

# **Understanding and Teaching U.S. Lesbian, Gay, Bisexual, and Transgender History**

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## Teaching Same-Sex Marriage as U.S. History

SHANNON WEBER

Contemporary battles in the United States over the “hot-button” issue of same-sex marriage might lead us to believe that the fight for marriage equality is a fairly recent phenomenon. However, marriage has been a topic of discussion and personal yearning for many gay and lesbian people for at least the past sixty years, and forms of what could be described as same-sex marriage have been occurring for centuries. For example, on June 13, 1821, the English noblewoman and diarist Anne Lister wrote of her lover, Mariana Belcombe, “She is my wife in honor and in love and why not acknowledge her [as] such openly and at once?”<sup>1</sup> The two women even exchanged rings, although Mariana’s dutiful marriage to a man brought much heartache and complication to her relationship with Anne.

Incorporating historical documents into the classroom can be a particularly engaging way to show students the day-to-day concerns of ordinary people from history, and so including snippets from Anne Lister’s diary would be an instructive way to personalize same-sex marriage history for students. Through the example of Anne’s life, we can see that the issue of same-sex marriage is not an ahistorical concern that surfaced in the early twenty-first century. It is an issue that has deeper roots in Anglo-American history, even in historical contexts in which the idea of pursuing same-sex marriage as a matter of equality under the law was scarcely thinkable. The inclusion of the history of same-sex marriage in general discussions about marriage enables

students to understand that marriage as an institution has changed over time, from the development of love-based companionate marriage to the removal of antimiscegenation laws in the 1967 Supreme Court case *Loving v. Virginia*. For students to learn that norms governing who can marry whom change across time and space is an important lesson in honing critical thinking skills about the relationship between the social and the historical.

### Historical Overview

It is possible to incorporate same-sex marriage into the earliest known history of what we now consider the United States, as indigenous tribal understandings of gender and sexuality often lent themselves to more permeable marital, familial, and sexual arrangements than did the rigid Christian doctrines related to gender, sex, and sin that European colonists brought to the "New World."<sup>2</sup> As Genny Beemyn's essay in this volume points out, there are documented cases, in both the United States and Europe, of individuals who passed as men, married women, and later were discovered to be female bodied. Although we do not know how all such individuals identified, whether as men, as women passing as men, or as some other configuration of gender entirely, and we also do not know all of these individuals' reasons for taking up a male gender, what we do know is that such marriages existed, as did some instances in which men married one another with one party disguised as a woman. Without mapping contemporary cultural understandings about same-sex marriage as a phenomenon involving self-identified lesbian, gay, bisexual, and/or queer people onto these earlier historical cases, it is possible to see how marriage has been entered into by people whose lives conflicted with prevailing ideologies about normative gender and sexual expression.

Including the above discussion in a classroom lesson about historical understandings of marriage, relationships, and/or gender would fit in perfectly with asking students to think about the ways that dominant ideas about gender and relationships are questioned and change over time. Students are already confronted with this reality in U.S. history textbooks documenting women's fight for suffrage and property-owning rights, the way gender roles for men and women were questioned during the hippie counterculture of the 1960s, and the grievances leading to the second-wave feminist movement. For students to have

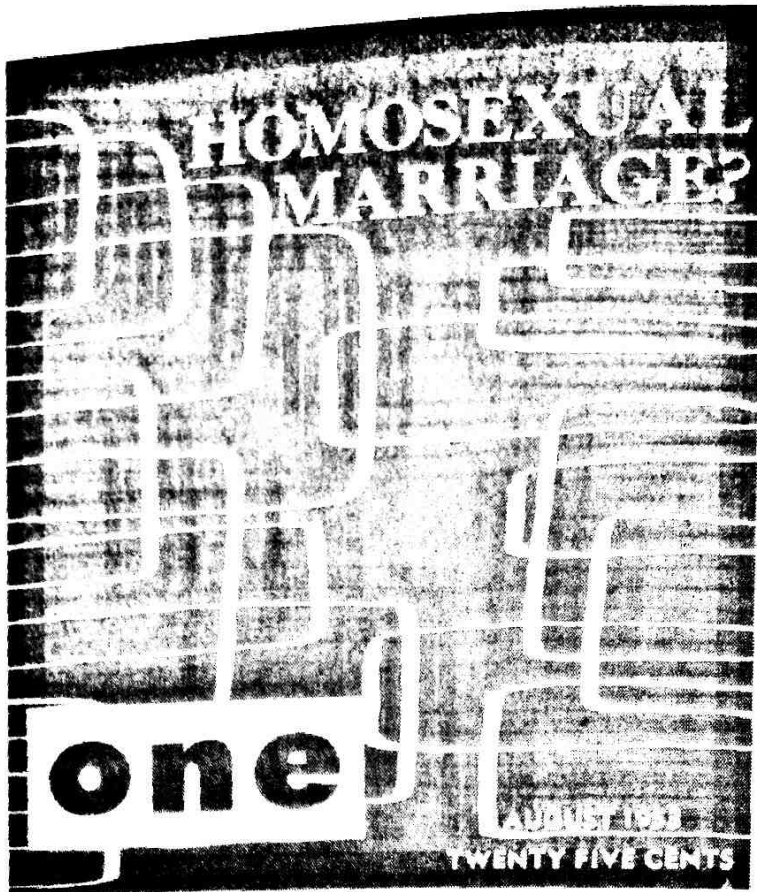
access to this additional information is to help broaden those understandings of change over time and in various cultural contexts, which is crucial in helping them understand the role that culture and history play in shaping social norms and institutions.

The "romantic friendships" of the late nineteenth and early twentieth centuries in America and Britain are a useful case study for showing students how women found ways to build kinship structures with one another outside the prevailing gendered mandates of their day. Women, including famous women often studied in high school and college contexts, such as Emily Dickinson, entered into romantic friendships that involved several hallmarks of what would now be considered conventional intimate relationships, including kissing, cuddling in bed, and writing passionate love letters, as Dáša Frančíková's essay in this volume explores. In most cases, romantic friendship was looked on favorably by the larger society as long as it ended in heterosexual marriage for the women involved. This is because women's love for one another was seen as nurturing, coming from a place of spiritual purity, and as excellent preparation for doting on a man. What became known as "Boston marriages" enabled a woman of economic means to take up long-term residence with her female companion, thereby avoiding heterosexual marriage.

Internal debates within gay and lesbian communities around issues of marriage, respectability, and governmental legitimation stretch back at least into the mid-twentieth century. You might distribute the debates found in *ONE*, the first gay American news publication, to your college students and ask them to compare these arguments to current queer debates over same-sex marriage, which I will address. When *ONE* took up the question of marriage for same-sex couples in August 1953, the daring of even considering such a possibility was evident in the question posed on the cover: "Homosexual Marriage?" In an article featured in the issue, "Reformer's Choice: Marriage License or Just License?," by E. B. Saunders, the author makes the self-described "impertinent" argument that "homosexual marriage" is important in promoting marriage as an institution for everyone rather than "allowing . . . deviates" (gay people) to continue to pursue sex outside marriage while heterosexuals are held to a higher legal standard.

In a surprising twist on what we often hear voiced—that same-sex marriage is a threat to heterosexual marriage—Saunders argues that the absence of same-sex marriage is a threat for heterosexual marriage: "The





"Homosexual marriage" in the 1950s, ONE magazine, August 1953 (courtesy of the ONE National Gay & Lesbian Archives)

problem of marriage versus promiscuity is an old one . . . fondly dwelt upon by the dissatisfied. Yet for heterosexuals, at least, there yet has not been a better arrangement on which to base the family unit. Heterosexual marriage must be protected. The acceptance of homosexuality without homosexual marriage ties would be an attack upon it." Thus, it seems, if queer people are allowed to be promiscuous because they are unable to enter into marriage, but heterosexual people are expected to marry and remain faithful to their husband or wife, heterosexual marriage will be imperiled. Saunders argues that many gay and lesbian people do not seem to care for the idea of marriage, but "one would think that in a movement demanding acceptance for this group, legalized marriage would be one of its primary issues . . . [and] it must be before such a movement can hope for any success."<sup>3</sup>

Despite Saunders's traditionalist argument, there is an acknowledgment that there may very well be some internal dissent among gay and lesbian people over the issue of entering into marriage. Saunders's musings on the subject seem to have been met with frustration by some writers of letters to the editor. R. H. Karcher wrote in part, in response to the question of whether gay and lesbian people should be allowed

to continue their promiscuity in the future, "Well, why the hell not? restrictions? . . . Saunders assumes that homosexuals are fighting for acceptance as 'normals.' I, for one, am not."<sup>4</sup>

The 1967 *Loving v. Virginia* case legalizing interracial marriage across the United States became a significant precedent in federal marriage law that gay rights activists and lawyers have used to argue for the analogous need for equal treatment for same-sex couples. When teaching students about the history of both interracial and same-sex marriage, it is important to make them aware of the complex historical and cultural contexts of both issues. Taboos on interracial marriage, for example, have been and continue to be based in white supremacist, eugenic ideologies about promoting a "pure" white race "untainted" by non-white blood, whereas same-sex couples' presumed inability to reproduce has rendered them "unnatural" and outside the family to those who tie notions of marriage to reproduction. The history of interracial relationships is also fraught with the history of sexual violence by white slave owners and overseers against black women and the "one-drop" rule, in which individuals "qualified" as black and thus subject to racist treatment if they had even one black ancestor ("one drop" of African blood), that in part justified slavery and, later, Jim Crow. On the other hand, violence against black men, particularly in the form of lynchings, has been justified historically through the trope of black men as dangerous sexual aggressors against white women's virtue; thus, interracial sexuality and intimacy have become imbued with various forms of violence throughout American history. Therefore, while both interracial and same-sex marriage involve state policing of "appropriate" family structures, reproduction, and sexuality, and while American jurisprudence rests on a system of legal precedent that of necessity must emphasize that which is analogous between cases, it is important for students to understand the complexities of how systems of racism and homophobia differently impact marginalized groups' access to marriage.

After the Stonewall riots of 1969 in New York City, in which largely economically disenfranchised lesbian, gay, and transgender youth of color and white youth fought back against police brutality during a gay bar raid at the Stonewall Inn, and the subsequent formation of the gay liberation movement, the idea of pursuing same-sex marriage rights became more of a palpable goal for some people. Although many individuals in the gay liberation and the lesbian feminist movements of the

1970s were highly critical of the patriarchal aspects of the institution of (heterosexual) marriage, others remained interested in the possibility of entering into it. In May 1970, Richard Baker and James Michael McConnell sued when they were denied a marriage license in Minnesota. Their lawsuit ultimately led to the 1972 U.S. Supreme Court decision in *Baker v. Nelson*, in which the men's suit was dismissed for "want of a substantial federal question."<sup>5</sup>

The 1980s and 1990s spurred gay men and lesbian women in the United States to focus on marriage rights due in large part to two important historical phenomena: the HIV/AIDS crisis beginning in the 1980s and the lesbian baby boom of the 1990s (see the essays by Jennifer Brier and Daniel Rivers in this volume).<sup>6</sup> During the AIDS crisis, gay men watched their friends and partners get sick and die all around them and then were forced to grapple with the added trauma of not having access to crucial end-of-life decisions for their loved ones as estranged family members of origin, often homophobic parents who had rejected, abused, and/or disowned their sons for being gay, had full control over hospice care and funeral arrangements. For these men, who had no legal rights of inheritance or ability to collect on their partners' Social Security benefits, let alone be offered the dignity of being acknowledged openly as the partner of the deceased or included in the eulogy during funerals, securing marriage rights became a goal of the utmost practicality and urgency.

Lesbian women increasingly turned to advocating for marriage rights during the period of time in the 1990s called the lesbian baby boom, in which same-sex female couples began making use of new assisted reproductive technologies, as well as turning to sperm banks in larger numbers. The parental rights tied to marriage become even more of an issue for same-sex couples, for at least one parent does not have a biological link to the child and thus occupies a more legally tenuous position in the child's life. This tenuousness is only compounded by homophobia in the legal system on the part of judges and juries alike. In this context, having the legal power of marriage behind one's family also becomes a safeguard against certain legal manifestations of anti-gay oppression. As these issues continue to impact LGBT families, you might ask students to research current events having to do with same-sex parents, transgender parents, and/or LGBT children and have them present their findings in class. Students could address some of



the following questions. How are families with same-sex parents treated under the law compared to families with different-sex parents? Does the answer to this question hinge at least in part on marital status? How do the wildly fluctuating protections for sexual orientation and gender identity from state to state impact LGBT families? How are LGBT parents, LGBT children, and their allies fighting back against discrimination?

The 2010 federal case against Proposition 8, the California same-sex marriage ban that passed via a popular referendum in 2008, was the next federal lawsuit after *Baker v. Nelson* to address same-sex marriage. A classroom analysis of Proposition 8 enables educators to engage students around a number of issues such as civil rights, the politics of the referendum process, media representations of gay and lesbian people as threats to children, the influence of fund-raising on campaign messaging and public opinion, and issues of states' rights versus federal protections for marginalized groups. The U.S. Supreme Court ruled in *Hollingsworth v. Perry* in June 2013 that the opponents of same-sex marriage lacked standing to file a federal appeal after Judge Vaughn Walker struck down Proposition 8. This ruling allowed same-sex marriages to resume in California, and couples began marrying within a few days after the Ninth Circuit Federal Court of Appeals lifted its stay on the resumption of same-sex marriages. (See Marc Stein's essay in this volume on the U.S. Supreme Court's marriage decisions.)

An illuminating exercise educators might give their students would be to compare the legal arguments proposed by the lawyers for the same-sex couples in *Baker v. Nelson* to those put forward in *Hollingsworth v. Perry* and analyze what the similarities and differences tell us about societal changes from the 1970s to the 2000s. How does the evidence presented in *Hollingsworth*, the two lower court decisions striking down Proposition 8 as unconstitutional, and the eventual Supreme Court decision against the defenders of Proposition 8 compare to the arguments and ruling in *Baker* in 1972? What are the similarities and differences between the arguments used in these cases, including the arguments used by those seeking to prevent same-sex couples from marrying? How have social attitudes toward same-sex couples shifted in American society, and how might this shift have affected the way these cases were received by the courts and the public? What has stayed the same?

## Queer Critiques of Same-Sex Marriage

Conservative opponents of same-sex marriage commonly rely on a notion of marriage that enforces rigid gender roles, prioritizes heterosexual reproduction, and centers on religious condemnations of same-sex sexuality. However, as we have seen, there have also been, and continue to be, critiques of queer people entering into the institution of marriage from people within LGBT communities. While perhaps too advanced for a high school class, these arguments are important when teaching a college-level course and speak to the diversity of LGBT people's philosophical and lived relationship with the institution of marriage.

Even while many members of LGBT communities fight passionately for the right to marry, others question the way marriage as an institution is premised on granting key legal rights, such as hospital visitation, immigration, and in many cases health care and citizenship, to those recognized as married while disenfranchising people whose relationships fall outside the realm of legal marriage. According to these arguments, marriage as a system is premised in hierarchy and exclusion and does not promote a radical politics of sexual liberation, which many queer people argue was originally at the center of the gay liberationist struggles that began in the late 1960s. Many individuals would prefer to disengage from and/or dismantle marriage as an institution rather than fight for inclusion within it, echoing a common tension in social movements between incrementalism and reform versus separatism and radical anti-institutional politics. Some critics argue that marriage is an antiquated and harmful way to structure familial relationships premised on a flawed idea of the heterosexual nuclear family and that queer people should reject conforming to an institution that is so exclusive and "heteronormative." Further, many individuals question the tendency for marriage equality to be seen as a stand-in for "gay rights" such that other issues, including employment discrimination, bullying and street violence, HIV/AIDS, queer youth homelessness, and incarceration, are not given the proper attention and funding that they so crucially deserve.

Nonetheless, some American LGBT groups are engaged in the fight for marriage equality while also attending to other important issues of social justice. The group GetEQUAL continues to embrace marriage equality activism while also engaging in coalitional campaigns to

pass the Employment Non-discrimination Act (ENDA), which would federally protect individuals from being fired from their places of employment based on sexual orientation, gender identity, or gender expression, and promote LGBT-inclusive immigration reform. Educators might explore this debate with students at the college level by assigning readings on this issue written from various queer perspectives, such as selections from Michael Warner's *The Trouble with Normal* (1999), Adam Isaiah Green's "Queer Unions" (2010), and Katrina Kimport's *Queering Marriage* (2013).<sup>7</sup> They might pair these readings with a discussion about how students conceptualize marriage, what meanings they assign to it, whether they desire marriage in their own lives and why, what the benefits and drawbacks of entering into marriage might be for various groups of people (e.g., marrying for citizenship as an undocumented person), and what types of alternatives to marriage some students might like to see.

### The Present and Future of the Marriage Equality Fight

In the twenty-first century, the fight for marriage equality has embodied and expanded on the longer historical trajectory of the marriage-related concerns and struggles detailed in this essay. As marriage morphed into a modern institution providing 1,183 state- and federal-based rights over the course of the twentieth century, legally separate from the religious sphere, it has become an increasingly important locus for the attainment of equality under the law. It has also become a cultural battleground for warring ideas about whose relationships are seen as legitimate in American society and whose relationships are recognized as families. This debate has increasingly taken on the shape of a popular referendum on the acceptability of same-sex love and desire in the public sphere.

After the Hawai'ian Supreme Court ruled in 1993 in *Baehr v. Miike* that there must be a compelling state interest in prohibiting same-sex marriage, many groups opposed to gay rights feared a domino effect on legal same-sex civil unions and even marriages in other states. One result of this panic was President Bill Clinton's 1996 signature on the federal Defense of Marriage Act (DOMA), an act he would eventually come to repudiate and which was partially struck down in the landmark 2013 Supreme Court decision *United States v. Windsor*. After Massachusetts became the first state to legalize same-sex marriage in 2004, many



states again feared a domino effect and passed their own "mini-DOMAs" during the 2004 election campaign.

A discussion of DOMA, as well as the states' mini-DOMAs, would enhance both high-school- and college-level discussions about U.S. government and history, as federal passage of DOMA resulted in the U.S. government denying same-sex couples federal marriage rights even when they lived in a state recognizing their right to marry. This denial of federal benefits contained in Section III of DOMA was successfully challenged by a New York widow, Edith Windsor, after her wife, Thea Spyer, died and Windsor was forced to pay over \$360,000 in estate taxes. Section II of DOMA, which allows states to refuse to recognize same-sex marriages performed in other states, awaits legal remedy. The importance of the *Windsor* case cannot be overstated, however, and the momentum of both the *Windsor* and *Perry* cases, as well as more favorable wins at the ballot box, has led to numerous lawsuits and referenda against existing mini-DOMAs in states as diverse as Pennsylvania, Florida, and Arkansas. As a result of the *Windsor* case, the federal government also began processing green cards for married U.S. citizens and their transnational spouses as well as extended federal tax benefits for married same-sex couples regardless of their state of residence.

The question of the balance of power between the federal government and states' rights is a classic one in the study of American legal and political thought. Married same-sex couples often find themselves subjected to what has been termed a "crazy quilt of laws" under which they may reside in a state with marriage equality but find themselves legal strangers on crossing the border to another state lacking such protections.<sup>8</sup> While the *Windsor* case paved the way for the federal government to extend federal benefits to same-sex couples that married in a state with legal recognition of same-sex marriage, regardless of whether the couple's home state recognizes their marriage, state-based benefits are still denied to married same-sex couples in states that do not recognize same-sex marriage. Adding to the confusion is the fact that some states allow domestic partnerships or civil unions for same-sex couples, sometimes without all the same rights that married couples enjoy. Further, a same-sex couple that marries in one state and then moves to a state with domestic partnership or civil union recognition must opt into one of those other legal arrangements; their marriage does not transfer. There is also the legal mess around divorce for same-sex couples who marry in a state with marriage equality and then seek a legal end to their relationship in a state where their marriage was never legal to



begin with. The question of federal power to define marriage versus states' autonomy is crucially bound up in all these situations as same-sex couples continue to be subject to the whims of state law and the punishing scope of Section II of DOMA.

Since the backlash against state mini-DOMAs began in 2004, multiple states and the District of Columbia have legalized same-sex marriage through their legislatures, the courts, or popular referendums. At the end of 2013, this list included Massachusetts (2004), Connecticut (2008), Iowa (2009), Vermont (2009), New Hampshire (2010), New York (2011), Maine (legalized by the state legislature in 2009, prevented from becoming law via popular referendum in 2012), Maryland (2012), Washington (2012), Rhode Island (2013), Delaware (2013), Minnesota (2013), California (June through early November 2008 and once again in 2013 due to the *Perry* victory), New Jersey (2013), Hawai'i (2013), Illinois (2013), and New Mexico (2013). Eight tribal jurisdictions also recognized equal marriage.

As we see with the passage of marriage equality via popular vote in Maine, Maryland, and Washington, the 2012 election represented a stark contrast from the infamous 2008 passage of Proposition 8 in California and the similar 2009 people's veto of same-sex marriage in Maine. Countering these popular displays of antigay sentiment, 2012 proved to be the year that demolished the argument that when given the chance voters will without fail vote against same-sex marriage at the ballot box. The elections in Maine, Maryland, and Washington thus signaled an important turning point in the fight for marriage equality, suggesting that voters are increasingly drawn to the side of marriage equality advocates and that the antimarriage equality battle cry of giving "the people" a voice is beginning to backfire. Even Maggie Gallagher, head of the anti-gay National Organization for Marriage that helped pass the anti-gay marriage referenda in California and Maine, stated in March 2014, "We are now in the 'gay marriage in all fifty states' phase whether we like it or not."<sup>9</sup>

For any classes incorporating discussions about civil rights, the voter initiative process, the three branches of government and separation of powers, and/or the interplay between law and public opinion, same-sex marriage would serve as a fruitful case study through which to deepen students' understanding of how these issues play out in a contemporary context to affect real people's lives. For classes analyzing elections and media, you might want to have students watch commercials from both sides of the 2008 Proposition 8 campaigns in California

and 2012 Question 1 campaigns in Maine. You might ask the following questions. What strategies were used by both sides during these campaigns to persuade the public to adopt their points of view? What do you think helped the "vote yes on Proposition 8" campaign to succeed in California? How do the pro-marriage-equality ads of Question 1 compare to those that opposed Proposition 8? What about the ads do you think helped win marriage equality in Maine?

Marriage equality as a global movement provides an important way for students to consider the relevance of the marriage equality question for populations outside the United States, and it also allows educators to engage with possible assumptions on the part of students about American exceptionalism, the idea that the United States is necessarily more progressive on LGBT rights compared to other parts of the world. As Americans anxiously awaited the Supreme Court's rulings in the *Perry* and *Windsor* cases, Uruguay, New Zealand, France, Brazil, and the countries comprising the United Kingdom (England, Wales, and Scotland) became the latest countries to legalize same-sex marriage. As of May 2014, eighteen countries had fully legalized same-sex marriage, demonstrating that the drive for marriage equality is certainly not limited to the United States or even Western Europe, and that in the case of marriage, the United States is not leading the way on LGBT rights.

### The Importance of Discussing Same-Sex Marriage in the Classroom

Inclusion of LGBT issues in such topics as marriage in the U.S. history curriculum validates the lived realities of many students, whether they identify as lesbian, gay, bisexual, transgender, or queer; have same-sex parents, a gay sibling, or queer friends; or simply come into contact with LGBT people in their daily lives. This point cannot be overstated. Of course the inclusion of LGBT topics in the classroom is not without risks. The state legislature of Tennessee, for example, has continued to debate the Classroom Protection Act, more informally known as the "Don't Say Gay Bill," which not only would prevent teachers from addressing topics related to sexual orientation in the classroom but would also require them to notify students' parents if their children are suspected to be queer. A new provision in the 2013 version of the bill would also require teachers to give queer children a referral for counseling to "treat" their sexual orientation. While a similar bill failed in Missouri in 2012, Steve Cookson, the state legislator who

sponsored the bill, became the chairman of the Missouri House Elementary and Secondary Education Committee.<sup>10</sup>

Although the Tennessee bill died in a House committee later the same year, these types of sanctioned, adult-driven anti-LGBT bullying continue to surface in educational spaces, including at least one documented case of a Tennessee teacher attempting to silence a gay seventh grader in 2014 by falsely claiming that the anti-gay bill had become law.<sup>11</sup> Cultural anxieties about children being tainted by knowledge about queer people and becoming queer themselves were particularly instrumental in the advertisements used by the successful campaign to pass Proposition 8 in California in 2008. Key to these arguments was the fear of children learning about same-sex marriage in school, which was seen as a threat to religious liberty and heterosexual marriage and, in the most extreme variations of this argument, as jeopardizing the future of western civilization at large.

Yet public opinion has changed. On the issue of marriage equality in particular, a 2013 Washington Post-ABC News poll placed support for marriage equality at a record-breaking 58 percent, with 81 percent of young voters between the ages of eighteen and twenty-nine favoring the legalization of same-sex marriage.<sup>12</sup> According to another 2013 poll, conducted by a firm with ties to the conservative, evangelical Southern Baptist Convention, 64 percent of Americans thought that the legalization of same-sex marriage across the nation was "inevitable" regardless of their personal views on the issue.<sup>13</sup> A 2014 poll conducted by the Pew Research Center found that 61 percent of Republicans under thirty support same-sex marriage.<sup>14</sup> Knowing that this issue has a history can help put the struggle in context and will undoubtedly enrich students' understandings of histories as diverse as western kinship formations, social justice movements, and American legal thought. Incorporating same-sex marriage into existing curricula, on a basic level, advances the project of underscoring the fact that queer people's lives matter and queer people are a part of U.S. history.

#### NOTES

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