

Same-Sex Marriage

Fierce and often ugly battles are being waged, especially in the United States, over who is allowed to marry, what marriage signifies and where marriage is headed. Kathleen Hull examines these debates, and data from interviews with over seventy people in same-sex relationships, to explore the cultural practices surrounding same-sex marriage and the legal battle for recognition. Arguing that the cultural and legal dimensions of marriage are closely intertwined, she shows how same-sex couples use marriage-related cultural practices, such as public commitment rituals, to assert the reality of their commitments despite lack of legal recognition. Though many same-sex couples see the law of the state to hold a unique cultural power to legitimate their relationships and identities, Hull finds that their opponents equally look to the law to re-establish a social normalcy that excludes same-sex relationships. This is a timely look at a contentious issue.

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Same-Sex Marriage

The Cultural Politics of Love and Law

Kathleen E. Hull



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For my parents, Frank and Katherine Hull
And for Kate

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Preface

On May 17, 2004, Massachusetts launched a new era in the legal treatment of American gays and lesbians by becoming the first state to issue marriage licenses to same-sex couples. In less than two decades, the country had moved from the US Supreme Court ruling in *Bowers v. Hardwick*, which ridiculed the idea that homosexual behavior deserved protection under the Constitution, to Massachusetts' *Goodridge v. Department of Public Health*, which bestowed equal legal recognition for same-sex couples in at least one US state. The developments in Massachusetts sparked a fresh wave of activism, debate and controversy around same-sex marriage. Before the *Goodridge* ruling even took effect, local officials around the country began issuing marriage licenses to same-sex couples in a show of support, drawing media attention and the outrage of social conservatives. Politicians and activists opposed to same-sex marriage moved quickly to prevent another ruling like *Goodridge* elsewhere in the United States. An amendment to the US Constitution to block same-sex marriage nationwide gained the backing of President George W. Bush but foundered in Congress. By the end of 2004, one-third of the states had written bans on same-sex marriage into their constitutions. Although the same-sex marriage issue did not dominate the 2004 presidential election, some political analysts believe it played a critical role in galvanizing social conservatives to cast votes for President Bush.

Most of the research for this book was completed before the arrival of same-sex marriage in Massachusetts, but the results of this research are highly relevant to the current political and legal climate. What the United States will have for the foreseeable future is a patchwork system of rights and recognition for same-sex relationships. Gay and lesbian couples in a few areas of the country will have access to some or most of the legal rights of marriage. (Even the Massachusetts marriages are not recognized by the federal government, meaning that same-sex couples do not enjoy full marriage rights anywhere in the United States today.) In most of the country, same-sex couples will continue to lack access to

legal recognition, even as they avail themselves of the chance to enact marriage culturally through various practices, and the legal and political struggles over relationship rights will persist. In this turbulent national climate, insight into the perspectives of ordinary same-sex couples is more valuable than ever.

This study provides a window onto the motivations, experiences and frustrations of same-sex couples in an environment of continuing ambiguity and ambivalence. Couples can adopt marriage as a cultural model for their intimate commitments, and in some cases can obtain religious recognition for their unions, but they cannot secure full and unambiguous legal recognition of these unions as marriages. Some states and localities offer other forms of legal recognition, such as domestic partnerships or civil unions, but the legal meaning of such statuses outside their originating jurisdiction is often unclear. Ambivalence also persists among some gays and lesbians about the suitability of marriage as a cultural model of commitment and a legal goal. As the legal, political and cultural climate continues to shift and evolve, the insights and experiences of the couples profiled in this study offer an opportunity to consider what these changes and conflicts might mean from the perspective of those American citizens who are most directly affected by the issue of same-sex marriage.

Writing this book presented many stimulating challenges, not the least of which was staying on top of such a fast-evolving research topic. I could not have seen this project through to publication without the help of many fine people and supportive institutions. My greatest debt is to the participants in the study, who so generously shared their experiences and insights with me. I learned from every person I interviewed, and I found these conversations immensely interesting. I hope the study participants will share my satisfaction in finally seeing their stories in print. I also wish to acknowledge the members of the Same-Sex Marriage List, an excellent listserv devoted to the topic of legal same-sex marriage (<http://lists.qrd.org/mailman/listinfo/marriage>). The work of the list's moderators and contributors helped me stay abreast of new developments related to the legal recognition of same-sex couples in the United States and abroad.

This book started as my dissertation at Northwestern University and benefited from the thoughtful guidance and cogent critiques of my thesis committee members: Wendy Griswold, Robert Nelson, Wendy Espeland and Ellen Lewin. Orville Lee also gave valuable feedback in the early stages of the project. Many graduate school colleagues lent support in

various ways, but special thanks go to Lisa Amoroso, Brian Donovan, Brian Gran and David Stevens.

I have benefited from the support of many wonderful colleagues in the sociology department at the University of Minnesota. I am especially grateful to Penny Edgell, Doug Hartmann and Erin Kelly for reading chapter drafts and responding with detailed, constructive comments. Ron Aminzade has been an enthusiastic supporter of my work and gave me great advice on the ins and outs of academic book publishing. Other department colleagues who have been especially supportive include Liz Boyle, Joe Gerteis, Ann Hironaka, Ross Macmillan, Ann Meier, Jeylan Mortimer, Joachim Savelsberg, Evan Schofer, Rachel Schurman, Robin Stryker, Teresa Swartz and Chris Uggen. I also wish to thank scholars from other institutions who have shared ideas on my work and expressed enthusiasm for the project at various stages, including Scott Barclay, Baptiste Coulmont, Jon Goldberg-Hiller, Beth Hoffman, Anna-Maria Marshall, Sally Merry, Laura Beth Nielsen and Verta Taylor.

I am grateful to many good friends and supporters who gave moral support and practical advice as the book developed. My special thanks go to Deborah Smith, David Krewinghaus, John Fiedler, the Saturday morning womyn, Corinne Kawecki, Maureen Sweeney, Greg Brewer, Stephen Welcome, Carol Wichers and Sue Wolfe.

My research profited from the opportunity to present work in progress in various forums. I wish to thank the discussants and audience members who responded to talks based on this project at the annual meetings of the American Sociological Association and the Law and Society Association. I also appreciated the chance to present my work in Northwestern University's Culture and Society Workshop and in the sociology departments of Northeastern Illinois University and the University of Pennsylvania. At the University of Minnesota, I received useful feedback at presentations to the Sociology Department Workshop, the Engendering Politics Workshop and the Feminist Studies Colloquium.

The junior academic's most precious resource is writing time, and such time was provided to me through the generous support of my universities. My project was supported with a Dissertation Year Fellowship from the Graduate School at Northwestern University, a Faculty Summer Research Fellowship from the Graduate School of the University of Minnesota and a Single Semester Leave from the College of Liberal Arts at the University of Minnesota. I also received a small grant for research assistance from the Life Course Center in the Department of Sociology at Minnesota.

At Cambridge University Press, I was fortunate to have two editors, Sarah Caro and John Haslam, shepherd my manuscript to publication; I thank Sarah for taking an interest in the project and John for seeing it through. I also thank copy-editor Monica Kendall and production editor Jackie Warren for their expert assistance. Parts of Chapter 4 appeared in “The Cultural Power of Law and the Cultural Enactment of Legality: The Case of Same-Sex Marriage,” *Law and Social Inquiry* 28: 629–657 (copyright 2003 by the American Bar Foundation). Parts of Chapter 5 appeared in “The Political Limits of the Rights Frame: The Case of Same-Sex Marriage in Hawaii,” *Sociological Perspectives* 44: 207–232 (copyright 2001 by the Pacific Sociological Association). I thank the University of Chicago Press and the University of California Press respectively for permission to reprint this material.

In the end, this is a book about recognizing families, so it is fitting that I close by recognizing my own. My brother Ron and his partner, Mark White, have been a reliable source of encouragement throughout the development of this project; I thank them for their interest in my work and occasional comic relief. My parents, Kitty and Frank Hull, could not be more wonderful. From my youngest years to the present, they have fostered in me a love of reading and learning, taken pride in my accomplishments and pushed me to go the distance (“Write on!”). I could not have written this book without their unstinting support. And finally, I thank my partner Kathryn Hansen, who has been a calming and loving presence through so many highs and lows. Kate, thanks for believing in me and helping me remember what really matters in life. I know there’s plenty of lightness and laughter still ahead for us.

Same-sex marriage timeline

- 1971 *Baker v. Nelson*: Minnesota Supreme Court rejects a claim to marriage rights by a same-sex couple, the first such reported case in the United States. An appeal to the US Supreme Court is dismissed the following year, and other state rulings unfavorable to same-sex marriage follow, including *Jones v. Hallahan* (Kentucky Court of Appeals, 1973) and *Singer v. O'Hara* (Washington Court of Appeals, 1974).
- 1993 *Baehr v. Lewin*: Hawaii Supreme Court rules that denial of marriage licenses to same-sex couples appears to violate state constitution's equal rights amendment. Court remands case for trial, asking the government to show a compelling interest in limiting marriage to opposite-sex couples.
- 1996 Defense of Marriage Act: Anticipating possible legal recognition of same-sex marriage in Hawaii, US Congress passes and President Clinton signs the Defense of Marriage Act, which establishes a federal definition of marriage as a legal union between one man and one woman and declares that states will not be required to recognize same-sex marriages performed in other states. Dozens of individual states pass similar laws stating that they will not recognize same-sex marriages performed elsewhere.
- Hawaii ruling: Circuit Court Judge Kevin Chang rules that the State of Hawaii has failed at trial to demonstrate a compelling interest in denying marriage licenses to same-sex couples, and orders the state to begin issuing licenses to same-sex couples. The ruling is stayed pending appeal.
- 1998 State constitutional amendments: Voters in Hawaii and Alaska pass the first state constitutional amendments prohibiting state

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- recognition of same-sex marriage. These amendments foreclose further court challenges to state marriage laws. Nebraska and Nevada later pass similar amendments.
- 1999 *Baker v. State of Vermont*: Vermont Supreme Court rules that the denial of marriage licenses to same-sex couples violates the Common Benefits Clause of the state constitution. The court orders the legislature to revise marriage statutes to include same-sex couples or create an alternative legal vehicle for delivering the rights and benefits of marriage to these couples.
- 2000 Civil unions: Vermont Legislature creates civil unions for same-sex couples, a new legal status that delivers all the state-level rights and benefits of marriage to same-sex couples. Non-residents are allowed to enter civil unions but the unions are not recognized by other states or the federal government.
- 2001 Netherlands: The Netherlands becomes the first country to legally recognize same-sex marriage.
- 2003 Belgium: Belgium is the second country to grant legal recognition to same-sex marriages.
- Lawrence v. Texas*: US Supreme Court overturns state anti-sodomy laws, making homosexual conduct legal nationwide. In his dissent, Justice Antonin Scalia warns that the ruling paves the way for legal same-sex marriage.
- Canada: The province of Ontario grants legal recognition to same-sex marriage in June 2003, soon followed by the provinces of British Columbia (July 2003) and Quebec (March 2004). The Canadian federal government announces plans for legislation to make same-sex marriage legal nationwide.
- Goodridge v. Department of Public Health*: Massachusetts Supreme Judicial Court rules on November 18 that the denial of marriage licenses to same-sex couples violates the state constitution and orders the state to begin issuing licenses in 180 days.
- 2004 Civil disobedience: San Francisco Mayor Gavin Newsom begins issuing marriage licenses to same-sex couples on

Same-sex marriage timeline

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February 12 despite state law limiting marriage to opposite-sex couples. Local officials in New Mexico, Oregon, New Jersey and New York follow suit by issuing licenses or performing civil marriage ceremonies for same-sex couples. These local actions are eventually halted by court orders, and the supreme courts of California and Oregon later rule the licenses in their states invalid.

Federal amendment: President George W. Bush announces his support for amending the US Constitution to block same-sex marriage, citing the *Goodridge* decision in Massachusetts and the issuance of marriage licenses to same-sex couples in San Francisco and New Mexico.

Massachusetts marriages: On May 17, Massachusetts becomes the first state in the country to recognize same-sex marriages.

State constitutional amendments: Between August and November, thirteen more states pass constitutional amendments banning same-sex marriage. Some amendments are broadly worded to prohibit not only legal marriage but other forms of legal recognition such as domestic partnership or civil unions.

2005 California domestic partnership: California's expanded domestic partnership statute takes effect January 1, providing virtually all of the state-level benefits and protections of marriage to registered couples.

Civil unions redux: Connecticut becomes the second state in the country to recognize same-sex civil unions granting state-level benefits of legal marriage, and the first state to enact civil unions through voluntary legislation rather than in response to a court order.

More amendment action: Kansas becomes the eighteenth state to pass a constitutional amendment blocking same-sex marriage; activists in other states push for similar amendments.

International developments: Spain and Canada become the third and fourth countries to recognize same-sex marriages; laws creating civil partnerships and civil unions take effect in Great Britain and New Zealand respectively.