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# Legislating the Family: Heterosexist Bias in Social Welfare Policy Frameworks

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*This article addresses the effects of heterosexist bias in social welfare policy frameworks on lesbian, gay, bisexual and transgender (LGBT) individuals and families in the United States. It discusses the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), the Defense of Marriage Act (DOMA), federal definitions of family and household, and stereotypes about LGBT individuals. It argues that poor LGBT individuals and families lack full citizen rights and access to needed social services as a result of these explicit and implicit biases.*

*Key words: Welfare reform; family policy; civil rights; gay, lesbian, bisexual and transgender (LGBT); heterosexism*

Welfare reform is fundamentally about family policy—about promoting and privileging particular kinds of families, and about penalizing and stigmatizing others. (Cahill and Jones 2002: 1).

Two pieces of legislation were passed in 1996 that set an important tone for family policy in the United States: The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), an act that expanded welfare-to-work programs throughout the country, restricted people's access to public assistance, and crystallized the broader restructuring of public-private boundaries; and the Defense of Marriage Act (DOMA), which defines marriage as a legal union between a man and a woman. At first glance, the two initiatives appear unrelated and inconsequential, although the reality is quite different. Combined, they constitute a national policy context within which legal and cultural

definitions of "the family" have been restricted and where lesbian, gay, bisexual and transgender (LGBT) civil rights legislation has been blocked or challenged, both on moral and legal grounds. Although some important victories have been made by LGBT civil rights activists, heterosexist biases in federal law and policy continue to have negative effects for LGBT communities. Poor LGBT individuals and families, in particular, suffer consequences from these policy decisions because they do not have full citizen rights nor, in many cases, can they access needed resources.

This article addresses the effects of heterosexist bias in social welfare policy frameworks on LGBT individuals and families. It brings together three often-disconnected arenas of public policy: social welfare, family, and LGBT civil rights. Although contemporary scholarship on social welfare and family policy have put into question the "nuclear family" as the basis for policy (Haney and Pollard eds. 2003), and rightly so, few studies have addressed the role that institutionalized heterosexuality itself plays in shaping and powerfully influencing social welfare agendas. While many scholars have addressed the gendered and racialized dimensions of social welfare frameworks, including how racism and sexism provide foundations for restricting people's access to much-needed forms of assistance and to their civil rights, few have addressed how heterosexism, too, works to restrict access and limit citizenship for individuals who do not fit within sexual and gender norms (Phelan 2001; on racism and sexism, see Gordon ed. 1990; Gordon 1994; Gordon and Fraser 1994; Mink 1990; Mink ed. 1999; Naples 1998; Moller 2002). Even fewer have addressed the ways in which gender identity discrimination intersects with heterosexism to affect the lives of transgendered as well as non-transgendered lesbians, gays, bisexuals and heterosexuals. And the few researchers and policy-makers who have made important contributions to "queering," or examining the heterosexist biases in, American social policy, have yet to be taken seriously within mainstream policy circles (Butler 1990; Sedgwick 1992; Cahill and Jones 2002). In fact, policy struggles over the meaning of family and attacks on LGBT communities and civil rights have gone hand-in-hand: "It is no accident that the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), and the Defense of Marriage Act (DOMA) were passed and signed into

law within days of each other," as Sean Cahill and Kenneth T. Jones observe (2002: 15). In these ways, institutionalized heterosexuality is central to some of the key motivation(s) behind and design of public policy frameworks in the United States.

By "institutionalized heterosexuality" I am referring to the set of ideas, institutions and relationships that make the heterosexual family the societal norm, while rendering homosexual/queer families "abnormal" or "deviant" (Ingraham 1999). My queer analysis of social welfare involves examining how sexuality and gender can be rethought and reorganized in economic and social policy frameworks, theories and practices. Throughout the article I examine how heterosexuality is assumed to be the natural basis for defining the family, and by extension, society, both explicitly (by excluding LGBT people from the analysis and by stigmatizing certain individuals as "non-family" or "anti-family") and implicitly (by assuming that all people are heterosexual, that marriage is a given and exists only between a traditionally-defined man and woman, and that all people fit more or less into traditional gender roles; see Foucault 1978; Fraser and Gordon 1994; Ingraham 1999; Phelan 2001; Bernstein and Reimann eds. 2001; Mink ed. 1999; Cahill et al. 2002).

### Historical Background: Sexuality and Public Policy

Homosexuality has been historically regulated and disciplined through various policies, laws, and institutions in the U.S. (Foucault 1978; Calhoun 2000; Bernstein and Reimann eds. 2001). Until now, gays, lesbians and bisexuals in a limited amount of states or municipalities have enjoyed certain heterosexual privileges, such as health or insurance benefits, the right to adopt or have children, the right to work in a discrimination-free environment, and the right to "marry" (e.g., Massachusetts, domestic partner laws in Vermont, California, and over 65 cities). These legal and political achievements have been obtained at the municipal or state levels rather than through federal legislation, thus extending rights to LGBT communities in a fragmented way. In addition, many of these policies and laws are laden with contradictions. Vermont's Domestic Partner Laws, for example, are set up as a parallel system to marriage laws, thus creating

a “separate but equal” context reminiscent of earlier civil rights legislation and leaving the heterosexist institution of marriage intact and largely unchallenged. The federal “Don’t Ask, Don’t Tell” policy, signed by President Bill Clinton (1992–2000) in 1993 and implemented in 1994, is contradictory because although President Clinton authorized the policy as a way to “protect” gays in the military (as long as they remain in the closet), the reality is that more gays have been expelled from the military since 1994 than ever before (SLDN 1999), including during the explicit government campaign to expel homosexuals from the military during World War II (Berubé 1990).

Importantly, LGBT people have actively challenged and negotiated discriminatory legislation with some success. Anti-sodomy laws, which legally prohibit consensual, same-sex sexual relationships (sometimes for women too), have been repealed, although thirteen states upheld these archaic laws until the landmark decision by the Supreme Court to overturn them in June 2003 (NGLTF 2004a and b). Non-discrimination clauses have been passed by some states and dozens of municipalities, providing protection for citizens regardless of their sexual orientation and in some cases, their gender identity/expression (TLPI 2004). In addition, many private companies and public institutions (e.g., universities) have added non-discrimination clauses to their code of ethics or by-laws. The State of Connecticut is currently reviewing proposed legislation for same-sex marriage, following the lead of earlier state movements in Vermont, Hawaii, California, and Massachusetts. Thus far 3 states (California, Connecticut, and Vermont) explicitly permit second parent or stepparent adoption by same-sex couples, and an additional 20 states and the District of Colombia have legislation allowing same-sex adoption in certain cases (NGLTF 2004c). In some states such as Florida, however, gay and lesbian couples are not allowed to adopt at all, although currently this is being challenged in court (Liptak 2003).

These civil rights victories have not gone unchallenged by the Right. Anti-gay legislators and social movements (e.g., the religious right) effectively have blocked the passage of several pro-LGBT laws and policies and passed their own legislation, including the Defense of Marriage Act (DOMA), which was signed by President Bill Clinton in 1996 as a compromise with the Right.

Although DOMA is a very short piece of legislation, it has had a significant impact on the LGBT rights movement. DOMA allows states the right to not honor other states' marriage contracts where marriage is defined differently. In this scenario, a state such as Arizona that has passed its own DOMA does not recognize domestic partnerships of same-sex couples that were "married" in a state where they are recognized (e.g., Vermont). President Clinton's passage of DOMA at the federal level paved the way for states to actively pass their own versions of the Defense of Marriage Act, thereby passing even stronger messages about who has the right to marry and who does not. To date, 36 states have passed DOMA (NGLTF 2004d).

DOMA alone has helped to institutionalize heterosexism in profound ways because it blocks future proactive and protective legislation for gays and lesbians. LGBT activists and institutions wishing to work around DOMA have strategized to pass domestic partner laws and policies at state and local levels, including in private organizations, as a way to obtain the 1,000+ benefits for LGB employees/citizens that married couples are entitled to by default. Through this process, civil rights strategies have become localized and "privatized" along with the broader privatization of the social welfare system and economy: As with other policies, poor LGBT individuals are the most likely to be left out in this restructuring process, even by LGBT activists themselves. This has the additional consequence of creating forms of social control among non-profit and community organizations and also within LGBT communities: there may be, for example, "deserving" vs. "undeserving" homosexuals (Piven and Cloward 1993), and some are more likely to "pass" than others. As the histories of other social movements (e.g., civil rights, women's) have shown, federal legislation alone does not create equality among all but it is crucial for providing legal equality across states.

### Social Welfare Policy and Lesbian, Gay, Bisexual and Transgender Communities

Heterosexist biases in social welfare policy frameworks exist in at least three ways: through policies that explicitly target LGBT individuals as abnormal or deviant, such as policies that

defend the institution of heterosexual marriage; through federal definitions that assume all families are heterosexual, thereby implicitly leaving out LGBT individuals and families; and through policies that overlook LGBT poverty and social need due to stereotypes about LGBT communities being affluent. The first type of heterosexist bias has become particularly apparent since the 1990s, when conservative political sectors organized more concerted efforts to block or overturn LGBT civil rights legislation. Since the mid 1990s, social welfare policy initiatives have included explicit components about marriage that protect heterosexuality as a social institution. These policies began during the William Jefferson Clinton administration (1992–2000) but have been promoted most fervently by the George W. Bush administration (2000–present). The latest version of the TANF reauthorization bill calls for dedicated federal funding sources for “healthy marriage promotion” activities and “fatherhood programs.” Currently, provisions being considered by the House and Senate and supported by the President include \$100 million in competitive matching grants to states to develop “innovative approaches to promoting healthy marriages,” including “public advertising campaigns on marriage,” education in high schools on the value of marriage, marriage enhancement and marriage skills training, divorce reduction programs, marriage mentoring programs in “at-risk communities” (Fremstad et al. 2002: 3). These provisions also call for an additional \$20 million annually that would be designated specifically for fatherhood programs, such as promoting “responsible parenting,” improving fathers’ family business management skills, and premarital education programs (Fremstad et al. 2002: 3).

Under current legislation, state governments have been offered incentives to provide marriage workshops in exchange for additional funding. Since 1996, over \$400 million per year in public funds have been spent across the U.S. on abstinence-only-until-marriage education. In the abstinence campaigns, gay, lesbian and bisexual adolescents have no access to sex education that pertains to their sexual experiences. In addition, many school districts throughout the country have developed laws forbidding teachers from discussing homosexuality in any form, despite the fact that, according to one major national study conducted by

the Henry J. Kaiser Foundation, seventy-six percent of parents of 7–12<sup>th</sup> graders feel that sex education should cover homosexuality (Cahill and Jones 2002: 48).

The George W. Bush administration (2000–present) has made it a priority to preserve the traditional heterosexual family through legislation and policy, including through his so-called faith-based initiatives. In January 2001, President Bush created the White House Office of Faith-Based and Community Initiatives (OFBCI); in December 2002, he signed an executive order directing federal agencies to formulate and develop policies to ensure “equal protection” for faith-based organizations competing for government contracts, thereby allowing organizations to compete for federal funds while maintaining their specific religious perspective (Office of the President 2003). Thus far, the Bush administration claims that it has completed regulations that would allow religious groups to compete for nearly \$20 billion in grants administered by the Department of Health and Human Services, and it is currently completing regulations for the Department of Housing and Urban Development and for the Departments of Justice, Education and Labor (Stevenson 2003). In September 2003, the Bush administration awarded \$30.5 million in grants to 81 religious and community groups to develop their own social welfare programs; in 2002, \$24 million was awarded under the same program to 21 groups (Stevenson 2003).

Because the executive order and subsequent acts allow faith-based service providers to operate by a different set of rules than other non-profit and for-profit organizations, they potentially pave the way for further discrimination against LGBT people and women who do not fit within faith-based organizations’ visions of the family or those “in need.” In addition to the general concern that the separation of church and state has been overridden through this executive order, historically marginalized groups such as LGBT people, poor single mothers, and other social sectors considered “undeserving” are especially likely to lose out in religious-based forms of service delivery. Nonetheless, OFBCI Director James Towey has stated that President Bush “was ‘going to use every single tool that he has as chief executive’ to advance his goal of giving religious groups a greater role” (Stevenson 2003, quote in text). This process is certain to reinforce the dominance



of institutionalized heterosexuality in American social policy and social welfare distribution. To the extent that it will exclude LGBT people from access to resources and/or from being seen as full citizens, these regulations potentially undermine the struggle for LGBT civil rights in the United States. Thus while it is important to address LGBT civil rights incrementally, it is also crucial that researchers and policy-makers examine the institution of heterosexuality as an integral part of U.S. welfare policy reform, as even policies that appear not to have anything to do with sexual or gender identity have specific implications for LGBT communities in need of assistance from the state and private social service agencies.

The second type of heterosexist bias in social welfare policy concerns how "the family" and "household" are federally defined, including in the U.S. Census. Although there is no specific question on the census about sexual orientation/identity, census data serves as a self-disciplining factor in defining sexual citizenship through self-reporting at the household level. Income, employment rates, family size, military service, citizen status, and poverty statistics are just a few of the many variables collected, all of which combined contributes to the "governmentality of the closet at the national scale," as Michael Brown and Paul Boyle observe (2000: 90). For the purposes of data collection in the Current Population Survey (CPS), the U.S. Bureau of the Census (2003) defines family and household as separate categories. A "family" is defined as "a group of two or more (one of whom is the householder) related by birth, marriage, or adoption and residing together." A household, in contrast, "consists of all people who occupy a housing unit," and is further divided according to its status as a "family household" or "non-family household," thus reinforcing the legal distinction between families (i.e., those that are related through blood, marriage or adoption, as defined by law) vs. non-families (e.g., same-sex households). A family household is defined as "a household maintained by a householder who is in a family (as defined above) and includes any unrelated people who may be residing there." A non-family household is defined as a "householder living alone or where the householder shares the home exclusively with people to whom he/she is not related" (U.S. Bureau of the Census 2003). Clearly, these definitions privi-

lege the institution of marriage over domestic partnerships, and the status of heterosexual families over other types of families. While to some degree these definitions are contradictory and open to interpretation, they form an important basis for recent welfare legislation and related proposals to promote "two-parent families" through marriage (Brown and Boyle 2000).

Available studies show that there is an enormous disjuncture between popular conceptions of "the family" in current political discourse and the reality. For example, according to the 2000 U.S. Census, 44 percent of U.S. adults are not married, and married couples with children make up less than one-quarter of U.S. households (Cahill and Jones 2002: 12). A recent study by the Human Rights Campaign (HRC) shows that over one million same-sex unmarried partner households self-identified in the 2000 U.S. Census; for a variety of reasons, this figure is believed to be a gross undercount of same-sex unmarried partner households (Smith and Gates 2001). Based on the 2000 U.S. Census data, the HRC study estimates that over 3 million gay and lesbian people are "living together in the U.S. in committed relationships in the same residence" (Smith and Gates 2001: 2). The study also estimates that the U.S. population is comprised of over 10 million gay and lesbian people; a lower estimate than the 10% that earlier gay and lesbian activists estimated but consistent with recent studies that estimate gays and lesbians to be 5% of the total U.S. population. This research demonstrates the need for policies that address the specific needs of LGBT families in the U.S.

The third type of heterosexist bias in social welfare policy frameworks is a result of stereotypes about lesbian, gay and bisexual (LGB) individuals and families as affluent or as "HINKs" (High Income, No Kids). These stereotypes tend to reproduce the invisibility of LGB families in social welfare policy frameworks and in research on poverty; they also completely overlook the experiences of transgendered LGB individuals. For example, lesbians, gays and bisexuals often remain invisible in studies of poverty because they are viewed as "family-less." Rather than being viewed as part of a family, it is often assumed that LGB adults have no children. Following this already tainted logic, if LGB households have no children or less children than heterosexual households, they are assumed to have fewer family fi-

nancial responsibilities and subsequently higher overall incomes than heterosexual households in their same age group—thus contributing to the common stereotype that most LGB households are wealthy or better-off than their heterosexual counterparts. This assumption, combined with other forms of heterosexism and homophobia, leads policy-makers to believe that LGB people, as a group, do not experience poverty. As a result, LGB people are seen as not in need of any economic, social and health-related services (with the important exception treatment for HIV/AIDS, in which case many gay men have been targeted as a “social problem” or as a risk to health security—see Farmer 1992; Wright 2000). In most cases, those who do have access to government subsidies, health care and social services must do so through the lens of institutionalized heterosexuality: as “single” people and as legally unmarried, and many undergo discriminatory treatment as patients as a result.

Existing studies show that economic levels among LGB people range significantly and can be differentiated by group as well. For example, in his pioneer study of gay male communities in San Francisco, Manuel Castells (1983) found that “. . . on the whole, [lesbians] are poorer than gay men . . . and are less likely to achieve local power.” (Castells 1983: 140). Gay men and lesbians experience class differently in part due to their distinct gendered experiences, although this of course varies according to other factors as well. Several studies since then have critiqued Castells’ assertion and pointed out the economic and income differentiation of LGBT households by gender in combination with race, class, citizen status, and/or geographic location (Knopp 1995; Badgett 2001). For instance, in some cities where there are larger, relatively concentrated lesbian populations, lesbians have more wealth relative to national rates of wealth among lesbians (Rothenberg 1995). More recent studies, such as that of M. V. Lee Badgett (1998), challenge the myth that LGBT people are affluent. Rather, Badgett argues, “Gay, lesbian, bisexual, and transgender persons are not, as a class, richer than heterosexuals. In some cases, we appear to earn less.” (Badgett 1998: i). Recently released U.S. Census data from California, Florida, Illinois, New Jersey, New York, and Texas shows that same-sex households are similar to other families in these states on variables that include income,

family size, employment rates, military service and citizen status, thus supporting the idea that LGB families are as economically diverse and stratified as heterosexual families (HRC 2003\*). And although there is a paucity of data on the economic and class experiences of transgendered people, preliminary evidence based on secondary studies would indicate that many transgendered people, including self-defined transsexuals, male-to-female and female-to-male transgendered individuals, are not wealthier than heterosexuals as a class (Cahill and Jones 2002). Like anywhere, some LGB people are upper class, wealthy and/or work in high-paying professional fields. However, the stereotype of wealth among LGB people is just that: a stereotype.

Due to a combination of social, economic and cultural factors, many gay men, lesbians, bisexuals and transgendered people have difficulty finding jobs and/or keeping them (i.e., because of their appearance, because of homophobic work environment, blatant discrimination, and the disciplining of heterosexuality and/or gender identity in the workplace—see McDowell 1995), in addition to the fact that many of their families do not accept them nor provide the kinds of support that heterosexuals receive (e.g., college tuition or living expenses, support for a new house or wedding, providing advice on the job market, and associated forms of emotional support). Additionally, financial success often depends upon one's willingness and/or ability to "pass" as heterosexual and/or as appropriately gendered in a given context (MacDowell 1995). These issues demonstrate that there is a need for a broader definition of poverty that includes, for example, personal safety and freedom of abuse as well as economic hardship (Abramovitz 1988; Cahill and Jones 2002). Policy-makers could also benefit from more research on how sexual identity shapes individuals' views on the social welfare system, including social service agencies, non-profits, government offices, and federal agencies.

### Conclusion: Implications for Research and Policy

This article has addressed three important reasons for the persistent heterosexist biases in social welfare policy frameworks: Federal legislation and policies that explicitly target homosexuality as "abnormal" or "unnatural," such as DOMA; restricted legal

definitions of "the family" in federal policy; and stereotypes about LGBT individuals and families. In closing, I wish to offer some suggestions for future research on social welfare policies, with the aim of denaturalizing institutionalized heterosexuality and bringing LGBT communities to the center of research on poverty, families, and state policy. First, there is a need to re-envision the notion of social welfare itself. Central to social welfare policy frameworks is a heterosexist understanding of families, individuals and citizenship. Rather than being a natural, essential aspect of our society, the institution of heterosexuality is socially constructed and has been produced through these very policies and laws (in conjunction with cultural practices, the educational system, religious institutions, etc.) that establish hierarchies and power relations in our society. It is crucial that we begin to examine the connections among welfare reforms themselves and the many other forms of policy that coincide with these policies to produce an "appropriate" welfare recipient and citizen (Fraser and Gordon 1994). Furthermore, it is important that we examine such policies in a global perspective, since our policies have consequences for families in the U.S. and abroad, through immigration, foreign, and international development policies (Hondagneu-Sotelo 2001; Luibhéid 2002; Lind and Share 2003).

The queering of welfare reform is a much-needed project. The National Gay and Lesbian Task Force (NGLTF) has produced one of the most comprehensive studies to date on the effects of welfare and family policies on LGBT communities in the United States (Cahill and Jones 2002). In order to truly construct equitable policies and systems of distribution, we would need to examine the roots of institutionalized heterosexuality as a central aspect of the U.S. welfare state, in addition to other forms of institutionalized discrimination or bias. Only this way can we envision a society with all families in mind.

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