

**The Domestication of Equality:  
Gays, Lesbians and EU "Family" Rights**

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While feminism sparked the systematic politicization of personal relations that exposed the family as patriarchy's chief institution, liberalism afforded comforting illusions of exceptionalism that encouraged us to believe that the egalitarian families, which eluded our foremothers, were ours for the making. This paper focuses on those living on the margins of this institution within the European Union and contends that the politics of integration affirms neither the insights of feminists nor the aspirations of liberals with regard to the family, particularly for lesbians and gays.<sup>1</sup>

With neither the social status to defy its legitimacy nor the needed vigilance to critique its content, many lesbian and gay advocates are demanding their inclusion within the rubric of family so as to secure the rights and privileges seemingly associated with it. Invoking the mythical portrait of the family as a "haven in a heartless world" (Lasch, 1977), they disregard the feminist analysis and empirical evidence that contradicts this pristine image (Barrett and McIntosh, 1982; Delphy and Leonard, 1992). Historically, women and girls were patrimonial possessions; prohibited from owning their own property, pursuing private incomes, and controlling their bodies. Virginia Woolf was one of many early feminists who wrote in despair of "the claims and tyrannies of families" (1929, p. 54). Such powerful criticisms led to the successful adoption of property rights, divorce, and other reforms that, in turn, modified the most ominous aspects of family life.<sup>2</sup> Nonetheless,

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<sup>1</sup>Though feminism resists wedding lesbians to "their" (gay) men (Robson, 1994, n. 1), it is impossible to overlook the oppressive position both share within the dialectic of "family rights." The empirical nature of the European cases and policies we are about to examine frequently defies a gender-specific analysis though one will be attempted where possible.

<sup>2</sup>Social progress is, however, not linear. For example, in Sweden, new laws concerning shared custody and visitation have resurrected male ownership of children and, hence, male control of former wives and girlfriends. Women who do not actively support their children's contact with their fathers risk lost custody. Even battered mothers at refuges are expected to maintain contact with their batterers to guarantee ongoing visitation for their children -- a policy that clearly places such women at risk (Nordenfors, 1996). Moreover, refuges that refuse to reveal the whereabouts of women and children seeking safety risk lost state funding and

expectations of domestic service and sexual access persist, a predicament aptly underscored by the limited legal recourse available to women raped in marriage (Elman, 1996a, Chapter 4). Moreover, male violence against women and girls within families remains the most endemic form of violence, no less within Member States than in other countries. Though the EU recently acknowledged the brutal reality of family existence (COM 97 224 final),<sup>3</sup> its endorsement of the institution has not wavered. Although women's movements remain less enthusiastic, most have abandoned their once fervent opposition to the family.<sup>4</sup>

The lesbian legal theorist Ruthann Robson similarly observes: "Much current feminist and lesbian legal theorizing has abandoned previous critiques of the oppressive and political nature of the family in favor of advocating recognition for 'our' families, often leaving the concept of family unproblematized" (1994, p. 977). This transformation is, in part, connected to the success of conservatives in conflating honorable behavior and concerns with "family values". As well, the lesbian baby boom in North America and Western Europe has taken a considerable toll on both feminist and lesbian movements. One of the most notable consequences is that those once engaged in political struggle are now playing "super moms", absorbed in raising a "less sexist" generation; a pompous claim that belittles the significance of social structures as it implicitly blames mothers of past

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police intimidation (Beausang, 1999).

<sup>3</sup>In 1997, the European Parliament insisted on the need to establish a European Union-wide campaign for zero tolerance of violence against women and called for action from the Commission which, in turn, designated 1999 the "European Year Against Violence Against Women" (COM 98 335 final). However, funds proved inadequate to support this "Daphne Program" and the Commission has proposed several activities to launch a public anti-violence campaign. Most recently, the Commission sponsored a conference in Cologne.

<sup>4</sup>Spain provides an interesting contrast to its European neighbors. There extricating the family from oppression proves more difficult as new social movements developed in opposition to fascism's explicit embrace of nation, church and family (Llamas and Vila, 1999, pp. 214-218).

generations for failing to raise just children.

The affirmation of family has entailed, among other approaches, campaigns for lesbian and gay marriage and the legalization of same sex cohabitation. While these efforts may sensitize some to the exclusionary nature of several social institutions and provide immediate comfort to others, they undermine a more radical agenda. That agenda is one that would both embrace a multiplicity of vital living arrangements and rigorously question the authority of regimes to grant privileged recognition to some relationships (e.g., cohabiting and marital) and not others. Yet, before making the case for this revolutionary approach, it is necessary to explore the numerous disappointments that have, in part, stemmed from recent efforts to ameliorate codified heterosexism within Member States and European institutions. Rigorous attention to these details is particularly necessary as many may assume that there are greater risks in pursuing radical agendas over those that are reform-oriented. On balance and over time, this assumption may prove misleading.

Although European law has yet to define "the family," plethora policies, secondary legislation, and European Court of Justice (ECJ) rulings have privileged conventional conceptions premised in blood and marriage.<sup>5</sup> For example, in 1986 the Court ruled in *Netherlands v Reed* that the term "spouse" refers only to partners in marital relationships and not to the millions of Europe's cohabitants who daily define themselves as family (Case

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<sup>5</sup>Conventionality does not, however, provide clarity. To the contrary, it often leads to confusion. For example, the anachronistic assumption that marriage necessarily confers "legitimacy" to offspring suggests that marriage should be the exclusive province of fertile couples intent on reproducing (Hodgkinson, 1988). Moreover, an exclusive emphasis on sexual relationships as determinative of "families" similarly precludes mother-child relationships (Fineman, 1992). Definitional difficulties have not, however, weakened the EU in its pursuit of laws that invoke a subject (and its relations) it has yet to carefully define. Other international law proves just as vague. For example, the International Covenant on Civil and Political Rights insists that families are "natural units": "The family is the natural and fundamental group unit of society and is entitled to protection by the law and state." A similar statement may be found in the Universal Declaration of Human Rights.

59/85 [1986] ECR 1283). A decade later, the Council of Ministers refused the adoption of a parental leave directive that explicitly forbade discrimination based in sexual orientation and replaced it with one that deleted any reference to heterosexism (International Lesbian and Gay Association, 1998, p. 11). More recently, the Council ignored its own 1998 staffing regulations prohibiting heterosexist discrimination and denied a household allowance to a Union official whose Swedish same-sex marriage it refused to recognize (*D v Council*, Case T-264/97). The political consequences of such positions are numerous and far reaching, especially for those unwilling or unable to marry.

Prohibited from (recognized) matrimony, lesbian and gay EU nationals maintain legal residence through nationality yet possess only some and not all of (heterosexual) citizenship. "The right to family life" continues to be one of the most illusive components of EU citizenship for this historically oppressed group. Whereas legal residence and other social benefits are among the privileges customarily available to the foreign spouses of EU heterosexuals, Europe's lesbians and gays are often severely disadvantaged (through law) from establishing similar intimate, cohabiting relationships with third country nationals. This paper focuses especially on the politics of cohabitation because, as Tamara Hervey notes: "The constituents of the right to family life in the context of Community law essentially focus on the right of family members to install themselves together, in the family home" (1995a, p. 223).<sup>6</sup> With marriage as a principal route of legal entry to the EU for many (heterosexual) immigrants from non-Member states (Lutz, 1997, p. 103), lesbians and gays stand on the cusp of fortress Europe regardless of their nationality.

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<sup>6</sup>Indeed, the Latin word for family means essentially the house and not its various occupants which historically included wives, concubines, slaves and children, all belonging to a (male) master.

## **Heterosexism's National Codification**

The conservative legal norms of Member States can often reinforce Europe's exclusionary position. In 1993, Germany's Constitutional Court ruled that the right to marry (and the ensuing socio-economic benefits) is an exclusively heterosexual prerogative, a ruling since challenged on a piecemeal basis (Agence France Presse, 1993).<sup>7</sup> In 1998, Britain's Labour Party joined the conventional clamor with proposals to "encourage [heterosexual] marriage and bolster family life." These included a call for legally binding prenuptial property agreements, the introduction of 15-day waiting periods to mitigate "quickie" weddings, and improved mediation services for married couples having difficulties. Ironically, the Conservative Party opposed the proposals insisting they posed "an unprecedented level of intrusion into family life" (*The New York Times*, 5 November 1998). France's right-wing deputies utilized a similar argument the same year to successfully oppose extending marital benefits (e.g., shared inheritance and tenant's rights) to cohabiting couples, both straight and same-sex.

When a more progressive national consensus does prevail, the resulting efforts taken by Member States to mitigate heterosexism can prove disappointing. For example, since 1997, foreign same-sex partners of British citizens can immigrate though they face more stringent standards of demonstrating commitment. Previous policy for cohabiting heterosexuals required that couples be together for only two years. By contrast, same-sex

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<sup>7</sup>By 1996, the North Rhine-West Phalia Higher Administrative Court granted that, in the absence of a legal right to marry, a Romanian citizen (Mr. X) could settle permanently with his German lover (Mr. Y). The Court declared that the right to live with someone of the same sex is guaranteed by the German Constitution and the European Convention for the Protection of Human Rights. This decision directly contradicts the 1993 Constitutional Court and has yet to be appealed.

couples must demonstrate that they have been living together for four years, an exceptionally difficult criterion for many long-standing couples to meet. In fact, many face violating residence requirements which typically forbid non-EU nationals from living in Britain for more than several months each year (Watson, 1997, p. 4). Those lesbians and gays that do obtain longer legal residence (through, for example, special work permits) frequently discover that British law affords them no legal protection against discrimination in either housing or employment. As Sonya Andermahr explains: "Britain is contradictory in having one of the most visible and active gay and lesbian communities in Europe, yet some of the most draconian and discriminatory legislation" (1992, p. 117). Indeed, in 1988, Section 28 of the Local Government Act singled out lesbian and gay lifestyles for legal disapproval. To date, local authorities are prohibited from "intentionally promoting homosexuality." Such conditions, among countless others, clearly demonstrate that heterosexist discrimination remains legally sanctioned (see Tatchell, 1992) --- even within national contexts that appear to be moving in a direction that would seemingly subvert it.<sup>8</sup>

Belgium, Denmark, and Sweden are presently the only Member States to provide an explicit legal endorsement of intimate same-sex relationships. Belgium, however, still lacks any provision explicitly outlawing discrimination against such relationships -- a position that undermines their legal affirmation. Portugal is investigating measures to extend legal recognition to cohabiting intimates for heterosexuals and homosexuals alike, an effort that ended in failure in France. Still, the British example clearly demonstrates that state recognition of same-sex partnerships is no guarantee of equality before the law. The

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<sup>8</sup>More recently, in 1999, the House of Lords ruled that foreign gays and lesbians could seek asylum in Britain if they could demonstrate persecution premised in "sexual identity" (Wockner, 1999).

Netherlands is an additional case in point. Dutch lesbians and gay men may register their relationships with other Dutch nationals, but the state extends neither joint pension benefits nor equal inheritance taxes to these couples (Schuyf and Krouwel, 1999, p. 168). Moreover, the Netherlands refuses same-sex foreign partners access to immigration. The government attributes its refusal to the fact that same-sex partnerships and marriages lack legal standing within most other Member States (Waldijk, 1998, p.10).

The divergent positions among Member States are of great concern to Europe's lesbian and gay communities<sup>9</sup> and were featured in an annual report issued in 1996 by the International Lesbian and Gay Association (ILGA). For most new social movements, the successful assertion of claims at the Union level can obviate the need for local campaigns within all fifteen Member States just as losing may obliterate any local victories movements may have already accrued. However, the special difficulty for gay and lesbian movements is that their claims for justice often challenge policy areas where states maintain sovereignty and the EU refuses to intervene (e.g., marital policies). In consequence, lesbian and gay social actors are forced to repeatedly assert claims within all Member States while knowing that progressive policy gains within any one state rarely transfer to other national contexts. In France, for example, "the government, which allows Swedish heterosexuals to register their partnership in their embassy in Paris, banned same-sex partners from doing so despite the legality of the move on Swedish soil" (ILGA, 1996, p. 2). Same-sex partners from Sweden moving to other Member States (with perhaps the exception of Denmark) may find

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<sup>9</sup>The reference to "communities" is intentional given that political strategies and visions have been developed and argued for "emphatically in the plural" (Epstein, 1999, 30), not least because (in addition to the differing national communities) the political aspirations of lesbians and gay men are often at odds (see Elman, 1998a). See note 15 for an example.



that they suddenly have the status of strangers to each other.<sup>10</sup> This condition can severely impede free movement, particularly in those instances where one partner is a third country national. The European affiliate of ILGA argues that "this is unacceptable and unworthy for a civilised and humane society. In this field, we see a very urgent need for action" (ibid.). Moreover, and perhaps more importantly for the EU, conflicts concerning sovereignty are apt to become more prominent given the "controversial" character of lesbian and gay rights and the different approaches taken by Member States.

The affirmative positions on lesbian and gay relationships taken by Sweden and Denmark would seem to distinguish them as egalitarian. Both are, however, indistinguishable from other Member States in their refusal of adoption for same-sex couples.<sup>11</sup> Throughout the Union, children already living with lesbian and gay parents are thus without the legal protections afforded others. As ILGA aptly illustrates, the consequences of this second class status can prove alarming: "If the biological parent dies, there is no guarantee that the courts will allow the child to remain with the parent that might have been the primary care giver all of her/his life" (1998, p.18). Moreover, even biological connection affords limited protection, especially for women engaged in bitter divorce struggles. Such discrimination is institutionalized and though the occasional rulings that resist heterosexism provide both inspiration and important precedents at the national level, Community law affords no redress against disappointments.

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<sup>10</sup>Note below the Council's recalcitrance to recognize Sweden's same-sex marital relationships (e.g., *D. v Council Case T-264/97*).

<sup>11</sup>In 1999, however, Sweden's government appointed a commission to reconsider this position. In addition, it shall also consider the ban on insemination for lesbians (see below). The final Swedish report is due in early 2001. The Danes adopted a new law on adoption that takes effect July 1, 1999. It permits the partner of a registered same sex relationship to adopt the children of his/her lover if the children are nationals. In other instances, adoptions are still restricted.

Austria, France, Sweden and Denmark expressly forbid lesbians access to insemination programs and several other Members are deciding whether to follow suit. Italy, for example, maintains no general ruling on insemination though efforts to criminalize it for all but married women persist and were first introduced, in 1994, by the Professional Order of Doctors. Regardless of one's general position on insemination and other reproductive technologies,<sup>12</sup> such prohibitions maintain the patriarchal "principle of legitimacy" whereby "no child should be brought into the world without a man -- and one man at that -- assuming the role of sociological father" (Malinowski, 1962, p. 63). To date, no EU provision *forcefully* prohibits this "principle of legitimacy" and other forms of discrimination.<sup>13</sup> Even the European Women's Lobby has been reluctant to address such discrimination (see Andermahr, 1992, p. 116).

### **Europe's Disappointing Response**

Considering the above-mentioned conditions, it is hardly surprising that many lesbians loathe appealing to the very political systems that have historically operated against them (Robson, 1994). Those more willing to make claims are frequently disappointed. In January 1997, only eighteen months after adopting the Roth Report affirming gay and

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<sup>12</sup>Many feminists remain critical for various reasons. Some, like Joyce Outshoorn, note that such technologies have led to the "increased power of the medical professionals over human reproduction" -- a development "probably more threatening to women's control over their own fertility than the anti-abortion groups" (1988, 218) --- a position accentuated by the Italian example. Ute Winkler observes that because men control these technologies, some women now face greater (moral) pressure to reproduce while others can be precluded (1996). Winkler's thesis is underscored by the legal exclusion of lesbians and other unmarried women from insemination programs throughout the EU. Nevertheless, as noted earlier, many lesbian communities are experiencing a baby boom. The majority of those born through insemination appear to be male and many lesbians remark that the mothers of these boys have given birth to their own oppressors (Hoagland and Penelope, 1988).

<sup>13</sup>See the critical discussion of Amsterdam's non-discrimination clause below.

lesbian rights, the European Parliament's Committee on Legal Affairs refused to adopt the demand of equal treatment for lesbian and gay EU civil servants. This action resulted in the denial of benefits to same-sex couples that are currently enjoyed by married ones where the Commission employs only one partner. Such benefits include, but are not restricted to, bereavement leave, pensions, and joint health insurance. Exclusion from such benefits can cause significant financial hardship, particularly for lesbians who, as women workers in Europe, likely earn 20% less than their male counterparts (International Lesbian and Gay Association, 1998, p. 18). Marion Opriel, co-president of EGALITE, an advocacy group for lesbian and gay Eurocrats, said "Homophobia has once again reared its ugly head and in an institution we had believed to be free of it" (EGALITE Press Release, January 28, 1997, p. 1). Although the European Parliament was persuaded to change its course the following month, other disappointments followed.

After months of torturous negotiation over whether and how to prohibit discrimination,<sup>14</sup> Member States endorsed a draft of the Amsterdam Treaty that defined as discriminatory; bigotry based on disability, sex, age, and "sexual orientation." Although such language represents progress to many, several lesbian and gay advocates remain critical of efforts to counter discrimination within the rubric of "sexual orientation." Peter Norman, a former editor of the *EGALITE Newsletter*, remarked that: "the full recognition of sexual orientation discrimination as a form of 'straightforward' sex discrimination would be the best possible outcome, both politically and legally" (personal correspondence, 1997).

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<sup>14</sup>In February 1997, the Dutch Presidency retreated from the Dublin initiative to adopt measures to prohibit discrimination. The Presidency insisted that there was sufficient opposition to warrant this view and, thus, proposed that efforts to counter discrimination on the basis of disability, age, social origin and sexual orientation be taken only from within the existing substantive policy provisions (in Shaw, 1997, p. 17). Four months later, this impasse was overcome through the Amsterdam Treaty.

Virginia Harrison explains: "discrimination against a person for having a partner of the same sex is discrimination on the ground of gender" (1996, p. 275) and could, thus, be prohibited under existing equality law (e.g., Article 119).<sup>15</sup> Differentiating between sex discrimination and prejudice premised in "sexual orientation" is particularly difficult for lesbians as these oppressions are profoundly interconnected.

Amsterdam's non-discrimination clause conforms to the convention of distinguishing sex discrimination from discrimination based on sexual orientation. The text, Article 6a, reads:

Without prejudice to the other provisions of this Treaty and within the limits of powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.<sup>16</sup>

The Council's requirement to reach a unanimous vote on a Commission proposal before it "may take appropriate action" to blunt bigotry tempers the reach of this clause. By declining to assert that the Council "shall" endeavor to take action, passivity may prevail in the presence of prejudice. Moreover, while the EU appears to value consensus on monetary policy, Elizabeth Meehan notes that vetoes are not used sparingly on social issues (1993, Chapters 4 and 6). Given its historic reluctance to provide swift redress for discrimination, it is unlikely that the Council will be changing direction, particularly in light of *Grant v*

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<sup>15</sup>Both Harrison and Norman offer a pragmatic solution to the problem of heterosexism by noting the possible relief Article 119 could provide. However, it is worth noting that belonging to the disadvantaged sex (i.e., female) oppresses lesbians and that gay men are discriminated against not because they belong to the male sex but because of their homosexuality (i.e., "sexual orientation"). In consequence, orientation may be the reason that gay men are oppressed whereas for all women it is (primarily) sex. Efforts to end heterosexism often overlook the gender-specific components of this bigotry (Elman, 1998a).

<sup>16</sup>For a thorough analysis and text of the Treaty, see Duff (1997).

*South-West Trains Ltd.* (Case C-249-96) and, most recently, *D v Council* (Case T-264/97).<sup>17</sup>

Within months after the ink set on Amsterdam, the European Court of Justice joined the chorus of caution in its refusal to recognize heterosexism as sex discrimination in *Grant*. Lisa Grant's employer, Britain's South-West Trains Ltd., extends travel concessions to employees and their spouses as well as heterosexual partners of two years or more. Grant argued that the company's refusal to extend this same benefit to her female partner constituted sex discrimination. The company, whose submissions were supported by the British government, argued that discrimination on the basis of sexual orientation does not constitute sex discrimination. Mindful that such bias is sex discrimination, the European Commission nonetheless refused to support Grant's application and argued that Grant's determination to have the same rights of married couples would interfere with each Member State's ability to determine family law for itself. In consequence, the Commission privileged the right of sovereign Member States to pursue discriminatory "family policies" over its own ability to insist on relief.

The Court denied Lisa Grant's claim of sex discrimination by noting that "concessions are refused to a male worker if he is living with a person of the same sex, just as they are refused to a female worker living with a person of the same sex." It concluded that the policies of Grant's employer "could not therefore be taken as discrimination based directly on sex, since it applies in the same way to male and female workers." More significant perhaps was the Court's reasoning behind its refusal to confer heterosexual privileges to same-sex partners: "stable relationships between two persons of the same sex

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<sup>17</sup>These cases will be considered below.

are not to be regarded as equivalent to marriages or stable relationships outside marriage between two persons of the opposite sex" (par. 35). Implicit in this reasoning is the belief that discrimination is justifiable in the absence of "equivalence," a troubling position for human rights advocates. Throughout, the Court fails to transcend this liberal understanding of equality as sameness and dominance as (quantitative) difference.

Like *Reed, Grant* raised a provocative issue before the European Court of Justice. While the former focused on to whom the term spouse should extend, the later considered whether the refusal of social benefits to a lesbian partner constituted sex discrimination. Despite the differing components to each case, the challenge for the judges was the same --- to act firmly against discrimination. In both cases the Court refused.

Although the Court declined to treat discrimination based on sexual orientation as discrimination based on sex, it observed that the Council could (on a proposal through the Commission after consultation with the Parliament) take measures to mitigate heterosexual discrimination. However, the Council's refusal to abide by its own staff regulations prohibiting discrimination premised in sexual orientation suggests that it is unlikely to distinguish itself from the Court, the Commission and a majority of the Member States. In fact, in *D. v Council*, Europe's Court of First Instance endorsed the Council's defiance, reasoning that the regulations governing EU civil servants refer exclusively to civil marriage in the conventional sense of the term. The Council is not, therefore, obliged to extend a household allowance to the same-sex (Swedish) male couple; an exclusive privilege for heterosexual spouses (Court of Justice Press Release, 1999). The Swedish government is appealing this decision for Mr. Sven Englund on the grounds that (its) national law (and not Community law) stipulates the notion of marriage and recognizes Mr.

Englund's relationship. It is now for the Court to finally resolve this matter.

The issue, however, is less whether or when the EU will act in a decisive manner to counter heterosexism and, instead, how the once harshest critics of this hegemony have come to expect the EU to respond any differently than it already has. The answer, in part, has much to do with the ways in which lesbian and gay movements have begun embracing patriarchy's principal institution, the family.<sup>18</sup> Their romanticization of this institution has enabled them to believe that, in pursuing a veneer of respectability, Member States and EU institutions will be persuaded of their equal worth. This has not happened, not least because familial alliances have not conferred equality, especially for women and girls long oppressed within its bounds.

### **Conclusion: The Demise of Radical Aspirations & The Need to Reclaim Them**

This paper commenced with an overview of the codification of heterosexism within Member States and addressed the absence of remedy afforded by European institutions. Indeed, Europe's response has sometimes been alarming. *Grant* demonstrates that when discriminatory policies are implemented within the parameters of "the family," states are beyond reproach and, the Court and Commission's apologetic rhetoric notwithstanding, the intervention of the Council appears unlikely, particularly in light of *D v Council*. In addition to rebuffing Lisa Grant's plea for equal treatment, the Court more dangerously affirmed the second class status of her relationship and intimate same-sex relationships more generally. Having catalogued additional examples of such (sexual) inequality, the reader may surmise that what is being called for is "equal rights" for lesbians and gays.

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<sup>18</sup>The reference to "movements" is deliberate. Those seeking clarification should consult note 9.

However, a more radical analysis and solution is necessary.

In their efforts to end discrimination, lesbian and gay movements throughout Europe appear to have relinquished their critical disdain of the dominant world that excludes them and asked instead for its acceptance. In France, for example, "Le droit à la différence" (which also demanded that the majority change) soon surrendered to republican logic, "which held that minorities should strive to obtain the same rights as the majority" (Fillieule and Duyvendak, 1999, p. 189). At the transnational level, this position was evidenced in a 1998 report from the International Lesbian and Gay Association. It calls for: "steps to provide for recognition of lesbian and gay relationships and families as *equally valid to heterosexual relationships and families* within laws and social policies pertaining to the family, parenting, the care of children, adoption and fostering, and immigration" (1998, p.26, my emphasis). ILGA declared 1997 the Year of the Family. Once analyzed in ways that exposed its exclusive and oppressive dimensions, the family is now presumed to afford a venue through which one can secure and support egalitarian goals.

Not long ago, feminists throughout Europe questioned the desirability of monogamy, heterosexuality, and stressed the importance of friendship between women (see Leeds Revolutionary Feminists, 1981). In the absence of state recognition and subsequent regulation, such "non-familial" relationships are freely entered and, more importantly, when dysfunctional, escaped with relative ease.<sup>19</sup> Lesbian relationships were regarded as a positive alternative to domestic conformity and the privatization of public life. "Many feminists strongly opposed individualism, promoted an ethic of sisterhood and sought to

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<sup>19</sup>Laws pertaining to visitation and shared custody laws underscore this point, see note 2.



establish women's collectives" (Langford, 1998, p. 63).<sup>20</sup> This sapphic strategy has been increasingly surrendered, replaced by gender-neutral same-sex "partners" insisting on rights through legal claims that privilege private (familial) relationships and mimic the oppressive economies of the husband-wife couple (Robson, 1994, p. 987). The willingness to adopt the tactical frame of familialism suggests that the women's movement has also sadly developed in awe of capitalism<sup>21</sup> while succumbing to "the culture of intimacy" (Langford, 1998, p. 63). Considering that little has been gained by taking this tack, we have everything to gain from examining it critically.

A general survey of the EU's positions as regards "alternative families" (e.g., cohabiting couples and lesbian mothers) reveals that they have become so legally marginalized that one wonders if the loyalty they aroused prevents us from finding better solutions to the concrete problems their affirmation was designed to eliminate. For example, rather than seeking to extend health care and other benefits to the sexual partners of (and/or those "related" to) insured employees, the ethically ambitious project would be to mobilize for guaranteed access to quality health care and other essentials for all, regardless of their cohabiting status (Rieder, 1992). Robson warns that the promotion of domestic partnerships "tacitly promises lesbians protection if we conform our relations to traditional family values and threatens persecution if we do not" (1994, p. 989). As noted above, the state's recognition of same-sex relationships entails regulation, to say nothing of the

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<sup>20</sup>The very term "sisterhood," the metaphor of kin and unconditional love, suggests the institution of family as a (feminist) model and underscores a linguistic faltering among feminists in their efforts to transcend its bounds (Lugones in collaboration with Rosezelle, 1995).

<sup>21</sup>Several analysts have focused on the commercialization and subsequent depoliticization of European lesbian and gay movements (see Chapters 6-9 in Adam, Duyvendik and Krouwel, 1999). For a more detailed lesbian feminist analysis of this class dimension, see Robson (1994, pp. 985-988).

ominous potential of its agencies in later discriminating against the very couples that trusted the authorities enough to register in the first instance. Seemingly unfazed by this concern, those seeking the eradication of heterosexism focus less on ending the particularized privileges of (heterosexual) couples than on embracing domesticity in an effort to secure equivalent advantages. Note that Lisa Grant's objection was not that benefits were given to the spouses of her straight co-workers. Rather, she demanded that she and her lesbian partner be granted the same privileges. Bartering over privileges rather than demanding their eradication has proven strategically ineffective; it represents a lapse of political judgment and a lack of ambition. The goal is to make family less necessary, constructing society in ways that enable everyone to better meet their needs. As Michèle Barrett and Mary McIntosh perceptively insist, we must "transform not the family, but the society that needs it" (1982, p. 159). Privilege is effectively undone through repudiation, not extension.

It is time for a more innovative and radical approach; one that places both reformists and the advocates of convention on the defense by demanding to know the basis by which (any) couples constitute a *preferential class*, deserving of social benefits and rights denied others.

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