

Chapter 2

Strange Bedfellows

Strange Bedfellows: A Married Lesbian's Feminist-Queer Critique of the *Homo-Ehe* Debates in Germany

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Like many little girls—even queer ones—my best friend and I loved to play wedding. Our version featured the Osmonds. Whoever drew the short straw had to play Donny (or sometimes Jimmy) in this weirdly incestuous, gender-queer ceremony. The prized role was that of Marie, because she got to wear an ostentatious white and gold brocade robe

flanked with ostrich feathers that my grandmother had secreted away from the donations to the celebrity thrift store where she volunteered. As is the case with many children's games, ours represented ritual re-enactments of the patriarchal socialization to which girls in the West are subjected. At the same time, though, this was also a way for us to make sense of normative family structures, compulsory heterosexuality and monogamy, and traditional gender roles, none of which were consistently reflected in our immediate environments. As I reflect upon these fantasmatic childhood rehearsals of the heteronormative life course, I recognize them as the origins of my scholarly and personal engagement with marriage—except that now the theatrical has developed into a critique comprised of two, much later, formative epistemological turns in my intellectual development: intersectional feminism and queer theory.

By the time I got to college in the mid-1980s and came out as a feminist, I understood that marriage is an institution designed not only to maintain male supremacy and control women's sexuality, but is also inseparable from the racist and settler-colonialist foundations of the United States (us). Kinship under capitalism turns women and BIPOC (Black, Indigenous, and People of Color) into property, whereby women are trafficked from one man to another and the familial bonds between enslaved and colonized peoples are disrupted, disallowed, or destroyed. The fiction of patrilineal bloodlines perpetuates monogamy, and patriarchal family structures ensure that wealth continues to be passed disproportionately into white hands over generations. As a way of instrumentalizing heterosexuality, marriage safeguards paternity and eschews non-reproductive pleasures, most especially those between women. With such an oppressive history, it was no wonder that political organizing around same-sex marriage was not seriously on feminist or LGB¹ movement agendas at the time. Not only was marrying not of interest to me personally or an issue to which I wished to devote political energy, as a lesbian, it was also not a decision I assumed I would ever have to face in the first place.

¹ *A note on terminology:* in an effort to be precise about which constituencies are encompassed in terminology, I use LGBTQIA+, the most common acronym at the time of this writing, as an umbrella term to designate non-straight sexualities and genders. Other abbreviations, for example, LGB and LGBT, refer to contexts in which particular identities are specified; that is, these acronyms are intentionally non-inclusive. Finally, I use "gay" and "lesbian" to refer to specific identities, whereas "queer" is meant to designate non- and anti-normative practices and embodiments.

When I started graduate school at the University of Minnesota in the 1990s, challenges to state marriage laws by same-sex couples became more frequent and *gay marriage*, as it was non-inclusively termed in the US, became part of the mainstream lesbian and gay political mainstay. Simultaneously, I encountered queer theory, which offered a new way of understanding gender and “compulsory heterosexuality,” as elaborated by Adrienne Rich. Queer theorists, most especially Judith Butler, redefined gender as an effect of a fictional, yet naturalized series of reiterations or performances. Rather than conceiving it as either a role imposed from without or an essence from within, these early queer theorists posited that gender was a technology of both legibility and exclusion. Institutions like marriage thereby become the arbiters of whose identities and relationships deserve validation. Because of its interest in earning institutional recognition, same-sex marriage poses no challenge to heteronormativity as its strategies are grounded in a politics of assimilation, normalization, and respectability. As with its heterosexual variant, in same-sex unions a surrogate of the state sanctifies the monogamous, romantic relationship between two properly gendered subjects who are productive members of society. Furthermore, a married couple earns not just legal status, but also access to a litany of exclusive entitlements, many of which have very little to do with the organization of one’s private affiliations.

Subsequent developments include Roderick Ferguson’s queer of color critique, which much like intersectional feminism, challenges homogenizing accounts of the relationship between marginal identities and power. The queer of color critique demonstrates that both hetero- and homonormativity are deeply invested in privileging whiteness, the able- and normatively-bodied, and middle-class consumerism. What is required is a new queer politics that focuses not on a single, undifferentiated axis of identity, but one where “the *nonnormative* and *marginal* position of punks, bulldaggers, and welfare queens, for example, is the basis for progressive transformative coalition work” (Cohen 438). Instead of being more inclusive, legal same-sex marriage further ossifies the division between *good gays* and socially disreputable forms of queer kinship (e.g., polyamory, non-sexual relationships, inter-generational affiliations, families of choice), queer embodiments (e.g., nonbinary, Two-Spirit, trans), and queer heterosexualities (e.g., the anti-Black and misogynist pathologization of households headed by women, the erasure of Indigenous matrilineal kinship arrangements).

These two activist and intellectual traditions—intersectional feminism and queer theory—form the crux of my professional and personal epistemology. With respect to the former, much of my scholarship, including teaching, focuses on exploring the socio-historical pressures that produce and regulate norms of identity in Germanophone cultures. I frequently build on this kind of analysis by revealing the failures of normative discourse, that is, how these pressures are never wholly efficient. Consequently, I explore points of tension, ambivalence, and rupture, as they apply to queerness and citizenship. In this essay, I employ an intersectional feminist-queer analytic to examine the political debates around the so-called *Homo-Ehe*² or *Lebenspartnerschaftsgesetz* (*LPartG*) that occurred at the turn of the last century. I was in Germany when the *Bundestag* ultimately passed the legislation in 2000, as well as in 2001, when same-sex couples could legally register their partnerships for the first time. With my academic interest in exploring the tensions between sexuality and the state, along with my long-standing critique of the institution of marriage, I keenly followed Germany's national conversation on whether the right to wed should extend to lesbians and gay men. Instead of drawing from the radical impulses of West German feminism and LGBT movements of the late 1960s and 1970s, the proponents of same-sex marriage deployed an overwhelmingly conservative, family-values discourse reminiscent of the early postwar years. Its opponents took a similar tack and, for the most part, did not rely upon explicitly homophobic rhetoric about the fundamental perversity of homosexuality that dominated earlier discussions about lesbian and gay rights.

While marriage equality would not be legalized in the us until about fifteen years after same-sex couples in Germany could register as domestic partners, the rhetoric employed in both national settings confirmed my belief that marriage was not an institution that could be transformed as long as the state was the covert third party. Given this

² The demeaning term *Homo-Ehe* was informally used in public discourse to refer to the *LPartG*. The law did not extend full-fledged marital rights to lesbian and gay couples, but rather recognized same-sex unions only as domestic partnerships with limited privileges. Thus, the term *Homo-Ehe* was used to differentiate it from heterosexual marriage both in terms of its legal scope, but also as distinct from the values and traditions of the institution of marriage itself. The catachrestic term *marriage equality* used in the us to describe legal same-sex unions is also problematic. As I demonstrate throughout this essay, civil marriage in the us and Germany operates within a rights-based discourse. However, both in terms of its history and as a contemporary arrangement of kinship, the institution remains non-inclusive and assimilationist. Thus, we should not take the claim to equality literally.

position, the reader might be surprised to learn that in 2018, my partner and I legally wed. This essay is an exploration of a tension that has long been described by feminists as between the personal and political. It experiments with genre and combines personal narrative with academic analysis, a rhetorical strategy that Ruth-Ellen Boetcher Joeres champions, though it is new to me. To this end, I bookend my discussion of the *LPartG* with reflections from my own life. I open with the pre-ceremony statement my partner and I read at our recent wedding and close with a meditation on the irreconcilable contradictions engendered when the clarity of one's politics and real-life decisions are at odds. By expanding the reach of my scholarly theories and methods, I hope to demonstrate how these are not only tools for cultural analysis, but also reveal important truths about the complexity of individual choice.

Statement on Marriage, Alison and Andrea Guenther-Pal, August 12, 2018

Almost exactly thirty years ago, my partner Andy and I held a private commitment ceremony in Mendocino, a picturesque town on the coast of Northern California. As couples began to challenge state marriage laws and later when the Defense of Marriage Act or DOMA was passed, we rejected the political prioritization of gay marriage that the mainstream lesbian and gay movement actively pursued. When the US Supreme Court ruled the ban on same-sex marriage unconstitutional in several landmark decisions, we celebrated, of course, and were especially proud of the plaintiffs in the California case, one of whom is a friend from college. Yet, we did not want to take the plunge ourselves. Nevertheless, in the summer of 2018, at a second idyllic coastal California setting (my folks' backyard), surrounded by our family, we did just that. Before the officiating began, we read the following statement which expressed some of our reservations about marriage.

In April of 1991, we held a private ceremony in Mendocino, California, to pledge our love and commitment to one other. The rings from that ceremony are those that we will be exchanging today. Since that time, the legal rights of same-sex couples have undergone significant changes, as have social attitudes about LGBTQ

people. Important rights that had been explicitly denied to many queer people are now no longer the law. When we first made our vows to each other in 1991, we never expected that marriage, inheritance, healthcare, family immigration status, and countless additional benefits afforded to heterosexual couples would become available to us in our lifetime. When marriage equality was ultimately federally recognized in 2015, we cheered, along with many others.

Nevertheless, we stand here today with feelings of both joy and unease as we experience the cognitive dissonance of holding two contrary values, both true. On the one hand, we hold an abiding belief in and commitment to our love for one another, and we embrace our right to declare and celebrate this in the presence of our families and friends. At the same time, as we think systemically and critically about the institution, we recognize that our decision to take advantage of state-sanctioned marriage implicates us in an oppressive system that we find abhorrent. We are now able to choose legal marriage, and we do so in order to gain access to the economic and participatory benefits that have increasing personal relevance to us as we grow older. Yet we also value and celebrate that our relationship was forged and has thrived outside of state sanction or approval.

None of us can exist in society without being complicit in systems of domination, systems that privilege some and exclude many. We understand that the institution of marriage was not created for us. In its conception and continued practice in the US, state-sanctioned marriage is a patriarchal, normative, and coercive institution. We have ourselves been excluded, until recently, from the litany of benefits and the social status afforded through civil marriage. The fact that we are now legally allowed entry into this institution does not, however, redeem its racist, classist, patriarchal, colonialist, and gender normative framework. In fact, we fundamentally reject and seek to dismantle a system that coercively regulates consensual human intimacy and binds basic human rights to state-sanctioned relationship status.

It is impossible for us to fully experience the joy of this celebration today without also recognizing and affirming our commitment to the right of all to live freely, to be afforded basic human rights, and to enter into intimate and family relationships of their own choosing. Thus, we ask today that you join us in reflecting upon the many people who, still today, are unable to access these basic rights. We ask that you join us in acknowledging that there are many who are still harmed, coerced, and profoundly disadvantaged by the continuation of this institution as currently practiced. We ask that you join with us as we acknowledge our own class, race, cisgender, and relationship privilege in being able to now access the numerous benefits that can and will significantly impact our economic and personal well-being. And finally, we ask that you join with us to acknowledge and celebrate the limitless constellations of kinship and the diversity of identities and embodiments through which people live and love.

**“Die schwule Bewegung ist tot!”:
Homo-Ehe and German Family Values
at the Beginning of the Third Millennium**

In May 1949, the West German Constitution was ratified and included Article 6, a provision requiring that (heterosexual) marriage and the (patriarchal) family receive the special protection of the state. Article 6 reflected the postwar ideology that the success of the new Federal Republic was dependent upon the privileging of marriage and the nuclear family unit. Policymakers maintained that the family was central to re-establishing social and economic stability, normalizing sexual behavior, and promoting democracy. West Germany’s first Minister of Family Affairs, Franz-Josef Wuermeling, whose Catholic family values rhetoric was significant in shaping this conservative ideology, put it thusly: “Millionen innerlich gesunder Familien mit rechschaffen erzogenen Kindern sind als Sicherung gegen die kinderreichen Völker des Ostens mindestens so wichtig wie alle militärischen Sicherungen” (“Millions of emotionally stable families with properly raised children are as important a security against the populous peoples

of the East as any military force³; my trans.; qtd. in Haensch 74–75). As a microcosm of the state, the traditional family represented the *Keimzelle*, *Urzelle*, and *Kraftquelle* of society, and consequently, the rehabilitation of the family became the surest path to political normalization in the wake of the Third Reich and at beginning of the Cold War.

This brief background is meant to reveal how the status of marriage and the family remain central to the construction of citizenship and equality in a reunified Germany, through an examination of the debates around the German *Lebenspartnerschaftsgesetz*. I argue that contemporary constructions of marriage and family fold back onto their conceptual counterparts from the Adenauer Era (1949–1963). I begin with a brief historical overview of West German LGBT and feminist activism, which viewed marriage and family as fundamentally repressive. I then analyze the debates around the *LPartG* both within the *Bundestag* and in the public sphere to demonstrate that the radical impulse from previous emancipation movements had been replaced by a politics of respectability. Ultimately, much like in the early years of the Federal Republic, family values were inextricable from ideas about citizenship and equality. And at the most recent turn of the century, these were weaponized by liberal actors in the discourse that ensured the passage of Germany's first law to regulate same-sex unions.

On June 28, 1969, the Stonewall uprising on Christopher Street in Greenwich Village spurred what is generally understood as the beginning of an international modern LGBT liberation movement in North America and Western Europe, a movement that was also tied to a larger radical leftist social movement occurring primarily on university campuses. In West Germany, efforts to mobilize gay men and lesbians for the cause of emancipation are commonly said to have begun in 1971 at the premiere of Rosa von Praunheim's gay activist film, *Nicht der Homosexuelle ist pervers, sondern die Situation, in der er lebt* (*It Is Not the Homosexual Who Is Perverse, But the Society in Which He Lives*).³ The thematization of the daily struggles of gay men and the film's call to action prompted the founding of the *Homosexuelle Aktion Westberlin*

3 By most accounts, the Stonewall uprising is thought of as the beginning of Western LGBT movements. Its impact in West Germany must be more thoroughly explored, in particular with respect to what knowledge gays and lesbians had about the uprising. Von Praunheim, for example, was unaware of Stonewall when he made *Nicht der Homosexuelle* (Kuzniar 94). Historian Carla MacDougall challenges the validity of the narrative that constructs the Stonewall rebellion as the watershed moment in LGBT activism in West Germany (10).

(*HAW*) and other similar groups throughout the Federal Republic. *HAW* had both gay and lesbian members until 1975 when a group of women split from the organization to form the *Lesbische Aktions-Zentrum (LAZ)*. In their political work, *LAZ* pursued the radical and/or socialist goals of the autonomous women's movement, offering a critique of normative sexuality, monogamy, marriage and kinship, and male privilege. Because gender equality was part of the *Grundgesetz* (Basic Law or Constitution), liberal feminism never truly took hold in West Germany the way it had, for example, in the US, where there was a nation-wide and subsequently unsuccessful campaign for the adoption of an equal rights amendment. At the same time, the separatist vision of forming a *lesbian nation* insulated from patriarchal oppression was also not generally embraced by the *LAZ* and other lesbian organizations. Instead, they were "concerned with building a social community based on sexual preference and gender while also attempting to communicate their politics on a broader scale and to a larger audience" (MacDougall 8).

The West German gay men's liberation movement of the 1970s was essentially split in its objectives. On the one hand, there were those involved in the alternative scene, who were members of *HAW* and wanted to establish a gay counterculture. These men saw attempts at political reform as requiring work within a fundamentally homophobic and sexist system. On the other hand were older activists who had come of age in the 1950s; they may have been part of the earlier homophile movement, and their integrationist political strategies had succeeded in the 1969 and 1973 reforms of §175—the federal anti-sodomy statute. After the first reports of GRID (Gay-Related Immune Disease) in the early 1980s, activists mobilized internationally in the struggle against HIV and AIDS. In West Germany and the US in particular, HIV/AIDS activists signified the mainstream public and political response to the pandemic by evoking the Holocaust. They deployed the symbol of the pink triangle to demonstrate the continuity between the persecution of homosexuals during the Third Reich and the silence around the current health crisis (Jensen). By 1989, the reformist direction of gay political activity and the recent prominence of liberal gay activists such as Volker Beck and Günter Dworek caused those in the movement to declare, "Die schwule Bewegung ist tot, es lebe das homosexuelle Berufsbeamtentum!" ("The gay movement is dead, long live the bourgeois-homosexual bureaucracy!"; my trans.; Etgeton 11).

In 2000, a now reunited Germany adopted the *LPartG* allowing same-sex couples to register their partnerships and receive access to

some of the privileges previously afforded only to married heterosexuals.⁴ Propelled foremost by the joint efforts of the Green Party and Germany's largest LGB organization, the *Lesben- und Schwulenverband in Deutschland e. V. (LSVD)*, the sometimes heated discussion of the rights of gay men and lesbians to marry took place on the floor of the *Bundestag*, in the mainstream media, and within LGBTQIA+ organizations. These debates reveal how German knowledge about the institutions of the family and marriage, equal and sexual rights, and history was constructed.

Neither vitriolic diatribes cataloging the immorality of homosexuals nor lengthy testimony by experts as to the causes of homosexuality dominated the discussion around the rights of gay men and lesbians to have their relationships recognized by the state. The early postwar question of whether homosexuality was hereditary, acquired, or psychological had already been answered and was so obvious that it hardly warranted mention. The comparatively minor discourse from the 1950s used to argue for the reform or abolishment of §175 which held that homosexuality was simply a variant of human sexuality had, in the meantime, essentially become established knowledge. In 1957, the Supreme Court took the position that male homosexuality was a triple threat: it endangered the new democracy, vulnerable young men, and the patriarchal family.⁵ Some forty years later, they asserted in their written opinion on the constitutional challenge to the *LPartG* that homosexuality does not result from seduction or upbringing, but rather develops due to a biological predisposition (Bundesverfassungsgericht Part III, no. 1). With few notable exceptions, by the time of the marriage debates, even those against the so-called *Homo-Ehe* publicly presented the position that homosexuality was a natural and predisposed alternate form of sexuality.

The full-blown *Kulturkampf* that religious conservatives portended was largely hidden behind vague and confusing legalistic arguments about the constitutionality of the *LPartG*. The one substantive claim

4 It is too complicated to go into here, but the law was actually divided into two parts because of the difficulties its proponents saw in getting support from the *Bundesrat* for certain provisions, namely those around taxes. This splitting of the law was one of the legal arguments that Saxony, Thuringia, and Bavaria used to support their Supreme Court case that the *LPartG* was unconstitutional, and they lost their case on all counts. Political scientist Kelly Kollman provides an important history of the global political mobilization around legislating same-sex marriage in Western Europe and North America ("Same-Sex Unions").

5 See Moeller's comprehensive and illuminating discussion of this case ("The Homosexual").

made by the law's conservative opponents, the Christian Democratic Union/Christian Social Union (CDU/CSU) Party, was that it equated registered partnerships for gay and lesbian couples with marriage, and since marriage and the family enjoyed "special protection" under Article 6 of the *Grundgesetz*,⁶ the proposed law was unconstitutional. Although the conservative party largely avoided framing their opposition to the law in terms of immorality or social danger, they expressed concern about the erosion (*Aushöhlung*) of the nuclear family and heterosexual marriage and returned to earlier rhetorical strategies whereby these institutions were, as CDU *Bundestag* member Wolfgang Bosbach put it, "die Keimzelle jeder staatlichen Gemeinschaft" ("the nucleus of every community of the state"; my trans.; 1). Norbert Geis, Bosbach's colleague in the parliament, asserted that the family and marriage were under threat just as they had been under National Socialism and during the Cold War. According to this narrative, the Constitution and the new German family rose simultaneously from the postwar rubble and a miracle occurred:

Es war aber vor allem ein Grund, der aus der Nachkriegserfahrung der Väter und Mütter unserer Verfassung resultierte: Als nämlich 1945 unser Land vollständig am Boden und in Trümmern lag, als der Staat nicht mehr funktionierte, als die Einzelnen sich selbst überlassen waren, gab es ein Wunder: Die Familien haben zusammengehalten. Sie haben dieses Land mit einer Vitalität ohnegleichen wieder aufgebaut. Der schnelle Wiederaufbau, das Wirtschaftswunder wäre ohne die Vitalität der Familien nicht möglich gewesen.

(It was above all one reason [why marriage and family receive special protection] that resulted from the postwar experience of fathers and mothers: namely in 1945, as our country lay in complete ruins, as the state no longer functioned, as individuals had to depend only on themselves, a miracle occurred: the family remained intact.

6 The part of Article 6 in question, at least according to the opponents of the law, was, "Ehe und Familie stehen unter dem besonderen Schutze der staatlichen Ordnung." ("Marriage and the family shall enjoy the special protection of the state.").

Families built this country with an unprecedented vitality.
 The rapid reconstruction, the “economic miracle” would
 not have been possible without the vitality of families.;
Deutscher Bundestag 14/131; my trans.; 12614-15)

Instead of referencing a more universal origin story of the family, Geis’s testimony paints a picture of the Federal Republic and the postwar family as fraternal twins. In contrast to similar discussions in the US that conceived of the family as the cradle of civilization, German politicians declared a more recent date of birth.

Opponents of the law avoided explicit attacks on homosexuality itself. Instead of homosexual behavior representing a perversion, supporters of the law were now accused of “perverting” the Constitution. Former Supreme Court Justice Paul Kirchhof, for instance, called the law “eine Perversion des Verfassungsauftrages” (“a perversion of the constitutional mandate”; my trans.; qtd. in Darnstädt et al. 84). This position was decidedly anachronistic in its evocation of the rhetoric used to demonize homosexuality in Adenauer’s Germany. However, explicitly homophobic language was more or less limited to statements made by some members of the mostly Catholic clergy. They diagnosed the dissolution of the Christian Occident and spoke of homosexuality as degenerate, against the divine order of creation (*Schöpfungsordnung*), and a threat to youth.⁷ In his remarks on the *LPartG*, Cardinal Joseph Ratzinger, now pope emeritus Benedict XVI, called the adoption of children by gays and lesbians *child abuse* and believed that the law would have a damaging effect on morality (qtd. in Braun 10). As in the early postwar years, anxiety about a declining birthrate was once again instrumentalized as a way of castigating gays and lesbians as unproductive members of society. Children should have a (white, Christian) mother and a father.⁸

⁷ See the conversation between Fulda archbishop Johannes Dyba and Green Party member Volker Beck, the so-called father of the *Homo-Ehe*, published in *Der Spiegel* (Mestmacher and Wensierski 88). The letters to the editor in response to Dyba’s remarks in an earlier issue of *Der Spiegel* suggest that the clergyman’s position on the *LPartG* and homosexuality in general did not resonate with *Spiegel*-readership. Letter writers called his views medieval and reminiscent of National Socialism (“Verkommene Ansichten” 17).

⁸ Geis, for example, said “Nirgendwo erfahren die Kinder größere Geborgenheit als bei Vater und Mutter” (“Nowhere do children experience a stronger feeling of security than with their mother and father”; *Deutscher Bundestag* 14/115; my trans.; 10962).

Curiously, given the radical critiques of patriarchal family structures by the New Left and LGBT movements of the late 1960s and 1970s, as well as by feminists, the proponents of the *LPartG* also placed the family in the center of their rhetorical framework, and understood the issue of legally recognizing monogamous same-sex relationships as a matter of equal rights. Gay men and lesbians, they argued, comprise a minority. As such, the state has an obligation to protect minority groups from discrimination and to provide them with full citizenship rights. Denying gay men and lesbians the right to marriage, or to a marriage-like (*ehe-ähnlich*) institution, relegates them to second-class status. This reasoning represented a significant departure from the ideological legacy of earlier radical, feminist, and leftist activists, who advanced a critique of bourgeois society and, in particular, its repressive attitude towards sexuality.⁹ They sought alternative models of community and understood the institutions of the nuclear family and heterosexual marriage as symptomatic of a bourgeois patriarchal capitalist system. Through a discourse of radical liberation, not civil rights, they challenged sexual norms, and aimed to change social attitudes about monogamy, reproductive issues, marriage and kinship, sexual mores, and male privilege.

Whether primarily for strategic or philosophical reasons, the campaigners for the registered domestic partnership initiative started from the same assumption as their opponents: long-term monogamous relationships are valuable to the state and as such should be institutionalized. Aligning themselves with a politics of respectability, the pro-*Homo-Ehe* representatives were quick to point out that the *LPartG* had nothing to do with sex, but rather with the reproduction of values that are already a part of liberal democracy. Volker Beck asserted that, “Dies ist kein Projekt der Libertinage. Es ist ein republikanisches Projekt der Beendigung von Diskriminierung, ein Projekt einer wertorientierten und wertbestärkenden Politik” (“This is not a libertine agenda. It is a project of the republic to end discrimination, a project informed by a values-based and values-strengthening politics”; *Deutscher Bundestag* 14/115; my trans.; 10964). In response to the conservative charge that the law threatened the marriage and family article of the Constitution, advocates of the *LPartG* needed to emphasize the ways in which the law was unlike heterosexual

9 Kelly Kollman makes a related observation in her article that compares the different approaches to same-sex unions in Austria and Germany (“European Institutions” 58).

marriage.¹⁰ Gay men and lesbians who registered their partnerships with the government could not, for example, adopt children as a couple, nor were they eligible for certain tax breaks.

But what initially appeared to be simply a tactical maneuver ended up looking more like an assertion of the value of Article 6. Social Democratic representative Margot von Renesse suggested that the institutions of marriage and family would be even more powerful as a result of the *LPartG*: “Durch die Ausdehnung dieses verantwortlichen, verlässlichen und verbindlichen Rechtsinstituts auf andere, die nicht heiraten können, steigern wir die Bedeutung des von der Ehe und Familie ausgehenden Magnetismus, der Aura der Begeisterung für wechselseitige Verantwortung” (“By making this reliable, secure, legally binding institution available to those who cannot marry, we elevate the appeal of marriage and family, the aura of enthusiasm for mutual responsibility”; *Deutscher Bundestag* 14/115; my trans.; 10959–61). Finally, they pointed out that the continued exclusion of gay men and lesbians from those rights enjoyed by married heterosexuals was part of the appalling German legacy of homosexual persecution. Volker Beck declared to the parliament, “dieses Haus [ist] den Schwulen und Lesben etwas schuldig” (“this house of law owes gays and lesbians something”; *Deutscher Bundestag* 14/115; my trans.; 10964). Beck’s and other similar statements imagined a direct line from the Holocaust and the pre-1969 climate of secrecy brought about by the constant threat of prosecution under §175 to the present-day (*Deutscher Bundestag* 14/115 10959–61).

More radical critiques suggesting new ways of thinking about the family did, however tentatively, make it to the floor of the *Bundestag*. The Party of Democratic Socialism (PDS), which ultimately voted not to support the law, argued that the concept of marriage was outmoded and that the diversity of kinship constellations in present-day Germany needed to be reflected in the legal code. PDS representative Christina Schenk said, “In einer pluralistischen Gesellschaft muss der Staat die real gelebte **Vielfalt des Zusammenlebens** anerkennen und darf nicht einseitig das Ehemodell privilegieren” (“In a pluralistic society, the state must recognize the diverse, real-world ways of living together and may not unilaterally privilege the marriage model”; *Deutscher Bundestag* 14/115; my trans.; 10969). The impetus for re-establishing the *wissen-*

¹⁰ See, for instance, the *Spiegel* interview with minister of justice Herta Däubler-Gmelin (Lersch 103) and the Beck/Dyba debate mentioned earlier.

schaftlich-humanitäres komitee (*whk*)—the first iteration of which is widely assumed to be the first LGBT rights organization—was in part to provide a voice of dissent for the assimilationist goals of the mainstream gay movement, in particular Volker Beck's and others' work to legislate the *Homo-Ehe*. The *whk*'s position on the *LPartG* was that, far from providing more rights, the law inappropriately made the private realm of sexuality a matter of public legislation. The lesbian organization *Lesben-Ring* was also critical of the law because it perpetuated the privileging of marriage in the politics of the family. And at the 1999 Christopher Street Day parade in Berlin, participants holding *whk* banners emblazoned with their demand “Ehe raus aus dem Grundgesetz!” (“Ban marriage from the Constitution!”; my trans.) were observed. But these voices were comparatively few and represented a minor position in the debates.

At the beginning of the third millennium, the ideology around the family and marriage raised the specter of the early years of the Federal Republic. When the *Grundgesetz* was debated after the war, the provisions of Article 6 were put into writing to serve as a protective measure that was in part a response to the perceived perversion of the family under National Socialism. Consequently, this portion of the Constitution reflects the postwar ideology that the success of the new Federal Republic was dependent upon the privileging of marriage and the family unit (Cf. Moeller, *Protecting Motherhood* 65–71). Accordingly, the family was the ideal unit of social organization in a democracy and institutionalizing monogamous heterosexual life partnerships provided the framework for understanding sexual life. The debates of the *LPartG* demonstrate that the status of marriage and the family remain central to the ways in which citizenship and equality are constructed in a unified Germany. These were examined only in terms of either broadening or continuing to limit the concept of marriage and the impact that such actions would have on the stability of the family and the nation.

Activists in the leftist LGBT movements and the autonomous feminist organizations of the late 1960s and 1970s viewed the institutions of marriage and family as fundamentally repressive and offered a radical critique of the hierarchal organization of patriarchal capitalism. They argued that the social regulation of sexuality and gender existed to serve the interests of a conservative politics of the bourgeois family. However, when same-sex marriage received high-profile political attention in the 1990s, the function and definition of

the family and marriage, and most crucially, the role of the state in what are in principle private alliances, were not fundamentally interrogated by the major actors in the *Homo-Ehe* debates. Rather, these institutions were seen as fulfilling important social functions and, in its rhetoric, the mainstream liberal wing of the lesbian and gay movement turned to civil rights discourses emphasizing equality, tolerance, and assimilation. In 2017, the *LPartG* was essentially replaced by a new law that provides married same-sex and heterosexual couples with identical rights.

Can You Grow a Radical Tree from Tainted Roots?

Given its postwar history and, more recently, reunification, what shaped the precise contours of the German discourse around same-sex unions differed in important ways from discussions in the US. However, as in the German case, the US mobilization to legalize same-sex marriage also relied on the logic of assimilation and rights-based politics in a democracy. The law on marriage equality, as it was more commonly referred to stateside, would not be enacted in the US until nearly a decade and a half after federal domestic partner registration was possible for gay and lesbian couples in Germany.¹¹

My partner and I did not participate in any of the mainstream organizing to support marriage equality, nor did we view it as an important political priority. So, what led us to ultimately make the decision to legally marry, when our position on marriage has not changed since the 1980s? The reader might assume that I find myself in a constant state of cognitive dissonance. Before I began writing this essay, I, too, thought this was a possibility. The cure for cognitive dissonance is, of course, consonance, and to achieve consonance, one must relinquish one of the contradictory beliefs. Yet I have not changed my ideas about marriage to fit my marital status. Doesn't this make me a hypocrite? The hypocrite—whose linguistic origin is the Greek stage actor, someone who pretends—is similarly inaccurate, because my

11 Same-sex marriage was permissible in many states and in Guam before the federal Supreme Court ruled in 2015 that DOMA was unconstitutional. One of the legal grounds used to argue against the ban was the Fourteenth Amendment, which was adopted during US Reconstruction to extend citizenship and equal rights to formerly enslaved people. The 2015 case illustrates the imbrication of race and sexuality as advanced in the queer of color critique.

actions are not a pretense. I've never sought to hide the contradiction between my decision to marry and my critique of the institution; indeed, more often than not, I call attention to it. I suddenly recall Ruth-Ellen's rejoinder that *radical* means to get to the root of. In the final section of this essay, I explore the roots of these apparent contradictions.

The mainstream LGBT movement's focus on marriage equality was manifestly invested in homonormativity. Activists relinquished the opportunity to advocate for truly radical, plural, and inclusive forms of kinship that do not depend on their validity through proximity to straightness. Instead of marriage reform, an intersectional feminist-queer politics demands a reconceptualization of family, separating it from the patriarchal and colonialist economy of white supremacy and bloodlines, dislodging the myriad entitlements from marital status, and insulating private affiliations from the reach of the state. However, now that same-sex unions are legally recognized, different questions emerge, and their answers cannot be captured within a binary pro/con rubric. We must ask what purposes and effects do (non-)participation have? Does eschewing legal marriage bring us closer to realizing feminist-queer priorities? Can the institution of marriage be perverted from within? Can we afford to give up what marriage currently provides? These questions exemplify the ineluctably complicated choices that marginalized people and those outside of the political mainstream face—and uncoincidentally, their answers illustrate the inseparability of the personal and political as well as of theory and practice.

Helga Thorson's essay in this volume is a productive exploration of feminist choices and the limits of personal agency. She writes that, "Not all choices are available to everyone in the same way, and the same decision could elicit completely different responses and results in diverse contexts" (12). Decisions are not made by free and autonomous subjects; instead, agency is determined by social apparatuses designed to restrict choice for some and endow others with greater freedom and alternatives. Moreover, people belonging to marginalized groups not only encounter more limited options, but the consequences of each are typically also more complicated and contingent. With marriage, I face a Faustian dilemma of participating in an institution for which I have a fundamental antipathy, and at the same time of existing in a system that metes out privileges based on marital status. As I write this, COVID-19 is raging throughout the US and is particularly acute in Wisconsin where I currently live. Because as a group, we are disproportionately affected by the pandemic, accessing affordable healthcare through a

spouse's insurance, securing hospital visitation, making medical decisions for one's partner, and ensuring social security and survivorship benefits are pressing issues for LGBTQIA+ communities. The impacts of COVID (including access to the vaccine) on queer BIPOC are even greater, not to mention the racial and economic inequalities that until recently were barely acknowledged by white people. Draconian immigration and residency policies have become even more so under the last US president as have their intensified—and selective—enforcement by both Republican and Democratic administrations. Marriage to a US citizen may be the only legal way for some to remain in the country. As these examples demonstrate, the domain of sexuality encompasses race, gender, ability, class, and other dimensions of hierarchy. When access to benefits that should never have been linked to marriage in the first place are regarded as privileges rather than rights, no one should suggest that it is politically suspect to marry. Writing of the increased necessity of gaining access to these entitlements as she and her partner aged—a concern that my partner and I had as well—Claudia Card emphasizes that coercion circumscribes this decision: “Marrying under such conditions is not a totally free choice” (7). Participation and non-participation in any institution—especially one in which the state's power to sanctify certain affiliations and reject others—is always mediated by an individual's location within a system of dominance and hierarchy. A wedding can certainly represent a meaningful rite of passage for a couple. However, as a public affirmation and extension of privileges regulated by the government, the ritual's coercive function is obscured by its summoning of affect and relies on a deeply ingrained cultural imaginary of romantic fate, sexual fidelity, and self-determination.

In 1996, same-sex unions were first addressed by the US legislature in the Defense of Marriage Act (DOMA). As gay and lesbian couples challenged state laws with increasing frequency, homophobic, anti-marriage-equality advocates feared that including same-sex partnerships in the institution would be the ultimate cause of its downfall, the final nail in what had already been imperiled by divorce, single mothers, and changing sexual mores. In a fit of moral hysteria, lawmakers introduced DOMA to preempt any future legislative discussion of a federal same-sex marriage policy. With just two sentences, legal marriage would be defined as a union between one man (a husband) and one woman (a wife), and states, territories, or Native American Nations would not be required to recognize same-sex marriages performed else-

where. Congressman Bob Barr, the law's main author, opined in the House debate that, "The very foundations of our society are in danger of being burned" by legions of married queers. Stretching the metaphor to its limit, he continued that concerted action was needed to guard heterosexual marriage from "[t]he flames of hedonism, the flames of narcissism, the flames of self-centered morality [that] are licking at the very foundations of our society: the family unit" (*Congressional Record* H7482). Others were slightly more restrained in voicing their fears that traditional marriage would be demeaned by legitimizing what they regarded as fundamentally immoral relationships (see statements by Funderburk, Lipinski, or Smith in the *Congressional Record*). Likely unwittingly, DOMA supporters advanced an argument that marriage—arguably the most potent instrument of heteronormativity—was so fragile that it would be rapidly perverted by an infiltration of queers and sexual renegades. I find the paranoia of this argument laughable; yet liberal proponents of marriage maintain that the institution can be reformed or changed from within. However, I wish to address this issue from a different direction. Instead of imagining how we might change marriage, I'm interested in how it changes us.

J. Halberstam's *In a Queer Time and Place* explores the promise of queer time, which revels in imaginative identities and idiosyncratic life narratives. It functions as a counter-temporality to heteronormative time. Marriage represents a milestone that denotes one's place in a heteronormative progress narrative of successful adulthood marked by "temporal frames of bourgeois reproduction and family, longevity, risk/safety, and inheritance" (6). The project of gay and lesbian liberation unfolds in heteronormative time and traffics in discourses of inclusion and (neo)liberal rights. Marriage equality—as the latter part of the term suggests—relies on the interchangeability of the heterosexual and homonormative couple. In the life course of the *good gay* couple, white weddings and gaybies are merely analogues of straight horology. In other words, there is nothing queer about marriage.

Every legal marriage ceremony in the US is solemnized by an authorized surrogate of the state. The officiant publicly pronounces a couple legally married and thus "puts into effect the relation it names." Through the utterance "I now pronounce you ..." participants are no longer separate individuals, but are made intelligible through discourse in relation to each other (Butler, "Critically Queer" 17–20). Irrespective of the particular strategies for negotiating power within their relationship, each member of the couple is positioned hierarchically within a

heteronormative matrix.¹² Through this “performative act” (Butler, “Critically Queer”), *I am a wife* and all that it implies: I am made to occupy a subordinate position, regardless of there not being a *husband* in my dyad. Each time my partner or I are referred to as *wife*, which occurs with some regularity, this subordinate position is reaffirmed. In other words, when I am “hailed,” to use Althusser’s useful coinage (117–20), it forces a recognition of myself as being situated in relation to men. Although the category *woman* functions similarly—but not identically, because few social interactions necessitate being addressed as woman—this is the gender with which I identify. On the other hand, wife is not only akin to being called by the wrong name, it feels like a punishment, like I am being put in my place. To be sure, the fact that I actively reject the term makes it easier for me to understand its function as regulating and enforcing heteronormative gender relations, but its effect is the shame of subordination.

A second effect of the performative marriage pronouncement is that what was once private and invisible immediately becomes public and hypervisible. In the past, I controlled which details of my relationship I shared, if any. Now, specific, intimate knowledge assumed to correspond with my new marital status is freely available to an astonishing variety of entities and nameless individuals including the government, myriad service providers, and my employer. Simply the action of checking “married” on a form calls forth an entire complex of knowledge about my and my partner’s gender, our sexual life, the arrangement of our finances and household, and a great deal more. My unease with this should not be understood as nostalgia for the closet, but rather with the apparition of norms that now accompany me. Marriage is comprised of a limited, self-evident, and fossilized set of practices and social arrangements. For instance, in the sexual domain, marriage assumes, among other things, that the members of the couple relate to each other primarily as romantic partners who have chosen each other to live together long-term and that they have sex exclusively with each other and in private. It further presupposes that each partner’s sexuality and gender identity are stable and affixed to only one of an extremely limited number of possible categories, and that the gender of one partner is congruent with the sexual identity of the other. These

12 Judith Butler uses the term “heterosexual matrix” to designate the system of discourses that naturalizes sex, gender, and sexuality, each defined relationally through compulsory heterosexuality (*Gender Trouble* 151, n. 6).

assumptions circumscribe me and every other legally married person irrespective of the ways we may live out our relationship. Because its normalizing scope succeeds just as much by exercising power through operations of exclusion as inclusion, marriage simultaneously disavows all non-normative forms of gendered sexual relationality; examples are affiliations that are not primary, sexual, romantic, or long-term; polyamory; genderqueer, genderfluid, non-binary, and Two-Spirit people; and lesbians married to men. Exclusion on this basis not only creates two discursive categories—respectable good gays and illegitimate queers—but also intensifies the profound material effects that continue to disadvantage people marginalized on the bases of gender and sexuality. Of course, heteronormativity is also highly racialized and entrenched in ableism. As an instrument at the crux of reproduction, ableist white supremacy is preserved by promoting procreation between healthy white people and restricting interracial and BIPOC marriages. This was once achieved through eugenic policies and colonial marriage and anti-miscegenation laws. Today we can trace these in governmental policies that trigger a reduction in or loss of benefits when people with disabilities marry, reproductive technologies that allow donor selection based on race and medical history, blood quantum laws, and extrajudicial segregation and chronic disinvestment in communities of color. Being married incorporates me into an institution that by design ensures the generational preservation of an ableist white supremacy. My normative identities—white, educated, middle-class, currently able-bodied, and cisgender—contribute to its longevity.

DOMA passed in a bipartisan landslide. This must have been greatly reassuring to the bill's supporters who feared that heterosexual marriage was so fragile that it required federal legislation to prohibit lesbian and gay couples from legally wedding, despite it (supposedly) being the bedrock of centuries of civilization. However, those who ultimately voted for DOMA—including our current Democratic president—underestimated the formidable power of the institution of marriage. They imagined its end, if they allowed us access. Yet, there has been no modern-day fall of Rome in the years since marriage equality was successfully litigated. Instead, the state's reach into our private lives has become even more extensive and assimilatory cultural norms are yet another insidious way to exclude the extremely marginalized. In 1996, Congressman Lamar Smith lamented from the House floor, "Same-sex 'marriages' demean the fundamental institution of marriage. They

legitimize unnatural and immoral behavior. And they trivialize marriage as a mere ‘lifestyle choice’” (*Congressional Record* 7494). If only ...



FIGURE 2.1

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