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IN THE PURSUIT OF HAPPINESS: One Lesbian Couple's Personal Thoughts on Marriage

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I. WHAT DO WE MEAN BY "MARRIAGE"?

Before sharing our thoughts, we would like to clarify our use of the term "marriage," because its meaning varies according to era, society, and culture. For much of human existence, marriages were—and in some cases, still are—arranged based on lineage or economic conditions.² The prevalent notion in contemporary Western culture that marriage is based on individual preference and love is relatively new. Historically, marriage has often consisted of one man and many women.³ "Marriage" may also indicate a legally recognized relationship.⁴ On the other hand, the word "marriage" has described relationships that, although not legally "valid," resemble society's notion of a marital union.⁵ Marriage also can refer to relationships sanctioned by certain religions, which may or may not overlap with those recognized by governments.

Unless otherwise noted, the use of "marriage" in this article refers to the modern, Western concept of a union freely entered into by two people, and typically based on love. Our marriage happens to be between two women. As such, it is invalid in most jurisdictions.⁶ To the extent that there is a normalized notion of empirical marriage in our society, however, our relationship is a marital union.⁷

II. WHY DID WE MARRY?

On July 1, 2000, we married in a traditional wedding ceremony. Seventy-five of our friends and family members celebrated with us, pledging their support for our marriage. Although our wedding did not create a "valid" or legally recognized marriage, the significance of the event cannot be

understated. Prior to our ceremony, we both still viewed the world through individual lenses. Although we each had a desire for and were moving towards a joint approach to life, we still operated as individuals rather than a unit. The act of publicly announcing our desire and commitment—as well as asking for the respect of our family members and the community—was transformative. When the ritual began, we were individuals tenuously tethered by past actions. After the ceremony, we were married and joyously bound for the future.

We met in 1998 while we were both living in the Washington, D.C. area.⁸ We each came into the relationship with different views of marriage. Heather's view was shaped by an early recognition of her same-sex orientation, which occurred a few years before the events in Hawaii sparked genuine thoughts in the queer community about marriage equality as an attainable goal.⁹ Heather remembers the news from Hawaii being exciting but does not recall ever considering marriage to a woman a desirable option. In fact, until meeting Barb, Heather never thought about whether marriage could provide a desirable family structure.

In contrast, Barb's view was shaped by her Catholic upbringing and her plans to marry a man prior to falling in love with Heather.¹⁰ Although Barb always expected to marry and follow the family model she grew up with, she inwardly wondered if she could ever be happy within the patriarchal confines of marriage to a man.

Even though women are no longer property belonging first to their fathers and then to their husbands,¹¹ contemporary gender roles have firm roots in past legal inequities.¹² Before marrying another woman was a cognizable option for Barb, the tension between her desire to marry and her doubts about finding happiness in such a union emerged from the acknowledgement that she could never conform to gender role expectations. For example, Barb's fiancé assumed she would take his name when they married. While the two agreed it would be easier and preferable for everyone in the family to have the same last name,¹³ Barb refused to give up

an integral aspect of her identity just because she was a woman. Instead, she proposed that the choice between their two last names be decided by chance—through the toss of a coin. The conflict and discussions that arose out of this attempt to choose a family surname exemplify the influence gender role expectations have on marriage between a man and a woman.

In Barb's view, the net effect of gender role and marriage expectations created an irreconcilable dichotomy between the "individual" and the "couple." On the one hand, she was perpetually asserting—and trying to maintain—equality as an individual in the relationship. On the other hand, she was attempting to harmonize divergent individual interests and create a common goal and vision for the couple.

In contrast, our marriage is centered around a desire to share our lives, and a commitment to maintain our joint focus. Our belief that we can each achieve more individual satisfaction as part of a united couple may have its foundation in our science backgrounds¹⁴ and is reinforced by our experiences. For example, we generally accept the concept of synergy: the combination of parts functioning as a single unit maximizes utility and achieves greater results than the sum of the parts functioning separately. Consequently, as we witness the synergistic effects of our joint efforts (such as Heather's accomplishments founding and operating a non-profit, and Barb's accomplishments in law school—neither of which could have been achieved without the support and assistance of the other), our belief is fortified.

Our joint desire and commitment permeates every aspect of our relationship. It affects our daily interactions with both each other and the outside world. We each place primary importance on the health of our relationship and act accordingly. It has shaped our individual thought processes and has changed the lens through which we each view our surroundings. If we view an action as harmful to our marriage, we chart a new course. If we encounter a force that is hostile to our relationship, we devise ways to combat or avoid the force. The ubiquity of our desire and

commitment is but one of the many factors that contribute to our successful daily pursuit of happiness as a married couple.

As two women, we are free from the gender roles and expectations that may hinder or challenge male-female marriages. We are equals, which makes our daily negotiation of life's challenges—from mundane divisions of household labor, to monumental choices regarding careers and having children—truly joint and mutually beneficial decisions. Our individual trust and faith in each other and in each other's desire and commitment provides a comforting stability. Having built a stable foundation, we each have more energy to focus on our individual goals. And because our desire and commitment influenced the formation and expression of our individual ambitions, we maximize our benefits as a couple through individual accomplishments.

III. WHY DOES VALIDITY OR MARRIAGE EQUALITY MATTER?

The lack of legal recognition of our relationship is a hostile force to our marriage that attempts to interrupt the positive synergy we have created. The law refuses to recognize the nature of our relationship, and, in doing so, devalues and undermines the stability of our marriage in society. It forces us to operate in a system that will only recognize each of us as individuals, rather than acknowledging and protecting our desired status as unified individuals. Additionally, the absence of legal recognition makes it more difficult for those in our family and community to understand, acknowledge, and support our marriage.

Despite the enormous significance of our wedding, its lack of validity had a serious impact on us. Barb felt fortunate that both of her parents shared in her joy and attended the ceremony,¹⁵ but few of her numerous family members were willing to participate. Only one of her five siblings and one aunt out of thirty aunts and uncles chose to attend.

While a significantly larger portion of Heather's family chose to participate in the wedding, we knew it was very difficult for her

Grandmother, Ozzie, to accept our relationship and acknowledge our marriage. She never said it outright, but her actions spoke volumes. Although we were engaged at the time, Barb was left out of a collage Ozzie created for her eightieth birthday celebration, while Heather's sister's boyfriend was included. The wedding photograph we framed and placed on a desk in the kitchen was usually hidden from view behind a retractable screen whenever she had company. Yet pictures of Heather's sister with her boyfriend adorned the refrigerator, and once they were married a wedding photograph was prominently displayed for all visitors to see. Unfortunately, it was only after Ozzie's death that we learned from reading her memoirs how much she struggled to reconcile society's contempt for our relationship with her love for Heather, and her recognition that our marriage was not so different from her own.

In contrast with the conflict surrounding Barb's decision whether or not to change her name when she married a man, we embraced the only legal recognition that accompanied our wedding: changing our last names. Prior to the wedding, we were Heather Rhoads and Barb Weaver. After the wedding, we legally transformed into Heather and Barb Rhoads-Weaver. We noted on our name change petitions in King County that the reason for the change was our wedding. Expecting the judge to be as hostile as the court clerk,¹⁶ we were pleasantly surprised when he granted our petition, congratulated us in open court, and wished us "much happiness on [our] long journey together."

The impact that legally changing her name had on Heather underscores the impact that the legal recognition of a marriage has on a couple. By changing her name, Heather's colleagues understood that she had married. Most, however, assumed she had married a man. Each time she was asked about her new husband, Heather explained that she did not have a husband, but a wife. While awkward at times, the acknowledgment of Heather's peers adds to the stability of our marriage. Legal recognition of our marriage would exponentially increase the positive impact by requiring

every member of society to acknowledge our marriage, even if they did not accept or embrace it.

In addition to the indirect impact government recognition has on our marriage, having our marriage declared valid by any government has had a profound and direct impact on us individually. When we went up to British Columbia, Canada, on August 1, 2003, to renew our vows and obtain a marriage license, we had been married for just over three years. At the time, we went out of a sense of civic duty,¹⁷ believing that the action would most likely add legal protections to our relationship at some future point. We did not expect anything other than the positive benefits derived from taking a weekend vacation and spending time together. And yet, we both were profoundly moved when the marriage commissioner said, “By the power vested in me by the province of British Columbia, I now pronounce you wife and wife.” It was another transformative moment that solidified our foundation.

Although our marriage is strengthened by legal recognition in Canada, the lack of validity here in Washington State is a constant assault on our marriage. A very concrete example is the difficulty we have maintaining health insurance without a legally recognized marriage. Because of the cost of individual health insurance and the enormous financial and physical risk one takes by not being insured, every decision we make about our careers wears on the stability of our marriage. If our marriage were valid in Washington or the United States, each of us would be able to obtain health insurance through the other’s employer, or school plan, if necessary. The lack of marriage equality forces energy to be wasted on one individual’s well-being, instead of using it to advance mutually beneficial goals.

The difficulty of maintaining health care coverage has plagued us for the duration of our relationship. When we moved to Washington for Heather’s job, her new employer promised domestic partnership benefits. When it renewed its contract for health benefits, however, the company failed to negotiate coverage for domestic partners. Thus, instead of having a unified

interest in Heather's move to advance her career, Barb's individual interest would have remained in keeping a job back East that provided her with health insurance.

We faced the issue again when Barb was in law school and Heather was starting up her non-profit organization. It was possible for law students to obtain health care coverage through school. Although the school had a formal non-discrimination policy that prohibited discrimination on the basis of marital status, only married students could obtain health insurance for family members through the school. Thus, our marriage could not fully benefit from Heather's pursuit of her individual goal because we had to spend more for private health insurance than if the law school had either recognized our marriage, or considered domestic partners as family members. We are currently facing this issue again as we make decisions about our careers and possibly having children in the near future. The lack of marriage equality clearly results in energy wasted worrying about individual security as it relates to health insurance.

The instability of the law itself is another attempt to disrupt the self-sustaining, synergistic loop of our marriage. We were overwhelmed with joy upon hearing the news that the mayor of San Francisco had decided to issue marriage licenses to same-sex couples on the same terms as they are issued to heterosexual couples.¹⁸ We arranged time off work, bought plane tickets, and made other travel arrangements just before the county instituted an appointment process for obtaining marriage licenses. Because so many couples were seeking licenses, the first appointment we were able to secure was on March 12, 2004. Accordingly, we rescheduled all of our work and travel arrangements. On March 11, 2004, however, the California Supreme Court ordered San Francisco to stop issuing marriage licenses to same-sex couples.¹⁹

IV. WHAT'S NEXT?

We are eager to watch the national debate unfold as mainstream society begins to recognize the impact that not being able to legally marry has on our daily lives.²⁰ The unprecedented attention to marriage equality is exhilarating, and we are optimistic that both the proposed national constitutional amendment and the already-enacted Defense of Marriage Act will be defeated. While we are confident that our marriage can survive a lack of validity, we are equally confident that we will achieve even more once our marriage is recognized, and our energies focused on new goals.

¹ Barb credits Heather, her wife, for all that is good in her life and thanks her for providing daily inspiration. Heather would like to thank Barb for her unwavering support and faith in her.

² See, e.g., Jane Aiken, *Lessons from Nepal: Partnership, Privilege, and Potential*, 2 WASH. U. GLOBAL STUD. L. REV. 391, 409 (2003) (arranged marriages remain common place in conservative Hindu society); Laurel Remers Pardee, *The Dilemma of Dowry Deaths: Domestic Disgrace or International Human Rights Catastrophe?*, 13 ARIZ. J. INT'L & COMP. LAW 491, 494 (1996) (arranged marriages are widespread in India); Margaret Y.K. Woo, *Shaping Citizenship: Chinese Family Law and Women*, 15 YALE J. L. & FEMINISM 99, 117 (2003) (noting extinction of arranged marriages in urban areas of China while arranged marriages dominate undeveloped rural areas).

³ Maura Stassberg, *Lawyering for the Mentally Ill: The Crime of Polygamy*, 12 TEMP. POL. & CIV. RTS. L. REV. 353, 386 (2003) (describing common practice of arranged polygamous marriages in modern day, rural, fundamentalist Mormon communities).

⁴ The notion of validity is integral to English and American marriage laws. David E. Engdahl, *Medieval Metaphysics and English Marriage Law*, 8 J. FAM. L. 381 (1968). Even though a relationship was unlawful, if it empirically resembled marriage, then the union was considered a marriage. *Id.* at 384.

⁵ For example, in the late nineteenth century the treatise of the day described unions between same-sex, infertile, and enslaved individuals as invalid but still called the relationships marriages. JOEL PRENTISS BISHOP, COMMENTARIES ON THE LAW OF MARRIAGE AND DIVORCE §§ 122, 321 (Little Brown 6th ed. 1881) (1852). Marriages between same-sex couples and infertile couples were considered void because of the “physical incapacity” to “promote population” or to “bring the parties the comforts and solace of the family relationship.” *Id.* §321. Comparatively, marriages between slaves were considered void because “freedom is essential to marriage.” *Id.* §122.

⁶ Although we “legalized” our marriage by obtaining marriage licenses from British Columbia, Canada, and Multnomah County in Oregon, the validity of our marriage under state and federal law at present is doubtful.

⁷ In Washington, the courts apply several factors such as cohabitation, duration, purpose, pooling of resources and parties’ intent to determine if a relationship is

normatively stable and martial-like. *In re Pennington*, 14 P.3d 764, 771–73 (Wash. 2000). Although not valid marriages, relationships meeting these criteria are considered “meretricious,” and upon dissolution property is divided similarly to dissolutions of valid marriages. Telling are the purposes that the courts have found sufficiently marital-like: companionship, friendship, love, sex, mutual support, and caring. *Id.* at 772.

⁸ College friends introduced us to each other at the Dyke March on June 6, 1998. The four of us marched together, and we all went out for dinner and dancing that night. Although Barb and Heather both drove to the club, Barb was so smitten with Heather that she insisted her friends drive her car home so that she could ask Heather for a ride. Even though it was in the opposite direction, Heather gave Barb a ride home, and we talked until the sun came up. We exchanged phone numbers, and both looked for each other at the Pride Parade later that day. Although we did not see each other at the parade, we both told our friends about meeting someone the night before. Barb called Heather that evening, and we made arrangements to meet up at a local restaurant in Dupont Circle for dinner on June 10, 1998, because Heather was going out of town for a few days for work. We have been inseparable since that first date.

⁹ In 1993, the Hawaii Supreme Court ruled the state’s denial of marriage licenses to same-sex couples must be reviewed under strict scrutiny. *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993), *reconsideration granted in part*, 875 P.2d 225 (Haw. 1993). In 1996, however, the circuit court on remand found that the state failed to present sufficient evidence to meet its burden that marriage equality seemed attainable. *See Baehr v. Miiike*, 910 P.2d 112 (Haw. 1996).

¹⁰ Barb was engaged to a man she met in college. The two lived together for a few years after graduation, but put off setting a wedding date while he was in graduate school pursuing his Ph.D. He is gay, and had the courage to come out of the closet before the two actually married. They are still friends.

¹¹ See Ariela R. Dubler, *In the Shadow of Marriage: Single Women and the Legal Construction of the Family and the State*, 112 *YALE L. J.* 1641, 1654–56 (2003) (describing legal status and rights of married and unmarried women in the nineteenth and twentieth centuries).

¹² Claudia Zaher, *When a Woman’s Marital Status Determined Her Legal Status: A Research Guide on The Common Law Doctrine of Coverture*, 94 *LAW LIBR. J.* 459 (2002) (includes and annotates books and articles that discuss the present social and legal consequences of the doctrine of coverture).

¹³ The two always anticipated having children. Indeed, if it were not for that anticipation, the issue of last names upon marriage might not have been so contentious. It was the discussion of what name their children will bear that fueled many of these discussions. The two even tried to negotiate other solutions, such as having at least two children and giving each child a different last name. One would have been given Barb’s last name and the other would have been given the father’s last name.

¹⁴ Heather has a Master’s degree in environmental sciences, and Barb majored in biology as an undergraduate.

¹⁵ Poignantly, Barb’s father—who, along with Heather’s father, provided the toast at the reception—acknowledged that his dreams of her wedding had not included another bride.

Yet, he was pleased to welcome Heather and her family into his family because he could see in Barb's eyes the happiness and love she had found with Heather.

¹⁶ At the time, the fee for a name change in King County was \$50 and \$8 for each additional member of the household. Although we had owned a home and lived together for over a year, the clerk refused to recognize us as members of the same household and required each of us to pay the \$50 fee.

¹⁷ Although we recognize the obvious differences in the two civil rights movements, analogies between the actions taken for racial equality and those being taken for marriage equality are useful. An African American reporter compared our description of civic duty associated with getting marriage licenses to taking a seat at the front of the bus or sitting at a whites-only lunch counter.

¹⁸ Press Release, Office of the Mayor of San Francisco, Mayor Newsom Asks County Clerk to End Discrimination When Issuing Marriage Licenses (Feb. 10, 2004), at http://www.ci.sf.ca.us/site/mayor_page.asp?id=22778.

¹⁹ *Lockyer v. City of San Francisco*, 2004 Cal. LEXIS 2184 (Cal. Mar. 11, 2004) (staying the City of San Francisco's issuance of marriage licenses to same-sex couples pending the court's determination of the constitutionality of same-sex marriage under the California Constitution); see also Bob Egelko, *Court halts gay vows in Surprise Ruling: Newsom says the city will make a strong case*, SAN FRANCISCO CHRON., Mar. 12, 2004.

²⁰ Our accountant initially estimated that we would be required to pay higher taxes if we filed jointly as married, but due to recent reductions in the so-called "marriage penalty" we are actually now facing an "un-married penalty" of about \$1,800 for 2003. Although we submitted our single returns and paid the higher amount, we also mailed the IRS a draft copy of our joint return and requested a response with guidance about filing an amended return if the federal government chooses to recognize our Canadian or Multnomah County, Oregon, marriage licenses.