
Resisting the Family: Repositioning Lesbians in Legal Theory

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REDEFINING THE FAMILY has become a persistent demand in feminist legal scholarship. Lesbians—and our myriad relationships—are a usual and symbolic focus of this attempt at legal redefinition.¹ This feminist position entails advocating that lesbians be included within the legal definition of family and concomitantly theorizes lesbian relations within the legal framework of this redefined family. Lesbian legal advocates and theorists similarly have proposed that our relationships be understood under the rubric of the legally redefined family. While such a redefinition has practical benefits in particular circumstances, I nevertheless want to posit a theoretical challenge to the inclusion of lesbians in any family, redefined or otherwise, and to challenge further conceptualizations of lesbian relations as correlated—either by inclusion or by exclusion—to the family. At its most modest, my argument is simply that feminist (and lesbian) legal theorists reconsider the position that the family should be redefined to include lesbians and, further, that feminist (and lesbian) legal theorists reconsider the propriety of theorizing lesbian relations within the context of family.

Less modest is my suggestion that the position of lesbians with regard to the family's location within legal theory, including feminist legal theory, be one of resistance. While it might be argued that the existence of lesbianism is, in and of itself, a form of resistance to the paradigmatically

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¹ This focus is usually expressed as “lesbians and gay men.” As I have argued elsewhere, however, this classification of lesbians with “their men” is unacceptable within feminist legal theories that insist on gendering almost every category except that of “sexual orientation.” See Robson 1992. Although this essay will discuss a case involving a gay male relationship and I expect that some of this essay's arguments might be useful to theorizing about gay men as well as bisexuals, my interest is in fostering a specifically lesbian legal theory.

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heterosexual family, I propose that lesbian resistance to the family should become more elemental: resistance to being either included or excluded, resistance to the power of the category of family within legal theory and legal practice to define, redefine, sanction, and appropriate lesbian existence.² This proposition is normative, political, and perhaps even ethical and aspirational,³ grounded in a desire to promote lesbian survival as encompassing both the material survival of individual lesbians and the more discursive survival of lesbian communities, cultures, and theories.⁴

With the ultimate objective of exploring the parameters of a lesbian legal theoretical stance that fosters fundamental resistance to the family, I will problematize the family while discussing some of the obstacles to problematization. I will consider the interface between lesbian relationships and family in current political and legal discourse, concentrating on three cases implicating redefinitions of the family inclusive of lesbians. Elaborating on these cases, I will argue that the legal notion of family domesticates lesbians through its strategies of demarcation, assimilation, coercion, indoctrination, and arrogation. Finally, I will confront the possibilities of lesbian resistance.

The problem family

Feminist and lesbian theorizing has long problematized the family, often regarding it as an oppressive institution of the patriarchal state.⁵ The link between the family and state is not original to feminist and lesbian theories but is a prominent feature of much American political thought. For example, the "founding fathers" grounded national morality in private families, viewing the family as an important link in the religious and governmental "chain of authority"; later nineteenth-century thinkers proclaimed the family as the bedrock of American civilization

² For a discussion of resistance, see below.

³ The aspirational aspects of lesbianism in the context of the "political correctness" debates are addressed in a recent essay by lesbian-feminist theorist Marilyn Frye: "I persist in being able to hear the phrase *politically correct* nonironically and as a positive term. It sounds like a phrase I might have coined to name something I want to be—I want to 'be political' and to get things right and not get them wrong. This seems to be the route both to my own narrow happiness and to my fullest possible positive engagement in the welfare and happiness of many others both near and distant" (Frye 1992, 782).

⁴ Lesbian resistance as well as lesbian survival are, of course, both predicated on notions of lesbian identity, long problematized within lesbian communities and cultures and more recently problematized within postmodernist discourse. I have explored lesbian identity problems elsewhere (Robson 1993a, 1993b) and here leave the concept of lesbian identity relatively unproblematized. Similarly, I leave concepts such as "law," "theory," and "feminism" relatively unproblematized, not because they are unproblematic but because my concern in this instance is to focus on problematizing "family."

⁵ Two examples from the early 1970s anthology *Radical Feminism* are illustrative: marriage is posited as slavery for women and the model for all other forms of sex discrimination (Cronan 1973); welfare is "marriage to the state" that preserves the family system in which men's work earns pay and women's work does not (Leo 1973).

(Grossberg 1985). Contemporary political discourse in the United States continues to focus on the family, especially as it relates to the state of the nation. Recent legal scholarship continues to theorize the family as constitutive of the American system of government (see Dailey 1993, 958–59).

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 unproblematicized.⁶ Within lesbian cultures, the celebration of the family accompanies a general depoliticization and privatization of lesbianism, mirroring the general depoliticization and privatization that has been so prevalent in the last decade. Where once we theorized lesbian community, tribe, and perhaps even “nation” (Johnston 1973; Faderman 1991), we now theorize family (Weston 1991). Certainly our communities have not been idyllic and have often been stifling (Phelan 1989; Faderman 1991), but it seems as if we have forgotten the lesbian-generated critiques of family as oppressive and often deadly.⁷ Most contemporary lesbian rhetoric of the family decontextualizes and depoliticizes it.

Such a decontextualization is accompanied by an overcontextualization that occurs through overpersonalization. Personalization is exemplified by a therapeutic movement that “treats” individual lesbians in terms of their individual families of origin as recapitulated in their present relationships. With the tools of therapy, any lesbian—and any therapeutic client—can assess her present situations in light of her “dysfunctional” family of origin. The dysfunctionisms remain private, personal, and insulated, despite their standardization and the proliferation of self-help groups and books. Thus, family ideology becomes indistinguishable from members of our particular (and dysfunctional) families.⁸

⁶ This trend is disturbingly apparent among newer scholars. See Buchanan 1985; Friedman 1987; Schwartzchild 1988–89; Torielli 1989; Brown 1990; Berger 1991. Even when these scholars explicitly advocate an interrogation of family, their theoretical challenges do not encompass the possibility that family might not be a useful or “real” category of analysis. See Franklin 1990–91. One important exception to this trend is the excellent work of Didi Herman, a Canadian lesbian-feminist legal scholar; see Herman 1990. Within the lesbian and lesbian/gay/bisexual legal communities, however, what might be termed the “marriage debates” have sparked explicit interrogation of the historical and theoretical premises of marriage. See Dalton 1991; Dunlap 1991; Duclos 1991; Hunter 1991. Nevertheless, the marriage debate often fails to problematize concepts such as partnering or coupledness (see, in contrast, Robson and Valentine 1990) and generally has not been extended to problematize the larger notion of “family.”

⁷ I do not mean to imply, however, that earlier theorizing by feminists and lesbians was immune to the lure of family constructs. For example, second-wave feminists appropriated the familial relation of sister, as in “sisterhood is powerful” (Morgan 1972), which has been criticized as ageist as well as too familial (MacDonald 1983).

⁸ My thinking in this area has been greatly influenced by Caryatis Cardea, who notes that a “drift from radical feminism” occurred after 1975 in which lesbians’ “political self-examination” was abandoned in favor of “self-examination on a private level, meaning therapy (1990, 194–95). Cardea compellingly argues that this therapization not only

Overcontextualization is not limited to lesbians who accept the therapeutic paradigm. Many others of us confuse a critique of the family with a rejection of the persons whom we would confine within that category. This confusion is accentuated by the significance family members possess for many lesbians and feminists marginalized by our racial, ethnic, religious, and economic status.⁹ The law has historically denied the status of "family" to personal relationships among disempowered people, the extreme paradigmatic case being enslaved persons. The legacy of such denials can imbue present relationships with additional layers of struggle and meaning, as well as contribute to an attraction to the legal status of family. Yet the term *family* is often overcontextualized, as, for example, by a reference to an individual's love for a particular person such as a favorite "aunt" not related by blood or marriage or a reference to the cultural respect accorded a particular person such as a community elder, notwithstanding that such persons may be excluded by even the most liberal definitions of family. Thus, while the term *family* in any lesbian legal theory must be contextualized with reference to various communities, it must not be overcontextualized so that our recognition of legal power is obscured. Historically, the same oppressive legal and social conditions that denied family status to certain relationships were themselves often justified within legal discourse by references to family, as in the case of slavery's "happy plantation family."¹⁰

The depoliticization and the overcontextualization phenomena occur because we have difficulty remembering that *family* is a cognitive category enforced by law. The appeals to reality that are so dominant in redefinitions of the family mask the discursive process of categorization that occurs. Empirical "facts" such as "only one in four families is traditional" necessarily presuppose a generic category of family of which the traditional is only a subset. One could easily presuppose the generic category of family as either more expansive or less expansive and, without changing the meaning of "traditional," produce empirical "facts"

was a privatization but was also classist: "Therapy is the religion of middle-class-oriented political lesbians" (213). The argument that the therapy movement has privatized and depoliticized lesbians receives extensive treatment in Kitzinger and Perkins 1993.

⁹ To use a personal example, it would be stressful for me to tell my mother that I am writing a piece on the necessity for resisting the family. Some portion of that stress is related to a shared inculcation and experience of family as persons bonded together by class disadvantage and as an identifying term for persons on whom one can depend for material survival.

¹⁰ As Margaret Burnham argues: "This 'one big happy family' image celebrated by slavery's adherents portrayed social and economic relationships on the plantation, among slaves and freemen alike, as organically interconnecting ones. This portrayal echoed the idealized nineteenth century view of the family as refuge and safe haven, where flourished man's purest and most selfless instinct" (1987, 193).

such as "only one in one thousand families is traditional" or "every family is traditional."

Because *family* is a cognitive category subject to cultural as well as political constructions, *family* does not appear as a term in some languages; nevertheless, a person who does have *family* as a cognitive category will explain all perceived relations with reference to the organizing category of family.¹¹ For lesbians who have been acculturated in societies that subscribe to the cognitive category of family, the description of lesbian relations can occur reflexively in the language of family. According to one lesbian theorist of family, *family* is a "Rome term" to which "all roads lead," although there are "as many variants of the motive as there are roads" (Weston 1991, 99). Yet even if *family* is a "Rome term," it was never true that all roads led to Rome; the roads on the island of Lesbos led only to each other. To make the Rome proposition true, we must conceptualize Rome and roads in a way that redefines them toward that objective. Similarly, to make *family* a category to which all our lesbian motivations lead, we must conceptualize family and lesbian relations in a way that redefines them toward that end. This teleological redefinition tends toward the symbiotic: both family and lesbian relations are defined so that the terms satisfy the ultimate goal of having lesbianism be one of many paths to family.

I argue that family must be problematized as a nonessential, cognitive, and contested category rather than an unproblematized "reality" of "lived experience." While arguing for "contested categories" is a post-modernist strategy that has become an incessant refrain in contemporary feminist and lesbian/gay theorizing, appeals to experience continue to dominate our theorizing.¹² The epistemological lure of "experience" is especially potent given the omnipresence of "family" in the pervasive particularities of "family" in daily experience in the contemporary United States.¹³ Legal "experience" mirrors this ubiquity. For example, in the

¹¹ Collier, Rosaldo, and Yanagisako (1992, 35) discuss instances of anthropologists delimiting family boundaries while observing cultures in which the term *family* does not appear. The linguist George Lakoff (1987, 22–23) remarks on studies of Native American kinship systems, in which one "category" of family member refers to a group of persons that other societies would find unrelated. Lakoff's work is generally interesting for its discussions of categories as shaping perception in distinction to the classical view that categories are simply perceived.

¹² For a cogent analysis of the problem of experience in feminist theorizing, see Scott 1992.

¹³ For one day during a vacation, I monitored the references to family within my own social relations. In casual conversations, the term *family* recurred throughout the day: with a group of adults trading "family stories," with a child asking if pets could really be part of a family, with references to where I was staying as a "two-family house." Reading was no refuge from the family, even though I was reading "progressive" magazines instead of the conservative "Family Circle," especially in advertisements: a "family car" with plenty of room for the family to grow, and homeopathic "family medicines"

U.S. Code, the term *family* appears no less than 2,086 times. In addition to obvious examples derived from a social welfare system that is almost entirely predicated upon the category of family, the category of family occurs in myriad other contexts in the Code: compensation for members of Congress, furniture for the White House, agricultural products and trade, fire protection, immigration, the military, bankruptcy, banks, housing, the census, consumer credit, national parks, conservation, copyright, crimes, witness protection, sentencing, tariffs, museums, libraries, education, student loans, drug abuse, foreign service, highway safety, "Indians," labor, mineral rights, currency, patents and trademarks, "patriotic societies and observances," veterans, the postal service, territories, transportation, and national security. The "family farm," the "family corporation," "Aid to Families with Dependent Children," and other federal statutory constructs exist despite the oft-cited principle that "family matters" are the province of state—and not federal—legislation. A consideration of only two states, California and New York, reveals even more regulation of the family. Although the term *family* appears in the New York statutes 2,149 times, only slightly more than the federal statutes, the term appears in the California Statutes 4,139 times. Judicial interventions and interpretations of family are even more extensive.¹⁴ There also exist a plethora of casebooks, textbooks, articles, reporters, and newsletters devoted to family law as well as many professional organizations.

Any inclusion of lesbian in the (re)definition of the family subjects our relationships to an immense regulatory scheme, thousands of federal and state statutes and judicial opinions. Yet the exclusion of lesbians in the

made from all-natural ingredients; in the newspapers there were advertisements for "family department stores," grocery stores that can "handle any family," and parks that guaranteed "family fun." The commodification of the family is almost as pervasive as the commodification of sexuality: the family is appropriated to sell almost everything except liquor and cigarettes. The substantive text of the magazines and newspapers also relied on the family, even if in an ostensibly subversive or critical manner: in a lesbian magazine there was a cartoon called "The Chosen Family" and a critique of family-values rhetoric; in the newspaper there were cartoons such as "Family Circle," a selection of "summer family recipes," and several articles discussing the modern family. Tired of reading, I took a solitary walk on a nature trail, where I saw an official parks department placard labeling a particular tree as a "*Sibirica*—a member of the dogwood family"—thus assuring me that family is inherent in the natural world. That evening, I decided whether to eat at a recommended "family restaurant" and later whether to view a presentation that proclaimed itself as "family entertainment."

¹⁴ The citations are in excess of the tens of thousands. I appreciate the research conducted by Lisa Sbrana for the citations to case law and statutes. When I asked her to complete this assignment and put it on my desk, I did not expect to find a neatly organized but nonetheless overflowing carton of computer printouts listing the one- or two-line citation for each entry. This mass is a tangible testament to the mass of references to the family in only a few of the many jurisdictions.

(re)definition of family also subjects our relationships to regulatory schemes, often the same ones. Given the immense power of law to bestow or deny concrete benefits as well as the law's symbolic stature, it is perhaps predictable that the ideological contestations concerning the relationship of lesbians to the family are often located within the legal system.

Family quarrels

The contest over the terrain of family occurs within a legal and political regime hostile to feminism and lesbianism. This point is worth stressing because it is so obvious as to be ignored. In conservative political rhetoric, the phrase "family values" is generally understood to connote an opposition to lesbianism and other "deviations."¹⁵ This conservative oppositional strategy is codified in the federal statutes: the first time the category "sexual orientation" appears in the U.S. Code it is explicitly contrasted to "the American family," despite the irrelevancy of such a contrast given the statute's purpose to collect statistics on bias crimes.¹⁶

¹⁵ The rhetoric of the Reagan-Bush era is captured in a report on the family from the White House Working Group, which included U.S. Justice Clarence Thomas, then Commissioner of the Equal Employment Opportunity Commission, and which described children born to unmarried mothers, female-headed households, and abortions as pathologies linked to the "sexual revolution" and other "fads and trends" of the 1960s and 1970s, presumably including feminism and lesbian/gay liberation (White House Working Group 1986). The report also specifically celebrates the U.S. Supreme Court's decision in *Bowers v. Hardwick*, 478 U.S. 186 (1986), upholding the constitutionality of a Georgia statute criminalizing oral-genital contact between consenting adults. Although this decision has been overwhelmingly criticized in the legal scholarship, the report views the decision as honoring a state's attempt to "promote family goals" and "protect the family" by criminalizing (homosexual) sodomy.

¹⁶ The Hate Crime Statistics Act, passed by Congress in 1990, provides for the compilation of statistics on hate or bias crimes, specifically defined as "crimes that manifest evidence of prejudice based upon race, religion, sexual orientation, or ethnicity" (P.L. 101-275, 104 Stat. 140 amending 28 U.S.C. § 534). The inclusion of sexual orientation is a testament to the increasing recognition of violence against lesbians, gay men, and bisexuals, linking this violence with that perpetrated on the basis of other group identities such as race, ethnicity, religion, culture, and gender. Nevertheless, the mention of sexual orientation provoked much controversy within Congress, fostered by conservative Rep. Jesse Helms. See Recent Developments 1991; Herek and Berrill 1992, 4-7. The Congressional compromise necessary to preserve the sexual orientation category and prevent a Helms amendment was a statement inserted into the act that "the American family is the foundation of American society; federal policy should encourage the well-being, financial security, and health of the American family; and schools should not de-emphasize the critical value of American family life" (28 U.S.C. § 534). Any doubts about the function of this paean to the family operating as an antidote to the mention of sexual orientation is resolved by the statute's next section: "Nothing in this Act shall be construed, nor shall any funds appropriated to carry out the purpose of the Act be used, to promote or encourage homosexuality" (28 U.S.C. § 534).

The conservative definition of the family as oppositional to lesbianism and other "deviations" can provoke a liberal response at redefinition. The liberal (re)definition strategy stresses inclusion and diversity, specifically attempting to expand the conservative family to include previously excluded formations. This strategy is essentially an argument that no opposition exists because family does—and must—include lesbian and other alternative "families." This often rests on a liberal politic that stresses diversity, plurality, and self-determination and on an empirically derived "fact" that only a minority of contemporary families are within the traditional family definition. Thus, the liberal (re)definition argument appeals to the belief that the law should be both normatively grounded (plurality as aspiration) and descriptively grounded (diversity as reality).¹⁷ Stated in more generic theoretical terms, the conservative position employs a formalist approach: family is defined with reference to formal relationships, usually dictated by law or some other equally formal structure. Correspondingly, the liberal position employs a functionalist approach: family is defined with reference to the functions or attributes or "realities" operative in the relationships.

The confrontation between the conservative and liberal definitions of the family that is being waged in the law includes conflicts in the courts. Three recent cases are illustrative of the judicial battle over the terrain of the family: *Braschi v. Stahl Associates*, *In re Kowalski*, and *Alison D. v. Virginia M.*¹⁸ These are each important examples of litigation, supported by the lesbian and gay legal reform movement, in which there was an attempt to gain specific benefits reserved to family members. Because these three cases and the scenarios they represent are the focus of much feminist and lesbian legal theorizing about (re)defining the family, they merit specific interrogation.

In *Braschi v. Stahl Associates*, the only case of these three to involve a gay man rather than a lesbian, Miguel Braschi occupied a Manhattan rent-controlled apartment for approximately a decade with his lover, Leslie Blanchard. Shortly after Blanchard's death, the owner of the building threatened to evict Braschi because only Blanchard was the tenant of record. The resulting litigation initiated by Braschi to prevent the eviction reached New York's highest court and centered on a New York City rent-control regulation disallowing eviction of "either the surviving spouse of the deceased tenant or some other member of the deceased

¹⁷ In legal scholarship considering (re)defining the family, a typical statement would be "Most of us relish the diversity which exists in our pluralistic society; however, there has been insufficient legal recognition of the diversity which is the 'reality of contemporary family relationships'" (Truehardt 1990/91, 123-24).

¹⁸ *Braschi v. Stahl Associates*, 74 N.Y.2d 201, 543 N.E.2d 49, 544 N.Y.S.2d 784 (1989); *In re Kowalski*, 478 N.W.2d 790 (Minn. App. 1991); *Alison D. v. Virginia M.*, 77 N.Y.2d 651, 572 N.E.2d 27, 569 N.Y.S.2d 586 (1991).

tenant's family." The issue for the courts was whether Braschi was within the protected category "surviving spouse or some other member of the deceased tenant's family" and thus entitled to remain as a tenant in the rent-controlled apartment.

In considering the familial status of the gay men's relationship, the court approvingly referred to factors such as the exclusivity and longevity of the relationship, the level of emotional and financial commitment, the manner in which they conducted their everyday lives and presented themselves, and the reliance they placed on each other for "family services." The court relied on underlying facts such as their cohabitation for ten years, their regular visits to each other's relatives, and their joint status as signatories on three safe deposit boxes, bank accounts, and credit cards. Because the rent-control regulation did not define "family," the court could fashion its own definition on a "foundation" of "the reality of family life." In stressing that it was "realistic" to consider family as including two lifetime partners "whose relationship is longterm and characterized by an emotional and financial commitment," the court concluded that its (re)definition of family comported with "society's traditional concept of 'family' and with the expectations of individuals who live in such nuclear units" (74 N.Y.2d 212-13). The factors enunciated by the court, however, as well as the court's specific statements such as the men "regarded one another, and were regarded by friends and family, as spouses" and that they were viewed as "a couple" (74 N.Y.2d 213), delineate a more narrow category than family. Although *Braschi* involves the interpretation of the term *family*—and not the term *spouse*, which also occurs in the regulation—the model is clearly one of a coupled adult sexual relationship similar to a traditional heterosexual marriage.

More complex is the final judicial pronouncement in the controversy surrounding the well-publicized case of Sharon Kowalski, a lesbian severely disabled by a car accident.¹⁹ The litigation in *In re Kowalski* involved a guardianship contest between Kowalski's lover, Karen Thompson, and Kowalski's parents. Eight years after the initial accident, a Minnesota appellate court awarded guardianship of Sharon Kowalski to Karen Thompson. The pertinent Minnesota statute provided that in selecting a guardian, "kinship" was not a conclusive factor but should be considered to the extent "relevant" to explicitly mandated factors such as the ward's preference, the interaction between the ward and the guardian, and the guardian's ability to provide for the ward's needs, medical care, social requirements, training, and rehabilitation. Sharon Kowalski expressed her preference to live with Karen Thompson, although Kowalski's ability to express a preference was contested. By the time the

¹⁹ For an extended discussion of the situation, see Thompson and Andrzejewski 1988.

almost decade-long litigation reached its conclusion, Karen Thompson was the only person willing and able to assist Sharon Kowalski in living outside an institution. On the preference and ability basis alone, the Minnesota appellate court could clearly have named Karen Thompson the guardian. Nevertheless, the court found it important to include its judgment of the "fact that Thompson and Sharon are a family of affinity, which ought to be accorded respect."

The court's reliance on the reality of "fact" for its conclusion of familial relationship in *Kowalski* parallels that of the court in *Braschi*. The court's rendering of the relationship of Sharon Kowalski and Karen Thompson, however, is less clearly based on the model of the adult sexual couple. The court's pairing of "Thompson" and "Sharon" as the members of this "family of affinity" connotes a relationship more akin to caretaker and dependent, with unequal status and formality in the court's language. One interesting consequence of this caretaking/dependent model is that it may have made Karen Thompson's nonmonogamy more palatable to the appellate court than it was to the trial court, which had found Thompson's "affair" created a conflict of interest. Yet the appellate court also relied on expert testimony that "it is not uncommon for spouses to make changes in their personal lives while maintaining their commitment to the injured person" (478 N.W.2d 796; emphasis added).²⁰

When the family model invoked is clearly that of parent-child, litigation on behalf of lesbians has been less successful. For example, in *Alison D. v. Virginia M.*, one member of a lesbian couple gave birth to a child through alternative insemination. After the adult couple's relationship dissolved, the biological mother eventually refused to allow her former lover to visit with the child. The same court that rendered *Braschi* decided *Alison D.*, finding that a lesbian nonbiological mother was not within the definition of parent and so had no standing to bring a petition for visitation against the child's biological mother. In *Alison D.*, the court rejected the claim to reality in the form of "de facto parenthood" as insufficient to overcome the legal definition of parent. Only the sole dissenting judge, the highly regarded feminist jurist Judith Kaye, gave credence to an empirical approach; in the first paragraph of her opinion

²⁰ The trial court heard evidence that Karen Thompson had an affair or perhaps more than one sometime after the accident. The court held that Thompson's "testimony that she had been involved in other relationships since Sharon's accident" (478 N.W.2d at 795)—in combination with Thompson's taking of Kowalski to public events, some of which were lesbian or gay events, and solicitation of defense funds—created questions of conflict of interest with Kowalski's welfare and required the appointment of a third party as guardian rather than Thompson. Reversing, the court of appeals noted the doctor's testimony that "spouses" often make changes in personal lives, while also commenting on Thompson's representations that "anyone who is involved in her life understands that she and Sharon are 'a package deal'" (478 N.W.2d at 795–96).

she refers to estimates that "more than 15.5 million children do not live with two biological parents, and that as many as 8 to 10 million children are born into families with a gay or lesbian parent" (77 N.Y.2d 658–59). Judge Kaye explicitly appealed to *Braschi's* formulation of criteria, noting that the court had the competence and authority to formulate criteria in this instance.²¹

Braschi, *Kowalski*, and *Alison D.* demonstrate attempts to (re)define the family to include "nontraditional" relationships. On the one hand, within liberal feminist and lesbian theorizing, *Braschi* and *Kowalski* are judged "good" cases because the courts expanded the concept of family to include the lesbian or gay relationship and the right result was reached. On the other hand, *Alison D.* is judged a "bad" case because the court was unnecessarily restrictive and the wrong result was reached. Feminist and lesbian theorizing is not this simplistic, of course, but the implications of liberal (re)definitions of the family are less liberating and more detrimental than lesbian existence deserves.

Redefining families, redefining lesbians

Explicating the consequences of *Braschi*, *Kowalski*, and *Alison D.* within the context of feminist and lesbian legal theorizing elucidates some of the methods by which family redefinition becomes lesbian redefinition. *Braschi's* restrictive criteria constitute the most obvious demarcation of those of us whose relationships will qualify as family from those of us who will be excluded. The court's use of criteria marks the liberal functional approach by using factors to determine how the relationship functions, departing from the more conservative formalist approach by limiting recognition according to legal status. While the conservative formalist approach would exclude Miguel *Braschi* (as well as any lesbian in similar circumstances) from family membership and its concrete benefits, the liberal functionalist approach that extended benefits to *Braschi* is itself exclusionary. As expressed in *Braschi*, the requisite familial functions mimic the most traditional of marriages, including its economic practices within capitalist culture. *Braschi's* factor of "financial commitment" as well as the court's use of economic facts prove the elusive requirements of "dedication, caring and self-sacrifice" (74 N.Y.2d 213).

The importance of economics is not limited to *Braschi* but also surfaces in liberal legislative or quasi-legislative attempts to (re)define the

²¹ Kaye suggested that it "should be required that the relationship with the child came into being with the consent of the biological or legal parent" and that the person seeking visitation should "at least have had joint custody of the child for a significant period of time" (77 N.Y.2d 662). She also suggested that other factors likely should be added but did not specify them.

family. Even the most progressive domestic partnership policies typically require affirmations related to financial interdependency, often with specific requirements.²² While only a few policies pertain to nonbiological children, these also recapitulate the formal relations of parent-child, again stressing the economic.²³

Economic relations as a hallmark of family weaken functionalism's appeal to reality if such a reality is to be inclusive of lesbians.²⁴ Unlike Braschi and Blanchard, most lesbians do not live in material comfort on Manhattan's Upper East Side sharing the keys to their safe deposit boxes; many do not have the level of economic privilege necessary to obtain joint bank accounts and credit cards. A ramification of *Braschi* (as well as domestic partnership policies) is that certain economic benefits (such as housing or insurance) depend on family or spouselike status, which is in turn proven through other economic accomplishments (such as joint bank accounts). This approach prioritizes the individual's problem of an inequitable position within the wealth-distribution system over the problem of collective inequities in the distribution of wealth. A criticism of this approach is that obtaining a benefit such as health insurance should not be dependent on being "related" to an individual sufficiently privileged to have insured employment: the problem is not simply that some people (who would be insured but for their lack of legal relation to a insured worker) are denied insurance but that anyone is denied insurance. Such an argument is more easily discernible in the spousal context than in other contexts, but it is no less applicable in other contexts. Class-based criticisms are highly relevant here, especially given the gender, racial, cultural, and ability disparities in the wealth distribution system,²⁵ although such critiques often provoke accusations of being unrealistic or marxist, or both.²⁶

Further, economic ideologies are germane to nonmaterial factors constituting spousal or familial relations such as exclusivity. The patriarchal

²² For example, two-thirds of the criteria needed to establish a domestic partnership in the University of Iowa's Affidavit of Domestic Partnership are linked to property or property rights, and a domestic partnership may be established entirely on a property basis.

²³ For example, a Stanford University employee may "enroll an unmarried same sex Domestic Partner" and the "Domestic Partner's child(ren)" in the university medical, dental, accident insurance, and tuition grant program if the child meets eligibility requirements that are primarily economic; these criteria also require that the economic relationship mimic the most conservative family construction consisting of one "breadwinner" and all other family members as dependent.

²⁴ As well as inclusive of all economically marginalized women. The work of feminist legal theorist Martha Fineman considering mothers in poverty is especially relevant (Fineman 1991a, 1991b).

²⁵ For an important discussion of class and family, including perspectives on middle- and upper-class family theorizing, see Rapp 1992.

²⁶ One of the most cogent critiques of familialism, Barrett and McIntosh 1982, often implicitly is dismissed as too marxist or socialist.

link between marriage and women as property so devastatingly criticized by generations of feminist theorists is resuscitated and reified in familial functionalism. *Braschi's* emphasis on the "exclusivity and longevity of the relationship," *Kowalski's* attention to the issue of monogamy, and the domestic partnership affidavits mandating affirmation that the other is one's "sole domestic partner" all demonstrate the property model of relationship by valorizing exclusivity in sexual relations.²⁷ In *Braschi*, the narrowness of the court's conception of family as limited to coupledness is further evidenced by the distinction the court made between its decision and its decisions involving functional familialism in the context of zoning restrictions limiting land use to "families." These zoning cases, which bring under the rubric of family any group of individuals that is the "factual and functional equivalent" of the family, such as a group home for adults—and perhaps also several lesbians sharing an apartment—are specifically rejected by the *Braschi* court.²⁸ The not-so-implicit message is that lesbian/gay relationships will be accorded the status of family only to the extent that they replicate the traditional husband-wife couple, a tradition based on property relations.

Nevertheless, critiques of capitalism can seem less pertinent in situations such as the ones in *Kowalski* and *Alison D.*, which place at issue "benefits" like caring for or visiting a loved one. Certainly, not all of us have lovers who have been disabled by a car accident as Sharon Kowalski has been, and not all of us have coparented a child with a biological mother, but our realities in similar situations seem undetermined by economic and other privileges. The arguments that Karen Thompson should be accorded any operative "kinship" preference and *Alison D.* should be accorded a parental claim for visitation rest on claims to reality as functionalism. Surely Karen Thompson was—in reality—functioning as true "family" to Sharon Kowalski by supporting her even after Kowalski's biological family members had abandoned her to institutional care. And surely *Alison D.* was—in reality—functioning like any parent in the constellation of the lesbian family. Yet both realities are situated

²⁷ Exclusivity of sexual relations is a problematic criterion, but so, too, is the fact of sexual relations. As Didi Herman suggested in her consideration of sexual relationships as proof of "couple" or "family" in Canada, problems of definition arise with respect to "sexual relationship" (1990). The concept of "sex" as categorizing lesbian relations is quite problematic (Frye 1988). Further, as Martha Fineman suggests, the problem of sexual relations as determinative of family is a problem for all families in which heterosexuality is not exercised, such as a mother-child relation (1992).

²⁸ In a footnote to its opinion, the court notes that its definition of the family in *Braschi* is "completely unrelated to the concept of the 'functional family' as that term has developed" in the zoning cases that "have absolutely no bearing" on the scope of the noneviction protections at issue in *Braschi*. The adamancy of the court's disclaimer is rather disingenuous: both *Braschi* and the zoning cases involve the right to occupy property and constructions of the family that will be enforced through state power.

within specific circumstances such as sufficient economic resources to care for a disabled person or to arrange visitation of a child. Further, both realities are situated within a legal regime that propertizes persons by allowing the legal exclusion of others through the mechanisms of guardianship and custody/visitation.²⁹

Enshrining realities through the functionalist approach to family reifies the family and conceptualizes relationships in instrumental terms, terms that are culturally constructed and enforced. While the functionalist approach may seem more fluid than the formalist approach, on closer examination the functionalist approach reveals only a more complex rigidity. The functions that serve as criteria to determine family recapitulate the formal relations of either spouse-spouse or parent-child. These formal relations emphasize the economic, which is perhaps not surprising given our capitalist culture.³⁰

The criteria developed from spouse-like and parent-child relations are not only culturally determined but also aspire to universality and centrality. Such claims cannot be sustained. Feminist anthropologists and psychologists have convincingly disputed the universality and centrality of familial functions.³¹ Within feminist legal theorizing, arguments that adult sexual intimacy is foundational (e.g., MacKinnon 1989) compete with arguments that the mother-child dyad is similarly constitutive (e.g., Fineman 1992). Similarly, arguments that (hetero)sexual relations are the ground of women's subordination compete with arguments that reproduction or mothering is the root of women's oppression. These competing claims may reveal schisms within feminist legal theory, but they also expose the problem of universalizing functions as indicators of family formations.

The functionalist approach also directly contradicts another tenet of feminist and lesbian family redefinition agenda. This tenet is crystallized in an often articulated faith that as lesbians we can enter the family and

²⁹ Davies 1993 (quoting Gray 1991) uses the term *propertised* to explain how women become conceptualized as property, especially as property is the object of a right to exclude others from use and enjoyment.

³⁰ The law and economics perspective that family is a system of rational persons acting to maximize benefits and minimize costs and that law should govern the family accordingly (Becker 1991) is a respected, if extreme, position that one need not adopt—as I certainly do not—to nevertheless acknowledge the effect of economic perspectives on family law.

³¹ See, e.g., Luepnitz 1988 (arguing against family psychologists who have naturalized and universalized family functions, especially as such functions are gendered); Collier, Rosaldo, and Yanagisako 1992 (critiquing the functionalist approach to family and the conclusion that the family is universal); and Thorne 1992 (describing two decades of feminist formulations of the family as consisting of various, contingent, socially, and historically constructed and sometimes contradictory relations of kinship, intimacy, and domestic sharing).

transform it by our very existence or at least by our aspiration to transform it (e.g., Dunlap 1991). But the functional criteria used to determine whether relationships are under the rubric of family guarantee exclusion of the very relationships that might transform the functions. For example, a sexual relationship among three lesbians would be excluded by factors resting on an assumption of monogamous couples, insuring that the couple model could not be transformed from within the family. Further, the transformation of family functions is disfavored by feminist theorists in their arguments for the liberalized transformation of family participants. For example, feminist legal theoretician Martha Minow, discussing her position that Alison D. should be considered a *de facto* parent, concludes that "people should be able to choose to enter family relationships, but not free to rewrite the terms of those relationships" (Minow 1991, 282).

Even when functionally (re)defined, the family redefines lesbians by demarcating, assimilating, coercing, indoctrinating, and arrogating us. Demarcation occurs when familialism becomes a division among ourselves, as well as when it serves as a convenient division between "good" lesbians and "bad" ones for the dominant culture. The danger of demarcation has been eloquently expressed by lesbian theorist and activist Joan Nestle, who writes of the temptation to see ourselves as the "clean sexual deviant" and disassociate ourselves from public sexual activity, multiple partners, and intergenerational sex and cloak ourselves in the image of "monogamous long-term relationships, discrete at-home social gatherings, and a basic urge to recreate the family" (1987, 123). As Nestle notes, the safe image is not the reality for all of us, "not now and not in the past," and allows some of us to be scapegoated for the protection of others (1987, 123).

Demarcation can occur only in a climate in which assimilation is coercive. An offer of concrete benefits such as retaining a rent-stabilized apartment is an example of such coercion, but a strong undercurrent of physical violence also marks this coercion to assimilate. In contending that the formation of families through "gay marriage" is not a "denial of family values," but "an extension of them," one conservative gay male writer chillingly argues: "Since persecution is not an option in a civilized society, why not coax gays into traditional values rather than rail incoherently against them?" (Sullivan 1989, 22). This argument for coaxing is situated in an implicit historical reference to the persecution and execution of lesbians as well as an unexpressed contemporary reference to the continuing violence against lesbians (see Robson 1992a, 29-45, 145-56). Such a situation of the argument tacitly promises lesbians protection if we conform our relations to traditional family values and threatens persecution if we do not.

The (re)defined family further redefines lesbians by mandating a display of our indoctrination. Thus, it is not only sufficient that we structure our relations like familial ones, but we must also indicate our belief that our relations are, indeed, familial. One of *Braschi's* criteria and the criteria of almost all functional family definitions is that the putative family members present themselves as family; they must indicate that they conceptualize themselves as a family. While this may be interpreted as extending family membership only to those who willingly choose it, the choice involved is coercive not only against the background of concrete benefits and fears of persecution but also in terms of mandating that we demonstrate our own indoctrination. We not only must conform our actions; we also must be true believers.

One aspect of the true belief of the assimilability of lesbian relations in the redefined family is the arrogating of lesbian relations to heterosexual ones. The heterosexually defined family thus remains the norm, even in the redefinition. This results in the theoretical position adopted by some lesbian theorists that lesbian relations are "commensurable" to their "heterosexual counterparts."³² Heterosexuality as the norm is as subject to critique in lesbian legal theory as masculinity as the norm has been subject to critique in feminist legal theory. Any argument that equal comparisons between heterosexuality and lesbianism are possible ignores the power differentials between the regime of heterosexuality and the subordination of lesbianism. Outside of a lesbian-centered perspective, comparisons between lesbians and heterosexuals necessarily arrogate lesbianism to heterosexuality.

The arrogation of lesbianism is not limited to heterosexuality. Lesbianism is also arrogated to feminism and even to familialism. Many feminist legal theorists routinely theorize that feminist legal theories based on the category of gender must merely be extended to incorporate the category of sexual orientation. Within feminist legal theories addressing gender disparity, lesbianism can further become arrogated to familialism itself. For example, in a prominent and often excellent book devoted to feminist legal theorizing, the only section specifically devoted to lesbians, "Lesbian-Gay Rights and Social Wrongs," is encapsulated in a chapter

³² For example, Kath Weston argues that gay families introduce the basis for rendering heterosexuality and lesbian or gay identity "commensurable," and she partially justifies the need for such commensurability to a reduction of the "othering" of lesbians and gay men that makes the violence against us palatable. She notes, however, that her argument is not that lesbians are "just like" heterosexuals but that lesbians "laying claim to families" present themselves as fully human and not sharply segregated as members of a species unto itself (1991, 202-5). A less nuanced argument is that of Libby Post, who contends that the battle for domestic partnership is "the cutting edge issue of the lesbian and gay political agenda" so that "lesbians and gay men, like their heterosexual counterparts, are accorded full protection of the law" (1992, 747, 758).

titled "Competing Perspectives on Family Policy." Similar to the manner in which legal treatises confined "women's issues" to discussions of "family policy," this positioning and the text itself arrogates lesbian issues to family ones.³³

Demarcation, assimilation, coercion, indoctrination, and arrogation of lesbianism redefine lesbianism as the family is being (re)defined. This domestication of lesbianism must be resisted.

Possibilities of lesbian resistance

To lesbians subjected to the hegemony of the family and its strategies of demarcation, assimilation, coercion, indoctrination, and arrogation, any desired resistance to being theorized in relation to the family can seem impossible. Yet resistance is not a monolithic activity with a predetermined result. Although some Foucault-influenced feminist theorizing might resist the very notion of the possibility of resistance, Michel Foucault's own formulation of resistance stresses its integrity as well as its multiplicity.³⁴ Foucault's formulation also posits that "mobile and transitory points of resistance" are capable of "marking off irreducible regions" in individuals, in "their bodies and minds" (Foucault 1978, 96). Lesbianism can be such an "irreducible region" in our "bodies and minds."³⁵

Resistance requires at the very least an abandonment of our reflexive adoption of the category "family" to explain and organize our relationships. Attending to the automatic quality of reference to "family" and the contemplation of the absence of such a ready referent are important forms of resistance to the power of family to domesticate lesbianism. While a critically strategic adoption of the category "family" in the context of litigation for particular benefits can be an important form of resistance, one wonders what a resistance to the category of "family" might mean. Thus, rather than lesbians requesting inclusion into the privileged legal category of "family," what if lesbians advocated the abolition of benefits based on family status, the reconsideration of what

³³ The example is from Rhode 1989. My critique of the position of lesbians in Rhode's work, however, must be read in the context of feminist legal theories that accord lesbians little, if any, position. See MacKinnon 1989; Minow 1990.

³⁴ Foucault states that there is a "plurality of resistances, each of them a special case: resistances that are possible, necessary, improbable; others that are spontaneous, savage, solitary, concerted, rampant, or violent; still others that are quick to compromise, interested, or sacrificial; by definition, they can only exist in the strategic field of power relations. But this does not mean that they are only a reaction or rebound, forming with respect to the basic domination an underside that is in the end always passive, doomed to perpetual defeat" (Foucault 1978, 96).

³⁵ Such a statement courts accusations of lesbian essentialism, which I discuss elsewhere (Robson 1993a, 1993b).

constitutes "benefits," or even the abolition of the category "family" itself? And what would such advocacy mean for nonlesbian feminists?

Any contemplation of the abandonment of such a culturally central category can cause consternation: if not the family, then what? A reconceptual attempt to answer this question could also be an important form of resistance, assuming that the effort would be to reconceptualize rather than merely replicate.³⁶ If we are no longer "riveted" on the extant categories, then the possibility exists that we can create new categories that reflect lesbian diversity (Hoagland 1988, 63). As feminists and lesbians we have learned the power of naming, renaming, and reclaiming our situations, problems, strengths, and precursors. Lesbians have invented new forms and resituated old ones in our relationships, cultural formations, literature, art, and spirituality. Within feminist legal theorizing, we have originated categories such as sexual harassment, comparable worth, and the category of feminist legal theory itself. The formulation of new categories in lieu of "the family" could be an important form of resistance and could allow us to reconceptualize ourselves and our relationships in as yet unimaginable ways, while honoring our complex relationships rooted in our varying racial, ethnic, religious, and economic identities.

In addition to naming and renaming categories, feminist legal theorizing has also banished categories, accomplishing a virtual un-naming of the situations they once represented. For example, we no longer theorize about gendered harms from breaches of promise to marry or from seduction (Coombs 1989). It is not only that the law and cultural conditions have changed but also that few of us would use such categories in a serious manner to conceptualize contemporary events, although we might know women in the circumstances these categories were meant to describe.

Un-naming is an important, if underutilized, form of resistance.³⁷ Un-naming the family may be the most conceptually radical form of resistance to the family's power to domesticate lesbianism; it has potentially important results for lesbian and feminist legal theorizing. At its most simple, such theorizing proceeds as if lesbians are not derivative of the family. Within lesbian legal theorizing, this means theorizing not as if

³⁶ As Michèle Barrett and Mary McIntosh argue, any synonymous institution would suffer all the defects of the present institution. In answering the question "What would you put in family's place?" Barrett and McIntosh insist "nothing" and offer their solution: "What is needed is not to build up an alternative to family—new forms of household that would fulfil all the needs that families are supposed to fulfil today—but to make family less necessary, by building up all sorts of other ways of meeting people's needs. . . . [We must] transform not the family, but the society that needs it" (1982, 159).

³⁷ The idea of un-naming is evocatively presented by feminist writer Ursula LeGuin in a story about Eve un-naming the animals (LeGuin 1986).

lesbian relations are commensurate to familial relations but as if lesbian relations are commensurate only to themselves. Such theorizing requires a critical interrogation of legal benefits and responsibilities predicated on familial status, an interrogation that goes beyond strategies of inclusion for particular (or privileged) lesbians and attempts to center lesbian concerns. Within feminist legal theorizing, this means theorizing as if lesbian existence is important to all aspects of the feminist project and not as if lesbian issues need only be considered in the context of familial status. Such feminist theorizing requires a repositioning of lesbians so that lesbianism becomes a consideration in issues such as sexual harassment, pornography, and health services, as well as in conceptions of difference and diversity and equality. If both lesbian and feminist legal theorizing struggle to unname family as the organizing category of lesbians as legal actors, perhaps lesbians can struggle toward new organizing categories. As long as family—in whatever form it takes—remains a dominant legal category, lesbians are positioned as either outlaws or in-laws.

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References

- Barrett, Michèle, and Mary McIntosh. 1982. *The Anti-social Family*. London: Verso.
- Becker, Gary S. 1991. *A Treatise on the Family*. 2d ed. Cambridge, Mass.: Harvard University Press.
- Berger, Vada. 1991. "Domestic Partnership Initiatives." *De Paul Law Review* 40:417-53.
- Brown, Amy. 1990. "Broadening Anachronistic Notions of 'Family' in Proxy Decision Making for Unmarried Adults." *Hastings Law Journal* 41:1029-76.
- Buchanan, G. Sidney. 1985. "Same-Sex Marriage: The Linchpin Issue." *University of Dayton Law Review* 10:541-73.
- Burnham, Margaret. 1987. "An Impossible Marriage: Slave Law and Family Law." *Journal of Law and Inequality* 5:198-225.
- Cardea, Caryaris. 1990. "Lesbian Revolution and the 50 Minute Hour: A Working-Class Look at Therapy and the Movement." In *Lesbian Philosophies and Cultures*, ed. Jeffner Allen, 193-217. Albany: State University of New York Press.
- Collier, Jane, Michelle Rosaldo, and Sylvia Yanagisako. 1992. "Is There a Family? New Anthropological Views." In *Rethinking The Family: Some Feminist Questions*, ed. Barrie Thorne with Marilyn Yalom, 31-48. 2d ed. Boston: Northeastern University Press.
- Coombs, Mary. 1989. "Agency and Partnership: A Study of Breach of Promise Plaintiffs." *Yale Journal of Law and Feminism* 2:1-23.
- Cronan, Sheila. 1973. "Marriage." In *Radical Feminism*, ed. Anne Koedt, Ellen Levine, and Anita Rapone, 213-21. New York: Quadrangle.

- Dailey, Ann. 1993. "Constitutional Privacy and the Just Family." *Tulane Law Review* 67:955-1031.
- Dalton, Harlon. 1991. "Reflections on the Lesbian and Gay Marriage Debate." *Law and Sexuality: A Review of Lesbian and Gay Legal Issues* 1:1-8.
- Davies, Margaret. 1993. "Feminist Appropriations: Law, Property, and Personality." Paper presented at the Feminist Legal Theory Conference, Columbia University, June 17.
- Duclos, Nitya. 1991. "Some Complicating Thoughts on Same-Sex Marriage." *Law and Sexuality* 1:31-61.
- Dunlap, Mary. 1991. "The Lesbian and Gay Marriage Debate: A Microcosm of Our Hopes and Troubles in the Nineties." *Law and Sexuality* 1:63-96.
- Faderman, Lillian. 1991. *Odd Girls and Twilight Lovers: A History of Lesbian Life in the Twentieth Century*. New York: Columbia University Press.
- Fineman, Martha. 1991a. "Images of Mothers in Poverty Discourses." *Duke Law Journal* 1991: 274-95.
- . 1991b. "Intimacy outside of the Natural Family: The Limits of Privacy." *Connecticut Law Review* 23:955-72.
- . 1992. "The Neutered Mother." *University of Miami Law Review* 46:653-83.
- Foucault, Michel. 1978. *The History of Sexuality*. Vol. 1, trans. Robert Hurley. New York: Vintage/Random House.
- Franklin, Kris. 1990-91. "'A Family Like Any Other Family': Alternative Methods of Defining Family in Law." *New York University Review of Law and Social Change* 18:1027-78.
- Friedman, Alissa. 1987. "The Necessity for State Recognition of Same-Sex Marriage: Constitutional Requirements and Evolving Notions of Family." *Berkeley Women's Law Journal* 3:134-70.
- Frye, Marilyn. 1988. "Lesbian 'Sex.'" *Sinister Wisdom* 35:46-54.
- . 1992. "Getting It Right." *Signs: Journal of Women in Culture and Society* 17(4):781-93.
- Gray, Kevin. 1991. "Property in Thin Air." *Cambridge Law Journal* 50:252-307.
- Grossberg, Michael. 1985. *Governing the Hearth*. Chapel Hill: North Carolina University Press.
- Herek, Gregory, and Kevin Berrill. 1992. "Introduction." In *Hate Crimes: Confronting Violence against Lesbians and Gay Men*, ed. Gregory Herek and Kevin Berrill, 1-10. Newbury Park, Calif.: Sage.
- Herman, Didi. 1990. "Are We Family? Lesbian Rights and Women's Liberation." *Osgoode Hall Law Journal* 28(4):789-815.
- Hoagland, Sarah Lucia. 1988. *Lesbian Ethics*. Palo Alto, Calif.: Institute of Lesbian Studies.
- Hunter, Nan. 1991. "Marriage, Law and Gender: A Feminist Inquiry." *Law and Sexuality* 1:9-30.
- Johnston, Jill. 1973. *Lesbian Nation*. New York: Simon & Schuster.
- Kitzinger, Celia, and Rachel Perkins. 1993. *Changing Our Minds*. New York: New York University Press.
- Lakoff, George. 1987. *Women, Fire and Dangerous Things: What Categories Reveal about the Mind*. Chicago: University of Chicago Press.

- LeGuin, Ursula K. 1986. "She Unnames Them." In *Hear The Silence: Stories by Women of Myth, Magic and Renewal*, ed. Irene Zahava, 192-94. Freedom, Calif.: Crossing.
- Leo, Andre. 1973. "ADC: Marriage to the State." In *Radical Feminism*, ed. Anne Koedt, Ellen Levine, and Anita Rapone, 222-27. New York: Quadrangle.
- Luepnitz, Deborah Anna. 1988. *The Family Interpreted: Psychoanalysis, Feminism and Family Therapy*. New York: Basic/HarperCollins.
- MacDonald, Barbara, with Cynthia Rich. 1983. *Look Me in the Eye: Old Women, Aging and Ageism*. San Francisco: Spinsters, Ink.
- MacKinnon, Catharine. 1989. *Toward a Feminist Theory of the State*. Cambridge, Mass.: Harvard University Press.
- Minow, Martha. 1990. *Making All the Difference: Inclusion, Exclusion and American Law*. Ithaca, N.Y.: Cornell University Press.
- . 1991. "Redefining Families: Who's In and Who's Out?" *University of Colorado Law Review* 62:269-85.
- Morgan, Robin, ed. 1970. *Sisterhood Is Powerful*. New York: Vintage/Random House.
- Nestle, Joan. 1987. *A Restricted Country*. Ithaca, N.Y.: Firebrand.
- Phelan, Shane. 1989. *Identity Politics: Lesbian Feminism and the Limits of Community*. Philadelphia: Temple University Press.
- Post, Libby. 1992. "The Question of Family: Lesbians and Gay Men Reflecting a Redefined Society." *Fordham Urban Law Journal* 19:747-58.
- Rapp, Rayna. 1992. "Family and Class in Contemporary America: Notes toward an Understanding of Ideology." In *Rethinking the Family: Some Feminist Questions*, ed. Barrie Thorne with Marilyn Yalom, 49-70. 2d ed. Boston: Northeastern University Press.
- Recent Developments. 1991. "Bringing Hate Crime into Focus—the Hate Crime Statistics Act of 1990, Pub. L. No. 101-275." *Harvard Civil Rights—Civil Liberties Review* 26:261-93.
- Rhode, Deborah. 1989. *Justice and Gender*. Cambridge, Mass.: Harvard University Press.
- Robson, Ruthann. 1992. *Lesbian (Out)Law: Survival under the Rule of Law*. Ithaca, N.Y.: Firebrand.
- . 1993a. "Embodiments: The Possibilities of Lesbian Legal Theory in Bodies Problematized by Postmodernisms and Feminisms." *Law and Sexuality* 2:37-80.
- . 1993b. "The Specter of a Lesbian Supreme Court Justice: Problems of Identity in Lesbian Legal Theorizing." *St. Thomas Law Review* 5:433-58.
- Robson, Ruthann, and S. E. Valentine. 1990. "Lov(h)ers: Lesbians as Intimate Partners." *Temple Law Review* 63:511-41.
- Schwarzschild, Hannah. 1988-89. "Same-Sex Marriage and Constitutional Privacy: Moral Threat and Legal Anomaly." *Berkeley Women's Law Journal* 4:94-127.
- Scott, Joan. 1992. "'Experience.'" In *Feminists Theorize the Political*, ed. Judith Butler and Joan Scott, 22-40. New York: Routledge.
- Sullivan, Andrew. 1989. "Here Comes the Groom: A (Conservative) Case for Gay Marriage." *New Republic* (August 28), 20-22.

- Thompson, Karen, and Julie Andrzejewski. 1988. *Why Can't Sharon Kowalski Come Home?* San Francisco: Spinsters/Aunt Lute.
- Thorne, Barrie. 1992. "Feminism and the Family: Two Decades of Thought." In *Rethinking the Family: Some Feminist Questions*, ed. Barrie Thorne with Marilyn Yalom, 3-30. 2d ed. Boston: Northeastern University Press.
- Torielli, Gina. 1989. "Protecting the Nontraditional Couple in Times of Medical Crises." *Harvard Women's Law Journal* 12:220-36.
- Truehardt, Mary Patricia. 1990/91. "Adopting a More Realistic Definition of 'Family.'" *Gonzaga Law Review* 26:91-124.
- Weston, Kath. 1991. *Families We Choose: Lesbians, Gays, Kinship*. New York: Columbia University Press.
- White House Working Group on the Family. 1986. *Report to the President: The Family: Preserving America's Future*. Washington, D.C.: Government Printing Office.