

Marriage, Cruising, and Life in Between: Clarifying Organizational Positionalities in Pursuit of Polyvocal Gay-Based Advocacy

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Varying political affiliations and theoretical leanings exist in the gay, lesbian, bisexual, and transgender (GLBT) community, hardly surprising in a population that encompasses middle-class white gay men and butch leather dykes alike. Yet many GLBT organizations purport to speak on behalf of all of their very different constituents. How successfully gay-based organizations reconcile these competing interests has become a concern for academics and activists, many of whom fear the increasing homogenization of the gay movement and the resulting marginalization of dissenting viewpoints. The growing clamor over same-sex marriage provides an illustration of this trend. While major GLBT organizations litigate for the “right to marry,” apparently at the behest of those they seek to represent, scholars like Michael Warner worry that marriage rights for same-sex couples would only serve to strengthen the normalizing power of marriage and, while bringing the Good (married) Gay into the heteronormative fold, to consolidate the Bad (unmarried) Queer’s position in the margins.¹ Under Warner’s conception of the current gay rights movement, the pursuit of marriage necessarily comes at the expense of articulating alternative, queer goals.²

Although some scholars frame the debate in such absolute terms, an exploration of the actual work being done on the ground shows that same-sex marriage occupies a more complex and tenuous position in gay-based advocacy. For the most part, gay rights projects do not, at any one moment, express a single normative vision for the GLBT community. Both within and across the range of gay-based organizations, one can glean

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¹ See, e.g., MICHAEL WARNER, *THE TROUBLE WITH NORMAL: SEX, POLITICS, AND THE ETHICS OF QUEER LIFE* 114 (1999). A different version of this chapter has been reprinted in *LEFT LEGALISM/LEFT CRITIQUE* 259 (Wendy Brown & Janet Halley eds., 2002).

² WARNER, *supra* note 1, at 145.

differing understandings of what gay representation entails. To explore whether GLBT constituents are being represented, both in the sense of being advocated for and being rendered visible, it is analytically helpful—if not mandatory—to lay out the various political and theoretical positionalities present in the GLBT population and explore the extent to which gay-based organizations participate in those discourses.

At one end of the spectrum is the conservative gay position, illustrated by groups such as the Log Cabin Republicans (LCR). Guided by the motto that “inclusion wins,”³ LCR espouses integration and rejects liberal and queer arguments regarding what it means to be “gay.”⁴ Such political conservatives promote formal equality and individual rights, and eschew claims that rely on the distinctiveness of the group. In this respect, the right-wing position endorses equal rights and incremental progress at the cost of recognizing the uniqueness of queer culture.⁵ Marriage, while desirable, can wait; non-discrimination and the repeal of anti-sodomy laws are more realistic and more worthwhile objectives. Furthermore, a behavioristic, moralistic call for monogamous commitment and a thorough rejection of promiscuity and multiple intimacies, often accompanied by connecting promiscuity to AIDS, maps onto a conservative gay orientation; this argument has also been used by gay-centrist thinkers.⁶ Insofar as the conservative line accepts the status quo and eschews aggressive activism, it is, by definition, not generally supported within public interest organizations litigating on behalf of gays. While the rhetoric of individual rights, integration, and equality surfaces in many gay rights campaigns, even the least progressive of gay-based legal organizations recognizes the distinctiveness of GLBT groups, evidenced by their push for hate crimes legislation and litigation.

A gay-centrist position is closely associated with liberal calls for same-sex marriage, but it is more widely characterized by an appeal to equality and liberty as bases for the inclusion of gays and lesbians in rights and protections afforded to heterosexuals. In this respect, a centrist orientation (like a conservative one) is invested in the liberal tradition of individual rights. At the same time, the centrist position recognizes the distinctiveness of the group to the extent that the GLBT community experiences specific vulnerabilities and suffers specific injuries. For example, centrists acknowledge the unique injury and stigma that anti-sodomy laws inflict on gays. Similarly, a centrist orientation endorses frank sex education in the

³ Log Cabin Republicans, *Home Page*, at <http://www.lcr.org> (last visited Mar. 23, 2003).

⁴ See Log Cabin Republicans, *Who We Are & LCR's Mission*, at <http://www.lcr.org/mission.asp> (last visited Mar. 23, 2003) (“No longer will we be told where we must live, how we must dress, and how we must vote.”).

⁵ See, e.g., *id.*

⁶ See, e.g., WILLIAM N. ESKRIDGE, JR., *THE CASE FOR SAME-SEX MARRIAGE: FROM SEXUAL LIBERTY TO CIVILIZED COMMITMENT* 9 (1996) (arguing that AIDS is a wake-up call to gay and bisexual men that they are “in need of civilizing, [and] same-sex marriage could be a particularly useful commitment device for [them]”).

name of GLBT youth whose experiences are particularly at risk of being written out of existence by abstinence-only programs. In this sense, a centrist stance resonates within left multiculturalism and identity politics. But while gay-centrist objectives are defensible as logical extensions of equality jurisprudence and as a means of representation responsive to constituents, the centrist focus on the normative⁷ nature of marriage arguably renders queer ideals undesirable.⁸

In articulating the queer critique of same-sex marriage, Warner observes that even if gays seek to marry to revolutionize the institution from within, “marrying [nevertheless] consolidates and sustains the normativity of marriage.”⁹ He goes on to argue that the marriage debate has likewise normalized the gay movement.¹⁰ This queer orientation represents the left position and is most closely associated with an embrace of sexual shame and a celebration of marginalized sexual orientations and practices.¹¹ Queer thought is characterized by anti-identitarian, antinomian, and sex-positive impulses. While I understand that many people oppose the imposition of queer thought onto gay rights organizations, I find the application of queer theory in this vein useful on both an analytical and representational level. By resisting the stability (if not the very existence) of identity, queer thought provides a useful tool for interrogating the concept of representation that is key to cause lawyering.¹² Furthermore, by recon-

⁷ In referring to the normative force of marriage, I am setting up marriage as an expected, standard way of organizing intimate relations. I am not using the term to describe marriage as an ideal. For a more thorough explanation, see *infra* text accompanying note 44.

⁸ See, e.g., Judith Butler, *Is Kinship Always Already Heterosexual?*, in LEFT LEGALISM/LEFT CRITIQUE, *supra* note 1, at 229, 232–33 (“In the case of gay marriage . . . , we see how various sexual practices and relationships that fall outside the purview of the sanctifying law become illegible or, worse, untenable, and new hierarchies emerge in public discourse.”).

⁹ See WARNER, *supra* note 1, at 109; see also Wendy Brown & Janet Halley, *Introduction*, in LEFT LEGALISM/LEFT CRITIQUE, *supra* note 1, at 1, 23 (“[A]n extension of marriage rights to new couple forms would reconfigure, perhaps strengthen, the normalizing power of marriage.”).

¹⁰ See WARNER, *supra* note 1, at 143.

¹¹ This is not to say that the queer position, as I explain it, is *the* left position. The queer left position is subject to critique, for instance, by leftist scholars criticizing what they view as the white, male, middle-class privilege of queer activism and seeking to draw the attention of queer politics to race, class, and gender. See, e.g., Cathy J. Cohen, *Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics?*, 3 GAY & LESBIAN Q. 437 (1997); David L. Eng & Alice Y. Hom, *Introduction*, in Q & A: QUEER IN ASIAN AMERICA 1 (David L. Eng & Alice Y. Hom eds., 1998).

¹² See Austin Sarat & Stuart Scheingold, *Cause Lawyering and the Reproduction of Professional Authority: An Introduction*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 3 (Austin Sarat & Stuart Scheingold eds., 1998). By “cause lawyering,” I mean a form of lawyering infused with moral activism and “directed at altering some aspect of the social, economic, and political status quo.” *Id.* at 4. The practice is not stable and “continues to reinvent itself in confrontations with a vast array of challenges.” *Id.* at 5. I use the terms “public lawyering” and “social justice lawyering” to convey the same connotations. While the term “social movement lawyering” also conjures up images of moral activism, I intend it to suggest, more specifically, overt representation

ceptualizing the position of gays as one of vibrant insubordination, the queer critique facilitates a thoughtful questioning of the terms on which gay rights are often pursued and the claims that gay advocates choose to make. Finally, by celebrating the “sex” in homosexuality (and in everyone else), queer theory adheres to the ethos of sexual liberation that sparked the gay movement of the 1960s and 1970s. In so doing, it seeks to represent GLBT individuals who celebrate deviance and resist normative sexual practices. When a queer position articulates itself within the legal regime, it attempts to defend distinctive sexual practices such as cruising. Similarly, instead of focusing on the institution of marriage, queer thought locates dependency relationships and finds ways to attach benefits and protections to those relationships.

With these political positionalities in mind,¹³ I will explicate a model of gay-based advocacy that focuses on pluralism and representation across a broad range of constituents. In Part I, I will analyze the literature on social movement lawyering in the context of donor, client, and lawyer goals to build a model of representation that values intragroup debate, a diverse GLBT constituency, and the maintenance of multiple organizations equipped with divergent political and theoretical postures.

After establishing this vision of social justice lawyering, I will then, in Parts II through V, analyze four paradigmatic gay-based organizations and notice their internal political moves as well as the range of decisions they make. I will praise and critique these organizations based on my presumption that a proliferation of political postures and discursive renderings is desirable. Even as I critique such organizations, however, I remain committed to the underlying goal of bettering the lives of individuals marginalized on account of their sexuality.¹⁴ Since marriage, at this historical moment, is the vehicle by which many advocates and activists are seeking to unite and homogenize the GLBT movement, the same-sex marriage campaign becomes central to understanding the current state of gay-based organizations. By scrutinizing the rhetoric employed in this campaign in the context of other projects advanced by gay-based organizations, a more complete and nuanced understanding of how GLBT advocacy maps onto political and theoretical positions emerges. If

on behalf of a group that the lawyer constructs as fairly stable and identifiable.

¹³ The conservative, centrist, and left positions have been idealized and simplified, of course, for purposes of this argument; in reality, each position is characterized by a range of perspectives. For instance, Leo Bersani, a leftist thinker, exemplifies the anti-identitarian, pro-sex approach of queer theory, but he deals exclusively with gay men in a way that acknowledges male desire as distinctive instead of connecting gay men to other sexual minorities. *See generally* LEO BERSANI, *HOMOS* 8 (1995). In conflating positions into a single political and theoretical orientation, I aim to depict broad alternatives to imagining gay life and representation, but I do not intend to deny the lively debate within each particular position.

¹⁴ *See* Brown & Halley, *supra* note 9, at 28 (making clear that engaging in critique does not undermine one’s “commitment to the vision of equality for sexual minorities in a heterosexual culture”).

a goal of such advocacy is to allow competing discourses to exist and flourish, then the ideal organization is neither one that advances normalization and marriage in a wholesale fashion nor one that rejects marriage as utterly anti-progressive and stunting. Instead, the ideal organization, or combination of organizations, occupies both ends of the same-sex marriage debate and simultaneously accounts for the versions of gay life and representation between the purely centrist and the purely queer.

In Part II, I examine the structure and agenda of a national gay rights organization, the Human Rights Campaign (HRC). Part II maps HRC onto the gay rights movement to understand the way it positions marriage politically and theoretically and to understand the message it sends to its GLBT constituency about expectations for gay life. While HRC does not litigate same-sex marriage cases, it nonetheless discusses the campaign and presents a picture of GLBT life that positions marriage as a project of normalization. In this regard, HRC participates in a liberal rights discourse in which advocates seek to better the lives of their particular constituents, but do so by developing a homogenous picture of the broader group to which their constituents belong. As thereby constructed, the group's identity centers around respectability and mainstream values.

In Part III, I explore the possibilities for advocacy presented by an organization that straddles the line between national and regional perspectives. In this Part, I use Lambda Legal Defense and Education Fund (Lambda) as the paradigmatic organization. Lambda operates as a national organization out of its national headquarters; at the same time, however, it maintains regional offices that can be more responsive to smaller constituencies. Lambda remains at the forefront of same-sex marriage litigation and is largely responsible for the discursive rendering of the GLBT community. While Lambda's framing of same-sex marriage as the logical extension of a heterosexual institution maps easily onto a liberal rights discourse, Lambda also deploys other rhetorical strategies that move away from marriage as a cultural and social signifier. In this sense, Lambda pushes marriage as a functional, practical institution that makes the lives of its coupled constituents economically and logistically easier. Part III reveals how Lambda pursues same-sex marriage while also advocating for other, less hetero-normative causes, and how its branch offices carve out spaces in which to provide more direct representation and pursue less popular projects.

In Part IV, I investigate the possibilities for gay-based representation offered by a regional organization, Gay & Lesbian Advocates & Defenders (GLAD). Like Lambda, GLAD stands at the forefront of the same-sex marriage movement and litigates for marriage by framing the plaintiff couples as hetero-normative. In this sense, GLAD draws on the liberal language of rights to stress the similarities between gays and straights. At the same time, however, GLAD emphasizes the purely functional advantages of marriage, and thereby participates in a discourse that remains

agnostic as to the name and the cultural significance of the relationship status, focusing instead on the associated package of rights and benefits. Part IV also explores the other projects that constitute GLAD's agenda, including advocacy relating to transgender individuals, sex education, public sex, and HIV. Through these causes, GLAD responds to the needs of its queer constituents and paints a picture of gay-based advocacy—and of the GLBT community more generally—that is pluralistic. In other words, due to self-conscious lawyering and an organizational structure that affords opportunities for responsive representation and advocacy for politically unpopular causes, GLAD allows varied cultural discourses to coexist.

In Part V, I analyze a local, grassroots organization, using Gay Men's Health Crisis (GMHC) as the model. GMHC does not directly pursue same-sex marriage, but rather looks to strategies commensurate with its direct client services program. By centering its advocacy on health (through HIV) instead of gay identity, and by defining its constituency broadly, GMHC engages in work that resonates with a queer, anti-identitarian analytic.¹⁵ This is not to say, however, that GMHC does not participate in the discursive construction of the same-sex marriage campaign. GMHC's community-based lawyering implicitly positions marriage as a functional institution that would ease many of its clients' legal struggles.

In Part VI, I conclude by positing the necessity of maintaining and encouraging multiple organizations, and of equipping those organizations with a range of ideological positions. Furthermore, I note the potential benefits of coalitions among gay-based organizations—namely, the aggregation of financial and rhetorical resources that can be used to better the lives of gay constituents across a broad spectrum of respectability. Such coalition-building returns the discussion to its roots—the ethics of representation in social movement lawyering. Building coalitions and representing multiple constituencies serves a model of cause lawyering, and of gay-based advocacy in particular, that supports a proliferation of causes, strategies, and discourses.

I. BUILDING A MODEL OF GLBT ADVOCACY AND REPRESENTATION

GLBT advocates, like other social movement lawyers, seek to practice political lawyering in order to effect systemic change. As defined by Gary Bellow, political lawyering constitutes “a medium through which

¹⁵ I do not mean to imply that GMHC is not susceptible to critique from within queer politics. Some organizations seek more explicitly to represent queers marginalized on account of their race and/or class. *See, e.g.*, Eng & Hom, *supra* note 11, at 2–3 (outlining the formation of queer Asian American groups). Furthermore, some organizations situate themselves more prominently within extreme versions of queer politics and stake out more radical political goals than legal organizations like GMHC. *See, e.g.*, Cohen, *supra* note 11, at 445 (discussing Queers United Against Straight-Acting Homosexuals (QUASH), which views heterosexuality as the monolithic “enemy” of queer liberation).

some of us with law training chose to respond to the need for change in an unjust world.”¹⁶ Bellow explains how lawyers administering direct client services, such as lawyers at a legal aid clinic, can (and should) adopt an overtly political perspective in the same way as do lawyers at impact litigation offices.¹⁷ Of course, cause lawyers exercise power and attempt to achieve their goals in different ways and in diverse settings. Yet lawyers in all settings must address and account for the complex relations among donors, lawyers, and clients. These relationships generate multiple discourses within and across social movement organizations.

In his seminal article *Serving Two Masters*, Derrick Bell discusses the implications of the NAACP’s donor base for the organization’s identity and goals from the 1950s through the 1970s.¹⁸ Since most of the NAACP’s funding was provided by middle-class whites and blacks, the lawyers fervently pursued school integration to implement their sponsors’ strategy of choice.¹⁹ Bell reveals how donor desires can, and often do, diverge from the goals of the rest of the client base; in the NAACP’s case, lawyers pursued integration to the exclusion of educational quality, which topped the list of priorities for many black parents with school-age children.²⁰ Since the donor base would withdraw funding for projects with which they disagreed, the NAACP’s lawyers were left in a difficult position that implicated the ethics of representation and responsiveness to clients.

Other issues concerning client representation may arise after the donor base has influenced the selection of cases or the goals of litigation. The actual relationship between lawyer and client raises questions of client autonomy, lawyer control, and client representation (i.e., how the lawyer renders or constructs the client subject). Much of the literature on public interest lawyering, and on poverty lawyering in particular, encourages the lawyer to empower the client by giving her autonomy and choice, even as the client confronts an institutionalized world of unfamiliar discursive tools and normative assumptions.²¹ In this model of client-centered lawyering, “[a]ttorneys are admonished to relate to clients as listeners and learners rather than as translators.”²²

¹⁶ Gary Bellow, *Steady Work: A Practitioner’s Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 309 (1996).

¹⁷ See Gary Bellow, *Turning Solutions into Problems: The Legal Aid Experience*, 34 NLADA BRIEFCASE 106, 121 (1977).

¹⁸ See Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 489 (1976).

¹⁹ *Id.*

²⁰ See *id.* at 488–89.

²¹ See, e.g., Lucie White, *Mobilizing on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1987–88) [hereinafter White, *Mobilizing*]; Lucie White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990).

²² Sarat & Scheingold, *supra* note 12, at 9.

William Simon, however, rejects (at least in part) the wholesale appeal to client autonomy in the context of poverty lawyering. Simon argues that “lawyers cannot avoid making judgments in terms of their own values and influencing their clients to adopt those judgments.”²³ Simon himself illustrates this idea in *Lawyer Advice and Client Autonomy*, an article in which he discusses his representation of Mrs. Jones, a black woman from a lower-middle-class Boston neighborhood.²⁴ Mrs. Jones faced criminal charges for allegedly leaving the scene of a car accident. Convinced of her innocence, Simon asked his client to choose between going to trial or accepting a plea bargain in which she would plead *nolo contendere* but not risk jail time.²⁵ In framing these two options, Simon informed Mrs. Jones that taking the plea bargain “wouldn’t be total justice.”²⁶ Accordingly, Mrs. Jones chose justice. Immediately following this exchange, Simon’s colleague had the opportunity to participate in the discussion and present her options in a different light; he warned of jail time at greater length, and did not allude to “justice.”²⁷ As a consequence, Mrs. Jones accepted the plea bargain. Although Mrs. Jones made her own decision, the options presented to her were infused with the value judgments of the two lawyers; the choice, albeit hers, was somewhat less than autonomous.

In addition to exposing the myth of client autonomy, Simon also demonstrates the way in which lawyers actually participate in the construction and discursive rendering of the client (group). Lawyers representing communities, whether poor communities or gay communities, do not enter a world of established and homogenous groups.²⁸ Instead, cause lawyers make normative judgments when selecting cases, determining strategies, and choosing clients.²⁹ Moreover, individual and group identities, upon which the concept of community and group lawyering is based, are not stable and immutable; rather, they are constructed, contingent, and ever-changing.³⁰

Relying on the work of Simon, Janet Halley discusses the constitutive power of cause lawyers when she explores the appropriation of arguments from the black civil rights movement by the gay rights cam-

²³ William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099, 1102 (1994).

²⁴ William H. Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones’s Case*, in ETHICS IN PRACTICE: LAWYERS’ ROLES, RESPONSIBILITIES AND REGULATION 166 (Deborah L. Rhode ed., 2000).

²⁵ *Id.*

²⁶ *Id.* at 167.

²⁷ *Id.*

²⁸ See Simon, *supra* note 23, at 1104.

²⁹ See *id.* at 1102, 1106, 1108.

³⁰ See *id.* at 1104 (discussing the post-modern idea that the process of representation itself constructs and alters identities).

paign.³¹ She argues that lawyers not only may choose goals and strategies for the communities they represent, but also can “alter the social definition of the group itself.”³² Lawyers, in short, can “make up people.”³³ When lawyers argue that gays are “like blacks,” and therefore are deserving of particular judicial outcomes, they are exercising just the type of constitutive power that Simon exposes. Such lawyers are producing gay identity by appealing to the status of an established rights-holding minority and by muting both intergroup and intragroup difference. The danger that lawyers will define the very identities of the clients they have undertaken to represent exists acutely in the impact litigation context, where causes often precede clients. It is also present, though, in situations where direct legal services organizations center their work on a particular issue or group. Clients, then, occupy a tenuous position in which they are largely at their lawyer’s mercy—they struggle to assert their autonomy, but they rely upon the lawyer’s construction of the issues and options at hand, if not of the client’s identity itself. In this regard, it is impossible for lawyers to identify client goals with certainty and to interact with the client group as a stable, clearly delineated collective.

Equipped with a critical perspective on their role in constructing and representing their clients, and aware of the constraints imposed by the ideological positions of their donors, how are lawyers to respond and move forward in pursuit of a social justice project? At times, lawyers must construct identities in order to achieve legal reform.³⁴ For instance, if the judiciary proves sympathetic to a particular gay identity—e.g., homosexual as respectable family member—advocates will use such identity to obtain desirable results and to meet client needs. Accordingly, although cause lawyers should be aware (and wary) of their use of constitutive power, they are not necessarily acting wrongly or in bad faith when they do so. Moreover, the fact that the identities of GLBT clients are being produced by members of the GLBT community itself (or by straight allies working in the movement) makes the representation less harmful and more empowering. That is, at least GLBT constituents are being defined by similarly marginalized individuals rather than by the institutionalized ruling elite.³⁵

³¹ See Janet E. Halley, “*Like Race*” Arguments, in *WHAT’S LEFT OF THEORY? NEW WORK ON THE POLITICS OF LITERARY THEORY* 40 (Judith Butler et al. eds., 2000).

³² *Id.* at 46.

³³ *Id.*; see also Brown & Halley, *supra* note 9, at 24 (arguing that the “gay gene” theory, which is used by gay rights litigators to fit gay people within equal protection jurisprudence’s immutability category, “helped to produce the very science on which it then relied—a dynamic that made it richly productive and substantive”).

³⁴ See Halley, *supra* note 31, at 53.

³⁵ See LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* 88 (2002) (“[B]lacks have created spaces where they can define themselves, instead of being totally defined by those at the top of the racial hierarchy.”).

In his article, Bell urges NAACP lawyers to explore alternative approaches to the problem of school segregation and to abandon their inflexible and dogmatic adherence to integration.³⁶ More generally, Bell advises civil rights lawyers to recognize the viability and desirability of alternative projects.³⁷ William Rubenstein builds upon Bell by advocating for democratic decision-making in representing groups whose members possess divergent interests.³⁸ Rather than allowing lawyers to decide the group's "appropriate" goals, Rubenstein envisions a process of consensus-building whereby a goal ultimately emerges as the product of majoritarian politics.³⁹ After distilling a single goal through democratic practice, gay rights organizations would then rely on (legal) expertise to collectively pursue the most advantageous strategy.⁴⁰

Before challenging the results of such a process, it is worthwhile to at least question the efficacy of the procedures themselves. While more of a community-centered form than a traditionally client-centered approach,⁴¹ Rubenstein's model is nonetheless vulnerable to Simon's critique of poverty law scholarship. In this vein, multiple concerns arise regarding the extent to which client desires and goals are actually being identified: Who is framing the decision? If community members rather than lawyers are doing so, how are such community members "representative"? What range of goals is being presented? How far outside the confines of legalism are community members encouraged to travel?

These questions are meant to reveal that even a well-intentioned process of democratic deliberation followed by the exercise of (legal) expertise cannot ensure representation of all (or even most) constituencies, since the process itself depends on participation. Men who have sex with men but do not identify as "gay" certainly have needs and require representation in legal and non-legal arenas. Since they surely do not come to the table when GLBT community goals are being defined and established, their needs will not be addressed by gay-based advocacy committed to the pursuit of democratically determined objectives.

Turning from procedure to substance (if the two can in fact be separated), Rubenstein's model pursues a single goal that seems to set the gay rights movement on precisely the course that Bell fears—in the direction of an all-or-nothing push. Even if the community's goals are determined through democratic decision-making, and even if lawyers would be more

³⁶ See Bell, *supra* note 18, at 482, 488.

³⁷ See *id.* at 516.

³⁸ See William B. Rubenstein, *Divided We Litigate: Addressing Disputes Among Group Members and Lawyers in Civil Rights Campaigns*, 106 YALE L.J. 1623, 1627 (1997).

³⁹ See *id.* at 1655 (outlining ways that groups collectively make decisions about community goals).

⁴⁰ See *id.* at 1662 ("Legal expertise . . . ought to be valued (yet is not) in attorney disagreements about legal strategies.").

⁴¹ See *id.* at 1674 (illustrating the ways in which his model departs from, yet satisfies, that of client-centered lawyers).

responsive to client desires as a consequence, Rubenstein's gay rights lawyer still would not be exploring and pursuing alternatives. By defining the community in a particular way, and by allowing minority goals and discursive renderings to be dismissed through the process of majoritarian politics, the gay rights agenda in Rubenstein's model lacks a thorough responsiveness to the full range of interests in the GLBT community. Of course, it is desirable for lawyers to encourage democratic practice and to pursue client goals rather than steadfastly stick to donor visions. At the same time, though, a process that allows for multiple representations of the community and a proliferation of objectives has the potential to yield a more vibrant model of advocacy. This polyvocal process, in which multiple voices share space, would produce a fairly thorough representation and avoid a monolithic construction of the constituency. Since lawyers cannot observe client goals with confidence, even under Rubenstein's model, advocacy for multiple causes will help ensure that divergent interests will be heard and represented, regardless of their emergence from a possibly exclusive process of democratic deliberation.

Furthermore, the push for a single goal is inconsistent with the umbrella-like nature of gay-based organizations and their increasing insistence on representing a diverse constituent base. By committing themselves to representing gays, lesbians, bisexuals, transgender individuals, people with HIV, and queers, such organizations are necessarily evincing a need for coalition-building and multiple forms of representation. In *The Miner's Canary*, Lani Guinier and Gerald Torres state the rationale for coalitions most simply: "Having the support of others makes getting things done a lot easier."⁴² Collective action is possible because subordinated groups are resisting the same form of power—the power of the governing elite, who are equipped with privileged status by virtue of their race, gender, class, and sexual orientation. Although Guinier and Torres view race as central to their project of coalition-building, a similar rationale can be transported to the world of gay-based advocacy. Just as being "raced" in America offers the opportunity for "solidarity and connection,"⁴³ being sexually subordinated also creates the potential for collective struggle.

Since different conflicts will yield different coalitions, require different forms of representation, and necessitate the deployment of different discursive tools, advocacy based on coalition-building requires the type of flexibility that Bell advocates. In this mode of advocacy, social movement lawyers pushing for systemic change and practicing coalition-building recognize that change has distinct meanings for various groups and individuals. They work against the status quo in ways that accommodate and account for the needs and interests of multiple causes, constituencies, and political positions.

⁴² GUINIER & TORRES, *supra* note 35, at 93.

⁴³ *Id.* at 95.

Furthermore, if numerous causes and discourses are pursued both within and across organizations, concerns about client autonomy, donor pressure, and lawyer influence are less compelling because a definitive normative vision is not being advanced. Ideally, strategies would be responsive almost exclusively to clients; but the actual constraints on the lawyer/client relationship, the lawyer's ability to "make up" clients, and the dynamics of the internal decision-making process at any particular organization make strategies and discourses more likely to emerge from the highly contingent process of negotiation between lawyers, clients, and donors. In the process, many client goals may be left behind. Yet if multiple forms of representation are available to a broad range of the constituency, then client and group needs likely will be met to the greatest degree possible. In other words, politics within each constituent group will produce varied ideological positions, but broad representation is likely to accommodate and account for these divergent postures. In sum, a client-conscious model that has as its goal the representation of as many client objectives as possible recognizes the extent to which lawyers and donors influence representation, but does not find this critique disabling.

In setting up a polyvocal model of gay-based advocacy, I am envisioning the pursuit of the different positions and polemics associated with the GLBT community. In addition to the arguments for and against same-sex marriage, the issue of how marriage should be understood—as a mode of recognition, or as a dependency scheme and private welfare system—has also been debated. In this regard, one can speak of marriage as "normative" or as "functional." By normative, I mean average or expected. Rather than using the term norm to connote something virtuous, my use of the term does not equate to what is good and actually leaves room for the deviant to be virtuous.⁴⁴ Therefore, when I state that marriage normalizes the gay movement, I am arguing that marriage as a social and cultural status positions the gay movement as aspiring to a common, entrenched societal standard. In contrast, the queer critique of marriage questions the desirability of the norm of marriage and actually celebrates deviance from the norm. While queer thought rejects the ascendancy of the normative marriage model, it arguably can be read as sympathetic to a functional imagining of marriage—marriage is valuable not for its social significance, but rather for the array of benefits and protections it bestows on those who enter it. In this sense, a proponent of marriage purely for its functionality would be agnostic as to the form of the package of rights and benefits.

⁴⁴ See, e.g., Janet E. Halley, *Recognition, Rights, Regulation, Normalisation: Rhetorics of Justification in the Same-Sex Marriage Debate*, in *THE LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS: A STUDY OF NATIONAL, EUROPEAN, AND INTERNATIONAL LAW* 97, 100 n.7 (Robert Wintemute & Mads Andenas eds., 2001).

The most straightforward response to the critique that same-sex marriage is normalizing argues that same-sex marriage actually denormalizes heterosexuality.⁴⁵ By challenging the compulsory heterosexuality of marriage, the same-sex marriage movement displaces one of the elements deemed most essential to marriage. In this mode of analysis, normalization is not centered around the married/unmarried distinction but rather the heterosexual/homosexual divide.⁴⁶ Merely disturbing one entrenched norm, however, does not weaken the power of marriage to strengthen another. While arguably upsetting the preeminence of heterosexuality, the pursuit of marriage on normative grounds solidifies the outlier status of those who remain unmarried.⁴⁷ Replicating a heterosexual institution, even with homosexual couples, may further legitimate heterosexual ordering and further marginalize queer alternatives. Why, for instance, cannot a male housekeeper be cast as wife to his breadwinner husband and only reinforce the feminine connotation of “housekeeper?” In posing this question, I am resisting William Eskridge’s argument that the gendered breadwinner/homemaker paradigm will be immediately “less normal” once same-sex marriage is legalized.⁴⁸

A more nuanced response to the queer and feminist critiques of marriage casts advocates deploying the normative marriage model as more self-conscious. In this account, they use the rhetoric necessary to achieve same-sex marriage so that they can then seek from within to revolutionize the institution.⁴⁹ According to this line of reasoning, only by accessing marriage can gay men and women invert the gender dynamics plaguing that institution, contest the construction of certain types of relationships as normative, and strip marriage of its gendered implications.⁵⁰ This argument might be correct, but we cannot be sure at the present time. Indeed, the polyvocal model of advocacy I propose (in contrast to Warner’s queer model) might bring us closer to an answer by at least pursuing same-sex marriage and, if successful, providing empirical data with which to determine if same-sex marriage actually revolutionized the institution.⁵¹ The danger that it will not, though, is great. Indeed, merely using the language of social recognition normalizes marriage and gays seeking to enter into it; rhetoric can be powerful.⁵² Moreover, while the use of such

⁴⁵ See WILLIAM N. ESKRIDGE, JR., EQUALITY PRACTICE 209 (2002).

⁴⁶ See *id.*

⁴⁷ See WARNER, *supra* note 1, at 108 (pointing out that “marrying has consequences for the unmarried”).

⁴⁸ See ESKRIDGE, *supra* note 45, at 215 (“Once female-female and male-male couples can marry, the wife-housekeeper/husband-breadwinner model for the family would immediately become less normal, and perhaps even abnormal over time.”).

⁴⁹ See *id.*

⁵⁰ See *id.*

⁵¹ See *id.* at 202 (pointing to the speculative nature of any claims regarding what will happen once we have same-sex marriage).

⁵² See WARNER, *supra* note 1, at 100 (arguing that the “sentimental rhetoric” deployed by marriage advocates serves to hide real inequalities and perpetuate the status quo).

language may constitute a self-conscious rhetorical move by some, the language of recognition has “real” meaning to many others, and contributes to the normative weight of the institution.⁵³

While the marriage debate currently stands at the forefront of GLBT activism and scholarship, other polemics exist in the world of gay-based advocacy. Additional areas of dispute include, but are not limited to: whether gays should be imagined as dignified and respectable or as sex-positive and queer; whether representation and connection should be expanded to other communities affected by HIV or limited to HIV+ individuals who are gay; and whether gays should be conceived and presented as sodomites or homosexuals, i.e., as sex actors or as status and identity holders. William Eskridge points to this last distinction as the issue that most distinguishes the gay rights movement from other civil rights projects.⁵⁴ For instance, the military’s anti-gay policy, which supposedly holds individuals accountable for their conduct and not for their status, distinguishes between homosexuals (those who hold the identity but do not necessarily engage in same-sex sex) and sodomites (those who actively have same-sex sex).⁵⁵ Demonstrating the historical roots of this distinction, postmodern theorist Michel Foucault shows how the “practice of sodomy” eventually yielded homosexuality as a form of sexuality.⁵⁶ As Foucault concludes, “[t]he sodomite had been a temporary aberration; the homosexual was now a species.”⁵⁷ Foucault’s discussion traces the extreme slippage between the two terms, as the act of sodomy comes to define the status of homosexual. The slippery nature of the distinction lives on today in military policy as well as numerous other gay rights issues, and it plays out differently when articulated within different gay-based legal challenges. One can imagine arguing that a conduct-based distinction, such as an anti-sodomy statute, is actually a status-based discrimination. Yet in the next moment it might be necessary, perhaps in a same-sex marriage or adoption case, to disassociate gay identity from sodomy to present a palatable picture of gay life that neglects, and even transcends, sex.

By advocating a model based on pluralism, I risk losing some of the features that make the different political positions I outlined desirable. For instance, Judith Butler argues that pursuing same-sex marriage creates a contest for legitimacy that leaves non-normative arrangements out

⁵³ See *id.* at 109 (“[M]arrying consolidates and sustains the normativity of marriage . . . despite what may be the best intentions of those who marry.”).

⁵⁴ See William N. Eskridge, Jr., *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100 MICH. L. REV. 2062, 2181 (2002).

⁵⁵ See *id.* at 2183–85. For a discussion of the conduct/status distinction and the slippage between the two in the military’s anti-gay policy, see generally JANET E. HALLEY, *DON’T: A READER’S GUIDE TO THE MILITARY’S ANTI-GAY POLICY* (1999).

⁵⁶ 1 MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY* 43 (Robert Hurley trans., Vintage Books ed. 1990) (1976).

⁵⁷ *Id.*

of bounds.⁵⁸ Making marriage central to a gay rights project restricts the range of relationships that can compete for approval and makes queer arrangements practically unthinkable.⁵⁹ Indeed, I want to track this queer critique to the extent it highlights the de-legitimizing implications of the gay movement's pursuit of marriage. But I resist taking this position to its logical extension—the rejection of marriage as a desirable project even against the wishes of a large number of constituents, and a corresponding dismissal of their wishes as the product of false consciousness.⁶⁰ If marriage is popular among clients, the push for it is defensible and logical. This is the point at which a queer analytic runs afoul of the model of representational ethics I propose, even while its critique of the act of representation itself remains quite fruitful. Moreover, as Butler herself points out, the existence of the marriage debate may “permit for middle zones and hybrid formations, suggesting that the binary formation does not exhaust the field in question.”⁶¹ In fact, one can be for or against marriage for a variety of reasons, including reasons that function as independent strands along the continuum between the two poles of the debate and reasons that implicate radical reimaginings of sexuality itself. Although proponents of a particular position, whether queer or centrist, have a strong argument that more is lost than gained in forgoing the opportunity to pursue one project steadfastly, this argument cannot respond to a representational ethos that values pluralism. In seeking GLBT advocacy across the client base, an embrace of intragroup difference and divergent positions is necessary. Perhaps such debate will produce an even more sophisticated and nuanced discourse.

II. THE NATIONAL ORGANIZATION—HUMAN RIGHTS CAMPAIGN

The Human Rights Campaign (HRC) opens its Annual Report with a message of rights and equality:

As the nation's largest lesbian and gay political organization, the Human Rights Campaign envisions an America where lesbian, gay, bisexual and transgender people are ensured of their basic equal rights—and can be open, honest and safe at home, at work and in the community. More than 400,000 HRC members—gay, lesbian, bisexual, transgender and straight—are committed to making this vision a reality.⁶²

⁵⁸ See Butler, *supra* note 8, at 233.

⁵⁹ See *id.*

⁶⁰ See WARNER, *supra* note 1, at 105.

⁶¹ Butler, *supra* note 8, at 234.

⁶² HUMAN RIGHTS CAMPAIGN, ANNUAL REPORT: APRIL 1, 2000–MARCH 31, 2001 (2001), available at http://www.hrc.org/publications/annual_rpt/2000_2001/index.asp [herein-

Simply through this statement, HRC communicates the liberal notion that gay rights are merely a matter of equality and basic human decency. In fact, straight people are (and should be) as invested in HRC's mission as gays themselves.

HRC is located in Washington, D.C., the seat of the federal government and the center of mainstream political activity. In fact, HRC has recently initiated plans to move to a new location, the B'nai B'rith building. The symbolic value of the move is not lost on the plan's chief officer, Jeff Sachse, who commented that "this will make us the first GLBT organization to have its own building in the nation's capital."⁶³ Furthermore, the building is located between Dupont Circle and the White House, positioning HRC as the legitimate connection between Dupont's vibrant gay community and American political life. Indeed, the Annual Report looks to the building as a way to meet "the symbolic needs of any movement that seeks a permanent and visible presence in the nation's capital."⁶⁴

While HRC has a legal arm, it defines its core mission as political, focusing potential donors on HRC's "work with Congress and the federal government to pass and enforce laws to secure equality for lesbian and gay Americans."⁶⁵ HRC also advertises its Political Action Committee, which "supports candidates for the U.S. House and Senate who will fight to end discrimination against lesbian and gay Americans, for AIDS funding and research, women's health, and many other issues of concern to our members."⁶⁶ HRC thus communicates to its members, potential donors, and other interested constituents that its resources are invested in efforts to work within the existing system to advance a liberal discourse of formal equality that will secure rights for the GLBT community. In this vein, its new building mirrors the centralization, size, and political investment of HRC itself.

Since same-sex marriage is certainly not a viable political project within the federal government or judiciary, HRC focuses its efforts in other legal and legislative arenas, such as hate crimes legislation, immigration reform, and anti-discrimination laws.⁶⁷ For instance, HRC recently condemned a state bill in Minnesota seeking to remove "sexual orientation" from its current anti-discrimination law.⁶⁸ In this gay-centrist

after HRC ANNUAL REPORT].

⁶³ Chris Bull, *A New Home for HRC*, ADVOCATE, Nov. 12, 2002, at 24.

⁶⁴ HRC ANNUAL REPORT, *supra* note 62, at 15.

⁶⁵ Form letter soliciting contributions from Elizabeth Birch, Executive Director, Human Rights Campaign, to Doug Nejaime, para. 4 (Nov. 1, 2002) (on file with author).

⁶⁶ *Id.*

⁶⁷ HRC ANNUAL REPORT, *supra* note 62, at 12–14 (noting "[t]he urgency of adding sexual orientation to existing federal hate crimes law," efforts to "provide same-sex partners of U.S. citizens and lawful permanent residents the same immigration rights that married spouses enjoy," and the importance of "ensur[ing] equal treatment on a variety of . . . federal issues, including hospital visitation, inheritance, Social Security, pension, and taxation of domestic partner benefits").

⁶⁸ Press Release, Human Rights Campaign, HRC Condemns Radical Minnesota Bill

move, HRC recognized the particular vulnerabilities gays face and the continued need for protection in employment and public accommodations. Another initiative seeks to gain judicial and political support for GLBT issues; HRC describes its JusticeWatch program as an effort “to expand public education and lobbying efforts around the judicial appointment process.”⁶⁹

Although HRC is not directly involved in marriage litigation, it fully supports the marriage campaign as well as the range of alternatives (such as domestic partnership arrangements) that furnish marital rights and benefits without the actual status.⁷⁰ While its own initiatives focus on gay rights issues that are currently viable on the national front, HRC has also included a marriage section for “couples/partners” on its FamilyNet site.⁷¹ Here, HRC endorses the struggle to legitimize same-sex marriage and depicts marriage as a logical and natural step in a relationship’s progression—if “you have been lucky enough to find someone you want to spend the rest of your life with . . . , sooner or later, you will find yourself thinking about marriage.”⁷² In addition to providing support and direction through FamilyNet for those interested in marriage, HRC reports on same-sex marriage litigation through *LawBriefs*, its quarterly newspaper that details efforts throughout the country to advance a gay rights agenda. For instance, HRC reported the filing of the same-sex marriage suit in New Jersey by Lambda.⁷³ The publication covers numerous legal issues, however, and does not make same-sex marriage a priority.⁷⁴ In this way, marriage is presented as one of many significant items on a gay rights agenda.

While the diverse agenda of HRC might suggest a sympathy toward a polyvocal approach, HRC thoroughly adopts the hetero-normative rhetoric of formal equality. Every project that HRC details in its Annual Report and *LawBriefs* is oriented toward state regulation and entrenched in the language of rights. These legal/political campaigns seek to position gay people as similar to straight people, and thus as deserving of equal treatment. In this sense, marriage, even when not explicitly discussed, is always present. It is considered part and parcel of a gay rights paradigm, for marriage is perceived as the most fundamental form used by hetero-

that Seeks to Eliminate “Sexual Orientation” from State Law (Feb. 7, 2003), available at <http://www.hrc.org/newsreleases/2003/030207minnesota.asp>.

⁶⁹ HRC ANNUAL REPORT, *supra* note 62, at 14.

⁷⁰ See E-mail from Cheryl Hanson, Legal Assistant, Human Rights Campaign, to Douglas NeJaime (Dec. 15, 2002) (on file with author).

⁷¹ Human Rights Campaign, *FamilyNet: Marriage*, at <http://www.hrc.org/familynet/chapter.asp?chapter=126> (last visited Mar. 23, 2003).

⁷² *Id.* para. 1.

⁷³ *Marriage Lawsuit Filed in New Jersey*, LAW BRIEFS (Human Rights Campaign, Wash., D.C.), Sept. 2002, at 4, available at <http://www.hrc.org/publications/lawbriefs/v05n03.asp>.

⁷⁴ See *id.* The newsletter covers employment, marriage/domestic partnership, family law, education, HIV/AIDS, gender identity and expression, hate crimes, criminal law, and the military. See *id.*

sexuals to order their lives. Accordingly, securing gay rights not only entails passing anti-discrimination statutes, ending the military's anti-gay policy, passing hate crimes legislation, and repealing anti-sodomy laws, but also involves securing rights in the realm of family law, such as marriage, adoption, and custody. Martha Nussbaum makes this clear in her exemplar of the liberal rights form, *Sex and Social Justice*,⁷⁵ which includes a chapter devoted to gay and lesbian rights. When answering the question of "what rights?," Nussbaum answers with a list familiar to HRC:

The Right to be Protected against Violence

The Right to Have Consensual Adult Sexual Relations without Criminal Penalty

The Right to Be Free from Discrimination in Housing, Employment, and Education

The Right to Military Service

The Right to Marriage and/or the Legal and Social Benefits of Marriage

The Right to Retain Custody of Children and/or to Adopt.⁷⁶

Advancement, in the vision of both Nussbaum and HRC, is about rights. Every project that can be conceived as vital or desirable to a gay-based agenda can be understood as a right—hence gay rights. Furthermore, such rights are not special or unique to gay identity. Instead, the rights valued by liberalism are basic, universal rights—hence Human Rights (Campaign).⁷⁷

Since the rights envisioned by this centralized, large-scale campaign to better the lives of gays and lesbians (and other sexual minorities?) are conceptualized as basic human rights, gays are positioned as no different than other (read straight) individuals. As universal and integrationist ide-

⁷⁵ MARTHA C. NUSSBAUM, *SEX AND SOCIAL JUSTICE* 10 (1999). Nussbaum situates herself within liberalism and "the liberal tradition of equal concern and respect . . ." *Id.*

⁷⁶ *Id.* at 190, 193, 194, 197, 200, 204.

⁷⁷ *See id.* at 5. Nussbaum premises her work on the liberal notion of universal human dignity and equality. She writes in her introduction:

Human beings have a dignity that deserves respect from laws and social institutions The idea of human dignity is usually taken to involve an idea of *equal* worth: rich and poor, rural and urban, female and male, all are equally deserving of respect, just in virtue of being human, and this respect should not be abridged on account of a characteristic that is distributed by the whims of fortune.

Id. Not only does this perspective frame gay rights as an issue of basic human rights work, but it also casts gays as like straights (with the exception of their sexual orientation). Sexual orientation (or sexuality) is merely a "whim of fortune" and thus should be meaningless when understanding sexual minorities.

als are advanced through liberalism's rights discourse, no space exists for difference to be asserted. Even the name itself, Human Rights Campaign, glosses over gays and other sexual minorities.⁷⁸ GLBT individuals' overarching identity as human becomes primary; their difference as gay or queer becomes secondary and, in HRC's ideal world, irrelevant.

Marriage, in this understanding of gay advocacy, represents the inclusion of gay men and lesbians in the most basic of human (again, read straight) institutions. In fact, as Nussbaum tells it, gays already already order their lives in this manner; they simply desire state recognition of their relationships in the same way that the state celebrates heterosexual unions:

Emotionally and morally, being able to enter a legally recognized form of marriage means the opportunity to declare publicly an intent to live in commitment and partnership. Although many lesbian and gay people consider themselves married and have frequently solemnized their commitment in ceremonies not recognized by the state, they still seek to do so in a recognized manner because they attach importance to the public recognition of their union and to the expressive act of declaring a commitment in the presence of others.⁷⁹

This conception of marriage, positioned as a gay rights project, portrays gays as replicating the intimate associations of straights. It conceptualizes gay advocacy as a project of securing rights that already exist in the straight world.

Consequently, even though HRC does not devote much legal attention, funding, or media space to same-sex marriage, its positioning of marriage as one of the numerous rights sought by gay advocates in an overall agenda of securing basic human rights situates same-sex marriage as a hetero-normative project. In this way, HRC promotes, almost exclusively, the normative marriage model. Rather than scrutinize marriage to understand its economic effects, divergent cultural meanings, and gendered and heterosexual mandate, HRC says that marriage is marriage—period.

⁷⁸ For a critique of human rights as a project and movement, see David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101 (2002). Kennedy argues that the international human rights movement's focus on individuals as right holders "blunts awareness of diversity, of the continuity of human experience, or overlapping identities. Together these tendencies inhibit expression of the experience of being part of a community." *Id.* at 112. Similarly, HRC, with its focus on securing universally understood rights, de-emphasizes the importance of maintaining communities of sexual minorities and instead insists on the assimilation of sexual minorities into mainstream (straight) society.

⁷⁹ NUSSBAUM, *supra* note 75, at 201.

Perhaps HRC simply has too much on its plate to delve deeply into the effects and implications of a same-sex marriage project. Or perhaps, due to its national scope, HRC cannot devote too much attention to same-sex marriage. This goal certainly does not occupy the minds of Washington lawmakers; and it currently is viable only when it tracks liberal political opportunities in the Northeast, whose residents comprise just a fraction of HRC's national constituency. But neither of these observations is purely descriptive. Instead, they point to the problematic nature of a highly centralized and politically centrist organization attempting to speak for the entire nation's GLBT community. The difficulties increase when HRC or any other centralized organization promotes a project as potentially homogenizing as marriage without making space for alternative interpretations and outright dissent.

Since HRC is not focusing its efforts on same-sex marriage, it can arguably be faulted for being unresponsive to a portion of its client base, particularly those in left-leaning northeastern states who see marriage as a realizable goal. More significantly, by emphasizing human rights (and its normalizing, establishment-oriented implications), HRC neglects queers across the country who, like the gays and lesbians that HRC counts among its ranks, enjoy same-sex sex but also celebrate "the lively insubordination"⁸⁰ of their minority status.

As a centralized, national organization, HRC cannot engage in intimate and frequent communications with its diverse, ever-changing, and gigantic constituency—recall HRC's membership of 400,000. Decentralization might enable this (or any) organization's leaders (and lawyers) to "operate from within the communities they assist."⁸¹ More importantly, decentralization might allow for more thoughtful consideration and identification of constituents' interests.⁸² By employing a thoroughly centralized, large-scale model of gay advocacy, HRC does not make space for negotiating the terms on which same-sex marriage is advanced and understood. More generally, it does not make space for negotiating the terms of gay activism and advancement. Instead, HRC adopts a particular mode of representation that warmly embraces those who believe they are "like straights," envelops queers and pro-sex advocates without their consent, and, worst of all, makes others unwittingly believe that they are the way HRC characterizes them.

While the foregoing analysis has noted some of the limitations and shortcomings of a centralized, national organization, I do not mean to imply

⁸⁰ Halley, *supra* note 31, at 53.

⁸¹ See Note, *In Defense of an Embattled Mode of Advocacy: An Analysis and Justification of Public Interest Practice*, 90 YALE L.J. 1436, 1456 (1981). While this piece addresses the subject of public interest lawyers working with actual clients in the legal services context, I find the analysis and observations compelling when applied to gay rights lawyers and other leaders of gay rights or gay-based organizations.

⁸² See *id.* at 1457.

that a national organization is per se unworkable within a framework that values representation across a broad client base. There is, of course, a segment of the constituency that values the push for recognition of same-sex partnerships, and HRC is well-situated to advocate for federal legislation to respond to this demand. For instance, HRC is presently working to secure Congressional approval of the Permanent Partners Immigration Act, which would extend immigration rights to same-sex partners of U.S. citizens and lawful permanent residents.⁸³

My point, then, is not to argue that a national organization is ill-equipped to pursue certain GLBT initiatives. Rather, I want to show the ways in which HRC neither serves nor adequately represents a portion of the GLBT population when its efforts—even those that are local—function within a discourse that assumes a gay world of same-sex partnerships and the desire for legal and social recognition. For instance, even HRC's grassroots effort, the Action Network, focuses exclusively on legislative and electoral goals and consequently recognizes activism as strictly within the realm of mainstream politics. HRC's lack of responsiveness to constituents not attuned to such politics is further problematized by its attempt to be *the* national voice for the GLBT community.

The centralized, non-negotiable nature of HRC's work implicates William Simon's idea that lawyers impose value judgments that construct the group.⁸⁴ Building on Simon's ideas, Janet Halley articulates representation as "manag[ing] the discursive rendering of the group."⁸⁵ Halley points to the ways in which lawyers can construct and change the social definition of a group, leading those they are representing to believe that they are "like that."⁸⁶ Likewise, HRC's disconnected, larger-than-life model constricts the number and variety of renderings of the GLBT group. HRC presents a singular, all-encompassing picture of gays that excludes competing conceptions of the lives of gays and other sexual minorities. In this regard, a critic of HRC's move to the B'nai B'rith building correctly notes that "the problem is that there are many smaller, more innovative gay organizations out there that are vulnerable and struggling for money. My fear is, HRC will become a 999-pound monster that will gobble up the entire gay rights movement, and the building will only facilitate that trend."⁸⁷ Such a consolidation of resources, both financial and rhetorical, has the potential to produce a definitive and extremely narrow conception of the GLBT community that HRC purports to serve and represent.

⁸³ Permanent Partners Immigration Act of 2003, H.R. 832, 108th Cong. (2003). For HRC's commentary on the bill, see Human Rights Campaign, *Quick Facts: Permanent Partners Immigration Act, H.R. 832*, at http://www.hrc.org/issues/federal_leg/ppia/quickfacts.asp (last visited Mar. 23, 2003).

⁸⁴ See Simon, *supra* note 23, at 1102.

⁸⁵ Halley, *supra* note 31, at 45.

⁸⁶ *Id.* at 46.

⁸⁷ Bull, *supra* note 63, at 24.

By centralizing resources, choosing to provide representation on a national scale, and doing so under the sexually neutral banner of human rights, HRC not only pushes its own limited conception of gay rights, but also risks rendering other strategies and organizational efforts undesirable. David Kennedy points out the ways in which the international human rights movement's claims to universal rights may produce costs such as "the loss of more diverse and local experiences and conceptions of emancipation."⁸⁸ HRC's effort to universalize gay rights and adopt the slogan of human rights shifts both financial resources and rhetorical strength away from smaller, more local forms of gay-based advocacy. Kennedy maps this trend in the international human rights movement, explaining that as the movement's universal claims and international scope became large and entrenched, it may have diverted resources away from other strategies.⁸⁹ To Kennedy, human rights "occupies the field by implicit or explicit delegitimation of other emancipatory strategies."⁹⁰ Likewise, HRC makes sweeping claims that universalize the experience of gays and make many gays believe they are the way HRC says they are—normal, rights-holding individuals who deserve and desire the same rights, including the right to marry, enjoyed by their straight counterparts.

Continued reliance on this large, centralized, univocal organization will set the gay agenda on an inflexibly centrist path without room for competing discourses and strategies. This is not to say that HRC silences all competing depictions simply by presenting its homogenous picture of the GLBT community. Rather, HRC, with its new building, political location, and upper-class donor base, engages in a concerted effort to capture Washington, D.C., and act as the national voice of the GLBT community to the political establishment. As Simon has argued, "rhetorical styles empirically associated with white upper-class males are given implicit normative primacy in the credibility judgments of official actors."⁹¹ HRC adheres to its strict, dignified, unwaveringly centrist portrayal of its constituents and participates in a white, upper-class discourse in an attempt to appeal to the official, institutionalized political sensibilities of Washington, D.C. While some members of the GLBT constituency certainly approve of this strategy, such a singular approach cannot reasonably be understood as responding to the range of client positionalities undoubtedly alive on the ground.

⁸⁸ See Kennedy, *supra* note 78, at 114.

⁸⁹ See *id.* at 108.

⁹⁰ *Id.*

⁹¹ Simon, *supra* note 23, at 1101.

III. THE NATIONAL ORGANIZATION WITH BRANCH OFFICES— LAMBDA LEGAL DEFENSE AND EDUCATION FUND

Lambda Legal Defense and Education Fund (Lambda) is a national organization headquartered in left-of-center New York City with branch offices, responsible for their respective regions of the country, in Atlanta, Chicago, Los Angeles, and, most recently, Dallas.⁹² Whereas HRC primarily emphasizes political action, Lambda focuses principally on legal reform. Lambda defines itself as “committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, the transgendered, and people with HIV or AIDS through impact litigation, education, and public policy work.”⁹³

Evidencing the centrality of marriage to the current GLBT agenda, Lambda maintains a Marriage Project that is separate, at least structurally, from its other advocacy work.⁹⁴ Lambda has been at the forefront of the same-sex marriage movement since its participation in the historic case of *Baehr v. Lewin*, in which the Hawaii Supreme Court concluded that the prohibition on same-sex marriage constituted sex discrimination.⁹⁵ Lambda recently launched another same-sex marriage case, *Lewis v. Harris*, in New Jersey.⁹⁶ The rhetoric employed by Lambda in advancing its same-sex marriage agenda features appeals both to hetero-normativity and economic functionality.⁹⁷ In its press release, Lambda declares that the couples involved in the New Jersey suit are “demand[ing] the state allow them to marry just like their heterosexual friends, family, and neighbors.”⁹⁸ This normalizing rhetoric appears not only in Lambda’s media appeals, but also in its legal work. The first paragraph of the complaint in *Lewis v. Harris* asserts that “[e]ach couple seeks the legal support, commitment, and responsibilities of civil marriage for the same reasons as any other couple planning to wed.”⁹⁹ Using language similar to that employed by Nussbaum, the complaint argues that the plaintiff couples “seek the recognition and respect from family and community that come with marriage,”¹⁰⁰ and that “[e]ach Plaintiff couple wants to say to each other and to the

⁹² LAMBDA LEGAL DEF. & EDUC. FUND, 2001 LAMBDA LEGAL ANNUAL REPORT 3 (Chris Hampton ed., 2001) [hereinafter LAMBDA ANNUAL REPORT].

⁹³ *Id.* at title page.

⁹⁴ See Lambda Legal Def. & Educ. Fund, *Marriage Project*, at <http://www.lambdalegal.org/cgi-bin/iowa/issues/record2?record=9> (last visited Mar. 23, 2003).

⁹⁵ *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993).

⁹⁶ Press Release, Lambda Legal Defense & Education Fund, *Sweeping Gay Marriage Lawsuit in New Jersey Aims for U.S. History* (June 26, 2002), available at <http://www.lambdalegal.org/cgi-bin/iowa/documents/record?record=1074>.

⁹⁷ Compare *id.* para. 1, with Complaint ¶ 1, *Lewis v. Harris*, No. L-00-4233-02 (N.J. Super. Ct. filed Oct. 8, 2002), available at http://www.lambdalegal.org/binary-data/LAMBDA_PDF/pdf/135.pdf [hereinafter *Lewis Complaint*].

⁹⁸ Press Release, *supra* note 96, para. 1.

⁹⁹ *Lewis Complaint*, *supra* note 97, ¶ 1.

¹⁰⁰ *Id.*

world that ‘we’re married’ and thus instantly communicate the depth, commitment, and legal nature of their relationship.”¹⁰¹ In emphasizing marriage as a gay rights focus, Lambda casts gays as desiring the same institutions celebrated by straight society.

Such rhetoric would appear to be completely at home in the liberal rights discourse of HRC; it is no surprise it ended up in HRC’s quarterly newsletter. Evan Wolfson, former director of Lambda’s Marriage Project, sounded the liberal line in a speech at a same-sex marriage symposium in 1996, during the battle for same-sex marriage in Hawaii.¹⁰² He quoted Congressman John Lewis during a debate over the Federal Anti-Marriage Bill: “‘It denies gay men and women the right to liberty and the pursuit of happiness. Marriage is a basic human right. You cannot tell people they cannot fall in love.’”¹⁰³ In this conception, marriage derives its significance from its existence as a natural, pre-political, universal right. Of course, Wolfson and other litigators most likely find it legally expedient to cast marriage in this way. In their defense, legalism itself limits the terms by which a particular issue can be framed and debated. By imposing an adversarial, winner-takes-all contest on the question of same-sex marriage, litigation can inhibit a polyvocal struggle over the desirability and terms of marriage, and instead force the issue into the narrow rhetoric of rights.¹⁰⁴

Critiquing Lambda’s framing of marriage and its choice of other projects cannot be done fairly without at least attempting to account for Lambda’s funding considerations. In tracking the tension between pursuing school integration, as the NAACP did, or working for improved educational quality, as many constituents advocated, Derrick Bell points out that civil rights organizations “are supported by middle class blacks and whites who believe fervently in integration.”¹⁰⁵ Bell explains that “[m]any of these supporters either reject or fail to understand suggestions that alternatives to integrated schools should be considered.”¹⁰⁶ These supporters, upon whom the organization relies for funding as well as prestige and legitimacy, “will be understandably reluctant to provide financial support for policies which they think unsound, possibly illegal, and certainly disquieting.”¹⁰⁷ Similarly, many donors of large gay rights organizations are middle- and upper-class gays and straights¹⁰⁸ who see marriage as fun-

¹⁰¹ *Id.* ¶ 38.

¹⁰² Evan Wolfson, *The Freedom to Marry: Our Struggle for the Map of the Country*, 16 QUINNIPIAC L. REV. 209 (1996).

¹⁰³ *Id.* at 215.

¹⁰⁴ See Brown & Halley, *supra* note 9, at 22 (pointing to the rights framework mandated by litigation and to the way adversarialism prohibits nuance and intragroup conflict).

¹⁰⁵ Bell, *supra* note 18, at 489.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 489–90.

¹⁰⁸ Of course, I cannot say with certainty the class status of Lambda donors, but its 2001 Annual Report lists ninety-six individuals or couples giving \$5,000 or more. Hun-

damental to a gay civil rights agenda.¹⁰⁹ More importantly, they see other, queer possibilities as strategically unsound and morally reprehensible. Warner observes the “prominence of a fat-cat donor base within the movement, often consisting of well-heeled men with very little lived connection to the most despised parts of the queer world.”¹¹⁰ This might account, for example, for the fact that “the organized gay and lesbian movement has traditionally been reluctant to engage in a principled defense of sexual culture outside the home.”¹¹¹ Moreover, this demographic observation might explain why gay-based organizations fervently pursue and garner media attention for the same-sex marriage campaign.

Lambda and other gay rights organizations could be seen as having an ethical obligation to serve the donor base from which they derive support. This assertion is controversial, however, since the client base is not the donor base, but rather the entire GLBT community that the organization purports to represent. The better argument, then, is that Lambda is responsive to the donor base for the very reason Bell suggests: without these much-needed funds, Lambda could not serve *anyone* in the GLBT community. I am speculating here as to the internal workings of the organization, but the argument that “prestigious” donors might make their financial support contingent on the pursuit of the “prestigious” institution of marriage seems at least plausible. Pursuing same-sex marriage to the satisfaction of donors thus secures funds with which to pursue other projects. Of course, I cannot make this argument with any certainty, and without transparency from Lambda, a clear answer will not emerge.¹¹² Non-governmental organizations (NGOs) have been criticized for their opaqueness as well as their maintenance of a small, private, and unaccountable decisionmaking elite.¹¹³ These problematic characteristics of traditional, internationally oriented NGOs also can plague newer, domestically focused NGOs, such as GLBT organizations. My speculations, then,

dreds of other donors gave at least \$500. See LAMBDA ANNUAL REPORT, *supra* note 92, at 23–38.

¹⁰⁹ As Janet Halley reminds us, though, the question always remains as to whether donors are merely responding to the representations being rendered by gay advocates. Perhaps gay advocates are leading the movements, and the donors are responding with equal force to the way advocates have constructed them. We must ask, as Halley does, “does a description of the movement have the effect of making people see group members to be ‘like that,’ or does it make people see themselves as ‘like that’? Does a description of the group have the effect of bringing it into existence or repositioning its boundaries?” Halley, *supra* note 31, at 44.

¹¹⁰ WARNER, *supra* note 1, at 76.

¹¹¹ *Id.* at 166.

¹¹² For the most part, the organizations I consulted during my research were extremely helpful. My speculations regarding donor pressure and case selection do not reflect an explicit refusal by Lambda, or other organizations, to answer my questions; rather, they reflect my presumption that such questions were out-of-bounds from the start.

¹¹³ See, e.g., Julie Mertus, *From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society*, 14 AM. U. INT’L L. REV. 1335, 1372–73 (1999).

might prove inaccurate, but hypothesizing as to a logical and quite possible explanation for the positioning of same-sex marriage within Lambda at least illuminates the complex concerns surrounding issues of representation and case selection. Indeed, these concerns about funding and donor influence are important to thinking about any gay-based organization.

Lambda does not simply frame marriage as a universal human right that is necessary for an individual's full recognition as an adult member of society; Lambda recognizes functional justifications for the institution as well. To some, marriage represents recognition by straights (which some either already have or do not want) as well as the accrual of much-needed economic benefits.¹¹⁴ After establishing the social significance of marriage and its symbolic importance to the plaintiff couples, the complaint in *Lewis v. Harris* argues that the couples are excluded "from a broad array of statutory protections, benefits, and mutual responsibilities."¹¹⁵ Specifically, Lambda points to the "[d]enial of [p]rotections [u]pon [i]ncapacitation or [d]eath of a [s]pouse," the "[d]enial of [s]upport for [f]amily [f]inances," and the "[d]enial of [w]orkplace and [p]rivate [s]ector [s]afety [n]ets."¹¹⁶ In this way, Lambda is appealing to legislatively crafted economic rights rather than to universal human rights. The discourse has shifted from one of Nussbaum-esque liberalism to one of functional ease within the existing social framework. Marriage is important, for instance, to secure the "right to file a wrongful death lawsuit when a partner is killed,"¹¹⁷ because marriage has been linked to that right through lawmaking.¹¹⁸ This

¹¹⁴ Certain marital functions will resonate more strongly with some decisionmakers than others; thus, devoting attention to different conceptions and components of marriage will increase the likelihood of legal victory. More specifically, focusing on the economic benefits and responsibilities (to each other and to third parties) of marriage may bolster the chances of success in court. See *Lewis Complaint*, *supra* note 97, ¶¶ 50–51. Indeed, some decisionmakers might be agnostic about same-sex marriage, and thus might be swayed in Lambda's direction by the increased size of the private welfare system that comes with expansion of the institution of marriage.

¹¹⁵ *Id.* ¶ 40.

¹¹⁶ *Id.* ¶¶ 43–49 (emphasis omitted).

¹¹⁷ *Id.* ¶ 43.

¹¹⁸ For a discussion of which relationships should be recognized in the Canadian context, see Brenda Cossman & Bruce Ryder, *What is Marriage-Like Like? The Irrelevance of Conjugalality*, 18 CAN. J. FAM. L. 269 (2001). Cossman and Ryder argue that the requirement of conjugalality to deem a relationship "marriage-like" bears no relation to the state's objectives in assigning the rights and responsibilities that are attached to recognized relationships. More relevant to the discussion of Lambda's framing of same-sex marriage, the authors illustrate the ways in which rights attached to marriage actually would have the same beneficial effect if applied to other interdependent relationships that are currently deprived of those rights. For instance, in discussing a Canadian wrongful death provision, the authors argue that

[s]ince the objective of this provision is to compensate for harm to an economically or emotionally interdependent relationship, it follows that any person who had a relationship characterized by economic and/or emotional interdependence with the deceased or injured person may have suffered a relevant loss and therefore should be entitled to bring an action.

problem could be just as easily solved by changing the statute to allow partners to sue, or by repealing the statute entirely so that no one has that right. In this sense, marriage represents a functional, pragmatic tool with which same-sex couples can secure certain economic rights.

This functionalist conception of marriage seems satisfactory even to queer theory scholar Michael Warner, who questions whether “it [is] possible to have a politics of marriage in which marriage could be seen as one step to a larger goal.”¹¹⁹ In imagining an adequate response, Warner determines that the answer “would have to say that marriage is a desirable goal only insofar as we can also extend health care, tax reform, rights of intimate association extending to immigration, recognition for joint parenting, and other entitlements yoked to marital status.”¹²⁰ While Lambda certainly is not arguing that marriage is desirable only to the extent it offers Warner’s list of benefits, it has indeed picked up this strand of thinking and has developed it into a coherent legal argument. To that extent, Lambda has crafted a conception of marriage that satisfies the liberal rights discourse that envisions marriage as a basic human right, while at the same time constructing a more nuanced argument that dissects marriage into its various benefits and obligations in a way that should be palatable to queer theorists.

In addition, Lambda’s same-sex marriage campaign does not define Lambda or its place in gay-based advocacy. Rather, Lambda’s other projects also partly determine the effects produced by same-sex marriage. As Warner contemplates the position of a same-sex marriage initiative within gay-based advocacy, he recognizes the extent to which marriage becomes simply an item on the agenda that functions with and receives definition from other projects.¹²¹ Warner sees marriage as viable only as part of an agenda that includes a repeal of status-based sexuality discriminations, a move toward increased marriage substitutes and alternatives, and, most fundamentally, “responsive[ness] to the lived arrangements of queer life”¹²² Just as HRC’s attention to formal rights in other areas contributed to an understanding of marriage within HRC and the GLBT community it purports to represent, Lambda’s other projects help to construct the terrain on which same-sex marriage operates.

With *Lawrence v. State*,¹²³ a case arguably more high profile than its marriage case, Lambda is currently engaged in litigation seeking to invalidate anti-sodomy laws under the Constitution. The case is currently before the United States Supreme Court and Lambda is urging the Court

Id. at 315; see also Butler, *supra* note 8, at 252 (arguing that new forms of kinship allow for thinking of dependency ties as existing outside of conjugality).

¹¹⁹ WARNER, *supra* note 1, at 146.

¹²⁰ *Id.*

¹²¹ See *id.*

¹²² *Id.*

¹²³ 41 S.W.3d 349 (Tex. App. 2001), *cert. granted*, 123 S. Ct. 661 (2002).

to overturn its historic decision in *Bowers v. Hardwick*.¹²⁴ In taking on a sodomy case, Lambda must negotiate the issue of how to define gays. “Sodomy” refers to a sex act and thus positions homosexuals as sex actors, and deviant ones at that. Conceptualizing an anti-sodomy law as a regulation about gays, however, makes the law arguably transcend sex and renders the injury inflicted on gays an identity-based offense. In this line of reasoning, sodomites are punished because they are homosexuals, not because they are sodomites; targeting a sexual practice common among gays is a way of targeting gays themselves. This conduct/status distinction pervades much of the constitutional jurisprudence on gay rights. When this debate is articulated within gay circles rather than the legal world generally, it becomes one that pits centrist adherence to identity against queer insistence on sex. While the centrist might choose to define gays as holders of one of the many statuses celebrated by left multicultural thinking, a queer advocate might question the roots and stability of this identity and recognize that the status springs from the distinctive sex act. Moreover, both sides acknowledge the slippage between conduct and status.

In Lambda’s *Lawrence* case, Texas’ law facially targets homosexuals, permitting only sodomy performed by opposite-sex couples.¹²⁵ Thus, the status/conduct distinction seems like less of a sticking point, but it nonetheless surfaces when Lambda confronts the problem of how to depict gays targeted on the basis of their sexual practices. In its *Lawrence* brief, Lambda argues for sexual liberty, asserting that Texas’ “Homosexual Conduct Law flatly forbids lesbians and gay men from engaging in basic forms of sexual expression that are open to and wholly legal for heterosexuals.”¹²⁶ Although doing so within the rhetoric of free “expression,” Lambda nevertheless makes sex an essential part of gay identity, defining gays as sodomites. Unlike its depiction of gays looking to marry, in search of love and commitment, gays in *Lawrence* are having sex, whether or not as an expression of love.

Before concluding that the sodomy case provides a perfect pro-sex foil to the normalizing rhetoric of its same-sex marriage campaign, Lambda connects the two. Casting gays merely interested in sex as second-class citizens relative to their commitment-oriented peers, Lambda asserts that “[t]he Homosexual Conduct Law interferes with more than specific sex acts.”¹²⁷ The more salient harm in the law is that “it strikes at gay relationships”¹²⁸ The sex acts implicated by the statute are “integrally

¹²⁴ 478 U.S. 186 (1986) (upholding the constitutionality of Georgia’s anti-sodomy statute).

¹²⁵ TEX. PENAL CODE ANN. § 21.06 (Vernon 1994) (“A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex.”).

¹²⁶ Petition for Writ of Certiorari at 11, *Lawrence v. Texas*, 123 S. Ct. 661 (2002) (No. 02-102), available at http://www.lambdalegal.org/binary-data/LAMBDA_PDF/pdf/177.pdf.

¹²⁷ *Id.* at 13.

¹²⁸ *Id.*

linked to forming and nurturing the close personal bonds that give humans the love, attachment, and intimacy they need to thrive.”¹²⁹ Lambda reminds the reader that this is the case for gays just as it is for straight adults. Rather than mere sodomites, those violating the Texas law are status holders, homosexuals who lead lives defined by and in contrast to heterosexuals.¹³⁰ Lambda, then, casts sodomy as not merely a sexual act worthy of protection in its own right, but also as a prerequisite to love, which is necessary for successful living. In the end, Lambda constructs two different pictures—gay as sodomite and gay as homosexual.¹³¹ Lambda’s sodomy initiative shows the way in which a sex-centered project can headline its national gay agenda, but the rhetoric it uses displays an ambivalence about the way to represent and frame gays committing sodomy.

In another project garnering less media attention than the marriage and sodomy campaigns, Lambda works to create a safe environment for queer youth. The organization’s Annual Report refers to Lambda’s “victory against anti-gay school violence in the Nabozny case”¹³² and reports continued efforts to protect students, as evidenced by *Henkle v. Gregory*,¹³³ Lambda’s case against the Reno, Nevada, school district.¹³⁴ These cases recognized a school’s duty to protect GLBT students from harassment and violence and acknowledged a school’s responsibility not to impinge on a student’s First Amendment free speech rights, including the right to reveal one’s sexual orientation. Not only does Lambda fight for the safety of GLBT students, but the organization also works to provide spaces for asserting queer support. Lambda states in its Annual Report that “[a]fter years of fighting Lambda Legal’s lawsuit on behalf of students attempting to organize gay-supportive school clubs, the Salt Lake City School Board finally gave up.”¹³⁵ While Lambda is not explicit in the way these types of suits fit within either normalizing or queer regimes, attention to queer youth and a recognition that support groups can include straight, transgender, and other students under the banner “gay-supportive” represents a departure from hetero-normative, couples-oriented rhetoric and shifts the focus to protecting and celebrating the lives of sexual minori-

¹²⁹ *Id.*

¹³⁰ See Halley, *supra* note 31, at 42. Halley explains the way in which the identity politics invoked here rely on the relational quality of homosexuality to heterosexuality. She points out, though, that such identity politics are part of the discourse that oppresses gay people, in that heterosexual people find it necessary to confirm their status and distance themselves from a homosexual identity.

¹³¹ See *id.* at 60. Halley explains that the status/conduct distinction is not easily separable. While rejecting the notion that the group is simply defined by their acts, Halley affirms that “[h]omosexuals *do* engage in homosexual acts,” but “the relationships between sexual orientation identity and homosexual conduct are so slippery that they are always capable of becoming the vehicle for homosexual panic.” *Id.*

¹³² *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996).

¹³³ 150 F. Supp. 2d 1067 (D. Nev. 2001).

¹³⁴ See LAMBDA ANNUAL REPORT, *supra* note 92, at 6.

¹³⁵ *Id.*

ties, regardless of the way such young people organize their intimate lives.¹³⁶ Creating spaces for relationships and potential kinship in school communities actually removes young people from their presumptively heterosexual family lives and delivers them to an environment that embraces non-normative intimacies and families.¹³⁷

Continuing its advocacy on behalf of queer youth, Lambda endorses “real” sex education in response to the recent conservative campaign for “abstinence-only” sex education. The organization urges grassroots activism by providing tools with which parents and students can convince their schools to provide sex education that deals frankly with safe sex and sexual orientation. Lambda opposes “abstinence-only” programs because these programs “deprive students of basic information, and the health and lives of young people across this country are being endangered in the process.”¹³⁸ Lambda finds two youth populations most jeopardized: LGBT youth, “whose lives are erased from existence by messages that sex can only happen in marriage,” and “teens who are sexually active and don’t protect themselves” and thus are at risk for HIV infection.¹³⁹ In this effort for frank sex education, Lambda uses rhetoric that acknowledges and promotes the sexual agency of young people, recognizes the reach of HIV into gay and straight teen populations, and argues for the dissociation of sex from marriage.

Lambda also advocates on behalf of individuals living with HIV or AIDS. In its Annual Report, Lambda reports that it “brought together a broad coalition of public health and child advocacy organizations in a successful battle against HIV discrimination by Pennsylvania foster care officials.”¹⁴⁰ In *Doe v. County of Centre*, Lambda obtained a Third Circuit holding that officials cannot refuse to place a child in a home merely because another child in the home has AIDS.¹⁴¹ Lambda’s participation in

¹³⁶ Gay support groups seem conducive to a queer understanding. Warner comments on the intersections between gay men, lesbians, and their straight friends and how these relationships construct gay, and queer, life. These alliances are replicated by young people through the creation of gay support groups or gay-straight alliances. See WARNER, *supra* note 1, at 115.

Because gay social life is not as ritualized and institutionalized as straight life, each relation is an adventure in nearly uncharted territory—whether it is between two gay men, or two lesbians, or a gay man and a lesbian, or among three or more queers, or between gay men and the straight women whose commitment to queer culture brings them the punishment of the ‘fag hag’ label.

Id.

¹³⁷ See Brown & Halley, *supra* note 9, at 16 (discussing a left commitment to “the liberation of children from the exclusive dominion of their families”).

¹³⁸ Lambda Legal Def. & Educ. Fund, *Tell Me The Whole Truth: School Supplies to Get Real Sex Education* (Sept. 5, 2002), at <http://www.lambdalegal.org/cgi-bin/iowa/documents/record?record=1126>.

¹³⁹ *Id.*

¹⁴⁰ LAMBDA ANNUAL REPORT, *supra* note 92, at 9.

¹⁴¹ 242 F.3d 437, 451 (3d Cir. 2001) (holding that an individualized, case-by-case as-

this case tells multiple stories. It demonstrates that gay identity (or the experience of same-sex desire) is not a prerequisite for advocacy by Lambda; HIV positive children are indeed underserved, and Lambda recognizes and responds to that need. It shows the intersection of health and sexuality and the continued centrality of HIV and AIDS to gay-based advocacy. It recognizes the potential power of coalition-building, as gay-based communities, health-focused advocates, and child-centered organizations recognize their common opposition to HIV-based discrimination.

Most importantly, Lambda's commitment to HIV advocacy shows a distancing from one of the key arguments that has pervaded conservative and gay-centrist scholarly efforts to achieve same-sex marriage. Gay-centrist William Eskridge argues that marriage would civilize gay men, noting that "[i]t should not have required the AIDS epidemic to alert us to the problems of sexual promiscuity and to the advantages of committed relationships."¹⁴² While Eskridge links the success of the same-sex marriage movement to the rejection of sexual promiscuity and AIDS, Lambda recognizes that the gay men (and straight people, youth, and lesbians) the group serves are not in need of civilizing. Those afflicted with HIV are as deserving of advocacy and protection as those seeking the right to marry. Consequently, by keeping HIV advocacy central to its mission, Lambda challenges the gay-centrist position of Eskridge and satisfies the pro-sex, queer position of many of its clients, who see health and sex as inextricably connected and essential to a gay-based program.

Contrary to Eskridge, Michael Warner asserts that "[n]ot a single study has shown that a new wave of infections can be traced to sex clubs. Most risk happens in the bedroom, not the back room."¹⁴³ Warner continues to advocate for frank talk about safe sex and sustained resources for HIV prevention, treatment, and advocacy.¹⁴⁴ Lambda's efforts to protect those living with HIV and provide public education on safe sex thus situates the organization in a pro-sex position that counteracts some of the normalizing effects produced by its rhetoric in the same-sex marriage campaign. While surely the marriage movement remains one of Lambda's most highly publicized, well-funded projects, Lambda has not lost sight of other queer constituents and has tried to negotiate the shaky terrain between hetero-normativity and queer politics.

Perhaps Lambda's most valuable asset in this regard are its branch offices. While I am speculating in making this assertion, it is a proposition worth exploring. Satellite offices might offer spaces within which to respond to smaller client bases and to explore less popular queer possibilities. The work Lambda takes up in these offices suggests that branch

assessment is necessary rather than a generalized rule prohibiting placement of a child in a home with an HIV positive child); *see also* LAMBDA ANNUAL REPORT, *supra* note 92, at 9.

¹⁴² ESKRIDGE, *supra* note 6, at 9.

¹⁴³ WARNER, *supra* note 1, at 209.

¹⁴⁴ *See id.* at 201.

offices can offer services and pursue goals tailored to the particular region and thereby provide more direct ways to interact with a particular segment of the client base.¹⁴⁵ For instance, Lambda's new South Central Regional Office in Dallas will look to advance gay rights issues that are viable in the more conservative environment in which it is situated.¹⁴⁶ On the other hand, the Western Regional Office, located in Los Angeles, can provide service to the more conservative Rocky Mountain regions while also pushing more radical initiatives in the liberal hotbeds of Los Angeles and San Francisco. For example, the Los Angeles office advertises its Latino Outreach program, which deals with "issues important to LGBT Latinas/os such as immigration, HIV/AIDS and sexual orientation discrimination."¹⁴⁷ While the Latino population may not be a majority of Lambda's constituency overall, the Los Angeles branch office allows Lambda to serve a GLBT subpopulation that is substantial in California. The recognition of and service to sexual minorities of color appears commensurate with a queer ideology,¹⁴⁸ as well as other orientations occupying the left, center, and right. Furthermore, recognizing the extent to which marriage is not a priority for Latino queers shows Lambda activists to be receptive to critiques of marriage as the overarching gay rights project.

While the national office leads an arguably pro-sex fight in its sodomy challenge, the Western Regional Office pursues similarly sex-positive cases that are not national campaigns but city-specific struggles. For instance, that office has fought on behalf of gay men in Los Angeles who use public spaces as sites of sexual pleasure.¹⁴⁹ While the rhetoric of the Texas sodomy case is grounded in the privacy of the adult bedroom, litigation on behalf of cruising gay men takes the sexual activity of gays outside the privacy of one's home and into public spaces.¹⁵⁰ Of course, the pri-

¹⁴⁵ See Note, *supra* note 81, at 1457. While the Note discusses the decentralization of public interest law offices generally, the analysis and conclusions remain quite valuable when examining the specific context of gay rights organizations.

¹⁴⁶ The South Central Region consists of the largely conservative states of Texas, New Mexico, Colorado, Nebraska, Kansas, Oklahoma, Arkansas, and Louisiana. See LAMBDA ANNUAL REPORT, *supra* note 92, at 3. For example, all four states with anti-sodomy statutes that specifically target same-sex sex are in this region—Texas, Oklahoma, Missouri, and Kansas. See Press Release, Lambda Legal Defense and Education Fund, U.S. Supreme Court Will Hear Lambda Legal's Challenge to Texas "Homosexual Conduct" Law (Dec. 2, 2002), at <http://www.lambdalegal.org/cgi-bin/iowa/documents/record?record=1176>.

¹⁴⁷ Lambda Legal Def. & Educ. Fund, Latino Outreach Flyer (n.d.) (on file with author).

¹⁴⁸ See WARNER, *supra* note 1, at 150–55. Warner laments the recent increasing gentrification and privatization (and the coinciding increase in whiteness) of New York's gay neighborhoods. He fears that spaces for queers of color will disappear. Warner celebrates Christopher Street as "a queer scene: many of those who come are young black gays and trannies." *Id.* at 150. He goes on to mourn the closing in the mid-1990s of the Hudson River Piers, which was "a legendary meeting place for queers for decades, and more recently for youth of color." *Id.* at 155.

¹⁴⁹ See Letter of Amicus Curiae Lambda Legal Defense and Education Fund, to the Honorable Ronald George, Chief Justice, Cal. Supreme Court, re Tucker v. Municipal Court (No. S080680) (Apr. 16, 1999) (on file with author) [hereinafter Tucker Letter].

¹⁵⁰ See *id.*

vate/public distinction is not this easy, since gay men engaging in public sex often do so in areas they conceive of as private, hiding themselves yet keenly aware of the potential of watchful eyes, whether from voyeuristic gay men or law enforcement.¹⁵¹ In fighting against harassing and humiliating police tactics used by the Los Angeles County Sheriff's Department, Lambda points to the targeting of gay men for behavior also engaged in by women and straight men, arguing that police focused exclusively on areas where gay men congregate and lured gay men with sexually suggestive advances.¹⁵² Noting the lack of citizen complaints against the arrested gay men, Lambda contends that "heterosexuals commit public sex acts in the same vicinity in which Petitioners were arrested, without being arrested, and the officers have never operated any sting operation targeting heterosexuals."¹⁵³ Despite the context of pro-sex litigation, this argument relies on a straight sexual culture of cruising that might prove non-existent. Of course, straight sex happens in cars and public spaces, but a cruising scene is arguably unique to queer life. The appeal to heterosexual behavior furthers the relational quality of gay identity and attempts to push the sameness of gays relative to straights instead of recognizing the distinctive quality of queer culture.

In a more unequivocally queer vein, Lambda makes the legal argument that the relevant statute requires that the arrestee knew or should have known that the sexual advances were unwanted.¹⁵⁴ To provide factual support, Lambda details the conduct of the vice officers:

In one case, the officer followed a petitioner from one restroom to another, and in another, one officer stood at a distance from the urinal with his hands on his penis, but not urinating. Additionally, officers loitered around the restroom for lengthy periods of time—sometimes shirtless, often with the pants unbuttoned and penis exposed, and sometimes with pants lowered and buttocks exposed. Finally, officers made eye contact with suspects, smiled at them, engaged in hand gestures with them, and engaged in small talk with them, all in the restroom.¹⁵⁵

Not only does this fully expose what many gay men deem to be their private sex lives, but it also attests to the public sexual culture of urban gay men in Los Angeles. Such park cruising and restroom sex seems far removed from the monogamous, committed coupling of married life and

¹⁵¹ See WARNER, *supra* note 1, at 173 ("Public sex' is public in the sense that it takes place outside the home, but it usually takes place in areas that have been chosen for their seclusion, and like all sex involves extremely intimate and private associations.").

¹⁵² See Tucker Letter, *supra* note 149, para. 4.

¹⁵³ *Id.*

¹⁵⁴ See *id.* para. 7.

¹⁵⁵ *Id.* para. 10.

resonates instead with a queer analytic that values the preservation of sexual counter-publics.

The lawyers in the branch offices participate in constituting the client base just as their peers in the national headquarters do, but the existence of the regional offices allows for a narrower, more nuanced production of the constituency. Indeed, by defending gay men in Los Angeles, the Lambda lawyers arguably reproduce a public, promiscuous sexual culture, but such representation is concentrated and does not purport to cast a vision for the GLBT population across the nation. Through the use of branch offices to craft unique initiatives and take on unpopular causes in service to its constituents, Lambda has shown the vitality of gay-based advocacy when a national organization opts for some form of decentralization. While some might argue that the opening of branch offices simply makes Lambda bigger (and hence more national), the above analysis of Lambda's projects, both in its national and branch offices, speaks to the contrary. The high-profile national office will always remain responsible for showing a palatable image of the GLBT community to the rest of America. On the other hand, the branch offices allow for the pursuit of certain cases out of the national spotlight and away from the watchful eyes of the group's national donors.

IV. THE REGIONAL OFFICE—GAY & LESBIAN ADVOCATES & DEFENDERS

Gay & Lesbian Advocates & Defenders (GLAD) is located in Boston and serves the New England region, which includes some of the nation's most progressive states.¹⁵⁶ Like Lambda, GLAD focuses primarily on impact litigation in a variety of areas affecting the GLBT population.¹⁵⁷ GLAD defines itself as "New England's leading legal rights organization dedicated to ending discrimination based on sexual orientation, HIV status, and gender identity and expression."¹⁵⁸

GLAD, like Lambda, has been at the forefront of the same-sex marriage movement. It served as co-counsel in the landmark case that led to civil unions for same-sex couples,¹⁵⁹ *Baker v. Vermont*.¹⁶⁰ Currently, GLAD is litigating a same-sex marriage case in Massachusetts, *Goodridge v. De-*

¹⁵⁶ GLAD serves Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. See GAY & LESBIAN ADVOCATES & DEFENDERS, ANNUAL REPORT (1999).

¹⁵⁷ See GAY & LESBIAN ADVOCATES & DEFENDERS, AN INTRODUCTION TO SERVICES OFFERED BY GLAD (1998) (on file with author). According to the pamphlet, GLAD provides representation in matters such as: "[e]mployment discrimination, HIV/AIDS discrimination, [c]ustody, adoption and parental rights, [p]ublic accommodations and access discrimination, [g]uardianship and probate matters, First Amendment and constitutional issues, [a]ccess to healthcare, confidentiality issues, [s]exual orientation and the military, [and] [r]eferendum and election issues/anti-gay ballot measures." *Id.*

¹⁵⁸ Gay & Lesbian Advocates & Defenders, *Mission Statement*, at <http://www.glad.org> (last visited Mar. 23, 2003).

¹⁵⁹ See VT. STAT. ANN. tit. 15, §§ 1201–1207 (2002).

¹⁶⁰ 744 A.2d 864, 866 (Vt. 1999).

partment of Public Health. Much like Lambda, GLAD relies on both normalizing rhetoric and a functionalist discourse to frame its claim for same-sex marriage.¹⁶¹ GLAD not only appeals to the cultural, social significance of marriage, but goes to great lengths to discuss the plaintiff couples and describe their lives in hetero-normative terms. While the couples are technically GLAD's clients, they are held up as signifiers for the broader constituency seeking marriage rights. They are meant to be representative, both in the sense of being ideal within society and ordinary within GLBT circles. As exemplars of family life, they deserve marriage rights; since the plaintiff couples are meant to typify most other gay couples, the broader client base deserves such rights.¹⁶²

The complaint states that Hillary and Julie Goodridge "have been living together in a committed partnership for thirteen years and intend to do so for life."¹⁶³ It goes on to explain that "[t]he Goodridges first lived together in 1988 in a residence owned by Julie, and then jointly purchased a home in Boston in 1993."¹⁶⁴ Soon, "Hillary and Julie decided to have a child."¹⁶⁵ In anticipation of "their growing family, the parties had a private commitment ceremony and exchanged rings in 1995."¹⁶⁶ The complaint makes clear that Hillary and Julie enjoy the approval and love of their extended families, who understand the relationship as they would a heterosexual marriage. "Hillary's parents each consider Julie to be their daughter-in-law. Hillary's parents consider Hillary and Julie's daughter to be their granddaughter and her brother considers Hillary and Julie's daughter to be his niece."¹⁶⁷ They are also laudable parents, as both of them "volunteer on committees at their daughter's school, and both work reduced schedules in order to spend as much time with her as possible."¹⁶⁸ As for their daughter, she "is happy and well-adjusted. She has numerous friends at school and in her neighborhood."¹⁶⁹ With their commitment, their home, their child, and their recognition and love from family and friends, Hillary and Julie are almost a replica of the traditional nuclear family.

In this way, GLAD articulates Eskridge's gay-centrist case for same-sex marriage. Since Julie and Hillary are the exemplar of family values, Massachusetts' "prohibitions against same-sex marriages may be antifamily and antichildren."¹⁷⁰ Grounding the appeal to the state in terms of family,

¹⁶¹ See Verified Complaint, *Goodridge v. Dep't of Pub. Health*, No. 01-1647-A, 2002 WL 1299135 (Mass. Super. Ct. May 7, 2002) [hereinafter *Goodridge Complaint*].

¹⁶² See *id.*

¹⁶³ *Id.* ¶ 14.

¹⁶⁴ *Id.* ¶ 15.

¹⁶⁵ *Id.* ¶ 17.

¹⁶⁶ *Id.* ¶ 18.

¹⁶⁷ *Id.* ¶ 25.

¹⁶⁸ *Id.* ¶ 23.

¹⁶⁹ *Id.* ¶ 24.

¹⁷⁰ *ESKRIDGE*, *supra* note 6, at 13.

children, partnering, love, and social recognition, GLAD normalizes the lives of gays to make the leap to same-sex marriage seem logical and sensible. In doing so, though, GLAD constructs a universal image of gays that may be “persuad[ing] gay men and lesbians that they [are] ‘like that.’”¹⁷¹ These discursive tools, then, produce normalizing effects that not only respond to certain gay constituents’ lived realities, but also tell others that they are (or should be) this way. As Eskridge puts it, “[a] self-reflective gay community ought to embrace marriage for its potentially civilizing effect on young and old alike.”¹⁷²

This is not to say that all of the plaintiff couples conform so neatly to the paradigmatic traditional family. In fact, a queer reading of the complaint turns up a lived reality that would lend itself more readily to queer politics than to hetero-normative impulses. David and Rob, an interracial couple, were both previously in heterosexual marriages.¹⁷³ As the complaint notes, “David became the father of three children and Robert of two children.”¹⁷⁴ Rob’s “son lived with them for a time while the son was in college.”¹⁷⁵ “They are on good terms with their former wives, both of whom support them as a couple and want them to be happy.”¹⁷⁶ Certainly, this extended network of lovers, straight and gay, more closely tracks the less ritualized gay life that Warner documents.¹⁷⁷ David and Rob’s continued platonic relationships with their former wives seem only one step removed from the situation of “gay men and the straight women whose commitment to queer culture brings them the punishment of the ‘fag hag’ label.”¹⁷⁸ Perhaps this observation points to the queer ethos that will remain intrinsic to gay relationships, especially as many gay men continue to transition from heterosexual married life to gay life. Furthermore, this non-normative ordering satisfies the queer desire for the “brave, exploratory ‘families we choose.’”¹⁷⁹ David and Rob’s kinship ties illustrate the increasingly blurred boundaries between family and community, kinship and friendship.¹⁸⁰ Their situation demonstrates the vitality of divorce chains, in which “pseudokinship groups are formed on the basis of links between the new spouses of ex-spouses.”¹⁸¹ The relationships mold to the particular situation and emerge as the product of specific needs and dependencies.¹⁸² In this way, David and Rob’s extended family performs functional

¹⁷¹ Halley, *supra* note 31, at 52.

¹⁷² ESKRIDGE, *supra* note 6, at 10.

¹⁷³ See Goodridge Complaint, *supra* note 161, ¶ 36.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* ¶ 37.

¹⁷⁷ See WARNER, *supra* note 1, at 115.

¹⁷⁸ *Id.*

¹⁷⁹ Brown & Halley, *supra* note 9, at 15.

¹⁸⁰ See Butler, *supra* note 8, at 252.

¹⁸¹ Paul Bohannon, *Divorce Chains, Households of Remarriage, and Multiple Divorces*, in *DIVORCE AND AFTER* 127, 129 (Paul Bohannon ed., 1971).

¹⁸² See *id.* at 131.

and emotional roles simultaneously and deconstructs normative assumptions about family life and traditional dependency relationships.

GLAD to some extent addresses the economic, functional benefits and obligations of marriage in a way that highlights the social constructivist nature of the relationship and satisfies dissenting queers who want the rights of marriage without the social baggage. GLAD's memorandum in support of summary judgment lists many Massachusetts statutes that furnish benefits, rights, and obligations to married couples.¹⁸³ GLAD provides various examples of the ways that the lives of the plaintiff couples are rendered more difficult and unpredictable by the lack of access to the rights and obligations of marriage. For instance, "[s]hould one of the members of these couples need nursing home care, they would not enjoy the unlimited ability to transfer assets to a spouse prior to institutionalization and could not protect the family home from a lien by MassHealth."¹⁸⁴ Similarly, for couples with their own 401(k) accounts, "if the owner dies, the beneficiary would have to take taxable distributions immediately and could not roll over the account into his or her own tax-deferred account."¹⁸⁵ While linked to notions of traditional family life, this discussion of economic consequences and the structuring of dependency relationships speaks to the functional, legally constructed aspects of marriage rather than to the social significance of the institution. Of course, the two are practically inseparable in the American legal system, but one could imagine relationships in which the rights and obligations of marriage are granted in an institutional form devoid of the cultural connotation of marriage. In fact, GLAD has such a prototype in the form of Vermont's civil unions.¹⁸⁶

Ultimately, GLAD links its functional account of marriage with the normalizing rhetoric designed to appeal to a centrist judiciary potentially sympathetic to same-sex couples who adhere to traditional, hetero-normative family values: "The plaintiffs have formed families of love, commitment and affection, but without access to the laws that protect the emotional bond of married couples."¹⁸⁷ Consequently, one must keep in mind that while the result—the securing of much-needed rights for couples—might be welcomed by gay or queer advocates outside the same-sex marriage

¹⁸³ See Memorandum in Support of Plaintiffs' Motion for Summary Judgment at 26–28, *Goodridge v. Dep't of Pub. Health*, No. 01-1647-A, 2002 WL 1299135 (Mass. Super. Ct. May 7, 2002) [hereinafter *Goodridge Summary Judgment Memo*].

¹⁸⁴ *Id.* at 27.

¹⁸⁵ *Id.*

¹⁸⁶ Of course, GLAD pursued marriage in *Baker v. Vermont*, and it finds civil unions insufficient as they lack the significance of marriage. See GAY & LESBIAN ADVOCATES & DEFENDERS, CIVIL MARRIAGE FOR SAME-SEX COUPLES: THE FACTS 23 (2002), available at http://www.glad.org/Publications/CivilRightProject/CivilMarriage_TheFacts.PDF ("Although civil unions are good, they are not good enough. Civil unions are not a substitute for marriage.").

¹⁸⁷ *Goodridge Summary Judgment Memo*, *supra* note 183, at 26.

movement, the reasoning that underlies the result remains normalizing. Again, this may be accounted for by some combination of (1) the heteronormative impulses of many gays that GLAD represents, (2) the integration-focused donor base, and (3) the work of reflective, self-conscious lawyers. Such lawyers' representations of gays may not always appease the impulses of critical theory, but those "representations do work in the sense that they facilitate actual legal reform."¹⁸⁸

Just as an examination of Lambda's broader agenda was necessary to contextualize its same-sex marriage efforts, a more complete discussion of GLAD's projects must be undertaken to understand its vision for the GLBT community. First, GLAD remains committed to work on behalf of transgender individuals. While HRC only recently amended its mission statement to include gender expression,¹⁸⁹ GLAD has long been at the forefront of transgender advocacy, having litigated many landmark cases.¹⁹⁰ Such advocacy resonates within a queer ethos and certainly takes GLAD outside the realm of homosexuality per se. As Warner tells it, "[p]eople whose gender identity differs from the norm are despised, often violently, whether they desire those of their own sex or not."¹⁹¹ In this sense, a queer community, and a gay-based community informed at least in part by a queer analytic, should embrace transgender individuals and advocate on their behalf.

GLAD attorney Jennifer Levi, a passionate defender of transgender rights, argued the landmark case of *Rosa v. Park West Bank and Trust Co.*¹⁹² After the First Circuit held that federal sex discrimination law protects a gender-nonconforming man, Levi commented in GLAD's press release that the "decision puts the business community on notice that it cannot exclude any person . . . because of stereotypical beliefs about how real men and women should look or act."¹⁹³ In order to achieve a victory, Levi had to argue the case in terms of sex discrimination, but her statement reveals the extent to which she understands the situation as one of socially constructed gender normativity rather than as a classic case of sex discrimination. Indeed, her nuanced approach to the case provides an example of a situation in which thoughtful gay rights lawyers pursue liberal, centrist strategies to achieve results for their clients, yet simultaneously

¹⁸⁸ Halley, *supra* note 31, at 53.

¹⁸⁹ HRC ANNUAL REPORT, *supra* note 62, at 6.

¹⁹⁰ See Gay & Lesbian Advocates & Defenders, *GLAD Takes the Lead*, at http://www.glad.org/Publications/CivilRightProject/TG_Recent_Gains.PDF (last visited Apr. 11, 2003) (outlining GLAD's work for the transgender community over the last few years).

¹⁹¹ WARNER, *supra* note 1, at 37.

¹⁹² 214 F.3d 213 (1st Cir. 2000).

¹⁹³ Press Release, Gay & Lesbian Advocates & Defenders, Court Affirms Right of Transgendered Plaintiff to Sue (June 9, 2000), available at http://www.glad.org/News_Room/press26-6-9-00.shtml.

articulate the way in which gay-based advocacy reaches outside the bounds of traditional liberal understandings.

With equal success, Levi argued a transgender rights case before the Massachusetts Superior Court in Brockton; the court ruled that a school cannot prevent a transgender student from expressing her desired gender identity.¹⁹⁴ Levi noted the significance of *Doe v. Yunits* for queer youth and transgender individuals and celebrated it as “the first reported decision addressing the rights of a transgender student to express her gender identity in school”¹⁹⁵ She went on to note that “a school may not exert its authority over a student simply to enforce stereotyped ideas of how boys and girls should look.”¹⁹⁶ While the court found that the school’s conduct constituted sex discrimination, it also ruled that the school violated the biologically male student’s right to free expression. Levi had asserted that the plaintiff’s “wearing clothing typically worn by girls is a statement and expression of who Pat is.”¹⁹⁷ Here, GLAD grounded the issue in identity politics, postulating that Pat has an authentic, stable identity and experience that can be identified and expressed. By accepting GLAD’s invitation to open up the terrain on which transgender identity is understood, the court insisted on a model of society that is pluralist and anti-majoritarian. It noted that the school’s behavior amounted to “the stifling of plaintiff’s selfhood merely because it causes some members of the community discomfort.”¹⁹⁸ Moreover, GLAD’s press release celebrated the court’s “recogni[tion] that ‘exposing children to diversity at an early age serves the important social goals of increasing their ability to tolerate differences’ and teaches ‘respect for everyone’s unique personal experience.’”¹⁹⁹ Indeed, GLAD persuaded the court to adopt a posture embodying left multicultural identity politics, in which tolerance and diversity are essential components of a political agenda. Rather than passing judgment on the viability of a left multicultural project, the point here is merely to show a way in which GLAD’s advocacy can produce a political, theoretical discourse that is different from both the normalizing, universalizing rhetoric of marriage and the progressive, celebratory ethos of queer thought.

GLAD’s advocacy on behalf of GBLT youth extends from the sphere of transgender identity to the realm of sex education. In the landmark case of *Brown v. Hot, Sexy and Safer Productions, Inc.*, GLAD success-

¹⁹⁴ *Doe ex rel. Doe v. Yunits*, No. 00-1060-A, 2000 WL 33162199 (Mass. Super. Oct. 11, 2000), *aff’d sub nom. Doe v. Brockton Sch. Comm.*, No. 2000-J-638, 2000 WL 33342399 (Mass. App. Ct. Nov. 30, 2000).

¹⁹⁵ Press Release, Gay & Lesbian Advocates & Defenders, Brockton Court Rules in Favor of Transgender Student (Oct. 12, 2000), at http://www.glad.org/News_Room/press29-10-12-00.shtml.

¹⁹⁶ *Id.*

¹⁹⁷ Amended Complaint ¶ 31, *Yunits* (No. 00-1060-A).

¹⁹⁸ Press Release, *supra* note 195.

¹⁹⁹ *Id.*

fully obtained the dismissal of a lawsuit against a safe-sex educator and the school committee that contracted her services.²⁰⁰ The educator used a pro-sex, humorous approach to sex education, and in the course of her presentation, allegedly addressed masturbation, oral sex, sodomy, pornography, and commercial sex.²⁰¹ In arguing that her presentation was protected by the First Amendment, GLAD asserted that the educator chose her manner of communication in order “to express her message in a way that is accessible and meaningful to teenagers.”²⁰² Not only does GLAD support the educator’s right to sexual expression, but it also implies the sexual agency of young people in advocating for their right to receive sexually frank information. By pursuing this case, GLAD not only places itself in a queer posture by appearing on behalf of a sex-positive entity named Hot, Sexy and Safer, but more importantly, it recognizes the diversity of sexual experiences, imaginations, and identities with which high school students approach issues of safe sex.²⁰³

GLAD’s sex-positive stance in the area of sex education is articulated even more clearly in its public space litigation. In *Doe v. Kelley*, GLAD sought to enjoin Massachusetts state police conduct that targeted gay men at rest stops.²⁰⁴ In advocating for her client, GLAD attorney Mary Bonauto opened her Memorandum in Support of a Preliminary Injunction with a direct appeal to queer, pro-sex sensibilities:

John Doe is a gay man who has been banned from highway rest areas by the State Police because he once had sex with another consenting adult in the woods, and the State Police believe, apparently, that this gives them the right to enforce their belief that Doe has no legitimate right to use highway rest areas. Although these facts are somewhat unconventional, the principle involved is deeply embedded in our hard-won tradition of personal lib-

²⁰⁰ 68 F.3d 525 (1st Cir. 1995).

²⁰¹ See Brief for Appellants at 10–12, *Brown v. Hot, Sexy & Safer Prods., Inc.*, 68 F.3d 525 (1st Cir. 1995) (No. 95-1275).

²⁰² Joint Brief for Defendant-Appellees at 65, *Brown* (No. 95-1275).

²⁰³ GLAD continues its advocacy regarding safe-sex educators. GLAD currently represents an educator secretly tape recorded while leading “a workshop for youth ages 14–21 on AIDS and HIV prevention which included frank discussions of sexuality.” See Amended Complaint at ¶ 2, *Netherland v. Whiteman*, No. 00-2163E (Mass. Super. Ct. filed May 17, 2000).

²⁰⁴ First Amended and Verified Complaint at 9, *Doe v. Kelley*, No. 99-4307 (Mass. Super. Ct. filed Aug. 25, 1999). GLAD settled the case with the Massachusetts State Police. A general order, limiting the reach of police power in public spaces, was issued. See Press Release, Gay & Lesbian Advocates & Defenders, GLAD Settles Harassment Case with Massachusetts State Police (Mar. 1, 2001), available at http://www.glad.org/News_Room/press35-3-1-01.shtml; Mass. State Police, *General Order: Sexual Activity in Public Places* (Mar. 21, 2001), available at http://www.glad.org/GLAD_Cases/generalorder.shtml [hereinafter *General Order*].

erty, a tradition that applies to all citizens, regardless of sexual orientation.²⁰⁵

Bonauto articulates the queer ethos in describing the social life of plaintiff John Doe. He is “a gay man,” who “meets and socializes with other gay men” in “places like parks and highway rest areas.”²⁰⁶ At times, the plaintiff “and a person whom he meets in a park or highway rest area will agree to go meet elsewhere for coffee, conversation, or, upon occasion, for sexual activity”²⁰⁷ While Bonauto must be cognizant of the legal limitations on queer life, such as actually engaging in sex in a public place, she pushes the rights of queers as far as she can: “[I]t is not a crime to *solicit non-commercial, consensual, adult sex in Massachusetts unless one asks someone who would be offended to perform such activity in a public place.*”²⁰⁸

The realm of public sex again takes GLAD beyond advocacy based solely on gay identity and into the domain of queer politics. In fact, cruising at rest stops might be directly opposed to notions of community and gay identity.²⁰⁹ The highway rest stop offers “a venue where men from very different worlds meet, often silently, for sex.”²¹⁰ In this sense, same-sex sex between men is not about hetero-normative partnering and monogamy, but instead is about anti-community and anonymous pleasure. As Leo Bersani articulates this version of same-sex attraction, these men are “drawn to the *anticommunitarian* impulses they discover in homosexual desire.”²¹¹ Bersani recalls, with seeming nostalgia, “the unbridled popped promiscuity of the 1970s, of our perverse preference for five or ten partners in the bathhouse over the one-and-only in the drug-free privacy of a suburban home.”²¹² This conception of same-sex sex is diametrically opposed to a celebration of the civilizing influences of marriage and family. By taking a case grounded in public sex, with all its theoretical and political baggage, GLAD lawyers question the naturalized assumptions of the same-sex marriage movement and articulate an analytical position that is responsive to more left, radical understandings of sex, both heterosexual and homosexual.

Of course, GLAD does not entirely resist value judgments about gay life. Its devotion to the same-sex marriage movement casts partnering and community as ideal. But through its work on behalf of queer men, GLAD presents a certain agnosticism, at least with regard to its advocacy, to-

²⁰⁵ Substituted Memorandum of Law in Support of Application for Preliminary Injunction at 1, *Kelley* (No. 99-4037) [hereinafter *Doe v. Kelley Memo*].

²⁰⁶ *Id.* at 2.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 4.

²⁰⁹ See WARNER, *supra* note 1, at 166.

²¹⁰ *Id.*

²¹¹ BERSANI, *supra* note 13, at 7.

²¹² *Id.* at 20.

ward the choices one makes about the ordering of one's intimate life. Although she does not espouse her client's cruising as the ideal gay lifestyle, Bonauto nonetheless places his desire to lead his life as he pleases as paramount, and thus she constructs a model of gay and queer life that is pluralist. Just as Levi defended the rights of transgender individuals, Bonauto makes clear that "the discomfort of others is not a sufficient basis for denying the injunction."²¹³ In her conclusion, Bonauto makes her appeal to pluralism explicit, noting that the homophobic views of one state trooper "do not and should not have the force of law . . . in our pluralist society."²¹⁴

GLAD ultimately settled the case; the settlement included a general order to all state police, instructing that "[o]fficers should not order someone to leave a public area in the absence of unlawful conduct."²¹⁵ Bonauto fought to preserve public areas as bastions of cruising for queers in the same year that she led the fight for same-sex marriage in Vermont; this displays a personal and an organizational commitment to the plights of GLBT constituents, regardless of whether their actions are palatable to mainstream society. By advocating for queers, GLAD resists the totalizing call for increased privatization and refuses to abandon the sites that constructed and cultivated gay sexual culture in the first place.²¹⁶ In fact, GLAD's own roots reflect the beginnings of the gay movement that Warner recounts; GLAD was established in response to a sting operation against gay men at the Boston Public Library,²¹⁷ and its name appears to reflect its work defending gays stigmatized as criminals. In this sense, while it continues to pursue same-sex marriage, GLAD refuses to repudiate those resistant queers "caught with their pants down."²¹⁸

Like Lambda, GLAD litigates on behalf of HIV+ individuals, and it does so in a way that accommodates the expansion of HIV to non-gay populations. In *Commonwealth v. Landry*,²¹⁹ the Supreme Judicial Court of Massachusetts held that "needle exchange program participants may lawfully possess needles throughout the state, not merely in the city or town in which the program is sited."²²⁰ In arguing for those involved in needle exchange, GLAD asserted, in its amicus capacity, that the program "is one of the most effective mechanisms to engage the high-risk population of intravenous drug users in substance abuse treatment serv-

²¹³ Doe v. Kelley Memo, *supra* note 205, at 13.

²¹⁴ *Id.*

²¹⁵ Press Release, *supra* note 204; *see also* General Order, *supra* note 204.

²¹⁶ *See* WARNER, *supra* note 1, at 168.

²¹⁷ Gay & Lesbian Advocates & Defenders, *Historical Timeline—Landmark Accomplishments*, at http://www.glad.org/About_GLAD/timeline.shtml (last visited Mar. 23, 2003).

²¹⁸ WARNER, *supra* note 1, at 163.

²¹⁹ 779 N.E.2d 638 (Mass. 2002).

²²⁰ Gay & Lesbian Advocates & Defenders, *GLAD Cases: HIV Prevention*, at http://www.glad.org/GLAD_Cases/index.shtml#aidslaw (last visited Mar. 23, 2003).

ices.”²²¹ GLAD’s participation shows potential for building coalitions across communities affected by HIV. Instead of shying away from substance abusers, perhaps even more stigmatized than GLAD’s GLBT constituents, the organization embraces the cause of intravenous drug users in order to combat HIV more effectively. Even though gay HIV+ individuals are not explicitly implicated by the needle exchange program, GLBT constituents and drug users are similarly situated relative to HIV and attempts to thwart progressive prevention efforts. Consequently, while some may find space in the same-sex marriage movement to make moralistic arguments about “clean” living, those opposed to these behavioristic appeals find voice and representation through expansive HIV-based advocacy.

GLAD presents a compelling model of a gay-based organization that fosters coalition-building and manages to oscillate between normalizing gay people and celebrating “a culture that enables sexual variance”²²² With its regional scope, GLAD is able to ground its advocacy within the community it purports to represent. The fear that clients (or donors) might have their goals shaped by lawyers representing them becomes less acute when lawyers function within the community itself and remain responsive to a more geographically compact, identifiable constituency. In such cases, “the lawyers’ influence on their clients’ aspirations . . . is less problematic.”²²³ Not only does its regional character enable GLAD to be more responsive to a diversity of GLBT positionalities, it also allows GLAD to pursue unpopular causes since such cases are less likely to have national implications. In other words, by not framing itself as a national organization, GLAD is not purporting to assert a national agenda for gays and is likewise not casting its representation across the nation’s entire GLBT population. With these tighter reins, the organization is able to more quietly handle public sex cases while forcefully pushing for same-sex marriage. GLAD recognizes that a liberal culture is a major part of the political spectrum in New England; by participating in this strand of liberal political thought, GLAD can push issues such as sex education and gender expression in an environment that is more receptive to left multicultural and pluralist modes of thinking. Ultimately, then, GLAD enjoys the benefits of being at the forefront of the national same-sex marriage movement while maintaining a regional identity that allows queer, pro-sex advocacy and more thoughtful client representation.

²²¹ *Id.*

²²² WARNER, *supra* note 1, at 7.

²²³ Note, *supra* note 81, at 1457.

V. THE LOCAL, GRASSROOTS ORGANIZATION—
GAY MEN'S HEALTH CRISIS

Gay Men's Health Crisis (GMHC) is a community-based organization in New York City. GMHC is a service organization that includes legal services among its programs. In this sense, the lawyers at GMHC are less involved in rights strategies and more invested in needs strategies.²²⁴ GMHC's "mission is to reduce the spread of HIV disease, help people with HIV maintain and improve their health and independence, and keep the prevention, treatment and cure of HIV an urgent national and local priority."²²⁵ While this mission statement demonstrates that GMHC bases its advocacy on health rather than sexual orientation,²²⁶ it understands, and makes explicit, the way in which the two are related: "[W]e will remain true to our heritage by fighting homophobia and affirming the individual dignity of all gay men and lesbians."²²⁷

GMHC defines the community it serves as a broad array of queer constituents. For instance, GMHC advertises its new Institute for Gay Men's Health as "serving all gay men including people living with HIV/AIDS, men of color, substance abusers, men who practice same sex desire, sex workers, bisexual men, people of transgender experience, immigrants, and youth."²²⁸ Indeed, this reads like the "bad" side of society's sexual hierarchy.²²⁹ Mapping Michael Warner's thinking onto this phenomenon, GMHC not only accepts but seeks to represent and advocate on behalf of those deemed most despicable by "gay moralists"²³⁰ who try to purify all group members in order to create a respectable gay identity for themselves. For instance, Warner is critical of gay men who blame their stigma on "sex addicts, bodybuilders in Chelsea or West Hollywood, circuit boys, flaming queens, dildo dykes, [and] people with HIV . . ."²³¹ By serving these very constituents, GMHC can be seen as providing service to the underrepresented in the gay-based community and rejecting their status as untouchables.

²²⁴ See Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, in *CAUSE LAWYERING*, *supra* note 12, at 31, 37.

²²⁵ Gay Men's Health Crisis, *Mission*, at <http://www.gmhc.org/aboutus/gmhcmain.html> (last visited Mar. 23, 2003).

²²⁶ While GMHC is specifically focused around health issues, Lambda and GLAD both feature HIV-based representation and advocacy as core projects. In this sense, Lambda and GLAD are not solely based on sexual orientation, but also transcend identity-based projects and seek to serve the diverse community affected by HIV.

²²⁷ *Id.*

²²⁸ Press Release, Gay Men's Health Crisis, GMHC Launches the Institute for Gay Men's Health (Oct. 1, 2002), at http://www.gmhc.org/aboutus/press/release_100102.html.

²²⁹ See WARNER, *supra* note 1, at 25–26.

²³⁰ *Id.* at 32.

²³¹ *Id.*

While GMHC's title explicitly references gay men and thus would seem to define its client base in this way, the organization serves a broad array of community members in a manner that suggests anti-identitarian queer thought and a reimagining of community and identity. For example, by including men who practice same-sex desire, rather than immediately labeling such men as "gay," GMHC tracks a queer analytic that looks to move beyond identity politics.²³² By not forcing men engaging in same-sex sex into the category "homosexual," GMHC recognizes that many men in need of health care and legal services will not identify as gay because of their own homophobia and the homophobia in their communities. At the same time, the explicit inclusion of this group in GMHC's service model points to the relational quality of homosexuality and carves out a space in which same-sex desire is not constructed as an oppositional category to heterosexuality.²³³

Moreover, by including multiple and varied groups under the organization's umbrella, GMHC challenges the very notion of community and suggests a positive practice of post-identity politics that builds coalitions and recognizes intersecting interests. Lani Guinier and Gerald Torres, in *The Miner's Canary*, explore the way in which communities of color experience race asymmetrically; that is, being "raced" in America produces contingent, varied subjectivities.²³⁴ Similar claims can be made about sex or sexuality; gay men, lesbians, transgender individuals, bisexuals, queers, and other sexually marginalized individuals experience their sexuality in different ways. Guinier and Torres recognize the multiplicity of racial experience, but they turn this critique of identity politics into a source of empowerment through nuanced, context-specific coalition-building.²³⁵ Applied to the GLBT context, individuals who find themselves at the bottom of sexual hierarchies share experiences of oppression. Coalitions among these individuals, and the groups with which they associate, can create real change.²³⁶ While Guinier and Torres adopt the term "political race," an analog for sexuality similarly "recogniz[es] as an asset the potential solidarity and connection that those who have been [sexed] often experience."²³⁷ While Lambda and GLAD can be seen as aligned with this vision of social justice by serving gay men, lesbians, transgender individuals, and those living with HIV under a single banner, GMHC seems most responsive to this idea by resisting fixed boundaries of community

²³² See Halley, *supra* note 31, at 42 (noting that a queer analytic maintains "that identity is not the core truth and safe zone of authenticity and authority . . .").

²³³ See *id.* (discussing the diacritical nature of sexual identity and the queer critique of the resort to identity politics).

²³⁴ See GUINIER & TORRES, *supra* note 35, at 92.

²³⁵ See *id.* at 92–93.

²³⁶ See *id.* at 93.

²³⁷ *Id.* at 95.

and including individuals on terms that do not even assume the existence of identity.

GMHC focuses its energy on direct client services, rather than impact litigation. Poverty law scholarship, which has dealt significantly with legal services organizations, tends to be anchored to idealized grassroots lawyering and notions of transparency and client empowerment.²³⁸ Of course, as Simon has shown, this body of literature is subject to criticism as overly romantic and idealized.²³⁹ However, it is interesting to assess GMHC within the ideals promulgated by poverty law scholarship. Within this vision, GMHC advocates provide legal services to individual clients with a vision for more systemic change,²⁴⁰ aware of the ways in which their clients' interests "involve a challenge to external hierarchy."²⁴¹ Work on one client's case can produce systemic change that benefits other community members. Since their clients are similarly situated in terms of the way they are marginalized on account of HIV, explicitly political postures by GMHC lawyers present all clients in opposition to the conservative status quo.²⁴² In turn, clients begin to understand their situations as indicative of broader systemic problems. Of course, such visions of social justice can easily disappear when lawyers are faced with the day-to-day pressures of client demands and unmanageable caseloads, but GMHC's connection to a specific issue—HIV—distinguishes it from legal aid offices that take on a range of issues. While GMHC's clients bring different legal issues to the table, their situations center on HIV (and often on sexual orientation discrimination) and thus provide common sites from which to mobilize for change.

In so hypothesizing, however, it is necessary to keep in mind the critiques of poverty lawyering ideals. That is, the idea of transparency to the client base is perhaps tautological and hides more than it reveals.²⁴³ In using a model of client autonomy and empowerment, a lawyer may in fact be constituting her client base even as her aspirations directly oppose such productive power. By connecting individual situations to a bigger picture of subordination, she may use her own notion of the politics at stake to sweep in many cases that clients in fact do not view as illustrative of some broader trend of injustice. Moreover, the picture of the po-

²³⁸ See generally White, *Mobilizing*, *supra* note 21.

²³⁹ See generally Simon, *supra* note 23.

²⁴⁰ See, e.g., Bellow, *supra* note 16, at 301 ("Exercising power always involves systemic consequences, even if the systemic impact is a product of what appear to be unrelated cases pursued individually over time.").

²⁴¹ William H. Simon, *Visions of Practice in Legal Thought*, 36 STAN. L. REV. 469, 485 (1984).

²⁴² See Bellow, *supra* note 17, at 121 (discussing his own legal aid experience in which he adopted "an explicit political perspective" toward cases in order to produce systemic change).

²⁴³ See Simon, *supra* note 23, at 1102.

litically aware, self-conscious advocate might be too much to ask of a lawyer dealing with the daily grind of urgent cases.

While I have pointed to GMHC's narrow focus on the issue of HIV as a potential positive force, it can certainly be argued that such single-mindedness is detrimental. Just as I criticized HRC for its exclusion of matters outside the liberal mainstream, GMHC focuses on HIV in a way that could be conceptualized as inflexible, unyielding, and exclusionary. In this critique, GMHC is HRC at a lower level of generality. My description of GMHC's changing client base and flexible representation, however, disputes this claim. Insofar as GMHC does not match its single issue to a rigid, single client, its work does not produce the same costs as HRC's narrowly focused work. Moreover, GMHC does not claim the same rhetorical and financial strength as HRC, accordingly limiting its ability to control the world of HIV advocacy and define the terrain on which AIDS is understood. These responses, however, do not make the critique powerless, and in fact, GMHC might be vulnerable to critiques similar to mine of HRC and to David Kennedy's of the international human rights movement.²⁴⁴

Since my concerns are primarily with the ethics of representation, I am less troubled by GMHC's singular vision. As a grassroots, street-level organization, GMHC offers more direct, intimate representation than an elite organization like HRC. With a more directly engaged constituency and a smaller geographical area to cover, GMHC not only interacts with much of its client base on a regular basis, but also lives and works within the community it purports to represent.²⁴⁵ This intimacy affords GMHC the opportunity to directly respond to client concerns and desires and to accommodate needs in HIV advocacy work that take the organization beyond its original structure and mission. Consequently, as a model of effective, responsible representation, GMHC does not suffer from the weaknesses arising from HRC's monolithic structure.

As a community-based organization, rather than simply a legal organization, GMHC provides a site for empowering and constructing a community. By taking HIV as the focus, GMHC redefines a status—and its associated behaviors—that the larger society pathologizes, using it instead as an organizing apparatus.²⁴⁶ By not defining the group in narrow terms, GMHC provides a space in which the local community it serves can construct itself in a way that provides tools for sustained activism.²⁴⁷

²⁴⁴ See Kennedy, *supra* note 78.

²⁴⁵ See, e.g., Mertus, *supra* note 113, at 1373–74 (“Studies have found that the closer a NGO is to the grassroots, the greater its chances at promoting positive social change because it is more likely to represent a highly motivated and engaged constituency.”).

²⁴⁶ See Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157, 165 (1994) (discussing how grassroots self-help organizations dedicated to the poor “redefine personal experiences that society defines as deviant or ‘pathological’”).

²⁴⁷ See William P. Quigley, *Reflections of Community Organizers: Lawyering for*

By providing a forum in which diverse individuals, such as gay white men, straight men of color, lesbians, and drug addicts recognize their common cause, GMHC advances a mode of advocacy that empowers the actual community it seeks to represent not simply through legal recognition of rights but also through sustained street-level political activism.²⁴⁸

GMHC does not include marriage as part of its agenda. In discussing the areas of legal services it offers, GMHC lists the following: “[d]iscrimination,” “[c]onfidentiality,” “[e]mployment,” “[i]nsurance,” “[d]ebt [m]anagement,” “[e]state [p]lanning,” “[l]andlord/[t]enant,” “[f]amily and [d]omestic [u]nity [l]aw,” “HIV+ [i]mmigrant [l]egal [r]ights,” “[b]enefits and [e]ntitlements,” “[h]ealth [c]are [a]ccess,” and “[m]anaged [c]are [c]onsumer [a]ssistance [p]rogram.”²⁴⁹ GMHC’s silence on the marriage question might prove revealing. Perhaps because HIV is at the center of GMHC’s work, and marriage seems at best a few steps removed from the pressing needs relating to health that are GMHC’s primary concern, GMHC focuses on issues more relevant to its clients. Furthermore, since GMHC provides direct client services and grounds itself in a model of grassroots activism, it uses strategies that are likely to provide desirable results for clients. Marriage is not likely to be extended to same-sex couples in New York in the immediate future. Moreover, a judicial decision mandating same-sex marriage is not prone to emerge from the case of a GMHC client with a pressing legal need. Rather, same-sex marriage would more likely result from a large-scale effort with vast resources and exemplary plaintiff couples who are not otherwise in need of legal representation.

In other words, GMHC’s clients need real, immediate conflicts resolved. While marriage might solve some of the clients’ legal problems, there are other ways in which GMHC can resolve its clients’ situations. GMHC’s ad hoc handling of individual cases contrasts dramatically with the systematic nature of the impact litigation organizations and reflects its choice to forego efforts aimed at broad institutional reform in order to meet clients’ urgent needs. Furthermore, GMHC’s lack of emphasis on same-sex marriage recognizes the extent to which its clients may already have “caretakers” willing to fulfill the private welfare system role of marriage. That is, since GMHC is concerned with the well being of its HIV+ constituents, it remains agnostic as to whether care comes from a lifetime

Empowerment of Community Organizations, 21 OHIO N.U. L. REV. 455, 472 (1995) (“In the context of an organization of poor or powerless people lawyering has as its goal the reallocation of power from those who have an unfair share to those who lack their rightful share.”).

²⁴⁸ See *id.* (discussing the process by which lawyers in leadership roles within community organizations help community members to see their common problems and craft common strategies and solutions).

²⁴⁹ Gay Men’s Health Crisis, *GMHC Legal Services & Client Advocacy Department*, at <http://www.gmhc.org/living/legal/legmain.html> (last visited Mar. 23, 2003).

partner or from the social networks that emerge from the unconventional intimacies of urban gay life.²⁵⁰

Of course, if GMHC clients were allowed to get married, and actually chose to do so, some of their legal issues would disappear. Issues such as insurance coverage and estate planning would be covered by the laws of marriage. Marriage would automatically confer certain benefits on clients that would consequently make litigation to secure those benefits unnecessary. In other words, marriage would make for more effective representation of some clients; accordingly GMHC supports the marriage movement.²⁵¹ But GMHC's representational work suggests that it is agnostic about the form in which marriage benefits are delivered to same-sex couples. In this sense, marriage within GMHC elicits almost exclusively the functionalist rhetoric discussed as part of Lambda's and GLAD's framing of the marriage campaign and resonates within Warner's queer positioning of marriage as part of a gay-based agenda.

GMHC's model of gay-based advocacy presents a highly contingent, negotiable mode of representation. In this sense, GMHC is a queer, thoroughly postmodern organization. It serves a client base that is not pre-defined. Rather, it molds to its changing constituency; for instance, as HIV began to spread from "a gay men's disease" to one that struck populations of color in devastating fashion, GMHC sought to provide greater service to communities of color.²⁵² With services based on health and not identity, GMHC's advocacy follows its constituency as determined not only by HIV but by the clients themselves. By broadly defining its client base and by reaching down into the otherwise untouchable ranks of queer constituencies, GMHC finds direct client services and grassroots activism commensurate with a program in which competing agendas and multiple communities can coexist. In this sense, GMHC's posture regarding marriage mirrors its model of advocacy: the clients themselves directly participate with lawyers in negotiating the value and desirability of same-sex marriage. If clients and lawyers continue to see that other strategies offer the most workable solutions for their legal and social struggles, then energy and resources will continue to be funneled into those efforts, with marriage waiting as something less than a panacea but more than just a novel legal strategy.

²⁵⁰ See WARNER, *supra* note 1, at 94 (pointing to the strong networks left over from the "disco seventies" as sites of gay support in times of crisis).

²⁵¹ Telephone Conversation with Vishal Trivedi, GMHC Immigration Project Coordinator, Gay Men's Health Crisis (Nov. 4, 2002).

²⁵² This is not to say that GMHC is immune to race-conscious critique. Insiders have criticized its lack of inclusiveness and insufficient commitment to diversity. See, e.g., Cohen, *supra* note 11, at 437 (discussing complaints of racism at GMHC).

VI. CONCLUSION

Assessing a broad spectrum of cases, strategies, and political affiliations required a discussion across a sample of the range of gay-based organizations. A model of advocacy premised on broad representation could not emerge merely from a discussion of a single organization, no matter how many issues its advocates pursued. From marriage to cruising, the same issue can be articulated in very different ways.

Analyzing the positioning and framing of same-sex marriage in paradigmatic gay-based organizations shows the ways in which the meaning and significance of marriage is highly negotiable and contingent. Marriage means different things to different organizations, and this depends largely on the community the organization purports to represent and the organization's vision for gays in America. This discussion has demonstrated that marriage can mean social recognition, functional ordering of dependency relationships, or simply one solution among many for particular legal problems. At the same time, this analysis has revealed ways in which the normative marriage model threatens to homogenize the GLBT movement and to leave behind dissenting clients. Exploring and emphasizing the functional and legalistic aspects of marriage allows a marriage campaign that is multi-faceted and dynamic; it also permits the existence of a vibrant world of GLBT advocacy less focused on marriage and more centered on non-normative causes.

Organizations position themselves in the marriage movement, but they also engage other subjects of debate. Multiple projects, strategies, and rhetorical devices enter the landscape of gay-based advocacy to represent those gays less invested in the marriage campaign. Organizations respond to clients' queer impulses by adopting sex-positive postures, react to their constituents' health concerns by advocating for those affected by HIV, and take action in the name of a range of constituents by organizing, for instance, on behalf of queer youth, transgender individuals, and sex educators. Accordingly, gay-based organizations, at any one moment, do not produce a unilateral normative vision. Instead, divergent ideological postures are given voice both within and across organizations.

A range of causes and constituencies is currently represented in legal and political circles, but the maintenance of this range requires preserving various organizations committed to a representational ethos that refuses to yield to majoritarian politics. The increased size and rhetorical strength of an organization like HRC threatens to streamline the GLBT movement. Such a streamlining risks reducing the movement to a singular cause and image and consequently losing much of the debate and diversity that shape effective advocacy. The reduction of the movement to a single organization is particularly undesirable when assessed within a context of public lawyering ideals that value a proliferation of discursive tools and client visions. This danger is especially acute when viewed in

context of an organization as normatively single-minded as HRC, but the GLBT movement is jeopardized when any organization is given rhetorical and financial preeminence. My proposal of pluralism as a representational culture points to the potential in maintaining different organizations equipped with divergent political orientations so that advocates can accommodate a dynamic client base with numerous differences of opinion.

Furthermore, such organizations can help each other by exchanging and sharing rhetorical, financial, and political strength. For instance, Lambda can lend its credibility and name to a particularly queer, urgent case on GMHC's desk, while GMHC can provide a vital, engaged, local client base. Lynn Kelly, in her discussion of lawyering for the poor, points to the importance of coalition-building.²⁵³ She describes how poor communities in New York found an unlikely friend in the urban gay population.²⁵⁴ Both populations found themselves similarly situated regarding housing and did something about it in the landmark case of *Braschi v. Stahl Associates Co.*²⁵⁵ As Kelly describes it, the case "expanded tenants' rights through a successful coalition formed between gay rights, poverty law, civil rights and other groups which shared the common goal of preventing . . . eviction . . . when a loved one dies or moves out."²⁵⁶ While the ACLU represented the client, the amici curiae pointed to the way the interests at stake extended to multiple marginalized communities; both GMHC and Lambda participated in this capacity.²⁵⁷ The cooperation and participation of GMHC and Lambda and the various advocacy groups' success in building coalitions resulted in a victory: the New York court held that the term "family includes two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence."²⁵⁸ In so doing, the court bestowed succession rights on Braschi, whose gay partner had died.²⁵⁹

In a polyvocal gay-based movement, gays living across a broad range of political contexts will find access to representation, organizations equipped with the discursive tools necessary to effectively advocate on their be-

²⁵³ See Lynn Kelly, *Lawyering for Poor Communities on the Cusp of the Next Century*, 26 *FORDHAM URB. L.J.* 721, 723 (1998).

²⁵⁴ See *id.*

²⁵⁵ 543 N.E.2d 49 (N.Y. 1989).

²⁵⁶ Kelly, *supra* note 253, at 723.

²⁵⁷ See *id.* GMHC itself notes another case in which it cooperated with Lambda: "In 1983, a physician was threatened with eviction from his home simply for treating people with AIDS. GMHC helped Lambda Legal Defense take the landlord to court. That suit—the first successfully litigated AIDS discrimination case—set a critical precedent." *Gay Men's Health Crisis, July 2000–December 2001 Annual Report: Client Services*, at <http://www.gmhc.org/aboutus/annual-report/ar2001-services.html> (last visited Mar. 23, 2003). Not only does this point to the value of pooling resources and mobilization efforts, but it also shows the way in which GMHC lawyers understand how their clients fit into broader trends of injustice. By enlisting the help of Lambda, GMHC transformed an individual case into a vehicle for systemic change.

²⁵⁸ *Braschi*, 543 N.E.2d at 54.

²⁵⁹ See *id.*

half, and unlikely coalitions capable of producing varied and surprising results. Of course, certain potential assets are sacrificed by not unifying the gay movement under a single banner. Perhaps gay advocates would find greater strength if they were able to present a united front, consolidate resources, and mobilize all constituents behind a particular push. But a pluralist model not only responds to concerns for comprehensive representation, it also promotes healthy intragroup debate and allows for dynamic and politically expedient flexibility.