***A Tourist in Heteroland***

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The title of this piece comes from a lively series of blog posts in which a blogger and his commentators shared the missteps and machinations of their adolescence as they experimented with their initial love interests and teen crushes. They joked about wearing too much cologne or makeup, about agonizing over what music to play during make-out or snogging sessions, and generally reminisced about youthful struggles and follies as they first learned how to form adult relationships. In the middle of this internet conversation, a gay man wrote:

I dunno [sic] if this is the appropriate spot, but this post, along with the stuff on scents, reminds me how much of these experiences I missed out on as a gay teen. Never had the opportunity to do the dating thing, or get caught up in trying to impress folks. It just struck me how foreign all of these concepts are to my own history and experience. I'm a tourist in heteroland. (majeff, 2011).

This comment illustrates one aspect of the insidiousness of heterosexism and what Adrienne Rich called “compulsory heterosexuality”: the shared (and erroneous) assumption that we are all straight and that accordingly we all fit into a communal experience (Rich, 1983). For sexual minorities, this shared enterprise – that we do not and cannot join (Los Angeles County Bar Association, 1994; Hennepin County Bar association, 1995; N.J. Supreme Court, 2011) – marginalizes us and reinforces norms that separate us from our peers and from societal institutions (Brower, 2011; Ho 2006).

In their roles as norm creators and enforcers, law and legal institutions magnify and reinforce heterosexism (McAdams and Rasmussen, 2007). When combined with heterosexism, courts and legal doctrine can push LGBT people to the margins of society. As Weeks (1998) reminds us, the idea of sexual citizenship is about enfranchisement, inclusion and belonging. When LGBT people are included within legal doctrine and institutions, they may break down the hidden assumptions of heterosexuality and transform those societal norms and institutions. More negatively, however, they may also provoke a backlash or a claim of oppression by those who wish to prevent that loss of heterosexual privilege.

***A. Factual Assumptions and Legal Institutions***

One example of how heterosexism can push sexual minorities outside institutions is voir dire: the process of asking questions of potential jurors in the US legal system in order to select a jury. Typically potential jurors in the venire panel are asked a series of questions about themselves and their background in order to ascertain bias or elicit information that would lead the court to believe that an individual juror is unfit to serve (Kovera et al., 2003).

Standard voir dire questions ordinarily include this inquiry: “Juror X, are you single, married or divorced?” The marital status question may render minority sexual orientation so invisible during jury service that often lawyers and judges do not even realize how those questions affect the venire panel and the courts or how inattentive traditional inquiries are to the diversity of lesbian and gay court users’ lives.

A lesbian from South Carolina captured the gamut of emotions felt by some gay or lesbian venire panelists:

Before anything else, we had to go around the room and state our name, address, length of residence, employment, education, legal marital status and our spouse’s employment. I was immediately angry. Right there in my face was another screaming example of discrimination. South Carolina, unlike Massachusetts, of course, does not allow gay couples to marry. Otherwise my partner and I would already be legally hitched. But because we are not allowed to marry, my legal marital status is regarded as single.

I am NOT single. I am as married as a person can get without access to that damn piece of legal paperwork called a marriage license. But here I was, standing in a court of law, where my relationship with my partner meant absolutely nothing. When the questions came around to me, I was legally bound to say I was single – because according to the law, I was.

I thought about it hard as the judge went around the room asking for everyone’s personal information. Since my last name starts with a ‘V’, I was near the end. Finally, when the judge came around to me, I said out loud what I had been practicing in my head. I didn’t care if I got in trouble, I just had to say it – I felt morally obligated.

I gave my full name, my address, my length of residence, my employment and my education. Then, I said: “I am gay and partnered, but not legally allowed to marry my partner under the laws of the state of South Carolina. So I guess that means, under the legal definition, I would erroneously be labeled “single.”

And then I promptly sat down. The judge gave me a very nasty look, perhaps she was considering if I could be held in contempt of court. And, in a way, I did have contempt for the court – and the legal system – and the government. I have major contempt for the legal institutions that prevent me and my partner from being equally recognized and given the same rights as straight married couples. (Vess, 2006).

As illustrated above, the marital status questions enshrine compulsory heterosexuality within jury service and engender several marginalizing effects.

The range of experiences of this South Carolina juror mirrors empirical juror research on the treatment of lesbians and gay men in courts. A 2001 California study of sexual minorities in the courts (California Judicial Council, 2001), found that during their most recent California court experience, forty-four percent of gay men and lesbians were jurors or venire panelists. In that contact, 48.3 percent were asked if they were married. Many respondents felt they could only reply incompletely or inadequately to that query. “All prospective jurors were asked about marital status. I have been in a monogamous relationship [for] 33 years and consider myself married. It would have been wrong to deny my relationship but it would have been legal to do so.” (Brewer and Gray, 2000, 15-16).

As seen above, the marital status question reinforces the assumption that individuals are heterosexual and either single, married, divorced or widowed, and that the construction of LGBT relationships do not match societal or legal categories. As demonstrated by the South Carolina lesbian venire panelist, the question may create the perception of bias or foster a feeling of invisibility or contempt in anyone whose life cannot be described by those categories. Unless specifically relevant to a case, the marital status inquiry may undermine the credibility of the judicial process in several ways.

First, it deprives the court and lawyers of valuable information about relationships necessary or useful for a fair jury selection or court process. “In a domestic abuse case, the judge did not ask me the same questions she asked the other potential jurors regarding my relationship with my companion or domestic abuse.” “I was serving jury duty. Questions asked of straight jurors were not asked of me. Things that excluded ‘married’ people were not applied to gay/lesbian even with long time partners.” (Brewer and Gray, 2000, 20, 14). By not recognizing these relationships or requesting information about the experiences and backgrounds of same-sex partners, the court may overlook the very bias or perspectives that voir dire is designed to uncover.

Second, it forces gay or lesbian jurors either to disclose their sexual orientation or answer the question narrowly according to its specific terms, leaving them to deny or be incomplete about their lives. One respondent noted,

The judge asked all prospective jurors to state marital status and what their spouse’s occupation was: I have a long-term domestic partner, so I felt that answering the question honestly required me to reveal my sexual orientation and to state my partner’s occupation even though legally my marital status is single. Stating ‘single’ would have felt like lying. (Brewer and Gray, 2000, 3)

Accordingly, a potential juror is forced to be dishonest or less than forthcoming in court, undercutting an essential premise of the questioning process.

Third and most importantly for the thesis of this paper, the marital status question may foster a perception among gay and lesbian court users that their subsequent judicial experience may not be fully informed or fair. “I feel the court does not take sexual orientation seriously and excludes it as an issue, which may be a mistake under certain circumstances–assuming everyone is either single or married.” “Lawyers questioned jurors about relevant medical conditions of spouses and family with disregard for other relationships of gays, lesbians, and domestic partners. Judge did not clarify the lawyer’s intent. The net effect: Our relationships don’t count.” (Brewer and Gray, 2000, 16, 20).

The idea that lesbian and gay relationships don’t count, or that the courts erroneously assume that everyone before them is heterosexual, creates distance and estrangement from the courts and makes sexual minorities doubt their access to that institution. The public’s view of the courts is very heavily dependent on the perception that the justice system is concerned about procedural fairness: that is, (1) treatment with dignity and respect, (2) honest and impartial decision makers who decide based on facts, (3) the opportunity to express one’s views in court, (4) decision makers who were concerned with fair treatment and hearing all sides of the story (Rottman, 2005; Warren, 2000).

Empirical studies show that, compared to heterosexual respondents, lesbians and gay men generally hold less favorable opinions of the ability of the judicial system to treat sexual minorities fairly. Moreover, those same studies demonstrate that heterosexuals sometimes undervalue the risks of discrimination or mistreatment that sexual minorities run by making their sexual orientation visible in court. Lesbians and gay men feel unwelcome in courts and legal institutions, and even openly gay people may prefer to be closeted there. If people believe society and institutions are hostile and that they must hide their sexuality, they will avoid engagement in activities and institutions where disclosure of that characteristic is mandatory (Brower, 2007).

Thus, lesbians and gay men may prefer that friends or peers address dissolution of relationships, or may go to counselors or mediation rather than the courts (Gartner, 2007; Polikoff, 1990; Freshman, 1997). Informal alternative dispute resolution mechanisms might be perceived as better equipped to handle issues without bias or with a better understanding of lesbian or gay community values. Further, if gay people do not bring relationship, dissolution, visitation and other legal issues to courts, legal doctrine will not evolve mechanisms to accommodate those different households. And if the law is not seen as reflective or understanding of the realities gay or lesbian life, people lose confidence in those institutions and their access to them (Brower, 2007). Accordingly, a circle of withdrawal and mistrust is created (Boyd, 2007).

Conversely, coming out and visibility is an important indicator of how accepted people feel, and how comfortable they are participating in mainstream culture. That participation serves to counteract heterosexism as society adapts to the idea that everyone is not heterosexual. That trend is accelerating today. Demographically, the lesbian and gay population is shifting away from traditional, urban, gay-identified locations to suburban and other venues. Sociologically, lesbian and gay visibility is also increasing in civil life (Gates, 2007). As people believe they are integrated into society, they will also turn to societal institutions to resolve disputes and enforce rights (Carpenter, 2008). Increasingly, they may believe that courts, administrative agencies, and tribunals are appropriate venues for their issues and that they “deserve” to be represented within those legal and institutional structures (In re Marriage Cases, 2008; Cowen, 2008). Accordingly as acceptance grows, the disputes LGBT people have will become progressively more visible in court. Thus law and courts will increasingly have to deal with sexual minorities – something they are not always well equipped to do now. Thus, both geographically and jurisprudentially we might expect LGBT individuals to be visible in courts and legal institutions where they have not previously been as apparent.

Anecdotal data on younger lesbians and gay men who have grown up with more openness and acceptance about their sexuality reinforce this conclusion that visibility may lead to increased desire to join conventional legal and social institutions. In an era of growing acceptance of civil partnerships or marriage for same-sex couples and increasing numbers of same-sex families rearing children, younger lesbians and gay men envision fitting themselves into familiar and familial institutions and structures. One trend among younger sexual minorities is to contemplate and participate in marriage and monogamous relationships in which they raise children (Denizet-Lewis, 2008). Not all commentators see this mainstreaming of same-sex relationships into traditional models as positive, however (Polikoff, 2008); Fineman, 2001; Polikoff, 1993).

The trend toward the mainstreaming of sexual minority identity is geographically uneven; some locations are more accepting than others. This disparity may affect LGBT persons and their interactions with heteronormativity in the courts in unexpected ways. The California study of sexual minorities’ experiences was conducted prior to relationship recognition for same-sex couples in that state and elsewhere in the US. Currently, same-sex couples may legally marry in some foreign countries and in some US States. Same-sex relationships are also recognized to varying degrees short of marriage in other states and foreign nations (Wikipedia, 2012; NGLTF, 2012). Moreover, couples often state that it feels different to be married or that others perceive them differently Norris and Block, 2008; Magagnini, 2008; Kornblum, 2008; Brand and Cohen, 2008; Eskridge, 1996). Those couples’ relationships take on a different societal and legal character, which should be recognized on voir dire and during jury service. Consequently, marital status questions on voir dire may either positively or negatively intensify the effects on both courts and sexual minority jurors of recognizing same-sex relationships.

Those persons in states where voir dire questions accurately reflect the diversity of sexual minority relationships may feel validated and believe that the judicial system is accessible to them (California Judicial Council, 2001). For example, as a result of the juror responses discussed above (California courts website, 2012), California changed the marital status question to add: “‘or anyone with whom you have a significant personal relationship.’ The term, ‘anyone with whom you have a significant personal relationship’ means a domestic partner, life partner, former spouse, or anyone with whom you have an influential or intimate relationship that you would characterize as important.” (Judicial Council of California, 2010). Conversely, for those lesbian or gay jurors in states like South Carolina where their relationships are ignored or inaccurately labeled on voir dire, they may now perceive that loss more sharply as the contrast between what their jurisdiction denies and others permit is more striking (Vess, 2006; Kahneman et al., 1991).

***B. Queer Identity And Offensiveness***

In addition to factual assumptions that everyone is heterosexual, a more subtle way in which heteronormativity becomes enshrined in law and legal regimes is through jurisprudence that takes agency away from sexual minorities and treats ordinary expression as extra-ordinary. Since commonplace events blend into and confirm our expectations, they often escape our notice (Tversky and Kahneman, 1973). And because our expectations are unquestioned, superficially trivial examples of legal doctrine sometimes more clearly reveal significant problems than do larger issues. Underlying assumptions appear closer to the surface of these smaller examples and we can use them to interrogate larger developments.

For example, an administrative tribunal denied a gay man a personalized automobile license plate that would have read “IM GAY.”Both the Department of Motor Vehicles (“DMV”) and the administrative law judge found that that message violated the relevant regulation: “No special license plate will be issued which may be offensive to the general public.” At the administrative hearing the DMV articulated three unofficial categories of license plate messages which may be offensive to the general public: “Sexual Connotations,” “Racial or Ethic Comments,” and “Cuss Words” [profanity]. Moreover, the DMV admitted that any message containing “gay” or “lesbian” would be automatically deemed offensive and not permitted, but it would issue a personalized plate with the word “GAY” if that were the applicant’s name (Oklahoma Tax Commission, 2009, 3).

Two features of the decision shift control over content of queer expression from the individual and transfer it to outsiders. First, offensiveness was determined not by the meaning intended by the speaker/LGBT individual, but by how others might understand the message (Oklahoma Tax Commission, 2009, 7; Kahn, 1993, 13). This interpretation explicitly relocates control from the LGBT person to others. That relocation inheres in the concept of offensiveness, which looks at a message’s impact on listeners and focuses on the audience for speech instead of the communicator. That change in the locus of control over meaning places the originator of the message at the mercy of her recipients (Kalvan, 1965; Feiner, 1951).

Second, disparate and worse treatment of LGBT messages is reinforced by the DMV’s admission that IM GAY would have been permitted if the applicant’s name had been “Gay.” IM GAY was offensive if the applicant’s message was an announcement of his sexual orientation or of open self-identity, but not if the applicant’s name were Gay. This distinction is logically inconsistent as it depends on others’ reactions to the message to generate offensiveness. The ordinary effect on the reader of IM GAY is identical in both situations. Unless personally acquainted with the speaker, the observer would not know if the license plate reflected the speaker’s name or his sexual orientation. When intended as a name, the DMV must have concluded that the license plate’s significance should be read from the perspective, and with the intended message, of an applicant named Gay and not from the understanding of witnesses to the message. The DMV used the originator’s viewpoint when IM GAY meant a proper noun, and the recipient’s perspective when the license plate’s message was LGBT identity or pride. This difference evidenced that the DMV varied its interpretation based on the queer content of the message and prohibited only that queer expression as offensive. Thus, queer identity messages were silenced in ways that other communication and identity speech were not.

Another fact in the case clarifies this conclusion. The DMV permitted the license plates, STR8FAN (straight fan) and STR8SXI (straight sexy) and did not find them offensive (Volokh, 2010). One possible reason was that the DMV simply did not recognize those messages as sexual orientation references. Tversky and Kahneman found that common information recedes in value, while distinctive or unusual information increases in salience (Tversky and Kahneman, 1973). Thus, people may not even recognize that heterosexuals have a sexual orientation because it is the baseline; it appears normal and invisible (Kramer, 2009; Brower, 2009).

An alternative explanation for the disparate treatment of the two messages is that the DMV saw “straight” as a sexuality reference, but explicitly treated that message differently. Since heterosexuality is common and dominant, the DMV and the majority of viewers may see a reference to heterosexuality as innocuous, bland or safe; minority sexuality would be distinct, shocking, and thus, offensive (Bem, 1994). Heteronormativity, the concept that heterosexuality dictates the expectations for, and places demands or restraints on society, underlies both alternative rationales: that heterosexuality is invisible or that it is safe (Warner, 1993; Chambers, 2003).

The benign view of heterosexuality and malignant perspective on homosexuality stems from the sexualization and marginalization of the latter identity. Consistent with heteronormative interpretation, people believe heterosexual sexual identity revolves around relationships and families and do not reduce it solely to sexual behavior. In contrast, LGBT identity is often seen purely as sexual activity and is divorced from its social, emotional or self-constitutive content (Brower, 2009; Volokh, 2012). If so, queer identity becomes explicitly sexual and the message IM GAY refers to sexual acts and not to self-identification (Bem, 1994). Consequently, it falls within the DMV’s policy prohibiting sexual connotations and is offensive. This reductionist and heterosexist view of gay identity effectively flattens LGBT individuals’ personhood and self-expression to make it one-dimensional. It changes the message of identification or pride into flaunting of pure sexual behavior by reconstituting that communication into offensiveness. It controls and marginalizes the queer self, with attendant negative consequences for LGBT people and their expression.

***C. Change and Resistance: From Insiders to Outsiders***

Whether heterosexism appears through factual assumptions as in the voir dire example, or through legal doctrine as in the license plate case, it is durable and resistant to change. Traditional heterosexist norms are so strong and persistent that any attempted normalization of LGBT identity may create a backlash to retain heterosexual privilege. Some people witnessing or experiencing this change can perceive the incorporation of sexual minorities into societal institutions as a violation of their own customary privileges and legal protections.

For example, in *Walker v. Jackson* (2011), James Walker, a US federal employee, argued that he was the victim of religious harassment and reprisal when Lisa Jackson, the Acting Office Director of a US government agency, sent a general listserv email to him and to all other employees announcing a voluntary, in-office celebration of a fellow employee’s same-sex marriage:

[Employee A] and his partner [named] are getting married this Sunday. The IO is sponsoring an informal celebration to congratulate [Employee A] on this happy event. Please feel free to drop by the IO conference room on Thursday, October 7 at 4:30 P.M. to wish them well.

Thirteen days later Walker responded to the Jackson’s email, with a copy to the all employees on the global listserv, with the following message:

I feel your message announcing the celebration of the “union” of [Employee A] and his “Partner” was offensive and insensitive to my religious faith as a Christian. I think it is general knowledge that the Christian faith only condones “marriages” between men and women, not men and other men. As acting Office Director, I feel you could have been more “sensitive” and “neutral” with regards to this issue.

The following day, other agency employees sent approximately fifteen to twenty emails on the general listserv to all employees (including Walker) congratulating Employee A on his marriage. None of those emails specifically mentioned Walker or his email to the Acting Director, Jackson. However, two employees emailed Walker personally (not sent to the global listserv) and opined that Walker’s email was insensitive because it was sent to everyone, including Employee A, rather than just to the Acting Director (Walker, 2011, 1-3).

In both his original complaint before the employment tribunal, the Equal Employment Opportunity Commission (“EEOC”), and on appeal Walker argued that Jackson’s and his fellow employees’ emails violated his right against discrimination on the basis of his religious beliefs, harassed and retaliated against him, and “affected his psychological well-being in the office.” (Walker, 2011, 3).

The EEOC in *Walker* rejected all claims. (Walker, 2011, 6) As Professor Eugene Volokh, a prominent legal academician and critic of harassment law stated, “If you publicly complain about a colleague’s celebration, and a bunch of people respond by conspicuously congratulating the colleague, that’s disagreement — it’s not harassment.” (Volokh, 2011).

As in the license plate case, a bland statement of visibility of gay people and/or their addition as social equals in the workplace in *Walker* is an affront to traditional heteronormativity. It may provoke a negative reaction or backlash in those whose beliefs reject that presence or inclusion.

The entrenched and stubborn hold that heteronormativity has on social behavior in the workplace can affect both critics and supporters of the EEOC’s decision. A closer reading of Professor Volokh’s above-quoted comment illustrates that even backers of the EEOC judgment may read the facts through a heteronormative lens. The fifteen or twenty emails other employees wrote were sent to the workforce-wide listserv and were not directed at Walker himself (Walker, 2011). To the extent that Professor Volokh labels that behavior “conspicuously congratulating” Employee A, it reinforces the assumption that celebrating a same-sex marriage is not viewed identically as observing opposite-sex nuptials. The record in *Walker* showed that the Acting Director’s original email comported with the Agency’s long-standing practice of celebrating milestone events in the lives of its employees (Walker, 2011). General, congratulatory wishes for a heterosexual marriage of a work colleague are typically seen as common courtesy or normal, polite behavior, and not as conspicuous, political statements.

This is a matter of shifting baselines. In a workplace in which heteronormativity is the default and invisibility of sexual minority identity is the expected norm, equal treatment can be seen as preferential behavior and an attack on traditional values. That even sympathetic commentators on this case did not see wedding congratulations as commonplace events evidences that what is perceived as normal, non-controversial behavior in a heterosexual setting, in a homosexual context those actions can be viewed by supporters as a protest statement or by detractors as an affront (Brower, 2009; Dawson, 2005).

***D. Inclusion and Transformation***

Finally, the inclusion of sexual minorities into legal institutions and regimes may also lead to the incorporation of non-heterosexist norms in law and may have the potential to alter baselines in order to break down latent heteronormativity in those structures. In essence, the law has two basic choices: (1) keep same-sex couples outside these legal doctrines and the solutions they provide; or (2) incorporate same-sex couples into these solutions and continue to rethink them. The former alternative ignores demographic and economic realities of modern life and will only preserve the disabilities same-sex couples face from heteronormativity and discrimination. The latter alternative may trigger the biggest effect that lesbians and gay men can have on the heteronormative nature of law: the opportunity to review and reevaluate existing solutions and doctrine.

One brief illustration demonstrates the potential of the second option. The Massachusetts Maternity Leave Act (MMLA) provides mothers eight weeks of unpaid employment leave to give birth or adopt a minor child. Both the statute and the agency guidelines expressly apply only to women and not to men (MMLA, 1989). In June 2008, a Massachusetts Commission Against Discrimination (MCAD) Commissioner announced that parents of either sex in both opposite- and same-sex marriages would be entitled to the statutory benefits in order to avoid the following problem:

If two women are married [as is legal in Massachusetts] and adopt a child, then they are both entitled to leave under the [MMLA], and yet if two men are married and adopt a child, they would be entitled to no leave under a strict reading of the statute. That result was troubling to us, and we didn’t think it was in keeping with our mandate by statute, which is to eliminate, eradicate and prevent discrimination in Massachusetts. (Frank, 2008).

On one level this announcement is unsurprising. The statute’s gender distinction constituted invalid sex discrimination under the state constitution (Mass. Const.; Commonwealth, 1975). In opposite-sex couples, mothers but not fathers were the only ones entitled to leave, but MCAD had always ignored that statutory disparity. When faced with married same-sex couples, however, MCAD converted a gender-biased statute to gender-neutrality. Addressing the factual differences between same-sex and opposite-sex couples left space for decisionmakers to appreciate the underlying purposes and preconceptions behind existing doctrine.

This shift in perspective occurs because same-sex couples force people to reexamine law’s underlying heteronormative gender and sex roles. Since heterosexual marriage is commonplace, decisionmakers ignored its gendered underpinnings (Brower, 2009). As applied to heterosexual marriage, the MMLA’s conflation of sex, gender, motherhood, and childcare responsibilities passed unnoticed, or change seemed more appropriately addressed by the legislature. The law had already envisioned women having separate childbearing and child-minding roles since leave was available both for children borne by a woman or adopted by her. Traditional gender roles masked this distinction in heterosexual couples. Because same-sex couples appeared sufficiently different from traditional families, their incorporation into marriage exposed this conflation. Both members of a married female couple could take MMLA leave to be caregivers, although only one could have borne the child. Once MCAD found that the regulation allowed leave for shared childcare responsibilities by a parent who did not bear the child, the sex-discrimination claim was obvious; men, too, could be carers and were entitled to MMLA leave.

Incorporating LGB individuals and same-sex couples into the law may more extensively affect society and its structures. A maternity-only leave policy encourages new mothers to learn to parent and to care for children while fathers work. It reinforces traditional gendered relationship patterns that often find their way explicitly or implicitly into family law. For new parents of a first child, neither the mother nor the father may have any particular experience or skills in childcare. In essence, an eight-week maternity leave becomes a “boot-camp” for new mothers but not fathers; it encourages and supports maternal responsibility taking for the newborn (Sibley, 2008). But a sex-neutral, maternity or paternity leave gives time for both spouses to learn these skills and may support greater equality since it recognizes both men and women as potential equal partners in childcare. A same-sex couple necessarily lives that lesson since traditional, sex-differentiated roles are biologically absent. When the law incorporates those couples, decisionmakers acknowledge that difference and expose how legal norms may reinforce or undermine gender roles in the taking of family responsibility.

This hope for reevaluation or legal change may be overly optimistic. Comparable economic discrepancies in both opposite-sex and same-sex couples may result in one parent becoming the primary caregiver. In opposite-sex couples, that is likely to be women due to economic, traditional, cultural, and other reasons. Although one partner in same-sex couples may also assume primary childcare responsibilities, it may be somewhat less common there (Implett and Peplau, 2006). However, whether same-sex couples replicate “gender roles” in the workplace or family depends on whether caretaking and wage-earning roles are valued differently – whether the parties to the relationship and/or society view the roles hierarchically. The increased visibility of same-sex families in society and in legal institutions may help make these assumptions manifest.

Courts, their decisions, and resulting legal doctrine inform and shape social norms (Peltz, 1995; Thomas, 1993). By determining how domestic relations law should treat LGB families, courts not only resolve the litigants’ cases, they decide the legitimacy of these family structures, and implicitly convey approval or disapproval of those arrangements (L. v. D., 1982). Therefore, incorporating same-sex couples’ arrangements into legal responsibility structures will both recognize jurisprudential changes and signal social acceptance.

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