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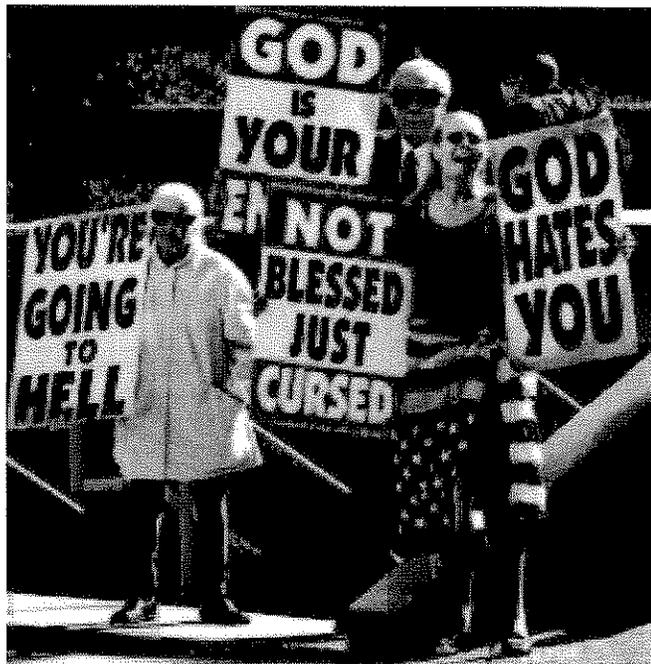
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MARRIAGE APARTHEID AND THE TYRANNY OF AMERICAN MORALITY

By Shelly Eversley*

Marriage is overrated. It claims moral superiority by suggesting that the unions it recognizes have special sanction from God. In the United States, that sanction grants married people exclusive benefits in civil society: financial bonuses, tax credits, privileged access to healthcare, and immigration preference, among others. A married person can even change her name, without hassle, for free. These special benefits demonstrate how government institutions give marriage its most salient meaning. They show it is not God who makes marriage special, it is the law. In the logic of a government-sanctioned marriage, it is thus particularly odd to insist on it as sacred, as an entity that must be protected from the kinds of people who, for "moral" reasons, threaten its sanctity.

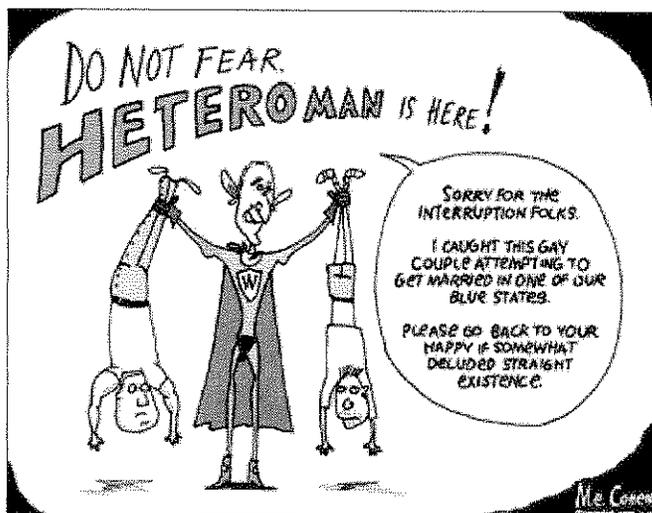


Source: theinsanityreport.com

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Consider the rhetoric surrounding debates about same sex marriage: "homosexuality is fundamentally morally inferior to heterosexuality and represents a sinful outcome to perverse choices...homosexual unions, by being inherently non-procreative, are fundamentally inferior to heterosexual unions. To grant legal status and recognition to inferior unions of immoral people undermines the importance of the institution, thereby eroding the foundation of civil society" (Segura 2005). The contradictions within this kind of rhetoric are astounding. Morality is a question for the Church, not the State. The United States is not a theocracy, it should not legislate morality. Furthermore, the very idea that procreation is "inherently" and inevitably the result of heterosexual marriage insists on a patriarchal family structure in which women, as breeders, subordinate to their husbands whose powers and privileges are sanctioned by law. This Trinity of morality-procreation-heterosexuality has become a political institution that demands interrogation of the processes and the implications in which hegemonies are made.

Even before the marriage equality movement, feminists have sought rights for women that are counter to the Christian Right's Trinity of marriage-heterosexuality-procreation. The struggle for women's reproductive rights includes the right of a married woman to choose not to have children. It also supports a woman's right to have a child without patrimony. The achievement of *Roe v. Wade* (1973) secured the rights of a woman to control whether she would bear children; she no longer needed *permission* from her husband or her (male) doctor. Similarly, with the advent of the birth control pill women in heterosexual relationships could *regulate* when—and if—that union would be procreative. Women's reproductive rights consequently undermine the logic of patriarchal power by challenging the notion that heterosexual unions are "inherently" procreative. Even today as the Christian Right works to dismantle women's reproductive rights, it deploys the "moral" argument that, in the name of "family values," women should bear children. This implicitly promotes the assumption that female sexuality exists for procreation, not pleasure.



Source: publiceye.org/magazine/v22n2/gaycon.html

The arguments against women's reproductive rights, like recent arguments against marriage equality, incite panic about "moral decline." Noting the ways in which "Americans are utopian moralists who press hard to institutionalize virtue, to destroy evil people, and eliminate wicked institutions and practices," Seymour Martin Lipset (1996) describes this missionary vision as an American exception. Most advanced industrialized nations in the

world—including countries in northern Europe whose Protestant roots are most similar to the United States—offer civil unions, domestic partnerships, registered partnerships or marriage to same sex couples. Countries as varied as Andorra, Argentina, Australia, Brazil, Canada, Colombia, Denmark, France, Germany, Ireland, Israel, Mexico, Slovenia, Spain, South Africa, the United Kingdom and Uruguay not only provide the opportunity for all citizens to enjoy legally recognized unions, they also have instituted human rights legislation that protects gay and lesbian citizens from discrimination. The European Union's *Charter of Fundamental Rights* goes even further by guaranteeing every citizen's right to marry and form a family (Adam 2003). Mobilized by Christian fundamentalists the United States even used its veto power against United Nations recognition of the *International Gay and Lesbian Association* (Adam 2003).

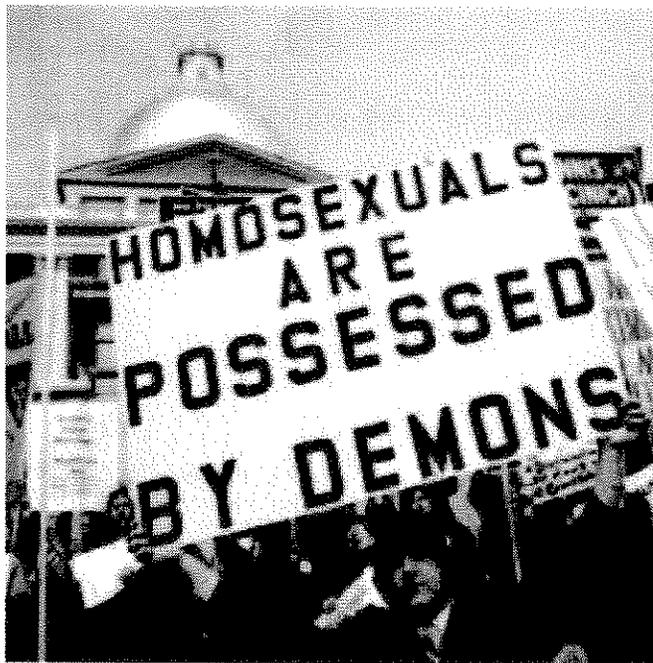
And maintaining its exception among its peer nations, the United States enacted the *Federal Defense of Marriage Act* (DOMA) in 1996 that effectively endorses the sacredization of the state and institutionalizes heterosexual unions by assaulting the rights of gay and lesbian Americans. Thirty states have instituted some form of marriage amendments in their constitutions to bolster a heteronormative definition of marriage. The Alabama example is telling: "Marriage is a sacred covenant, solemnized between a man and a woman, which, when the legal capacity and consent of both parties is present, established their relationship as husband and wife, and which is recognized by the state as a civil contract" (*Alabama Constitution*). Ratified in 2006, this amendment reflects a consensus that feels compelled to define marriage as heterosexual as well as sacred. This union between the laws of man—"civil contract"—and the laws of god—"sacred covenant"—shows exactly what the overestimation of marriage looks like.



Statue of Lady Justice in London. Source: freephoto.com

In his provocative analysis of the Christian fundamentalist interpretation of the *U.S. Declaration of Independence*, legal scholar Alan Dershowitz (2007) explains their mistaken understanding of American democracy. He situates Thomas Jefferson, the Declaration's author, within his intellectual milieu, the Enlightenment. Constitutional framers such as Jefferson, John Adams and Benjamin Franklin were rationalists "who believed that 'the alliance between church and state' produces only evil, and that a wall of separation must be maintained." He continues, "The government of the United States is not in any sense founded on the Christian religion." Dershowitz's attention to the historical record is an important response to the religious right's political maneuvers concerning morality and marriage.

Televangelist and former presidential candidate Pat Robertson believes the nation's original documents of liberty are proof of a Christian government in which "Jesus is the Lord of the government." And James Dobson, leader of the conservative group *Focus on the Family* and major proponent of DOMA, contends "it is utterly foolish to deny that we have been, from the beginning, a people of faith whose government is built wholly on a Judeo-Christian foundation" (Dershowitz 2007). Religious politicians like Robertson and Dobson have failed in the lessons of history since Jesus never had a place in American democracy. Dershowitz points out, the famous lines "We hold these truths to be self-evident, that all Men are created equal, that they were endowed by their Creator with certain unalienable Rights..." are not a declaration for a new Christian nation, but they are an exercise in Enlightenment rationalism and independent thinking. The Declaration's "Creator"—who, incidentally, is never mentioned in the Constitution—is, in fact, a deist god who made the world and left it behind. And, in Jefferson's own words, the holy Trinity is "incomprehensible, unintelligible and insane" (Jefferson 1819).



Source: sodahead.com

The unintelligibility of characterizing marriage as a sacred union between a man and a woman that should be protected by the state is a problem that reveals a religious tyranny, threatening the very principles on which this nation was built. DOMA and state amendments like Alabama's are antithetical to American democracy, a democracy that from its beginnings insists on keeping religion out of government. Federal and local legislation that restricts equal access to marriage manifests a hierarchy of persons in which "moral" people are cast as "better" Americans. Such hierarchies—and the government institutions that keep them alive—produce an apartheid system of citizenship.

This power differential reflects a "moral panic" (Adam 2003) that isolates gay and lesbian citizens in order to promote the diminishing power of the patriarchal hegemony. The ideology and the rhetoric apparent in DOMA revive "the same national imaginary generated around gender and family that had functioned to block the *Equal Rights Amendment* for women" (Adam 2003). The heteronormative "defense" of marriage presents itself as a moral

guardian of the (patriarchal) family and of civil society, even though it is clear that marriage is a political institution. Government, not religion, determines the rights of citizens.



Source: news.lavenderliberal.com

When acknowledged as a political institution, marriage recalls poet Adrienne Rich's (1980) arguments about a compulsory heterosexuality. In her groundbreaking work, she claims that heterosexuality should be recognized as a "political institution," something which has to be "managed, organized, propagandized and maintained," much like the ways in which DOMA and state amendments regulate what marriage means. Rich contends that as an institution, heterosexuality is not a choice or a preference but an imposition. American culture insists on this imposition, positing that married people have no choice but to be "heterosexual." Most directly, the state manifests this coercion on populations least able to resist. In its "war against poverty," the 1996 *U.S. Personal Responsibility and Work Opportunity Reconciliation Act* (PRWORA) encourages "marriage as a means to remedy poverty" (Robson 2009). With its intention to promote "job preparation, work and marriage" (PRWORA), welfare reform uses financial bonuses to encourage women—sometimes even teenagers—to marry. For poor women who are mothers, marriage is less a question of choice and more a question of institutional coercion.

Since Christian fundamentalists have successfully linked their version of morality to legal definitions of marriage, heterosexual monogamy has become the standard against which all other unions are measured. Even children with gay, lesbian and single parents must face the tyranny of this "morality." And as state and federal governments continue to "defend" marriage as heterosexual and procreative, the United States' political system becomes more theocratic than democratic. And while law professor Ruthann Robson (2009) perceptively suggests "recent legal developments regarding same sex marriage raise the possibilities of decoupling heterosexuality with marriage," the United States should do better. In order to keep with its founding principles, it should separate "marriage" from government: let the people who want marriage seek marriage in the Church of their choice. They can determine the morality of their unions outside of civic discourse. For everyone else—heterosexual, lesbian, gay, trans—they should be allowed to register their commitments with the State and then equally enjoy the rights and privileges previously associated with marriage. The United States can then return to democracy.

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