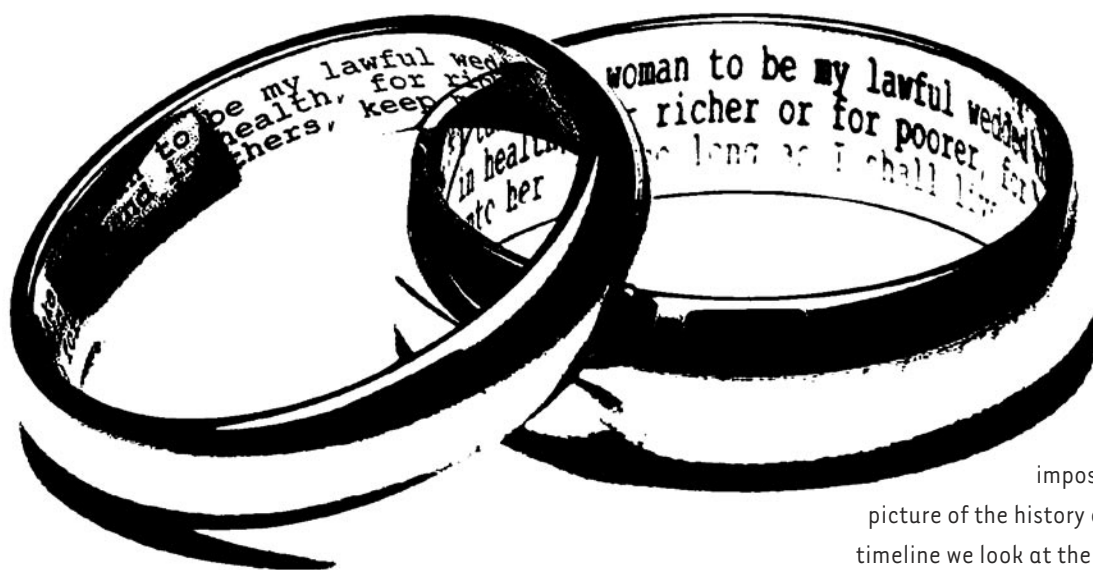


WE WILL MAKE SOCIAL CHANGE
MOST EFFECTIVELY WHEN WE
ARE GROUNDED IN HISTORY.



This timeline offers some context for the current historical moment—a time when the right wing is powerful and defining an anti-gay, anti-poor, anti-immigrant, and anti-woman agenda. Because marriage is so interconnected with other parts of life, it is

impossible to offer a complete picture of the history of marriage. In this timeline we look at the development of marriage with specific attention to race, class, gender, immigration, and sexuality.

Untying the Knots: Marriage Equality and the Struggle for Civil Rights

+ A Selective History of Marriage in the United States

by Jill Shenker

1691: Virginia enacts a law stating that if a white person (bond or free) marries a person of color (Negro, mulatto, or Indian), the couple will be banished from the colony. Banishment means almost certain death in the woods.

1724: Article VIII of the Louisiana Black Code forbids marriages between slaves without the consent of the slave master.

1769: American colonies based their laws on the English common law, which said, "By marriage, the husband and wife are one person in the law? The very being and legal existence of the woman is suspended during the marriage, or at least is

incorporated into that of her husband under whose wing and protection she performs everything.”

1787: U.S. Constitution signed.

1839: The first state (Mississippi) grants women the right to hold property in their own name, with their husbands' permission. By 1900 all states had legislation granting women some control over their property and earnings.

1855: In *Missouri v. Celia*, a Slave, a Black woman is declared to be property without a right to defend herself against a master's act of rape.

1865: The [Mississippi Black Code](#) prohibits blacks from marrying whites, punishable by life imprisonment.

1875: Page Law ends the arrival of Chinese women immigrants based on the fear that Asian immigrants would either begin to form families in the U.S., or that “those who didn't have the protection of a man might become a prostitute.”

1917: The Immigration Act of 1917 bans all Asian immigration and bans “Psychopaths, Inferiors, and ‘people with abnormal sexual instincts’” from coming to the U.S. Under this law lesbian and gay immigrants were officially excluded from coming to the U.S. until 1990.

1918: *New York v. Sanger*, allows doctors to advise their married patients about birth control for health purposes. It wasn't until 1965 that all state laws prohibiting the prescription or use of contraceptives by married couples were overturned.

1920: “Ladies Agreement” ends the arrival of Japanese and Korean picture brides. European women are also affected—they were banned from entry if they could not show that either a man or a job was available.

1924: Immigration Act of 1924 establishes quotas that even more heavily favor Northern and Western European immigrants. Immigration from Asia is banned, including wives and children of Chinese Americans.

1948: *Perez v. Sharp*, California Supreme Court becomes first state high court to declare a ban on interracial marriage unconstitutional. In 1967 the U.S. Supreme Court, in *Loving vs. Virginia*, overturns all state bans on interracial marriage, declaring that the “freedom to marry” belongs to all Americans.

1965: Immigration Act eliminates race, creed, and nationality quotas as basis for admission to the U.S.. The act stressed family reunification and awarded 3/4 of immigration slots to relatives. “Family” is based on strictly heterosexual and nuclear ties. Law explicitly bans lesbians and gays as “sexual deviates.”

1969: California adopts the nation's first “no fault” divorce law, allowing divorce by mutual consent.

Early 70s: Development of the current religious right movement

1973: First battered women's shelter opens.

1980: INS announces new policy on homosexuality: If an immigrant admitted that s/he was homosexual to an INS inspector, s/he is excluded from entering the U.S. If a homosexual person denied that s/he was homosexual, but was later found out, s/he could be deported for perjury.

1981: *Kirchberg v. Feenstra*, overturns state laws designating a husband “head and master” with unilateral control of property owned jointly with his wife.

1990-96: A series of articles were published in LGBT and mainstream journals advocating for marriage of same-sex couples to become a national priority in LGBT organizing. The authors of these articles were gay conservative white men who saw marriage as a way to make the LGBT community more “respectable.”

1990: Congress repeals ban on gay and lesbian immigration by removing homosexuality as a reason to disqualify foreigners from immigrating, or even visiting the U.S.

1993: All fifty states have revised laws to include marital rape.

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1993: Hawaii Supreme Court rules that prohibiting same-sex couples from marrying may violate Hawaii Constitution's ban on sex discrimination and can only be upheld if prohibition is justified by a compelling reason- in 1996 no compelling reason is found. In 1998, before the HI Supreme Court can issue a final ruling, the voters amend the state Constitution to allow state legislature to restrict marriage to men and women only. Hawaii couples' lawsuit comes to an end.

1994: Gays and lesbians qualify as a particular social group for purposes of US asylum law.

1996: the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) was the first federal law to explicitly promote marriage and encourage the formation of two-parent [heterosexual] families.

1996: Defense of Marriage Act (DOMA) (a) defines marriage under federal law as exclusively heterosexual (between one man and one woman); and (b) declares that states are not required to recognize same sex marriages performed in other states.

1998: Arizona passed Covenant Marriage legislation, under which heterosexual couples promise to stay married for life and renounce their legal right to a no-fault divorce. Florida became the first state to mandate high school seniors to take a marriage and relationship skills course before graduation through the Florida Marriage Preparation and Preservation Act.

1998: In May, Alaska trial court rules that choosing a marital partner is a fundamental right and can't be interfered with by the State absent a compelling reason. In November of that same year, voters amend Alaska Constitution to require that all marriages be between a man and a woman, effectively ending Alaska couples' lawsuit.

1999: Vermont Supreme Court rules that same-sex couples are entitled, under the Vermont Constitution, to all of the protections and benefits provided through marriage. In 2000, Vermont legislature passes and Vermont Governor signs a law creating civil unions for same-sex couples, giving these couples all the rights and benefits of marriage under Vermont law but not marriage licenses.

2000: Arizona passed a Marriage Initiative that allocates \$1 million Temporary Assistance for Needy Families (TANF-welfare) for marriage skills courses provided by community-based organizations (often churches).

March 2000: Oklahoma Governor announced a \$10 million plan to encourage marriage and reduce divorce. Other states continue to follow this example and in 2004 Congress will vote on whether or not to include "marriage promotion programs" in welfare reform nationally.

2001: Gay and lesbian couples from Massachusetts file state court lawsuit seeking the right to marry. On Nov. 18, 2003 in Goodridge v. Department of Public Health, the Massachusetts Supreme Court holds that barring an individual from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts Constitution. Marriage licenses first issued to same-sex couples in MA on May 17, 2004.

April 2001: Last chance for persons who entered the U.S. without being inspected by an INS officer, who have ever been unlawfully employed in the U.S. or who failed to always maintain lawful status in the U.S. to apply for an adjustment of their status in the U.S. Since 2001 these people must leave the U.S. for 3-10 years to be eligible to get permanent residency or citizenship even if they have a spouse or close relative who is a permanent resident or citizen in the U.S.

June 26, 2002: Seven New Jersey lesbian and gay couples sue in New Jersey state court and demand their constitutional right to marry.

2003: Lawrence v. Texas, the U.S. Supreme Court strikes down last remaining anti-gay sodomy laws in Texas and other states.

2003-2004: The Federal Marriage Amendment (FMA) is a proposed amendment to the U.S. Constitution that would deny marriage rights for same-sex couples. This Amendment would add the following two sentences to our Constitution: "Marriage in the United States shall consist only of the union of a man and a woman." "Neither this Constitution or the constitution of any state, nor state or federal law, shall be construed to require

a fear of difference and a desire to keep certain privileges for some while denying them to others.

Women, Welfare, and Marriage

While conservative government officials fight against marriage rights for same-sex couples, they are campaigning for welfare reform programs that coerce low-income women on welfare into marriage. The Bush Administration's latest round of welfare reform proposals recommend spending \$300 million per year on "marriage promotion programs" such as marriage education classes for adults and in schools; financial incentives for single mothers on welfare to get married; abstinence-until-marriage education; and covenant marriage programs developed by the Christian fundamentalist movement, which make it more difficult for those in troubled marriages to divorce. Many states have already implemented some of these measures. Queer women on welfare who live in states with cash incentives for those who marry are placed in a difficult situation: either deny their sexuality and marry a man, or be open about their sexuality and forfeit needed welfare bonuses that are only given to women who participate in marriage programs.

Both the ban on marriage of LGBT couples and the promotion of marriage as a way out of poverty for poor women reinforce the myth that the only valid family is one with a powerful man and a dependent wife and children. To emphasize this ideology, the radical right has changed the language in welfare policy from "single-parent families" to "father-absent households" and "never-formed families," phrases also used to denigrate LGBT families. We should not reinforce the widespread but problematic belief that state-sanctioned marriage makes a relationship more worthy of recognition and rights than other intimate or familial relationships.

Queers, Family, and Marriage

According to the General Accounting office of Congress, there are 1,138 benefits, rights, and privileges contingent on or related to marital status. Some of the most widely known include access to healthcare through a partner's or parent's insurance, ability to see a loved one in intensive care, inheritance rights, and second-parent adoption rights. These benefits ought to be available to people in intimate relationships regardless of their marital status, not conditional upon it. Others are about familial commitments

and responsibilities. For children of queer parents these protections are critically important. For example, if a child of LGBT parents gets in an accident, it's impossible to ensure that their non-biological/non-adoptive parent will be allowed to visit them in intensive care or make decisions about their care. These children may not be able to get health coverage on the insurance policy of their non-biological/non-adoptive parents' policy. Many children of LGBT parents express that marriage would offer social recognition of their families, without which they face marginalization and, frequently, harassment. Ordinary activities like making a family tree in school or filling out a form can make a child feel like their family is invisible and invalid. Often, when their family is visible, it is shunned and ridiculed, not only by peers, but also by adults in their lives.

Conservatives have made anti-gay initiatives central to their national organizing over the last decade, and it has taken its toll. In addition to the proposed Federal Marriage Amendment, there are 19 states with state constitutional amendments proposed to define marriage as between one man and one woman. These efforts come on the heels of a right wing campaign that has won Defense of Marriage Amendments** in 38 states since 1996, making a federal constitutional amendment more possible since it would have to be ratified by 38 states. Conservatives claim that marriage of same-sex couples is a violation of the sacred institution of marriage, and they use children to justify it. In fact, their campaign to deny marriage equality is harming millions of children, putting caring relationships at risk, and invalidating families.

The strength of the LGBT community lies in our diversity: we are everywhere, in every community. We include families who want to get married (and those who do not), immigrants struggling to be united, and people dealing with poverty and oppressive state policies everyday. Our struggle for civil rights is about more than the right to marry. All families that are about love, respect, and caring are valid no matter what the configuration. Fighting poverty isn't about "getting a man," but instead about living wages, access to education, and affordable childcare and healthcare. Our country is built on the hard work of immigrants and the strength of diverse communities. The most successful defense against the attacks on our civil rights is to recognize the connections between our struggles and our different communities. As the LGBT movement works for marriage equality, we need to also fight for the rights of immigrant

families, and at the same time, need to challenge the use of marriage as a weapon against low-income women and their children. Don't let the right wing succeed in dividing us with a coordinated attack. Don't let marriage equality become a wedge issue in an election year. We can build a more equitable, diverse, and caring society if we make connections and work together across dividing lines.

** Defense of Marriage Act (DOMA) (a) defines marriage under federal law as exclusively heterosexual (between one man and one woman); and (b) declares that states are not required to recognize same sex marriages performed in other states.

* This article was written for Just For Us, a publication of COLAGE (Children of Lesbians and Gays Everywhere), in connection with the "Bringing the Message Home" campaign to lobby against the Federal Marriage Amendment between Mother's Day and Father's Day, www.colage.org, (415) 861-5437, jill@colage.org. Jill Shenker is an organizer, arts activist, and political educator with COLAGE as well as the San Francisco Day Labor Program and Women's Collective of La Raza Centro Legal.

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Resources to learn more:

National Network for Immigrant and Refugee Rights: www.nnirr.org

Legal Momentum: <http://legalmomentum.org/issues/wel/marriagepromotion.shtml> (formerly the NOW Legal Defense and Education Fund)

National Gay and Lesbian Task Force: www.nglftf.org