

Introduction

Del Martin was terrified. Her husband, Jim, had found a cache of love letters that she had written – but never sent – to the woman who lived next door. Jim told Del that, if she persisted in filing for a divorce, he would use the letters against her in court, making it unlikely that she would ever see their young daughter again.¹ In 1945, same-sex attraction was widely understood as a psychological disorder. Del knew that a court would never grant a lesbian visitation rights, let alone custody of a toddler.² Sick with fear and shame, she could not even bring herself to warn her attorney about the letters. To her immense relief, the judge determined the documents contained nothing more than an expression of chaste female friendship.³ He may have been compassionate, or simply naïve. Regardless of the reason for the judge's ruling, Del got her divorce, as well as custody of Kendra.⁴

Del was not yet the out and proud lesbian who would lead a queer rights revolution. Born in San Francisco in 1921, she realized from an early age that she was attracted to women. However, Del also knew that those feelings were forbidden. As a teenager, she repressed her desires by burying herself in schoolwork and extracurricular activities.⁵ She adopted the same approach at San Francisco State University, where she majored in journalism and joined the staff of the school newspaper. It was at the journal's

offices that she met Jim, the paper's business manager. The two quickly discovered they had a great deal in common and, before long, they were engaged. Nineteen-year-old Del accepted Jim's proposal in part because she had convinced herself that she was in love with him. But just as importantly, she wanted to prove that she could be like every other American woman.⁶ By her third year of college, she was pregnant. The family moved to a house in the suburbs, where Del became increasingly unhappy in the relationship. She cared for and respected her husband, but she was also attracted to her female neighbor. When she finally asked Jim for a divorce, he shocked her by asking whether her misery had anything to do with the woman next door. She had never suspected that he knew her secret.⁷

Del may have ended her marriage because of her sexual orientation, but she did not yet identify as a lesbian. That was unsurprising, given that she had never even heard the term. When she finally came across it, in her mid-twenties, she raced to the library to learn everything she could. What she discovered turned her euphoric feelings of self-discovery into a well of suicidal despair.⁸ Everything she read framed homosexuality as a pathological condition, a crime, or both. She wondered how she could identify with something so terrible.⁹ Over time, she built up the courage to voice her sexual confusion to two close friends. Neither believed that Del was a lesbian, but they commented that she could settle her doubts by going to the bars in San Francisco's North Beach, one of the city's first queer neighborhoods.¹⁰ After Prohibition's repeal, a series of gay and lesbian-owned and operated nightclubs had opened in the area, leading members of the queer community to rent rooms near the cluster of establishments that catered to them.¹¹

Del gave little thought to visiting those bars until a year later, when her life had changed enough for her to venture into queer life. Her first lesbian relationship, with a close friend, had come to an end. She had also agreed to relinquish custody of Kendra. Jim had remarried, and he had convinced her that his two-parent home would be better for their child.¹² Bereft and looking for companionship, Del began frequenting gay and lesbian bars and clubs. She quickly learned that doing so was perilous, as vice officers regularly

harassed and arrested the patrons.¹³ As Del left the Chi-Chi Club one night, a policeman stopped her, demanding to know her name and where she worked.¹⁴ When she refused to answer, the officer let her go, but the incident rattled her enough that she decided to look for employment opportunities elsewhere. She hoped it would be easier to transition out of the closet somewhere new, away from the vestiges of her old life. When a specialty magazine in Seattle offered her a position, she jumped at the opportunity.¹⁵ On her first day at the office, she met Phyllis Lyon, the woman who would become her life partner.

Like Del, Phyllis had also grown up in California, and she too had followed her journalism career to Seattle.¹⁶ Phyllis had also known early on that she was different, but she thought it was only because she was uninterested in marriage or homemaking.¹⁷ Although Phyllis recognized that she felt more comfortable in the company of women, it never occurred to her that these relationships could extend beyond mere friendships.¹⁸ In fact, until Del disclosed her attraction to women at after-work drinks one night, Phyllis had never met a lesbian.¹⁹ What Del did not reveal during that conversation was that she had fallen in love with Phyllis. Del had experienced so many unrequited loves that she had resigned herself to Phyllis being nothing more than her “good straight friend.”²⁰ It was not until two years later, when Phyllis was about to relocate to San Francisco, that Del worked up the courage to reveal her feelings.²¹ As it turned out, Phyllis had been waiting for Del to make the first move. When Phyllis left town soon after that fateful night, Del followed her.²²

The women struggled to blend their lives and personalities. They had been close friends for three years, but a relationship was something else entirely. When Del would leave her shoes in the middle of the room, Phyllis became so frustrated that she threw them out of the window. Del, on the other hand, became infuriated when Phyllis would disengage from their arguments. Del would later joke that they only stayed together for the sake of their kitten.²³ After a tumultuous first year, the women were able to resolve their differences. They began looking for friends as a couple, but found themselves reluctant to visit the city’s queer

establishments due to Del's earlier encounter with the police in North Beach. At the time, there were few alternatives to the bar scene. Consequently, in 1955, they founded the Daughters of Bilitis, a lesbian social group, where women who loved women could socialize in the safety of one another's homes. Soon, they changed the group's mission, turning it into the first lesbian rights organization in the country – and launching their life's work in the process.²⁴

Over the next five decades, Del and Phyllis would fight tirelessly for LGBTQ+ rights. They lobbied to declassify homosexuality as a mental illness, decriminalize consensual sodomy, and secure sexual orientation antidiscrimination protections.²⁵ The women took on projects at the local, state, and national levels, often combining queer rights advocacy with feminist activism. In 1966, they joined the National Organization for Women (NOW), where they made waves by insisting on the membership rate offered to spouses. The duo quickly convinced the group to make lesbian rights part of its political platform.²⁶ In 1977, both attended the International Women's Year Conference in Houston to ensure that the agenda would include lesbian rights. The following year, Phyllis chaired the San Francisco campaign against a California ballot measure to ban gay and lesbian teachers from public schools. By that point, Del was already serving on the city's Human Rights Commission.²⁷ The couple continued their work through the 1990s, when both served as delegates to the White House Conference on Aging. Thanks to their efforts, the conference – for the first time in its thirty-eight-year history – addressed discrimination based on sexual orientation.²⁸ The women's final contribution to the LGBTQ+ rights movement was filing a lawsuit challenging California's discriminatory marriage law.²⁹ In 2008, just a few minutes after the state's highest court ruled in their favor, the women legally wed.³⁰ By that point, they had spent fifty-five years as a devoted couple. Two months after the ceremony, Del passed away.³¹ Phyllis was devastated, but took some comfort in knowing that they were able to undertake a formal vow of love and commitment before their time together came to an end.³²



FIGURE 1 Del Martin and Phyllis Lyon marrying at a ceremony officiated by Mayor Gavin Newsom at San Francisco's City Hall, 2008. The public celebration of their union illustrated just how much views of same-sex sexuality had changed over the course of their fifty-five-year relationship. Photo by Marcio Jose Sanchez/AFP. Courtesy of Getty Images.

Del and Phyllis lived through a remarkable transformation in American law. At the time that the women began advocating for queer rights, the state went to great lengths to suppress homosexuality,

insisting that it was deviant, immoral, and socially harmful.³³ State-sanctioned discrimination infused statutory codes and legal policies, impeding the ability of many gays and lesbians to work, form communities, and create households. One of the main tools that the state wielded to repress queer life was its family law doctrines. Gay and lesbian parents, like Del, risked losing the children they loved because of their sexual orientation. Another weapon in the state's regulatory arsenal was its criminal codes. As Del had experienced firsthand, penal laws rendered every sexual liaison dangerous. Queer individuals risked arrest, prosecution, and punishment for seeking affection, companionship, and comfort. Officials did not always agree with the law's harsh punishments. Some turned a blind eye, like the judge who heard Del's case may have done. Others used their discretion to dismiss charges against homosexuals.³⁴ These small mercies mattered a great deal to individual gay men and lesbians, but they did little to dissipate the fear that pervaded queer life. Additionally, the existence of punitive criminal laws did more than make same-sex sexual activity illegal. By defining gays and lesbians as outlaws, the state reinforced social disapproval and stigma. Gays and lesbians consequently faced an oppressive legal regime, one that made the prospect of law reform seem daunting, if not impossible.

Yet the law changed – dramatically – in a surprisingly short period of time. In 1960, consensual sodomy was a crime in every state in America. Homosexuality was considered a mental illness, a designation that prevented gays and lesbians from serving in the military, obtaining federal employment, and securing custody of their children. Just fifty-five years later, in 2015, the Supreme Court ruled in *Obergefell v. Hodges* that same-sex couples had a fundamental right to marry. Over the span of two generations, advocates like Del and Phyllis had transformed American law from a regime that criminalized gay and lesbian relationships to one that recognized and affirmed the dignity of queer families. By the time the Supreme Court ruled in favor of same-sex marriage rights, gay men no longer feared being arrested, imprisoned, or institutionalized because of who they were. Lesbians did not live with the constant anxiety of losing their livelihoods if their sexuality became known.³⁵ Instead, they could overwhelmingly celebrate their relationships with pride. Del and Phyllis had begun their relationship in secret, unable to go out as a couple without risking

police harassment and arrest. Five and a half decades later, they wed at City Hall, in a ceremony officiated by San Francisco's former mayor and attended by hundreds of well-wishers.³⁶ The celebration of their commitment could not have been more public.

The fight for gay and lesbian rights has become one of the most conspicuous social justice movements in American history, with *Obergefell* marking advocates' remarkable progress. Because the *Obergefell* decision was so consequential, numerous scholars and popular writers have detailed the history of the campaign for marriage equality, tracing the evolution of same-sex marriage rights in courts, legislatures, and administrative offices.³⁷ But the struggle for marriage equality was only one small part of a more than half century-long movement for queer family rights. Decades before the United States became embroiled in debates over same-sex marriage, advocates were working to support and promote the rights of queer couples and their children. The queer community faced an oppressive legal regime, one centered on the assumption that same-sex sexuality was inherently dangerous to children. Through painstaking efforts, advocates secured changes to criminal codes and family law doctrines that allowed gay- and lesbian-headed households to become more prevalent and visible. These families, in turn, reshaped the place of same-sex sexuality in American society and law. By the time the Supreme Court held that the Constitution required states to recognize same-sex marriage, the law was no longer protecting children *from* gays and lesbians, but rather protecting the children *of* gays and lesbians.

These decades of queer family advocacy are largely unknown. Yet without this history, it is impossible to understand how the marriage equality movement secured so much, so quickly. *Family Matters* provides this crucial missing piece of the puzzle. As it explains, changes to criminal codes and family law doctrines allowed same-sex couples to become increasingly open about their sexual orientation. The country consequently came to see gays and lesbians as both partners and parents. Battles to protect the community from hate violence also encouraged the straight mothers and fathers of gays and lesbians to become advocates for queer rights. By making public their love and support for their gay sons and lesbian daughters, these parents highlighted that gays and lesbians were embedded within traditional households not just as parents, but also as children. The visibility of

both types of queer families – the families that gays and lesbians created, as well as their straight families of origin – had a significant effect on the law. These households were consequential because they provided evidence of same-sex sexuality's ubiquity and projected a new vision of what it meant to be queer, one that was centered on "conventional" domestic life. What this book therefore demonstrates is that "family matters" – issues relating to the family – were essential to the evolution of American law and the rise of queer rights. At the same time, family rights were crucial to members of the gay and lesbian community, for whom family *mattered*.

This book consequently highlights the legal reforms that predated the movement's focus on marriage, rather than focusing on the fight for marriage equality. These changes transformed society, such that advocates could conceive of and pursue marriage rights. By presenting this history, *Family Matters* reveals a deep irony at the heart of the gay and lesbian rights movement: although marriage traditionally marks the start of a family, gays and lesbians had to form legally and socially recognized families before the law would allow them to marry. Marriage equality may be the queer rights movement's best-known success, but it was a postscript to decades of family-centered strategies.

Advocating for Queer Families

In a 2015 speech from the White House Rose Garden, President Barack Obama lauded the Supreme Court's marriage equality decision. The president explained that the ruling, which the Court had handed down earlier that day, "affirmed what millions of Americans already believe in their hearts" about the worth of queer households.³⁸ Love, the nation had come to see, was love. The president concluded that the decision was a triumph not only for gays, lesbians, and their families, but America as a whole. Marriage equality brought the country closer to fulfilling its founding premise that everyone was created equal.³⁹ The speech thus connected gay and lesbian rights to American values, a link that would have been unimaginable when Del and Phyllis first began their work in the mid-twentieth century. That it came from President Obama, who just seven years earlier had voiced his opposition to same-sex marriage, made the declaration all the more remarkable.⁴⁰

The president's views on marriage equality, like those of most Americans, shifted as the queer rights movement made its case for eliminating discriminatory bans on same-sex unions. By the time the Court issued its decision, marriage equality had spent more than two decades on Americans' minds. After advocates won their first judicial victory in 1993, the country debated the issue of same-sex marriage with an unprecedented intensity. During those years, many Americans had learned, through their everyday interactions, that gays and lesbians created families just like their own. As a result, the United States Supreme Court's declaration in *Obergefell*, that the Constitution protected same-sex couples' right to marry, cemented what they already believed about the value of queer relationships. The gay and lesbian rights movement's signature achievement thus depended on the existence and visibility of queer families, which more than fifty years of advocacy had made possible. Over the course of half a century, advocates had secured legal reforms that produced new social understandings of homosexuality. Where same-sex relationships had once meant psychopathy, predation, and deviation, they now had become another means of expressing love, care, and commitment. Those changes meant that, for many Americans, marriage rights no longer seemed incongruous with queer life.

As *Family Matters* explains, this transformation in attitudes about same-sex sexuality had three equally important causes. The first was a dramatic change in law at the state and local levels, where revisions to criminal code provisions and family law doctrines helped to reshape Americans' perceptions of gays and lesbians. Penal laws during much of the twentieth century defined queer life as a public menace. Police raids on bars, arrests at cruising spots, and prosecutions for same-sex assignations all reinforced the public's perception of homosexuality as deviant. Criminal law reforms in the last three decades of the twentieth century allowed gay and lesbian couples to interact in public without fear of prosecution. Changes to family law were equally significant. Developments in custody and adoption laws made queer-headed households possible, such that gays and lesbians became visible as parents. Domestic partnership registries, which emerged in the 1980s, revealed that same-sex couples were devoted and committed partners, much like their straight counterparts. Together, these legal changes allowed gays and lesbians to create

“conventional” families – nuclear households composed of caring parents and beloved children.

Family law and criminal law reform efforts also made visible another dimension of the queer family. Gays and lesbians were not just partners who raised children. They were also the sons and daughters of straight parents. In the 1980s, these parents of queer children “came out” in droves, becoming central players in the effort to protect sexual minorities from hate. That project became particularly urgent during the AIDS epidemic, when rates of violence against gays and lesbians soared. Enraged assailants would descend upon queer individuals, perpetrating attacks that terrified the entire community. Advocates tried to stem the tide of hatred through police reform and hate crimes legislation, but the progress they made was slow and uneven. They likewise tried to change school curricula to inculcate tolerance for same-sex sexuality, but religious conservatives opposed these efforts with such furor that the queer community made little headway. It was not until Americans heard from the parents of gay and lesbian children, who spoke about the heartache that prejudice inflicted on their families, that the country started reckoning with the dangerous consequences of anti-queer sentiment. These parents of queer children emphasized that support for gay and lesbian rights and support for family values were one and the same. When combined with the increased visibility of queer parents, these changes promoted a particular image of gays and lesbians, one that highlighted their roles as partners, parents, and family members.

If state and local law provides an unexpected geographic locus for the origins of change in national constitutional law, the second source for the law’s transformation may seem equally surprising. Advocates were able to secure radical legal change by appealing to tradition. They self-consciously put forward a limited vision of gay and lesbian life that centered around conventional domesticity and an immutable identity. Over the course of five decades, as advocates fought for couples and their children, the most conspicuous markers of gay and lesbian life shifted from bathhouses and bars to playgrounds and PTA meetings. Legal victories in the criminal and family law context allowed gays and lesbians to be open about their sexual orientation, with individuals then projecting a vision of same-sex sexuality that highlighted how gay and lesbian couples were committed partners.

As increasing numbers of queer individuals raised children, they fought for legal recognition as parents to protect their families. When these legal remedies became available, other lesbian mothers and gay fathers seized upon them, making clear just how many queer families existed. The parents of gay sons and lesbian daughters, who emphasized their love for their queer children, reinforced the message that same-sex sexuality was consistent with domestic life. The increased visibility of these many types of queer families provided fuel for further reform, which in turn gave rise to a legal system in which queer families increasingly belonged.

The movement's emphasis on conventional households was an accurate representation of the lives of many community members whose legal battles shaped the movement's trajectory. It was also strategically necessary given the strident opposition that queer rights engendered. However, these arguments also minimized that many gays and lesbians did not fit this norm. Advocates' focus on families also did not address the most pressing needs of less privileged members of the gay and lesbian community, as well as those who deviated from social convention. Many of these individuals would have preferred that the movement address other issues, such as eliminating discrimination in employment and housing, expanding access to health care, and ensuring the physical safety of low-income, racial minority, and gender nonconforming queer individuals.⁴¹ Yet by emphasizing how gay and lesbian households conformed to convention, queer rights advocates promoted the rights of all members of the LGBTQ+ community. Their appeal to tradition ultimately proved to be quite subversive, changing how Americans understood both same-sex sexuality and the family. The legal victories they secured for same-sex couples and their children reformulated ideas about marriage, parenthood, and the traditional household.⁴² The movement thus did not just grant the queer community access to established legal institutions – it also challenged and reshaped legal and social norms.

The third cause for the law's transformation may be just as unexpected as national change coming from advocacy at the state and local levels, or a legal revolution deriving from arguments about conformity. As *Family Matters* shows, the crucial actors behind the transformation of criminal codes and family law doctrine were not just lawyers, legislators, and judges. As often, the central figures were social

scientists, business leaders, social workers, police officers, teachers, school board members, and media consultants. These individuals did not necessarily see themselves as agents of legal change. Their efforts nevertheless instigated essential shifts in social perceptions of gays and lesbians, as well as the legal doctrines that shaped their lives. By helping to inspire changes in Americans' attitudes and law, these nonlegal actors helped to make queer family rights possible.

By the time the Supreme Court issued its *Obergefell* decision in 2015, American law and society had changed decidedly. Both had become more pluralistic in their definition of families, which increasingly encompassed queer households. The movement's extensive advocacy for same-sex couples thus produced legal and social changes that opened the door to marriage equality. Putting the *Obergefell* ruling in its historical context demonstrates that the legal victory depended on decades of prior rights gains on behalf of same-sex parents and their children. That fact does not reduce the importance of the marriage equality ruling, which conferred crucial rights and privileges on queer households. The Supreme Court's decision made hundreds of thousands of same-sex couples eligible for countless federal and state benefits. It also conferred significant dignitary rights on queer families.⁴³ At the same time, unearthing the evolution of queer family rights demonstrates that demands for marriage equality were the natural outgrowth of a movement that had long focused on the needs of queer couples and their children. The turn to marriage, in other words, was simply the next stepping-stone on the path to gay and lesbian rights.

The Turn to Marriage

In the fall of 1989, the queer community became embroiled in a fierce debate over whether to press for marriage rights.⁴⁴ Two attorneys from Lambda Legal Defense and Education Fund, a prominent queer legal rights organization, set out the competing considerations in the pages of a widely circulated gay and lesbian magazine.⁴⁵ The group's executive director, Tom Stoddard, argued that the movement should prioritize same-sex marriage because that strategy provided the surest path to equality.⁴⁶ Marriage, he argued, was much more than a legal relationship. It served as the centerpiece of America's social

structure. As a result, until gays and lesbians were legally allowed to wed, they would always be second-class citizens.⁴⁷ Paula Ettelbrick, the organization's legal director, disagreed. She conceded that marriage provided "the ultimate form of acceptance" and "an insider status of the most powerful kind."⁴⁸ That fact, however, was the problem. Gays and lesbians, she argued, should not have to assimilate to the norm to secure legal equality. The queer community's distinct perspectives and experiences were something to be valued, not erased.⁴⁹ Moreover, the state should support all families, rather than create a "two-tier" system in which only married couples were entitled to respect, protection, and public support.⁵⁰ She therefore urged the movement to focus its resources on securing meaningful alternatives to marriage.⁵¹

Ettelbrick lost the debate. In the decades that followed, gay and lesbian rights groups would litigate and lobby for marriage equality, ultimately securing their victory at the Supreme Court. The *Obergefell* decision reflected a profound change in how legal decisionmakers conceptualized same-sex sexuality. But for those familiar with gay and lesbian rights advocacy, the movement's victory raised an important and troubling set of questions. When gay liberationists first began pressing for their rights, they vocally demanded sexual freedom. These self-proclaimed radicals flaunted their difference, making no apologies for pursuing a new social order. They sought the right to define, explore, and experience their sexuality without fear of legal prosecution.⁵² Given the movement's revolutionary origins, many commentators have denounced advocates' decision to prioritize marriage equality. Some have gone so far as to charge national organizations with squandering gay liberation's potential. In their view, marriage equality was a poor substitute for the freedom that the movement promised.⁵³ Many of these critics were also troubled by the sanitized image of queer life that advocates put forward to secure marriage rights. These commentators argued that the movement's strategies did little to address the visceral disgust for same-sex intimacy that undergirded social and legal discrimination.⁵⁴ Other critics of the marriage equality movement expressed discomfort because the victory primarily benefited the most privileged members of the LGBTQ+ community, given that white, educated, and wealthier individuals are the ones who are most likely to marry.⁵⁵

As *Family Matters* demonstrates, these criticisms overlook the history that both shaped the movement's evolution and limited the arguments that advocates could make. Community members' goals shifted over time, coming to center on marriage equality, in part to secure benefits that people urgently needed. Because so many rights depend on marital status, the law's refusal to recognize queer households as families inflicted significant financial, psychological, and dignitary harms. At the state level, child custody, inheritance, and medical decision-making rights all turn on whether a couple is married. Marital status matters just as much at the federal level. More than 1,000 federal statutes make marriage a factor in accessing benefits, including tax credits, social security payouts, and insurance coverage.⁵⁶ Obtaining these forms of state financial assistance became particularly pressing after the economic downturn of the 1970s. As inflation spiked and unemployment soared, governments cut social support programs to balance their budgets.⁵⁷ Yet even as the state shrunk the size of its overall safety net, it continued to confer benefits on married couples.⁵⁸ The law's refusal to recognize queer households as families consequently deprived gays and lesbians of one of the main remaining forms of government support. Indeed, these pragmatic considerations were what led three same-sex couples in Hawaii to file the lawsuit that sparked the marriage equality movement.⁵⁹

Advocates were able to establish some alternative forms of family recognition that made certain benefits available to same-sex couples, but none were as robust as marriage. These rights also did not confer the important symbolic and dignitary benefits that came with marriage equality. The state's discriminatory marriage laws communicated that same-sex couples were somehow lesser than their different-sex counterparts. By denigrating the dignity and worth of same-sex relationships, the laws expressed that gays and lesbians did not belong in American society. They consequently harmed all members of the queer community, even those who did not live in nuclear family structures. Today, organizations' pursuit of marriage equality may seem like a narrow goal, one at odds with the movement's desire to radically transform society and promote justice for those who deviated from accepted norms.⁶⁰ Such a characterization, however, ignores how direly members of the queer community needed the rights that came with marriage. It also overlooks the expressive benefits of marriage

equality, which helped to counter the enormous resistance that the gay and lesbian rights movement faced.

Indeed, critics of the movement for marriage rights often ignore the power of Christian conservatives, who constrained the strategic choices of queer rights advocates. By the late 1970s, objections to queer rights had crystallized around the claim that gays and lesbians were harmful to children. The religious right insisted that homosexuality was a behavioral choice, rather than an immutable identity. Christian conservatives also maintained that same-sex sexuality was a lifestyle that children learned from adult role models. To prevent homosexuality's transmission, they argued, the state should deny civil rights protections to gays and lesbians. In their view, doing so would reduce the likelihood that minors would interact with gay or lesbian adults and thus become homosexual themselves. Promoting the rights of gay parents, partners, and families thus meant launching a direct assault on the fundamental beliefs of those who most vocally denounced same-sex sexuality. Emphasizing queer households may have rankled religious conservatives, who were especially invested in the traditional family, but it also made gays and lesbians appear more familiar, and less threatening, to large swaths of mainstream society.

To counter the power of the religious right, advocates also had to demonstrate that homosexuality was an innate and unchangeable trait. Doing so ran counter to the goals and aspirations of gay liberationists and lesbian feminists, most of whom rejected efforts to base legal arguments on homosexuality's status as an immutable identity. For gay liberationists, arguments based on homosexuality's biological basis missed the point. Individuals should have the freedom to express their sexual desires, regardless of where they originated.⁶¹ Lesbian feminists echoed these arguments, with some claiming that lesbianism was both a sexual identity and a political choice, one that all women should adopt to challenge the patriarchal social order.⁶² However, Christian conservatives' child protection rhetoric required queer rights advocates to underscore homosexuality's status as an immutable trait, as only by doing so could they reduce the concerns of a public anxious that same-sex sexuality was a learned behavior. To some modern readers, emphasizing family visibility and homosexuality's immutability suggests a conservative approach.⁶³ From a

historical perspective, however, the movement's goals and strategies appear more radical.

As this explanation suggests, analyzing how gay and lesbian rights advocates succeeded in transforming American law necessarily requires examining how conservative opposition framed and influenced the movement's priorities and arguments. The rise of conservatism and religious fundamentalism in postwar America had a significant influence on gay and lesbian rights advocacy, making strategic concessions necessary to attain legal gains. This history is not unique. Scholars of other rights movements have demonstrated how conservative political pressures channeled, narrowed, and consequently defined the parameters of postwar liberalism, influencing the arguments that legal organizations could successfully pursue.⁶⁴ Although the religious right ultimately lost the fight over marriage equality, it indelibly shaped the evolution of queer rights by constraining the arguments that advocates could make. Because of the power of Christian conservatives, the movement could not pursue the more politically challenging goals that advocates like Ettlbrick championed. They also could not root these arguments in sexual freedom, but rather had to base their claims on homosexuality's status as an innate trait.

The movement's history consequently demonstrates that contemporary criticisms of the marriage equality movement are deeply flawed. Advocates did not sacrifice the movement's revolutionary potential on the altar of conformity, while gaining little of substance in return. These commentators ignore that advocates often found themselves stymied by political headwinds they could not control. They also overlook the pressing needs of many queer community members, which only marriage rights could meet. Of course, critics are correct that the gains the movement attained were uneven, leaving the most marginalized members of the LGBTQ+ community – racial minorities, the economically disadvantaged, and gender nonconformists – with the fewest legal protections. Indeed, although the *Obergefell* decision was an important marker of larger progress on behalf of queer families, marriage equality did not address the rampant discrimination, harassment, or violence that members of the LGBTQ+ community continue to endure. Marriage equality's limitations are such that, although *Family Matters* is an account of a

successful campaign to promote the rights of queer families, it is not a triumphalist narrative of gay and lesbian legal victories. The right to marry was simply one step in the fight for full legal equality, which gays, lesbians, and other members of the LGBTQ+ community are still working to attain. Queer rights continue to be contested, with advocates experiencing defeats as well as victories.

The book thus uses marriage equality as a marker of change, rather than casting it as an end point for the legal movement. At the same time, by placing marriage rights within the broader context of queer family mobilization, *Family Matters* demonstrates that advocates' focus on marriage equality was not a symbolic white whale that narrowed or diverted the movement's ambitions, as some have claimed. To the contrary, what this book demonstrates is that the fight for marriage rights was the natural next step for advocates, given their long-standing focus on creating legally recognized queer families. Moreover, the intense resistance that advocates encountered makes it clear just how significant the movement's achievements were. Indeed, that detractors can characterize advocates' focus on marriage rights as conservative and unimaginative is a testament to how dramatically gay and lesbian rights advocates transformed both American society and law.

The queer rights movement, in other words, did not simply secure the right of same-sex couples to marry. It attained profound social and legal changes. The *Obergefell* ruling symbolized how much advocates had accomplished since the middle of the twentieth century, when the state actively repressed and punished same-sex sexuality. In addition to conferring practical and dignitary rights, the decision was consequential because it served as a reminder that the law could have a transformational effect. *Family Matters* thus offers more than a history of gay and lesbian rights. By tracing the movement's evolution, the book suggests how advocates for minority rights may be able to unlock the potential of law reform.

Securing Meaningful Change

John Stevens brushed the tears from his eyes as he and David Daily exchanged vows. Just a few hours after the Supreme Court ruled that the federal Constitution protected their right to marry, the couple of

thirty-nine years wed in Detroit, Michigan. Stevens, a retired computer programmer, had spent weeks checking a website that live-blogged the Supreme Court's actions, awaiting the decision with equal parts hope and trepidation. He later confessed that he never truly expected to see the day when he could marry the love of his life.⁶⁵ Around the country, gay men and lesbians who had lived through decades of state repression echoed Stevens's sentiments. Their moments of joy came as a surprise. None had thought marriage equality would happen in their lifetimes.⁶⁶

These members of the queer community were not the only people who marveled at the legal change. The gay and lesbian rights movement's rapid, extraordinary success has mystified academics, advocates, and the public alike. The legal system is known for moving at a glacial pace, rather than lightning speed. Judicial decisions all too often deliver hollow victories, rather than meaningful social change. Many have thus been left wondering how the gay and lesbian rights movement was able to defy those conventions. At stake in these debates is whether the struggle for queer rights serves a model for the many other groups clamoring for their rights. What *Family Matters* shows is that the gay and lesbian rights movement is distinctive, because historical forces beyond advocates' control often shaped the law's evolution. At the same time, the movement's past offers new ways of understanding how reform movements are able to attain consequential legal change. This book is thus as important to understanding the systemic manner in which rights become embedded in law and society as it is to understanding the state of the law around same-sex sexuality.

Gay and lesbian rights advocates necessarily had to chart a new path to achieve their goals, given the singular nature of their cause. The reasons for anti-queer animosity shifted over time, with each new justification fueling another wave of state regulation and repression. What also made the fight for gay and lesbian rights unique was the host of external political, legal, economic, and cultural changes that shaped the movement's evolution. During the second half of the twentieth century, conceptions of sex, gender, and the family were in a state of flux.⁶⁷ In the 1960s, feminist activists launched an assault on gender norms, questioning the need for sex differentiation in society.⁶⁸ The rise of feminist liberation coincided with the wider availability of

contraception, which helped to spark a sexual revolution.⁶⁹ Around this time, states made it easier to divorce by instituting no-fault regimes. Consequently, the rates of couples ending their unions soared.⁷⁰ American households had always been multifaceted, but in the 1970s, they became more visibly diverse. Most households continued to comprise two married adults and their children, but an ever-greater number consisted of single parents, unmarried couples, and blended families.⁷¹ These changes produced pitched political battles over the state of the family, helping to launch a new conservative movement.⁷² To the religious right's consternation, same-sex couples were increasingly able to present themselves as just another deviation from the norm. The queer rights movement was consequently pushing against a door that was poised to open.

The particular historical moment in which gay and lesbian rights advocates operated thus explains some of the movement's successes. At the same time, the movement's victories were more than a matter of fortunate timing. They were also the product of deliberate choices, one of which was sustained attention to reform at the state and municipal levels, where small groups of motivated citizens were able to secure legal changes that would have been unthinkable in other parts of the country. Many of the debates over gay and lesbian rights took place in liberal cities like Los Angeles, New York City, and San Francisco. However, municipalities across America responded to these developments, which queer rights advocates – and their opponents – brought to local officials' attention. Sometimes they did so with sympathetic laws that mirrored the actions on the coasts. Just as frequently, however, elected officials enacted legislation or policies that demonstrated their hostility to gay and lesbian rights. Yet even in the face of this resistance, successes at the state and local levels undermined conservatives' strident opposition. These developments allowed for small-scale experiments that made unthreatening queer families more visible. The conspicuous existence of these households, in turn, generated legal, political, and constitutional change at the national level. In other words, it was not that decisions in progressive enclaves represented national trends, but rather that they provided the foundation for widespread change.

Family Matters consequently provides a history of law reform across the United States, but does so by examining law from the

ground up. Only by studying the day-to-day struggles for equality in cities and towns around the country can the successes and limitations of the gay and lesbian rights movement as a whole be understood. It thus analyzes episodes throughout the country, then weaves them together, to explain the transformation of American law writ large. This focus on the state and local is a methodological innovation that is essential to understanding legal change more generally. Many accounts of the fight for gay and lesbian rights have focused on federal constitutional law and national politics – understandably so, given that federal policies had an important effect on gay and lesbian life, from prohibitions on serving in the military to funding research on AIDS.⁷³ Legal histories of other rights movements have likewise concentrated on federal actors, congressional enactments, and Supreme Court decisions, which shaped rights across the country.⁷⁴ At the same time, legal historians have produced exceptional local studies of efforts to combat discrimination, both in the context of gay and lesbian rights advocacy and other rights movements. However, their works have tended to be case studies rooted in specific cities, rather than the country as a whole.⁷⁵ They have likewise typically focused on a singular legal issue or limited their analysis of local developments to court cases.⁷⁶

By examining seemingly disparate locales and areas of the law, *Family Matters* demonstrates how they are integrally related, with each forming a piece of a larger puzzle. What *Family Matters* reveals is that the causes of change in constitutional law and national policy often came from outside of the capital. Moreover, the impetus for change frequently originated outside of the courts, where state legislative enactments and municipal administrative decisions often had little to do with the Constitution's protections. Focusing on state and local advocacy efforts, as well as the links between them, demonstrates how many small shifts in discourse can make national change possible. As a result, the book showcases a broader array of legal experiments and experiences than analyzing federal developments alone. This attention to the state and local is not meant to minimize the role of federal law, but rather to extend the possibilities for consequential reform beyond the halls of Congress, the White House, and the Supreme Court. Likewise, identifying how advocates connected the changes in various parts of the country does not diminish any one effort. Instead, it helps

to illuminate important, but previously overlooked, mechanisms for national law reform.

This state and local lens also focuses attention on the important role of nonlegal actors in securing meaningful legal change. *Family Matters* consequently provides a different narrative than typical accounts of law reform, which until recently have focused on lawyers, judges, and legislators.⁷⁷ The traditional loci of law reform scholarship are important, given that litigators and elected officials had a substantial influence on the development of the law. Indeed, they also appear in this book's pages, playing a crucial role in battles over gay and lesbian rights. However, they are only part of the story. Administrative agencies and ballot measures were also integral to law reform, as were the nonlegal actors whose work shaped decisionmakers' actions. This book thus expands the study of legal change beyond both the traditional players and the typical branches of government, identifying how reform occurs in unexpected places. Social scientists, local civil servants, social workers, teachers, business leaders, and the media were important actors that made it possible for advocates to succeed. Identifying their contributions to the gay and lesbian rights movement provides an account of legal change that is neither top-down, nor entirely bottom-up. Instead, it emphasizes the distinct and indispensable role of those who operate in between.⁷⁸ By presenting this history, *Family Matters* demonstrates that civil rights law is based on more than cases, statutes, and administrative regulations. It also includes a diversity of other sources, including employment contracts, scholastic policies, and public education campaigns. Expanding the focus of law reform in this way reveals a wider range of opportunities for change, by a greater variety of people.

Family Matters takes as expansive an approach to legal argumentation as it does to legal actors. Gay and lesbian rights advocates often rooted their claims in traditional forms of legal reasoning, focusing their briefs and oral arguments on doctrine and established precedent. However, many queer rights battles were fought in the court of public opinion, where advocates discovered the power of appealing to emotion.⁷⁹ Their opponents had already learned this lesson, securing anti-queer laws by stoking fears that gays and lesbians would harm children. The queer rights movement adapted conservatives' strategy. Rather than calling upon dread, however, they emphasized love and

affection. Advocates underscored the bonds between straight parents and their children, as well as the devotion of same-sex couples to their sons and daughters. This affective reasoning convinced many members of the public to support queer rights, but the framing strategies did more than reshape popular opinion – they ultimately informed legal arguments. By the time the marriage equality movement took its cases to the Supreme Court, its attorneys were emphasizing the lasting bonds between same-sex couples, as well as the decency, dignity, and humanity of gays and lesbians. Social movement scholars have noted that the divide between political and legal mobilization is often porous.⁸⁰ Activists routinely draw upon legal principles to achieve their political goals. They likewise demand that the state intervene on their behalf, giving rise to enforceable rights. Nowhere was the line between law and politics thinner than in the gay and lesbian rights context. The arguments that featured in public education campaigns quickly peppered court filings, with both reshaping the place of same-sex sexuality in America.

Family Matters' methodological innovations reinforce one another. Its state and local lens brings together a varied and unexplored set of public policy issues, which in turn illuminate the role of diverse actors and arguments in bringing about legal change. Together, they allow the book's insights to apply beyond the LGBTQ+ community, to the legal system more generally. The speed of the gay and lesbian legal revolution – especially as compared to efforts to secure civil rights for Americans of color and women – has challenged conventional wisdom about the law's resistance to change and its ability to produce meaningful results.⁸¹ The book's emphasis on the state and local, as well as the role of nonlegal actors and emotional rhetoric, offers keys to understanding the processes of law reform and how social movements can secure consequential legal victories. Those lessons are particularly important, given that the story it tells also serves as a reminder that, for people suffering at the hands of state oppression, legal change cannot come fast enough.

The Path Forward

Clive Boutilier had a quiet life in Brooklyn, New York. He lived in the same building as his mother and stepfather, although in a separate

apartment.⁸² During the day, he worked a custodial job in Manhattan.⁸³ On nights and weekends, he bowled and attended Mass.⁸⁴ Then, in 1959, the 26-year-old departed from his routine. He met a stranger and they engaged in a quick tryst – one that led to his arrest for consensual sodomy. For Boutilier, the problem was not the criminal charge, which the district attorney's office soon dismissed.⁸⁵ Instead, it was that he was a Canadian citizen at a time when America's immigration law barred gays and lesbians from entering the country. He and his family had emigrated from their Nova Scotia farm in 1955, after his mother married a United States citizen.⁸⁶ When Boutilier applied for citizenship in 1963, the Immigration and Naturalization Service learned of his arrest, and thus of his homosexuality. The agency ordered him deported.⁸⁷ He spent six years fighting their decision, only to have the United States Supreme Court rule against him. The distraught Boutilier attempted suicide, which left him in a month-long coma. When he finally awoke, it was with brain damage and physical disabilities that would last for the rest of his life.⁸⁸

Like Boutilier's encounters with the law, *Family Matters* begins in the 1950s, a time when the state went to great lengths to punish queer identity. The book traces legal changes through 2015, when *Obergefell* was decided, detailing reforms to penal codes, child custody standards, domestic partner benefits, adoption regulations, hate crimes laws, and educational policies. It recounts this history in seven chapters, arranged in three sections that proceed in loosely chronological order. The first section addresses the rise of visible same-sex couples, as well as how gays and lesbians came to be seen as parents. Chapter 1 begins with the laws and legal practices that created an imposing barrier to reform, detailing the web of criminal provisions that punished, stigmatized, and isolated homosexual men and women in mid-twentieth-century America. The chapter then turns to initial efforts to dismantle the discriminatory regime. It explains how and why lawmakers began decriminalizing gay and lesbian life in the 1960s and 1970s, which made it possible for same-sex relationships to flourish. Chapter 2 turns to early efforts to secure the rights of queer parents, analyzing custody disputes in the late 1970s and early 1980s. These lawsuits gave rise to visible gay- and lesbian-headed families, setting the stage for broader changes, including demands for

affirmative protections during and after the HIV/AIDS crisis of the 1980s. Chapter 3 takes up the rise of domestic partnership registries in the mid-1980s and early 1990s, which granted concrete benefits to gays and lesbians and made a symbolic statement concerning the ubiquity and acceptability of same-sex couples. Chapter 4 details foster care and adoption policy reforms during this time period, demonstrating how the changes allowed an increasing number of gays and lesbians to become parents. Chapters 1 and 3 thus address queer partners, while Chapters 2 and 4 discuss queer parents.

The second section presents a different dimension to the queer family, which was more than simply gay- and lesbian-headed households. Gay and lesbian adults began their lives as queer children, and the overwhelming majority had straight parents. Chapters 5 and 6 explain how antiviolence advocacy in the 1980s and 1990s helped to make this aspect of the queer family visible. The AIDS crisis unleashed a torrent of animosity against the queer community. As hatred rose, so did levels of violence. However, attacks did not just come from outside the community. Queer youth also responded to society's hatred by inflicting harm on themselves at alarming rates. By the end of the 1980s, suicide had become the leading cause of death for gay and lesbian youth. Both chapters detail how parents of queer children became involved in antiviolence efforts, pressing the American public to take seriously the plight of their sons and daughters. These families of origin helped to bridge the gap between the queer and straight worlds by showing that gays and lesbians were members of close-knit, "traditional" households.

Family Matters' final section examines marriage equality and its aftermath. Chapter 7 discusses the movement for marriage equality, demonstrating how battles over domestic partnerships, custody, foster care, adoption, and hate violence shaped arguments for marriage rights. Over the course of the 1980s and 1990s, same-sex couples had become visible as partners and parents. They were also increasingly recognized as integral members of straight families. Advocates drew upon these themes in both their legal briefs and their public opinion messaging, creating a framework that helped many Americans to become more accepting of same-sex sexuality. The chapter consequently demonstrates how previous victories on behalf of queer families made marriage equality possible. The epilogue then

extends these arguments by addressing debates over queer rights since the Supreme Court's same-sex marriage ruling.

Crafting this narrative required piecing together archival fragments and combining them with a range of other sources. Much of the information in this book comes from the records of gay and lesbian rights organizations, whose newsletters, memos, press releases, and other materials memorialized their work. Movement leaders, advocates, and community members also preserved pamphlets, fliers, speeches, and other documents that contained crucial details and revealed connections between events in various parts of the country. Dozens of oral history interviews with individuals involved in battles over gay and lesbian rights – including attorneys, activists, elected officials, government administrators, social scientists, and educators – helped to fill in the missing pieces. So too did government reports, legislative histories, newspaper accounts, magazine articles, documentaries, scientific studies, and published sources.

Some of the materials for the book were particularly difficult to obtain. Family court decisions are typically unreported and sealed for the protection of the children involved, while the records of criminal courts are often spotty when they are first created, and are not always maintained for posterity. Because of these limited institutional records, putting together the narrative meant finding the unpublished judicial opinions and case files that lawyers, litigants, and advocates had entrusted to libraries, as well as collecting reports of decisions scattered in the newsletters of local queer rights organizations. Uncovering the more ephemeral materials that were crucial to the fight for gay and lesbian rights, such as television commercials, meant scouring internet databases, contacting producers, and visiting far-flung repositories.

These sources contained numerous stories of courageous individuals, whose efforts to secure justice contributed to the transformation of America's legal system. When discussing specific people, the book uses last names, except when two or more people share a moniker. Under those circumstances, the book employs first names to avoid confusion. Where individuals – like Del and Phyllis – are widely known to the queer community by their given names, the chapters reflect that common usage. In the historical records in which queer community members appeared, people with same-sex attractions described themselves in varying ways. The terminology that this book deploys

consequently depends on the time period in question. Discussions of the 1950s and 1960s use the term *homosexual*, while chapters on later periods primarily deploy *gay* and *lesbian*. The chapters also rely on the generic *queer* to refer to those who engaged in same-sex practices, even though that word sometimes departs from those individuals' self-conceptions and risks eliding bisexuals, who have long been marginalized within the queer community.⁸⁹ It additionally uses *queer family* as a descriptor for households with gay or lesbian family members, who might be partners, parents, or children. Using "queer" risks introducing a modern term into a historical narrative, but it is also a necessary descriptor for complex, shifting, and diverse identity categories.

The term queer is also a useful means of recognizing that many of the individuals who suffered at the hands of state discrimination – and fought to overturn unjust laws – included transgender, nonbinary, and other gender nonconformists. The pages of this book focus on people who self-identified as men and women, offering a history of gay and lesbian rights. However, state repression extended to all parts of the queer community, whose members often banded together to combat discrimination. Much like the language that individuals used to describe themselves, the labels for the movement that represented their interests have changed over time. Since the book focuses on the work of people and groups in the 1980s and 1990s, it primarily describes the legal movement as "gay and lesbian." Many national rights groups became *LGBT* in the late 1990s and early 2000s, and today would identify themselves as *LGBTQ* or *LGBTQ+*.⁹⁰ This work uses these acronyms when appropriate, which depends on both the historical time period and the rights at issue.

As the varied and changing terminology indicates, the place of same-sex sexuality in twentieth-century American society and law shifted significantly. Over the course of five decades, both queer and straight society developed new understandings and conceptions of same-sex sexuality. These changes would prompt legal reform, giving rise to a significant transformation in American law. The events that would change the country include inspiring accounts of resistance, heartwarming tales of affection, and humorous moments of wit. Some were headline-grabbing theatrical protests, such as when a queer rights activist literally shut the mouth of evangelical leader Anita Bryant by hurling a banana cream pie at her face. The gay and lesbian

press reveled in the fact that he self-identified as a “Groucho Marxist.”⁹¹ Others were personal moments of activism, like the elderly lesbian couple who contributed to the cause by coming out in the newsletter of their assisted living community.⁹² Still others were painful stories of hardship, agony, and injustice, experiences that all too often dominated the lives of those who fought against America’s discriminatory legal regime.

Perhaps no account illustrates the dangers that gays and lesbians faced in the middle of the twentieth century more vividly than the tale of Bert Chapman, who spent thirty-one years confined to psychiatric hospitals because he was gay. In September 1940, Michigan police arrested Chapman for having been sexually intimate in his own home with another man.⁹³ What led law enforcement to Chapman’s home that night has been lost to history, as the clerk’s office overlooked his files when converting its paper documents to microfilm.⁹⁴ The few remaining records, however, paint a grim picture of Chapman’s life after the arrest. Instead of sending him to jail, the court confined the 35-year-old to a psychiatric institution until he “fully and permanently recovered” from his homosexuality. In the decades that followed, Chapman repeatedly appealed his confinement. He was finally able to secure his release in 1971, after convincing a jury that he was no longer a danger to society. At that point, he was 68 years old. His mother had died a year before the verdict, at the age of 90, having spent the last three decades of her life trying to secure her son’s freedom.⁹⁵

Chapman’s experience provides a sobering reminder that, in the mid-twentieth century, the legal landscape for homosexuals was bleak. The extreme nature of Chapman’s ordeal was the exception, not the rule, but he was also far from the only gay man who suffered prolonged periods of confinement because of his sexual orientation. At the same time, Chapman’s release also demonstrates that the law could and did in fact change. Given that the state relied so heavily on its penal codes to humiliate, denigrate, and abuse homosexuals, initial reforms perhaps unsurprisingly focused on the criminal law. The story of the gay and lesbian rights revolution thus begins with the fight against surveillance, arrest, and imprisonment, all of which dominated the lives of homosexual men and women in mid-twentieth-century America.

