, in an historic decision, the Supreme Judicial Court ruled on November 18, 2003, that gay and lesbian couples have the right to legal civil marriage. The legal experience and financial backing in Massachusetts of GLAD (Gay and Lesbian Advocates and Defenders) as well as the support of the well organized and funded LBGTQ organization MassEquality, made a significant difference in Massachusetts' ability to legalize same-sex marriage. The findings indicate that it was the combination of support from GLAD and MassEquality, the powerful legal suit comprised of seven plaintiffs, *Goodridge v Department of Public Health* (2001), organizational abilities and coalition politics, and the strategic use of media resources which made the difference for Massachusetts in contrast to Arizona.

The data suggests that in Arizona, even though armed with constitutional arguments, those in favor of same-sex marriage did not have the experience, funding, unified presence, or support compared to those in favor of the constitutional amendment to ban gay marriage. In addition, the difficulty of using the tension between the constructed white, gendered, racial, christian, heteropatriarchal identity of the nation and its liberal equality claims becomes obvious in the case of Arizona. Within the context of the historically conservative politics of Arizona, liberal equality claims have found tremendous challenges. In contrast to Massachusetts, the politics of Arizona make it more difficult for the same-sex marriage movement to further its liberal equality goals. The findings suggest that the conservative politics of Arizona have had an impact on policy decisions and have affected the possible success of counter-narratives in the state.

What are the lessons activists in Arizona can learn from the successes of the same-sex marriage movement in Massachusetts? First, Arizona activists did not have sufficient funding or experience for the LGBTQ organizations to successfully mobilize the various constituencies of the state. Second, the lack of funds created an additive impediment to success since it prevented activists from buying positive media coverage. Third, the division within the LGBTQ community in Arizona in contrast to Massachusetts made it difficult to create a unified presence and provided opportunities for exploiting this divide. Finally, unlike in Massachusetts, Arizona activists were mostly unable to reach out to other organizations. This failure to form coalitions in support of same-sex marriage was also a major obstacle to success. Consequently, the successes in Massachusetts may provide Arizona as well as other states with important information for mobilizing in a conservative state.

Future Directions and Alternatives

While the dissertation is focused on the struggle for same-sex marriage equality, it is important to note that according to the 2000 Census, there are eleven million unmarried people living with an unmarried partner in the United States today, and this number has grown 72% in the last decade alone. Millions more are not currently in relationships or do not live with their partner, and have no plans to marry (<http://www.unmarried.org>). There are many reasons people may choose not to marry. Some people, like same-sex couples and those in relationships of more than two people, are not legally allowed to marry within the current patriarchal ideology and its subsequent imagined security.

Consequently, many people in the U.S. are already adopting alternatives such as the organization “Alternatives to Marriage.” According to their mission statement,

The Alternatives to Marriage Project advocates for equality and fairness for unmarried people, including people who are single, choose not to marry, cannot marry, or live together before marriage. We provide support and information for this fast-growing constituency, fight discrimination on the basis of marital status, and educate the public and policymakers about relevant social and economic issues. We believe that marriage is only one of many acceptable family forms, and that society should recognize and support healthy relationship in all their diversity. (Alternatives to Marriage Project, <http://www.unmarried.org>)

The Alternatives to Marriage Project is open to everyone, including singles, couples, married people, people in relationships with more than two people, and people of all genders and sexual orientations, and is not founded on patriarchal beliefs, structures and practices.

For example, the organization “Beyond Marriage” is already practicing empowerment strategies, especially for those already marginalized by a patriarchal ideology. They, the undersigned – lesbian, gay, bisexual, and transgender and allied activists, scholars, educators, writers, artists, lawyers, journalists, and community organizers write:

We seek to offer friends and colleagues everywhere a new vision for securing governmental and private institutional recognition of diverse kinds of partnerships, households, kinship relationships and families. In so doing, we hope to move beyond the narrow confines of marriage politics as they exist in the United States today.

We seek access to a flexible set of economic benefits and options regardless of sexual orientation, race, gender/gender identity, class, or citizenship status.

We reflect and honor the diverse ways in which people find and practice love, form relationships, create communities and networks of caring and support, establish households, bring families into being, and build innovative structures to support and sustain community.

In offering this vision, we declare ourselves to be part of an interdependent, global community. We stand with people of every racial, gender and sexual identity, in the United States and throughout the world, who are working day-to-day, often in harsh political and economic circumstances – to resist the structural violence of poverty, racism, misogyny, war, and repression, and to build an unshakeable foundation of social and economic justice for all, from which authentic peace and recognition of global human rights can at long last emerge.¹⁸⁹ (http://www.beyondmarriage.org/full_statement.html)

The U.S. Census findings tell us that a majority of people, whatever their sexual and gender identities, do not live in traditional nuclear families. Recognizing the diverse households that already are the norm in this country is simply a matter of expanding upon the various forms of legal recognition that are already available. Alternative discourses claim that all families, relationships, and households struggling for stability and economic security will be helped by separating basic forms of legal and economic recognition from the requirement of marital and conjugal relationship. The struggle for same-sex marriage rights can be understood as only one part of a larger effort to strengthen the security and stability of diverse households and families. LGBTQ communities already have ample reason to recognize that families and relationships know no borders and will not fit into the narrow, single existing template currently allowed and practiced by the heteropatriarchal nation.

I want to end on a personal note by acknowledging that in my world of family, friends, colleagues, students, and extended family, many of us long for communities in which there is systemic affirmation, valuing and nurturing of difference, and in which conformity to a narrow and restricting vision is never demanded as the price of admission to civil society. Like the activists for same-sex marriage, many of us envision the creation of communities in which people are encouraged to explore the widest range of

¹⁸⁹ The published signatories to the statement include Mimi Abrovovitz, John D’Emilio, Barbara Ehrenreich, Marvin Ellison, Judith Plaskow, Cornel West, and a host of others.

non-exploitive, non-abusive possibilities in love, gender, desire and sex without the fear that this searching will potentially forfeit our full rights to citizenship. The struggle for same-sex marriage exemplifies for many of us the yearning for an end to repressive attempts to control our personal lives. It is a movement which consciously seeks to embrace alternatives to patriarchal structures and practices and attempts to broaden the ways in which security and insecurity is imagined.

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C/O Boards, Committees & Commissions, P?O Box 27210 Tucson, AZ 85726

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PETITION FOR REVIEW OF A SPECIAL ACTION DECISION OF THE
COURT OF APPEALS. Harold Donald Standhardt, a single man; Tod Alan
Keltner, a single man. Petitioners, vs. superior court of the State of Arizona, In
and For the County of Maricopa, Michael K. Jeanes, The Clerk of the Court,
Respondents, and State of Arizona, Respondent-Real Party in the Interest. Kent
& Ryan, P.L.C. 45 W. Jefferson, Ste 220, Luhrs Tower, Phoenix, AZ 85003.
Michael S. Ryan Attorneys for Petitioners. Paul Bender, Member of the District
of Columbia Bar, James Weinstein, Member of the California Bar., P.O. Box
877906, Tempe, AZ 85287. Attorney’s for Petitioner.
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Council on Contemporary Families, Institute for Gay and Lesbian Studies – “Will Providing Marriage Rights to Same-sex Couples Undermine Heterosexual Marriage? Evidence from Scandinavia and the Netherlands.” M.V. Lee Badgett, Ph.D., Amherst, Mass. July 2004.

Defend Marriage site: <http://www.deffendmarriage.org>

DOMA – “Defense of Marriage Act,” Pub. L. 104-199, 110 Stat. 2419 (approved Sept. 21, 1996) (codified at 1 U.S.C. § 7, 28 U.S.C. § 1738c) Enrolled bill:

<http://thomas.loc.gov/cgi-bin/query/z?c104:HR.3396.ENR>

Effects of Marriage on Health: A Synthesis of Recent research Evidence. Prepared for: Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Office of Human Services Policy, Contract Number 233-02-0086

Federal Marriage Amendment:

H.J.Res. 56, 108th Cong. (introduced May 21, 2003 by Rep. Musgrave, and

S.J.Res. 26, 108th Cong. (introduced Nov. 25, 2003 by Sen. Allard), would have added this language to the Constitution:

Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the Constitution of any State, nor State or Federal law, shall be construed to require that marital status or the legal incidents there of be conferred upon unmarried couples or groups.

H.J. Res. 39, 109th Cong. (introduced March 17, 2005 by Rep. Lungren) would add this language to the Constitution:

SECTION 1. Marriage in the United States shall consist only of a legal union of one man and one woman.

SECTION 2. No court of the United States or of any State shall have jurisdiction to determine whether this Constitution or the constitution of any State requires that the legal incidents of marriage be conferred upon any union other than a legal union between one man and one woman.

SECTION 3. No State shall be required to give effect to any public act, record, or judicial proceeding of any other State concerning a union between persons of the same sex that is treated as a marriage or as having the legal incidents of marriage, under the laws of such other State

S.J. Res. 1, 109th Cong. (introduced Jan. 24, 2005 by Sen. Allard), would add this language to the Constitution:

Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall

be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman. S.J. Res. 13, 109th Cong. (introduced Apr. 14, 2005 by Sen. Brownback) would add this language to the Constitution:

SECTION 1. Marriage in the United States shall consist only of the union of a man and woman.

SECTION 2. Congress shall have the power to enforce this article by appropriate legislation.

Family Connections in Alabama (HMI)

First Restatement of Conflicts on Marriage and Legitimacy s.121, 1934

Gay Marriage Amendment Fast Facts:

www.cbsnews.com/stories/2004/02/25/opinion/courtwatch/main602312.shtml

GLAD, "GLAD Responds to President Bush Endorsement of the Federal Marriage Amendment." http://www.glad.org/News_Room/Press69-2-24-04.shtml

Governor's Office of Faith-Based and Community Initiatives (HMI)

Healthy Marriage, Healthy Families Coalition of Tarrant County,
<http://www.healthymarriageetc.org>

Healthy Marriages-Strong Families Initiative of Washington, DC (HMI)

Healthy Parents, Healthy Families, Healthy Children – Austin, Texas (HMI)

Heritage Foundation, "Understanding the President's Healthy Marriage Initiative."
<http://heritage.org/Research/Family>

Human Rights Campaign. "What the Defense of Marriage Act Does."

www.hrc.org/issues/5443.htm, "Federal Marriage Amendment."

IGLSS, The Institute for Gay and Lesbian Strategic Studies, www.iglss.org

Institute for American Values, <http://center.americanvalues.org>

Marriage Education for Couples Becoming Parents (HMI)

Marriage First Project of Illinois (HMI)

Marriage Watch website at

<http://marriagelaw.cua.edu/cases/wa/kandu/documant/-coffin-20030818.pdf>

Marriage Works of Pennsylvania

Married 4 Keeps at <http://married4keeps.org>

Minnesota Healthy Marriage and Responsible Fatherhood Initiative (HMI)

NAME National Organization of Marriage Enhancement at <http://www.nameonline.net>

National NOW Times: Marriage movement announces itself. Summer 2000.

Pennoy v. Neff, 95 U.S. 714 (1877)

Religious Coalition for Marriage at "Top Ten Social Scientific Arguments Against Same-Sex Marriage" <http://www.religiouscoalitionformarriage.org>

Remarks by the President, The Roosevelt Room: "President Calls for Constitutional Amendment Protecting Marriage." <http://www.whitehouse.gov/news/releases/2004/02>

Second Restatement of Conflicts on Marriage and Legitimacy § 283(2) 1971)

Smelt v County of Orange, 374.Supp.2d. 861 (CD Cal. June 16, 2005)

Statement of Administration Policy, S.J. Res. 40 – Federal Marriage Amendment,
Executive Office of the President, Office of Management and Budget,
Washington, D.C., July 12, 2004.

Thomas, Library of Congress, at

<http://thomas.loc.gov/cgi-bin/bquery/z?d104:HR03396:@@@L&summ2=m&>

US Government Info: Federal Marriage Amendment – H.J. Res 56,

<http://usgovinfo.about.com/cs/usconstitution/a/marriage.htm?p=1>

U.S. Senate blocks gay marriage ban, <http://www.bbc.co.uk>

White House Compassion in Action Roundtable Highlights Partnerships with Faith-Based and Community Organizations to Promote Healthy Marriages and Families, April 15, 2008. <http://www.whitehouse.fob/news/releases/2008/04/print>

Chapter Eight: Implications from the Critical Examination of Same-sex Marriage, Heteronormativity, and the National Security Imaginary

Alternatives to Marriage Project at <http://www.unmarried.org>

Beyond Marriage at <http://www.beyondmarriage.org>

Democracy Now! at <http://222.democracynow.org>

Freedom to Marry – The Gay and Non-gay Partnership Working to Win Marriage Equality Nationwide, www.freedomtomarry.org

Religious Tolerance at <http://www.religioustolerance.org>

Unmarried America: <http://www.unmarriedamerica.org>

APPENDIX B

“Examples of the Healthy Marriage Initiative”

Examples of the Healthy Marriage Initiative consist of Premarital and Marriage Education; Marriage Education for Couples Becoming Parents; Links between Marriage and Health; and research such as the Building Strong Families project and Supporting Healthy Marriage organization. The Administration for Children and Families recently launched the Community Healthy Marriage Initiative to help couples who choose marriage for themselves develop the skills and knowledge necessary to form and sustain healthy marriages. The initiative’s concept of healthy marriage is guided by Lewis and Gossett (1999), who define eight essential characteristics of a healthy marriage:

- Both partners participate in the definition of the relationship
- There is a strong marital bond characterized by levels of both closeness and autonomy
- The spouses are interested in each other’s thoughts and feelings
- The expression of feelings is encouraged
- The inevitable conflicts that do occur do not escalate or lead to despair
- Problem-solving skills are well developed
- Most basic values are shared
- The ability to deal with change and stress is well developed

Marriage education, a relatively new approach to preventing marital distress and breakdown, is based on the premise that couples can learn how to build and maintain successful, stable marriages. Couples can learn how to increase the behaviors that make a marriage successful and decrease those associated with marital distress and divorce. Strong, healthy marriages have benefits for couples and their children (www.acf.hhs.gov/healthymarriage/about/factsheets_premarital_edu.html). Along with the skills that teach couples how to communicate more effectively, manage conflict, and work together as a team, the courses also teach the benefits of marriage for couples and their children and what to expect in the course of marriage. Program length ranges from several hours to semester-long courses.

The Marriage Education for Couples Becoming Parents is about the transition to parenthood, especially with a first child, creating a fundamental life change for the couples involved. The transition requires couples to adapt their relationship and individual roles, improve their communication skills, and contend with their existing life responsibilities while assuming responsibility for a child. Marriage education for couples becoming parents focuses on expectant couples’ attention to relationship issues before they experience marital distress brought on by the transforming event of becoming parents. The Becoming Parents Program (BPP) targets married or committed couples who are becoming parents for the first time. The program involves 27 hours of classroom time, mostly during the weeks preceding birth, with one 3-hour “booster” session held when the infant is 6 – 8 weeks old and another when the child is 6 months old. Program instructors are often nurses, but paraprofessionals can be trained in the program method (www.acf.hhs.gov/healthymarriage/about/factsheets_premarital_edu.html).

Much of the research of the HMI focuses on recent evidence concerning the effects of marriage on health. In general, married people are healthier than those who are not married across a wide array of health outcomes (Schoenborn 2004). The existence of an association between marriage and health does not necessarily imply that marriage causes better outcomes, however. In particular, people who marry may already be healthier than those who do not, and this may be the reason for the better health of married adults. An examination of the relevance of these patterns for public policy must include careful consideration of whether the association between marital status and various health measures indicates that getting and staying married actually improves health (<http://aspe.hhs.gov/topic/subtopic.cfm?subtopic=377>). The Building Strong Families Project focuses on strengthening marriages and relationships in low-income families and has emerged as a national policy strategy to enhance child well-being. Building Strong Families (BSF) is an initiative to develop and evaluate programs designed to help interested unwed parents achieve their aspirations for healthy marriage and a stable family life.¹⁹⁰ The Administration for Children and Families within the U.S. Department of Health and Human Services has also launched a new project called Supporting Healthy Marriage. It is the first large-scale, multi-year, rigorous test of marriage skills programs for low-income married couples. It is designed to inform program operators and policy makers of the most effective ways to help couples strengthen and maintain healthy marriages. This project measures the effectiveness of programs that provide instruction and support to improve relationship skills.¹⁹¹

On February 26, 2002, President Bush states that: “My Administration will give unprecedented support to strengthening marriages. Many good programs help couples who want to get married and stay married” (www.heritage.org/research/family/bg1741.cfm). According to the Heritage Foundation, the President’s Healthy Marriage Initiative is a future oriented, preventive policy that will foster better life-planning skills – encouraging couples to develop loving, committed marriages. The marriage initiative will provide marriage-skills education to married couples to improve their relationships and reduce their dependence on state and federal welfare.

¹⁹⁰ See www.buildingstrongfamilies.info/

¹⁹¹ For more information about this study contact MDRC (Virginia.knox@mdrc.org).