

Out of the Courtroom, Into the Streets:

Lesbian Legal Activism, Family Recognition Politics, and the Fight for LGBT Parental

Rights that Shaped the Modern Movement, 1970-1993

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INTRODUCTION

A month after her two young children were removed from her home by police and remanded to the custody of her husband, lesbian mother Jeanne Jullion addressed a gathered group of supporters at a gay rights protest and rally to support her legal defense in June 1977. A year prior, Jeanne had realized that she was a lesbian, divorced her husband, and moved herself and her two sons aged 4 and 8, to San Francisco.¹ The city was by then home to a sizable gay and lesbian community, something Jullion sought out as she started her new life.² It was also a hotbed of gay activism, something she would soon call upon to protect her family. In spring 1977, Jullion's ex-husband charged that she was an unfit mother for her boys due to her sexual orientation, and that he should be granted full custody of the boys. An Alameda County family court judge agreed. Based solely on her lesbianism, not her parenting ability, Jullion's parental rights were revoked.³

After this initial loss, Jullion realized that she would be unable to appeal the decision and continue the custody battle without community support. Jullion and a lesbian feminist attorney that she had met through the community founded a group to support her legal defense: the Jeanne Jullion Defense Fund. The group raised awareness and funds for the case (Jullion's legal bills surpassed \$10,000) and over the next year amassed around 25 dedicated members in the Bay Area.⁴ One of their first major actions was organizing a public rally in front of the San Francisco City Hall to educate the

¹ Margy et al., "Jeanne Jullion," *Lesbian Connection* (E. Lansing, MI: Ambitious Amazons, 01 1978), <https://jstor.org/stable/community.28039181>.

² See Susan Stryker and Jim Van Buskirk, *Gay by the Bay: A History of Queer Culture in the San Francisco Bay Area* (San Francisco: Chronicle Books, 1996).

³ Margy et al., "Jeanne Jullion," in *Lesbian Connection*.

⁴ Interview with Jeanne Jullion, originally cited in Daniel Winunwe Rivers, *Radical Relations: Lesbian Mothers, Gay Fathers, and Their Children in the United States since World War II* (Chapel Hill: University of North Carolina Press, 2013).

community about the case, garner support for the defense committee, and raise money. Turnout was sizable, even attracting gay community leader Harvey Milk, the unofficial “Mayor of Castro Street” and a then-candidate for the San Francisco Board of Supervisors.⁵ Children of lesbians were active participants in the rally, bearing signs reading. “We’re proud not stigmatized” and “We love our gay parents.”⁶



A rally for Jeanne Jullion’s Defense Fund, June 3, 1977. Jullion, right, in a pantsuit, speaks to a group; in the lower right hand corner is a small picture of Jeanne and her two sons. Future openly gay San Francisco city supervisor Harvey Milk can be seen in the background over Jullion’s shoulder. In the foreground, two young children hold signs reading “We’re proud not stigmatized” and “We love our gay parents.” Photo by Cathy Cade.⁷

1977 had seen a sharp rise in backlash to increased rights and visibility for LGBT people. In May, Anita Bryant, a singer and Florida orange spokeswoman announced a campaign to overturn a

⁵ The title referenced the large gay community in the Castro district of the city; in a few months, Milk would become the first openly gay man to be elected to public office in California.

⁶ Cathy Cade, “Rally for Jeanne Jullion and Portrait with Her Boys.” 1977, Cathy Cade Photographs Collection. GLC 41 Gay & Lesbian Center, San Francisco Public Library

⁷ Ibid.

recently passed pro-gay civil rights ordinance in Miami-Dade County. Bryant likened her campaign to a “crusade,” driven by her conservative Christian beliefs in the inherent sinfulness of homosexuality and the unfounded assumption that LGBT people were child abusers who sought to recruit youth. She christened the organization behind the Miami-Dade campaign “Save Our Children from Homosexuality, Inc.,” alleging that by overturning the civil rights ordinance she hoped to “save not only Miami area children from the evils of homosexuality, but all youngsters in the United States.”⁸ After overturning the ordinance in Miami-Dade, Bryant and her followers defeated similar civil rights protections in Wichita, Kansas, Eugene, Oregon, and St. Paul, Minnesota—garnering significant attention from LGBT activists. The story of the repeal of the Miami-Dade civil rights ordinance and its impact on gay liberation activism has been well-covered by other LGBT political histories, but less acknowledged was its impact on LGBT parents.⁹ During the Dade-County campaign, Bryant combined her “save the children” refrain with arguments villainizing LGBT parents. “As a mother, I know that homosexuals cannot biologically reproduce children,” Bryant said at one campaign rally, “therefore, they must recruit our children.”¹⁰ Bryant inspired the Florida state legislature to pass a law prohibiting of adoption by same-sex couples in 1977—the first of its kind.¹¹

On the other side of the country, Jeanne Jullion and her defense committee watched the Bryant campaign unfold with outrage, but not surprise. They knew all too well of the social and legal

⁸ Jeanne Cordova et al. “Bryant Rants...No Sunshine for Gays in Florida” in *Lesbian Tide, The* 6, no. 6 (May 1, 1977). <https://jstor.org/stable/community.28039278>.

⁹ For more see Fred Fejes, *Gay Rights and Moral Panic: The Origins of America’s Debate on Homosexuality* (New York: St. Martin’s Press, 2008)

¹⁰ Anita Bryant, *At Any Cost* (Old Tappan, N.J.: Revell, 1978), <http://archive.org/details/atanycost0000brya>.

¹¹ Individual gay and lesbian parents and same-sex couples had been denied custody on a case-by-case basis over the last decade, as chapter one details, but there were not named specific or explicit statutory prohibitions on gay couples adopting until the Bryant campaign.

hostilities faced by LGBT parents, especially lesbian mothers who for the past decade had been routinely denied custody of their children in family courts. In a flier advertising a protest and rally for Jullion, the defense committee compared her plight to the Florida situation, writing that “Anita Bryant is alive and well and living in the Bay Area.” Further, they made a systemic critique of how the justice system discriminated against gay parents, and that this had implications for judicial marginalization beyond this case and even beyond the gay community:

It is an outrage that a child can be removed from a gay parent’s home without any show of neglect. Taking a child away from a lesbian mother because of the possibility of future stigma threatens the right of any member of a minority group to raise their children...the rights of all of us are in danger. We demand a fair trial.¹²

Establishing a connection between parenthood and civil rights was an important part of the Jullion committee’s consciousness raising and organizing—an argument that would have lasting relevance and implications for LGBT movement politics.

Jeanne Jullion’s case garnered national attention within the gay community and was noteworthy in its high level of politically activity. But as a legal issue involving a lesbian parent facing a hostile court system, it was certainly far from unique. Rather, it was emblematic of larger trends in legal discrimination against lesbian parents in the court system, which inspired specific forms of political organizing by and on behalf of lesbian parents. These developments influenced the wider political trajectory of the LGBT movement. A decade after the Jullion case, parenthood issues would be more relevant than ever to LGBT political mobilization.

¹² Lesbian Mother Jeanne Jullion Lost Her Children; California social, protest, and counterculture movement ephemera collection, SOC MOV EPH; Box 1, Folder 13; California Historical Society. <https://oac.cdlib.org/findaid/ark:/13030/c84f1v1d/>

Family issues certainly did not start out as major LGBT movement concerns. Even in the gay community, “homosexual” and “parent” were widely regarded as categories that did not and could not overlap. In the years after World War II, the some of the earliest gay rights groups (called the homophile movement) formed amid the growth of metropolitan gay communities, increased police harassment of these communities, and national discussions of human and civil rights. Influenced by the Civil Rights Movement, 1950s homophile groups began arguing for the first time that the discrimination and over-policing that the LGBT community faced constituted an infringement on their citizenship rights—that LGBT people were an oppressed minority in the eyes of law and society. In 1969, the Stonewall riots in New York City, led primarily by poor transgender people of color and homeless LGBT youth, transformed the political landscape of LGBT activism. The early 1970s saw the rise of more militant forms of LGBT rights activism, with groups like the Gay Liberation Front, Gay Activist Alliance, Lesbian Feminist Liberation, and Street Transvestite Action Revolutionaries (STAR) protesting police violence and anti-gay discrimination by taking to the streets. It is impossible to identify a singular “gay political agenda” for this period (or any.) Generally speaking, post-Stonewall gay liberation groups articulated broad radical vision that included complete liberation from repressive social institutions, including that of the family (the association being the heterosexual nuclear family and traditional gender roles.)¹³

¹³ For more on this and the homophile movement see: Rupp, Leila J. “The Persistence of Transnational Organizing: The Case of the Homophile Movement.” *The American Historical Review* 116, no. 4 (2011): 1014–39. <http://www.jstor.org/stable/23307877>; Donald Webster Cory, *The Homosexual in America: A Subjective Approach* (New York: Greenberg, 1955), <https://catalog.hathitrust.org/Record/001109885>. For discussion of post-Stonewall gay liberation activism, see Dudley Clendinen and Adam Nagourney, *Out for Good: The Struggle to Build a Gay Rights Movement in America* (New York: Simon & Schuster, 1999).

Activists at the time focused on the most visible (and often violent) forms of repression: mass mobilized efforts to combat police raids on gay bars and later resistance to systemic discrimination in employment, housing, and public accommodations. Historians covering the period have often set their sights on this angle as well. But repression of LGBT people also happened closer to home: when the state infringed upon their right to be parents via custody denials based on a parent's homosexuality, which occurred en masse at the dawn of gay liberation.

This thesis tracks the history of LGBT activism by and on behalf of LGBT parents, with a particular focus on lesbian parents, their legal battles for custody, adoption, and parenthood rights, and the political organizing and institution building that went into supporting this legal activism. It aims to connect the history of advocacy for the right of LGBT people to parenthood and legal protections for their family units to LGBT movement political activism, especially at moments when LGBT family politics have been overlooked or erased.

In the decade after the Stonewall Riots, LGBT parents, especially lesbian mothers, lost custody of their children in “epidemic proportions.”¹⁴ Typically, these were cases in which women left heterosexual marriages with men and were then drawn into custody conflicts over the children from these unions. Judges revoked custody of their children not because of parenting ability, As the experience and fear of losing one's children was particularly widespread and devastating, custody and adoption motivated three decades of activism in the lesbian community. 1970s lesbian mothers leaving heterosexual marriages with their children responded to discrimination in the court system and fought

¹⁴ Laura Benkov, *Reinventing the Family: The Emerging Story of Lesbian and Gay Parents* (New York :, 1994), <http://hdl.handle.net/2027/uva.x002736106>, 40.

for their right to be parents via child custody cases and by forming grassroots legal aid networks and organizations. Though on the margins of the LGBT movement, this activism within and outside the courts won important concessions for gay and lesbian parents. In the 1980s and 1990s, greater numbers of lesbians (and to a lesser extent gay men) became interested in parenthood. Changing cultural attitudes towards parenthood and the extent that legal insecurities affected lesbian parents and their children in daily life influenced the political priorities of many in the lesbian community. Family and parenthood issues became more central to lesbian movement politics. These legal issues and altered political priorities were a critical factor that laid the foundation for 1990s and early 2000s litigation over marriage equality and debate over its merits. The legal issues tied to family protections in turn made LGBT parents in particular supporters of pursuing marriage equality as a political goal, as legal marriage would respond to the needs of their families by extending to them sorely needed benefits and protections.

I argue that the efforts of lesbian mothers and legal activists set a political agenda for what I call “LGBT family recognition politics.” Family recognition politics consisted of political activity around issues related to custody, adoption, co-parentage, and legally recognized unions, all of which center the rights of LGBT individuals, partners, and their children to exist and be recognized as families in the eyes of law and society.

In terms of protections for the marginalized, the law can be both a help and a hindrance—in the LGBT context, it has been more often used for the latter: from the criminalization of same-sex relationships via sodomy laws to “don’t ask/don’t tell” measures. In the words of one scholar, ‘Law has been a tool for the repression of lesbian existence more often than it has been a tool for lesbian

liberation.”¹⁵ Still, when they were brought into a punitive and hostile court system, lesbian parents pushed the state to recognize a broader definition of family, one that encompassed same-sex parents, their partners, and their children. Lesbian mothers transformed the institution of family in American life, even as traditional “family values” were mobilized against them. They challenged the state’s encroachment on their families by advocating for legal recognition of their families and for the right to raise children openly as lesbians. The impact of this legal activism was not constrained to the courts themselves. Cases around individuals involved collective action and political organizing in a similar vein to that of Jeanne Jullion’s defense committee. Moreover, lesbian parents took their assertion of the right to parenthood and family recognition out of the courtrooms, into the streets, their children’s schools, and to other political organizing endeavors. More broadly, the legal activism of lesbian mothers reshaped and broadened legal definitions of family drove LGBT family issues to the forefront of the LGBT movement’s focus.

Historiography

My period of focus, from 1970 to the early 1990s, was a dynamic time in LGBT history and contained no shortage of grassroots mobilization, legal activity, and forays into electoral politics for the gay community, and has thus been the subject of numerous political histories of the LGBT movement.¹⁶ But by and large, these works have not given major attention (or any at all) to lesbian

¹⁵ Julie Shapiro, A Lesbian-centered Critique of Second-parent Adoptions, 14 *BERKELEY WOMEN’S LJ*. 17 (1999). <https://digitalcommons.law.seattleu.edu/faculty/64>

¹⁶ Examples include: *Out for Good: the Struggle to Build a Gay Rights Movement in America*, which chronicles the emergence of gay rights organizing after the Stonewall riots with detailed accounts of municipal struggles for gay rights provisions as well as how intra-community conflict shaped the movement; Timothy Stewart-Winter, *Queer Clout: Chicago and the Rise of Gay Politics, Politics and Culture in Modern America* (Philadelphia: Penn, University of Pennsylvania Press, 2016), which examines the movement of LGBT issues into electoral politics in urban centers, focusing on Black progressive and gay voters forged alliances shared issues of police brutality and harassment. Though important works, their non-coverage of any organizing pertaining to custody and parental rights, limits them.

custody and parental activism. While that does not negate their observations and arguments, by failing to cover family issues they have missed out on crucial aspects of lesbian political activity. Since family politics issues undergirded later developments like amassing interest in gay marriage and domestic partnership issues, I argue that by not covering these issues a significant aspect of LGBT political development has been overlooked.

Social histories of lesbian life have also not conclusively told this story. Lillian Faderman's seminal work on lesbian history in the 20th century, *Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth-Century America*, briefly discusses lesbian parenthood in the 1980s as a signifier of changing cultural attitudes towards motherhood and adoption of middle-class lifestyles, but does not touch upon custody cases of the 1970s.¹⁷ Nor does the book unpack the ways in which custody cases in the 1970s or adoption cases of the 1980s created or influenced political activity in the lesbian movement.

This thesis is greatly informed by two crucial works to analyze the development of parenthood and family issues in the LGBT community and their lasting impacts: Carlos A. Ball's *The Right to be Parents: LGBT families and the Transformation of Parenthood* and *Radical Relations: Lesbian Mothers, Gay Fathers, and their Children in the United States since World War II* by Daniel Rivers. Ball chronicles how gay and lesbian custody and adoption cases contributed to a redefinition of "family" in American law, from those fighting against custody revocation to custody battles between

¹⁷ Lillian Faderman, *Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth-Century America*, electronic resource (New York : Jackson: Columbia University Press Perseus Distribution [Distributor], 2012), <http://www.columbia.edu/cgi-bin/cul/resolve?clio14139715>.

gay and lesbian partners.¹⁸ Ball's methodological approach centers what happened within courtrooms in gay and lesbian custody and adoption cases, while surrounding social or political developments take a peripheral role. However, he does not discuss political organizing in detail. In contrast, Rivers puts emphasis on the political organizing done by lesbian mothers and gay fathers in a way that is unparalleled in the literature, giving extensive attention to defense committees/defense funds and LGBT legal advocacy organizations. By tracking lesbian and gay families from the 1950s to the early 1990s, he argues that the sexual revolution of the 1960s that undergirded the feminist and gay liberation movements was also a "family revolution," one in which LGBT parents promoted a diversity of family types and carving out new parental roles in law and society.¹⁹

I also draw heavily from George Chauncey's 2004 book *Why Marriage?: The History Shaping Today's Debate Over Gay Equality*. Written in the thick of early 2000s debate of same-sex marriage, Chauncey explores its origins, noting how the fallout of the AIDS crisis and a baby boom among lesbians exposed them to the added burdens—legally, economically, and socially—of not having same-sex unions recognized made marriage more a more attractive option for LGBT people than ever before. Social change had outpaced legal change, calling for a resolution. At the same time, contradictory developments—increased social tolerance for LGBT people in broader society and right-wing backlash to the specter of same-sex marriage—pushed political attention on the marriage

¹⁸ Carlos A. Ball, *The Right to Be Parents: LGBT Families and the Transformation of Parenthood*, electronic resource (New York: New York University Press, 2012), <http://www.columbia.edu/cgi-bin/cul/resolve?clio13209802.001>.

¹⁹ Rivers, *Radical Relations*.

question.²⁰ Chauncey's work is one of the first to analyze why marriage equality became a political goal in the LGBT movement from a historical perspective.

Where this thesis differs from and elaborates upon these works is that it is among the first to concept of "family recognition," which appears time and time again in legal cases and legal literature surrounding LGBT people and their children, to political mobilization on behalf of parenthood rights and marriage rights. It draws direct through lines from 70s custody activism to marriage equality litigation of the early 2000s. Given how contemporary the marriage equality movement in the United States has been, full historical understanding of its origins and implications is still developing. I hope to contribute to that historical understanding by tracing the how issues of sexuality, family, marriage, legal recognition, and civil rights intersect.

"Nothing is as threatening to a parent as the threat to remove his or her child," Mary Bonauto, lead counsel in *Goodridge v. Massachusetts* and architect of the legal argument for marriage equality, wrote in 2005. "As a result, some of the first LGBT civil rights cases were custody cases."²¹

Outline of Chapters

Chapter one, "Sexuality on Trial," discusses the contours of lesbian mother custody litigation from 1970 to 1977 and the political organization that developed to support mothers going through the harrowing experience of a custody case. In countless custody battles, legal statutes and judicial reasoning that unjustly equated sexual orientation with harm to a child were used to bring the weight of the law down upon gay and lesbian parents. It argues that specific pressures that lesbian parents

²⁰ George Chauncey, *Why Marriage? The History Shaping Today's Debate over Gay Equality* (Cambridge, MA: Basic Books, 2004).

²¹ Mary L. Bonauto, "Goodridge in Context," *Harvard Civil Rights-Civil Liberties Law Review* 40, no. 1 (2005): 13.

faced within the courtroom and exclusion from other lesbian liberation organizing drove them to develop their own forms of legal and political advocacy: most commonly defense funds and defense committees. Lesbian mother activism allowed women to make forceful appeals of their cases and ultimately win their custody battles as they simultaneously tied these struggles to larger discussion about parenthood as a civil rights issue.

The second chapter, “Lesbian Family and Family Recognition Politics from the Margins to the Center,” shifts focus to the “lesbian baby boom” which saw a sharp increase in the number of lesbians who wanted to have children and began doing so in large numbers and its impact on activism in law in politics in the 1980s. Crucially, the baby boom altered community thinking about motherhood and parenthood and exposed many more women to the legally precarious position of their families. This legal insecurity was due in large part to the fact that non-biologically related parents did not have a means of establishing legal relationships to the children of their partners and therefore lacked the legal rights necessary to care for their children. Desire among lesbian parents to solidify familial protections helped reshape the community’s political priorities, emphasizing issues pertaining to family and parenthood more than ever before. LGBT family recognition politics—issues surrounding custody, adoption, and legal same-sex partnerships—moved closer to the forefront of movement focus.

The final chapter, “From Motherhood to Marriage” picks up where the second chapter left off, exploring how the desire to attain family recognition in the eyes of the law—especially in the context of conservative anti-gay backlash and complicated custody cases that hinged on the legal relationships between same-gender couples—drove interest in marriage. As the leading source of legal protections and benefits for families, the denial of legally recognized same-sex unions marginalized

LGBT parents and their children in ways disproportionate to heterosexual couples and their children.

LGBT parents connected equal protections for their families to equal protections under the law. In so doing, they framed both parenthood and marriage as civil rights issues for the LGBT community.

CHAPTER ONE: Sexuality on Trial, 1970-1977

Standing before a Torrance, California family court on December 12, 1973, Lynda Mae Chaffin watched as her parents and ex-husband testified that she was an “unfit mother” to her two pre-teen daughters, Tracy and Rachelle. While Chaffin and her lawyer highlighted the loving relationship between Chaffin and her daughters, submitting statements from the children affirming that they would like to live with their mother, the judge ultimately sided with Chaffin’s parents and ex-husband—denying custody to Chaffin because she was an out lesbian who lived with another woman.

The children’s father criticized Chaffin for her relationship, testifying that “A woman such as this should not have custody of the children” as they could be “exposed to the behavior of their mother and her girlfriend.”²² An appellate judge for California’s Second District, echoed Chaffin’s ex-husband, writing in his opinion that Chaffin “does not merely say she is homosexual. She also lives with the woman with whom she has engaged in homosexual conduct, and she intends to bring up her daughters in that environment.” Ultimately, he concluded that “permanent residence in a homosexual household would be detrimental to the children and contrary to their best interests.”²³

Chaffin’s story is emotional and sobering for the way in which she fought for her children and the severity with which the judge reprimanded her on the basis of sexual orientation and stripped her of her right to parenthood. But it was far from an isolated occurrence. Openly gay and lesbian parents before her had near universally fought and lost custody in family court. The court’s ruling in the

²² Chaffin v. Frye, 45 Cal. App. 3d 39, 119 Cal. Rptr. 22, 1975 Cal. App. LEXIS 1662 (Court of Appeal of California, Second Appellate District, Division Two January 31, 1975).

²³ Ibid.

Chaffin case and many others discussed in this chapter reveal the extent to which courts were unjustly hostile and discriminatory to lesbian mothers and gay fathers into the 1970s—painting them as sexually deviant, mentally ill, immoral, and harmful to children. Family courts followed a doctrine that custody cases should be decided “in the best interest of the child,” a subjective standard meant to gauge the ability of the parent to meet the needs of the child. Near uniformly, judges held that a child having openly gay or lesbian parents, by virtue of their being gay or lesbian, contradicted the best interest of the child, barring all other factors—no matter if a lesbian mother was a primary caregiver since birth or if a child testified that she would want visitation to see her gay father. For gay women who were coming out of the closet *and* coming out of heterosexual marriages with children, loss of custody rights was a pressing concern. In droves, lesbian mothers were labeled “unfit” by courts and had custody over their children revoked or advised to settle outside of court, knowing the inevitable outcome. In effect, lesbian mothers were effectively stripped of their right to be parents as their sexuality was put on trial.

As the gay liberation movement gained traction in the years after the Stonewall Riots and fought various forms of discrimination, marginalization, and violence, lesbian parents began to argue and win child custody cases that challenged the institutionally prejudiced status quo. Amid custody battles, lesbian mothers and their allies—primarily other gay liberation and lesbian feminist activists—organized systems of support for mothers fighting for their day in court.

This chapter analyzes the unique forms of hostility and discrimination that lesbian mothers faced at child custody trials because of their sexual orientation as well as the added difficulties of finding and paying for legal representation. It then examines how the pressures placed on lesbian

mothers drove unique and driven advocacy, particularly in the form of legal defense funds. Finally, I explore how Lesbian mother activism and independent media coverage in support of that activism allowed more women to make forceful appeals of their cases and ultimately win their custody battles as they simultaneously tied these struggles to larger discussion about legal rights, bodily autonomy, and reproductive justice—setting the agenda for later movement action. I call upon case records from lesbian custody cases, articles in the independent gay press, and the newsletters and papers from a leading advocacy organization to chronicle how lesbian mothers fought for their right to be parents.

I. Hostile courtrooms: “Unfit Mothers” and “the Best Interest of the Child”

Prior to the Stonewall Riots in 1969, LGBT people primarily had children within heterosexual relationships. Lesbian mothers who co-parented with female partners and formed families had to be extremely secretive—as a result, it is difficult to determine what these families looked like or just how common lesbian parents were.²⁴ Accounts of lesbian women from the pre-Stonewall era reveal that they usually had children as the result of heterosexual marriages, sex work, or relationships with other women who had children from these means.²⁵

Into the early 1970s, the majority of lesbian mother and gay father custody cases involved men and women who had divorced a spouse and left their heterosexual marriage upon coming out (or having been forcibly outed.). Gay fathers usually fought for visitation rights, as courts were predisposed to give custody to mothers, while lesbians fought for either visitation or outright custody.

²⁴ Colleen Marea Quinn, "Riding out the Storm After the Stonewall Riots: Subsequent Waves of LGBT Rights in Family Formation and Reproduction," *University of Richmond Law Review*, 54, 733 (March, 2020).

²⁵ Ibid

Both were denied if the parent's homosexuality was revealed to the court.²⁶ Alternatively, lesbians and gay men gained custody at the cost that they denounce their homosexuality, not live with a same-sex partner, or be involved with the LGBT community in any form.²⁷ Institutionalization of prejudice within the family court system, surveillance of "homosexual conduct," and financial barriers heightened hostility against lesbian mothers in family courts. As one advocate observed, "There wasn't a single case in the United States in 1972 in which a lesbian mother had won, not only custody...but even won normal visitation rights."²⁸

Court rulings on lesbian mother custody cases from 1967 to 1977 reflect the institutionalization of prejudice against sexual minorities and those that did not adhere to a heterosexual nuclear family convention in family courts. To understand the later advocacy on behalf of lesbian mothers, it is crucial to understand how these cases functioned and what facets of courts made it so difficult for lesbians to retain custody. This section surveys cases from the early 1970s and examines the mechanisms under which lesbians were denied custody.

These cases were determined under the doctrine that custody should be allocated "in the best interests of the child," a nebulous standard that allowed family court judges to make broad arguments that exposure to a parent's homosexuality as detrimental to a child's wellbeing, barring all other factors. Courts labeled lesbian mothers "unfit" on account of her homosexuality and/or relationships to other women and recommended that custody of children be given to ex-husbands, family members,

²⁶ Rivers, *Radical Relations*.

²⁷ Chaffin v. Frye

²⁸ *Mom's Apple Pie: The Heart of the Lesbian Mother's Custody Movement*, Directed by Jody Laine, Shan Ottey and Shad Reinstein. Frameline Media, San Francisco CA, 2006.

or the state. In these cases, I argue that it was the sexuality of mothers, rather than the standard of living for the children, that was scrutinized by the courts.

The available historical record of lesbian mother custody cases has been limited by the fact that family court proceedings and decisions are not publicly published anywhere in the country. As a result, family court decisions and the facts of cases are only publicly available in cases that were appealed to a higher court, where opinions were issued publicly. Since appeals cost significant time and resources, the case record skews whiter and more middle-class than was likely true of all lesbian mothers. To address this gap, I also look at independent LGBT newspapers, interviews, and newsletters from advocacy organizations, discussed more in following sections, to highlight the ways that homophobic discrimination was intertwined with racial and class discrimination.

In many cases, anti-sodomy laws, laws that criminalized non-procreative sex and same-sex intercourse as “crime[s] against nature,” were weaponized against gay and lesbian parents. Though largely not enforced in and of themselves by the 1960s, courts applied these statutes as grounds to justify other forms of legal discrimination against sexual minorities, including in custody cases.²⁹ Judges argued that a parent’s homosexuality was “per se,” grounds for denying custody, since engaging in same-sex acts was inherently illegal.

An illustrative example is the case of Ellen Nadler, which occurred in California in 1967. Nadler divorced her husband in that year, which instigated a child custody proceeding. Both parties wanted sole custody. At the trial, Nadler’s husband testified that she was a lesbian, which Nadler did

²⁹ For more on the application of anti-sodomy laws, see Rivers, *Radical Relations*.

not deny. In its ruling, a trial court noted that “The homosexuality of plaintiff as *a matter of law* constitutes her not a fit or proper person to have the care, custody and control of . . . the minor.”³⁰

Here, California’s prohibition against sodomy and “engaging in sex acts with other females,” which remained on the books until 1975, was invoked to bar Nadler from custody of her child and place the child with their father.³¹

State sodomy laws continued to be weaponized against parents. Indeed, in the Lynda Chaffin case mentioned above, six years after *Nadler*, a California court again invoked penal laws against sodomy in its ruling, saying, “certain homosexual acts [are] a criminal offense in California, *albeit an offense not readily susceptible to criminal prosecution.*”³² While the court acknowledged the approaching obsolescence of anti-sodomy laws, they nonetheless invoked them against Chaffin by tying criminality to the environment of the mother’s home and possible “exposure” to homosexuality.

More generally, courts repeatedly argued that lesbian mothers should not be allowed custody of their children because the presence of a lesbian relationship in the household or exposure affection between two women would be immoral and harmful to the children. For example, in one 1974 New York case, a judge ruled that a relationship between a mother and her partner in the same apartment as a child “create[d] an improper environment” for the child, finding that the child was “emotionally disturbed by virtue of this environment.”³³ In cases where custody or visitation *was* granted to lesbian

³⁰ *Nadler v. Nadler* Superior Court of Sacramento County, 255 Cal. App. 2d 523, 63 Cal. Rptr. 352, 1967 Cal. App. LEXIS 1305 (Court of Appeal of California, Third Appellate District October 30, 1967)

³¹ *Ibid.* After an appellate court upheld the lower court’s denial, Nadler again appealed, sending the case to the state supreme court. Surprisingly, the state supreme court ultimately ruled that Nadler should be allowed custody of her child and that the trial court had erred in not allowing more discretion. However, the court was careful to note that penal laws against same-sex intercourse could still be invoked by judges.

³² *Chaffin v. Frye*

³³ *In re B.*, 85 Misc. 2d 515, 380 N.Y.S.2d 848, 1976 N.Y. Misc. LEXIS 2025 (Supreme Court of New York, Onondaga County January 2, 1976).

mothers, it was sometimes done with a stipulation that partners would not be allowed in the same household as the child or to stay in the home overnight, nor was the mother allowed to “take her to any place where homosexuals are present” or “involve her in homosexual activities.”³⁴

Courts also fixated on the sexual aspects of lesbian relationships and the potential that children could be exposed to them, resulting in demeaning treatment and lines of questioning in the courtroom. Lorraine Towend, who lived with her lover Vicky Dickinson along with her two elementary-school aged children in Ohio, was asked “how do you do it?” (in relation to lesbian sex) and if they had intercourse while sharing an apartment with children. The trial court speculated if that the women’s sex lives were “to the neglect of supervision of the children.”³⁵

Though the women and their attorneys objected to this line of questioning as crude and irrelevant to the wellbeing of the child, as no heterosexual couple would be asked such questions, an appellate court upheld the invasive questioning. Going even further to demean the couple, an appellate judge wrote “I was struck by the primacy that lesbians, at least the two lesbians who testified here, give to multiple orgasms. They mean more to them apparently than the children.”³⁶ Beyond the insulting and gross language, the idea that children would be uniquely harmed by sex between two women in a household while heterosexual relationships would not receive the same scrutiny demonstrates the extent to which courts conflated policing lesbian parents with “safeguarding” children.

³⁴ Ibid.

³⁵ Towend v. Towend, 1976 Ohio App. LEXIS 6193, 1976 WL 189159 (Court of Appeals of Ohio, Eleventh Appellate District, Portage County September 30, 1976). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRS-VF50-0054-C1GS-00000-00&context=1516831>.

³⁶ Ibid.

Race was also a factor in determining the “fitness” of a lesbian mother and her home environment. Legal historians have documented racial bias, especially against African Americans, in custody cases and the child welfare system.³⁷ For Black lesbians, homophobia and racism intertwined in the court room, as Earnestine Blue, a lesbian mother from California who faced a court case in the early 1970s later reflected, “I think that homophobia plays into it, I think the racism plays into it. ... I think that they felt like I was way worse [because I was a lesbian].”³⁸ Facing loss of her children and mounting legal fees, Blue fled the state in 1974 and went into hiding.

Psychiatrist testimony was also invoked in lesbian custody cases. In addition to testimony from plaintiffs/defendants and arguments from their attorneys, family courts let parties call “expert witnesses” to weigh in on the case. In lesbian custody cases, these were mostly child psychiatrists. Lesbian mothers also brought in psychiatrists to testify that a parent’s homosexuality would not be harmful to the development of a child nor influence the child’s own sexuality. Beyond advocacy in a specific case, expert witness testimony was a way in which lesbian mothers and their advocates sought to challenge longstanding biases in the court system through education. However, even when pro-gay psychiatrists were brought in to testify, they were not always heeded by the courts and custody could still be denied. Moreover, reports from lesbian mothers in interviews and newsletters indicate that the cost of bringing in an expert witness piled onto already exuberant legal fees.

Given the hostility towards out lesbians in the courtroom, and that hiring representation was incredibly expensive, many lesbian mothers were advised or pressured to settle out of court and

³⁷ Maldonado, S. (2017), Bias in the Family: Race, Ethnicity, and Culture in Custody Disputes. *Family Court Review*, 55: 213-242. <https://doi.org/10.1111/fcre.12274>

³⁸ Interview with Earnestine Blue, quoted in *Mom's Apple Pie*, Directed by Jody Laine.

relinquish custodial rights, often to ex-husbands. This pressure was especially high for poor lesbians and lesbians of color, who lacked the resources to bring their cases to courts, and so are underrepresented in the court record.³⁹ By relinquishing custody, many of these women lost contact with their children for years, if they were able to reconnect at all. In this environment of the discrimination faced in the court room, pressure to settle, and financial challenges drove specific and concerted forms of activism by and for lesbian mothers.

II. Barriers to activism and overcoming exclusion

The threat of a protracted child custody proceeding hung over the heads of lesbian women who had recently divorced their husbands or who were still in heterosexual marriages and prevented many from coming out. Moreover, joining an LGBT activist group was a risky behavior for those who were quietly living as lesbian mothers without the law's knowledge or intervention. As custody cases can be reopened at any time, even after an initial grant had been issued, mothers lived in near constant fear that custody could be revoked if one's lesbianism was brought to the attention of the courts. As a result, lesbian mothers faced heightened barriers to participating in LGBT activism. For example, in a letter to the Daughters of Bilitis, an anonymous lesbian mother wrote that she would attend meetings of the organization if not for fears about her children, and added that she believed many others were in a similar position.⁴⁰

³⁹ Benkov, *Reinventing the Family*.

⁴⁰ Rivers, *Radical Relations*

In other cases, parents suffered retaliation for participating in gay liberation activism. In one case, a judge used the fact that a lesbian couple were active in a Kent State campus gay liberation organization and an interview they had given to a local newspaper in which they discussed gay liberation as supporting evidence for their decision to bar custody, saying that such involvement made the environment not suitable for the children.⁴¹ The threat posed by increased visibility via activist involvement was a deterrent to lesbian mother participation in gay liberation activism.

On the other hand, even when they could participate in activism, lesbian mothers faced social marginalization within the lesbian-feminist movement. As has been well documented, a vibrant women's movement, termed second-wave feminism, emerged in the 1960s and reached its crescendo in the 1970s. The 1970s was also the birth of lesbian-feminism as a radical social movement combining aspects of gay liberation and second-wave feminist ideology. Lesbian-feminists saw their status in society, relationships to one another, and the wider world as being influenced by *both* their gender and sexual orientation together. As lesbian activists grew tired of sexism in the gay liberation movement and homophobia in the women's movement, they began to form their own organizations and develop critiques of the social and legal structures that punished women who loved women: patriarchy, nuclear family (which pushed women into heterosexual relationships and traditional gender roles), the criminalization of same-gender desire, and the institutions that upheld this oppression.⁴² These ideas, in turn, influenced the political aims of the lesbian-feminist movement—

⁴¹ Towend v. Towend 1976; Two years prior, a court had restricted a father's visitation rights not because he was gay, but because he had been involved with the gay rights movement and brought his kids to the Firehouse, a meeting place for the Gay Activist Alliance, In re J. S. & C., 129 N.J. Super. 486, 324 A.2d 90, 1974 N.J.

⁴² For more see Verta Taylor and Leila J. Rupp, "Women's Culture and Lesbian Feminist Activism: A Reconsideration of Cultural Feminism," *Signs* 19, no. 1 (1993): 32–61.

emphasizing the creation of lesbian-specific organizations and spaces, and to orient one's life and politics more broadly around women as opposed to men.

In this frame of thinking, “motherhood” as a concept had considerable baggage tethered to it, and to lesbian-feminists of the time it was reminiscent of suppressive sexist and heteronormative roles that the women of prior generations had been forced into. To be sure, there were substantive critiques of how patriarchal ideals manifested in the family and the negative impact this had on women, particularly how traditional family roles isolated women from one another. But a corollary result of this thinking was also an at times pejorative attitude to lesbian women who were mothers, and the extent to which impacted on the movement's own community members was neither fair nor productive to achieving movement goals. Another aspect of the stigma faced by lesbian mothers was the idea that they had been “tainted” by past heterosexual relationships and were thus unable to fully commit to the movement—or even that they were truly lesbians.

These sentiments impacted the extent to which lesbian mothers were able to be involved in community and political organizing. In letters to lesbian-feminist movement publications, lesbian mothers complained about a lack of childcare at lesbian feminist events, which then precluded them from attending.⁴³ Another writer reported that other lesbian feminists had insulted her at an activist meeting because she had been married to a man and had a child, to which the writer quipped, “statistically, most lesbians are married with children,” referencing the likelihood that many women were unable or had not yet come out, especially after having been married.⁴⁴

⁴³ Michimi Amano, Christina Lundberg, Lyn Davis, Karin Wandrei, K. R., Julie Jenkins, Margy, and Judy. “Lesbian Connection.” *Lesbian Connection* 1, no. 8 (November 1, 1975): 1–28. <https://jstor.org/stable/community.28039163>.

⁴⁴ Beth Elliott. *Lesbian Tide, The* 2, no. 10/11 (May 1, 1973): 1–44. <https://jstor.org/stable/community.28039255>.

However, as the decade continued and the issues of lesbian mother issues remained so dire and sobering, lesbian mother issues developed their own forms of activism via defense funds and defense committees. As these defense committees grew, they became more integrated into other forms of lesbian activism.

III. Early Defense Committees, Defense Funds, and the Lesbian Press

The difficulties of mounting a legal defense for lesbian mothers in custody cases and the costs of this defense drove the creation of lesbian mother defense funds and committees throughout the 1970s. These groups provided financial support, located attorneys, and provided moral and emotional support to mothers going through the tumultuous experience of a court case. In the early part of the decade, defense committees arose around specific cases, typically those that were being appealed after a mother had lost custody.

Also in the 1970s, a vibrant lesbian print culture was born. Periodicals, newsletters, and magazines like *The Lesbian Tide*, *Lesbian Connection*, and *Lavender Woman*, among others, circulated widely. These publications contained news articles relevant to lesbian issues, anti-capitalist and anti-sexist political commentary, and letters and writing that were submitted from women across the country. They helped shape, and were in turn shaped by, the growing lesbian community and its political consciousness and priorities. Custody issues were well represented within lesbian print culture. *The Lesbian Tide* ran a story about lesbian mothers and custody battles in its second ever issue in 1971. Early to mid-1970s lesbian periodicals ran frequent stories on ongoing custody cases. The

Tide and *Lesbian Connection* developed dedicated recurring sections titled “Motherhood” and “Updates on Custody,” with the *Tide* specifically mentioning activist organizing on custody issues.⁴⁵

Lesbian mothers and their defense committees used the independent lesbian press as a means of organizing, fundraising, and consciousness raising. Coverage of custody cases directed the community to action, typically encouraging donating to specific defense funds or joining defense fund committees, the information of which was listed at the bottom of the article. For example, in 1972, Beth Elliott, a transgender lesbian and friend of a mother who had won custody but was ordered to live apart from her partner and her partner’s children requested that readers of *The Lesbian Tide* send funds to a lawyer’s office to support her legal defense.⁴⁶ In another instance, a group called SOS Mother’s Defense Fund called for donations to support the appeal of a woman from Buffalo, New York who had lost custody to her ex-husband.⁴⁷ Moreover, other articles provided advice directly to lesbian mothers.

The grassroots activism around the case of Lynda Chaffin, discussed in the introduction of the chapter, was yet another example of defense funds and the independent lesbian press building activist networks of support for lesbian mothers. After a judge initially ruled against Chaffin’s custody claim over her two daughters in 1973, word of her custody loss and the hostility she faced at trial spread to a Los Angeles-based lesbian feminist newspaper, *The Lesbian Tide*. In response, lesbian activists, including many staff members of the *Tide*, founded the Women’s Defense Committee in early 1974.

⁴⁵ Sharon McDonald, Julie Robinson, Jeanne Cordova, Jeanne Cordova, Cheryl Diehm, Jeanne Cordova, Pat Califia, et al. “Updates on Custody” *Lesbian Tide* (1974), *The* 7, no. 2 (September 1, 1977): 1–40. <https://jstor.org/stable/community.28039280>.

⁴⁶ Beth Elliot “Lesbian Mother Victory.” *Lesbian Tide*, *The* 2, no. 2 (September 1, 1972): 1–28. <https://jstor.org/stable/community.28039247>.

⁴⁷ Mimi Lewin, Clementine Leavitt, Laura, Cherry, Chocolate, M. Punk Duck, Judy Cohen, et al. “Lavender Woman.” *Lavender Woman* 4, no. 1 (February 1, 1975): 1–17. <https://jstor.org/stable/community.28039122>.

The group dedicated themselves to raising funds and garnering support for Chaffin and Anna Marie Nunes, a lesbian who was fired because of her sexuality earlier that year.⁴⁸ The committee connected Chaffin to Al Gordon, a heterosexual lawyer who aided LGBT legal causes after his son came out as gay, who represented her appeal. Connecting women facing custody cases to sympathetic lawyers was an important function of many of these early defense committees.

The Women's Defense Committee also aimed to turn the attention of the larger lesbian community towards the case, publishing multiple articles about the case in the *Tide*. In one, members of the defense committee called on the lesbian and gay community to "let the "justice system" know that Lesbians will not take the oppression of their sisters sitting down," tying Chaffin's experience to homophobic oppression more broadly.⁴⁹ To raise money for legal fees, they solicited donations in LGBT newspapers and hosted fundraising events, including a "sing-in protest"—a quasi-political-rally meets music festival—held in a San Francisco park, where \$1 admission was charged to raise money for Chaffin's defense. After a protracted legal battle that included two failed appeals and several months spent in hiding, Lynda Chaffin successfully regained full custody—as an out lesbian—in May 1975. Litigating the appeals alone, not even considering the other forms of support provided, would have been impossible had it not been for the defense committee and community support.

These early defense committees and lesbian mother groups were perennially underfunded and faced difficulty gaining support from larger legal organizations.⁵⁰ Moreover, these groups appear to

⁴⁸ Ibid.

⁴⁹ Rita A. Goldberger, "The Tide." *Lesbian Tide, The* 3, no. 8 (April 1, 1974): 16. <https://jstor.org/stable/community.28045724>.

⁵⁰ For example, a 1972 article chronicles tensions between lesbians and N.O.W.'s legal defense fund after they refused to take on a lesbian custody case, calling it a homosexual as opposed to a "women's issue." See: *Lesbian Tide, The* 1, no. 8 (March 1, 1972) <https://jstor.org/stable/community.28039242>.

have largely folded after a few months or when a case was finished, and therefore lacked the longevity and connections necessary to sustain long-term action. Still, their evolution and growth represented an important source of support—financial, legal, and emotional—for lesbian mothers who faced a hostile court system. Before the early 1970s, such organizing was nonexistent. The prevalence of these cases, alongside growth of lesbian communities in cities like San Francisco and interest in gay liberation activism prompted the growth of these organizations, which in turn reversed the trend of custody battles. Now, with the resources necessary, women were given a chance to organize and win.

IV. LMNDF: “Raising Our Children is a Right”

In July 1974, Geraldine Cole, Lois Thetford, and two other women met in Seattle, Washington. All were lesbians, and three of the four had children. None of them had any legal training but were all too familiar with the harrowing realities of lesbian custody cases. After discussing “oppression from inside the lesbian movement and externally,” and lamenting that past lesbian mother groups in other cities had not been able to sustain themselves long-term, the women decided to form a group of their own.⁵¹ The Lesbian Mothers National Defense Fund (LMNDF) was born.

In November 1974, a few months after its founding, the organization announced that it had 40 members nationwide, and had identified six lawyers working with them or who had offered to help, including some referrals from the ACLU of Washington state.⁵²

⁵¹ *Mom’s Apple Pie*, November 1974, 1.

⁵² *Mom’s Apple Pie*, November 1974, 2.

Cautious to avoid what they saw as the pitfalls of previous groups that had stretched themselves too thin by focusing on issues of raising a child more broadly, the LMNDF defined their scope as squarely in supporting mothers fighting custody cases through conducting legal research, tracking current and past custody cases, and raising funds to offset the financial burdens of these cases. In an article published by the group in October 1974 titled “Lesbian Mothers are Fighting Back,” LMNDF staff announced that they would be “collecting briefs, transcripts, and decisions from every lesbian mother case we can get our hands on” and requested donations of these materials. “Our hope is that we can serve as a clearing house for lawyers, researchers, and lesbians who have need of information on cases,” they wrote.⁵³

Over the next few years, LMNDF amassed contact lists of lawyers and expert witnesses across the nation. Women who found themselves in a custody proceeding called and wrote to LMNDF for resources from a variety of states, and LMNDF would distribute relevant contact information, practical advice, and materials that they had collected to share with lawyers. LMNDF materials repeatedly emphasized that the most important part of winning a custody case was a good lawyer—one who did not simply “phone in” on the case and would be open to education.⁵⁴

Part of what set LMNDF apart from earlier defense committees was its commitment to collecting and distributing legal research and resources about lesbian mother cases. For example, in a September 1976 newsletter, LMNDF reported on a case where a woman that they had helped had won her custody case, and offered to send copies of the decision to any interested parties for \$2 (in part

⁵³ “Lesbian Mothers Fight Back” *Lesbian Connection* 1, no. 1 & 2 (January 1, 1974): 16. <https://jstor.org/stable/community.28039157>.

⁵⁴ “Lawyers of Lesbian Mothers” *Mom’s Apple Pie*, January 1977 .

to cover the cost of postage.)⁵⁵ In another newsletter the organization advertised a packet of case opinions, briefs, law journal articles, and other resources for mothers fighting custody battles and their representation that could be purchased by interested parties by a donation to the organization.⁵⁶ They also put together videos meant to educate courts about lesbian motherhood, including interviews with children and neighbors of lesbians to enter as exhibits at trial.⁵⁷ At least one case reported using these tapes.

Though lesbian mothers were the ones bringing the cases, most of their lawyers were heterosexual men, the vast majority of whom were not particularly LGBT advocates. Many lesbians spoke about their difficulties finding lawyers who would represent them, and when they did, the quality of representation being poor.⁵⁸ The ACLU and nascent LGBT legal advocacy organizations like Lambda Legal, founded in 1973, did not take on any lesbian custody cases until the 1980s. As such, the LMNDF filled a critical void. By conducting and collating research and becoming a hub of legal information, LMNDF took an active position in legal advocacy and presenting legal arguments and education to the courts and empowered other lesbians to do the same.

In addition to providing legal resources, fundraising for various cases remained a top priority of the LMNDF. The legal fees were exorbitant, particularly for women who were facing public scorn and potential job loss because of publicly fighting their case. An early LMNDF newsletter paints a depressing picture:

⁵⁵ *Mom's Apple Pie*, September 1976, 1.

⁵⁶ *Mom's Apple Pie*, May 1977, 1.

⁵⁷ *Mom's Apple Pie*, November 1974, 3.

⁵⁸ *Mom's Apple Pie*, May 1976

The lawyers who don't just turn the case down with a snort cost \$500 for retainer fee and \$40 an hour, expert witnesses go for \$500 a shot and are hard to find, so you have to call all over the country because you almost cannot win without them. [It is especially difficult] if you have little education or a poor paying job if you have one at all, on top of knowing your kids need...a warmer jacket. Some lesbian custody cases have cost over \$10,000.⁵⁹

LMNDF's disclosures of their donations and expenditures (beginning in 1976) demonstrate the organization's tight budget, with the nearly every dollar of incoming funds from memberships and donations directly funneled into the case funds that it LMNDF was supporting at the time.⁶⁰ By 1976, the LMNDF was financially supporting about ten cases at any given time, though many more mothers were writing to them for assistance. All of this despite that they only had a staff of seven (who were all unpaid and had other full time jobs) and operated out of "an office smaller than most bathrooms" and "a budget that barely qualifies as shoestrings" for several years.⁶¹ In one of their more fiscally prosperous periods, in 1977, a newsletter documented an intake of \$1532.33 (the majority of which came from donations and a smaller portion from memberships) and expenditures of \$1043.27, including \$550 dollars in legal fees and \$150 for expert witnesses on top of the costs of the newsletter itself. The remaining \$500 was earmarked for direct aid to LMNDF's ongoing cases, though, the organization noted, this only worked out to \$50 per case—they pressed readers to continue to donate.⁶²

Mom's Apple Pie, the LMNDF newsletter, was also a critical resource for lesbian mothers in custody proceedings. The newsletter provided a space for LMNDF to share practical advice, including recommendations for locating and dealing with lawyers, provide news about custody cases and developments in the law, and provide emotional support and community for mothers who were likely

⁵⁹ *Mom's Apple Pie*, November 1974, 2.

⁶⁰ *Mom's Apple Pie*, January 1975, 2.

⁶¹ *Mom's Apple Pie*, March 1977, 1.

⁶² *Mom's Apple Pie* June 1977, 12

going through one of the worst ordeals in their lives. In the words of one anonymous writer, “You make the loneliness, bitterness, and disillusionings a little less heavy. Your response, alone, did that. The [legal] information you sent us was an added luxury.”⁶³

The newsletter also provided critiques of the justice system’s approach to lesbian custody cases and argued that the right to parenthood had been unjustly denied to them. The newsletter’s slogan printed across *Mom’s Apple Pie* read “Raising our Children is a Right, not a Heterosexual Privilege,” a clear and direct assertion of parental rights, one that asserted that equal protection should not be denied to lesbian mothers. One issue warned of the anti-gay bias endemic to the court system as “we face the double jeopardy of being women and queer in a society that hates us and fears us...custody cases are being heard in hostile territory with very little chance of an impartial judgment.”⁶⁴ Another column (not written by regular staff) made a more systemic critique, observing that the “government system is...male controlled,” and thus court cases were “a way...to try to keep [lesbians] in line, teach them a lesson. And if lesbians are single parents and become politically active, they are especially vulnerable to grand jury and FBI abuse.”⁶⁵ LMNDF does not appear to have shared some of the more radical left politics of the lesbian feminist movement, at least not in public literature. Avoiding the possibility that controversial political stances might have on the cases they funded may have been a consideration in this. It is likely that the organization did not want any incendiary writing to be used against mothers in the courtroom.

⁶³ *Mom’s Apple Pie*, January 1975, 1.

⁶⁴ *Mom’s Apple Pie*, September 1977, 3.

⁶⁵ *Mom’s Apple Pie* June 1976, 12
Mom’s Apple Pie, January 1975, 1.

LMNDF leaders connected the struggles of lesbian mothers to anti-racist, anti-classist, and anti-sexist politics more broadly. “It is equally unjust and intolerable for women to lose custody of their children for reasons of race, class, and lesbianism,” LMNDF leaders wrote in *Quest: A Feminist Quarterly*, in 1979. “Mothers also lose their children because they are feminists, poorer than their children’s father, handicapped, involved in interracial relationships, or politically active.”⁶⁶ LMNDF further linked their cause to that of abortion rights and advocacy against forced sterilization, which predominately affected Black and Puerto Rican women, saying they should not “limit ourselves to reach lesbian mothers [only].”⁶⁷ LMNDF leaders also sought to build coalitions with other reproductive justice and anti-racist organizations, including the Chicago Working People’s Health Clinic. In 1975 LMNDF also helped raise funds for and draw legal attention to the case of Yvonne Wanrow, a heterosexual Natives American woman who faced a 25-year prison sentence for shooting and killing her son’s abuser when he trespassed on her property and threatened to attack her. In a speech given at an LMNDF fundraising event for her, Wanrow connected the long history of Native American family separations in the United States to the plight of lesbian mothers.⁶⁸

Still, most of the cases that the LMNDF supported in the early 1970s appear to have been white women, though both middle class and poor white women appear to be represented. After 1979, more self-identified women of color wrote to the LMNDF. Financial costs would likely have been an additional barrier to court access for lesbian mothers of color.

⁶⁶ Organizer’s Dialogue: Lesbian Mothers Fight Back,” *Quest: A Feminist Quarterly* 5, no. 1 (Summer 1979): 63.

⁶⁷ “Did You Know,” *Mom’s Apple Pie*, April 1979, 4.

⁶⁸ Quoted in *Mom’s Apple Pie*, Directed by Jody Laine, 2006

In the years after its founding, the LMNDF's influence was far reaching. Between 1974 and 1980 LMNDF aided over 400 lesbian mothers. In nearly every lesbian custody case covered by the lesbian press after 1975, the LMNDF is mentioned the mother's source of legal support and directs readers to send donations to the organization.⁶⁹ In multiple cases, these articles were written by LMNDF or its founder Geraldine Cole directly. A South Dakota couple wrote to *Lesbian Connection* in March 1977 that "We are so thankful for [LMNDF] for all their help and support," that "helped greatly to prepare us for the ordeal."⁷⁰

In the latter half of the decade, more and more lesbians began winning custody of their children compared to the abject realities of the early 1970s. In my survey of LMNDF newsletters which provided coverage of wins and losses, over time the writers had more and more "good news" and "wins" to report, though losses persisted into the 1980s and 1990s. Though not entirely responsible, the financial and legal resources and community network building spearheaded by LMNDF no doubt played a role in getting many women to see their day in court, and win.

V. Custody, Ideology, and Radical Politics

Ideologically, lesbian mother legal custody activism and coverage of custody issues in the lesbian press helped advocates firmly frame custody issues as lesbian issues and intertwine the struggles of lesbian mothers fighting for custody with broader struggles against patriarchy and government-

⁶⁹ For examples see: Geraldine Cole and Karen Burr "Lesbian Mothers Fight Back." *Lesbian Tide, The* 4, no. 4 (May 1, 1976): 7. <https://jstor.org/stable/community.28039272> "Lesbian Mothers." *Lesbian Tide, The* 4, no. 6 (May 1, 1975): 1-40. <https://jstor.org/stable/community.28039268> "Colorado Lesbian Mothers in Custody Battle." *Lesbian Connection* 2, no. 5 (September 1, 1976): 1-20. <https://jstor.org/stable/community.28039168>.

⁷⁰ "A Victory of Sorts" in *Lesbian Connection* 2, no. 8 (March 1, 1977): 1-28. <https://jstor.org/stable/community.28039171>

sanctioned oppression. One woman commented in an article published by a feminist newspaper that her own custody case should be a lesson to not just lesbians but all feminists about the importance of supporting mothers in custody cases. “When men have the power to take our children away from us because of the choices we make without their participation,” she wrote, “The basic rights of all women are threatened.”⁷¹

Mothers

A Dollar A Day Keeps The Husbands Away

While you are reading this column, no matter what time of the day, or what month of the year it is, there is a lesbian mother somewhere in this country wondering how she can raise the money to keep her child. We have spent literally hundreds of thousands of dollars in the long fight to free mothers from the anguish of having their children taken away because they are lesbians. Thousands more are needed. Take a moment for yourself and your sisters - write a check to THE NATIONAL LESBIAN MOTHERS DEFENSE FUND (LMNDF), 2446 Lorentz Pl., N. Seattle, WA 98109. Mothers in trouble with custody are urged to call LMNDF at (206) 282-6798 or (206) 284-2290.

Yaseen Wins, Keeps Daughter

The ten month old fight of Ginny Yaseen to retain custody of her daughter Rachele ended in victory for the mother in a Denver courtroom April 28. Despite a protracted battle during which Ginny's ex-husband raised questions about his daughter's "sexual identity problems" and ex-wife's questionable lifestyle, the judge rejected the husband's suit for taking Rachele away from her mother.

During their last hearing Yaseen's ex-husband showed copies of *Big Mama Rag*, *Lesbian Tide*, and *Lesbian Connection* to the judge, alleging that Ginny had planted stories in those publications in an attempt to use Rachele as a "shell" to raise money. At one point his thinly veiled allegations about Ginny's lesbianism prompted the judge to say to him, "either say it or don't."

Although the court opinion was brief and made no mention of lesbianism, *Mom's Apple Pie* reports the favorable Yaseen decision was helped by testimony of an expert witness who countered allegations about raising a child with no father in the home and the development of sexual identity in children.

THANKS FROM GINNY

Dear Sisters -
Thank you for your support in all its forms. The money you've sent us has, quite simply, made it possible to take this case through the courts. Beyond that, however, those of us working on the Defense Fund have been immeasurably strengthened by the sense of community which has grown with your response to our appeals.

This case is won, and this particular struggle over. However, the climate for lesbian mothers, never good, has recently grown much worse. Reactionary courts are beginning even to reverse previous decisions favoring lesbian mothers' custody of their children. In the months we have functioned as a defense fund, we

have come to understand how central an issue lesbian custody is to the feminist movement. When men have the power to take our children away from us because of choices we make without their participation, the basic rights of all women are threatened.

We urge all of you who have mobilized behind the Rachele Yaseen case to continue to support the lesbian mother custody struggle as a whole. There are countless individual cases currently being fought, many of which are publicized in women's newspapers. There is also the Lesbian Mothers National Defense Fund, a Seattle-based group which publicizes and raises money for custody cases all over the country. The LMNDF also follows and documents trends in lesbian mother custody decisions in every state, and maintains an up-to-date list of "expert witnesses" sympathetic to the lesbian custody struggle. Their address is 2446 Lorentz Place North, Seattle, Washington 98109, phone (206) 224-3571 or 282-6798.

Again, thank you for your support. Don't stop now. Ginny and the Yaseen Defense Committee

"Kebzfruit"
A Pouch in Sterling Silver
\$13.50 Postpaid
Fuffen Jewl
P.O. Box 235
Amelia, California
95223

July/August '77

The “Mothers” section of an issue of *The Lesbian Tide*, featuring a fundraising call from the LMNDF

(“A Dollar a Day Keeps the Husbands Away”) and Colorado mother Ginny Yassen.⁷²

Lesbian mother stories were also folded into conversations about radical political movements, the criminal legal system, and civil rights and freedom struggles. News about custody battles was frequently listed alongside anti-capitalist and anti-racist commentary, and commentary about lesbian

⁷¹ Sharon McDonald, , Jeanne Cordova, Majoie Canton, Rogi A. Rubyfruit, Kathy Plowmin, Pat Califia, et al. “Yaseen. Wins, Keeps Daughter.” *Lesbian Tide*, *The 7*, no. 1 (July 1, 1977): 27. <https://jstor.org/stable/community.28039279>.

⁷² Ibid.

women involved in groups such as the Weather Underground, as well as warnings about FBI and CIA infiltration in the lesbian feminist movement. Reporting on a slew of custody denials in 1975, *Lavender Woman* wrote that custody denials were “intended to scare and keep women from fighting for their rights against the top-heavy and patriarchal court system.”⁷³ In still other articles, writers highlight the “constitutional right of lesbians to their children.”⁷⁴

The anti-establishment views of the first article and the assertion of civil protections in the second did not necessarily clash with one another in the moment, as both pointed to a readily apparent injustice—the state was infringing on the right of lesbians to be parents and policing their conduct in a way that was distinct from heterosexual women. However, tensions over dismantling as opposed to seeking protections within a prejudiced justice system would continue as lesbian parental rights cases were litigated into the following decade. LMNDF, as previously mentioned, also treaded this line between radical lesbian-feminist politics and calling for rights and protections. But nearly all political and personal writing about lesbian mother custody cases agreed that these cases were about more than just individual women and their children’s best interest. A restrictive legal and social definition of family had been weaponized against lesbian mothers, in the same way that traditional gendered and familial roles had been used against women, including lesbians, more broadly. Cases that asserted a LGBT right to family helped combat this. The inclusion of family issues in institutional critiques helped, not hindered, the lesbian movement, as custody rights helped pave the way for future political and legal gains.

⁷³ Ibid.

⁷⁴ Loretta Mears, Rosie Pearl, Mary Beth Ross, Julie Lee, Charlotte Bunch, Joan E. Nixon, Kay Blanchard, et al. *Lavender Woman* 4, no. 3 (June 1, 1975): 1–17. <https://jstor.org/stable/community.28039124>.

VI. Conclusions and Groundwork for Future Advocacy

Lesbian mothers faced immense hostility and prejudice within the courtroom as they advocated for their right to be parents in the 1970s. Facing the bleak reality of mother after mother losing custody, lesbian mothers and other lesbian feminist allies organized systems of financial, legal, and emotional support via defense funds and defense committees. Chief among these was the LMNDF, whose work to provide funds and arm lesbians with legal knowledge and attempts to cultivate coalition politics between lesbian mothers and other marginalized groups was especially noteworthy. On a broader scale, coverage of these cases by the lesbian press connected the difficulties faced by lesbian mothers to other struggles against patriarchy and legal oppression.

The LMNDF's coalescing of legal resources and collecting networks of attorneys laid the groundwork for the next era of lesbian parental rights advocacy as large national-facing organizations that would provide legal representation to lesbian mothers were founded and other LGBT legal aid organizations took a greater interest in custody cases as the result of efforts by lesbian activist attorneys. In the following decade, questions about both custody cases and adoption complicated litigation and pushed lesbian family issues more firmly into the political forefront.

CHAPTER TWO: Lesbian Family and Family Recognition Politics from the Margins to the Center, 1978-1986

Beth and Liz hadn't wanted to take their four-year-old daughter into the courtroom until it was all over; they worried that the invasive questions the couple would be asked would upset her, or that the number of people in the courtroom would be overwhelming. When the couple had first applied for joint adoption of their daughter, Laura, in 1983, they did not initially realize that they were among the first gay or lesbian couples to do so, ever.

"We realized how critical it is for both parents to have full legal rights – the "right" to take Laura to the hospital or to enroll her in school," Liz later reflected on the importance of going through the formal adoption process. "And it's good for Laura to have both of us recognized by others as her parents, because it affirms her perception of her family. It's hard for her, for example, when other kids don't believe that she really has two moms and was adopted. [But you can] just say. 'No, she's telling you the truth.'"

At the end of the proceedings, the judge invited Laura to come up to the bench and sign the adoption papers with her parents. When the four-year-old protested that she didn't know how to read the documents, the judge had simply explained: "It means you're a family."⁷⁵

In the decade since the Stonewall Riots, the gay liberation movement had sought to challenge heteronormativity, discrimination, and anti-gay violence on an increasing variety of fronts: from employment discrimination to police harassment to societal and gender norms. For lesbian women,

⁷⁵ Interview with "Beth" and "Liz" in Roberta Achtenberg, "The Adoptive and Foster Gay and Lesbian Parent," in *Gay and Lesbian Parents*, ed. Frederick W. Bozett (New York: Praeger, 1987), 89–111.

many of whom who were also aligned with the second-wave feminist movement, this meant challenging the assumption that they would marry men, have children, and retreat from public life. “Marriage” and “family” were seen more as heteronormative, sexist traps that ensnared women rather than something that women could attain on their own terms. In conjunction with this, LGBT parents—primarily lesbian mothers seeking to retain custody of their kids from previous marriages as they came out and began living with same-gender partners—had been on the margins of the broader gay liberation movement. Relatively few in number and socially invisible, these women faced stigma both from homophobic law and society and within the gay movement itself. As such, lesbian mothers formed their own networks of support and advocacy to normalize lesbian parenthood and gain the legal right to be parents, as discussed in the previous chapter. Though these grassroots efforts achieved significant concessions in the gay freedom struggle, they were largely under-resourced. Major groups and organizations did not place family issues at the top of their political agenda.

However, in the late 1970s and early 1980s, LGBT family issues, including the right to raise a family, adopt a child, and have LGBT family units recognized by law, moved from being at the margins of movement focus to closer to its center. Liz and Beth’s two primary concerns: that unmarried, non-biologically related partners lacked the legal rights necessary to care for their children and the desire to affirm their own definition of “family,” became rallying cries for growing numbers of gay and lesbian parents. Advocacy in favor of the right of LGBT people to have and raise a family became a main focus of LGBT political activism alongside combatting other forms of anti-gay discrimination. This chapter chronicles how and why this shift occurred in the lesbian community and its implications for movement politics and legal struggles more broadly.

First, I will explore the origins and contours of the “lesbian baby boom” which saw a sharp increase in the number of lesbians (and to a lesser extent gay men) who wanted to have children and began doing so in large numbers beginning in the late 1970s/early 1980s.⁷⁶ I then examine how this demographic change in the lesbian community, as many became mothers, created new sets of legal and political concerns. The desire on the part of growing numbers of lesbians and gay men to have families amid the 1980s baby boom made family politics issues—namely parental custody and adoption rights—more relevant than ever before. Non-biologically related parents had no recognized legal relationship to their children with same-gender partners, meaning that many families headed by lesbian parents did not possess full legal protections and that lesbian parents faced legal insecurity in their status as family units.

I argue that the lesbian baby boom of the 1980s resulted in two important political phenomena. First, legal precarity and pressure from lesbian parents drove LGBT legal advocacy organizations to spend more time and resources on family issues, laying the foundation for greater legal protections for LGBT families. Additionally, the desire among lesbian parents to solidify familial protections helped reshape the community’s political priorities, emphasizing issues pertaining to family and parenthood more than ever before. Increasing parenthood catalyzed political action across the board, and shaped the larger gay rights agenda, pushing a LGBT family recognition politics—issues surrounding custody, adoption, and legal same-sex partnerships—to the forefront.

⁷⁶ The term originated in press coverage of the phenomena. Gina Kolata, “Lesbian Partners Find The Means to Be Parents,” *The New York Times*, January 30, 1989, sec. U.S., <https://www.nytimes.com/1989/01/30/us/lesbian-partners-find-the-means-to-be-parents.html>.

I. The Lesbian Baby Boom

Lesbian women (and to a lesser extent, gay men) began starting families in large numbers in the late 1970s and early 1980s. The trend was perhaps most visible in the socially liberal, metropolitan areas that had attracted large gay communities in the previous two decades. In San Francisco, for instance, the number of women who attended workshops for prospective lesbian parents reached the hundreds per session by its apex.⁷⁷ Even in smaller cities and more rural areas, observers noted that unprecedented numbers of lesbian women were choosing to have children.⁷⁸ The lesbian mothers of the 1970s were women coming out and leaving heterosexual marriages, and all too often had to hide their sexual orientation lest they risk losing custody of their children. In the 1980s, however, more than a decade after Stonewall, more women sought to start families as already out lesbians. Many---but not all---did so in a partnership with another woman and aimed to raise children in two-parent households where both parents were of the same gender. LGBT news outlets began to dub this the “lesbian baby boom.” In 1990, *Newsweek* and other major outlets covered the phenomena, though by then this was not exactly news to those within the gay and lesbian community: they had already been living through the demographic change for years.⁷⁹

It is hard to pinpoint a specific reason for the sharp increase in interest in children and families among the lesbian community in the early 1980s. Given how lesbian mothers were all too often marginalized even within the lesbian and gay rights movement of the previous decade, it may be surprising that so many would embrace parenthood. The growth of gay visibility may have been a

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ “Up and Coming.” *Up and Coming* 4, no. 2 (February 1, 1987). <https://jstor.org/stable/community.28046022>.

factor: the past several years had seen an explosion of gay community and culture, especially in cities like New York and San Francisco. Two possible narratives emerge about changing community attitudes and age demographics may explain the causes of the lesbian baby boom. Firstly, many of the women who came out in the height of gay liberation and second wave feminism in the early 1970s were in their early 20s and did so without having been in prior heterosexual marriages. By the late 1970s and early 1980s, these women were now in their thirties, and perhaps more willing and financially able to start a family. At the same time, both this slightly older group and younger women who were coming out at the time had a decade of precedent increased visibility of gay life—including those lesbian mothers who had children from past heterosexual marriages. To imagine raising children with a same-gender partner, therefore, would not seem quite as far-fetched as it once did. Because of the last decade of visibility and activism, including the too-often-forgotten activism of lesbian mothers, something that had been unthinkable—raising a child with a lesbian partner—was now much more of a possibility.

Most lesbians seeking to have children did so via donor insemination. The technology behind donor insemination had existed since at least 1940s, though its use was primarily restricted to married heterosexual couples who were otherwise unable to conceive. Gay periodicals, such as the homophile magazine *One*, had discussed donor insemination as an option for childrearing for the LGBT community as early as the 1960s, though this discussion was purely hypothetical at the time.⁸⁰ Though the mainstream press only appeared to catch wind of the changing demographics of LGBT families by

⁸⁰ Daniel Guerin, Dorian Mode, Del McIntire, Sten Russell, J. Lorna Strayer, W., B., et al. *ONE* 9, no. 2 (February 1, 1961). <https://jstor.org/stable/community.28041956>.

the late 1980s, its origins appear over a decade earlier. By the mid to late 1970s, newspapers and magazines written by and for lesbians reflect a growing interest in donor insemination. The ability to have children without the involvement of men was understandably attractive to the lesbian community, as “the use of [donor insemination] by unmarried women for the first time allow[ed] reproduction to be separated from sexual activity and traditional family life.”⁸¹

Alongside increased interest among lesbians in donor insemination came backlash against the procedure as a perceived legal and ethical challenge to the conventional structure of nuclear families in America. One critic of the potential of donor insemination warned that the technology constituted “[t]he power of science over human reproduction and traditional family values.” Other news media articles had drummed up anxieties about unmarried women having kids or that fathers were to become “obsolete.”⁸² The perception that donor insemination threatened traditional marital and gender roles had tangible effects. Though donor insemination was never officially regulated by law, reports abounded of women who were refused the service because they were unmarried or were lesbians. Some physicians falsely claimed that it was illegal or immoral to provide donor insemination to lesbians and subsequently refused lesbian patients.

As was the case with lesbian mother support advocacy networks in the 1970s, the solution was often for the community to take matters into their own hands. The broader gay and lesbian community created information networks for legal and parenting advice as well as for locating donors and clinics. Speaking to the intersections between the lesbian movement and the second-wave feminist

⁸¹ Barbara Kritchovsky, “The Unmarried Woman’s Right to Artificial Insemination: A Call for an Expanded Definition of Family,” *Harvard Women’s Law Journal* 4 (1981): 1–42.

⁸² *Ibid.*

movement, women interested in donor insemination tied its accessibility to broader discussions of bodily autonomy and the women's health movement. The women's health movement, a subset of second-wave feminism, centered around challenging cultural silence around topics like contraception and abortion and extending access to health services for women in environments free from medical discrimination. As such, women were empowered to take control of their bodies, especially in reproductive health. In May 1975, the San Francisco-based *Lesbian Tide* advertised a newly-opened health clinic run by and for women that listed artificial insemination as one of the services it was currently researching.⁸³ In September 1977, the *Tide* listed donor insemination among other major health issues related to lesbians.⁸⁴

Women wrote to these publications asking for advice related to donor insemination, and others wrote back with their experiences and recommendations. In September 1978, the *Tide's* "Mothers" section, which had previously been solely occupied by lesbian custody battles, ran a three-page article titled "Do It Yourself Artificial Insemination," instructing readers in best medical and legal practices for donor insemination.⁸⁵ A November 1979 issue of *Lesbian Connection* printed a similar article titled "How to Get Pregnant Without Getting Screwed."⁸⁶ In December 1982, *Lesbian Connection* announced that the Oakland Feminist Women's Health Center had just opened its own donor insemination program, advertised as "operat[ing] on a sliding scale and open to all women

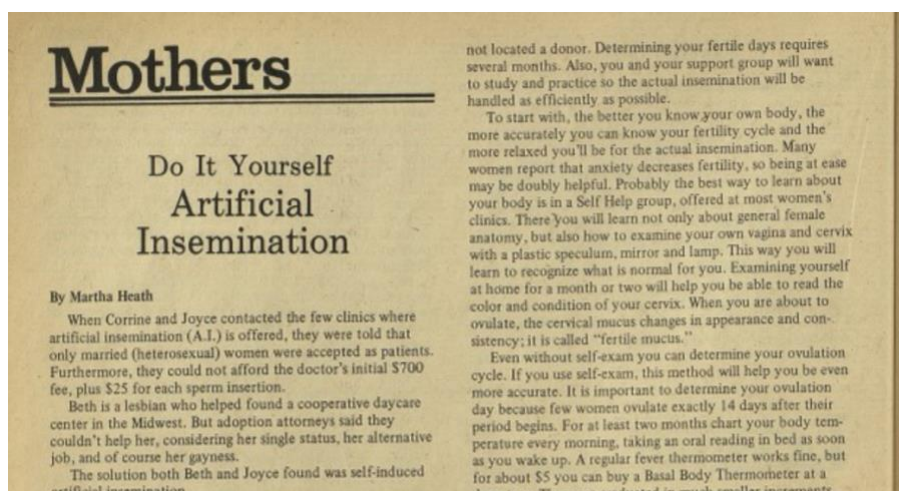
⁸³ Linda Russell, "Women Make Better Medicine," *Lesbian Tide, The* 4, no. 6 (May 1, 1975). <https://jstor.org/stable/community.28039268>.

⁸⁴ Jeannette Foster, "Lesbian Health Issues," *Lesbian Connection* 3, no. 4 (September 1, 1977). <https://jstor.org/stable/community.28039176>.

⁸⁵ Martha Heath. "Do It Yourself Artificial Insemination." *Lesbian Tide, The* 8, no. 2 (September 1, 1978). <https://jstor.org/stable/community.28039286>.

⁸⁶ "How to Get Pregnant Without Getting Screwed." *Lesbian Connection* 4, no. 7 (November 1, 1979). <https://jstor.org/stable/community.28039189>.

regardless of their marital status and lesbianism.”⁸⁷ An estimated 20% of the Health Center’s patients in its first year of operation were lesbians, a figure that would double in the following years.



From The Lesbian Tide, Volume 8, Issue 2

Among those that opted for donor insemination, many articles and letters reference a trend where lesbians sought out gay men—friends or even relative strangers—to be donors. Some women reported that they felt more comfortable having the child’s other biological parent be a gay man as opposed to a heterosexual one, some even framing this as a form of inter-community solidarity. In some cases, these gay men were involved in raising a child with a lesbian parent or parents. These arrangements also evaded some of the issues with having an unknown donor, such as a child who might want to reconnect with a biological parent later in life. The AIDS crisis complicated these arrangements, as fears arose about the transmissibility of the virus through sperm donations; some facilities ceased accepting gay men as donors altogether.⁸⁸ (The following chapter will explore the

⁸⁷ *Lesbian Connection* 6, no. 1 (December 1, 1982). <https://jstor.org/stable/community.28039197>.

⁸⁸ *Lesbian Connection* 8, no. 5 (March 1, 1986). <https://jstor.org/stable/community.28039213>.

AIDS crisis and its ramifications for LGBT family politics in more detail.) Still, via these connections, lesbians' and gay men's communities and issues became further intertwined during the baby boom and family issues had the potential to become more important to both groups.

Lesbians who wanted to be parents also explored fostering and adoption as options for family planning, but this was less accessible due to legal red tape, discrimination by case workers and child welfare officials, and exclusionary state and local policies. The same standards that were used to deny lesbian mothers' custody of their biological children—that homosexuality was illegal or that having a homosexual parent constituted harm to a child contrary to their “best interests”—were also used to prevent adoptions by gay individuals and same-sex couples. In the early 1970s, a handful of gay men and lesbians were quietly able to become adoptive or foster parents. They did so living as closeted, unpartnered individuals and/or when individual caseworkers turned a blind eye towards sexuality.⁸⁹

Growing interest from openly gay men and women—particularly those in relationships—seeking to adopt children threatened the adoption status quo, assumed to be the domain of married heterosexual couples. As one lawyer later remarked, “A judge who might be willing to leave a happy, healthy child with a single gay or lesbian parent may embrace the opportunity to remove the child from a home the parent shares with a partner.”⁹⁰ Even in California, a state that had formally adopted a non-discrimination stance on sexual orientation since 1979, watchdogs reported that Department of Social Services (DSS) did not enforce this policy.⁹¹ In San Francisco, which had one of the country's

⁸⁹ Nancy D. Polikoff, “Lesbian and Gay Couples Raising Children: The Law in the United States,” in *Legal Recognition of Same-Sex Partnerships: A Study of National, European, and International Law*, ed. Robert Wintemute and Mads Andenaes (Oxford: Hart Publishing, 2001.)

⁹⁰ Ibid.

⁹¹ Achtenberg, “The Adoptive and Foster Gay and Lesbian Parent.”

oldest records of licensing gay and lesbian foster parents, case workers and DSS administrators were known to hold gay adoptive parents to higher standards than their heterosexual peers. Moreover, since state adoption services are administered on a county-by-county basis, more conservative counties had greater license to deny foster/adoption certification without major oversight. The same pattern held true in many other states.

GAYS STILL “NOT FAMILY”

A New York judge has ruled that Stanley Saul cannot inherit the co-op apartment in which he had lived with his lover, Phillip Perl, for 10 years until Perl's death at age 50 last September. Housing Judge Ferdinand Pellegrino stated, “The court has been unable to find any authority that holds that homosexuals living together constitute a family unit.”

IT'S POSSIBLE

Lesbian foster mothers are badly needed for young lesbians in San Francisco. Contact Susie Williams (415) 239-2900 of the Alternative Family Planning Services Placement Agency, or Francis Terziev (415) 558-5163 at the Department of Social Services.

From The Lesbian Tide, Volume 9 Issue 1

Curiously, in gay centers like San Francisco, adult gay men and lesbians were called upon to parent growing numbers of homeless LGBT youth in the city. While concrete numbers are difficult to come by, at least some LGBT youth who had been rejected from their home families after coming out found their way to cities with large gay populations and were adopted by lesbian or gay parents. In one 1979 issue of the *Lesbian Tide*, readers were urged to contact two social service workers who were desperately seeking foster mothers for young lesbians in the San Francisco area.⁹² That case workers

⁹² Jeanne Cordova et al. “It’s possible” in *Lesbian Tide*, The 9, no. 1 (July 1, 1979). <https://jstor.org/stable/community.28039291>.

were not only willing to recruit lesbian foster parents but also that they reached out to a lesbian community periodical to do so is noteworthy. The headline of the advert, reading simply “It’s Possible” suggests the unlikeliness and novelty of lesbians—a group that had been separated from their children on a broad scale were actively being sought out as parents by state authorities. But also that the chance to be foster or adoptive parents could be referencing a more widespread desire, something that the lesbian community had hoped would one day be made available to them. It’s unknown if any lesbians called the numbers listed and received a foster care placement. Parents who may have called in and been accepted would have been an exception to the rule, but nevertheless provide an illuminating example of potential LGBT families. Speaking to the duality of the moment, the listing above the “It’s Possible” blurb reported on the case of a New York City gay man who was unable to inherit his deceased partner’s apartment, something that would have been possible had the couple been straight and married. In his decision on the matter, the judge wrote “the court has been unable to find any authority that holds that homosexuals living together constitute a family unit.”⁹³ By the mid-1980s, LGBT parents and advocates would strive to assert more evidence to the contrary.

II. Legal Insecurity and Legal Advocacy

By the mid-1980s, a few years after discussion about lesbians raising children began in earnest, the lesbian baby boom led to more numerous and complicated legal challenges, where families headed by same-gender couples faced compounded difficulties. For these families, legal issues manifested in

⁹³ Ibid.

daily life. Is it “fair,” a straight parent, case worker, or judge might ask, to bring a child into the world or adopt and raise a child into a lesbian family, because the children of lesbians could be discriminated against because of the mother’s sexual preference? Issues also arose around cases where one parent was biologically related to the child—often that they had conceived them via donor insemination—and the other parent was not. No legal process existed that would grant custody to a non-birth parent of the same gender. That a child’s parents would be a married heterosexual couple, or at the very least a man and a woman, was so imbedded in American family law that the basic recognition of two same-gender parents was anathema to courts. Social change in terms of the definition and demographics of family had outpaced legal change. This presented several concerns for lesbian mothers: a non-biological parent could not enroll their child in school, for instance; if a child’s birth parent died, their living non-biological parent would be a legal stranger to them—putting the child’s custody in jeopardy.

One case emblematic of these anxieties arose in Denver, Colorado in 1984. A lesbian mother named Joan died after a long illness, leaving Janine, her lover of 14 years, and their six-year-old daughter behind. Their daughter Kristin had been conceived by Joan via artificial insemination, and though they were not biologically related Janine was Kristin’s parent and had been the girl’s primary caregiver in the years leading up to Joan’s death. However, courts instead awarded custody to Joan’s estranged parents, going against the testimony of a child psychologist who testified that being separated from her “psychological parent” would cause “irreparable harm” to Kristin. Janine’s Defense Fund wrote that the case “appears have been decided solely on the...lesbian issue.”⁹⁴ The judicial

⁹⁴ *Lesbian Connection* 8, no. 5 (March 1, 1986), 3. <https://jstor.org/stable/community.28039213>.

system's well documented anti-gay bias in custody proceedings and lack of recognition of LGBT family units—specifically, of unions between same-gender partners or custody rights of non-biologically related parents—undoubtedly played a role in the case.

Another North Dakota case reflected similar issues. In *Jacobson v. Jacobson*, a divorced mother living with her partner had custody rights revoked after the judge ruled that the mother's partner living in the same home as the children given the "absence of legal recognition for same sex relationships," meant that the children's best interests were better served by giving custody to their father who had recently remarried.⁹⁵ In the eyes of this judge, that two lesbian parents could not be legally married made their family unit inherently less conducive than a family unit headed by two heterosexual parents. What was new in these cases was that whether parents were in a legally recognized relationship—and, by extension, whether same gender couples could have legal standing as a union—was directly impacting custody outcomes for their children. Interviews with lesbian parents and media coverage of ongoing custody cases, including the aforementioned 1984 case, reflect mounting insecurity among parents over the future and legal protection of their children.⁹⁶ As we will see, this tension over legitimacy and recognition will continue to shape LGBT family politics into the following decades.

With growing interest in starting families even while simultaneously facing insecurity in the eyes of the law, lesbian parents began seeking out legal advice and protections for their families more than ever before. Prospective and current lesbian parents turned to lawyers and legal aid organizations

⁹⁵ *Jacobson v. Jacobson*, 314 N.W.2d 78, 1980

⁹⁶ Roberta Achtenberg, "The Adoptive and Foster Gay and Lesbian Parent" in *Gay and Lesbian Parents*, ed. Frederick W. Bozett (New York: Praeger, 1987), 89–111.

for answers. Outside of the grassroots lesbian mother defense funds discussed in the previous chapter, national LGBT-focused legal defense organizations had not yet done much in the way of parental rights. New organizations were founded, and ones that had formed earlier in the gay liberation movement began to place greater focus on LGBT family issues in response to the new slew of cases coming their way. The Gay and Lesbian Advocates and Defenders of Boston, more commonly known as GLAD, which had represented LGBT clients in discrimination suits since the late 1970s, began seeing a sharp increase in adoption and custody related queries from lesbian clients around 1985-1986. One lawyer in Columbus, Ohio—a city not exactly known for having a large gay community—noted in a 1989 *New York Times* interview that she had spoken to around 30 lesbian mothers in recent months.⁹⁷ That same year, Paula Ettelbrick, the newly appointed executive director of Lambda Legal Defense and Education Fund spearheaded the creation of the Lambda Family Relationships Project, which she wrote was aimed to “stress the growing importance of our work on lesbian and gay family issues” in response to the growing number of clients who were coming to Lambda with queries about adoption and legal issues surrounding children.⁹⁸

One organization particularly active on adoption and custody issues was the Lesbian Rights Project (LRP), founded in 1977 by Donna Hitchens and Roberta Achtenberg, both lesbian attorneys practicing in California, which took cues from previous custody activism and broadened its scope. LRP took on a variety of cases related to anti-gay discrimination, but a substantial portion of their case load in the late 1980s centered on lesbian custody issues. Founded on the cusp of the lesbian baby

⁹⁷ Kolata, “Lesbian Partners Find The Means to Be Parents.”

⁹⁸ “A Note from Legal Director Paula Ettelbrick about Lambda’s Family Relationships Project,” Lambda Legal Defense Fund. Organizations Files, folder 6, Lesbian Herstory Archives.

boom and the era of custody struggles of lesbians leaving heterosexual marriages, LRP served both "generations" of lesbian parents. According to Achtenberg, the LRP was founded in response to the slew of custody issues facing the community and was in part inspired by the Lesbian Mothers National Defense Fund, discussed at length in the previous chapter.⁹⁹

Like the LMNDF, the LRP grounded their advocacy work in community dialogue and forming information networks, disseminating information about the legal situations of lesbian parents and their children. LRP wrote and circulated "know your rights" pamphlets about donor insemination, in response to broad interest in the topic by the lesbian community and reports of discrimination at certain clinics. LRP attorneys published and circulated similar pamphlets covering legal rights of gay couples to adopt or foster children and tips for engaging with the child welfare system.¹⁰⁰ Further, LRP also appeared in popular lesbian and gay magazines and newspapers throughout the latter 1980s and early 1990s, either by writing in directly with legal advice and news or as referenced by those who wrote into the magazine. In 1986, one woman wrote to *Lesbian Connection* about the number of challenges she was facing adopting her partner's children, including court fees totaling \$20,000. She ended her story by mentioning that LRP had sent the couple packets with information, legal strategy, and contact information for reliable lawyers, encouraging couples in similar situations to do the same as "[w]e are still faced with prejudice in our so called justice

⁹⁹ Rivers, *Radical Relations*; LMNDF itself remained active in the 1980s, especially in more rural and conservative areas where women lacked financial resources and access to sympathetic attorneys. However, by the early 1990s, the group focused on adoption and child-raising issues in the lesbian community more broadly (as opposed to a narrower focus on financially supporting mothers in custody proceedings).

¹⁰⁰ Kritchevsky, "The Unmarried Woman's Right to Artificial Insemination."

system!”¹⁰¹ A year later, another woman wrote into the magazine saying that her partner had successfully adopted children from her ex-husband with help from the LRP, which they heard about from the previous respondent. As a result, the women were among the first in their state to secure a same-sex joint adoption.¹⁰² Additionally, LRP members spoke at popular lesbian community events like music festivals, and hosted family support groups, which were also advertised in print.¹⁰³ When Roberta Achtenberg began hosting workshops on legal rights for gay and lesbian parents in the late 1980s, attendance reached as high as 500 parents at a single session.¹⁰⁴ This demonstrates LRP’s high level of engagement with broad sections of the community.

The variety of ways that the Lesbian Rights Project was in close dialogue with significant portions of the lesbian community over family issues illuminates several aspects of the effects of lesbian parenthood on broader LGBT politics. First, the sheer volume of people who were reaching out to LRP and other legal aid organizations demonstrates that many lesbians were interested in having children, and, more critically, that they were concerned about the uncertain legal standing of their family units, especially for those that were not biologically related to their children. Attempting to secure these relationships, therefore, was fast becoming a priority among the broader community. It is also noteworthy that this communication was not one-sided: while LRP attorneys were disseminating legal resources, the experiences and concerns of lesbian parents were influencing their legal work and the issues the organization prioritized. Such was likely the case with Lambda Legal and

¹⁰¹ “Our Justice System” in *Lesbian Connection* 9, no. 1 (July 1, 1986). <https://jstor.org/stable/community.28039215>.

¹⁰² *Lesbian Connection* 9, no. 5 (March 1, 1987). <https://jstor.org/stable/community.28039219>.

¹⁰³ The music festival was advertised in *Lesbian Connection* 11, no. 1 (July 1, 1988). <https://jstor.org/stable/community.28039227>; the workshop in *Lesbian Connection* 10, no. 6 (May 1, 1988). <https://jstor.org/stable/community.28039226>.

¹⁰⁴ Kolata, “Lesbian Partners Find The Means to Be Parents.”

GLAD as well. In other words, the community pushed for greater prioritization of family rights issues in legal advocacy, which had ramifications for the future of the gay movement. Case by case, the LRP and their clients began to alter existing standards of family relationships, redefining family in American law.

Beyond information sharing, LRP directly represented lesbian clients in the courtroom. Previously, direct access to the courts themselves was not possible for the low-budget, volunteer-run grassroots organizations founded earlier in the decade, who instead focused on finding sympathetic lawyers for the women that contacted them and paying legal fees. LRP's founders, attorneys Achtenberg and Hitchens, were women who had been educated at college and law school amid the second-wave feminist movement and were among the growing class of queer women in professional fields such as law. Lawyers of the previous decade, almost exclusively heterosexual men, were known to charge exorbitant fees and provide lackluster representation. By contrast, as lesbian activist-lawyers who were embedded within the community, the attorneys at LRP were better able to develop a legal strategy that was specific to the needs of their clients. Just as the LRP valued disseminating information and education to prospective LGBT parents, they also made education a courtroom strategy: evidenced by amicus briefs in several cases that aimed to educate the courts about the realities of gay families and clear up popular misconceptions about the children of gay parents.¹⁰⁵

In 1986, LRP attorneys litigated one of the first successful joint adoptions by two open lesbians in San Francisco and Alameda Counties, California.¹⁰⁶ Previously, LGBT parents had only

¹⁰⁵ Rivers, *Radical Relations*.

¹⁰⁶ Achtenberg, "The Adoptive and Foster Gay and Lesbian Parent."

been able to successfully adopt as individuals, even if they planned on living with a same-sex partner. But here, in both cases a same-sex couple that did not have a legally recognized union were able to adopt a child and were both recognized by the courts as the child's legal parents. The cases represented a substantial shift in LGBTQ custody litigation thus far. This precedent for expanding custody rights was made possible not only by community interest in raising children and the individual people who fought for this right in a hostile court system, but also by LRP representation and legal strategy. For example, they ensured that state child welfare officers would give a positive recommendation for the adoptions in the courtroom to give more expert credibility to their argument that the adoptions would serve the best interests of the child. In a press release republished in *Lesbian Connection*, LRP wrote that the cases "made history within American family law...giving hope to thousands of lesbian and gay couples in the United States that may be interested in adoption."¹⁰⁷ The statement's observation that the cases would resonate with "thousands" demonstrates how family issues had risen to the forefront of the minds of many in the gay and lesbian community—and how this would continue to shape activism in and outside of the courts.

III. Social Worlds of Lesbian Parents and their Children

Socially, moreover, lesbian parents and their children navigated both visibility and backlash as they forged a new definition of what could be considered a family unit. Put simply, the rise in lesbians choosing children resulted in greater numbers of gay families that were visible to the heterosexual

¹⁰⁷ *Lesbian Connection* 9, no. 4 (January 1, 1987). <https://jstor.org/stable/community.28039218>.

world. In mundane interactions—at schools, playgrounds, doctor’s offices—lesbian and gay parents and their children pushed back against heteronormativity and the dominant definition of family in subtle, everyday ways. These interactions pushed understanding of what family could be both within the gay community and to those outside of it.

Of course, unfortunately these interactions put the onus on lesbian parents and their children to bear the brunt of societal homophobia, which could put strain on families. From a series of interviews with lesbian parents and their children published in 1990, the greatest shared concern by far was the potential social stigma and perception of their families from peers and the parents of peers. “The hardest part was basically always people’s reaction – what they might think of...my mom, and for someone to criticize her or Monica – I’ve been afraid of that,” Alicia, a daughter of two lesbians reflected in the late 1980s. Alicia also spoke about how peer pressure had at times prompted her to ask her parents to not “act like a couple” in the presence of her friends. Alicia counseled that parents “have to be aware of their kids’ need to have a “normal” house when their friends come over...to know that there are times when kids are going to want their parents not to act like they’re lovers.”¹⁰⁸ To the children of lesbians and gays, navigating the complexity of both wanting to be supportive and protective of parents and dealing with the potential shame and fear of exposing their family status to outsiders was a part of life. But this did not preclude happy and healthy family relationships. One teenage son of two lesbians expressed a similar sentiment to Alicia. “It seems to me that basically I have a family here, and it doesn’t seem much different from any other person’s family, except that some

¹⁰⁸ Achtenberg, “The Adoptive and Foster Gay and Lesbian Parent.”

people don't accept it as a family," he said. "The only problem I ever had was just having to deal with *other people* dealing with my lifestyle."¹⁰⁹

Though it does not appear to have been a widespread occurrence, gay youth adopted by lesbian parents—in arrangements like the one advertised in the *Lesbian Tide* advertisement discussed previously—seemed to especially benefit from the experience of living with gay and lesbian foster parents. In the years since Stonewall, any number of LGBT young people from rural areas and small towns who experienced familial rejection at the hands of their birth families found themselves boarding a bus to San Francisco or New York City, seeking out the promise of metropolitan gay subculture. This was the case of one interviewee, identified as "Casey," who was thrown out of his Texas home after his mother discovered that he was gay; with just enough money for a bus ticket and no prior connections, he made it to San Francisco. With the help of the Lesbian Rights Project, Casey was placed in a foster home with two lesbian parents. "For me, being in a gay foster home is like being with my real mom and dad," Casey later said. "But it's also like having a different set of parents who you can tell what you're really feeling, because you can never say what you're feeling in a regular home...I'll be the first one in my family to finish high school, and I'll be able to prove to my mom that being gay didn't stop me from graduating."

In another case, a teenage lesbian adopted by two lesbian mothers after surviving "every shelter and group home in Los Angeles" reflected that her new family were different from other foster parents in that they were both "like friends," and akin to legal or blood relations. "They treat me like I'm

¹⁰⁹ Ibid; emphasis original.

theirs, like they had me,” Rhonda said. “I kind of enjoy telling other people, ‘Well, I have two mothers.’” While the visibility of LGBT parents doubtlessly incurred stigma, for these LGBT youth interlocutors connecting with gay and lesbian foster parents after having experienced familial rejection was restorative to their sense of gay identity and perception of family. Both interviewees mentioned that they felt reassured by the presence of openly gay adults in their lives who understood their struggles. Moreover, these found families of gay parents and adopted gay children further pushed the conventional definition of what “family” looked like—something that could be redefined on their own terms, that they could access regardless of sexual orientation, something that would have been unfathomable a decade earlier.

These new family dynamics were a component of a changing attitude within the lesbian community towards family. Family, as encountered personally for many, no longer singularly represented an institution that was restrictive to women and restricted to heterosexuals. Rather, it was something accessible to those that wanted children, and was not antithetical to their sexual identity. As family came to be redefined, “lesbian” and “mother” no longer appeared so incongruous to each other.

IV. Lesbian Parents, Lesbian Politics

The surge of lesbians choosing to have children, and the resulting new types of legal conflicts and insecurity in the eyes of the law, subsequently shaped the lesbian community’s political priorities and political identity. Critics and supporters of the new perspective on motherhood debated what this meant politically for the lesbian movement. Fundamentally, this altered and expanded expressions of political lesbianism and lesbian activism.

Lesbian mothers before the baby boom of the 80s faced considerable stigma from within the lesbian movement, as was discussed in the previous chapter. Much of this stigma was based on the idea that lesbians with children who had left heterosexual marriages would not or could not commit to lesbian-feminist ideal of the “woman-identified woman,” or a woman who exclusively aligned herself with other women. The “woman-identified woman” was the intellectual framework that had spurred lesbian/women-centered and in some cases lesbian/women-only political organizing groups, businesses, public events. This ethos helped propel activism that combatted deeply entrenched homophobia and sexism. But at times, it also engendered blowback against lesbian mothers. The component of the lesbian community that advocated for separatism, which posited that the only way to be truly free from patriarchy and compulsory heterosexuality was to separate from men entirely, at times presented its own hostilities to mothers because of their past relationships with men or the ever-vexing question of what to do with male children in women-only spaces.

Connected to this, many prominent lesbian feminists of the era espoused the idea that to be a lesbian was not just a sexual orientation but a political identity and made this a part of political writing and consciousness raising. How these critics aligned personal behavior and political behavior is key. “The personal is political” was a popular maxim of second-wave feminism popularized by essayist Carol Hanisch, who argued that women’s problems and conditions are informed by larger societal conditions and institutions of patriarchy. In this formation, motherhood, for example, was commonly perceived as something that ensnared women and, like heterosexual marriage, kept them constrained to the home. But in criticizing lesbians who chose to be parents, critics inverted the meaning of “the personal is political” from its original meaning that social structures affect personal life, instead

interpreting it to mean that all personal decisions are inherently political—thus having children is inviting that oppression onto oneself.

Despite, or perhaps because of its widespread nature, the lesbian baby boom was not without its critics within the lesbian community into the mid-80s. Some argued that motherhood was detrimental to lesbian politics, as embracing motherhood meant having “abandoned” or “betrayed” the politics of the lesbian feminist movement. Debate over the merits and drawbacks of the interest in family and childrearing among many lesbians played out in community-sourced publications like *Lesbian Connection*. One woman wrote in a letter to the editor in reference to an article that discussed lesbian motherhood and bisexuality noted that she was “alarmed at how many lesbians who were once radical have abandoned their lesbian politics and adopted heterosexual values,” in reference to the rise in lesbians choosing to have children. She continued, saying that pregnancy and motherhood were “heterosexist activities” and “a direct attack on lesbianism” as “fucking with men and/or becoming pregnant” spelled the death of political lesbianism.¹¹⁰ Pregnancy and motherhood, even via donor insemination, were inherently heterosexual, as women were “inviting” contact with men in some form; by employing the language of “betrayal,” she further argued that the lesbian community embracing parenthood to an extent not seen previously was spelled the end of lesbian political engagement.

In fact, the opposite happened. Even in these same magazines, just as many if not more presented the counterargument that it would be beneficial to the community at large and their

¹¹⁰ *Lesbian Connection* 9, no. 2 (September 1, 1986). <https://jstor.org/stable/community.28039216>.

political aims to embrace, not reject, LGBT parents and evolving definitions of family. As one self-identified new lesbian mother wrote in response to the letter excerpted above:

Lesbians have been having and raising children for as long as there have been lesbians. Only recently, however, have out lesbians had the option to do it without men in our lives. I've spoken with many Dykes who gave up their hidden dream of having children when they came out. Many of these same Dykes are now realizing that the option of motherhood does not necessarily end with living a lesbian lifestyle.¹¹¹

The writer's assertion that a growing section of the community now felt that motherhood and queer life were not mutually exclusive speaks to a broader cultural change and normalization of non-nuclear family, at least within the lesbian community, calling upon the history of gay parents to do so. The normalization of parenthood within the lesbian and gay community had an impact on identity—it was now much more possible to see oneself as both a lesbian and a parent than a decade prior. She also tied this cultural change to political and legal threats facing LGBT parents, since those that opposed lesbians having kids ironically aligned themselves with New-Right and conservative actors, wryly adding, “Queer-haters would love the idea of legally restricting us from having children...Wouldn't Reagan, Falwell, and the boys on the Supreme Court love that?”¹¹² More broadly, the print record—in LGBT magazines, newspapers, and other publications—by the later 80s demonstrate far more discussion about lesbian and gay parenthood, raising children, and the social and legal issues particular to families with LGBT parents. More advertisements mention childcare, parental support groups, and resource books on lesbian parenting; articles and reader submissions discuss parenting resources and include birth announcements for children of gay and lesbian parents. As we have already seen, artificial insemination, adoption, and related legal concerns populated the pages of many gay and lesbian

¹¹¹ *Lesbian Connection* 9, no. 4 (January 1, 1987). <https://jstor.org/stable/community.28039218>.

¹¹² *Ibid.*

publications by the late 1980s. This demonstrates a shift away from critiques of motherhood leveled by political lesbians/lesbian separatists as the community sought to redefine family on their own terms.

As a movement contending with the legacy of “the personal is political,” the changing community outlook on parenthood and lesbian identity had ramifications for political identity as well. By the 1980s, separatist-inclined lesbian feminists had faded from being the dominant form of political lesbianism, facing critiques from intersectional feminists and the changed political landscape of the ascendant New Right and the AIDS crisis. Increased interest in parenthood and reconceptualization of queer parenthood as something that was not only possible, but *positive*—along with the legal insecurity faced by these families—came at a time when the political character of the movement was changing, and in turn opened the doors for a political identity that encompassed issues relating to LGBT parents and their children. This did not necessarily mean that other movement goals were abandoned or superseded. Rather, lesbian political identity broadened to include parenthood and parental rights . Moreover, those that did not have kids likely knew someone who did. At the very least, they could more readily recognize family politics issues were important to the community as lesbian parenthood became more widespread and because parenthood and lesbian identity were no longer so separate.

While some may have fretted that interest in motherhood and family issues meant that the movement was losing political traction, in many ways the opposite occurred. That more in the lesbian community were interested in having children while at the same time these families faced legal insecurity drove its own form of political activity: it made those who were parents care more about

LGBT family politics issues. Encountering the difficulties of not being able to be in a legally recognized family unit or being discriminated against in the child welfare system incentivized LGBT parents to become invested in securing those rights, as the stakes of the issues were as personal as they were political. In other words, parenthood had the potential to bring people *into* political activity rather than push them out of it, and in doing so could forge a more inclusive and resilient movement. This is especially true if we take an expansive view of LGBT activism—seeing, for example, the willingness to bring an adoption case through the court system as its own form of political activity and activism, significant both for the individual parent(s) and child(ren) involved and for establishing precedent to extend these protections to others. The efforts of lesbian mothers and legal activists helped set a political agenda for what I call “LGBTQ family recognition politics”—political organizing and activity that centers issues of custody, adoption, and partnership/marriage. LGBT parents moved these issues to the forefront centers the rights of LGBT individuals, partners, and their children to exist and be recognized as families in the eyes of law and society. This family recognition politics would only gain more relevancy into the 1990s, as the community faced backlash from the Religious Right and complicated legal issues that made gaining legal recognition for same-sex couples a more attractive policy goal.

To be sure, the increased emphasis on family issues and legal protections does represent a shift away from the radical politics of the 1970s, which were decidedly more anti-establishment and often also anti-government. (But, even then, it would be a mistake to label all political activity of the period as anti-government: the same timeframe saw activists working with municipal governments to pass non-discrimination ordinances, for example.) The increased emphasis on family issues often revolved

around gaining recognition from the state and the legal system—to seek protection *within* the system rather than *outside* of it. Although such aims were not in the same mold as the radical political lesbians of 1970s, that in and of itself did not make the pursuit of family politics “conservative.” It is hard to understate the novelty and radicality of the effort to redefine family in American life and politics to include those outside the heterosexual nuclear norm, particularly amid the political hostility of the ascendant New Right.

V. Conclusion

The substantial number of lesbians who had children and became interested in issues pertaining childrearing and family in the “lesbian baby boom” of the early 1980s had a transformative impact on the lesbian community and LGBT movement as a whole. The baby boom represented changing community perceptions of motherhood, as a noteworthy number of lesbian who never would have imagined the possibility that they could or would have children now found themselves considering the option. The novelty of planned lesbian family structures and the legal uncertainty faced by parents and their children—since many parent-child relationships were unrecognized by the law—drove more concerted legal focus on LGBT family issues, as evidenced by the activities of organizations like the Lesbian Rights Project in particular. In response to changing cultural attitudes and legal concerns, lesbian political identity shifted to encompass parents rather than shun them. LGBT family issues: securing the right to adoption, allowing dual same-sex parent guardianship, and more generally having LGBT familial relationships recognized and protected by the law, therefore became a priority issue for many. I analyze this reshaping of cultural and political priorities and goals

to include LGBT family issues as the rise of a new political inclination within the LGBT movement, what I call LGBT family recognition politics.

The next chapter will explore the development of family recognition politics and the effort to redefine family in law and society within this context of increased hostility to LGBT families in the late 1980s and early 1990s. In the following years, tensions over equal protection and parents seeking legal rights related to their children would inspire and shape debates around same-sex marriage.

CHAPTER THREE: From Motherhood to Marriage, 1986-1993

When Marjorie Forlini died of cancer in 1988, she left behind her partner of twelve years and two adult children. Forlini and Sandra Rovira, her partner, had been all but legally married, exchanging rings and vows in a ceremony years before. Since 1978, they had raised their two children together, who were Rovira's from a previous marriage. However, upon Forlini's death, Rovira learned that she would not be entitled to survivor benefits from AT&T, her deceased lover's employer; moreover, the couple's two sons would also not be eligible for benefits because they were not Forlini's "natural or adopted children." The denial of Rovira's claim came despite AT&T having an employee non-discrimination policy that included sexual orientation. Rovira brought suit against AT&T, arguing that the company had discriminated against its employees on the basis of marital status and sexual orientation because Rovira was the "functional equivalent" of a spouse, breaching its own anti-discrimination policy.

After five years of litigation, in 1993 a federal judge from the Southern District of New York ruled that Rovira was not entitled to the company death benefits awarded to a surviving spouse because their marriage was not legally recognized. Throughout the ruling, Rovira is identified as a life partner. "They considered themselves a family unit," the court acknowledged. The law, however, did not. Ruling in favor of the plaintiffs, the court warned, would mean that the floodgates would open to

“significant other ‘spouses’ and children of significant others, as well as gay and lesbian ‘spouses,’ [who] would be entitled to apply for benefits.”¹¹³

Rovira was hardly the first person in the country to fight against anti-gay discrimination in employment. But *Rovira v. AT&T* was one of the first cases to do so with an argument that the partner of a gay or lesbian employee who could not be legally wed was entitled to spousal benefits, and that the denial of these benefits constituted a violation of equal protection under the law. That the couple’s children, who were only biologically related to Rovira, were also denied benefits points to another issue facing gay families: that non-biological children of gay and lesbian parents were not seen as related to them in the eyes of the law. The case was one of many that would speak to the legal insecurity that continued to plague families with same gender parents, even as same gender parents rose in number and visibility.

Partially because of the lesbian baby boom and its ensuing cultural and political changes for the lesbian community, the broader LGBT community became more concerned with political and legal issues pertaining to family, parenthood, and children. Gay and lesbian parents’ legal concerns often concerned the lack of state recognition of their relationship with their children. In particular, the same-gender partners of a child’s birth parent had no formal avenue through which to become a child’s legal parent. The absence of legal standing threatened their legitimacy as parents. In the late

¹¹³ ROVIRA v. AT&T, 817 F. Supp. 1062, 1993 U.S. Dist. LEXIS 3604, 61 Empl. Prac. Dec. (CCH) P42,223 (United States District Court for the Southern District of New York March 25, 1993, Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4N-TFD0-001T-64B6-0000-00&context=1516831>.

1980s and early 1990s, several scenarios like the *Rovira* case arose, where having a legally recognized union proved decisive for ensuring equal protections for LGBT families.

This chapter explores the connections between activism by and on behalf of queer families to the campaign for the legalization of gay marriage. Specifically, I posit that the unique hostility and insecurity encountered by gay and lesbian parents drove the pursuit of marriage as a political goal to achieve familial stability and recognition under the law. I first trace how conservative, reactionary anti-gay backlash in the 1980s amid the rise of the Religious Right, AIDS crisis, and complicated custody cases that hinged on the legal relationships between same-gender couples influenced community thinking around marriage. I then examine how definitions of “marriage” and “family” had shifted for the gay community and society at large. Finally, I explore the intra-community debate surrounding gay marriage as a political goal and its connections to LGBT family recognition politics. I seek to complicate existing narratives around gay marriage politics--that it represented either uniform assimilation to heterosexual norms or resistance to them--by discussing the families and advocates who navigated the grey areas and compromises. Ultimately, LGBT parents and family rights advocates pushed the LGBT movement towards marriage as it would reliably provide sorely needed benefits and protections. In doing so, they articulated a connection between civil rights, equal protections, family, and parenthood for the LGBT community.

I. Conservative Backlash and LGBT Family Recognition Agenda Setting

As more LGBT parents started families, became visible to the greater public, and pursued legal protections for their family units, a conservative political backlash emerged that aimed to curtail these

gains. In response to these newfound threats to the security of their families, confronting the conservative backlash became a priority. In these the right to parenthood for the LGBT community was more relevant than ever before and rose to a more prominent place in the broader political agenda of the gay movement.

It is important to situate LGBT parents of the mid- to late- 1980s in the political and cultural context of the decade's political conservatism and anti-gay hostility. In the late 1970s and early 1980s, the New Right had risen in prominence, crystallizing with the election of Ronald Reagan in 1980.¹¹⁴ This political coalition consisted of a new brand of political conservatism uniting white evangelical Christians (who had previously been fairly inactive in electoral politics), national defense hawks, and opponents of liberalism and progressive reform under the banner of the Republican Party. Evangelical conservatives, termed the "Religious Right" flank of this coalition, had been politically activated in response to the gains and visibility of racial justice and integration as well as the LGBT and feminist movements the 1960s and 1970s. As an important constituency of the New Right, evangelicals held considerable sway on policy: policy positions included opposition to legal abortion (in response to the *Roe v. Wade* decision in 1973), the Equal Rights Amendment (ERA), affirmative action, racial integration, and gay rights.¹¹⁵

The Christian Right weaponized concepts of "family values" and "attacks against the family" against the LGBT community in an effort to motivate evangelical voters, framing LGBT existence as

¹¹⁴ Though the origins of the New Right date back to Barry Goldwater's unsuccessful 1964 presidential campaign, the movement did not pick up significant traction until the mid-1970s.

¹¹⁵ Overturning ordinances prohibiting discrimination on the basis of sexual orientation, for example. For more see: *The Evangelicals: The Struggle to Shape America*; Fred Fejes, *Gay Rights and Moral Panic: The Origins of America's Debate on Homosexuality* (New York: St. Martin's Press, 2008); *Listen America!*; *Suburban Warriors: The Origins of the New American Right*

incongruous with the institution of family. Homophobic rhetoric and fearmongering were important tools used by right-wing evangelical groups like Baptist preacher and televangelist Jerry Falwell's Moral Majority to establish collective grievances and a collective enemy in the form of the gay movement, perceived as hastening "moral decay" in America.¹¹⁶ This rhetoric and political messaging (in fundraisers, radio and television broadcasts, for example) fixated on the purported harm that the LGBT community posed to children. Messaging warned that children would be "recruited" to an immoral lifestyle, framing anti-gay positions as "saving children," or "protecting children."¹¹⁷ New Right leaders like Falwell and Phyllis Schlafly of Stop ERA grounded their politics in appeals to "traditional family values": valorizing traditional gender roles and the archetypal white heterosexual nuclear family (a breadwinning father, a stay at home mother, and children.) Moreover, rather than speak out directly against the LGBT community, appeals were "shrouded in 'pro-family' terms,' such as "defin[ing] traditional families as those with two heterosexual parents...[which] carried significant appeal among conservatives in the wake of the 1960s."¹¹⁸ These type of arguments were not new; they were ones that lesbian mothers going to court in the early 1970s had faced. But their impact on the political sphere had new political significance as evangelical-backed policy positions and talking points were more firmly integrated into American politics at the same time that more LGBT parents were starting families than ever before. By policing the boundaries of family and claiming authority over

¹¹⁶ Fetner, Tina. *How the Religious Right Shaped Lesbian and Gay Activism*. University of Minnesota Press, 2008. P.58-60 "Fund-raising letters and Christian television and radio frequently pointed to the threat of homosexual activists. Chip Berlet reports that anti-gay letters received greater contributions than other topics. Shared anti-gay sentiment aided in solidifying a collective set of grievances and ideologies, in establishing a collective identity of constituents, and in constructing a hostile enemy against which the conservative Christian activists were to fight (Herman 1997). The Moral Majority's voter registration drives signed up both unsatisfied Christian Democrats and nonvoters to the Republican Party, successfully politicizing a religious identity."

¹¹⁷ Fred Fejes, *Gay Rights and Moral Panic: The Origins of America's Debate on Homosexuality* (New York: St. Martin's Press, 2008)

¹¹⁸ Doug Banwart, "Jerry Falwell, the Rise of the Moral Majority, and the 1980 Election," *Western Illinois Historical Review*, Vol. V, Spring 2013, 25.

“family values,” politically ascendant evangelical actors presented a threat to LGBT families and the very concept of LGBT parenthood. This rhetoric, in turn, had policy implications which I will examine further in a subsequent section.

I also want to briefly note that, though I identify right-wing talking points as contributing to policy outcomes and a political environment that was hostile to the LGBT community, and specifically LGBT parents, discriminatory rhetoric and policy was not exclusive to the Republican party, evangelicals, or conservatives. Rather, “family values” rhetoric and support for anti-gay policies that aimed to roll back the legal gains of the past decade of the LGBT movement were part of a broader climate of reactionary hostility in response to the visibility and legal gains even in more “liberal” areas with sizable gay communities. (Two of the cases I will discuss later occurred in Boston and San Francisco respectively.) “Family values” rhetoric and politics was underlying context for the backlash against LGBT families in the late 1980s and early 1990s.

Another critical underlying factor was the AIDS crisis, during which the spread of disease and conspicuous inaction of the federal government took the lives of countless people, mostly gay men, profoundly shaped the LGBT community. A full account of the AIDS crisis and its political ramifications is beyond the scope of this paper and has been covered elsewhere.¹¹⁹ Here, I want to highlight the ways in which the AIDS crisis had implications for LGBT families and family recognition politics. After the disease was first identified in the early 1980s and quickly came to be associated with gay men, the AIDS crisis engendered a resurgence of homophobic rhetoric framing

¹¹⁹ For coverage of AIDS activism see: Deborah B. Gould, *Moving Politics: Emotion and ACT UP's Fight against AIDS* (Chicago: University of Chicago Press, 2009).

LGBT people as perverted, sexually predatory, and/or harmful to children. Additionally, gay fathers who desired biological children feared HIV transmission or were rejected from sperm banks; Lesbian mothers had new reservations about asking gay male friends to be donors.¹²⁰ A basic but profound aspect of the crisis was the sheer degree of loss. Tragically, the crisis acquainted the LGBT community with sickness and death. Those experiences, not to mention the plethora of surrounding legal issues—from hospital visitation to health and life insurance headaches to wills and testaments—became so much more difficult when partners and children were involved given the preexisting legal precarity of LGBT families.

The case of David Jean and Donald Babets in Boston, Massachusetts, was one of the most dramatic examples of backlash against lesbian and gay parents with lasting political consequences, demonstrating state hostility to the rights of LGBT parents. In 1984, Jean and Babets, a gay couple who had been together for more than a decade, were approved by the Department of Social Services (DSS) of the state of Massachusetts to be licensed foster parents. A few months later, two young boys were sent to live in their home. But just two weeks later, a Boston Globe reporter published a sensationalistic article about the placement, revealing the arrangement to the couple's neighbors and to the general public.¹²¹

The article generated public outcry and scrutiny of the state foster-care system, with the *Globe* as its ringleader, calling upon the state to prohibit certification of gay and lesbian foster and adoptive parents. "The state's foster-care program," they wrote in 1985, "should never be used, knowingly or

¹²⁰ *Lesbian Connection* 8, no. 5 (March 1, 1986). <https://jstor.org/stable/community.28039213>

¹²¹ Achtenberg, "The Adoptive and Foster Gay and Lesbian Parent."

unknowingly, as the means by which homosexuals who do not have children of their own . . . are enabled to acquire the trappings of traditional families.”¹²² Following the figures of speech of the anti-gay Religious Right, the *Globe* valorized “traditional families” and positioned prospective gay foster parents like Babets and Jean as attempting to manipulate vulnerable children to achieve a pale imitation of heterosexual parenthood; elsewhere, the *Globe* contrasted families with gay and lesbian parents to “normal” families which adhered to traditional gender roles. “I have never understood the need of gay couples to define their relationships as ‘family,’” added another writer and self-identified liberal commented. She broadened her critique to include LGBT parenthood that did not “those gay women who deliberately go out to ‘get’ children on their own through artificial insemination.”¹²³

Though DSS officials initially told the couple that they would not remove the children on account of the article, the state opted to remove the children as media fervor spread. Until the Boston case, Massachusetts did not have any formal policy prohibiting gay and lesbian foster parents and did not “inquire or receive information about the sexual preferences” of applicants. In response to the outcry and criticism in the *Globe*, Governor Michael Dukakis ordered the state’s department of Human Services to review the situation and adjust the policy accordingly. Later in 1985, the DSS announced that it would begin asking all applicants for their sexual orientation and implement a preference system for evaluating prospective foster parents, with married heterosexual parents at the top of the list and gay and lesbian parents at the bottom. Moreover, any placements with lesbian and gay foster parents, should they arise, would be subject to a special biannual review of the household. At a

¹²² Quoted in Achtenberg, “The Adoptive and Foster Gay and Lesbian Parent.”

¹²³ Quoted in *Ibid.*

press conference, a representative stated that it was “highly unlikely” that the state would license future gay and lesbian foster parents.¹²⁴

One of the most damaging outcomes of the Boston foster care case was the media frenzy that fostered and amplified conservative outcry about the fact that that gay and lesbian parents were not explicitly prohibited from being foster parents by law in most states, framing this slack of regulation by the state as damaging and neglectful. The policy backlash reverberated in other states as well. Following the events in Massachusetts, in 1987 New Hampshire passed a law explicitly prohibiting gay and lesbian foster parents, despite there being no case of a gay or lesbian couple applying to be certified foster parents on record.¹²⁵ This created discriminatory policy where there was none before, with the objective of curtailing even the idea of LGBT parenthood. The Massachusetts and New Hampshire cases were a prime example of how political discourse informed by New Right/conservative family values politics had an effect that was not only social, but law and policy related, even under Democratic administrations.

Another example arose in California, also in 1986. Shortly after judges in the state affirmed two separate “stranger” adoptions by lesbian couples in northern California, the state’s Department of Social Services (DSS) subsequently promulgated a new policy that appeared to be tailored to prevent future joint and second-parent adoptions by LGBT parents. The policy stated a preference for placing adoptive children in “homes where the couple...ha[s] formalized their relationship through a legal marriage.”¹²⁶ Although the policy applied equally to unmarried heterosexuals and gay couples on the

¹²⁴ Ibid.

¹²⁵ Carlos A. Ball, *The Right to be Parents*.

¹²⁶ Achtenberg, “The Adoptive and Foster Gay and Lesbian Parent.”

surface, it had a disproportionate impact on gay parents, who were legally barred from marrying. Moreover, the timing of the policy coming on the heels of two adoptions by lesbian couples raised eyebrows among advocates at the time. The inability to attain legal recognition for same gender unions was weaponized against LGBT families, in this case, seemingly explicitly targeting adoptions by lesbian mothers. As with the Massachusetts DSS, the California DSS guidance used a marriage preference to discriminate against LGBT parents in reaction to a successful LGBT adoption/foster care placement.

LGBT parents of the 1980s faced something of a discrimination feedback loop, where visibility and steps forward for LGBT parents resulted in potent conservative backlash, constituting a threat to families in its own right. This backlash elevated the political importance of attaining equal protections under the law for LGBT families as a component of the activism and aims of the larger gay movement.

The heightened political energy on LGBT family issues can be seen in the growth of LGBT parent activism and proliferation of parents' groups, an example of parental rights serving as a catalyst for political activity more broadly. The Massachusetts and New Hampshire policies inspired mass mobilization among gay and lesbian activists in the Boston area. The couple at the center of the case sued the city for violating their right to privacy and the equal protection clauses and were represented by GLAD and the ACLU of Massachusetts. For the next several years, activists led demonstrations against the anti-gay foster care policy in front of the state capital and at the home of Governor Dukakis up until he vacated the position to become the Democratic presidential nominee in 1988. During one protest on Father's Day 1985, protestors carried signs reading "If one Mom is good, two are better!" and "We demand the right to choose to raise children." In both the lawsuit and the aforementioned

“right to choose children” sign, LGBT parents argued that parenthood was a right, tying family recognition to civil rights.¹²⁷ The Massachusetts protests, along with similar demonstrations in New Hampshire, were ultimately unsuccessful in changing these restrictive policies, but their activism was still important. As LRP founder Roberta Achtenberg reflected on the matter, “[T]he mobilization of the lesbian/gay community, the formation of coalitions with supportive groups, and the dissemination of alternative information [about LGBT parents]...are the only conceivable counters” to discrimination and fearmongering as was seen in Boston. “Whether or not such efforts achieve a desired external result, they are always successful when they reinforce the dignity of gay and lesbian people themselves.”¹²⁸

Also in the late 80s, the Gay Fathers Coalition, a support group for gay fathers, restructured to include lesbian mothers and issues specific to them, becoming Gay and Lesbian Parents Coalition International (GLPCI), a chapter-based organization promoting gay and lesbian parental and domestic rights. In 1993, a group of children of LGBT parents split off from the GLPCI to form Children of Lesbians and Gays Everywhere (COLAGE), one of if not the first advocacy groups where the generation of children raised by LGBT parents organized politically.¹²⁹

As conservatives invoked “family values” arguments against LGBT rights, LGBT parents articulated their own version of family-centered politics based around gaining legal rights and recognition for their family units. In the wake of the material threat posed by political hostility and anti-gay backlash, parents sought practical solutions oriented toward ensuring stability in everyday life.

¹²⁷Rivers, *Radical Relations*.

¹²⁸ Achtenberg, “The Adoptive and Foster Gay and Lesbian Parent.”

¹²⁹ Rivers, *Radical Relation*.

Gaining protections from the state in the form of securing the legal right of LGBT people to be parents and legal recognition of their existing and planned family units was therefore highly attractive. As the decade continued, especially after a string of highly publicized court cases, the pursuit of legal unions for same gender partners appeared to be the most reliable way to achieve this stability and security for their children.

II. On the Road to Marriage: Couples and Custody in the Law

As families headed by same-gender parents became more commonplace, the legal questions surrounding them became more complex. In several cases, the fact that same-gender couples lacked a legal union between each other affected custody outcomes for their children. A partial solution to this dilemma was the creation of “second-parent adoption” in 1987, pioneered by attorneys from the Lesbian Rights Project. In a legal system predicated on a child having a single mother and single father, a child having two legal mothers or two legal fathers was often explicitly prohibited in state law. LGBT families and their legal advocates had been struggling with how to give parental rights to a second, non-biological parent without terminating the biological parent’s rights (i.e.. to replace a birth mother with an adoptive mother.)¹³⁰ From my review of custody cases prior to 1987, most successful adoptions by out lesbians were either “stranger” adoptions as individuals (as opposed to couples) or, in rare cases, joint stranger adoptions by a couple when a judge agreed it best served the child to recognize both individuals that served a parental role. Parents that were able to adopt their partners’ children did so very rarely and on an ad hoc basis.

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Considering this, LRP sought to establish a more stable precedent. The organization challenged the two-parent standard using a legal argument derived from step-parent adoptions, which had increased in number following higher divorce and remarriage rates of the 1970s. Marriage, one legal scholar wrote, was the primary way that two adults can extend the fullest legal security to their children; in the event that a spouse has a child from a previous marriage, the new spouse can adopt the child through stepparent adoption without terminating their spouse's parental rights.¹³¹ But stepparent adoptions were not available to couples who could not or were unable to get married—meaning that same-gender couples lacked an avenue to attain stepparent status since their relationships were not recognized as a marriage.

Two staff attorneys who worked for the LRP, Donna Hitchens and Nancy Davis, decided to test the second-parent adoption argument before the courts by adopting one of their own children, whom they had already been raising together for three years. The family's legal situation was complicated. Hitchens had adopted a daughter in 1984 as a single parent, (despite intending to raise the child with Davis) to avoid possible discrimination that could be incurred when two-same gender parents. In 1987, Davis and Hitchens together applied for a joint adoption of a second child, which was granted. But their first child remained a legal stranger to Davis. Roberta Achtenberg, the third LRP founder, would be their attorney and the case's primary strategist. (Legal headaches like these were not uncommon for lesbian couples—the law invited them.) Before the court, Achtenberg argued

¹³¹ Patt, E. (1987-88). Second parent adoption: When crossing the marital barrier is in a child's best interests. 3 *Berkeley Women's Law Journal*, pp. 96-133.

that the children's non-biologically related parent was the children's "psychological parent," with whom they had an emotional, if not blood, connection. The plaintiffs were careful not to claim that the lesbian parents' relationship was akin to a legal heterosexual marriage; however, they did argue that it would be in the best interest of the child to have two legal parents, something that was facilitated by the relationship between the two mothers.

The second-parent adoption argument was striking in that it included recognition of same-sex parent's relationships to each other, in addition to each parent's respective relationship to the child to argue that these parents and their children could be considered a legally legitimate family unit. These arguments resulted in children having two legal, unmarried parents of the same gender despite this at times being prohibited by state law. Soon after, other legal aid organizations were able to adopt the same argument in other custody cases, making it easier for LGBT parents who faced legal insecurity to formalize legal protections for their families. In 1992, for example, Massachusetts officiated its first second parent adoption.¹³² By 1993, an estimated 200-300 second-parent adoptions had occurred across the country.¹³³ Second parent adoptions were heralded as a legal and civil rights victory among advocates at the time.¹³⁴

However, second parent adoptions were not a universal solution to custody insecurity. Discrepancies from state to state or judge to judge meant that parents in more conservative areas of the country were *de facto* barred from obtaining second parent adoptions. Second parent adoptions were not available to the partners of women who had kids from a previous marriage nor those with known

¹³² Polikoff, "Lesbian and Gay Couples Raising Children: The Law in the United States,"

¹³³ Ibid.

¹³⁴ Shapiro, A Lesbian-centered Critique of Second-parent Adoptions.

sperm donors (since these children already had two legal parents) unless the custody rights of the father were terminated.¹³⁵ Moreover, pursuing adoption in the courts resulted in hundreds or even thousands of dollars in legal fees, making it virtually inaccessible to low-income couples.¹³⁶

More issues arose when two lesbian co-parents separated, as the parent who was a legal stranger to the child had no recourse to obtain custody or visitation rights. One case which gained a substantial amount of attention arose in New York in 1988: *Alison D. v. Virginia M.* The couple had been romantically involved and agreed to have a child together, Andrew, with Virginia as his biological parent, and co-parented for several years. The couple separated amicably in 1983 and reached an informal custody agreement where their son lived with Virginia, with Alison visiting liberally. Several years later, in 1987, Virginia abruptly cut off all contact between their son and Alison. Alison contacted Paula Ettelbrick from Lambda Legal, who had made family issues a cornerstone of her focus at Lambda, who agreed to take her case. The plaintiffs argued that Alison should be entitled to file for visitation rights because she was a co-parent to the child, despite not being related to him by blood nor having been in a legal union with Virginia. Despite Alison's and Ettelbrick's efforts to establish that Alison was Andrew's parent—the child called her “mommy”—and educate the court about the lived reality of lesbian families, the New York State Supreme Court ruled against her petition in May 1991.¹³⁷

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Suzanne B. Goldberg, “Family Law Cases as Law Reform Litigation: Unrecognized Parents and the Story of *Alison D. v. Virginia M.*,” *Columbia Journal of Gender and Law* 17, no. 3 (December 1, 2008), <https://doi.org/10.7916/cjgl.v17i3.2560>.

The loss was a devastating blow to expanding parental rights for LGBT people in the state. The case, which was covered in both the gay and mainstream press, was disquieting to many gay and lesbian parents. Some parents had made informal custody agreements in case of a break up similar to that of Virginia and Alison, and to see one such agreement rendered legally worthless was distressing. The *Alison D.* case demonstrated that, even with second parent adoption as a legally recognized procedure, there would continue to be lingering legal uncertainty about the fate of LGBT people and their families so long as LGBT unions remained unacknowledged. Once again, both parents' relationships to their children and relationships to each other had implications for whether a family unit received legal recognition from the state. Therefore, gaining access to legally sanctioned domestic partnerships or marriages was attractive to LGBT parents as a matter of attaining security and recognition as a family unit. As the decade progressed, legal marriage would seem not only attractive, but plausible as political goal for many lesbian and gay parents.

III. Debating and Redefining Marriage and its Benefits

During the late 1980s and early 1990s, LGBT parents encountered multiple cases where marriage was a determinant to the stability of their families, whether they learned about this via publicized cases like *Alison D.* or experienced it first-hand. Still, it is worth asking: why pursue marriage as a goal? Why not something else? While marriage in our society is thought to the apex of the love, devotion, and commitment two people can share with each other, LGBT people had long been cultivating that love for one another without the need for legal certification. Marriage as a legal

institution has been oppressive to women in particular, a means of denying them property and personhood. Feminists, especially feminist lesbians, maintained critiques of marriage for these reasons.

In part, marriage was attractive because the legal function of marriage had changed. As historian George Chauncey notes, in the years after the Second World War, “[m]arriage acquired a unique status ...as the nexus for the allocation of a host of public and private benefits.”¹³⁸ In 1997, the GAO estimated that there were over 1100 laws at the federal level alone that considered marital status a determining factor, in categories ranging from social security to taxation, employment benefits, and immigration.¹³⁹ These laws were ones that LGBT people in the 1990s were encountering daily and intimately due to the baby boom and AIDS. In the wake of the AIDS crisis, the stark reality of becoming sick or having a loved one become sick exposed of thousands LGBT people with HIV/AIDS, especially gay men, to the difficulties of legal estrangement in practical situations: when a loved one is dying and you cannot add them to your health insurance, or when you could become homeless after a shared apartment passes to a deceased lover’s legal albeit estranged next of kin.¹⁴⁰ Additionally, as I have shown repeatedly, countless statutes and advisories in family law and child welfare related matters at the state level privileged marriage in some way, or at least took it into account when determining the custody and parental rights/obligations. What is critical is not only that marriage conferred benefits to married couples over unmarried couples. But also that so many in the LGBT community, given the rise in LGBT couples having children in a legally precarious system and

¹³⁸ George Chauncey, *Why Marriage? The History Shaping Today’s Debate over Gay Equality* (Cambridge, MA: Basic Books, 2004).

¹³⁹ U.S. GEN. ACCOUNTING OFFICE, PUB. No. GAO/OGC-97-16, DEFENSE OF MARRIAGE ACT 1-3 (1997), available at <http://www.gao.gov/archive/1997/og97016.pdf>;

¹⁴⁰ George Chauncey, *Why Marriage?*, The Associated Press, “Homosexual Partner Wins Rent-Law Case,” *The New York Times*, April 22, 1986, sec. New York, <https://www.nytimes.com/1986/04/22/nyregion/homosexual-partner-wins-rent-law-case.html>.

their close connection to the drastic fallout of sickness and death of the AIDS crisis, were acutely aware of the protections being systematically denied to them.

To be sure, LGBT families had means of establishing legal relationships and thus attaining some legal benefits without legal marriage. Some we have already discussed, like second parent adoption. But numerous problems arise from these alternate methods. Financial cost is a big factor. Going to court to procure a second parent adoption, for example, might cost hundreds in legal fees. A marriage license, by contrast, is far less costly and more accessible—at least, for those who have the option to be legally married. Moreover, there are simply so *many* facets of law where legal relationships protected by marriage are instrumental to benefits conducive to health and wellbeing. In the words of one advocate,

One of the practical advantages of marriage is its default nature: whether or not a person prepared a will, he or she can be sure to share in a deceased spouse's estate; whether or not a person prepared a medical directive, a spouse will always be able to visit in intensive care.¹⁴¹ Lastly, there are matters that are only really covered by marriage. The *Rovira v. AT&T* case discussed in the beginning of the chapter, wherein the plaintiff was denied survivor death benefits from her unmarried life partner's employer, is a notable example. A key issue was not just AT&T's own policies, but also the Employee Retirement Income Security Act (ERISA), a federal law that sets standards for most retirement, health plans, and sickness and death benefits in private industry. Given that ERISA controlled applicability for these benefits and limited applicability to married partners and to biological/legally adopted children, even a sympathetic employer would likely have had to reject

¹⁴¹ Bonauto, *Goodridge in Context*.

Rovira's claim.¹⁴² Simply put, the fact that LGBT couples and parents had to constantly seek out alternative means of establishing legal relationships to their partners and children to achieve benefits that married heterosexual parents were granted by virtue of simply being married created additional burdens logistically and financially—and even then did not award full benefits.

Though LGBT parents with children in particular had compelling reasons to support pursuing marriage as a movement goal, not everyone supported a marriage agenda. Initially, many gay advocacy institutions like GLAD, Lambda Legal, or NGLTF did not see marriage as a feasible goal or, more commonly, simply prioritized other issue areas. Interest and support in marriage came more from the grassroots.

Still others cautioned that the embrace of marriage would hinder the movement strategically and ethically, as it would constitute gay domestication and assimilation—not gay liberation. A striking difference can be seen between two lesbian movement lawyers and advocates who had previously worked on lesbian custody and adoption cases: Mary Bonauto of GLAD and Paula Ettelbrick of Lambda Legal. By 1995, Bonauto, who would later successfully litigate the first same sex marriage case in the U.S., felt as though the right to marry was not only a valuable goal that would aid her clients facing adoption and employment discrimination cases, but that a gay marriage case was on the horizon for Massachusetts. Ettelbrick, meanwhile, repeatedly cautioned against the marriage trajectory for gay and lesbian family rights. In 1989, Ettelbrick published an essay in *Outlook* titled *Since When is Marriage a Path to Liberation?* In which she argued that “marriage will not liberate us as lesbians and

¹⁴² Denise Pino Erwin, ed., “Survivor Benefits Denied to Lesbian Life Partner: *Rovira v. AT*,” *Berkeley Journal of Gender, Law & Justice*, 1994, <https://doi.org/10.15779/Z388S2B>.

gay men. In fact, it will constrain us, make us more invisible, force our assimilation into the mainstream, and undermine the goals of gay liberation.”¹⁴³ She would maintain this position through the early 2000s. Pursuing marriage, Ettelbrick cautioned, would not resolve the underlying problem of how the legal system privileged married couples over unmarried ones (either gay or straight), nor would allowing LGBT people to extend health care benefits to married partners ameliorate the issue that a government that can afford to provide decent health care to all its citizens does not do so. It brought LGBT people into an archaic and patriarchal institution, to adhere to a heterosexual and sexist standard instead of transforming it by embracing the diversity of family types. “We will be liberated only when we are respected and accepted for our differences and the diversity we provide to this society,” she wrote.¹⁴⁴ A more substantive critique—not embracing—marriage would better suit the community, including the parents who wanted to secure legal protections for their children.

A similar critique emerged in lesbian law scholar Julie Shapiro’s analysis of second parent adoptions, where she questioned of asking for legal recognition from the state potentially create a division between “good” and “bad” lesbians—those who obtain a second parent adoption and those who don’t. This in turn privileges those that have the resources to obtain that legal recognition (i.e., who can afford to go to court.) “It is easy to focus too quickly on the benefit to be gained without adequately considering the possible detriments that might result from inclusion,” she wrote, noting that the argument could be extended to gay marriage as well.¹⁴⁵ At the same time, Shapiro did not deny

¹⁴³ Paula Ettelbrick, “Since when is marriage a path to liberation?” *Outlook* 2, no. 2(6) (October 1, 1989). <https://jstor.org/stable/community.28042321>.

¹⁴⁴ Shapiro, A Lesbian-centered Critique of Second-parent Adoptions.

¹⁴⁵ *Ibid.*

the usefulness of second parent adoptions in securing familial protection, having completed one herself. In her critique of second parent adoption and same sex marriage, Shapiro counseled balancing the benefits that came from state protections with the knowledge that the law's capacity to categorize a "privileged" and "non-privileged" group could potentially compound discrimination against the most marginalized. "It is one thing to carefully choose this path," she cautioned. "[B]ut quite another to uncritically travel along it."¹⁴⁶

It is not my aim to refute these intra-community critiques of the pro-gay marriage movement. The question over what is compromised or who is left out when aligning with institutions and accepting legal categorization is a valid one. Debate within the LGBT community around the merits and drawbacks of marriage is an important part of this story, and I am only able to provide a window into a fraction of the conversation here. However, the existence of these critiques does not necessarily negate the reasons why LGBT parents still thought it feasible and important to pursue marriage as a goal, even if they may have maintained hesitation about the baggage tied to the institution.

One possible reason for the mounting support of gay marriage among parents was the political moment. In the early 1990s, which was seeing a resurgence in the subjectivity of LGBT rights. Between 1988 and 1994, the country saw a cascade of efforts to repeal municipal civil rights ordinances that prohibited discrimination based on sexual orientation, usually via subjecting these laws to a popular ballot vote; nearly three quarters of these measures ended in an anti-gay result.¹⁴⁷ All the while, the continued uncertainty in the court system made these political occurrences all the more

¹⁴⁶ Ibid.

¹⁴⁷ Barbara S. Gamble, "Putting Civil Rights to a Popular Vote," *American Journal of Political Science* 41, no. 1 (1997): 245–69, <https://doi.org/10.2307/2111715>.

relevant. Family courts—especially those in rural and politically conservative areas—remained discriminatory towards gay and lesbian parents, including those who had previously been in a heterosexual union, as a national review of custody cases by Julie Shapiro revealed in 1995. The family court system had moved away from *per se* rulings rejecting all gay and lesbian parents' custody claims, but that did not indicate or lead to increased tolerance of lesbians and gay men everywhere. "While it may be true that not all lesbians and gay men are automatically disqualified in custody cases," Shapiro wrote, "individual lesbians and gay men routinely lose custody and instead receive restricted visitation simply because they are lesbian or gay...Ignorance and prejudice too frequently combine to distort the analysis of custody cases."¹⁴⁸ Because judges in family courts had wide discretion in determining the best interests of the child, they could effectively reject or restrict custody claims by lesbian or gay parents by arbitrarily, wrongfully associating sexual orientation with oversexualization and harm to a child. Particularly in rural and politically conservative jurisdictions, judges retained a license to discriminate against LGBT parents and did so liberally. A recent and chilling example had been the 1993 case of Sharon Bottoms, a Virginia mother and lesbian who had custody of her six-year-old child remanded to her parents solely because she was a lesbian. Media coverage of Bottoms' crushing, and heartbreaking defeat demonstrated parents' worst fears of custody loss.¹⁴⁹ Even the growth in social acceptance and visibility of LGBT parents had not ameliorated their legal precarity everywhere in the country. Given this political and judicial hostility, it follows that LGBT parents would seek the legal

¹⁴⁸ Julie Shapiro, "Custody and Conduct: How the Law Fails Lesbian and Gay Parents and Their Children," *Indiana Law Journal* 71, no. 3 (1996 1995): 623–72.

¹⁴⁹ B. Drummond Ayres Jr, "Judge's Decision In Custody Case Raises Concerns," *The New York Times*, September 9, 1993, sec. U.S., <https://www.nytimes.com/1993/09/09/us/judge-s-decision-in-custody-case-raises-concerns.html>.

construct that would offer the most security, despite intra-community objections and criticisms, if it was made available to them. This, for better or for worse, depending on one's politics, was marriage.

At the same time, despite cases like that of Sharon Bottoms, the frequent court cases involving LGBT family and parental rights had primed the courts in certain jurisdictions to better understand family in a LGBT context, setting a favorable precedent for marriage cases. In the metropolitan areas where the lesbian baby boom was concentrated, more family courts than ever were encountering LGBT parents by the 1990s. Joint adoption and second parent adoption cases had both educated the courts about the reality of gay and lesbian lives and parenthood and pushed for a redefinition of family legally, one that went beyond one husband, one wife, and child(ren.) These cases, though they may have been limited regionally, nonetheless provided courts with a framework with which to understand LGBT families and relationships. When opposition argued, for example, that same-sex marriage should not be legalized because of the historical association of marriage and childrearing and thus should only be allowed for opposite-sex couples who, theoretically, are capable of procreation, advocates could (and did) call upon precedent cases with LGBT families to refute this claim. In so doing, the fight for family recognition had given advocates and the courts the ability to refute the idea of "family values" excluded gay people. If family could be redefined to encompass the diversity of family structures, then why not marriage? If LGBT parents had been a driving force of redefining family, then why not marriage?

In terms of attitude towards civil rights and parenthood, the pursuit of marriage was an extension of the goal of family recognition as means of securing rights and protections for LGBT parents and their children. This had been built up gradually over the past two decades, beginning with

lesbian mothers fighting for custody in the 1970s, and growing in attention and relevancy with the sharp uptick in the number of lesbians, and to a lesser extent gay men, choosing to become parents in the 1980s. During this time, the meaning of family recognition had evolved. In the 1970s, lesbian mothers and their advocates often framed their struggle as one where the state infringed upon on their right to parenthood. The Lesbian Mother National Defense Fund printed the slogan “raising our children is a right, not a heterosexual privilege” across every edition of their bi-monthly newsletter.¹⁵⁰ In so doing, they put forth a claim that tied parenthood to civil rights. But by the 1980s and 1990s, marriage was so tied up in legal benefits and protections for families and partners that to be denied access to legal marriage was to be denied access to a host of economic and social benefits, a denial that made parenthood difficult to navigate and afford for LGBT parents. In effect, this created a form of second-class citizenship for LGBT parents. These arguments of LGBT parents in favor of marriage framed marriage as a part of citizenship rights and foreshadowed later legal thought arguing the same.

IV. Conclusion

The increase in support for pursuing marriage as a political goal for the LGBT movement was inextricably tied to the legal activism and political prioritization of LGBT parents in the late 1980s and early 1990s. Over the past decade, LGBT parents had transformed the institution of family legally and socially, even as a rising conservative tide mobilized “family values” rhetoric against them. Amid reactionary conservative backlash to the gay community at large, high profile episodes of retaliatory

¹⁵⁰ *Mom's Apple Pie*, January 1975, 1.

political action towards LGBT parents, and the realization that the legal precarity of LGBT relationships made partners and children highly susceptible in cases of tragedy, sickness, and death, LGBT parents began seriously considering marriage. Despite some hesitation about the implications of buying into an institution with such a loaded history, the necessity of the benefits and protections that marriage offered made the pursuit of marriage equality a worthy political goal. After all that LGBT parents had done to redefine and broaden the institution of family, prompting a similar evolution in the definition and significance of marriage now seemed not only desirable, but feasible.

CONCLUSION: Family Recognition Politics and its Afterlives

Massachusetts became the first state to legalize same sex marriage following the state's Supreme Judicial Court ruling in *Goodridge v. Dept. of Public Health* on November 18, 2003. There, the court affirmed 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."¹⁵¹ Marriage, as a nexus for civic benefits and protections, including those pertaining to children, could not be consciously denied to same gender couples. They could not be rendered, in the words of the court, "second-class citizens."¹⁵² Of the seven couples represented in the suit, four had children living with them (including the Goodridge family.)

On May 17, 2004, the state began administering marriage licenses to same sex couples. Two thirds of the couples who got married on that first day were lesbians. Within those couples, about 40% had children. In interviews with those standing in line at the courthouse, many cited their children as a motivating factor for the choice to wed. In particular, at least one mother mentioned that marriage would be beneficial to families who did not have the money or ability to wrangle various legal documents necessary to establish legal relationships to their family members otherwise; another recalled that it would be a relief to extend her health insurance to her partner with whom she had been raising children for several years.

¹⁵¹ *Goodridge v. Dept. of Public Health*, 440 Mass. 309, 798 N.E.2d 941 (Mass. 2003)

¹⁵² *Ibid.*

Attorney Mary Bonauto of GLAD spearheaded the *Goodridge* case, and her argument was the blueprint for every marriage equality case to follow. George Chauncey's *Why Marriage* recounts an illuminating anecdote about Bonauto and the legal trajectory of the LGBT movement at large. On her first day as one of two staff attorneys at GLAD in 1986, she saw three complaints: one from a teacher fired for her sexual orientation, one from a lesbian couple looking to adopt, and one from a couple who wanted to get married. She accepted the first two and declined the third.¹⁵³ Gay marriage at that time seemed such an unfathomable goal that neither GLAD nor any other LGBT legal aid organization, stretched thin by HIV-status, adoption, or other discrimination cases, would have wanted to devote precious resources to it. That in just 18 years the pendulum had swung so wildly from LGBT rights advocates thinking legal marriage unfathomable to it being both a priority issue for the movement and, at least in one state, a legal reality is striking. As I have shown, the centrality of the marriage question spoke in large part to a desire to combat the legal insecurities families faced because they were barred from legal marriage the mobilization of LGBT parents, especially lesbian parents, on family recognition issues. Adoption and custody cases, like the one that Bonauto took in lieu of the marriage case in 1986, were a significant component of shaping that trajectory.

LGBT families and family recognition politics continued to shape the marriage debate. As more state legislatures and courts began debating the question of marriage equality in the 2000s and 2010s, the voices that often had the most impact on changing public opinion were those of the

¹⁵³ George Chauncey, *Why Marriage?*

children of gay and lesbian couples who spoke passionately about how allowing their parents to marry would impact their families.

Even as same-sex marriage is the law of the land after the 2015 Supreme Court ruling in *Obergefell v. Hodges*, issues pertaining to LGBT families and legal protection of their right to parenthood remain relevant. The last statutory prohibition on LGBT foster/adoptive parents was overturned in 2016.¹⁵⁴ I began working on an early incarnation of this project in Fall 2020, as the Supreme Court heard oral arguments in *Fulton v. City of Philadelphia*, which posed the question of whether it was a violation of the First Amendment for Philadelphia to have terminated a contract with a Catholic social service agency because they refused to certify same-sex couples as foster parents. In a unanimous ruling, the conservative-majority Court found that the city's actions violated the right to free religious exercise.¹⁵⁵ As it stands, the case has troubling implications for LGBT anti-discrimination protections since it could allow private agencies that receive taxpayer-funding to provide government services—such as foster care providers, food banks, homeless shelters—to deny services to people who are LGBT on the basis of religion. Given its location in the realm of foster care and adoption, this ruling has an outsized impact on current and prospective LGBT parents.

Moreover, the rhetoric used to defame LGBT parents in and outside of the courts has resurged in our political discourse. In March 2022, the Florida state legislature and Governor Ron DeSantis passed the state's "Parental Rights in Education" bill, which prohibits schools from using a curriculum

¹⁵⁴ "Stewart and Stewart v. Heineman," American Civil Liberties Union, accessed April 15, 2022, <https://www.aclu.org/cases/stewart-and-stewart-v-heineman>.

¹⁵⁵ "Fulton v. City of Philadelphia," American Civil Liberties Union, accessed April 15, 2022, <https://www.aclu.org/cases/fulton-v-city-philadelphia>.

covering topics of gender identity or sexual orientation. Critics quickly dubbed the legislation Florida's "Don't Say Gay" bill.¹⁵⁶ At the time of writing, a cascade of other states have introduced similar bills, including Alabama, Ohio, and Louisiana.¹⁵⁷ To support this legislation, lawmakers and pundits have argued that teaching about gender, sexuality, and diverse families in schools is "inappropriate" and "harmful" to children, who they claimed are being "indoctrinated" into an LGBT lifestyle. These statements are eerily similar to those of Anita Bryant in her "Save the Children" campaign in Miami-Dade, Florida in 1977, which prompted the nation's first statutory ban on gays and lesbians becoming foster parents, where she warned of a homosexual agenda to "recruit our children."¹⁵⁸ A spokesperson for Governor DeSantis went as far as to suggest that opponents of the Florida bill condoned pedophilia, writing on Twitter, "If you're against [the bill], you are probably a groomer or at least you don't denounce the grooming of 4-8 year old children."¹⁵⁹ The absurd and homophobic statement is rooted in the long history of painting LGBT people as sexually deviant and/or a threat to children, which was often invoked to constrict the parental and custodial rights of LGBT parents, something I have documented many times in this paper.

Conservative actors like DeSantis have invoked language of "parental rights" to justify policies that restrict teachers from discussing topics like gender, sexuality, and America's long history of racism, attempting to prey upon the anxieties of mostly white suburban heterosexual parents and rally them to

¹⁵⁶ Jaelyn Diaz, "Florida's Governor Signs Controversial Law Opponents Dubbed 'Don't Say Gay,'" *NPR*, March 28, 2022, sec. Efforts to restrict rights for LGBTQ youth, <https://www.npr.org/2022/03/28/1089221657/dont-say-gay-florida-desantis>.

¹⁵⁷ Dustin Jones and Jonathan Franklin, "Not Just Florida. More than a Dozen States Propose so-Called 'Don't Say Gay' Bills," *NPR*, April 10, 2022, sec. Politics, <https://www.npr.org/2022/04/10/1091543359/15-states-dont-say-gay-anti-transgender-bills>.

¹⁵⁸ Bryant, *At any cost*.

¹⁵⁹ Christina Pushaw US [@ChristinaPushaw], "If You're against the Anti-Grooming Bill, You Are Probably a Groomer or at Least You Don't Denounce the Grooming of 4-8 Year Old Children. Silence Is Complicity. This Is How It Works, Democrats, and I Didn't Make the Rules.," Tweet, *Twitter*, March 4, 2022, <https://twitter.com/ChristinaPushaw/status/1499890719691051008>.

political action.¹⁶⁰ Amid this political maneuvering, it is incumbent on us to recall another side of “parental rights” that has been too often overlooked or erased: how lesbian mothers and gay fathers were en masse denied the right to custody of their children, how LGBT parents and the movement at large took advocacy for the rights of their families and children into the courtroom and into the streets, and how the fight for the recognition and protection of LGBT family units has shaped family law and American civil rights history.

¹⁶⁰ Mark Spain, “Gov. Youngkin Not Backing down on Promises of Parental Rights,” *WSET*, February 9, 2022, <https://wset.com/news/local/governor-glenn-youngkin-not-backing-down-on-promises-of-parental-rights-day-one-game-plan-mask-mandate-executive-order-2-critical-race-theory-ctr-covid19-coronavirus-richmond-virginia>.

BIBLIOGRAPHY

Primary Sources

- Achtenberg, Roberta. "The Adoptive and Foster Gay and Lesbian Parent." In *Gay and Lesbian Parents*, edited by Frederick W. Bozett, 89–111. New York: Praeger, 1987.
- "A Victory of Sorts" in *Lesbian Connection* 2, no. 8 (March 1, 1977): 1–28.
<https://jstor.org/stable/community.28039171>
- B. Drummond Ayres Jr. "Judge's Decision In Custody Case Raises Concerns." *The New York Times*, September 9, 1993, sec. U.S. <https://www.nytimes.com/1993/09/09/us/judge-s-decision-in-custody-case-raises-concerns.html>.
- Beth Elliot "Lesbian Mother Victory." *Lesbian Tide*, The 2, no. 2 (September 1, 1972): 1–28.
<https://jstor.org/stable/community.28039247>.
- Bonauto, Mary L. "Civil Marriage as a Locus of Civil Rights Struggles." *Human Rights* 30, no. 3 (2003): 3–7.
- . "Goodridge in Context." *Harvard Civil Rights-Civil Liberties Law Review* 40, no. 1 (2005): 1–70.
- Bozett, Frederick W., and Marvin B. Sussman, eds. *Homosexuality and Family Relations*. New York: Routledge, 1990. <https://doi.org/10.4324/9780203056530>.
- Bryant, Anita. *At Any Cost*. Old Tappan, N.J.: Revell, 1978.
<http://archive.org/details/atanycost0000brya>.
- "Chaffin v. Frye, 45 Cal. App. 3d 39." Accessed November 18, 2021.
<https://advance.lexis.com/search/?pdmfid=1516831&crd=9e2b5778-8a39-4e4f-8e4b-c72ca546ba5b&pdsearchterms=Chaffin+v.+Frye%2C+45+Cal.+App.+3d+39&pdstartin=hlct%3A1%3A1&pdtypeofsearch=searchboxclick&pdsearchtype=SearchBox&pdqtype=and&undefined=&pdquerytemplateid=&comp=xbnk&prid=8ac3cd56-43e1-49d3-a8b2-c7185140eea5>
- Cathy Cade, "Rally for Jeanne Jullion and Portrait with Her Boys." 1977, Cathy Cade Photographs Collection. GLC 41 Gay & Lesbian Center, San Francisco Public Library.
- Christina Pushaw US [@ChristinaPushaw]. "If You're against the Anti-Grooming Bill, You Are Probably a Groomer or at Least You Don't Denounce the Grooming of 4-8 Year Old Children. Silence Is Complicity. This Is How It Works, Democrats, and I Didn't Make the Rules." Tweet. *Twitter*, March 4, 2022.
<https://twitter.com/ChristinaPushaw/status/1499890719691051008>.
- "Colorado Lesbian Mothers in Custody Battle." *Lesbian Connection* 2, no. 5 (September 1, 1976): 1–20. <https://jstor.org/stable/community.28039168>.
- "Did You Know," Mom's Apple Pie, April 1979, 4.
- Diaz, Jaclyn. "Florida's Governor Signs Controversial Law Opponents Dubbed 'Don't Say Gay.'" *NPR*, March 28, 2022, sec. Efforts to restrict rights for LGBTQ youth.
<https://www.npr.org/2022/03/28/1089221657/dont-say-gay-florida-desantis>.
- Doczi, Ann, Jeanne Cordova, Cindy Gipple, Karla Jay, Ruth Shereff, Shirl Buss, Sophie Rivera, et al. "The Lesbian Tide (1974): Lesbian Tide (1974), The." *The Lesbian Tide*. Los Angeles, CA: The Tide Collective, 01 1975. <https://jstor.org/stable/community.28039269>.
- Erwin, Denise Pino, ed. "Survivor Benefits Denied to Lesbian Life Partner: *Rovira v. AT*." *Berkeley Journal of Gender, Law & Justice*, 1994. <https://doi.org/10.15779/Z388S2B>.
- Ettelbrick, Paula L. "Avoiding a Collision Course in Lesbian and Gay Family Advocacy Symposium 2000 - Chronicling a Movement: A Symposium to Recognize the Twentieth Anniversary of the

- Lesbian/Gay Law Notes - Panel III: Reaching Goals: Choosing Strategies and Issues for Advancement.” *New York Law School Journal of Human Rights* 17, no. 2 (2001 2000): 753–66.
- . “Domestic Partnership, Civil Unions, or Marriage: One Size Does Not Fit All Symposium - Family and the Political Landscape - Speech.” *Albany Law Review* 64, no. 3 (2001 2000): 905–14.
- . “Wedlock Alert: A Comment on Lesbian and Gay Family Recognition Symposium: Youth, Family and the Law: Defining Rights and Establishing Recognition.” *Journal of Law and Policy* 5, no. 1 (1997 1996): 107–66.
- . “Who Is a Parent: The Need to Develop a Lesbian Conscious Family Law.” *New York Law School Journal of Human Rights* 10, no. 2 (1993 1992): 513–54.
- . “A Note from Legal Director Paula Ettelbrick about Lambda’s Family Relationships Project,” Lambda Legal Defense Fund. Organizations Files, folder 6, Lesbian Herstory Archives.
- Foster, Jeannette. “Lesbian Health Issues.” *Lesbian Connection*. E. Lansing, MI: Ambitious Amazons, 01 1977. <https://jstor.org/stable/community.28039176>.
- Geraldine Cole and Karen Burr “Lesbian Mothers Fight Back.” *Lesbian Tide*, The 4, no. 4 (May 1, 1976): 7. <https://jstor.org/stable/community.28039272>
- Goldberger, Rita A. “Lesbians Fight for Jobs - Children.” *The Lesbian Tide*. Los Angeles, CA: Tide Publications, 01 1974. <https://jstor.org/stable/community.28039262>.
- “GOODRIDGE vs. DEPARTMENT OF PUBLIC HEALTH, 440 Mass. 309.” Accessed April 15, 2022. <http://masscases.com/cases/sjc/440/440mass309.html>.
- “How to Get Pregnant Without Getting Screwed.” *Lesbian Connection* 4, no. 7 (November 1, 1979). <https://jstor.org/stable/community.28039189>.
- In re B., 85 Misc. 2d 515, 380 N.Y.S.2d 848, 1976 N.Y. Misc. LEXIS 2025 (Supreme Court of New York, Onondaga County January 2, 1976).
- Jay, Karla, Nathalie Rockhill, Jeanne Cordova, Aleida Rodriguez, Nancy Borman, Susan Kuhner, Rita A. Goldberger, et al. “The Tide: Tide, The” 3, no. 8 (01 1974). <https://jstor.org/stable/community.28045724>.
- Jacobson v. Jacobson, 314 N.W.2d 78,1980
- Jeanne Cordova et al. “Bryant Rants...No Sunshine for Gays in Florida” in *Lesbian Tide*, The 6, no. 6 (May 1, 1977). <https://jstor.org/stable/community.28039278>.
- . “It’s possible” in *Lesbian Tide*, The 9, no. 1 (July 1, 1979). <https://jstor.org/stable/community.28039291>.
- . “Updates on Custody” *Lesbian Tide*, The 7, no. 2 (September 1, 1977): 1–40. <https://jstor.org/stable/community.28039280>.
- . “Yaseen Wins, Keeps Daughter.” *Lesbian Tide*, The 7, no. 1 (July 1, 1977): 27. <https://jstor.org/stable/community.28039279>.
- Jeannette Foster, “Lesbian Health Issues,” *Lesbian Connection* 3, no. 4 (September 1, 1977). <https://jstor.org/stable/community.28039176>.
- Jones, Dustin, and Jonathan Franklin. “Not Just Florida. More than a Dozen States Propose so-called ‘Don’t Say Gay’ Bills.” *NPR*, April 10, 2022, sec. Politics. <https://www.npr.org/2022/04/10/1091543359/15-states-dont-say-gay-anti-transgender-bills>.
- Kolata, Gina. “Lesbian Partners Find The Means to Be Parents.” *The New York Times*, January 30, 1989, sec. U.S. <https://www.nytimes.com/1989/01/30/us/lesbian-partners-find-the-means-to-be-parents.html>.
- Kritchevsky, Barbara. “The Unmarried Woman’s Right to Artificial Insemination: A Call for an Expanded Definition of Family.” *Harvard Women’s Law Journal* 4 (1981): 1–42.
- Up and Coming. “Lesbian Baby Boom Hits The Mass Mediaa.” Fayetteville, AR, 01 1987.
- “Lawyers of Lesbian Mothers” Mom’s Apple Pie, January 1977 .

- “Lesbian Mother Jeanne Jullion Lost Her Children.” California Historical Society, 1977. California social, protest, and counterculture movement ephemera collection, SOC MOV EPH; Box 1, Folder 13. <https://oac.cdlib.org/findaid/ark:/13030/c84f1v1d/>.
- “Lesbian Mothers Fight Back” *Lesbian Connection* 1, no. 1 & 2 (January 1, 1974): 16. <https://jstor.org/stable/community.28039157>.
- “Lesbian Mothers.” *Lesbian Tide, The* 4, no. 6 (May 1, 1975): 1–40. <https://jstor.org/stable/community.28039268>
- Lesbian Connection* 11, no. 1 (July 1, 1988). <https://jstor.org/stable/community.28039227>;
- Lesbian Connection* 10, no. 6 (May 1, 1988). <https://jstor.org/stable/community.28039226>.
- Lesbian Connection* 6, no. 1 (December 1, 1982). <https://jstor.org/stable/community.28039197>.
- Lesbian Connection* 8, no. 5 (March 1, 1986), 3. <https://jstor.org/stable/community.28039213>.
- Lesbian Connection* 8, no. 5 (March 1, 1986). <https://jstor.org/stable/community.28039213>
- Lesbian Connection* 8, no. 5 (March 1, 1986). <https://jstor.org/stable/community.28039213>.
- Lesbian Connection* 9, no. 2 (September 1, 1986). <https://jstor.org/stable/community.28039216>.
- Lesbian Connection* 9, no. 4 (January 1, 1987). <https://jstor.org/stable/community.28039218>.
- Lesbian Connection* 9, no. 4 (January 1, 1987). <https://jstor.org/stable/community.28039218>.
- Lesbian Connection* 9, no. 5 (March 1, 1987). <https://jstor.org/stable/community.28039219>.
- Lesbian Tide, The* 1, no. 8 (March 1, 1972) <https://jstor.org/stable/community.28039242>.
- Linda Russell. “Women Make Better Medicine.” *The Lesbian Tide*. Los Angeles, CA: The Tide Collective, 01 1975.
- Loretta Mears, Rosie Pearl, Mary Beth Ross, Julie Lee, Charlotte Bunch, Joan E. Nixon, Kay Blanchard, et al. *Lavender Woman* 4, no. 3 (June 1, 1975): 1–17. <https://jstor.org/stable/community.28039124>.
- Margy et al., “Jeanne Jullion,” *Lesbian Connection* (E. Lansing, MI: Ambitious Amazons, 01 1978), <https://jstor.org/stable/community.28039181>.
- Martha Heath. “Do It Yourself Artificial Insemination.” *Lesbian Tide, The* 8, no. 2 (September 1, 1978). <https://jstor.org/stable/community.28039286>.
- Messer, Karen, sudi, Aleida Rodriguez, Billy Graham, Freda Smith, Richard Ruth, Rita A. Goldberger, et al. “The Tide: Tide, The” 3, no. 7 (01 1974). <https://jstor.org/stable/community.28045723>.
- Michimi Amano, Christina Lundberg, Lyn Davis, Karin Wandrei, K. R., Julie Jenkins, Margy, and Judy. “Lesbian Connection.” *Lesbian Connection* 1, no. 8 (November 1, 1975): 1–28. <https://jstor.org/stable/community.28039163>.
- Mimi Lewin, Clementine Leavitt, Laura, Cherry, Chocolate, M. Punk Duck, Judy Cohen, et al. “Lavender Woman.” *Lavender Woman* 4, no. 1 (February 1, 1975): 1–17. <https://jstor.org/stable/community.28039122>.
- “More than a Dozen States Propose So-Called ‘Don’t Say Gay’ Bills : NPR.” Accessed April 15, 2022. <https://www.npr.org/2022/04/10/1091543359/15-states-dont-say-gay-anti-transgender-bills>.
- Mom's Apple Pie: The Heart of the Lesbian Mother's Custody Movement, Directed by Jody Laine, Shan Ottey and Shad Reinstein. Frameline Media, San Francisco CA, 2006.
- Mom's Apple Pie*, June 1976, 12
- Mom's Apple Pie*, June 1977, 12
- Mom's Apple Pie*, January 1975, 2.
- Mom's Apple Pie*, March 1977, 1.
- Mom's Apple Pie*, May 1976
- Mom's Apple Pie*, May 1977, 1.

- Mom's Apple Pie*, November 1974,
Mom's Apple Pie, November 1974, 2.
Mom's Apple Pie, November 1974, 3.
Mom's Apple Pie, September 1976, 1.
Mom's Apple Pie, September 1977, 3.
Mom's Apple Pie, January 1975, 1.
Mom's Apple Pie, January 1975, 1.
- “Nadler v. Superior Court of Sacramento County, 1967 Cal. App. LEXIS 1305.” Accessed November 20, 2021.
<https://advance.lexis.com/document/?pdmfid=1516831&crd=f658842e-bfcd-4344-856e-7fc406ce7929&>
- Organizer's Dialogue: Lesbian Mothers Fight Back,” *Quest: A Feminist Quarterly* 5, no. 1 (Summer 1979): 63.
- “Our Justice System” in *Lesbian Connection* 9, no. 1 (July 1, 1986).
<https://jstor.org/stable/community.28039215>.
- “Homosexual Partner Wins Rent-Law Case.” *The New York Times*, April 22, 1986, sec. New York.
<https://www.nytimes.com/1986/04/22/nyregion/homosexual-partner-wins-rent-law-case.html>.
- “Rally for Jeanne Jullion and Portrait with Her Boys | San Francisco Public Library.” Accessed April 14, 2022.
https://digitalsf.org/islandora/object/islandora%3A159286?solr_nav%5Bid%5D=ba8513c50fd8ec49a121&solr_nav%5Bpage%5D=0&solr_nav%5Boffset%5D=0#birds_eye_container.
- Riley, Marilyn. “Avowed Lesbian Mother and Her Right to Child Custody: A Constitutional Challenge That Can No Longer Be Denied, The Law Note.” *San Diego Law Review* 12, no. 4 (1975 1974): 799–864.
- ROVIRA v. AT&T, 817 F. Supp. 1062, 1993 U.S. Dist. LEXIS 3604, 61 Empl. Prac. Dec. (CCH) P42,223 (United States District Court for the Southern District of New York March 25, 1993, Filed).
<https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4N-TFD0-001T-64B6-00000-00&context=1516831>.
- Rita A. Goldberger, “The Tide.” *Lesbian Tide*, The 3, no. 8 (April 1, 1974): 16.
<https://jstor.org/stable/community.28045724>.
- “Schuster v. Schuster, 90 Wn.2d 626.” Accessed November 18, 2021.
<https://advance.lexis.com/document/?pdmfid=1516831&crd=c60e5607-5bbf-4c19-b247-0516e8febed7&pdDocFullPath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A3S3J-WCM0-003F-W0YC-00000-00&pdcontentcomponentid=10840&pdshetid=urn%3AcontentItem%3A7XWR-C5N1-2NSD-P07M-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=xzvnk&earg=sr5&prid=579cf3c2-e78e-4bb7-b5b9-03c75c5be020>.
- Shapiro, Julie. “A Lesbian-Centered Critique of Second-Parent Adoptions.” *BERKELEY WOMEN'S LAW JOURNAL*, n.d., 24.
- . “Custody and Conduct: How the Law Fails Lesbian and Gay Parents and Their Children.” *Indiana Law Journal* 71, no. 3 (1996 1995): 623–72.
- Spain, Mark. “Gov. Youngkin Not Backing down on Promises of Parental Rights.” *WSET*, February 9, 2022. <https://wset.com/news/local/governor-glenn-youngkin-not-backing-down-on-promises-of-parental-rights-day-one-game-plan-mask-mandate-executive-order-2-critical-race-theory-ctr-covid19-coronavirus-richmond-virginia>.

- Starr, Karla J. "Adoption by Homosexuals: A Look at Differing State Court Opinions." *Arizona Law Review* 40, no. 4 (1998): 1497–1514.
- Towend v. Towend, 1976 Ohio App. LEXIS 6193, 1976 WL 189159 (Court of Appeals of Ohio, Eleventh Appellate District, Portage County September 30, 1976).
<https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRS-VF50-0054-C1GS-00000-00&context=1516831>.
- American Civil Liberties Union. "Stewart and Stewart v. Heineman." Accessed April 15, 2022.
<https://www.aclu.org/cases/stewart-and-stewart-v-heineman>.

Secondary Sources

- Ball, Carlos A. *The Right to Be Parents: LGBT Families and the Transformation of Parenthood*. Electronic resource. New York: New York University Press, 2012. <http://www.columbia.edu/cgi-bin/cul/resolve?clio13209802.001>.
- Banwart, Doug. "Jerry Falwell, the Rise of the Moral Majority, and the 1980 Election," n.d., 25.
- Benkov, Laura. *Reinventing the Family: The Emerging Story of Lesbian and Gay Parents*. New York :, 1994.
<http://hdl.handle.net/2027/uva.x002736106..>
- Chauncey, George. *Why Marriage? The History Shaping Today's Debate over Gay Equality*. Cambridge, MA: Basic Books, 2004.
- Clendinen, Dudley, and Adam Nagourney. *Out for Good: The Struggle to Build a Gay Rights Movement in America*. New York: Simon & Schuster, 1999.
- Colleen Marea Quinn, "Riding out the Storm After the Stonewall Riots: Subsequent Waves of LGBT Rights in Family Formation and Reproduction," *University of Richmond Law Review*, 54, 733 (March, 2020).
- Faderman, Lillian. *Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth-Century America*. Electronic resource. New York : Jackson: Columbia University Press Perseus Distribution [Distributor], 2012. <http://www.columbia.edu/cgi-bin/cul/resolve?clio14139715>.
- Fred Fejes, *Gay Rights and Moral Panic: The Origins of America's Debate on Homosexuality* (New York: St. Martin's Press, 2008)
- American Civil Liberties Union. "Fulton v. City of Philadelphia." Accessed April 15, 2022.
<https://www.aclu.org/cases/fulton-v-city-philadelphia>.
- Gamble, Barbara S. "Putting Civil Rights to a Popular Vote." *American Journal of Political Science* 41, no. 1 (1997): 245–69. <https://doi.org/10.2307/2111715>.
- Goldberg, Suzanne B. "Family Law Cases as Law Reform Litigation: Unrecognized Parents and the Story of Alison D. v. Virginia M." *Columbia Journal of Gender and Law* 17, no. 3 (December 1, 2008). <https://doi.org/10.7916/cjgl.v17i3.2560>.
- Gould, Deborah B. *Moving Politics: Emotion and ACT UP's Fight against AIDS*. Chicago: University of Chicago Press, 2009.
- Patton-Imani, Sandra. *Queering Family Trees: Race, Reproductive Justice, and Lesbian Motherhood*. New York: New York University Press, 2020.
- "Pivoting Between Identity Politics and Coalitional Relationships: Lesbian-Feminist Resistance to the Woman-Identified Woman: Women's Studies in Communication: Vol 38, No 4." Accessed April 15, 2022. <https://www.tandfonline.com/doi/abs/10.1080/07491409.2015.1085938>.
- Rivers, Daniel Winunwe. *Radical Relations: Lesbian Mothers, Gay Fathers, and Their Children in the United States since World War II*. Chapel Hill: University of North Carolina Press, 2013.

- Stewart-Winter, Timothy. *Queer Clout: Chicago and the Rise of Gay Politics*. Politics and Culture in Modern America. Philadelphia: Penn, University of Pennsylvania Press, 2016.
- Stryker, Susan, and Jim Van Buskirk. *Gay by the Bay: A History of Queer Culture in the San Francisco Bay Area*. San Francisco: Chronicle Books, 1996.
- Taylor, Verta, and Leila J. Rupp. "Women's Culture and Lesbian Feminist Activism: A Reconsideration of Cultural Feminism." *Signs* 19, no. 1 (1993): 32–61.