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## Marriage

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*It doesn't bother me to tell kids my parents are gay. It does bother me to say they aren't married. It makes me feel that our family is less than their family.*

—Kasey Nicholson-McFadden, son of Karen and Marcye Nicholson-McFadden, plaintiffs in the legal suit against New Jersey for marriage equality, testifying in front of New Jersey lawmakers in Trenton in 2010 (Wildman, 2010)

*DOMA seeks to injure the very class New York seeks to protect. By doing so it violates basic due process and equal protection principles applicable to the Federal Government. . . . DOMA cannot survive under these principles. . . . DOMA's unusual deviation from the usual tradition of recognizing and accepting state definitions of marriage here operates to deprive same-sex couples of the benefits and responsibilities that come with the federal recognition of their marriages. . . . The avowed purpose and practical effect of the law here in question are to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States.*

—Anthony Kennedy, United States Supreme Court Justice, in the majority opinion of *The United States v. Windsor* that deemed section three of the Defense of Marriage Act (DOMA) unconstitutional (June 26, 2013, pp. 20–21 of the Opinion)

As the above quotes suggest, the discussion around marriage is deeply personal and heatedly political. Looking throughout history, we also know that marriage as a social institution is ever changing. Our understanding of the changing tides of marriage is based on a number of measures. We know that over the past 50 years, marriage as a social institution has been failing. Since the early 1960s, the United States has seen a decline in marriage rates, a rise in divorce rates, an increase in children being born to unwed parents, an increase in cohabitation as an alternative to marriage, and an increase in LGBT couples with children (Cherlin, 2003, 2004; Goldstein & Kenney, 2001). Since the 1960s, the annual rate of marriage among unmarried women ages 15 to 44 began falling significantly. In the 1960s, the rate of marriage (i.e., the number of marriages that occurred per 1,000 unmarried women aged 18 and older) was 150 per 1,000. In the 1970s, that rate fell to 110 per 1,000; in the 1980s, the marriage rate fell to 100 per 1,000; and in 2010, that number sank to 35 per 1,000 (Goldstein & Kenney, 2001; Payne & Gibbs, 2011). Since the 1980s, there has been a continual drop in the annual rate of marriage as well (Goldstein & Kenney, 2001), such that in 2008 only 52% of all adults in the United States were married, compared to 72% of American adults in 1960 (Pew Research Center, 2010). The drop in marriage has come with a change in attitudes about the importance of marriage. For example, in 1978, 28% of Americans over the age of 18 said that marriage was obsolete compared to 36% of Americans in 2010 (Pew Research Center, 2010).

If a business has been declining over the past 50 years and fails nearly 50% of the time, we would expect the owners of that business to follow any number of paths, including (a) looking for a new market in which to sell its product, (b) redefining and remaking its business so that its product is more attractive to existing and potential clients, or (c) closing down the business. So why has the institution of marriage not closed shop? And why have so many Americans been so resistant to opening the marriage market to a new group of people—LGBT people—who have been banging steadily for the past several decades on doors of “the marriage club” to let them in? The answer is that marriage is not really a “normal” business, although it certainly is a historically economic institution (Coontz, 2005), and is currently embedded in a vast economic industry of weddings, jewelry, fashion, music, travel, greeting cards, and food that surrounds and relies on the success of marriage—or at least the success of weddings and anniversaries. Rather than being a business, marriage is first and foremost a socially constructed institution steeped in a romantic ideology that not only sees marriage as the backbone of “the family” but also as being integral to the moral fabric of human society (Weeks, Heaphy, & Donovan, 2001). We know that marriage is

socially constructed because the age at which we decide to get married, how important we think marriage is, who we think should get married, and how we shape our marital arrangements have changed throughout time and are different across geographic locations (Coontz, 2005; Cott, 2002; Mintz & Kellogg, 1988; Yalom, 2002).

Although marriage is socially constructed, the institution has historically been the main way to create families. With the exception of the Na people of China (Coontz, 2005; Hua, 2001), every known group of humans throughout history has created and depended on some form of marriage to organize its families and kin networks. The universality of marriage stops there, however. Marriage as a social institution has taken on countless forms, meanings, and responsibilities throughout history depending on the social, economic, cultural, and political landscape at any given time. In fact, marriage is universal only in the sense that it has served some major function regarding family and kin networks. These functions have included the legitimization of social arrangements regarding sexual relations, the raising of children, living arrangements, economic relationships, the organization of property and inheritance rights, sharing and dividing household responsibilities, establishing cooperative relationships between families and communities, and sharing one's life with a loved one (Coontz, 2005). Even though marriage has at some point or another held all of the above functions, marriage has rarely if ever held all of these functions in any one society at any one historical moment in time. In fact, "almost every single function that marriage fulfills in one society has been filled by some mechanism other than marriage in another" (Coontz, 2005, p. 32).

Understanding the changing and evolving functions of marriage shows us that marriage is a socially constructed institution created to meet society's particular familial and kin-related needs at any given historical moment. There is nothing fixed or natural or universal about the functions of marriage; nor is the structure of marriage fixed, as we know that marriage can be monogamous or polygamous depending on where in time or geography that relationship exists. Moreover, all of the past and present functions of marriage can be, and in many societies throughout history have been, performed outside of marriage. For example, we do not need marriage to have children. We do not need marriage to pass our wealth onto our children. We do not need marriage to commit ourselves to someone we love.

As stated in Chapter 1, the vast majority of LGB people in the United States said they would like the right to marry. State governments have issued tens of thousands of marriage licenses in the United States. These numbers are accompanied by approximately 60,000 same-sex couples in Europe and South Africa who have married, thus, totaling over 100,000 same-sex couples married throughout the world (Chamie & Mirkin, 2011; Herek, Norton,

Allen, & Sims, 2010). If we do not need marriage to fulfill the functions that marriage currently fulfills, then why do we still have the institution of marriage? How and when did marriage become the battle cry for the current LGBT movement? And equally important, why do many LGBT people want the right to marry?

Before answering the above questions, I need to discuss the language used throughout this chapter. Although most popular and scholarly works refer to “same-sex marriage” or “gay marriage” when discussing the right of LGBT people to legally wed, I agree with lawyer and activist Evan Wolfson (2004) that these terms imply that LGBT people want “rights that are something lesser or different than what non-gay couples have” (p. 17). Instead, I use the term “marriage equality” as it implies that LGBT people are not looking for a different system created especially for them (e.g., gay marriage or same-sex marriage), but rather, they want the right to marry through the exact same legal mechanisms as heterosexual people.

## The Struggle for Marriage Equality

So how and when did marriage become the battle cry for many LGBT people? Numerous sources have documented in detail the historical struggle for marriage equality in the United States (Cahill, 2004; Cahill & Tobias, 2007; Chonody, Smith, & Litle, 2012; Mello, 2004; NOLO Law for All, 2005; Robinson & Soderstrom, 2011; Sullivan, 2004; Wolfson, 2004, to name a few). Here, I offer a greatly abridged version.

LGBT people have been fighting for marriage equality since the early 1970s, when they challenged marital laws, “claiming that in accordance with common-law tradition, whatever is not prohibited must be allowed” (Mohr, 1994, p. 35). The courts dismissed this challenge, stating that marriage automatically implies gender difference. Lesbians and gays also challenged courts by referring to the anti-miscegenation laws (laws prohibiting mixed-race marriages), arguing that preventing marriage based on sexuality was similar to preventing marriage based on race. Courts dismissed this challenge as well, until the 1993 *Baehr v. Lewin* case in Hawaii, which drew parallels to anti-miscegenation laws (Tong, 1998). The *Baehr v. Lewin* (and later the *Baehr v. Miike*) case brought wide political attention and media coverage to the issue of marriage equality (Mohr, 1994; Tong, 1998). Until the 1996 passing of DOMA, laws did not specifically state that marriage could occur only between a man and a woman.

LGBT pro-marriage equality activists won their first victory in 1997 when Hawaii gained limited domestic partner benefits for workers in the

public sector. The next major victory for marriage equality came in 2000, when Vermont instituted its “Civil Union law” that granted same-sex partners in Vermont “all of the state-level rights and responsibilities of marriage” (Vt. Stat. Ann. Tit. 15 §, as cited in Johnson, 2003, p. 285). Three years later, deciding on the *Goodridge et al. v. Department of Public Health* case and handing down the first-of-its-kind ruling in the United States, the Massachusetts Supreme Court ruled that under its state constitution, Massachusetts must grant same-sex couples the same marital rights as heterosexual couples (Johnson, 2003).

Following Massachusetts, there was a fierce backlash against marriage equality. Starting in 2004, 38 states instituted their own DOMAs on the state level to ensure that marriage was between one man and one woman and that their states did not have to recognize marriage between same-sex couples. In addition, conservative Republican politicians made two unsuccessful attempts—in 2004 and 2006—to amend the U.S. Constitution such that marriage would solely be between one woman and one man.

Despite the backlash against marriage equality, as indicated in Table 2.1, since 2004, in addition to Massachusetts, 22 states and the District of Columbia began offering marriages, civil unions, or domestic partner benefits to same-sex couples on a state level. There are additional seven states in which lower courts have deemed a ban on marriage for same-sex couples to be unconstitutional, but the cases are in appeal processes so marriage equality is not fully achieved. Many of the state struggles have been complicated. Although a detailed discussion of each state history is beyond the scope of this book, by way of example of the complexities of such struggles, we can look at New Jersey and California. While other states, such as Maine and Hawaii, could also provide a picture of a tumultuous fight for marriage equality, I selected New Jersey and California as their stories best exemplify the winding and bumpy roads that many states have taken in order to move toward marriage equality.

In New Jersey, in October 2006, 2 years after Governor James McGreevey signed into law domestic partner benefits for same-sex couples through the Domestic Partnership Act, the New Jersey Supreme Court heard the case *Lewis v. Harris*, ruling that same-sex couples in the state have a constitutional right to the benefits and privileges of marriage. The court mandated the state legislature to determine within 180 days following the verdict whether or not the state would institute marriage or some other form of legal union. The legislature opted for civil unions over marriage, which went into effect in 2007 (Robinson & Soderstrom, 2011).

As part of the Civil Union Act, the New Jersey State Legislature created the New Jersey Civil Union Review Commission to study the fairness of civil

**Table 2.1** States With Marriage Equality, Civil Unions, or Domestic Partnerships and Year Legalized; Listed Alphabetically With Most Recent Legal Recognition

	Marriage	Civil Unions	Domestic Partnerships	Court Cases Pending
Arkansas				2014
California	2013			
Colorado		2013		
Connecticut	2008			
Delaware	2013			
Hawaii	2013			
Idaho				2014
Illinois	2014			2014
Iowa	2009			
Kentucky				2014
Maine	2012			
Maryland	2013			
Massachusetts	2004			
Michigan				2014
Minnesota	2013			
Nevada			2009	
New Hampshire		2010		
New Jersey	2013			
New Mexico	2013			
New York	2011			
Oklahoma				2014
Oregon	2014			
Pennsylvania	2014			

	Marriage	Civil Unions	Domestic Partnerships	Court Cases Pending
Rhode Island	2013			
Utah				2014
Vermont	2009			
Virginia				2014
Washington	2012			
Washington, DC	2010		2002	

Source: Chonody et al., 2012; Socarides, 2013; HRC 2014b

unions in the state. In 2008, the commission found that “the separate categorization established by the Civil Union Act invites and encourages unequal treatment of same-sex couples and their children” (New Jersey Civil Union Review Commission, 2008, p. 1). After much lobbying from LGBT organizations, such as Garden State Equality, 10 members of the assembly sponsored, and an additional five members co-sponsored, the Marriage Equality and Religious Exemption Act, an act intended to institute full marriage equality in New Jersey. The state legislature passed the act in February 2012, but Governor Chris Christie vetoed the act shortly thereafter.

Simultaneous to moves within New Jersey’s legislature, two LGBT rights organizations—Garden State Equality and Lambda Legal—joined forces to assist seven lesbian and gay couples and their children in suing the state of New Jersey for the right to marry. The case sat nearly idle until 2013, when the U.S. Supreme Court struck down DOMA (see below for a longer discussion). Lambda Legal filed a motion for summary judgment with the New Jersey Supreme Court. They argued that because the federal government does not recognize civil unions, and because the federal government now recognizes marriages between same-sex couples in states where such marriages are legal, the lack of marriage equality in New Jersey disadvantaged lesbian and gay citizens (Lambda Legal, 2013; Rizzo & Sherman, 2013). State Superior Court Judge Mary Jacobson heard the case and ruled on September 27, 2013, that same-sex couples should have the right to marry in New Jersey, ordering the state to allow such marriages to begin 21 days later (Rizzo & Sherman, 2013). Governor Christie appealed Judge Jacobson’s decision and requested a stay of marriage licenses to same-sex couples until after the State Supreme Court heard the appealed case. In response to Governor Christie’s request for a stay,

the New Jersey Supreme Court replied, “The state has advanced a number of arguments, but none of them overcome this reality: same-sex couples who cannot marry are not treated equally under the law today. The harm to them is real, not abstract or speculative” (Rizzo & Sherman, 2013, para. 9.). Recognizing the court’s strong position, Governor Christie retracted his appeal, making New Jersey the 14th U.S. state to recognize marriage equality, allowing same-sex couples to legally marry starting on October 19, 2013.

Perhaps more tumultuous than New Jersey’s history is the struggle for marriage equality in California. In 1999, California became the first state to institute statewide domestic partnership benefits. As a conservative response, in 2002 California voters approved a ballot initiative called Proposition 22 thus writing into the state’s Family Code marriage as only between one man and one woman. Later, in 2004, San Francisco Mayor Gavin Newsome asserted that under the California constitution’s Equal Protection Clause, he had the authority to perform marriages for lesbians and gay men. By the time the California Supreme Court banned marriages in March of that year, San Francisco had issued nearly 4,000 marriage licenses, which the state later invalidated (Green, 2012).

In response to Proposition 22, proponents of marriage equality waged a legal battle. In May 2008, the California Supreme Court nullified Proposition 22 thus giving same-sex couples the right to marry in the state (Robinson & Soderstrom, 2011). Soon following the court’s decision, opponents of marriage equality put forth another ballot initiative, Proposition 8, which would institute a state constitutional amendment and solidify marriage as being between one man and one woman. In support of marriage equality, Governor Arnold Schwarzenegger pledged to uphold the court’s ruling and oppose Proposition 8 (Green, 2012).

In November 2008, Proposition 8 passed with about 52% of Californians voting for the measure. Because “the constitution supersedes the state civil code, same-sex marriage in California [was] once again banned” (Green, 2012). In the court case, *Strauss v. Horton*, the California Supreme Court upheld Proposition 8, even though the same court had recently invalidated Proposition 22, which was a similar measure. The court conceded, however, that all of the approximate 18,000 marriage licenses issued to same-sex couples between May 2008 and May 2009 would remain valid (Green, 2012).

Following the California Supreme Court’s decision upholding Proposition 8, supporters of marriage equality filed another lawsuit, *Perry v. Schwarzenegger*, challenging Proposition 8, and arguing that the ballot initiative “violated Due Process and Equal Protection Clauses of the United States Constitution. This was the first federal challenge to a state constitutional amendment banning same-sex marriage” (Robinson & Soderstrom, 2011, p. 534). After a 13-day



trial, Federal Judge Vaughn Walker decided the case on August 4, 2010, by ruling that Proposition 8 was unconstitutional. However, the Ninth Circuit Court of Appeals allowed supporters of Proposition 8 to file an appeal. On February 7, 2012, because of that appeal, the Ninth U.S. Circuit Court of Appeals also found Proposition 8 to be unconstitutional, opening the door for the case of marriage equality to be heard by the U.S. Supreme Court (Chonody et al., 2012). On March 26, 2013, the U.S. Supreme Court heard the Proposition 8 case in the form of *Hollingsworth v. Perry*. Three months later, on June 26, 2013, the court gave a 5–4 ruling that “declared that the supporters of Proposition 8 who argued in favor of the California ban on same-sex marriage had no legal standing, and negated the decision of the United States Court of Appeals for the Ninth Circuit” (Schwartz, 2012). The result is that the 2010 ruling from the federal court stands, thus allowing same-sex couples to legally marry in California.

The struggle for marriage equality will continue to unfold throughout the foreseeable future both in the courts and among the general public (Seidman, 2009). As the Global Box at the end of this chapter indicates, at a time when 28 nations on four separate continents (Europe, South America, Australia, and Africa) have legalized some form of federal-level marriage, civil unions, or domestic partnerships (Chonody et al., 2012), the United States continues to grapple with the issue of marriage equality.

Examining the history of the struggle for marriage equality shows us that our understanding of how societies have historically structured marriage is not connected to any natural or biological structure. Cultural understandings about how marriage should or could be structured—either around heterosexual or same-sex unions—are just that: cultural understandings. In other words, looking at the historical struggle for marriage equality lends evidence to how marriage, and the larger institution within which marriage exists (i.e., family), is socially constructed. Furthermore, the backlash against the struggle for marriage equality exemplifies how many conservative thinkers fear a change in the structure of marriage because they can see the institution of marriage shifting away from their own beliefs about marriage. However, as the remaining chapter will discuss, allowing same-sex couples to marry can in fact strengthen LGBT families and therefore strengthen American families in general.

## The Importance of Marriage to LGBT Families

In 2004, Cherlin wrote about the “deinstitutionalization of marriage” in which there has been a “weakening of the social norms that define people’s behavior in a social institution such as marriage” (p. 848). Despite or perhaps

because of the weakening of norms around marriage, Cherlin (2004) argued that for many people throughout the United States, the institution of marriage carries heavy symbolic meaning:

In times of social stability, the taken-for-granted nature of norms allows people to go about their lives without having to question their actions or the actions of others. But when social change produces situations outside the reach of established norms, individuals can no longer rely on shared understandings of how to act. Rather, they must negotiate new ways of acting, a process that is a potential source of conflict and opportunity. On the one hand, the development of new rules is likely to engender disagreement and tension among the relevant actors. On the other hand, the breakdown of the old rules of a gendered institution such as marriage could lead to the creation of a more egalitarian relationship between wives and husbands. (p. 848)

The position I take in this chapter as well as throughout the book, therefore, is one that builds on Cherlin's work. After reading about the struggle for marriage equality discussed above, I draw on Cherlin's analysis to better understand why marriage matters so much to LGBT people and their families. There are four main reasons: (a) Marriage socially legitimates a group of people, (b) marriage comes with many economic benefits, (c) marriage is a civil right, and (d) there are currently no equal alternatives to marriage in the United States.

### Marriage Socially Legitimizes a Group of People

The first reason—that marriage legitimates groups of people by legitimating their families—has been true throughout history, and as Cherlin (2004) noted, becomes even more important in times of social upheaval and change. As historian Nancy Cott (2002) wrote, “By incriminating some marriages and encouraging others, marital regulations have drawn lines among the citizenry and defined what kinds of sexual relations and which families will be legitimate” (p. 4). Anthropologist Ellen Lewin (2004) added that not only do the entitlements of marriage mark legitimacy and authenticity of a relationship, but also they “mediate the ability to claim a particular identity in the context of one's community, and they intervene in situations where shame may preclude naming one's most important relationships” (p. 1005).

Thus, marriage legitimates people's family lives—and therefore their very personal lives—in a way that no other institution does (Mezey & Boudreaux, 2005). The legitimization of people's family and personal lives is

one of the main points of columnist Jonathon Rauch's book on allowing same-sex couples to marry. Rauch (2004) stated that while marriage is a legal contract between two people, it is also "a contract between two people *and their community*" (p. 32). He argued that when two people pledge to marry, take care of each other, and do the best they can for society, society in turn is pledging to help them, as a family unit, to succeed. The legitimization that marriage offers, therefore, is not just in the eyes of the couple or their families but also in larger communities. Simply put, many LGBT people assume that when they hold the right to marry, they hold society's approval of their very existence.

The relationship between social acceptance and marital rights appears to be circular in nature and important to the fight for marriage equality. As social acceptance increases in general for LGBT people, so does social acceptance for marriage equality; and as marriage equality becomes more accepted, attitudes around LGBT people become more accepted as well. Supporters of marriage equality hope, therefore, that the momentum created around marriage equality will ultimately lead to the eradication of homophobic attitudes and heterosexist practices in the United States, thus, creating greater equality in general for LGBT people.

There is little doubt that increasing social acceptance of LGBT people has been important in the fight for marriage equality. Attitudes toward homosexuality have changed dramatically since the early 1970s; and attitudes around marriage equality reached a turning point around 30 years later (Wolfson, 2004). According to findings from the General Social Survey (GSS), a nationally representative survey of several thousand households conducted approximately every 2 years that tracks the opinions of Americans, between 1973 and the mid-1990s, 65% to 75% of respondents stated that "sexual relations between two adults of the same sex" is "always wrong." By 1998, that number decreased to 54% of respondents where it has hovered through 2006, which is the last recorded GSS survey asking that question (Brewer, 2008; Smith, 2011).

What is equally telling is that while only 11.2% of people in 1973 said that homosexual sexual relations were "not wrong at all," in 2006, that number climbed to 32.3%. However, while that climb makes for a 188% increase over a 33-year period, it also means that the remaining 68% of Americans in 2006 still believed that homosexual sexual relations are "always wrong," "almost always wrong," or "sometimes wrong" (Smith, 2011). In other words, while support for LGBT people and their relationships grew dramatically between 1973 and 2006, the vast majority of Americans in 2006 still did not approve of same-sex relationships. Attitudes have continued to shift, however. As noted in Table 2.2, a 2012 Gallup poll

**Table 2.2** Attitudes Toward Same-Sex Marriage, May 2012—Gallup

	Gay/lesbian relations should be legal %	Gay/lesbian relations are morally acceptable %	Same-sex marriages should be legal %
National adults	63	54	50
Men	61	49	42
Women	66	59	56
White	65	55	49
Non-White	59	50	50
18–34	76	65	66
35–54	61	55	47
55 and older	56	46	40
East	74	62	56
Midwest	69	60	53
South	49	43	40
West	68	58	55
Protestant	54	41	39
Catholic	68	66	51
Non-Christian	89	84	84
Republican	46	36	22
Independent	69	58	57
Democrat	72	66	65

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reported that 54% of Americans said that gay and lesbian relations are morally acceptable. Furthermore, according to a July 2012 poll conducted by the Pew Research Center, 48% of Americans favored marriage equality, while 44% opposed.

Although the aggregate numbers are important, attitudes concerning the morality of same-sex relationships, as well as marriage equality, are not universal; instead, they vary based on a number of factors, including gender, religion, age, geographic location, political affiliation, and race. Examining the disaggregated data is important because the data suggest what groups in the United States are more or less accepting of LGBT people and marriage equality. The indications of such data are that LGBT people within different demographic groups may experience greater or lesser discrimination and hardship. In addition, groups with powerful political voices can greatly affect laws and policies that support or discriminate against LGBT people and their families.

As Table 2.2 indicates, in 2012, women were more accepting than men of same-sex relations and marriage equality. Similarly, the majority (76%) of Americans aged 18 to 34 years old favored marriage equality compared to nearly 50% of 35 to 54-year-olds and 40% of those aged 55 years and older. Regarding geographic location, Americans located in the East, West, and Midwest were more accepting of marriage equality than those in the south. Furthermore, in 2012, non-Christians were more than twice as accepting of marriage for same-sex couples as Protestants, whereas over half of all Catholics (51%) polled said that marriage for same-sex couples should be legal. Additional studies support this latter finding, showing that Catholics are more supportive of marriage equality than are fundamentalist Protestant groups (Ellison, Acevedo, & Ramos-Wada, 2011; Olson, Harrison, & College, 2006; Sherkat, de Vries, & Creek, 2010).

In addition, as of July 2012, 65% of Democrats favored same-sex marriage, compared to 51% of Independents and 24% of Republicans (Pew Research Center, 2012). However, political affiliation does not always predict attitude, particularly when we account for race. An analysis of a Gallup Poll conducted between 2006 and 2008 of over 3,000 respondents showed that only “30% of black Democrats say they would agree that marriages between same-sex couples should be recognized by law as valid, compared to 57% of nonblack Democrats” (Newport, 2008, para. 6). This finding is important given that Democrats in general tend to be more supportive of marriage equality compared to Republicans, and yet Black Democrats are closer to Republicans in their views of marriage equality for LGBT people (Newport, 2008).

As Table 2.2 also indicates, race is indeed an important factor in shaping people’s attitudes toward marriage equality. According to Gallup, in 2012, Whites were more likely to favor marriage equality than what researchers call “non-Whites.” As the following discussion indicates, however, the category of “non-Whites” is problematic because there are many diverse groups that fit into this category. In addition, the use of the term

“non-Whites” places “Whites” as the “main” or “normal” category and places all other racial groups as a category outside of “normal.”

The data on racial-ethnic minorities (i.e., “non-Whites”) show that Blacks in the United States are more conservative in their thinking about marriage equality than other racial-ethnic groups, and their attitudes have not shifted much over the past 20 years or so (Sherkat et al., 2010). One reason why many Blacks oppose marriage equality is that they tend to belong to religious communities that condemn same-sex relationships in general (Bennett & Battle, 2001). Nearly two thirds of Black Americans are affiliated with Baptist or other sectarian Protestant denominations that tend to be anti-marriage equality, compared to approximately one third of White Americans. In addition, Blacks tend to worship at churches that are racially homogenous and segregated and that do not support LGBT rights. Therefore, the church experience of many Black Americans does not include a variety of differing opinions regarding homosexuality or marriage equality (Sherkat et al., 2010).

In addition, Black Americans in general do not favor marriage equality because many do not view the current gay liberation movement as being analogous to the civil rights movement of the 1960s, a point discussed in greater detail below (Ghavami & Johnson, 2011). Furthermore, previous research suggests that Whites have equated the sexuality of Black people as being abnormal and even criminal in nature (Collins, 1990). Because of the history of Whites demonizing the sexual behavior of Black people and because of connections to religious institutions, many Blacks today separate themselves from “deviant” sexual identities, thus rejecting LGBT sexual relations within their own communities (Greene, 2009).

Latinos show a slightly different picture than Blacks, particularly because approximately 73% of Latinos are Catholic, as opposed to 23% of Latinos who claim mostly conservative sectarian Protestant affiliations (i.e., fundamentalist, evangelical, and charismatic) (Ellison et al., 2011). Conducting a multivariate analysis of data collected through a large nationwide probability sample of Latinos in the United States, Ellison et al. (2011) found that “evangelical Protestant Latinos are much more resistant to same-sex marriage than their Catholic counterparts” (p. 47). In fact, the likelihood of approving of marriage equality is “84 percent lower among evangelicals who attend services regularly . . . compared to devout Catholics from otherwise similar backgrounds” (p. 47). However, secular Latinos, as well as Protestant Latinos who do not attend religious services, are significantly more supportive of marriage equality than are Catholic Latinos in general (Ellison et al., 2011).

Other attitudinal variations among Latinos also exist and mirror attitudes among similar groups within the United States. For example, among the

Latino population in the United States, we see greater approval for marriage equality among women, people aged 30 and younger, urban, higher educated, native born, and recent immigrant Latinos than among their counterparts. In addition, “Puerto Ricans are markedly more tolerant of same-sex marriage than members of other Latino nationality groups . . .” (Ellison et al., 2011, p. 49). These findings remind us that it is difficult to make generalizations about racial categories of people who are homogeneous by name only and in reality contain significant heterogeneity including attitudes concerning marriage equality.

Although there is limited information on attitudes among Asian Americans concerning marriage equality, and while the category of “Asian American” is incredibly diverse (Yep, Lovaas, & Elia, 2003), the limited evidence suggests that many Asian Americans oppose marriage equality (Rhee, 2006; Shore, 2004). For example, journalist Elena Shore (2004) reported that approximately 7,000 Chinese Americans and their church groups rallied against marriage equality in San Francisco in 2004. Former political candidate Rose Tsai explained the cultural and historical reasons as to why the Chinese community in San Francisco was fighting against marriage equality. She stated, “Chinese, in 5,000 years of history, have acknowledged that homosexuality has always existed. But, it is accepted with the understanding that you don’t glorify such relationships” (Shore, 2004, p. 1). Because Tsai based her response on anecdotal evidence, we do not know if her statement truly reflects widespread attitudes among Chinese Americans regarding marriage equality. However, Tsai offers some insight given the dearth of research conducted in this area.

In addition, studies have found similar sentiments among members of Korean American communities (Chung, Oswald, & Wiley, 2006; Rhee, 2006). For example, ethnic studies scholar Margaret Rhee (2006) analyzed *KoreAm Journal*, a printed source addressing Korean American same-sex sexuality, which reflects attitudes regarding marriage equality within Korean American communities. Rhee found that not only do many Korean Americans value a heterosexual, patriarchal family, but also value marriage between two people within the Korean community. Part of this attitude is connected to “traditional Confucius values such as filial piety, family lineage, and patriarchy,” a belief system held more firmly by older than younger generations within the Korean American community (Rhee, 2006, p. 77). Attitudes also vary by whether or not someone was born in, or immigrated to, the United States, as well as by economic standing (Rhee, 2006). In addition, one study reported in *KoreAm Journal* found that nearly 75% of Korean Americans are Christian and believe that homosexuality is a choice that can be reversed (Rhee, 2006). It was clear through Rhee’s analysis that

devout Christianity plays a part in spreading homophobia within the Korean American community as it has within other Christian communities.

## Marriage Comes With Many Economic Benefits

In addition to the promise of marriage socially legitimatizing the personal and family lives of LGBT people, the second reason many LGBT people want to legally marry is because marriage comes with a multitude of economic benefits. Therefore, in addition to the cultural benefits of marriage, being part of marriage as a legal institution could help LGBT people secure material benefits that can economically support their families. In 1997, the U.S. General Accounting Office (GAO) counted “1,049 federal laws classified to the United States Code in which marital status is a factor” (Shah, 2004). On December 31, 2003, the GAO updated that number by identifying “a total of 1,138 federal statutory provisions classified to the United States Code in which marital status is a factor in determining or receiving benefits, rights, and privileges” (Shah, 2004).

In referring to 1,138 benefits, there are two caveats worth mentioning. First, some of those laws might actually penalize married couples (Cherlin, 2010). For example, one of the statutes listed “limits the amount of certain crop support payments that one person can receive. For this purpose, a married couple is considered to be one person. But an unmarried couple can apparently escape this restriction and each receive the maximum amount” (Cherlin, 2010, p. 13). Second, the count might be incomplete. As Dayna K. Shah, the associate general counsel of the GAO wrote, “Because of the inherent limitations of any global electronic search and the many ways in which the laws of the United States Code may deal with marital status, we cannot guarantee that we have captured every individual law in the United States Code in which marital status figures” (Shah, 2004, p. 1). Despite these caveats, the counts conducted in 1997 and 2003 suggest that marriage bestows at least 1,000 benefits, giving LGBT people ample reason to want the legal right to marry.

The importance of the legal and economic benefits of marriage cannot be understated. Of course, many people today marry based on love, not money. However, throughout history, marriage has been—and continues to be—an economic institution, one used to transfer wealth and property to offspring, connect and maintain the wealth of families, and build empires (Coontz, 2005). That does not mean that love does not matter in marriage; love has mattered for approximately the past 200 years, and continues to do so (Coontz, 2005; Cott, 2002). But in addition to the personal commitment and social recognition that marriage bestows upon those who wed, the material benefits of entering into a legal marital relationship



add innumerable layers of economic support that can help bolster the personal commitment married people make to each other and the quality of their familial relationships.

The 1,138 benefits of marriage fall into 13 categories of law, displayed in Table 2.3. All of these categories and laws are important, although some carry more weight for the vast majority of LGBT families. In their 2009 booklet,

**Table 2.3** Overview of the Benefits of Legal Marriage

Category	Provisions
Category 1: Social Security and Related Programs, Housing, and Food Stamps	Includes major federal health and welfare programs including Social Security retirement and disability benefits, food stamps, welfare, and Medicare and Medicaid.
Category 2: Veterans' Benefits	Includes pensions, indemnity compensation for service-connected deaths, medical care, nursing home care, right to burial in veterans' cemeteries, educational assistance, and housing. Husbands or wives of veterans have many rights and privileges by virtue of the marital relationship.
Category 3: Taxation	Married taxpayers have the option to file joint or separate income tax returns. There are different tax consequences, depending on whether a taxpayer is married filing jointly, married filing separately, unmarried but the head of a household, or unmarried and not the head of a household.
Category 4: Federal Civilian and Military Service Benefits	Includes statutory provisions dealing with current and retired federal officers and employees, members of the Armed Forces, elected officials, and judges, in which marital status is a factor. Typically, these provisions address the various health, leave, retirement, survivor, and insurance benefits provided by the United States to those in federal service and their families.
Category 5: Employment Benefits and Related Provisions	Includes laws that address the rights of employees under employer-sponsored employee benefit plans, that provide for continuation of employer-sponsored health benefits after events like the death or divorce of the employee, and that give employees the right to unpaid leave in order to care for a seriously ill spouse, as well as special benefits in connection with certain occupations, like mining and public safety.

*(Continued)*

**Table 2.3** (Continued)

Category	Provisions
Category 6: Immigration, Naturalization, and Aliens	Includes the conditions under which noncitizens may enter and remain in the United States, be deported, or become citizens. The law gives special consideration to spouses of immigrant and nonimmigrant aliens, including the granting of asylum to aliens and their spouses.
Category 7: Indians	Various laws set out the rights to tribal property of “White” men marrying “Indian” women, or of “Indian” women marrying “White” men, as well as the descent and distribution rights for Indians’ property in general. The law also pertains to health-care eligibility for Indians and spouses and reimbursement of travel expenses of spouses and candidates seeking positions in the Indian Health Service.
Category 8: Trade, Commerce, and Intellectual Property	Concerns foreign or domestic business and commerce regarding bankruptcy, commerce and trade, copyrights, and customs duties. This category also includes the National Housing Act (rights of mortgage borrowers), the Consumer Credit Protection Act (governs wage garnishment), and the Copyright Act (spousal copyright renewal and termination rights).
Category 9: Financial Disclosure and Conflict of Interest	Federal law imposes obligations on members of Congress, employees or officers of the federal government, and members of the boards of directors of some government-related or government chartered entities, to prevent actual or apparent conflicts of interest. These individuals are required to disclose publicly certain gifts, interests, and transactions. Many of these also apply to the individual’s spouse.
Category 10: Crimes and Family Violence	Includes laws that implicate marriage in connection with criminal justice or family violence, including laws dealing with spouses as victims of crimes, spouses as perpetrators, or dealing with crime prevention and family violence.
Category 11: Loans, Guarantees, and Payments in Agriculture	Includes laws regulating federal loan programs in which a spouse’s income, business interests, or assets are taken into account for purposes of determining a person’s eligibility to participate in the program. Also includes factors determining the amount of federal assistance to which a person is entitled or the repayment schedule, including education loan programs, housing loan programs for veterans, and provisions governing agricultural price supports and loan programs that are affected by the spousal relationship.

Category	Provisions
Category 12: Federal Natural Resources and Related Provisions	Federal law gives special rights to spouses in connection with a variety of transactions involving federal lands and other federal property, including the purchase and sale of land by the federal government and the lease by the government of water and mineral rights.
Category 13: Miscellaneous Provisions	Includes federal statutory provisions that do not fit readily in any of the other 12 categories, such as prohibiting discrimination on the basis of marital status, and patriotic societies chartered in federal law, such as the Veterans of Foreign Wars or the Gold Star Wives of America.

*Answers to Questions to Marriage Equality*, the Human Rights Campaign (HRC), an organization that has long been documenting discrimination against gays and lesbians and lobbies for anti-discriminatory policies, has explained how some of the lack of access to marriage negatively affects LGBT families. The discussion below builds on HRC's work, fills in some of the details about how marriage offers people certain benefits, and explains how a lack of such benefits affects LGBT people from different backgrounds.

*Hospital Visitation, Health Care, and Medical Issues.* As Category 1 in Table 2.3 indicates, health insurance is a built-in safety net for married people. Marriage protects couples when dealing with a sick or injured spouse in four major ways: through hospital visitation rights, at nursing homes and assisted care facilities, through the Family Medical Leave Act (FMLA), and through health insurance.

Regarding hospital visitation rights, "Married couples have the automatic right to visit each other in the hospital and make medical decisions. Same-sex couples can be denied the right to visit a sick or injured loved one in the hospital" (HRC, 2009, p. 3). The issue of hospital visitation may be particularly problematic for transgender people who face added discrimination from medical professionals and hospital staff. In 2010, the National Gay and Lesbian Task Force and the National Center for Transgender Equality conducted the most comprehensive study of transgender discrimination to date, surveying 6,450 transgender and gender nonconforming people spread over all 50 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands. The study showed that 19% of those sampled "reported being refused medical care due to their transgender or gender non-conforming status, with even higher numbers among people of color in the survey" (Grant, Mottet, & Tanis, 2011, p. 5). In addition, because many physicians are often uninformed about issues concerning transgender people, "50% of the sample reported having to teach their

medical providers about transgender care” (Grant et al., 2011, p. 5). Although marriage may not solve the problem of ignorance among some medical professionals, marriage would at minimum allow transgender people to instantly obtain visitation rights in a medical emergency or involving other hospitalization issues without their partner having to face barriers—and greater emotional turmoil—created by misinformed medical staff and physicians because of the lack of a marriage license.

The second medically related protection provided by marriage involves care at nursing homes and assisted care facilities. “Married couples have a legal right to live together in nursing homes. The rights of elderly gay or lesbian couples are an uneven patchwork of state laws” (HRC, 2009, p. 4), and many elderly LGBT people face great discrimination in such facilities to begin with (Cantor, Brennan, & Shippy, 2004; Claasen, 2005). Although Medicare pays for short stays at nursing home facilities, it does not cover expensive long-term coverage. Therefore, many elderly people (LGBT or otherwise) rely on Medicaid to cover the remaining cost, provided certain income and asset rules apply. When a married person enters a nursing home, or even after that person’s death, Medicaid allows the surviving spouse to remain in their house instead of forcing sale to help pay for the care (Cianciotto, 2005; Claasen, 2005). It is only after the survivor’s death that

the state may then take the home to recoup the costs of terminal care. Because same-sex couples cannot marry they are not eligible for this protection, and they may be forced to choose between their home and life’s savings or medical coverage. (Cianciotto, 2005, p. 6)

The problem of covering expenses is particularly important for elderly LGBT, who may need to use a nursing home or assisted-care facility as they age. One study showed that at least 20% of LGBT people will rely on Medicaid for their long-term care needs (MetLife Mature Market Institute [MetLife], 2010), compared to approximately 16% to 18% of elderly people in the general population (Congressional Budget Office, 2013).

The third medically related protection that marriage provides is through the FMLA, which allows people to maintain job security while taking 12 weeks of work off without pay to care for a family member, for example, at the birth or adoption of a child or because of a serious health condition or illness. However, because under the law “family” refers to people connected by blood or legal ties, LGBT people who are not legally or biologically related may be excluded from the FMLA. Such exclusion prevents LGBT people from “taking care of their families on equal terms with families headed by opposite-sex couples, and exposes them to additional

vulnerabilities in the workplace” if they choose to take time off to provide care outside of FMLA (Cianciotto, 2005, p. 23).

The fourth medically related protection that marriage provides is reflected through health insurance. Although many public and private employers provide health insurance coverage to employees and their spouses, this coverage does not always extend to the “life partners of gay and lesbian employees. Gay and lesbian employees who do receive health coverage for their partners must pay federal income taxes on the value of the insurance” (HRC, 2009, p. 3), thus, placing a financial burden on LGBT families.

The financial cost of not having access to the medical benefits provided through marriage is particularly difficult for LGBT people of color. Studies on Black, Latino, and Asian American lesbians and gay men, as well as transgender people of all races, show that these populations earn significantly less than their heterosexual counterparts, thus, exacerbating the financial burden of not being able to legally marry (Cianciotto, 2005; Dang & Frazer, 2005; Grant et al., 2011; Magpantay, 2006; Yan, Peng, Lee, Rickles, & Abbott, 2004). In addition, often both Black and Latino gays and lesbians work in the public sector (Cianciotto, 2005; Dang & Frazer, 2005). In fact, “Black same-sex partners are about 25 percent more likely than white gay partners to hold public sector jobs” (Cahill & Tobias, 2007, p. 28). While private companies are able to create their own protections for their LGBT employees, such as domestic partnership benefits, employees in the public sector are subject to state and local laws that often lack the protections discussed above.

The difference between private and public employment can be particularly important for those who are able to land positions in large companies. In their 2014 assessment of 734 Fortune 500 and Fortune 1000 companies, the largest law firms, and other large corporations, HRC (2014a) found that 99% included sexual orientation in their nondiscrimination policies. In addition, 86% of these companies included gender orientation in their nondiscrimination policies, 90% provided medical and comprehensive health benefits, and 69% had complete equality in spousal and partner access to “soft” benefits such as bereavement leave, employee assistance programs, employee discounts, and relocation assistance. Eighty-four percent extended retiree health-care coverage to domestic partners, and 46% offered transgender-inclusive health-care coverage options through at least one firmwide plan. The numbers of private corporations protecting LGBT people in their nondiscrimination policies and extending benefits to LGBT people and their families compares to the public sector where only 17 states and the District of Columbia include sexual orientation and gender expression, and an additional four states include only sexual orientation, in their nondiscrimination policies. Therefore, “it remains legal in 29 states to discriminate against job applicants and

employees because of their sexual orientation, and in 33 states because of their gender identity” (HRC, 2014b, p. 20). Thus, LGBT people who are working for large supportive companies are likely to receive domestic partner benefits that many states refuse to provide their citizens.

If marriage provides and strengthens options for health benefits and if most states deny LGBT people the right to marry, the result is that as a country we are systematically preventing part of the American population access to health care that they may need. By doing so, we weaken not only some of our families, but also we create a system in which some people are unable to be healthy, productive citizens in ways that strengthen our nation. In other words, healthier family members and workers make for a healthier nation. Yet by denying marriage equality to LGBT people, the United States makes a decision to systematically weaken the nation by not allowing certain citizens to gain access to health benefits through the institution of marriage.

*Social Security Benefits, Pensions, and Estate/Inheritance Taxes.* In addition to health benefits, certain economic benefits of marriage are also an important reason why LGBT people want to get married:

Married people receive Social Security payments upon the death of a spouse. Despite paying payroll taxes, gay and lesbian partners receive no Social Security survivor benefits—resulting in an average annual income loss of \$5,528 upon the death of a partner. (HRC, 2009, p. 3)

In addition, “After the death of a worker, most pension plans pay survivor benefits only to a legal spouse of the participant. Gay and lesbian partners are excluded from such pension benefits” (HRC, 2009, p. 4). For example, if a married person with a 401k plan specifies her or his spouse as the beneficiary, when that person dies, the surviving spouse can roll the total amount of the distribution into an IRA without paying income tax. However, “if the surviving beneficiary is a same-sex partner, the pension distribution is subject to a 20 percent federal withholding tax” (Cahill & Tobias, 2007, p. 35). The lack of such benefits for unmarried couples greatly affects how LGBT people need to plan for their futures and retirements and also affects the quality of life of elderly LGBT people, particularly as at least one in 10 LGBT couples has a member who is over 65 years of age (Gates, 2003, as cited in Chonody et al., 2012, p. 281). For LGBT people of color, who already earn significantly less than White LGBT people (Cahill & Tobias, 2007), the loss of income in later years may be particularly devastating.

A 2006 study of 1,000 LGBT baby boomers between the ages of 40 and 61 conducted by MetLife showed that the most serious concern of the respondents—particularly women—was financial. Nearly one third of all

participants stated that their biggest concern was how they will pay for care as they grow old, with lesbians expressing slightly greater concern than gay men about outliving their income. More specifically, lesbians are particularly worried because without access to their widow's Social Security payments and other marriage-related federal benefits, they "are apprehensive about their financial ability to live comfortably in retirement. For gay men, by contrast, concerns about lack of access to such benefits may be somewhat offset by greater confidence in their overall earning capacity" (MetLife, 2010, p. 52).

Furthermore, LGBT people (both women and men) may have heightened financial fears because some tend to care for others at higher rates than those in the general population (Cantor et al., 2004; MetLife, 2010). In fact, many LGBT people care for other elderly LGBT nonlegal or nonbiologically connected family members "of choice" or "fictive kin" (Dill, 1994; Weston, 1991) because of the compromised financial support that LGBT people experience due to a lack of access to their partner's Social Security benefits and pensions. Thus, not having access to economic benefits that marriage affords means that many LGBT people are concerned about how to take care of themselves while also worrying about how they will take care of others as they grow old.

Given the discussion of how financially disadvantaged unmarried people can be due to rules of Medicaid, FMLA, Social Security, pensions, and other policies, the laws surrounding estate taxes add to the potential economic disadvantage. "A married person automatically inherits all the property of his or her deceased spouse without paying estate taxes. A gay or lesbian taxpayer is forced to pay estate taxes on property inherited from a deceased partner" (HRC, 2009, p. 4). The tax burden is particularly high for wealthier LGBT couples with over \$2 million in assets (including any jointly owned home). According to one report from the Williams Institute, over 550 LGBT couples were estimated to be affected by owing an average of 1.1 million additional tax dollars per estate (Steinberger, 2009). Indeed, such taxation was the very issue that prompted the *The United States v. Windsor* case (see the section on "No Equal Alternatives to Marriage" below for a longer discussion).

The result of living in a state that does not allow same-sex couples to legally marry is that both on the federal and state level, LGBT couples often spend thousands of dollars to create legal contracts that protect their family relationships (Cianciotto, 2005; Lev, 2004). Sociologist Amy Agigian (2004) listed nearly 20 contracts that the National Center for Lesbian Rights (NCLR) and the Human Rights Campaign Fund's FamilyNet (HRCF) suggest that LGBT people create in order to protect their families, including Autopsy

and Disposition of Remains, Directive to Physicians, Durable Power of Attorney for Finances, Durable Power of Attorney for Healthcare, Hospital Visitation Authorization, and Right to Receive Personal Property (p. 96).

Because of the great economic burdens posed by the inability to marry, the financial fears that LGBT people have as they grow older exist across lines of social class, even among those with college or graduate degrees and median annual incomes of \$50,000 to \$75,000 (MetLife, 2010). Interestingly, even though many Americans do not support marriage equality, many strongly “support treating same-sex couples equally under Social Security policy (68%) and laws governing inheritance (73%)” (Cahill, 2004, p. 59). Perhaps public support for including LGBT people under certain inheritance policies is because of how obvious the economic inequality is that LGBT people face when they do not receive similar benefits as heterosexual couples. In addition, the economics of Social Security and inheritance taxes generally do not carry the same ideological weight as marriage.

*Immigration.* “Americans in bi-national relationships are not permitted to petition for their same-sex partners to immigrate. As a result, they are often forced to separate or move to another country” (HRC, 2009, p. 3). According to some estimates, there are approximately 80,000 binational same-sex couples living in the United States. Although currently 20 countries offer some form of national legal recognition of LGBT relationships (see this chapter’s Global Box for more details), of the group of binational same-sex couples living in the United States, 80% come from countries that do not grant marital recognition to LGBT people (Badgett, 2011). As LGBT rights movements expand throughout the globe, more LGBT people are traveling via cruises, vacations, business, and political efforts, opening the opportunity for them to meet others with similar interests. “When those relationships deepen, binational couples face not the common question of whether it is time to move in together, but of whether it is even possible to live together in one place” (Badgett, 2011, p. 794). Given immigration restrictions, the Gay and Lesbian Advocates and Defenders (GLAD) issued a warning stating that even in states where gay and lesbians can legally marry, “marriages between same-sex binational couples are ineffective in changing the immigration status of the non-citizen partner and could even lead to deportation or other immigrant consequences,” particularly if that partner is undocumented or on a temporary visa (Magpantay, 2006, pp. 111–112). The reason for this warning is that currently, marriage equality is on a state level, while immigration laws exist on both state and federal levels.

The issue of immigration through marriage may be particularly salient for Latinos and Asian American LGBT people because they often come out of and belong to large immigrant populations (Cantú, 2009; Dang & Vianney, 2007).



An analysis of 2000 census data examining lesbians and gays in New York, San Francisco, and Los Angeles—cities claiming the greatest Asian same-sex household populations—showed that 73% of gays and lesbians in San Francisco and 83% in Los Angeles were foreign born (Yan et al., 2004). Studies found similar numbers among Asian American same-sex households in New York (Magpantay, 2006). Immigration was the most important issue to the respondents in Dang and Vianney's (2007) study as well.

Furthermore, 51% of Hispanic same-sex couples reported being born outside the United States, as opposed to 5% of White non-Hispanic same-sex couples (Cianciotto, 2005, p. 48). These numbers suggest that both Hispanic-Latino and Asian American LGBT people may face greater relationship barriers than other groups if not able to marry their foreign-born partners. As the above discussion makes clear, the lack of legal marriage presents many challenges to LGBT families. And as Table 2.3 indicates, the challenges presented in this section are only a very short part of the approximate 1,000 benefits that the institution of marriage offers.

### Marriage Is a Civil Right

In addition to legitimizing their families and accessing economic and material benefits, the third reason that many LGBT people want to legally marry is because they believe that marriage is a civil right, one that should be granted to all U.S. citizens (Wolfson, 2004). When people refer to “civil rights,” they often associate those rights with the struggle for Blacks to gain freedom from slavery as well as full citizenship rights (regarding the 13th and 14th amendments of the U.S. Constitution, respectively). Therefore, civil rights refers to a group of people's rights to be counted and treated as full citizens in the United States, with all the rights and privileges granted by the nation's rule of law.

Many people, both LGBT and heterosexual, equate the lack of rights for LGBT people, particularly pertaining to marriage, as a civil rights issue. Such thinkers span racial categories; in fact, Coretta Scott King, the wife of Dr. Martin Luther King Jr., was an early supporter of marriage equality, as were several other Black civil rights leaders, Holocaust survivors, and people who had experienced discrimination throughout their lifetimes (Wolfson, 2004). The argument of such allies is that without the right to marry, the United States denies LGBT people the same civil rights granted to other groups of people (Sullivan, 2004). Drawing on examples from the Black civil rights movement and arguing that they are a disadvantaged minority similar to other groups before them (Chauncey, 2004; Epstein, 1987), LGBT activists have also taken the stance that marriage is a civil right. As discussed below,

in the early 1990s, in attempts to push the marriage equality agenda forward, lawyers drew on the *Loving v. Virginia* case, which led to the end of anti-miscegenation (i.e., anti-mixed race marriage) laws (Tong, 1998). As sociologist Steven Epstein (1987) wrote, equating themselves as having an “ethnic” or minority identity politically serves LGBT people well because such an identity is “particularly suited to the American experience, with its history of civil-rights struggles and ethnic-based, interest-group competition” (p. 20).

The claim that marriage is a civil right has met resistance from groups within the pro-(heterosexual) marriage movement. White conservatives in particular have argued that we cannot equate the Black civil rights movement with LGBT rights (Wolfson, 2004). Conservative groups, such as the Family Research Council, have allied themselves with conservative Black clergy to argue that homosexuality is a lifestyle choice and therefore not equated with race, which they maintain is biologically determined.

In addition, those opposing marriage equality argue that giving LGBT people “rights” is giving them “special rights” beyond what other Americans receive. In fact, White heterosexual groups argue that giving LGBT people special rights would take away from the existing rights of Black people. To make this argument, opponents of marriage equality portray LGBT people as economically privileged White people who are therefore “undeserving of nondiscrimination protections” (Cahill, 2004, p. 71). In truth, most gay men earn about 20% to 25% less than their heterosexual counterparts do, and lesbian couples earn less than heterosexual couples do because they lack a male wage earner (Cahill, 2004). However, media portrayals showing wealthy, White gay people at lavish affairs create a popular belief that counters reality, deepens stereotypes, and perpetuates a false understanding of LGBT people as a homogeneous group.

Furthermore, lawyer Suzanne Goldberg (1995, as cited in Cahill, 2004, p. 71) and political scientist and lawyer Evan Gerstmann (2004) argued that “special rights” and “gay rights” do not exist. Rather, “there are only legal and constitutional rights that must be applied and protected equally for all people” (Gerstmann, 2004, p. 4). Gerstmann asked the question, “Why would same-sex marriage *not* be included under the fundamental right to marry” (p. 85). He stated that people who oppose marriage equality offer three answers to his question:

1. “The right to marry is a predicate of the right to procreate and raise children in a traditional family setting.
2. The ability to have children is at the core of marriage.
3. Marriage is by definition dual-gendered” (p. 85).

Countering these arguments, proponents of marriage equality point out that these three answers are weak and often false. In this century, certainly having children is not a requirement of marriage; nor is marriage a requirement of having children. People certainly are allowed to legally procreate outside of marriage. In addition, many heterosexual people get married without ever intending to, or actually having, children (Scott, 2009). Indeed, the U.S. Supreme Court's "most thorough discussion of the attributes of marriage barely mentions the issue of having or raising children" (Gerstmann, 2004, p. 91). Furthermore, the Court protects people's rights (married or otherwise) to avoid having children all together through abortion or use of contraceptives (Gerstmann, 2004).

If procreation is not a requirement of marriage, then legal scholars who support marriage equality question why marriage must be "dual-gendered." Arguments against marriage equality have stated that two women or two men cannot procreate together. However, we know that lesbians and gay men are becoming parents in increased numbers, particularly through the use of reproductive technologies and adoption (see Chapter 3 for a detailed discussion). We also know that the law allows infertile heterosexuals to marry.

Some opponents of marriage equality argue that the dual-gender designation is necessary not only to procreate but also to raise children with "proper gender roles" (Blankenhorn, 1996; Popenoe, 1999). The argument is that without a mother and a father present, children will grow up with a confused sense of gender. The problem with this argument is that there are no legal prescriptions as to what proper gender roles are. Similarly, there are no laws forbidding single parents from raising their children, so children are legally allowed to be raised by only a mother or father. How parents chose to raise their children in gendered, or nongendered, ways is just that—the parent's or parents' individual choice, married or not. Furthermore, research shows that children raised by single and same-sex couples have no more confusion about gender than children raised in two-parent married heterosexual families (Biblarz & Stacey, 2010). To say, therefore, that marriage equality would be a special right, or that there are any strong data-driven or even legal explanations as to why marriage for LGBT people would *not* be a fundamental civil right, is based on conservative ideology only.

### There Are No Equal Alternatives to Marriage in the United States

The fourth reason that LGBT people want to marry is that there are no equal alternatives to marriage in the United States. Opponents of marriage equality argue that if LGBT people want equal rights, they should be satisfied

with a separate system with a different name (Wolfson, 2004). A study conducted by the Pew Research Center found that in 2009, 57% of those polled supported civil unions, but only 39% supported marriage for LGBT people (Pew Research Center, 2009).

The problem with civil unions is that “separate but equal” does not work in the United States. As discussed above, the benefits gained through marriage are both cultural and economic. On a cultural level, there is a hierarchy of relationships, with marriage holding by far the highest cultural status (Natale & Miller-Cribbs, 2012). Other types of relationships, including civil unions, domestic partnerships, and designated beneficiaries, lose cultural status respectively as they move down the hierarchy. The hierarchy works on a material level as well. In the United States, although people wed in individual states, their marital relationship is recognized and honored by all other states, the U.S. federal government, and governments around the world (Shah, 2004).

In contrast, civil unions in the United States exist only at the state level without recognition by most other states, the federal government, or other countries. Therefore, although civil unions may offer similar benefits of marriage provided by a particular state, they do not offer any federal benefits, such as Social Security, FMLA, or immigration rights as discussed above. In addition, often civil unions do not contain the same benefits as state marriage, by law (Natale & Miller-Cribbs, 2012). Because civil unions create separate and unequal systems, and because the United States has a history of failing to create separate but equal systems (e.g., Jim Crow laws), advocates for marriage equality argue that marriage by any other name does not work (Wolfson, 2004).

An often weaker option than civil unions is domestic partnerships. Domestic partnerships emerged in the mid-1980s first at the city and county levels, as well as through private companies and organizations, and later at the state level. Some domestic partnerships are identical to civil unions, as was the case in California (Clifford, Hertz, & Doskow, 2007). However, many times the benefits for domestic partnerships are very limited and grant only limited rights and privileges, for example, those “related to inheritance, hospital visitation, and guardianship in the event of death” but not those relating to taxation and joint insurance claims (Natale & Miller-Cribbs, 2012, p. 157).

Some states also offer “designated beneficiaries” in which an LGBT person can designate his or her partner as the beneficiary to certain rights, such as is found in Colorado. The problem with this arrangement is that designated beneficiary agreements offer “a very limited cadre of rights including funeral arrangements and hospital visitation. These arrangements are not portable to other states and are not recognized at the federal level” (Natale & Miller-Cribbs, 2012, p. 157).

Because of the limited nature of the cultural and economic benefits of civil unions, domestic partnerships, and designated beneficiaries, supporters of marriage equality see anything other than marriage as “second-class solutions” (Kendell, 1998, p. 53). Furthermore, because civil unions and domestic partnerships are not nationally available or recognized, the amount of access LGBT people have to these benefits, and thus the amount of legal recognition and protection their families have, is determined by “the happenstance of geography” (Kendell, 1998, p. 54). Because marriage is the most privileged, respected, familiar, and far-reaching system of support for families, many LGBT people argue that anything short of marriage creates an unequal and unjust divide between themselves and their heterosexual counterparts.

On June 26, 2013, the U.S. Supreme Court agreed with supporters of marriage equality by declaring section three (§3) of DOMA to be unconstitutional. Section three defined marriage as “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” (*The United States v. Windsor*, 2013, p. 2). Section 2, which “allows States to refuse to recognize same-sex marriages performed under the laws of other States” (*The United States v. Windsor*, 2013, p. 2) remained unquestioned and intact. The landmark case (*The United States v. Windsor*) was the result of a case filed by New York resident Edith Windsor who married her partner Thea Spyer in Canada in 2007. Spyer died in 2009, leaving Windsor as the heir of her inheritance. Because DOMA did not allow the federal government to recognize their marriage even though the state of New York did, Windsor had to pay \$363,053 in estate taxes, taxes that she would not have had to pay had the federal government recognized Windsor and Spyer’s marriage (Dudley & Nolan, 2013). Windsor filed a lawsuit that eventually headed to the U.S. Supreme Court. The Court heard the case on March 27, 2013. Three months later, in a 5–4 decision, Justice Anthony Kennedy wrote in the Opinion of the Court,

DOMA singles out a class of persons deemed by a State entitled to recognition and protection to enhance their own liberty. It imposes a disability on the class by refusing to acknowledge a status the State finds to be dignified and proper. DOMA instructs all federal officials, and indeed all persons with whom same-sex couples interact, including their own children, that their marriage is less worthy than the marriages of others. . . . By seeking to displace this protection and treating those persons as living in marriages less respected than others, the federal statute is in violation of the Fifth Amendment. (*The United States v. Windsor*, 2013, p. 25)

Therefore, the Supreme Court established through *The United States v. Windsor* that same-sex couples legally married and living in a state that recognizes their marriage will receive federal marriage benefits. However, same-sex couples will not receive federal benefits if they have anything less than marriage (e.g., civil unions or domestic partnerships). In addition, if married LGBT people live in states that do not recognize their marriage from other states or countries, they may also not be eligible for some of the 1,138 benefits of marriage because a variety of different federal agencies distribute these benefits. However, some federal agencies, such as the IRS, honor all legal marriages regardless of where the couple resides (Internal Revenue Service, 2013). The details of how to address continued inequality regarding marriage remains largely in the hands of the U.S. Congress and individual states. Thus, as you read this book, there is a good chance that some states have changed their laws and the U.S. Congress has worked on new language to either grant or hinder the granting of equal marriage rights to same-sex couples.

## The LGBT Argument Against Marriage for LGBT People

Although many LGBT people want the right to marry, some LGBT people are wary of the fight for marriage equality. They base their argument partially on the fact that marriage is historically an oppressive institution, built on inequalities of gender, race, social class, and sexuality (Card, 1996; Ettelbrick, 2004; Gaboury, 2005). They question why LGBT people would want to become part of an institution that historically oppressed women, people of color, and poor people who either were used as free labor in marriages (e.g., wives) with no rights to land ownership or self-autonomy, as slaves or cheap labor (African slaves, African Americans, Mexicans, Chinese, etc.), or scapegoats for the ills of society (e.g., poor people who could not or cannot afford to get married and have one parent stay at home).

Moreover, LGBT opponents of marriage equality argue that marriage is a dangerous institution because it is the instrument through which the state decides what family is legitimate. As Jennifer Gaboury (2005), a board member for the advocacy group for unmarried people Alternatives to Marriage Project, wrote, "I don't believe that the state should have the power to say who is and who is not a proper family and distribute public benefits accordingly" (p. 29). Similarly, author and journalist Judith Levine (2005) argued that marriage is

intrinsically conservative. It does not just normalize; it requires normality as the ticket in . . . [and] pushes the queerer queers of all sexual persuasions—drag queens, club-crawlers, polyamorists, even ordinary single mothers or teenage lovers—further to the margins. (p. 78)

By allowing any given group into marriage and therefore having society accept that group as normal, society and policy makers give “legitimate” backing to view any other group not allowed to marry as “abnormal.” Such labeling has a dual effect of helping some LGBT people assimilate into the mainstream while simultaneously pushing others further to the outside. Allowing those in authority to purposefully include some groups and exclude others from the economic and social benefits of the institution of marriage takes power away from LGBT people in general (Ettelbrick, 2004). As legal expert Paula Ettelbrick (2004) wrote, “Marriage runs contrary to two of the primary goals of the lesbian and gay movement: the affirmation of gay identity and culture and the validation of many forms of relationships” (p. 124). As a possible solution to this problem, others suggest that rather than becoming part of an exclusive institution, LGBT people should fight to create a new system in which the rights and protections that marriage affords some people are available to everyone regardless of their family form (Browning, 2004; Card, 2007; Levine, 2005).

In addition to worrying about the conservative and exclusionary nature of the institution of marriage, some groups of LGBT people argue that marriage is not the most important issue to their families and therefore not the issue into which they wish to put their energies. For example, practicing attorney and law professor Glenn Magpantay (2006) wrote about members of Asian Pacific Americans (APA) LGBT communities. He stated that at the Queer Asian Pacific Legacy conference held in New York City in 2004, a common sentiment among the more than 400 participants was that racism within and outside of the LGBT community was a more compelling issue despite the great need for access to marital benefits. Dang and Vianney (2007) found that 98% of the 860 LGBT Asian and Pacific Islander Americans they surveyed experienced both racial and sexual-gender discrimination. Because many of the “LGBT APAs believe that same-sex marriage is a ‘white gay issue’ and, therefore, does little to combat racism” (Magpantay, 2006, p. 110), they are less likely than their White counterparts to work toward marriage equality.

Furthermore, the fight for marriage equality is occurring at the state level, and the greatest needs of the LGBT APA community (e.g., immigrant rights) work at the federal level. Another important issue for LGBT APA people is their invisibility or, perhaps worse, the stereotyped and ugly portrayal of

them in the media (Dang & Vianney, 2007). For example, media often portray gay Asian men as hypersexualized, exotic chattel, or emasculated (Magpantay, 2006). Therefore, LGBT APAs do not want to spend valuable time and energy supporting a fight for marriage equality when that fight does not help them access the benefits they need or fight against defamation and racism (Magpantay, 2006).

A final argument that some LGBT people make against the fight for marriage equality is that marriage equality will ultimately make it more difficult to terminate relationships because once you have marriage, you also have divorce, another relationship regulated by laws (Card, 2007; Herman, 2012). Access to marriage can both help and hinder LGBT couples who want to dissolve a relationship. If the separation is amicable, then not having legal ties prevents the need for a legal dissolution, just as with a heterosexual cohabitating relationship. However, if there are disagreements about how to divide property, finances, or child custody, then not being legally married creates hardships when not legally divorcing. For example, cohabitating partners (LGBT or otherwise) are not eligible for palimony, which would help cover the expenses of a partner who was not working for pay during the relationship. In addition, there may be tax ramifications for nonmarital partners who are dividing property (Herman, 2012). Despite the potential help of divorce laws, many LGBT people see divorce as a hindrance that comes with the right to marry.

## The Heterosexual Backlash Against Marriage Equality

Despite some LGBT people's resistance to marriage equality that is now the battle cry of the LGBT liberation movement, the strongest backlash against marriage equality comes from conservative thinkers, politicians, religious leaders, and the general public. There are a burgeoning number of books and articles written about whether or not states should allow LGBT people to marry. Here, I discuss what I deem to be the top four arguments against marriage for LGBT people, as well as the research and arguments that refute these claims.

### Allowing Gay Couples to Marry Will Harm the Institution of Marriage

As discussed in Chapter 1, conservatives believe that without stable families, society will fall apart. In addition, conservatives argue that in order to have stable families, we must maintain a particular family structure that



includes two heterosexual adults—one male and one female—who raise their children to adhere to dominant and culturally appropriate gender roles. According to the conservative argument, LGBT families, and particularly marriage equality, threaten that family order and therefore the greater social order. While many Americans hold this belief to be true, there is little evidence to support their claim (Cahill, 2004). First, since at least the 1980s, heterosexual couples, not same-sex couples, have been eroding the institution of marriage through increased divorce and cohabitation rates (Cherlin, 2004). Second, Massachusetts, the state in which same-sex couples have been able to marry the longest and in which same-sex couples make up about 7% of all marriages, has the lowest divorce rate in the country (Cahill, 2004). The Massachusetts divorce rate has remained the same (about 2.2 divorces per 1,000 people) since same-sex couples have been allowed to marry (Kurtzleben, 2011).

### Allowing Same-Sex Couples to Marry Will Harm Children

Conservatives argue that having LGBT parents is harmful to children for several reasons: Children will not have a balanced view of gender, will risk living with gay male pedophiles, and will be teased by others (Cahill, 2004). The conservative argument is that sanctioning marriage for same-sex couples not only sanctions homosexual relationships, but also sanctions same-sex couples having children because procreation is a main function of marriage (Gallagher, 2005). Indeed, this is the argument that Supreme Court Justice Scalia made on March 26, 2013, when the Court heard the case on Proposition 8. Justice Scalia stated,

If you redefine marriage to include same-sex couples, you must . . . permit adoption by same-sex couples, and there's—there's considerable disagreement among . . . sociologists as to what the consequences of raising a child in a—in a single-sex family, whether that is harmful to the child or not. (*Hollingsworth v. Perry*, 2013, p. 18)

Despite Justice Scalia's statement, research conducted on the children of LGBT parents is in fact in *considerable agreement* that conservative assumptions about the harm to children are false. The cumulative research focusing on both adopted and birth children of LGBT parents strongly suggests that these children grow up to be as mentally normal and healthy, *if not healthier in some ways*, as children raised in heterosexual families (see, for example, Biblarz & Savci, 2010; Erich, Hall, Kanenberg, & Case, 2009; Erich, Leung, & Kindle, 2005; Farr & Patterson, 2013; Golombok, 2007; Ross, Siegel,

Dobinson, Epstein, & Steele, 2012; Stacey & Biblarz, 2001; Tasker, 2005; Tasker & Patterson, 2007). In fact, in a recent meta-analysis of all related studies published between 1990 and 2010, Biblarz and Stacey (2010) found that “no research supports the widely held conviction that the gender of parents matters for child well-being” (p. 17).

Only one study conducted by sociologist Mark Regnerus in 2012 declared that children fare worse with gay and lesbian parents than with heterosexual parents. Even acknowledging that most studies on LGBT parents and their children do not use large, representational samples (Marks, 2012; Stacey & Biblarz, 2001), the definitions and methods employed by Regnerus were so flawed that one must wonder how a reputable journal published such blatantly unsound research. As several scholars have noted, the problem with Regnerus’s study is that he did not compare heterosexual couples to same-sex couples (Frank, 2012; Sherkat, 2013; Umberson, 2013). As Darren Sherkat (2013), a professor of sociology and a member of the editorial board of *Social Science Research* (the journal in which Regnerus’s study was published), stated,

The key measure of gay and lesbian parenting is simply a farce. The study includes a retrospective question asking if people knew if their mother or father had a “romantic” relationship with someone of the same sex when the respondent was under age 18. This measure is problematic on many levels. Regnerus admits that just two of his respondents were actually raised by a same-sex couple. . . . Since only two respondents were actually raised in gay or lesbian households, this study has absolutely nothing to say about gay parenting outcomes. (para. 19)

Therefore, while those who oppose marriage equality regularly cite Regnerus’s findings, the findings are invalid and unreliable. Indeed, in his original report of his findings, Regnerus himself stated that people should not use his study to inform policy. Although he went against his own statement by later testifying in cases, in his original study, Regnerus stated that “American courts are finding arguments against gay marriage decreasingly persuasive (Rosenfeld, 2007). This study is intended to neither undermine nor affirm any legal rights concerning such” (Regnerus, 2012, p. 766). The lesson learned here is that as consumers of information, we need to read the fine print (e.g., the methods section) before we use information to support our beliefs. With respect to the U.S. Supreme Court, the justices relied on one very weak study within a sea of much stronger research to make a critical argument against marriage equality.

Second, the accusation that gay men are likely to be pedophiles and therefore are not suitable parents is also false. Studies indicate that “90% of pedophiles are men, and 95% of these individuals are heterosexual” (Cahill, 2004, p. 35). Additional studies that examined the sexual identity of convicted child molesters have shown that less than 1% of child molesters are lesbian or gay (Cahill, 2004). Therefore, the reality is that children who live with gay fathers and/or lesbian mothers are at significantly lower risks of their parents sexually abusing them than if they lived with heterosexual parents, and particularly with their heterosexual fathers.

### Marriage Is a Religious Institution

Another main argument against marriage equality is that marriage is a religious institution, and most religions condemn same-sex relationships. Conservatives make this argument based on two reasons. First, religious conservatives argue that “the institution of marriage between a man and a woman was ordained by the Bible” and therefore prohibits marriage among other gendered formations (Limbaugh, 2005, p. 73). Drawing on the Bible to justify a restricted definition of marriage is not historically new. Men made similar arguments for centuries to justify wives’ subservience to their husbands. For example, according to the Bible, God told Eve, “Your urge shall be for your husband and he shall rule over you” (cited in Yalom, 2002, p. 3). Racist people have also made similar arguments to prevent interracial marriages. For example, when Richard Loving and Mildred Jeter legally married in Washington, D.C. in 1958, a Virginia circuit court indicted them for breaking state law. Drawing on religious justification, the judge stated, “Almighty God created the races white, black, yellow, Malay, and red, and He placed them on separate continents. . . . The fact that He separated the races shows that he did not intend for the races to mix” (cited in Tong, 1998, p. 117). Second, for many people, a wedding—the ceremony that makes a marriage official—often takes place within a religious context. Frequently, people hold their weddings, and therefore begin their marriages, in a church, synagogue, mosque, or temple, with a religious leader officiating the service.

Supporters of marriage equality level two main responses against both of these arguments. First, although most religions do not condone, and some condemn, same-sex relationships including marriage, most religions also teach acceptance and tolerance (Roste, 2005). Therefore, by denying LGBT people the right to marry, religious conservatives perpetuate hate and bigotry, which are also condemned by their own religions (Fatah & Tapal, 2005).

In addition, while marriage may have religious connotations for some people, in this country, marriage is first and foremost a civil institution, not

a religious one. As Wolfson (2004) wrote, the wedding is “a beautiful and significant occasion, and undoubtedly it’s an event that everyone in attendance will remember for many years to come. Yet, in the eyes of the government, it doesn’t mean a thing” (p. 105). The religious aspect of marriage does not matter to the U.S. government because marriage falls under civil law, not religious law (Cahill, 2004). In the United States, where our rule of law calls for a separation between church and state, the government cannot dictate that our marriages be framed by religious or secular weddings; the choice is up to the individual couple and their extended families, not the state (Wolfson, 2004).

Supporters of marriage equality acknowledge that religious organizations and leaders fear that the state will mandate their congregations to marry same-sex couples. However, the legalization of marriage for same-sex couples in the United States would not force religious organizations to marry people they see as falling outside their religious beliefs and practices (Cahill, 2004). Therefore, although the marriage of LGBT people may be outside the religious beliefs of some groups of people, the first amendment of the U.S. Constitution prevents religious groups from imposing their views on civil law and the government, and the government from forcing religious groups to act outside their beliefs.

### Allowing Marriage Equality Opens the Door for Other Harmful Types of Relationships

Marriage equality opponents fear a “slippery slope” in which once the definition of marriage changes to include LGBT relationships, then the door will open for other forms of relationships (e.g., polygamist, incestuous, bestial, or whatever they may be) to enter the marriage club (Cahill & Tobias, 2007; Rauch, 2004; Sheff, 2011). Ironically, this is “other side of the coin” to what LGBT opponents of marriage equality state—that marriage is narrowly focused and once same-sex couples can marry, other family forms will be ostracized.

Because they see the conservative argument as offensive and ridiculous, most LGBT people do not seriously counter the connection between bestiality and same-sex relationships (Rauch, 2004). However, they do refute issues of incest and polygamy. The response to the fear of incestuous relationships (e.g., parents marrying their children, siblings marrying their siblings, etc.), is that unlike homosexuality and bisexuality, incest is illegal in the United States. Therefore, supporters of marriage equality argue that comparing a legal relationship with an illegal one in the context of marriage makes no sense (Rauch, 2004). In fact, advocates of marriage equality

make clear that they are not asking for incestuous relationships to be included in the definition of marriage (Cahill, 2004; Rauch, 2004).

Regarding polygamy, supporters of marriage equality also argue that they want to maintain the “couple” relationship between two people. As Rauch (2004) stated, “Gay people are not asking for the legal right to marry anybody they love or everybody they love. . . . Instead, homosexuals are asking for what all heterosexuals possess already: the legal right to marry *somebody* they love” (p. 125). Note that this argument is somewhat conservative because it assumes that only committed monogamous relationships are healthy, and fits into the LGBT critique of the marriage equality movement (Card, 1996; Gaboury, 2005; Levine, 2005). In an extension of this (conservative) argument, Rauch (2004) acknowledged that polygamous relationships have existed throughout time, and continue to do so in certain countries around the world. However, he noted that to his knowledge, “not a single one of those polygamous societies has ever been a liberal democracy. . . . To the contrary, they tend to be authoritarian rather than liberal, hierarchical and male-supremacist rather than egalitarian, closed rather than open” (p. 129). In essence, Rauch (2004) is drawing on the same relationship of cause and effect that conservatives in the family values debate use as well: Marriage and family shape society (the conservative argument), rather than society shapes marriage and family (the progressive argument). In fact, Rauch’s argument fuels some LGBT fears that by mainstreaming monogamous same-sex coupled relationships, the marriage equality movement will push other family forms further to the margins.

Sociologist Elisabeth Sheff (2011) takes a more progressive approach to analyzing marriage through a comparison of polyamorous and lesbian, bisexual, and gay (i.e., “lesbigay”) families. Polyamorous families are ones in which the adults are “in openly conducted multiple-partner relationships” (p. 487) and in which those who are involved tend to subscribe “to modern, gender-neutral, egalitarian values” (Stacey & Meadow, 2009, p. 193). Sheff sees both lesbigay and polyamorous families as “an adaptive response to shifting social conditions” (2011, p. 492); therefore, the similarities among them “are not accidental, as the same social forces have shaped both groups’ strategies for family maintenance and relationships to institutions” (p. 508). Sheff argued that both family forms are here to stay and need to be understood and analyzed using scientific methods. Furthermore, she argued, assuming that all relationships should be monogamous, or are monogamous, obscures the real variances in American families and reinforce monocentrism (p. 510).

What Sheff’s argument reveals is that perhaps some of the conservatives’ fears of a “slippery slope” are partially founded. Her work also reveals that

in an effort to “normalize” LGBT (monogamous) families, marriage equality activists and scholars are willing to ignore and marginalize other family forms. The reasonable response to the slippery-slope fear is that marriage as a social institution has been changing ever since people and societies first created marital relationships (Coontz, 2005; Cott, 2002; Stacey & Meadow, 2009). There is no reason to think that LGBT families will be the last frontier of new family forms. If we have learned anything from history, we have every reason to believe that new family forms will continue to evolve as our society evolves. In fact, there is evidence that those in polygamous relationships in the United States are drawing on the marriage-equality platform from the LGBT movement to argue for legal recognition of their relationships as well. For example, an article in *Time* magazine about polygamous marriages quotes author, activist, and husband of three wives Joe Darger as saying, “If people are open to gay marriage, it impacts on how they look at plural marriage. . . . You can’t talk about gay marriage and still criminalize us for who we love and how we organize our families” (Luscombe, 2012, p. 44).

## What We Gain From Marriage Equality

As stated at the beginning of the chapter, marriage is socially constructed such that the meaning we give to marriage, the functions of marriage, and the experiences people have within their marriages change with time and across geographic space. As these new families develop, we see that they threaten what many people consider the normal, traditional, and “correct” form of marriage. However, we also see that by denying existing and future families’ access to social legitimacy, as well as access to the economic benefits that the legal institution of marriage offers, we are weakening a growing group of families nationwide. By weakening our families, we are not only denying tax-paying citizens access to the benefits that other citizens receive, but we are also forcing families to make decisions that may jeopardize the mental, physical, and financial health of families and their members.

What is noteworthy here, however, is that the very families that our laws are trying to suppress are in fact the very families that are faring well, particularly when children are involved. As discussed above, children with LGBT parents fare better in terms of mental health than children with heterosexual parents, and they are less likely to experience sexual molestation from either their father or mother. In addition, in the case of Massachusetts, divorce rates have held steady; and nationwide marriage rates among lesbians and gay men have increased. If the conservative agenda is to create safe and healthy homes for our nation’s children, and to create families in which

the parents marry and remain married, then the research suggests that allowing LGBT people to marry should provide great hope—not great fear—for our nation. And if homophobia and heterosexism are encouraging policy makers to create laws that prevent LGBT people from marrying and from fully forming their families as many want, then imagine how strong LGBT families could be and what great role models they could be for all Americans, if family laws, such as marriage, actually supported LGBT relationships.

## GLOBAL BOX

by *Morganne Firmstone*

According to the Pew Forum on Religion and Public Life, there are currently 15 countries that have instituted marriage equality: Argentina, Brazil, The Netherlands, Belgium, Spain, France, Portugal, Iceland, New Zealand, Canada, South Africa, Denmark, Norway, Sweden, and Uruguay. Although not all countries allow same-sex couples to marry, many nations opt to provide some type of civil union or partnership for couples. Some countries go a step further and provide basic same-sex marriage/partnership rights. But a few European countries, including the United Kingdom, Germany, and Switzerland, are among those who offer what they deem a “comparable-to-marriage” institution through same-sex unions and partnerships (Pew Research Center, 2009; see updates at the center’s website: [Pewforum.org](http://Pewforum.org)).

A common occurrence in those nations that allow marriage equality is that their central government has great control over the definition of marriage, whereas in countries like the United States and Mexico, substantial discretion over marriage law is provided to individual states or provinces (Gardiner, 2010). For instance, in the United States of America, same-sex couples can marry in some but not all states. According to the Human Rights Campaign, nearly 30% of Americans are now living in states that recognize or are on the cusp of recognizing marriage equality. With newly added states, 17 states, as well as the District of Columbia, now recognize marriage equality. In June 2013, the Supreme Court deferred California’s Proposition 8 ruling to the U.S. District Court’s 2010 verdict—that Proposition 8 violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Starting June 28, 2013, same-sex marriages resumed in California.

The Supreme Court also issued a 5–4 decision on June 26, 2013, that declared Section 3 of the 1996 Defense of Marriage Act (DOMA) unconstitutional under the Due Process Clause of the Fifth Amendment. The repeal of DOMA, which defines the terms “marriage” and “spouse” on a federal level as

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pertaining only to one woman and one man as husband and wife, means that the U.S. government will now honor federal rights, protections, and obligations to same-sex marriages.

Societal perceptions of same-sex marriages are changing; accordingly, although a slow process, so is the legal framework that governs these relationships. However, many gray areas still exist within the legal system. For instance, Anthony (2012) made note of the importance in legally defining one's sex when talking about transgender people and marriage. After all, if a state deems a marriage to be between one man and one woman, the state must also clearly define the terms of gender. Anthony (2012) noted few nations clarify such definitions. For example, in the United States, court systems have relied on several inconsistent definitions of an individual's "sex" ranging from "birth certificate records, to physical form at birth, to physical form at marriage, to the ability to engage in penetrative sex at marriage, to reasons that are unclear or inconsistent" (p. 174). The result? A piecemeal of contradictory standards where "one's sex is largely reduced to what state she [he] lives in" (p. 174). Essentially, Anthony (2012) noted, "A legal heterosexual marriage in one state will become an illegal homosexual marriage in another" (p. 174). Individual sexual identities do not fit into concise definitions, which is why the courts have interpreted them differently in case law throughout the years. Until nations and states remove sex altogether as a determining factor in granting fundamental rights, such as marriage, the legal framework will remain fickle and unjust.

While some areas around the world remain trapped in the legal web of marriage equality, several countries completely and unequivocally ban same-sex couples from marrying. These countries include Honduras, Latvia, and Uganda (Pew Research Center, 2009), and most recently Nigeria (Rappard & Karikariapau, 2014). Furthermore, countries like Afghanistan, Iran, and many African nations still outlaw homosexuality in general, let alone marriage by same-sex couples (Pew Research Center, 2009).

Marriage is not only a legally binding agreement, but also it is a vital part of the patchwork of cultural, spiritual, religious, and societal life. Many people perceive marriage to be an institution that gives order to human relationships and provides a strong foundation for the basic functional unit of life—the family. It is easy to see why any person would place so much emphasis on being allowed to enter into this sacred yet practical union. It is also easy to see how societies use marriage as a weapon of discrimination and prejudice. In Poland, for example, the "low level of homosexuality acceptance and a strong traditional family position in the Polish culture causes many lesbians and gays to cover their identities" (Majka-Rostek, 2011, p. 286). Deemed a "homophobic" state by the European Parliament in 2006, Polish culture tends to honor traditional family ties and rituals that place LGBT couples at a disadvantage when



trying to fit into customary family molds (Majka-Rostek, 2011). Interviews conducted by Majka-Rostek (2011) with people in permanent same-sex relationships in Poland testify to this sentiment:

Because we are not a married couple—not a distinct social unit—holidays are something disturbing for me. It’s impossible to imagine for our families that we two could spend Christmas together and on our own. It’s not possible that our families could spend Christmas Eve together. Even if I can bring E. with me, I can’t bring her mother because neither she would like it nor my grandparents would understand this situation. (p. 288)

As described above, culture plays a tremendous role in marriage equality and granting or restricting access to this social institution. Interestingly enough, Spain (a predominantly Catholic society) has legally recognized marriage between LGBT people since 2005, blurring the lines of traditional cultural beliefs and current societal trends. Many scholars attribute the shift in acceptance of marriage equality in Spain to a variety of factors including activism and grass-roots initiatives, which served as the spark to ignite legal change. In fact, Calvo and Trujillo (2011) attributed much of the LGBT marriage equality shift in Spain to LGBT organizations.

The political associations and groups that advocate lesbian, gay and transsexual rights are treated as a key social and political actor that links the desires and needs of grass-root non-heterosexual peoples with the higher spheres of institutions, politics, and the law. (p. 562)

Calvo and Trujillo (2011) explained that these advocacy organizations successfully transformed the LGBT movement into a human rights and equality issue, thereby, “de-sexualizing” the claims brought before the state and making the argument for human decency instead of what many people may consider “normal” or “deviant” (p. 562).

Similar to Spain, South Africa counts among the few countries in the world that honor marriage equality, despite its fairly conservative social history. South Africa has made progress in enacting policy, such as its Bill of Rights, which says that no one is subject to unfair discrimination on the ground of sexual orientation (Heaton, 2010). In 2006, the South African Parliament installed the Civil Union Act (which extended marriage rights to same-sex couples) in response to narrow interpretations of LGBT equal rights. However, the Civil Union Act of 2006 is not without criticism. Some say that it does not afford true equality to same-sex couples as the act is the only option for same-sex couples to be recognized under law, whereas heterosexual couples have a

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choice between civil union and civil marriage (Heaton, 2010). Heaton (2010) noted that because same-sex couples only have one option, an unfair “separate but equal” remedy has emerged (p. 117).

So where do we stand today? In the United States, the striking down of Section 3 of DOMA was a historic institutional shift that now recognizes married same-sex couples under federal law. However, same-sex couples living in states that do not have marriage equality will not necessarily have immediate access to some federal rights and benefits. For instance, according to the Human Rights Campaign, federal agencies sometimes draw on particular state laws in determining marriage validity for federal benefits. Some agencies reference state laws where a couple lives, others look to where a couple gets married, and many do not have a specific approach at all.

One breakthrough in the rejection of DOMA, deemed by Strozdas (2011) as “the largest obstacle in the way of immigration equality for same-sex binational couples,” lies in the ability for transnational same-sex unions to occur (p. 1353). Same-sex couples can now marry in a state that allows same-sex marriage and then petition the federal government for the naturalization of the noncitizen partner (Human Rights Campaign [HRC], n.d.). Even if the couple moves to a state that does not recognize a same-sex union, that state must still honor federal immigration status (HRC, n.d.).

Rapidly changing cultural and societal views have opened the door for marriage equality in recent years. Although some countries are still resistant, most industrialized nations (especially the United States) are beginning to adopt policies that allow same-sex couples the benefits and protections of a legally recognized union. However, until states and nations grant same-sex couples equal access to the same—not separate—institutions of marriage and recognize those marriages across territorial lines, the fight for equality will wage on.

## ADDITIONAL RESOURCES

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*Compiled by Morganne Firmstone*

### Websites

- Freedom to Marry
  - <http://www.freedomtomarry.org>
- Immigration Equality
  - <http://www.immigrationequality.org>
- Lambda Legal
  - <http://www.lambdalegal.org>

- The Pew Forum on Religion & Public Life
  - <http://www.pewforum.org/Gay-Marriage-and-Homosexuality/Gay-Marriage-Around-the-World.aspx>

## Films

- *8: The Mormon Proposition (2010 Documentary)*
  - Examines The Church of Jesus Christ of Latter-day Saints (LDS Church) and its support of California Proposition 8, stating that the church has been actively involved in the denial of LGBT human rights.
- *The Campaign—Christie Herring (2012 Documentary)*
  - The inside story of the fight to stop California's wildly controversial Proposition 8, which banned gay marriage and ignited a movement.
- *Edie & Thea: A Very Long Engagement (2009 Documentary)*
  - After 42 years, lesbian couple Edie and Thea are finally getting married. From the early 60s to the present day, the tireless community activists persevere through many battles, both personal and political.
- *Freeheld (2007 Documentary)*
  - Chronicles the story of Laurel Hester in her fight against the Ocean County, New Jersey, Board of Chosen Freeholders to give her earned pension benefits to her partner, Stacie.
- *I Can't Marry You—Catherine Gray (2003 Documentary)*
  - Explores same-sex marriage issues through the personal experiences of 20 gay and lesbian couples who have been in long-term relationships of 10–55+ years. Gray shot the film in large and small cities across the country, including New York City; Saugatuck, Michigan; Asheville, North Carolina; San Francisco, California; Fort Lauderdale and West Palm Beach, Florida.
- *Les Invisibles—Sébastien Lifshitz (2012 French Documentary)*
  - Several elderly homosexual men and women speak frankly about their pioneering lives, their fearless decision to live openly in France at a time when society rejected them.
- *The New Black—Yoruba Richen (2013 Documentary)*
  - Tells the story of how the African American community is grappling with the gay rights issue in light of the recent gay marriage movement and the fight over civil rights.
- *Outrage (2009 Documentary)*
  - The film presents a narrative discussing the hypocrisy of individuals purported in the documentary to be closeted politicians who promote antigay legislation.
- *Trembling Before G-d (2001 Documentary)*
  - Film about gay and lesbian Orthodox Jews trying to reconcile their sexuality with their faith.