

On “Marriage Dissidents”: From Marriage to “Radical Parenting”

Omar Swartz*, Mimi Yedinak

Department of Social Sciences,

University of Colorado Denver

Student Commons Building, Room 3201

1201 Larimer Street, Denver, Colorado 80204, USA

*Corresponding author (e-mail: Omar.Swartz@ucdenver.edu)

Abstract:

While “marriage equality” represents progress, “marriage” as a legal concept insufficiently recognizes its roots as a problematic institution. By examining the essentialism of “traditional marriage,” we can begin to understand many of the existing contemporary problems of marriage, which same-sex marriage may have imported. Marriage has historically contributed to a profound sense of sexism that, in general, oppresses women and promotes a white, middle-class heteronormativity that can be problematic for many, including same-sex couples who, having vindicated their civil rights, might be perpetuating a dysfunctional social institution.

Keywords: Heteronormativity, Marriage Dissidents, Marriage Equality, Revolutionary Parenting

The year 2015 was a watershed moment in the gay rights movement. Many in the movement were ecstatic that the United States Supreme Court took the courageous step in legalizing same-sex marriage nationally. (*Obergefell v. Hodges*, 576 U.S. - 2015). Indeed, it was not long ago that we faced an uncertain Supreme Court on the question of same-sex sexual intimacy and were relieved at the outcome of *Lawrence v. Texas*, holding unconstitutional laws that criminalized consensual same-sex sodomy. (539 U.S. 558 - 2003) Like others in the legal and gay rights community, we had been nervously awaiting that decision, worried that perhaps the Court would use the occasion to strike *down* the privacy rights line of cases upon which John Lawrence and Tyron Garner’s legal argument depended. After all, we feared, how could these gay men be found to have a right to same-sex sexual intimacy when the right to privacy in general - created out of thin air by a liberal Court in *Griswold v. Connecticut* (381 U.S. 479 -1965).- could be declared to have been a constitutional “mistake” and overturned by a more conservative Court? The beneficiaries of such judicial action would be, of course, the opponents of reproductive freedom, ever on the offensive and determined to destroy the legacy of *Roe v. Wade*, which itself depended upon the right to privacy established in *Griswold*.

As it turned out, *Lawrence* was a boon and marked, not the end of a liberal experiment in constitutional jurisprudence, but a major civil rights victory and is a portent of even better things

to come for all Americans. Although it had its rough patches at times (i.e., California's Proposition 8), the law has changed amazingly in terms of supporting the gay rights movement since 2003. Now that we as a nation have achieved our goal of marriage equality, we need to start asking difficult questions about what we have achieved, at what cost, and what that means going forward as a more inclusive and tolerant society. For instance, in our enthusiastic support for marriage equality did us, as a movement, overlook some important implications and necessary critiques of that which we were advocating?

From a legal point-of-view, it was obvious that marriage equality, and gay rights generally, were the civil rights issue of this generation, and that the law, while historically harsh and even cruel toward homosexuals, was changing and that it was inevitable that the anti-homosexual bias in the legal system was as outdated and *anachronistic* as the racist laws of the pre-civil rights years. The years since Stonewall have been nothing short of a revolution in laws and social change that are both *tumultuous* and significant achievement representing years of hard work and sacrifice by many. We are glad to live in a nation that has so changed. We are proud of what we have accomplished and glad, on this front at least, the world will be a better place for our children. Nevertheless, the success of the marriage equality movement should not keep us from continuing to ask the difficult questions that remain fundamental to our larger quest for freedom and justice in American society.

First, we question the "equality" of the phrase "marriage equality." Practically speaking, who in our society can get married? Evidence seems to suggest that marriage has become a middle class, largely white institution that excludes the poor and those without college education. If marriage is as important to our society as we often claim it is when faced with social movements like marriage equality, then the class constraints on marriage need to be addressed. Moreover, it is not clear to us that heterosexual marriages are "equal"; we suspect that they continue to disadvantage women in some way as they have done in the past. In short, the marriage equality movement has done *nothing* to problematize the institution of marriage itself, one that fails so many on so many different levels, the least of which is the question of whether we should continue to equate family with marriage.

Second, and related to the above, to what extent is the marriage equality movement anti-queer? If so, and we believe it is, what has that cost us in terms of coalition building and alliances across the LGBTQ spectrum? Too often, the BTQ part of the coalition is left out. Thus, we remain sensitive to the question of what capital was spent at whose expense? What causes were ignored in the quest for marriage equality? Is the LGBTQ coalition over? Will married gays become conservative and reproduce the culture that the gay rights movement has long fought against? What about the larger issue of social justice that was central to the early gay rights movement? Arguably, a commitment to social justice is more important than ever and may have already been lost.

Third, we are concerned about the intersection between gay rights, religious acceptance, and the larger problem of religious politics in our society. Will the acceptance of same-sex relationships by more religious groups make it difficult for critics of religion to attack the various

churches on other grounds? So, for example, while we want religions such as the Catholic Church to modify their anti-gay stances and policies, and while we are pleased by the stances taken recently by Pope Francis with regard to gay persons (Donadio 2013), what does this mean for our larger critique of religion, of which its anti-gay stance was but *one* of many problems - its misogyny being a major barrier to social justice? Other problems of religion, particularly of the fundamentalist type, involves intolerance, irrationalism, and an attack on science. A religious community can be accepting of gays and still be an impediment to social justice. Will the lesbian community remain as vigilant in criticisms of religion at that point?

In this paper, we argue that the idea of marriage equality insufficiently recognizes the essentialist arguments tied to marriage that often seek to preserve patriarchal structures. By examining how "traditional marriage" was grounded in these essentialist ideas, we can begin to understand problems with the institution of marriage altogether, and how although marriage today may be something very different, it has historically promoted a profound sense of sexism that hurts women in general. We will highlight how couples are pressured into entering the institution of marriage and argue that people should be able to choose *not* to participate in the institution of marriage while still having access to the same rights as married couples. We will examine family law cases that demonstrate how married people's rights are privileged over others in the legal sense and how this often does not serve the best interest of families as may have been intended. We will then review the arguments made by the "marriage dissidents" and connect those to the privileging of marriage seen in the case law. Through this lens, we can begin to stop viewing families as something completely private and separate from the larger social interest. In other words, by not allowing the State to define and preserve our intimate relations, families could be better served by the community in the sense that we could begin to recognize the benefits of what bell hooks calls "revolutionary parenting" rather than prioritizing a patriarchal concept of "motherhood."

Looking Beyond the Symbol

Although the concept of marriage has evolved to a more egalitarian view than that of the past, traditional marriage was historically centered on a discerning sense of sexism that kept women legally inconsequential as citizens. Under traditional marriage, the family was considered an indissoluble and homogeneous unit centered on the ideal of procreation and the hegemony of the husband/father, who was sovereign over the members of the household. Courts primarily considered marriage to exist within the essentialist view presented in *Black's Law Dictionary*, which describes marriage as "the civil status of one man and one woman united in law for life, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex." (Garner 2009) This "distinction of sex" is important in that members of a family were ranked in a strict hierarchy that assigned value based on status, of which gender was fundamental. Cases such as *Mackenzie v. Hare* (the Supreme Court

decision to expatriate a U.S. born female citizen for marrying a man who was not eligible for citizenship himself) demonstrate how the legal doctrine of coverture worked to subsume women's legal rights to that of her husband. (*Mackenzie v. Hare*, 239 U.S. 299-1915) Sexist notions of women existing as property of men were entrenched in the law in various ways throughout history. Husbands could charge other men with "criminal conversion" (a crime of exerting unauthorized use of someone else's property) or "criminal conversation" (an action in civil law) for having sexual relations with his wife. In addition, men had the right of sexual access to their wives as well as the right to mild chastisement of the wife in cases of disobedience, making sexual assault and domestic violence non-existent in the legal sense. In many states, husbands were excused of legal responsibility for murdering other men who sleep with their wives, as this was considered justifiable in the name of "treason against the conjugal rights." (*Briggs v. State*, 238 Ga. 171-1977). In essence, both the law and the institution of the natural sciences made the husband's power over wives and daughters ubiquitous and unquestioned. Both were considered his property and the husband had both the right and the obligation to protect it, regardless of what the women wanted.

Now that marriage has shifted toward a generally more non-essentialist view, we are quick to forget these aspects of history that made marriage problematic. Couples are often preoccupied with the *symbol* of marriage. Even those negative aspects of marriage that reliably pressure individuals into participation are often overlooked with the positive rhetoric of "love" as well as the material enticements provided by the wedding industry. We will demonstrate, we can continue to find theoretical faults with the institution of marriage in a more contemporary sense, particularly in the area of legal privilege.

Married Privilege and the Attack on Family

Although we like to believe that the idea of "family" is highly valued in our culture, this is actually not the case. While many politicians and public figures openly discuss their commitment to family values, many social, economic, political and legal practices often do just the opposite. The legitimation of relationships and what constitutes a "family" lies almost entirely in the hands of the State, which is unique given that, as Claudia Card points out, "[t]he State was often one of the things that these relationships formed a bulwark against." (Card 1996, 4) On some level, the Courts *do* recognize that there is more than one way to be a family and for the state to privilege one over the other is unconstitutional. Such was the position in the case of *Moore v. City of East Cleveland* (431 U.S. 494 - 1977), where Inez Moore was able to argue that a zoning ordinance restricting a combination of her extended family members from living under one roof was a violation of the due process clause of the Fourteenth Amendment. The Supreme Court determined that family was "by no means a tradition limited to respect for the bonds uniting the members of the nuclear family." (431 U.S. 504 - 1977) Still, our concept of what constitutes a legitimate "family" may not always protect individuals against non-marital discrimination, as was the case in *Hewitt v. Hewitt* (77 Ill. 2d 49 - 1979). Although the plaintiff, Victoria Hewitt was able to prove to the court that she and

defendant Robert Hewitt had "lived within the legitimate boundaries of a marriage and family relationship of a most conventional sort," the courts still categorized them and their three children as a pseudo-family due to lack of a marriage license between the couple. The result was that Victoria was unable to recover "an equal share of the profits and properties accumulated by the parties" during their period of cohabitation (77 Ill.2d 52 – 1979). Despite the fact that the Hewitt's had lived up to the expectations of a "conventional, respectable and ordinary family life" that is often glorified in our society, this did not offer them any sort of legal rights, protection, or responsibility when the relationship ended. In fact, the courts went so far as to admit that they feared granting the property rights between unmarried cohabitants might contribute to "enhancing the attractiveness of a private arrangement over marriage." (77 Ill.2d 62 – 1979)

What is it that makes the State want to avoid private arrangements and contracts so badly? The government has an interest in controlling the behaviors of intimate partnerships. In one case, *Marvin v. Marvin*, the courts states "a contract between non-marital partners is unenforceable only to the extent that it *explicitly* rests upon the immoral and illicit consideration of meretricious sexual services." (557 P.2d 106 (1976), 112) If sexual relations outside of the institution of marriage are considered unlawful, the motivation must, on some level, be the State attempting to control our sexual activity and intimate partnerships as citizens. Could this patriarchal mindset be the root of the problem when it comes to discriminating against unmarried peoples? According to Card, the answer may be "yes," as marriage provides an option for legitimating "behavior otherwise illegitimate and make available to us social securities that will no doubt become even more important to us as we age." (Card 1996, 7) Relationships that do not conform to marriage often remain nameless, and Card points out that "along with such namelessness goes a certain invisibility." (Card 1996, 7)

Without the protection of a name to define relationships, couples risk having their relationship behaviors classified as "deviant" simply because they do not adhere to the values that are theoretically associated with a marriage license. This seems to be in direct conflict with the contemporary idea that marriage is no longer strictly a means of promoting procreation and more so about a right to engage in adult bonding. With this concept of "adult bonding" in mind, we can begin to see a break down in the logic of why a marriage license would theoretically be necessary at all.

Another aspect of governmental pressure is a couple's desire to protect their families. While many feel that State regulation of intimate partnerships through the institution of marriage offers a sense of protection, particularly in regards to divorce, the benefits do not always outweigh the negatives. Card states that "we and many others like us might be pushed into marriage," especially when we become concerned about protection and legal rights, and that "marrying under such conditions is not a totally free choice." (Card 1996, 4) With more than 1,500 legal benefits, it is difficult for many committed partners not to consider marriage at some point in their relationship. However, the social and moral rhetoric presented along with the idea of marriage (i.e., "love," or

“religion”) often prevents us from looking beyond its symbol just as much as it encourages us to forget its sexist and patriarchal roots. The result is that these social pressures and privileges are quickly forgotten. We simply do not think about what we “get” when we enter marriage, how our marriage is subsidized by the state with a cacophony of institutionalized public benefits. For most, these benefits appear to flow naturally, as if they were the proper order of things, like rain falling from the sky. But it is not. Someone had to decide that these things were important and to create them. Someone drew the line and someone else polices the border.

In other words, it can be difficult for individuals to see the entire scope of how patriarchal norms can influence our decision-making when it comes to marriage. People often do not realize that these rights are not inherent to them as human beings until they are suddenly unavailable. If we allow the government to decide whose relationships are legitimate, there is nothing to say that this regulation could not one day become discriminative towards couples even when they *are* married for selective reasons. As marriage equality becomes more of a norm, pressure will be brought to bear on those couples, or even individuals who choose to not enter into long-term relationships, to play the marriage “mind games” or risk being branded as being “bad” or “deficient.” Such social pressures can lead, potentially, to a “good guy/bad guy” hierarchy with heterosexual-inspired marriage being the standard of measurement.

One fundamental point is that an opposition to marriage does not necessarily mean an opposition to intimacy, long-term relationships, or “durable partnerships of many sorts.” (Card 1996, 3) As Card writes, “I understand marriage as a relationship to which the State is an essential third party” and although marriage was historically only available to “members of propertied classes,” its purpose being to aid in the creation of a “family,” it is now seen as a form of adult bonding. (Card 1996, 4) If adult bonding is what the State says marriage has become, then why such emphasis on maintaining relationships within the traditional language of “marriage” at all? Card points out that “for those who would work to enlarge the concept of family to include groupings that are currently totally non-contractual, in retaining patriarchal vocabulary there is a danger of importing patriarchal ideals and of inviting treatment as deviant or ‘second class’ at best.” (Card 1996, 4) Card continues:

Let us not pretend that marriage is basically a good thing on the ground that durable intimate relationships are. Let us not be eager to have the state regulate our unions. Let us work to remove barriers to our enjoying some of the privileges presently available only to heterosexual married couples. But in doing so, we should also be careful not to support discrimination against those who choose not to marry and not to support continued state definition of the legitimacy of intimate relationships. I would rather see the state deregulate heterosexual marriage than see it begin to regulate same-sex marriage. (Card 1996, 6)

Although Card, in this case, is referring to the concept of marriage equality, she makes the point that marriage in itself is an institution of privileging certain individual’s rights over others.

This is particularly influential in regards to deciding what types of family relationships are recognized as legitimate by the state, and how they are seen as worthy of this privilege. Pressure to marry because of how one family might benefit from State recognition invites us to participate in an institution, which as Card points out, is hierarchical in nature. We do not want to risk having no rights at all, so we subject ourselves to a system that tells us what rights we can have based on how closely we can fit into a homogeneous mold.

Even though, like Card, we make these statements in reference to same-sex marriage, it speaks to the more peripheral issue of the marginalization of individuals who challenge traditional institutions by coming up with new ways of adult bonding and defining their own relationships/families. Does trivializing non-married relationships, especially those that chose not to conform to a traditional system of monogamy, really matter? How does this affect people in the larger social sphere? According to many authors writing about same-sex marriage, the pressure to conform to a certain ideology of "normalcy" is one that frequently even straight people have difficulty meeting. We expand on these ideas by explaining how marriage, in effect, "tames" people, focusing them on careers, materialism, and other entrapments that work against collective action and self-determination. This is particularly problematic for those who do not fit into a white, middle-class, and heterosexual value system.

"Marriage Dissidents": The Queerest of Them All

Not everyone in the gay rights movement, broadly defined, is satisfied with the focus on, and attainment of, marriage equality, but our sense is that most gay people are in support of it -that the anti-marriage critique of gay marriage by gay people belongs largely to a political and/or cultural fringe. While we agree mostly with the radical politics of this group (its critique of capitalism, for example), we do not necessarily agree with the confusing nature of some of its sexual politics. Moreover, for reasons we will explain below, we see what these anti-marriage queer activists want, politically and socially, as *separate* from the question of marriage equality. In other words, we do not see the movement for marriage equality being incommensurable with many or most of the goals desired by queer people that oppose it. Still, the arguments against marriage equality from this community deserve to be addressed.

M. V. Lee Badgett, research director of the Williams Institute for Sexual Orientation Law and Public Policy at UCLA, dedicates a chapter of her book, *When Gay People Get Married*, to discussing what she calls "marriage dissidents." Badgett reviews the arguments of this group which she summarizes as (1) marriage leading to the end of gay culture; (2) fear that the campaign for marriage equality is hurting progress in other areas important to the gay and lesbian community; and (3) that the institution of marriage will marginalize lesbian and gay people who do not wish to be married. (Badgett 2009, 129-150) To these concerns, we want to add two others: that marriage, being fundamentally heteronormative, is *irreconcilable* with a gay identity and/or lifestyle, and that the marriage equality movement is an expression of neo-liberalism, a politically offensive

phenomenon to people on the left. We will review and discuss each of these concerns below, all the while recognizing that the categories overlap, and making clear distinctions between them impossible.

We start with the supposed threat to gay culture that marriage dissidents' fear follows from marriage equality. According to Badgett, there is a concern among marriage dissidents that marriage equality will bring with it the end of gay culture as it has existed. Such critics are concerned that the main assumption behind the argument for marriage equality among mainstream gay rights activists - that to be gay is to be no different than being "straight" - will, if largely accepted, cause "traditional" gay communities to wither away. Such view assumes that "gay culture" is one thing to preserve or that what has counted as "gay culture" in the past is what should define it in the future. Critics fear, perhaps correctly, that what made being gay distinct may soon be unrecognizable or lost.

This fear of loss is represented by queer activist Mattilda Bernstein Sycamore, who complains that "Gay marriage advocates brush aside generations of queer efforts to create new ways of loving, lusty for, and caring for one another, in favor of a 1950s model of white-picket fence, 'we're-just-like-you' normalcy." (Sycamore 2008, 3) To this line of thinking, Sycamore adds that the word "homo" now stands for "homogeneous." (Sycamore 2008, 4) Another queer activist sums up this concern by warning against the "blandification of gay culture." (Shepard 2008, 124) So-called "blandification" or homogenization comes at the loss of the "we-ness" that lesbians and gays created as part of the consciousness-raising struggle of gay pride and it's morphing into a queer identity. As Patrick Califia laments, "When the term 'queer' first came along, it was such a relief to be able to embrace a label that encompassed so much of my experience and identity, but normalization is a relentless as marching troops of army ants. 'Queer' is on the verge of becoming nothing but a synonym for 'gay.'" (Califia 2008, 97) The problem here is that to be "queer" is not necessarily to be "gay," particularly when "gay" means white-middle-class gay men. In other words, some queer activists wonder what happens to the queer identity when it becomes subsumed by the assimilated white wealthy group of powerful gays who define the gay movement in terms of their own interests.

Badgett's second category of concern among marriage dissidents is that, by focusing on winning marriage rights (or the right to serve openly in the military or in the priesthood etc.), progress in other important areas of interest to the gay community will be hurt. For many gay people, the everyday needs of survival are more pressing than distant notions of marriage, which is unlikely because many gay people are people of color and/or impoverished and, consequently, do not see marriage as a possibility, as gay marriage takes place largely among white, middle-class people, as does marriage in general in this country. The argument here is that the larger, more diverse collection of gay people who do not benefit from marriage would much rather see activist energy spent on anti-racism and anti-poverty work, rights for transgender people, AIDS awareness, suicide prevention for young gay people, and improving the treatment of queers and transgender people in the adult and juvenile justice systems. (Spade 2008, 51) These critics of marriage equality point out

that marriage is largely about middle-class norms and expectations, and that assimilationist goals are more about gaining "straight privilege" than they are about challenging power or flattening the social hierarchy.

Badgett's third category of concern among marriage dissidents is that marriage will bring with it the marginalization or exclusion of white gay people who do not want to participate in marriage. As marriage equality becomes more of a norm, pressure will be brought to bear on those couples as well as other individuals who choose to enter into long-term relationships, to get married or risk having their relationship branded as being bad or deficient. Such social pressures can lead, potentially, to a "good gay/bad gay" hierarchy with heterosexual-inspired marriage being the standard of measurement. Good gays, this argument goes, should look like and act like heterosexuals. Sycamore echoes this concern when she writes that "[a]gainst the nightmare backdrop of assimilation queers striving to vie outside conventional norms become increasingly marginalized." (Sycamore 2008, 5) In an interview with National Public Radio, Sycamore elaborates:

Gay has become a narrow identity based in accessing straight privilege, whereas queer, to me, includes a wider diversity of people. And it also includes a politicized standpoint that means, you know, challenging the status quo and creating new ways of loving and living and with transforming our lives and one another, and also challenging the violence of traditional institutions.¹

In other words, Sycamore's critique is that the gay marriage movement limits people's options to traditional monogamous relationships rather than allowing or encourage people from experiment with new relationship forms. Paula Ettelbrick, for example, argues that marriage equality is a challenge to gay identity and culture as well as an undermining of different forms of relationships. (Ettelbrick 1996, 107-166) She argues it will trivialize non-married relationships. This concern is shared by activist Patrick Moore, who warns that "in redefining what it means to be gay in America, the gay community itself is on the verge of marginalizing those who refuse to conform to a system of heterosexual morality." (Moore 2004) Indeed, he argues this point further: "With the Census Bureau reporting that divorce rates are climbing and new marriages decreasing, it seems that gays are fighting to get into a burning house. If the legalization of gay marriage is achieved, will homosexuals be further marginalized if they can't or won't conform to a heterosexual idea that even straight people can't meet?" (Moore 2004) Moreover, "By universally equating queer sex with love, and love with long-term relationships, the gay movement is selling itself short." (De Vries 2008, 145)

A more radical critique is on display in an interesting collection of essays that appeared to express a collective "disillusionment" with the mainstreaming of the gay movement and with the liberal "assimilationist" gay political agenda. (Conrad 2010) The authors of these essays equate the movement for marriage equality with neoliberalism. They argue, not incorrectly, that marriage tends to be a middle-class institution that reinforces middle-class values. The institution of

marriage, in effect, “tames” people, focusing them on careers, materialism, and other entrapments that work against collective action and self-determination for gay people, particularly for gay people of color who tend to not belong to the middle class. Moreover, marriage equality is seen as a “false hope” or an illusion, as gay people, they argue, will be just as ill-treated as before they were allowed to marry, and that the people who benefit from marriage equality are the same people who benefit now: the elite white gays who already have privileges in other forms of identity.

Additionally, the radical critique of marriage equality is that once marriage equality is achieved, the fear is that privileged gay men will have no interest in fighting for social justice on other fronts (if, indeed, they do now) - like eradicating poverty, universal health care etc. These people will abandon the struggle for “mutual sustainability’ within queer communities and will, in fact, abandon such communities. Sycamore is particularly adamant in making this point:

Assimilation is violence, not just the violence of cultural erasure, but the violence of stepping on anyone who might get in the way of your upward mobility. Gay (and lesbian!) landlords evict people with AIDS to increase property values, gay bar owners arrest homeless queers so they don’t get in the way of business, and gay political consultants mastermind the election of pro-development, anti-poor candidates. (Sycamore 2008, 4)

In all, marriage equality, according to this critique, is a superficial response to the problems that gays and lesbians and non-gender binary folks of all stripes, along with minorities and poor people generally, suffer.

Our response to the above critiques from gays and lesbians (or queers, more generally) against marriage equality is that we recognize that there is more than a degree of truth in their critique. Moreover, we certainly share many of their concerns: we also believe that it is a waste of resources to have to be fighting for gay civil rights, that our society and world have more pressing problems with regard to social justice - for instance, fighting poverty, militarism, and environmental degradation. Fighting for civil rights in the twenty-first century seems so anachronistic. We also agree with the critique that the receipt of economic security and health care should not be dependent on marital status, as it largely does now. We also understand that gay people, like any other people, can be self-serving, greedy, and act out of base class interests or embody class privilege - for instance, critics point out that wealthy white gay landlords in high-density gay neighborhoods are often no better at treating tenants than wealthy straight landlords. Further, as the hostile social pressures that marked gay life for so long dissipate, the individuality of people who happen to be gay will be given free rein to blossom, which means that people will begin to see themselves less-and-less as “gay” or as *less* gay in the ways that earlier gay people felt about themselves and their communities. All of the above may be true. Nevertheless, the quest for marriage equality is a just and an important one, if for no other reason than the fact that life has only gotten better for gays and lesbians because they *stood their ground* and fought for their rights.

Marriage may be an imperfect institution, and we are not here defending it per se, only defending the choice and freedom of all to have marriage, if they want. We understand, at least in principle, the radical queer fringe who see their identities as too radical to participate in marriage, and that is fine. For example, while we cannot agree with Stephanie Schroeder's argument "that queer people having children conservatize not only themselves and their children, but tar the entire queer community as well [by mainstreaming it]" (Schroeder 2008, 103), we recognize that not everyone needs to have children - but many people, including gay people, *do*, and being a parent does not necessarily make one political conservative or mainstream (it does, we hope, make a person more *responsible*). Raising children is not necessarily only about exchanging our "activist/community membership cards for shitty diapers and college tuition bills." (Schroeder 2008, 104) Parenting is also about radicalizing, as well as raising, the next generation.

While the various critiques of the marriage dissidents are important, and while we condemn their marginalization from the mainstream gay rights community that, at times, seeks to silence them, the concerns of the marriage dissidents are, we argue, misplaced. Marriage equality and gay rights help radical queers as well, providing them with more allies and a more tolerant legal environment generally. As for their radical critique of capitalism, we embrace it wholeheartedly, but we believe that the political goals of the marriage dissidents can be better achieved through more traditional leftist methods in alliance with straight people in progressive parties that have outgrown (hopefully) its homophobia.

Overall, our argument is that marriage equality will work toward putting to rest the distinctions most people make between straight and gay people - or at least advance us greatly in that direction. Yes, religious bigots will continue to exist, but they, and not gay Americans, will operate from the margins. Most mainstream opponents of gay rights will move on with their lives as opponents of racial integration moved on with theirs. Such normalizations, we think, constitute a qualitative improvement for our nation. As a legal scholar and lesbian activist Barbara Cox argues:

Yes, we must be aware of the oppressive history that weddings symbolize. We must work to ensure that we do not simply accept whole-cloth an institution that symbolizes the loss and harm felt by women. But I find it difficult to understand how two lesbians, standing together openly and proudly, can be seen as accepting that institution? What is more anti-patriarchal and rejecting of an institution that carries the patriarchal power imbalance into most households than clearly stating that women can commit to one another with no man in sight? With no claim of dominion or control, but instead of equality and respect. I understand the fears of those who condemn us for our weddings, but I believe they fail to look beyond the symbol and cannot see the radical claim we are making. (Cox 1995)

In reality, however, there is no such thing as "gay society" or "non-gay society", just as there is no "black" society to be contrasted with "white" society. There is only "society" with all its vibrant diversity.

Revolutionary Parenting

Despite more contemporary and non-essentialist concepts of adult bonding, perspectives on marriage continue to be influenced by concepts of family and child-rearing. Views on how marriage and relationship privileging should be carried out by the State, with regard to certain individuals, are often fortified with the rhetoric of “protecting the children.” This is the same language which upheld the belief that an interracial couple could not be permitted to marry:

The amalgamation of the races is not only unnatural, but is always productive of deplorable results. Our daily observation shows us, that the offspring of these unnatural connections are generally sickly and effeminate, and that they are inferior in physical development and strength, to the fullblood of either race. It is sometimes urged that such marriages should be encouraged, for the purpose of elevating the inferior race. The reply is, that such connections never elevate the inferior race to the position of the superior, but they bring down the superior to that of the inferior. They are productive of evil, and evil only, without any corresponding good. (*Scott v. Georgia*, 39 Ga. 321 (1869), 323)

This language of “amalgamation” has endured well up until present day with many, and the same rhetoric of “child protection” has frequently been used to argue against same-sex marriage. What is often ignored is the larger, more general belief that child rearing requires a specific formula of two (married) parental figures, and feminist social critic bell hooks points out how this ideology can be problematic in many ways, particularly in a feminist context. hooks argues that a one to two parent model for child rearing in families recapitulates sexist notions about men and women’s parenting abilities, much like the way that the traditional and essentialist roots of marriage create relationship hierarchies. “Motherhood” is often romanticized by women and considered “a sphere of power they would lose if men participated equally in parenting.” (hooks 2000, 140) This emphasis on the “maternal” (even when it is being “acted out” by men) is problematic for hooks and other feminist theorists, in that it gives children few role models of what “male parenting” should look like, as well as “perpetuates the idea that parenting is a woman’s vocation, and reinforces male domination and fear of women.” (hooks 2000, 141) Society, however, says hooks, is unconcerned; she notes that “[t]hese facts raise two issues that must be of central concern for future feminist movement: The right of children to effective child care by parents and other child-rearers, and the restructuring of society so that women do not exclusively provide that care.” (hooks 2000, 141) hooks continues by saying that as time goes on and as “more heterosexual and lesbian women choose to bear children with no firm ties to male parents, there will exist a greater need for community-based child care that would bring children into contact with male-rearers so they will not grow to maturity thinking women are the only group that does or should do child-rearing.” (hooks 2000, 142) Her emphasis here is that child rearing does not necessarily have to be done by parents. (hooks 2000, 142) This causes a disrupt to the belief system that children *need* two parents

in order to be effectively brought up in society, which redefines what a family *is* and ultimately deconstructs an argument for the necessitation of marriage as being in the best interest of children.

hooks accounts for the fact that many feel tax-funded public child care is merely an attempt by women to avoid parenting. (hooks 2000, 143) Not only is public child care one of many options to engage in revolutionary parenting, but hooks points to a larger issue that isolated parenting of any kind, whether it is one or two parents, is not in the best interest of families. Here, hooks references Elizabeth Janeway and her book *Cross Sections*, which asserts that most families subscribe to what Janeway calls "an unusual pattern of parenting in the world, one that has proved to be unsuccessful because it isolates children and parents from society." (hooks 2000, 144) Rather than avoiding parenting, the effort to see that public childcare is provided for by society is an effort to "enlist community aid to supplement the proper obligations of parents, as was often the practice in the past." (hooks 2000, 144)

Revolutionary parenting is not limited to public childcare obligations. "Child care," says hooks, "is a responsibility that can be shared with other-rearers, with people who do not live with children. This form of parenting is revolutionary in this society because it takes place in opposition to the idea that parents, especially mothers, should be the only child-rearers." (hooks 2000, 144) Such shared responsibility is only possible in community settings where people are able to know and trust one another, which is a direct opposition to the separation and private nature of the family unit that the essentialist foundations of traditional marriage require. (hooks 2000, 145) But its main function, asserts hooks, is that it gives children an opportunity to learn how to respect a number of different adult caretakers, as well as provides emotional, intellectual, and material support, if their parents cannot meet their needs. (hooks 2000, 145) However, hooks warns, this is not possible in a community where "parents regard children as their 'property,' or their 'possessions.' This is problematic given that the law *does* see children (and historically, wives) as such." (hooks 2000, 145) Perhaps this is the general issue when it comes to society's beliefs about the nature of families - that in many ways we still revert to the essentialist idea that the members are virtually a type of "property" owned by a single patriarch. The result is that we are inclined to view our partnerships and families as being strictly private, especially in a legal sense, and same-sex couples are not immune to falling into this mold when they marry. Not only do we feel that a "good" and "normal" family's business is sharply their own, but we also theoretically feel no communal obligation to help any families (whether biological or socially constructed) who may be unable to live up to the rigid standards for what constitutes an "actual family", that essentialist marriage has created and carried over to today. The exception being when circumstances become such a "threat" that they require State intervention, but nevertheless, the community turns a blind eye when faced with the concept of caring for the wellbeing of families other than our own. However, Card contends that hooks' alternative form of child rearing and family development is actually "more common than is generally acknowledged in a society in which those whose caretaking does not take place in a nuclear family." (Card 1996, 2) Yet, somehow they are "judged by those with the power" to set standards

which label them as “unfortunate and deprived.” (Card 1996, 2) Again we see the insertion of language that would suggest a kind of deviancy when describing this type of parenting, rather than an alternative social institution.

Conclusion

Although for most people, marriage in a contemporary sense comes nowhere near the level of constrictive and patriarchal standards that it once did, many of its essentialist roots are still held up in the courts through various methods of judicial proceedings. Intimate partnerships in themselves are not the problem, but rather the dilemma lies in the government playing a major role in the defining and regulating of relationships. This is in part due to the symbol of marriage being extremely flawed, as well as the legal privileging of marriage and the nuclear family. As hooks points out, many couples and families do not fit into the homogenous mold of what constitutes a “legitimate” relationship or “family,” and thus are at a greater risk of experiencing legal adversity. Ironically, the old essentialist values are often applied more strictly toward those couples that are *not* married and the families that result from their partnerships.

We can see this in the way that the law often upholds biases against behaviors that are considered deviant, which as Card points out, is not a difficult label to achieve. A couple could simply choose not to marry, and suddenly they have relinquished their rights should the relationship dissolve, leaving them vulnerable when it comes to issues such as property, finances, or child custody. Card reminds us that the pressures that these situations present in many cases result in an un-free choice to sign a marriage license simply for protection. The concept of revolutionary parenting, on the other hand, deconstructs this notion of how exactly families need to be protected, and what from, resulting in a theoretical dismantling of many arguments in favor of marriage. By no longer permitting the State to regulate our unions, we could begin to move towards alternative concepts of partnerships, parenting, and the creation of families, rather than remain stuck within patriarchal and oppressive structures, such as “motherhood” or generally isolated projects of parenting. By no longer continuing to hide families behind a veil of “privacy,” society may begin to take a greater interest in supporting relationships and families in a manner that would render government regulation obsolete.

Endnotes

1. NPR interview with Michel Martin (June, 2010). Retrieved from <http://www.npr.org/templates/story/story.php?storyId=127740436>

References

Badgett, M. V. Lee. *When Gay People Get Married: What Happens When Societies Legalize Same-Sex Marriage*. New York: New York University Press, 2009.

Califa, Patrick. “Legalized Sodomy is Political Foreplay”. In *That’s Revolting: Queer Strategies for Resisting Assimilation*, Mattilda Bernstein Sycamore (Ed.), Berkeley, CA: Soft Skull Press, 2008: 92-99.

Card, Claudia. "Against Marriage and Motherhood." *Hypatia Inc.* 11, No. 3 (1996): 1-23.

Conrad, Ryan (Ed.). *Against Equality: Queer Critiques of Gay Marriage*. Lewiston, ME: Against Equality Publishing Collective, 2010.

Cox, Barbara. "A (Personal) Essay on Same-Sex Marriage," *National Journal of Sexual Orientation Law* 1 (1) (1995). Retrieved from http://www.cs.cmu.edu/afs/cs/usr/scotts/bulgarians/njsol/personal_marriage.txt.

De Vries, Gina. "Unsuitable for Children," in *That's Revolting: Queer Strategies for Resisting Assimilation*. Mattilda Bernstein Sycamore (Ed.), Berkeley, CA: Soft Skull Press, 2008: 141-146.

Donadio, Rachel. "On Gay Priests, Pope Francis Asks, 'Who Am I to Judge?'" *The New York Times* (July 29, 2013). Retrieved from http://www.nytimes.com/2013/07/30/world/europe/pope-francis-gay-priests.html?_r=0.

Garner, Brian A. (Ed.). *Black's Law Dictionary: Deluxe Ninth Edition*. St. Paul, MN: West, 2009.

Ettelbrick, Paula. "Wedlock Alert: A Comment on Lesbian and Gay Family Recognition," *Journal of Law and Policy*. (1996): 107-166.

hooks, bell. *Feminist Theory: From Margin to Center*. Cambridge, MA: South End Press, 2000.

Moore, Patrick. "Gays: Assimilated and Asexual?" *Los Angeles Times* (January 26, 2004). Retrieved from <http://articles.latimes.com/print/2004/jan/26/opinion/oe-moore26>.

Schroeder, Stephanie. "Queer Parents: An Oxymoron? Or Just Moronic?". In *That's Revolting: Queer Strategies for Resisting Assimilation*. Mattilda Bernstein Sycamore (Ed.), Berkeley, CA: Soft Skull Press, 2008: 100-104.

Shepard, Benjamin. "Sylvia and Sylvia's Children: A Battle for a Queer Public Space". In *That's Revolting: Queer Strategies for Resisting Assimilation*. Mattilda Bernstein Sycamore (Ed.), Berkeley, CA: Soft Skull Press, 2008: 123-140.

Sycamore, Mattilda Bernstein. "There's More to Life than Platinum: Challenging the Tyranny of Sweatshop-Produced Rainbow Flags and Participatory Patriarchy." In *That's Revolting: Queer Strategies for Resisting Assimilation*. Mattilda Bernstein Sycamore (ed.), Berkeley, CA: Soft Skull Press, 2008: 1-10.

Spade, Dean. "Fighting to Win". In *That's Revolting: Queer Strategies for Resisting Assimilation*. Mattilda Bernstein Sycamore (ed.), Berkeley, CA: Soft Skull Press, 2008: 47-53.