

Against Marriage and Motherhood

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This essay argues that current advocacy of lesbian and gay rights to legal marriage and parenthood insufficiently criticizes both marriage and motherhood as they are currently practiced and structured by Northern legal institutions. Instead we would do better not to let the State define our intimate unions and parenting would be improved if the power presently concentrated in the hands of one or two guardians were diluted and distributed through an appropriately concerned community.

The title of this essay is deliberately provocative, because I fear that radical feminist perspectives on marriage and motherhood are in danger of being lost in the quest for equal rights. My concerns, however, are specific. I am skeptical of using the institution of motherhood as a source of paradigms for ethical theory. And I am skeptical of legal marriage as a way to gain a better life for lesbian and gay lovers or as a way to provide a supportive environment for lesbian and gay parents and their children. Of course, some are happy with marriage and motherhood as they now exist. My concern is with the price of that joy borne by those trapped by marriage or motherhood and deeply unlucky in the company they find there. Nevertheless, nothing that I say is intended to disparage the characters of many magnificent women who have struggled in and around these institutions to make the best of a trying set of options.

BACKGROUNDS

My perspective on marriage is influenced not only by other's written reports and analyses but also by my own history of being raised in a lower-middle-class white village family by parents married (to each other) for more than three decades, by my firsthand experiences of urban same-sex domestic partnerships lasting from two and one half to nearly seven years (good ones and bad, some racially mixed, some white, generally mixed in class and religious backgrounds), and by my more recent experience as a lesbian feminist whose partner of the past decade is not a domestic partner. My perspective on child rearing is influenced not by my experience as a mother, but by my experience as a daughter reared by a full-time mother-housewife, by having participated heavily in the raising of my younger siblings, and by having grown to adulthood in a community in which many of the working-class and farming families exemplified aspects of what bell hooks calls "revolutionary parenting" (hooks 1984, 133-46).

bell hooks writes, "Childrearing is a responsibility that can be shared with other childrearsers, with people who do not live with children. This form of parenting is revolutionary in this society because it takes place in opposition to the idea that parents, especially mothers, should be the only childrearsers. Many people raised in black communities experienced this type of community-based child care" (hooks 1984, 144). This form of child rearing may be more common than is generally acknowledged in a society in which those whose caretaking does not take place in a nuclear family are judged by those with the power to set standards as unfortunate and deprived. Although bell hooks continues to use the language of "mothering" to some extent in elaborating "revolutionary parenting," I see this revolution as offering an alternative to mothering as a social institution.

Because it appears unlikely that the legal rights of marriage and motherhood in the European American models of those institutions currently at issue in our courts will disappear or even be seriously eroded during my lifetime, my opposition to them here takes the form of skepticism primarily in the two areas mentioned above: ethical theorizing and lesbian/gay activism. I believe that women who identify as lesbian or gay should be reluctant to put our activist energy into attaining legal equity with heterosexuals

in marriage and motherhood--not because the existing discrimination against us is in any way justifiable but because these institutions are so deeply flawed that they seem to me unworthy of emulation and reproduction.

For more than a decade, feminist philosophers and lesbian/gay activists have been optimistic about the potentialities of legal marriage and legitimated motherhood. This should be surprising, considering the dismal political genealogies of those institutions, which have been generally admitted and widely publicized by feminist thinkers. Yet, in the project of claiming historically characteristic life experiences of women as significant data for moral theory, many are turning to women's experiences as mothers for ethical insight. Not all focus on marriage and motherhood. Feminist philosophers are taking as valuable theoretical paradigms for ethics many kinds of caring relationships that have been salient in women's lives. Marilyn Friedman, for example, has explored female friendship in *What Are Friends For?* (1993). Sarah Hoagland (1988) offers value inquiry based on experiences of lesbian bonding in many forms. *Mothering*, edited by Joyce Trebilcot (1983), includes essays representing critical as well as supportive stances regarding motherhood. These works, however, are exceptions to a wider trend of theorizing that draws mainly positive inspiration from the experiences of women as mothers. Thus, Sara Ruddick's *Maternal Thinking* (1989), which acknowledges the need for caution, is devoted to developing ethical ideas based on experiences of mother-child relationships. Nel Noddings's *Caring* (1984) and Virginia Held's *Feminist Morality* (1993) likewise take inspiration from the experience of "mothering persons" and other caregivers, and to some extent, Annette Baier does likewise in *Moral Prejudices* (1994). These last four philosophers urge an extension of mothering values to more public realms of activity.

In *Black Feminist Thought* Patricia Hill Collins also speaks of "a more generalized ethic of caring and personal accountability among African-American women who often feel accountable to all the Black community's children" (1991, chap. 6). Her models for an "ethic of caring and personal accountability," however, differ significantly from the models characteristic of the work of so many white feminists in that her models already involve a wider community that includes "othermothers" as well as "bloodmothers," models elaborated by bell hooks as instances of "revolutionary parenting" (hooks 1984, 133-46). My skepticism is not aimed at such "revolutionary parenting," which I find has much to recommend it. Yet "parenting" by a wider community is a form of child care not currently enshrined in Northern legal systems. It is not the model guiding lesbian and gay activists currently agitating for equal rights before the law. For more communal child care, the language of "mothering" and even "parenting" is somewhat misleading in that these practices are not particularly "mother-centered" or even "parent-centered" but are centered on the needs of children and of the community.

Audre Lorde, who wrote about her relationship with her son (1984, 72-80), has left us with reflections on yet another model of parenting, that of a lesbian relationship struggling against the models of heterosexual marriage and patriarchal motherhood in her social environment. Nevertheless, she does not attempt to generalize from her experience or to treat it as a source of inspiration for ethical theory.

When confronted with my negative attitudes toward marriage and motherhood, some recoil as though I were proposing that we learn to do without water and oxygen on the ground that both are polluted (even killing us). Often, I believe, this reaction comes from certain assumptions that the reader or hearer may be inclined to make, which I here note in order to set aside at the outset.

First, my opposition to marriage is not an opposition to intimacy, nor to long-term relationships of intimacy, nor to durable partnerships of many sorts.¹ I understand marriage as a relationship to which the State is an essential third party. Also, like the practices of footbinding and suttee, which, according to the researches of Mary Daly (1978, 113-52), originated among the powerful classes, marriage in Europe

was once available only to those with substantial social power. Previously available only to members of propertied classes, the marriage relation has come to be available in modern Northern democracies to any adult heterosexual couple neither of whom is already married to someone else. This is what lesbian and gay agitation for the legal right to marry is about. This is what I find calls for extreme caution.

Second, my opposition to motherhood is neither an opposition to the guidance, education, and caretaking of children nor an opposition to the formation of many kinds of bonds between children and adults.² Nor am I opposed to the existence of homes, as places of long-term residence with others of a variety of ages with whom one has deeply committed relationships. When “the family” is credited with being a bulwark against a hostile world, as in the case of many families in the African and Jewish diasporas, the bulwark that is meant often consists of a variety of deeply committed personal (as opposed to legal) relationships and the stability of caring that they represent, or home as a site of these things. The bulwark is not the legitimation (often precarious or nonexistent) of such relationships through institutions of the State. The State was often one of the things that these relationships formed a bulwark against.

Marriage and motherhood in the history of modern patriarchies have been mandatory for and oppressive to women, and they have been criticized by feminists on those grounds. My concerns, however, are as much for the children as for the women that some of these children become and for the goal of avoiding the reproduction of patriarchy. Virginia Held, one optimist about the potentialities of marriage and motherhood, finds motherhood to be part of a larger conception of family, which she takes to be constructed of noncontractual relationships. She notes that although Marxists and recent communitarians might agree with her focus on noncontractual relationships, their views remain uninformed by feminist critiques of patriarchal families. The family from which she would have society and ethical theorists learn, ultimately, is a postpatriarchal family. But what is a “postpatriarchal family”? Is it a coherent concept?

“Family” is itself a family resemblance concept. Many contemporary lesbian and gay partnerships, households, and friendship networks fit no patriarchal stereotypes and are not sanctified by legal marriage, although their members still regard themselves as “family.”³ But should they? Many social institutions, such as insurance companies, do not honor such conceptions of “family.” Family, as understood in contexts where material benefits tend to be at stake, is not constituted totally by noncontractual relationships. At its core is to be found one or more marriage contracts. For those who would work to enlarge the concept of family to include groupings that are currently totally noncontractual, in retaining patriarchal vocabulary there is a danger of importing patriarchal ideals and of inviting treatment as deviant or “second class” at best.

“Family,” our students learn in Women’s Studies 101, comes from the Latin *familia*, meaning “household,” which in turn came from *famulus*, which, according to the *OED*, meant “servant.” The ancient Roman *paterfamilias* was the head of a household of servants and slaves, including his wife or wives, concubines, and children. He had the power of life and death over them. The ability of contemporary male heads of households to get away with battering, incest, and murder suggests to many feminists that the family has not evolved into anything acceptable yet. Would a household of persons whose relationships with each other transcended (as those of families do) sojourns under one roof continue to be rightly called “family” if no members had significant social support for treating other members abusively? Perhaps the postpatriarchal relationships envisioned by Virginia Held and by so many lesbians and gay men should be called something else, to mark that radical departure from family history. But it is not just a matter of a word. It is difficult to imagine what such relationships would be.

In what follows, I say more about marriage than about motherhood, because it is legal marriage that sets the contexts in which and the background against which motherhood has been legitimated, and it defines contexts in which mothering easily becomes disastrous for children.

LESBIAN (OR GAY) MARRIAGE?

A special vantage point is offered by the experience of lesbians and gay men, among whom there is currently no consensus (although much strong feeling on both sides) on whether to pursue the legal right to marry a same-sex lover (Blumenfeld, Wolfson, and Brownworth, all 1996). When heterosexual partners think about marriage, they usually consider the more limited question whether they (as individuals) should marry (each other) and if they did not marry, what the consequences would be for children they might have or raise. They consider this in the context of a State that gives them the legal option of marriage. Lesbians and gay men are currently in the position of having to consider the larger question whether the legal option of marriage is a good idea, as we do not presently have it in relation to our lovers. We have it, of course, in relation to the other sex, and many have exercised it as a cover, as insurance, for resident alien status, and so forth. If it is because we already have rights to marry heterosexually that right-wing attackers of lesbian or gay rights complain of our wanting “special rights,” we should reply that, of course, any legalization of same-sex marriage should extend that “privilege” to heterosexuals as well.

The question whether lesbians and gay men should pursue the right to marry is not the same as the question whether the law is wrong in its refusal to honor same-sex marriages. Richard Mohr (1994, 31-53) defends gay marriage from that point of view as well as I have seen it done. Evan Wolfson develops powerfully an analogy between the denial of marriage to same-sex couples and the antimiscegenation laws that were overturned in the United States just little more than a quarter century ago (Wolfson 1996). What I have to say should apply to relationships between lovers (or parents) of different races as well as to those of same-sex lovers (or parents). The ways we have been treated are abominable. But it does not follow that we should seek legal marriage.

It is one thing to argue that others are wrong to deny us something and another to argue that what they would deny us is something we should fight for the right to have. I do not deny that others are wrong to exclude same-sex lovers and lovers of different races from the rights of marriage. I question only whether we should fight for those rights, even if we do not intend to exercise them. Suppose that slave-owning in some mythical society were denied to otherwise free women, on the ground that such women as slave-owners would pervert the institution of slavery. Women (both free and unfree) could (unfortunately) document empirically the falsity of beliefs underlying such grounds. It would not follow that women should fight for the right to own slaves, or even for the rights of other women to own slaves. Likewise, if marriage is a deeply flawed institution, even though it is a special injustice to exclude lesbians and gay men arbitrarily from participating in it, it would not necessarily advance the cause of justice on the whole to remove the special injustice of discrimination.

About same-sex marriage I feel something like the way I feel about prostitution. Let us, by all means, *decriminalize* sodomy and so forth. Although marriage rights would be *sufficient* to enable lovers to have sex legally, such rights should not be *necessary* for that purpose. Where they *are* legally necessary and also available for protection against the social oppression of same-sex lovers, as for lovers of different races, there will be enormous pressure to marry. Let us not pretend that marriage is basically a good thing on the ground that durable intimate relationships are. Let us not be eager to have the State regulate our unions. Let us work to remove barriers to our enjoying some of the privileges presently available only to heterosexual married couples. But in doing so, we should also be careful not to support discrimi-

nation against those who choose not to marry and not to support continued state definition of the legitimacy of intimate relationships. I would rather see the state *deregulate* heterosexual marriage than see it begin to regulate same-sex marriage.

As the child of parents married to each other for thirty-two years, I once thought I knew what marriage meant, even though laws vary from one jurisdiction to another and the dictionary, as Mohr notes, sends us around in a circle, referring us to “husband” and “wife,” in turn defined by “marriage.” Mohr argues convincingly that “marriage” need not presuppose the gendered concepts of “husband” and “wife” (1994, 31-53). I will not rehearse that ground here. History seems to support him. After reading cover to cover and with great interest John Boswell’s *Same-Sex Unions in Premodern Europe* (1994), however, I no longer feel so confident that I know when a “union” counts as a “marriage.” Boswell, who discusses many kinds of unions, refrains from using the term “marriage” to describe the same-sex unions he researched, even though they were sanctified by religious ceremonies. Some understandings of such unions, apparently, did not presuppose that the partners were not at the same time married to someone of the other sex.

Mohr, in his suggestions for improving marriage law by attending to the experience of gay men, proposes that sexual fidelity not be a requirement (1994, 49-50). What would remain without such a requirement, from a legal point of view, sounds to me like mutual *adoption*, or guardianship. Adoption, like marriage, is a way to become next-of-kin. This could have substantial economic consequences. But is there any good reason to restrict mutual adoption to two parties at a time? If mutual adoption is what we want, perhaps the law of adoption is what we should use, or suitably amend. And yet the law of adoption is not without its problematic aspects, some similar to those of the law of marriage. For it does not specify precisely a guardian’s rights and responsibilities. Perhaps those who want legal contracts with each other would do better to enter into contracts the contents of which and duration of which they specifically define.

As noted above, my partner of the past decade is not a domestic partner. She and I form some kind of fairly common social unit which, so far as I know, remains nameless. Along with such namelessness goes a certain invisibility, a mixed blessing to which I will return. We do not share a domicile (she has her house; I have mine). Nor do we form an economic unit (she pays her bills; I pay mine). Although we certainly have fun together, our relationship is not based simply on fun. We share the sorts of mundane details of daily living that Mohr finds constitutive of marriage (often in her house, often in mine). We know a whole lot about each other’s lives that the neighbors and our other friends will never know. In times of trouble, we are each other’s first line of defense, and in times of need, we are each other’s main support. Still, we are not married. Nor do we yearn to marry. Yet if marrying became an option that would legitimate behavior otherwise illegitimate and make available to us social securities that will no doubt become even more important to us as we age, we and many others like us might be pushed into marriage. Marrying under such conditions is not a totally free choice.

Because of this unfreedom, I find at least four interconnected kinds of problems with marriage. Three may be somewhat remediable in principle, although if they were remedied, many might no longer have strong motives to marry. I doubt that the fourth problem, which I also find most important, is fixable. The first problem, perhaps easiest to remedy in principle (if not in practice) is that employers and others (such as units of government) often make available only to legally married couples benefits that anyone could be presumed to want, married or not, such as affordable health and dental insurance, the right to live in attractive residential areas, visitation rights in relation to significant others, and so forth. Spousal benefits for employees are a significant portion of many workers’ compensation. Thus married workers

are often, in effect, paid more for the same labor than unmarried workers (Berzon 1988, 266; Pierce 1995, 5). This is one way in which people who do not have independent access to an income often find themselves economically pressured into marrying. Historically, women have been in this position oftener than men, including, of course, most pre-twentieth century lesbians, many of whom married men for economic security.

The second problem is that even though divorce by mutual consent is now generally permitted in the United States, the consequences of divorce can be so difficult that many who should divorce do not. This to some extent is a continuation of the benefits problem. But also, if one partner can sue the other for support or receive a share of the other's assets to which they would not otherwise have been legally entitled, there are new economic motives to preserve emotionally disastrous unions.

The third issue, which would be seriously troublesome for many lesbians, is that legal marriage as currently understood in Northern democracies is monogamous in the sense of one *spouse* at a time, even though the law in many states no longer treats "adultery" (literally "pollution") as criminal. Yet many of us have more than one long-term intimate relationship during the same time period. Any attempt to change the current understanding of marriage so as to allow plural marriage partners (with plural contracts) would have economic implications that I have yet to see anyone explore.

Finally, the fourth problem, the one that I doubt is fixable (depending on what "marriage" means) is that the legal rights of access that married partners have to each other's persons, property, and lives makes it all but impossible for a spouse to defend herself (or himself), or to be protected against torture, rape, battery, stalking, mayhem, or murder by the other spouse. Spousal murder accounts for a substantial number of murders each year. This factor is made worse by the presence of the second problem mentioned above (difficulties of divorce that lead many to remain married when they should not), which provide motives to violence within marriages. Legal marriage thus enlists state support for conditions conducive to murder and mayhem.

The point is not that all marriages are violent. It is not about the frequency of violence, although the frequency appears high. The points are, rather, that the institution places obstacles in the way of protecting spouses (however many) who need it and is conducive to violence in relationships that go bad. Battery is, of course, not confined to spouses. Lesbian and gay battery is real (see Renzetti 1992; Lobel 1986; Island and Letellier 1991). But the law does not protect unmarried batterers or tend to preserve the relationships of unmarried lovers in the way that it protects husbands and tends to preserve marriages.

Why, then, would anyone marry? Because it is a tradition, glorified and romanticized. It grants status. It is a significant (social) mark of adulthood for women in patriarchy. It is a way to avoid certain hassles from one's family of origin and from society at large--hassles to oneself, to one's lover (if there is only one), and to children with whom one may live or whom one may bring into being. We need better traditions. And women have long needed other social marks of adulthood and ways to escape families of origin.

Under our present exclusion from the glories of legal matrimony, the usual reason why lesbians or gay men form partnerships and stay together is because we care for each other. We may break up for other kinds of reasons (such as one of us being assigned by an employer to another part of the country and neither of us being able to afford to give up our jobs). But when we stay together, that is usually because of how we feel about each other and about our life together. Consider how this basic taken-for-granted fact might change if we could marry with the State's blessings. There are many material benefits

to tempt those who can into marrying, not to mention the improvement in one's social reputation as a reliable citizen (and for those of us who are not reliable citizens, the protection against having a spouse forced to testify against us in court).

Let us consider each of these four problems further. The first was that of economic and other benefits, such as insurance that employers often make available only to marrieds, the right of successorship to an apartment, inheritance rights, and the right to purchase a home in whatever residential neighborhood one can afford. The attachment of such benefits to marital status is a problem in two respects. First, because the benefits are substantial, not trivial, they offer an ulterior motive for turning a lover relationship into a marriage—even for pretending to care for someone, deceiving oneself as well as others. As Emma Goldman argued in the early twentieth century, when marriage becomes an insurance policy, it may no longer be compatible with love (1969). Second, the practice of making such benefits available only to marrieds discriminates against those who, for whatever reason, do not marry. Because of the first factor, many heterosexuals who do not fundamentally approve of legal marriage give in and marry anyhow. Because of the second factor, many heterosexual feminists, however, refuse legal marriage (although the State may regard their relationships as common law marriages).

Now add to the spousal benefits problem the second difficulty, that of the consequences of getting a divorce (for example, consequences pertaining to shared property, alimony, or child support payments and difficulties in terms of access to children), especially if the divorce is not friendly. Intimate partnerships beginning from sexual or erotic attraction tend to be of limited viability, even under favorable circumstances. About half of all married couples in the United States at present get divorced, and probably most of the other half should. But the foreseeable consequences of divorce provide motives to stay married for many spouses who no longer love each other (if they ever did) and have even grown to hate each other. Staying married ordinarily hampers one's ability to develop a satisfying lover relationship with someone new. As long as marriage is monogamous in the sense of one *spouse* at a time, it interferes with one's ability to obtain spousal benefits for a new lover. When spouses grow to hate each other, the access that was a joy as lovers turns into something highly dangerous. I will return to this.

Third, the fact of multiple relationships is a problem even for relatively good marriages. Mohr, as noted, argues in favor of reforming marriage so as not to require sexual exclusiveness rather than officially permitting only monogamy. Yet he was thinking not of multiple *spouses* but of a monogamous marriage in which neither partner expects sexual exclusiveness of the other. Yet, one spouse per person is monogamy, however promiscuous the spouses may be. The advantages that Mohr enumerates as among the perks of marriage apply only to spouses, not to relationships with additional significant others who are not one's spouses. Yet the same reasons that lead one to want those benefits for a spouse can lead one to want them for additional significant others. If lesbian and gay marriages were acknowledged in Northern democracies today, they would be legally as monogamous as heterosexual marriage, regardless of the number of one's actual sexual partners. This does not reflect the relationships that many lesbians and gay men have or want.

Boswell wrote about same-sex unions that did not preclude simultaneous heterosexual marriages (1994). The parties were not permitted to formalize unions with more than one person of the same sex at a time, however. Nor were they permitted to have children with a person of the other sex to whom they were not married. Thus, in a certain restricted sense, each formal union was monogamous, even though one could have both kinds at once.

Christine Pierce argues, in support of the option to legalize lesbian and gay marriages, that lesbian and gay images have been cast too much in terms of individuals--*The Well of Loneliness* (Hall 1950), for example--and not enough in terms of relationships, especially serious relationships involving long-term commitments (Pierce 1995, 13). Marriage gives visibility to people "as couples, partners, family, and kin," a visibility that lesbians and gay men have lacked and that could be important to dispelling negative stereotypes and assumptions that our relationships do not embody many of the same ideals as those of many heterosexual couples, partners, family, and kin (Pierce 1996). This is both true and important.

It is not clear, however, that legal marriage would offer visibility to our relationships as they presently exist. It might well change our relationships so that they became more like heterosexual marriages, loveless after the first few years but hopelessly bogged down with financial entanglements or children (adopted or products of turkey-baster insemination or previous marriages), making separation or divorce (at least in the near future) too difficult to contemplate, giving rise to new motives for mayhem and murder. Those who never previously felt pressure to marry a lover might confront not just new options but new pressures and traps.

My views on marriage may surprise those familiar with my work on the military ban (Card 1995). For I have argued against the ban and in favor of lesbian and gay access to military service, and I argued that even those who disapprove of the military should object to wrongful exclusions of lesbians and gay men. In the world in which we live, military institutions may well be less dispensable than marriage, however in need of restraint military institutions are. But for those who find legal marriage and legitimate motherhood objectionable, should I be moved here by what moved me there--that it is one thing not to exercise an option and another to be denied the option, that denying us the option for no good reason conveys that there is something wrong with us, thereby contributing to our public disfigurement and defamation, and that these considerations give us good reasons to protest being denied the option even if we never intend to exercise it? I am somewhat but not greatly moved by such arguments in this case. The case of marriage seems to me more like the case of slavery than like that of the military.

Marriage and military service are in many ways relevantly different. Ordinarily, marriage (like slavery) is much worse, if only because its impact on our lives is usually greater. Marriage is supposed to be a lifetime commitment. It is at least open-ended. When available, it is not simply an option but tends to be coercive, especially for women in a misogynist society. For those who choose it, it threatens to be a dangerous trap. Military service is ordinarily neither a lifetime nor open-ended commitment; one signs up for a certain number of years. During war, one may be drafted (also for a limited time) and, of course, even killed, but the issue has not been whether to draft lesbians and gay men. Past experience shows that gay men will be drafted in war, even if barred from enlistment in peace. When enlistment is an option, it does not threaten to trap one in a relationship from which it will be extremely difficult to extricate oneself in the future. There is some analogy with the economically coercive aspect of the marriage "option." Because those who have never served are ineligible for substantial educational and health benefits, many from low- (or no-) income families enlist to obtain such things as college education and even health and dental insurance. However, the service one has to give for such benefits as an enlistee is limited compared to spousal service. Being killed is a risk in either case.

In such a context, pointing out that many marriages are very loving, not at all violent, and proclaim to the world two people's honorable commitment to each other, seems to me analogous to pointing out, as many slave-owners did, that many slave-owners were truly emotionally bonded with their slaves, that

they did not whip them, and that even the slaves were proud and honored to be the slaves of such masters.

Some of the most moving stories I hear in discussions of gay marriage point out that the care rendered the ill by families is a great service to society and that the chosen families of gay AIDS patients deserve to be honored in the same way as a family based on a heterosexual union. The same, of course, applies to those who care for lesbian or gay cancer patients or for those with severe disabilities or other illnesses. But is this a service to society? Or to the State? The State has a history of depending on families to provide care that no human being should be without in infancy, illness, and old age. Lesbians and gay men certainly have demonstrated our ability to serve the State in this capacity as well as heterosexuals. But where does this practice leave those who are not members of families? Or those who object on principle to being members of these unions as sanctified by the State?

To remedy the injustices of discrimination against lesbians, gay men, and unmarried heterosexual couples, many municipalities are experimenting with domestic partnership legislation. This may be a step in the right direction, insofar as it is a much more voluntary relationship, more specific, more easily dissolved. Yet, partners who are legally married need not share a domicile unless one of them so chooses; in this respect, eligibility for the benefits of domestic partnership may be more restrictive than marriage. And the only domestic partnership legislation that I have seen requires that one claim only one domestic partner at a time, which does not distinguish it from monogamous marriage (see Berzon 1988, 163-82).

Whatever social unions the State may sanction, it is important to realize that they become State-defined, however they may have originated. One's rights and privileges as a spouse can change dramatically with one's residence, as Betty Mahmoody discovered when she went with her husband to Iran for what he had promised would be a temporary visit (Mahmoody with Hoffer 1987). She found after arriving in Iran that she had no legal right to leave without her husband's consent, which he then denied her, leaving as her only option for returning to the United States to escape illegally (which she did). Even if a couple would not be legally recognized as married in a particular jurisdiction, if they move from another jurisdiction in which they *were* legally recognized as married, they are generally legally recognized as married in the new jurisdiction, and they are held to whatever responsibilities the new jurisdiction enforces. The case of Betty Mahmoody is especially interesting because it involves her husband's right of access. Spousal rights of access do not have the same sort of contingency in relation to marriage as, say, a right to family rates for airline tickets.

Marriage is a legal institution the obligations of which tend to be highly informal--i.e., loosely defined, unspecific, and inexplicit about exactly what one is to do and about the consequences of failing. In this regard, a marriage contract differs from the contract of a bank loan. In a legal loan contract, the parties' reciprocal obligations become highly formalized. In discharging the obligations of a loan, one dissolves the obligation. In living up to marriage obligations, however, one does not dissolve the marriage or its obligations; if anything, one strengthens them. As I have argued elsewhere, the obligations of marriage and those of loan contracts exhibit different paradigms (Card 1988, 1990). The debtor paradigm is highly formal, whereas the obligations of spouses tend to be relatively informal and fit better a paradigm that I have called the trustee paradigm. The obligations of a trustee, or guardian, are relatively abstractly defined. A trustee or guardian is expected to exercise judgment and discretion in carrying out the obligations to care, protect, or maintain. The trustee *status* may be relatively formal--precisely defined regarding dates on which it takes effect, compensation for continuing in good standing, and the consequences of losing the status. But consequences of failing to do this or that specific thing may not be specified or specifiable, because what is required to fulfill duties of caring, safekeeping, protection, or maintenance can be expected to vary with circumstances, changes in which may not be readily foreseeable. A large

element of discretion seems ineliminable. This makes it difficult *to hold a trustee accountable for abuses* while the status of trustee is retained, and it also means that it is difficult to prove that the status should be terminated. Yet the only significant sanction against a trustee may be withdrawal of that status. Spousal status and parental status fit the trustee model, rather than the debtor model, of obligation. This means that it is difficult to hold a spouse or a parent accountable for abuse.

Central to the idea of marriage, historically, has been intimate access to the persons, belongings, activities, even histories of one another. More important than sexual access, marriage gives spouses physical access to each other's residences and belongings, and it gives access to information about each other, including financial status, that other friends and certainly the neighbors do not ordinarily have. For all that has been said about the privacy that marriage protects, what astonishes me is how much privacy one gives up in marrying.

This mutual access appears to be a central point of marrying. Is it wise to abdicate legally one's privacy to that extent? What interests does it serve? Anyone who in fact cohabits with another may seem to give up similar privacy. Yet, without marriage, it is possible to take one's life back without encountering the law as an obstacle. One may even be able to enlist legal help in getting it back. In this regard, uncloseted lesbians and gay men presently have a certain advantage--which, by the way, "palimony" suits threaten to undermine by applying the idea of "common law" marriage to same-sex couples (see, e.g., Faulkner with Nelson 1993).

Boswell argued that, historically, what has been important to marriage is consent, not sexual relations. But, consent to what? What is the point of marrying? Historically, for the propertied classes, he notes, the point of heterosexual marriage was either dynastic or property concerns or both. Dynastic concerns do not usually figure in arguments for lesbian or gay marriage. Although property concerns do, they are among the kinds of concerns often better detached from marriage. That leaves as a central point of marriage the legal right of cohabitation and the access to each other's lives that this entails.

It might still be marriage if sexual exclusivity, or even sex, were not part of it, but would it still be marriage if rights of cohabitation were not part of it? Even marrieds who voluntarily live apart retain the *right* of cohabitation. Many rights and privileges available to marrieds today might exist in a legal relationship that did not involve cohabitation rights (for example, insurance rights, access to loved ones in hospitals, rights to inherit, and many other rights presently possessed by kin who do not live with each other). If the right of cohabitation is central to the concept of legal marriage, it deserves more critical attention than philosophers have given it.

Among the trappings of marriage that have received attention and become controversial, ceremonies and rituals are much discussed. I have no firm opinions about ceremonies or rituals. A far more important issue seems to me to be the marriage *license*, which receives hardly any attention at all. Ceremonies affirming a relationship can take place at any point in the relationship. But a license is what one needs to initiate a legal marriage. To marry legally, one applies to the state for a license, and marriage, once entered into, licenses spouses to certain kinds of access to each other's persons and lives. It is a mistake to think of a license as simply enhancing everyone's freedom. One person's license, in this case, can be another's prison. Prerequisites for marriage licenses are astonishingly lax. Anyone of a certain age, not presently married to someone else, and free of certain communicable diseases automatically qualifies. A criminal record for violent crimes is, to my knowledge, no bar. Compare this with other licenses, such as a driver's license. In Wisconsin, to retain a driver's license, we submit periodically to eye exams. Some states have more stringent requirements. To obtain a driver's license, all drivers have to pass a written and a behind-the-wheel test to demonstrate knowledge and skill. In Madison, Wisconsin,

even to adopt a cat from the humane society, we have to fill out a form demonstrating knowledge of relevant ordinances for pet-guardians. Yet to marry, applicants need demonstrate no knowledge of the laws pertaining to marriage nor any relationship skills nor even the modicum of self-control required to respect another human being. And once the marriage exists, the burden of proof is always on those who would dissolve it, never on those who would continue it in perpetuity.

Further disanalogies between drivers' and marriage licenses confirm that in our society there is greater concern for victims of bad driving than for those of bad marriages. You cannot legally drive without a license, whereas it is now in many jurisdictions not illegal for unmarried adults of whatever sex to cohabit. One can acquire the status of spousehood simply by cohabiting heterosexually for several years, whereas one does not acquire a driver's license simply by driving for years without one. Driving without the requisite skills and scruples is recognized as a great danger to others and treated accordingly. No comparable recognition is given the dangers of legally sanctioning the access of one person to the person and life of another without evidence of the relevant knowledge and scruples of those so licensed. The consequence is that married victims of partner battering and rape have less protection than anyone except children. What is at stake are permanently disabling and life-threatening injuries, for those who survive. I do not, at present, see how this vulnerability can be acceptably removed from the institution of legal marriage. Measures could be taken to render its disastrous consequences less likely than they are presently but at the cost of considerable state intrusion into our lives.

The right of cohabitation seems to me central to the question whether legal marriage can be made an acceptable institution, especially to the question whether marriage can be envisaged in such a way that its partners could protect themselves, or be protected, adequately against spousal rape and battery. Although many states now recognize on paper the crimes of marital rape and stalking and are better educated than before about marital battering, the progress has been mostly on paper. Wives continue to die daily at a dizzying rate.

Thus I conclude that legalizing lesbian and gay marriage, turning a personal commitment into a license regulable and enforceable by the state, is probably a very bad idea and that lesbians and gay men are probably better off, all things considered, without the "option" (and its consequent pressures) to obtain and act on such a license, despite some of the immediate material and spiritual gains to some of being able to do so. Had we any chance of success, we might do better to agitate for the abolition of legal marriage altogether.

Nevertheless, many will object that marriage provides an important environment for the rearing of children. An appreciation of the conduciveness of marriage to murder and mayhem challenges that assumption. Historically, marriage and motherhood have gone hand in hand--ideologically, although often enough not in fact. That marriage can provide a valuable context for motherhood--even if it is unlikely to do so--as an argument in favor of marriage seems to presuppose that motherhood is a good thing. So let us consider next whether that is so.

WHY MOTHERHOOD?

The term "mother" is ambiguous between a woman who gives birth and a female who parents, that is, rears a child--often but not necessarily the same woman. The term "motherhood" is ambiguous between the experience of mothers (in either sense, usually the second) and a social practice the rules of which structure child rearing. It is the latter that interests me here. Just as some today would stretch the concept of "family" to cover any committed partnership, household, or close and enduring network of friends, others would stretch the concept of "motherhood" to cover any mode of child rearing. That is

not how I understand “motherhood.” Just as not every durable intimate partnership is a marriage, not every mode of child rearing exemplifies motherhood. Historically, motherhood has been a core element of patriarchy. Within the institution of motherhood, mother’s primary commitments have been to father and only secondarily to his children. Unmarried women have been held responsible by the State for the primary care of children they birth, unless a man wished to claim them. In fact, of course, children are raised by grandparents, single parents (heterosexual, lesbian, gay, asexual, and so on), and extended families, all in the midst of patriarchies. But these have been regarded as deviant parentings, with nothing like the prestige or social and legal support available to patriarchal mothers, as evidenced in the description of the relevant “families” in many cases as providing at best “broken homes.”

Apart from the institution of marriage and historical ideals of the family, it is uncertain what characteristics mother-child relationships would have, for many alternatives are possible. In the good ones, mother-child relationships would not be as characterized as they have been by involuntary uncompensated caretaking. Even today, an ever-increasing amount of caretaking is being done contractually in day-care centers, with the result that a legitimate mother’s relationship to her child is often much less a caretaking relationship than her mother’s relationship to her was. Nor are paid day-care workers “mothers” (even though they may engage briefly in some “mothering activities”), because they are free to walk away from their jobs. Their relationships with a child may be no more permanent or special to the child than those of a babysitter. Boswell’s history *The Kindness of Strangers* (1988) describes centuries of children being taken in by those at whose doorsteps babies were deposited, often anonymously. Not all such children had anyone to call “Mother.” Children have been raised in convents, orphanages, or boarding schools rather than in households. Many raised in households are cared for by hired help, rather than by anyone they call “Mother.” Many children today commute between separated or divorced parents, spending less time in a single household than many children of lesbian parents, some of whom, like Lesl&ecutea Newman’s Heather, have two people to call “Mother” (Newman 1989). Many children are raised by older siblings, even in households in which someone else is called “Mother.”

My point is not to support Newt Gingrich by glorifying orphanages or other hired caretakers but to put in perspective rhetoric about children’s needs and about the ideal relationships of children to mothers. Much ink has been spilled debunking what passes for “love” in marriage. It is time to consider how much of the “love” that children are said to need is no more love than spousal attachments have been. Children do need stable intimate bonds with adults. But they also need supervision, education, health care, and a variety of relationships with people of a variety of ages. What the State tends to enforce in motherhood is the child’s access to its mother, which guarantees none of these things, and the mother’s answerability for her child’s waywardness, which gives her a motive for constant supervision, thereby removing certain burdens from others but easily also endangering the well-being of her child if she is ill supplied with resources. Lacking adequate social or material resources, many a parent resorts to violent discipline in such situations, which the State has been reluctant to prevent or even acknowledge. This is what it has meant, legally, for a child to be a mother’s “own”: her own is the child who has legal rights of access to her and for whose waywardness she becomes answerable, although she is largely left to her own devices for carrying out the entailed responsibilities.

By contrast, children raised by lesbian or gay parents today are much more likely to be in relationships carefully chosen and affirmed by their caretakers.⁴ Even though that would no doubt continue to be true oftener of the children of lesbian and gay parents in same-sex marriages than of the children of heterosexual parents, marriage would involve the State in defining who really had the status of “parent.” The State has been willing to grant that status to at most two persons at a time, per child. It gives the child legal rights of access to at most those two parties. And it imposes legal accountability for the

child's waywardness on at most those two parties. Under the present system that deprives lesbian and gay parents of spousal status, many lesbian and gay couples do their best anyway to emulate heterosexual models, which usually means assuming the responsibilities without the privileges.⁵ Others I have known, however, attempt to undermine the assumption that parental responsibility should be concentrated in one or two people who have the power of a child's happiness and unhappiness in their hands for nearly two decades. Children raised without such models of the concentration of power may be less likely to reproduce patriarchal and other oppressive social relationships.

The "revolutionary parenting" that bell hooks describes (1984) dilutes the power of individual parents. Although children retain special affectional ties to their "bloodmothers," accountability for children's waywardness is more widely distributed. With many caretakers (such as "othermothers"), there is less pressure to make any one of them constantly accessible to a child and more pressure to make everyone somewhat accessible. With many caretakers, it is less likely that any of them will get away with prolonged abuse, or even be tempted to perpetrate it.

In my childhood, many adults looked out for the children of my village. I had, in a way, a combination of both kinds of worlds. My parents, married to each other, had the legal rights and the legal responsibilities of patriarchal parents. Yet, some of those responsibilities were in fact assumed by "othermothers," including women (and men) who never married anyone. Because it could always be assumed that wherever I roamed in the village, I would never be among strangers, my parents did not think they always needed to supervise me, although they were also ambivalent about that, as they would be legally answerable for any trouble I caused. I used to dread the thought that we might move to a city, where my freedom would probably have been severely curtailed, as it was when we lived in a large, white middle-class urban environment during World War II. In the village, because everyone assumed (reasonably) that someone was watching us, we children often escaped the intensity of physical discipline that I experienced alone with my mother amid the far larger urban population.

There are both worse and better environments that can be imagined for children than stereotypical patriarchal families. Urban environments in which parents must work away from home but can neither bring their children nor assume that their children are being watched by anyone are no doubt worse. Children who have never had effective caretakers do not make good caretakers of each other, either. Feminism today has been in something of a bind with respect to the so-called postpatriarchal family. If both women and men are to be actively involved in markets and governments and free to become active members of all occupations and professions, when, where, and how is child care going to be done? The solution of many feminists has been, in practice, for two parents to take turns spending time with the children. There is an increasing tendency today for parents who divide responsibilities for the children to pay others to do the child care, if they can afford it, when their turn comes. To the extent that this works, it is evidence that "mothering" is not necessary for child care. Children who have had effective caretakers may be better at taking care of themselves and each other, with minimal supervision to protect them against hazards to life and health, than is commonly supposed. Charlotte Perkins Gilman's solution in *Women and Economics* (1966) and *Herland* (1992) was twofold. On one hand, she would turn child care into one of the professions that everyone with the requisite talents and motivations is free to enter. At the same time, she would *make the public safe* even for children, by an ethic that incorporated aspects of good caretaking. Virginia Held's *Feminist Morality* also suggests the latter strategy. A danger of this strategy, of course, is instituting paternalism among adults but spelled with an *m* instead of a *p*. Still, the idea of improving the safety of the public environment is compelling. If it were improved enough, there might be no need for motherhood--which is not to say that children would not need to bond with and be supervised by adults.

In *Feminist Morality* Virginia Held maintains that the mother-child relationship is the fundamental social relationship, not in a reductive sense but in the sense that so much else depends on one's relationships to primary caretakers (Held 1994, 70). This idea, also urged by Annette Baier (1994), seems to me in a certain sense incontrovertible and its general appreciation by philosophers long overdue. The sense in which it seems to me incontrovertible is that when one does in fact have a primary caretaker who has, if not the power of life and death, then the power of one's happiness and unhappiness in their hands for many years in the early stages of one's life, the influence of that experience on the rest of one's life is profound. It seems, for example, to affect one's ability to form good relationships with others in ways that are extremely difficult to change, if they are changeable at all. Yet, there is another sense in which the observation that the mother-child relationship is fundamental may be misleading. It may be misleading if it suggests that everyone really needs a single primary caretaker (or even two primary caretakers) who has the power of one's happiness and unhappiness in their hands for many years during the early stages of one's life. Perhaps people need that only in a society that refuses to take and share responsibility collectively for its own consciously and thoughtfully affirmed reproduction. In such a society, conscientious mothers are often the best protection a child has. But if so, it is misleading to say that such a relationship as the mother-child relationship is the, or even a, fundamental social relationship. It has been even less fundamental for many people, historically, than one might think, given how many children have been raised in institutions other than households or raised by a variety of paid caretakers with limited responsibilities.

Because mothers in a society that generally refuses to take collective responsibility for reproduction are often the best or even the only protection that children have, in the short run it is worth fighting for the right to adopt and raise children within lesbian and gay households. This is emergency care for young people, many of whom are already here and desperately in need of care. There is little that heterosexual couples can do to rebel as individual couples in a society in which their relationship is turned into a common law relationship after some years by the State and in which they are given the responsibilities and rights of parents over any children they may raise. Communal action is what is required to implement new models of parenting. In the long run, it seems best to keep open the option of making parenting more "revolutionary" along the lines of communal practices such as those described by bell hooks. Instead of encouraging such a revolution, legal marriage interferes with it in a state that glorifies marriage and takes the marriage relationship to be the only truly healthy context in which to raise children. Lesbian and gay unions have great potentiality to further the revolution, in part because we *cannot* marry.

If motherhood is transcended, the importance of attending to the experiences and environments of children remains. The "children" if not the "mothers" in society are all of us. Not each of us will choose motherhood under present conditions. But each of us has been a child, and each future human survivor will have childhood to survive. Among the most engaging aspects of a major feminist treatise on the institution of motherhood, Adrienne Rich's *Of Woman Born* (1976), are that it is written from the perspective of a daughter who was mothered and that it is addressed to daughters as well as to mothers. This work, like that of Annette Baier, Virginia Held, bell hooks, Patricia Hill Collins, and Sara Ruddick, has the potential to focus our attention not entirely or even especially on mothers but on those who have been (or have not been) mothered, ultimately, on the experience of children in general. Instead of finding that the mother-child relationship provides a valuable paradigm for moral theorizing, even one who has mothered might find, reflecting on both her experience as a mother and her experience of having been mothered, that mothering should not be necessary, or that it should be less necessary than has been thought, and that it has more potential to do harm than good. The power of mothers over children may have been historically far more detrimental to daughters than to sons, at least in societies where daugh-

ters have been more controlled, more excluded from well-rewarded careers, and more compelled to engage in family service than sons. Such a finding would be in keeping with the project of drawing on the usually unacknowledged historically characteristic experiences of women.

In suggesting that the experience of being mothered has great potential for harm to children, I do not have in mind the kinds of concerns recently expressed by political conservatives about mothers who abuse drugs or are sexually promiscuous. Even these mothers are often the best protection their children have. I have in mind the environments provided by mothers who in fact do live up to contemporary norms of ideal motherhood or even exceed the demands of such norms in the degree of attention and concern they manifest for their children in providing a child-centered home as fully constructed as their resources allow.

Everyone would benefit from a society that was more attentive to the experiences of children, to the relationships of children with adults and with each other, and to the conditions under which children make the transition to adulthood. Moral philosophy might also be transformed by greater attention to the fact that adult experience and its potentialities are significantly conditioned by the childhoods of adults and of those children's relationships to (yet earlier) adults. Whether or not one agrees with the idea that motherhood offers a valuable paradigm for moral theorizing, in getting us to take seriously the significance of the child's experience of childhood and to take up the standpoint of the "child" in all of us, philosophical work exploring the significance of mother-child relationships is doing feminism and moral philosophy a great service.

NOTES

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1. Betty Berzon claims that her book *Permanent Partners* is about "reinventing our gay and lesbian relationships" and "learning to imbue them with all the *solemnity* of marriage without necessarily imitating the heterosexual model" (1988, 7), and yet by the end of the book it is difficult to think of anything in legal ideals of the heterosexual nuclear family that she has not urged us to imitate.
2. Thus I am not an advocate of the equal legal rights for children movement as that movement is presented and criticized by Purdy (1992), namely, as a movement advocating that children have exactly the same legal rights as adults, including the legal right not to attend school.
3. See, for example, Weston (1991), Burke (1993), and Slater (1995). In contrast, Berzon (1988) uses the language of partnership, reserving "family" for social structures based on heterosexual unions, as in chap. 12, subtitled "Integrating Your Families into Your Life as a Couple."
4. An outstanding anthology on the many varieties of lesbian parenting is Arnup (1995). Also interesting is the anthropological study of lesbian mothers by Lewin (1993). Both are rich in references to many resources on both lesbian and gay parenting.
5. Lewin (1993) finds, for example, that lesbian mothers tend to assume all caretaking responsibilities themselves, or in some cases share them with a partner, turning to their families of origin, rather than to a friendship network of peers, for additionally needed support.

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