Illegally Yours, with Updated Foreword

Laura Weinstock

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Recommended Citation
Laura Weinstock, Illegally Yours, with Updated Foreword, 27 Hastings Women’s L.J. 207 (2016).
Available at: https://repository.uchastings.edu/hwlj/vol27/iss2/6

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Foreword

Laura Weinstock

It’s hard to believe that, in the seventeen years since I wrote “Illegally Yours,” same-sex marriage has become legal in the entire country. Fourteen years ago, my daughter, partner and I had uprooted our family from San Francisco to Northampton, Massachusetts. Who knew we would land there just in time to experience Massachusetts becoming the first state to pass same-sex marriage, two years later? In that historic moment, in 2004, we actually married legally for the first time in our then thirteen-year union. I am grateful that I got to experience that moment. Fleeting as it was.

A year later, we moved back to California. We found ourselves demoted to domestic partners and then briefly, during the whole Prop 8 fiasco, elevated, demoted, possibly grandfathered (grand mothered?) and mostly exhausted.

I was very pleased in 2013, when the US Supreme Court invalidated DOMA and made our marriage legal on the federal level. After twenty-two years, we truly were legal and we have the jointly filed federal taxes to prove it.

Unfortunately, though I appreciated the momentous changes for humankind in general, on a personal level, this victory was bittersweet. By June of 2013, when the DOMA decision came down, my own marriage was dwindling to embers, until January 2014, when my (then) wife moved out.

I know that we achieved the marriage milestone, because I lived through and barely survived that quintessential married person saga: divorce. Straight or gay or somewhere in between, divorce is not for the feeble. And it is impossible to emerge from it unscathed.

There’s a whole new world out there, I’ve learned, as emerge, I ultimately have done. When I first met my ex-spouse, lesbians rarely dated and there was no internet. Today we have the wonders and perils of internet dating, three women on the Supreme Court, the first black president and quite possibly the first female president, next year. Young women in Los Angeles (where I now live), are flocking to take up boxing, because the standard, hapless girlfriend role has happily receded and kick-ass female action roles, have become, unexpectedly, de riguer. The Buddhists recognize that life is impermanent. And though we unenlightened beings fight this concept tooth and nail, these days, I regard it mostly in a positive
light. Without impermanence, neither we, nor the world, could ever change. Impermanence has brought us from a country where no states had gay marriage and only 30% of Americans approved of it, to one in which fifty states have it on the books and over 50% of Americans approve. It led me to question my own decision to stop practicing law for fifteen years, to the discovery, five years ago, that I love immigration law and have just opened up my own practice. My daughter, who was a baby, when I first penned this article, is about to go to college. Since my very legal divorce, I have made new friends, traveled, had unexpected adventures, and have a brand new girlfriend in my life. Who knows what is on the horizon? Women are now choosing in record numbers not to marry at all and this is creating new seismic shifts. We don’t know what that landscape will look like in twenty years time. Only that it won’t be the same as it is today. If we’re still around, let’s make a date to compare notes then.
Illegally Yours**

Laura Weinstock*


* I was a founding member and an editor of the Hastings Women's Law Journal from 1988-1991, its first three years of existence. Upon graduating from Hastings, I worked for almost a year doing plaintiff's employment discrimination cases. I was an adjunct professor at JFK Law School for three years where I created and taught the class, "Gender Bias and The Law." In 1994, my partner and I, Rachel Pray, created Woman Power Self-Defense, Inc., teaching self-defense to women and girls. I am also a writer, guitar player, Spanish and Portuguese interpreter, a volunteer reading tutor in the public schools and a new mother. I am a practicing Buddhist of the Thich Nhat Hanh Vietnamese tradition of Buddhism. I live in San Francisco with my partner, daughter and cat.

A feminist since age twelve, I was horrified to discover that although Hastings was situated in progressive San Francisco, the law school was anything but. Those few women who dared to speak up during class faced extreme hostility. Professors and students alike hissed at us, booed us, shunned us and treated us dismissively. From talking amongst ourselves we realized that many of us were suffering in similar ways. Our class may have been more than 40% women, but the environment did not reflect this. Out of this injustice arose the first group discussions about forming a women's law journal and eventually the Journal herself.

We were committed to creating a journal that placed women's reality front and center, not in the margins. This meant there must be room for all women's experiences, including those of lesbians and bisexuals, women of color, disabled women, working class women and other groups of women facing oppressions in addition to that linked with gender.

We pledged to create a journal that was an alternative to the purely academic journals which required each note to contain 150 footnotes. We wanted there to be room for creativity and activism. We accepted poetry and artwork as well as personal pieces, all high quality and all making room for the voices that we felt were not welcome elsewhere at Hastings. We were proud to be openly feminist!

As with all feminist endeavors, economic survival of the journal became onerous. In the third year we spent much of our time negotiating among ourselves and with the administration about how to make the journal official (meaning that it would receive funding each year like all the other journals) without losing or diluting our values and mission. I remember a discussion between the administration, another editor and myself, where we actually discussed the length of poetry that might be acceptable for its author to get credit. I felt that we were on dangerously thin ice and worried that by ensuring our economic survival, we were compromising the very things that were most crucial to who we were and why we had formed in the first place. This has not happened. I was pleased that we were granted official status and I am delighted that the journal has survived for ten years. It is imperative that we remember our original goals and struggles so that future law students make decisions with full awareness, clarity and intention and do not compromise on what is most important.
On Election Day, 1998, I woke up in a pool of sweat. There were many issues in the election that I cared about to varying degrees. But there was one issue being decided which had the power to drastically transform my life. For days before the elections, I had been looking for predictions about this momentous issue. If there was any mainstream media coverage of it, it was scant, and I missed it. Millions of Americans might no longer be barred from enjoying one of the most basic, fundamental rights, yet no one was covering the story. There was this cloak of silence, this invisibility that made me nervous. When I turned on the television in the middle of the day, Charlie Rose was interviewing an election pundit who told us that this election was basically about nothing. It was the year that didn’t really matter much. My heart sank.

What about the issue of marriage—something that seems to matter to more than a few people, if I’m not mistaken? The historic question of whether lesbians and gay men would finally be granted the right to legally marry was about to be answered. The voters of Hawaii were going to decide if their constitution should be amended to empower the legislature to limit marriage to heterosexual couples only.1 Although this issue has been addressed in many other states, the situation in Hawaii is different. Several gay and lesbian couples attempting to have their marriages legalized had been successfully plodding their way through the Hawaii courts since 1991. The Hawaii Supreme Court had already found in Baehr v. Lewin, that under the present Hawaiian Constitution, the state must have a compelling reason to deny these couples this basic civil right.2 The case had been remanded to the trial court and wound its way back to the Hawaii Supreme Court which had been expected to reach a decision favorable to the couples.3 It seemed almost inevitable in December of 1997 that the state of Hawaii would soon be required to issue marriage licenses to gay and lesbian couples. In no other state had lesbians or gays progressed this far.

For months, my partner and I, along with thousands of others, waited for this decision to come down. Every day, I combed the newspapers, looking for that enormous front-page headline to herald in our right to legally marry. As soon as that day arrived, we would jubilantly call our travel agent, fly to Hawaii and finally have our seven-year union legally validated by a government entity. We knew that far from cementing the numerous rights and privileges that ordinarily accrue to married people, this legal ceremony would only be the beginning of the fight. Those of us married in Hawaii would then begin to test in earnest our federal constitution’s concept of full faith and

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We would return to our states of residence, declare ourselves legally married and then the ‘fun’ would begin. Where states had already redefined their laws and constitutions to invalidate these marriages, legal battles would ensue. Even in states where anti-gay marriage statutes had not been passed, same-sex newlyweds would take to the courts. Eventually, the United States Supreme Court would probably have to decide if full faith and credit applied. I relished the opportunity to be a trailblazer in this fight.

Things didn’t work out the way I’d hoped. Throughout 1998, the Hawaii Supreme Court sat on this long-awaited decision. Meanwhile, in an attempt to undermine Baehr, the state legislature placed on the ballot the aforementioned amendment to the constitution. If it passed, this amendment could undermine Baehr. The window for gays and lesbians to get married was only potentially going to be cracked open until Election Day so it was imperative that the court hurry up and decide. It didn’t. Because the court never decided, the window never opened. If we were ever going to be allowed to legally marry in Hawaii, we had to ensure that the amendment not pass on Election Day. Everything depended on the voters.

The people supporting the amendment were extremely well funded by right-wing religious political groups. The Church of Latter Day Saints alone donated $600,000 to Save Traditional Marriage, the primary group supporting the amendment. A vicious campaign fomenting deeply rooted fear and prejudice ensued. Focus on the Family spent $500,000 on homophobic ‘educational’ radio and television ads. One such television commercial showed a family of two gay men and their children. The children looked absolutely miserable. Where were the advertisements showing gays and lesbians as wonderful parents with thriving, happy children? Our side needed to fight back. We needed to earn some money.

That was when Ellen Degeneres, her mother, Betty, and Anne Heche stepped in. The Human Rights Campaign and the National Center for Lesbian Rights sponsored a San Francisco fundraiser. A documentary, “The Real Ellen Story,” was shown describing the demise of Ellen’s show after she came out. The Degenereses and Heche answered questions to an adoring audience when it was over. Afterwards, there was a fundraising dinner attended by about sixty people. Singer Melissa Etheridge was also there with her very pregnant partner, Julie Cypher. Tracy Chapman also attended the event. My partner, Rachel, and I were there too. It was expensive. But, we reasoned, it was far more costly to pay an attorney to draw up documents replicating some (but not...
even all) of the rights and privileges marriage automatically confers. We
didn’t want to wake up on November 4th and wonder, “if only we had
contributed, it might not have passed.” Meeting Ellen and Anne was
wonderful. Their courage to be out despite the huge personal cost, inspired me
to be even more out than I already was—and inspired this Article. It made me
remember that nothing in the world ever changes without brave people taking
risks.

After that evening, I really believed we could win. Fundraising goals were
met; enthusiasm, energy, commitment were all there. A broad coalition of
straight and gay people assured us that they were working diligently in Hawaii.
I felt hopeful. A part of me was scared not to be hopeful. One of the
organizers of the fundraiser had stated that if we lost this battle in Hawaii, we
would not have the opportunity to be legally married in our lifetimes! It might
have been a tactic to raise more money. It might just have been pessimistic
thinking. “What if it were true,” I wondered on Election Day? I got furious
listening to the pundit on Charlie Rose. “This election was really about
nothing.” Nothing could be further from the truth.

So where were the reporters? The next day, it was nearly impossible to
discover the results. I turned on the television. Nothing. I went out and
waited for The San Francisco Examiner. It was late arriving at all of the
newsstands and stores. Finally, in the late afternoon, I bought an Examiner
and hunted through it with Rachel. Buried in the middle of the paper was one
sentence. It stated that the amendment to prohibit gay marriage in Hawaii had
passed.8 Rachel and I decided not to spend our much-needed vacation in
Hawaii after all.

Several days before the elections, Rachel had asked me, “How many times
have we been married anyway?” Affirming our love and commitment to each
other has always been important to us. It’s not as if we’d been waiting around
for legal recognition, not valuing other forms of validating our union. After
our first year together, we bought gold rings from an eighty-year old Italian
artist in San Francisco’s North Beach. We solemnly and joyfully placed these
on each other’s ring fingers. I was in love and wanted to loudly proclaim it. I
wanted the world to see this ring and know that I was firmly attached.

A few months later, we had a romantic vacation, ironically, in Hawaii.
Bursting with love and clarity that this was the woman I wanted to spend my
life with, I asked her to marry me. By this I meant having a wedding, of
course, since nowhere in the United States is it possible to be legally married.
She agreed. But before jumping into the frenzy of planning a wedding, she
wanted to have a private ritual first. We created a spontaneous, deeply moving
ceremony on a deserted beach in Kauai, with just the two of us attending. I am

8. See Card Ness, Gay Marriage Foes Have Eyes on 2000 Ballot, S.F. CHRON., Nov. 5,
glad that before we went public, we first honored our passion and commitment in this way. We laid a sturdy foundation which kept us unified and centered when things got crazier later on.

Before our actual wedding, we decided to attend the massive group wedding in front of the IRS building at the 1993 March on Washington for Lesbian and Gay Rights. This march, attended by a million people, was a turning point in our relationship with our families. Since my parents live in New York, and Rachel’s live in New Jersey, we asked them to support us and attend. It might not have helped Clinton to prevent discrimination against gays in the military, but the March helped transform our parents. The mass wedding occurred early on in the day. Many people were dressed in tuxedos and gowns, although most wore jeans and sneakers. I could tell that my parents, particularly my father, were not overly comfortable during the ceremony. There were hundreds of chalk hearts being drawn on the street with the names of the lovers getting “hitched” and my father felt compelled to add a heart with his and my mother’s name. It felt disappointing and inappropriate to me since they were straight, able to be legally married and were supposed to be there to support us. “Change takes time,” I told myself. “Look, they do seem moved by the couples together for fifty years who simply want their loving unions legally sanctioned.”

Unlike the wilder and more playful Pride Parades, this parade was much more mainstream. As far as the eye could see there were contingents of the types of people one sees every day—gay and lesbian teachers, firefighters, police officers, bank tellers, lawyers, doctors, soldiers and hundreds of families pushing strollers. As each new contingent passed, I could see the wheels turning in our parents’ brains, realizing that whatever their preconceptions had been, they were shifting.

Perhaps the biggest shift occurred for my father, who had a tougher time than my mother adjusting to the notion that his daughter is a lesbian. For as long as I can remember, my father has reminisced nostalgically about his days at the University of Michigan and about his Jewish fraternity brothers. Toward the end of the day, as we wandered away from the parade, we came across a rowdy bunch of gay men partying in and around a doorway. My father, who until that moment had been noticeably uncomfortable being surrounded by so many gay men, suddenly realized, that what was transpiring inside that doorway was a raucous celebration by gay members of his Jewish fraternity at the University of Michigan. Without a moment’s hesitation my Dad disappeared inside that door for a half an hour. He returned, gleeful, glowing, eager to tell us about all the schmoozing he had done with his half-clad, toga-wearing, “brothers.” From that point on, my father has accepted me and supported my relationship to a much greater extent.

On June 12, 1994, we had our fourth ritual, our wedding, with one hundred and thirty people in attendance. This wedding was a creative work of art, as well as an affirmation of our love, compatibility, commitment and teamwork.
It represented a synthesis of our many selves—feminist, Jewish, goddess-nature revering, lesbian, artist, activist, innovator. We were married by a Jewish Renewal Rabbi with whom we had worked and struggled for many months. With him and the cantor, we feminized or made gender neutral the Hebrew prayers, and we emerged with a sense of awe without ever using the word God. Rachel and I kept enough of the traditional symbols of Jewish weddings (chuppah, seven blessings, circling around each other, stomping on the glass) that it was recognizable, but we made everything egalitarian and feminist. We essentially created from scratch what was not useable from this ancient, patriarchal, heterosexual institution. The ring ceremony honored the courageous women who loved each other in the past but who were not able to be as open as we were being in that moment. Our vows were carefully crafted; the seven blessings were chosen from our favorite poems, stories, songs. Both sets of parents, siblings and relatives were present. We were conscious that in this respect we were much more fortunate than many gay men and lesbians. Maybe because we knew that we could not attain legal married status and that the old forms did not apply to us, we took nothing about the ceremony for granted. It was solely about celebrating and honoring our love. It reflected our own unique ways of communicating this.

And yet, to arrive at the moment where my mother sang to us under the chuppah and she and everyone present wept, where an aunt from Orange County told us she had discovered her ‘womanhood,’ where friends proclaimed it the “most amazing wedding they’d ever attended,” where a year later people still talked about how moving it had been—to arrive at that moment where the sun broke through the fog in a beautiful garden in Bolinas overlooking the ocean and the city of San Francisco, where despite how radical we had been, people felt included—had not been easy. Although both of us had been out to most people in our lives for over a decade, having a wedding requires one to be out like you never imagined. Like everything else in life, coming out is a process. It deepens and extends and is never ending.

To begin with, we had to tell our parents. Although they came through royally for us on the day of the wedding, they were less than enthusiastic when we first announced our plans. It took an entire weekend of horrendous fighting before my parents were able to even congratulate us. Thank goodness they had gone to the March on Washington, or we might still be at war. Then, of course, they had to “come out” themselves to all of the people they wished to invite, like my pediatrician (an old friend of the family) and friends and colleagues at work. In fact, only a few years earlier, I knew that my father had told his boss that I had broken up with my “boyfriend” when my last girlfriend and I had split up. But this time around, his boss was sent a formal wedding invitation and the first presents we received were a pasta maker and pasta bowls from him. Since we had been afraid that people were going to shun us or not understand the seriousness of our commitment, it was wonderful to receive this and all of the other gifts and cards. That people could make this
leap and treat the union of two brides as they would if they'd been invited to a wedding of bride and groom, amazed and touched us deeply.

At this point, I find it necessary to make clear my views on marriage as a whole. I am well aware that same-sex marriage is far from monolithically desired in the gay and lesbian community. Just the other day, I was reminded of this fact when a good friend told me she was writing an anti-gay marriage paper. "Of course, I believe lesbians and gay men should have the right to marry," she said, "I just think we should widen the discourse." By this, I took her to mean we should be both critical of the institution of marriage and encourage greater acceptance and validation of a wider variety of unions. She, like many gays and lesbians and progressive people of all kinds, are wary of anything that smacks of 'normalization.' Queers are unique. We don't want to become just like straight people except that we are gay. Our differences are larger than this and these differences, and our marginalization, are to be celebrated, not smoothed over and erased. So the argument goes. I quite agree.

Who can argue that marriage is and has been for millennia, a misogynist institution? Passing women from father to husband as easily as sheep and cows. Denying married women the right to own property, inherit, take custody of their children, in some countries divorce no matter what the circumstances or even live when the husband dies. Granting husbands absolute authority over their wives and children including the right to beat them, have more than one wife, rape them, cast them aside for not producing male heirs and kill them if adultery is even suspected. Even today, the vast majority of women take their husbands' names and this is considered normal and not discriminatory. Those women who hyphenate or keep their own names almost always give their children the husbands' names. This too remains acceptable, ordinary, unquestioned behavior. We know that women do far more than their share of housework, childcare and eldercare even when they work full-time out of the house and earn as much or more than their husbands. There may be occasional exceptions to this rule, couples who valiantly strive to buck convention and create an equal marriage. But as a whole, marriage continues to be a conservative, far-from-feminist institution.

As to the other points my friend raised, of course, of course. Of course different kinds of unions, relationships and families should be recognized and valued. Of course, marriage shouldn't be the only way to bless your union and be bestowed with hundreds of benefits, rights and privileges. And of course, what is wonderful and unique about our outsider status should be allowed to shine. It should not be abandoned in exchange for a piece of paper, albeit a powerful one.

Rachel and I were first skeptical of having a wedding (even a non-legal one) for many of these reasons. From the time I was twelve and first became a feminist, I knew I was never getting married or having kids. I didn't see how you could be equal if you did. Even two women or two men getting married
can so easily fall prey to unequal roles. If I can’t stomach inequality between men and women, I certainly don’t want to perpetuate it between two women. Rachel and I work hard in our relationship to stay true to our ideals of equality. And, we certainly haven’t given up our outsidersness by having a wedding or working to support gay marriage. Before we met, Rachel had changed her last name to that of her maternal grandmother’s maiden name. When we wed, we both kept our names. My father’s daughter (not just his son) can pass on to her children, our family name. If anything, we are more ‘abnormal’ than ever. Our wedding was a supreme reflection of our radical outsidersness. In fact, our wedding did “widen the discourse on marriage” because in every detail, from structure to content, we expanded the old concepts, discarded the old frameworks and assumptions and created new forms to honor our love. We continue to live what we created in that ceremony, maintaining our far-from-the-mainstream, ‘abnormal’ views about politics, gender, class, race, sexuality, spirituality and living life.

Our wedding not only transformed many of the lives of our wedding guests, but also dramatically changed the way they treated us and the way we felt about our relationship. We did not expect these changes. We were amazed that after our wedding, Rachel’s ultra-conservative Republican uncle, who previously had not really acknowledged my existence, began to address all correspondence to both of us. When relatives and old family friends phoned us, they always asked about both of us—in fact they treated us, two women, as a married couple. Before the wedding, even though we’d been together for three years, they simply had not. When times got rough in years after the ceremony, we were helped by knowing we had made this important rite of passage. We felt watched over by the one hundred and thirty people who promised to help sustain our union. And these people, many of them very ordinary, middle-America heterosexuals, were moved by the powerful, emotional content of the ceremony. Whatever their fears and misapprehension had been beforehand, afterwards they were not the same. It was as if the wedding itself served as its own ambassador for making gay marriage more acceptable in the wider world. No longer was it just gays and lesbians re-educating the world, but all of the people who came in contact with us that day and experienced first hand what we are like. Our wedding was a radical act. It has changed the world.

Since we were blessed so completely by this wedding, why the eagerness for legalized marriage with the blessings of our government? I have mentioned some of the reasons progressive people do not favor gay marriage. What then, are some of the most pressing reasons to fight for what some have labeled a right of dubious value?

First, there is fundamental fairness. There are various rights that some

9. I do not think it helpful to this discussion to mention why this is so or why religious right fundamentalists do not support us.
might deem of dubious import. Many of us have no intention of ever serving in the military but we support the right of qualified women, people of color and gays and lesbians to serve and advance in rank without facing dire consequences. Women were once routinely barred from jury duty and although many of us say we wish we didn’t have to serve now, we are aware that women jurors are often vital in securing justice. Many of us never give a second thought to where we sit on a bus, but most of us remember the violence that ensued when Rosa Parks, a black woman, first sat in the front, thereby challenging an entrenched, legally sanctioned system of racial oppression. To allow whites rights and legal protections that are denied to blacks is fundamentally unfair. To allow men rights and privileges denied to women is fundamentally unfair. And to allow heterosexuals rights, privileges and legal protections that are denied to gays and lesbians is fundamentally unfair.

We who are denied these rights are second-class citizens. We experience discrimination, violence and a lowered quality of life. In fact, there is a thin line between discriminatory beliefs and actually condoning or committing hate crimes. Certainly, it was easier to brutally murder Matthew Shepard because of the prevalence of anti-gay attitudes.10 Those who most vehemently oppose granting gay people the fundamental right to marry are also among those who oppose protecting gays from job and housing discrimination. They call these protections ‘special rights.’ They are among the most vocal perpetrators of hate speech. The link between hate speech and later violence has been well documented.11 It comes as no surprise to most of us that the most confirmed homophobes are also racist and sexist. There are powerfully entrenched, historical systems of oppression against women, people of color, and gays and lesbians. Any time oppressed people seek to secure for themselves the rights that others take for granted but do not wish to share, there is struggle, hate and violence directed at the ones seeking to disrupt the status quo. I have noticed that many lesbian and gay organizations, once lukewarm on the issue of gay marriage, now support it because they too are aware that the forces that oppose gay marriage, simply oppose gay people as a whole.12

10. Matthew Shepard was a 21 year-old openly gay student at the University of Wyoming. He was attacked on October 7 or 8, 1998. Motivated by homophobia, two students lured Shepard out of a bar, beat him with a pistol butt and left him tied to a fence to die. He died on October 12, 1998 after being in a coma for five days. The two students were charged with first-degree murder. The incident sparked nationwide vigils honoring Shepard, who was a gay student leader at his campus, and underscored the need for stronger hate-crime legislation around the country, including Wyoming, which has no such laws. See A.P., Gay Beating Shakes Wyoming Town, S.F. CHRON., Oct. 12, 1998, at A2; Wyoming Gay Student Dies off His Wounds, S.F. CHRON., Oct. 13, 1998, at A1.


12. I have discussed above some of the valid concerns that gays and lesbians have expressed in opposition to gay marriage. Of the ones opposed, most don’t believe that we should be denied this right but now say that they personally would not partake of it. However, I do believe that there are some gay people who are plum against this right,
Second, there are the hundreds of benefits that marriage confers. Those of us who cannot legally marry must attempt in a piecemeal fashion to create legal documents conferring some of these rights. For example, after Rachel and I had been together for a certain period of time and our commitment and feelings for each other were clear, we went to see a lawyer. This cost money. We created powers of attorney for health, so that if either of us were to get sick, the other would have hospital visitation rights and would be consulted to make certain crucial medical and philosophical decisions. Without this document, we could be barred from visiting each other in the hospital. My partner’s family members, who know far less about her desires and beliefs, would be consulted and I would have no standing to do what I know she would want. If we could legally marry, this painful scenario would be moot.

Similarly, we created a power of attorney for finance. This enables each of us to sign checks for the other, should there be reasons that one of us becomes unable to do so. The law recognizes that even without a medical tragedy, it is often a matter of convenience to be able to sign checks for your spouse from time to time. As long as we carry around our steadily growing pile of documents, we too, can legally sign.

While we were in the attorney’s office, we also drew up our wills. Since, under the law, we are not each other’s natural supposed heirs, not being close blood relatives or spouses, we knew it was necessary not to die intestate. We wanted it to be known that we are each other’s main beneficiaries. We did not want either of us to be potentially embroiled in bitter struggles with family members, unable to prove that even if we were not the legal spouse, we were certainly de facto spouses. We thought it was important to leave a legal trail that documented the seriousness of our relationship. We did this partly to ensure that should there ever be a probate fight or any other contesting of what we have meant to each other, we had concrete proof.

All along the way we wanted both to express our love and also to make certain that this commitment, as valid as any other, is acknowledged. We did not want to be treated as a nonentity, and so we went along, step by step, securing the legal rights that we were able to secure. For example, we became Domestic Partners one fine Valentine’s Day. Contrary to what many people period. They cannot imagine that we deserve such a right. Or maybe they believe that because the world doesn’t seem ready, we shouldn’t rock the boat on this one. This attitude greatly concerns me. It reminds me of the gays and lesbians who felt that the Ellen show was too gay and that maybe the producers should have taken tiny baby steps forward, not leaps. I thoroughly disagree. I call this attitude the ‘colonized mind syndrome’ that shows up frequently in the brains of oppressed people everywhere. I understand it. I have compassion for those who suffer from it. But it makes me angry. I love the power and kick ass scowl of Xena. It was a giant leap forward to have a woman be so physically powerful. Because of Xena, women are being shown as physically powerful in other television shows and movies. I loved how brazenly gay the Ellen show became. For the first time, I saw my life on screen. It was disconcerting and mindblowing and I finally understood why straight people like television. It is the giant leaps that propel us forward. I have no patience for anyone who doesn’t believe we deserve true equality.
believe, the San Francisco Domestic Partnership law did not confer any of these benefits. We became legally responsible to care for each other financially and assume each other's debts, but we did not attain hospital visitation rights, inheritance rights, the ability to take time off for each other's funeral or any other right. We were not city workers so did not gain health insurance rights. It is a lovely lavender document which we have framed and placed in a prominent place on the wall, near our wedding ketubah, but it does not confer any rights and, like our ketubah, certainly does not approximate marriage.

The benefits of marriage are nothing to be scoffed at. Not being able to attain them is discriminatory. It is fundamentally unfair. It is financially costly. It fosters a sense of second-class status that is humiliating. Still, there are many people who blankly stare at me when I explain how unfair it is that we have had to go through this process to attain some of these necessary rights and protections. “At least you can do it,” they say. It is then that I pull out my final card: the extent to which Rachel and I viscerally suffered and experienced this second-class status, pain and humiliation when we began the process of adopting a child from China.

THE INTERVIEW

We chose an Adoption Agency that was recommended not only for its excellence, but also for its acceptance of gays and lesbians as good adoptive parents. We knew in advance that we would not be able to be out for the international part of the process. So it was all the more important to us to be as out as possible during the domestic part. We were first scrutinized by the director of the agency. She ruled out certain countries immediately. These countries were overly aware of lesbians and suspicious of “single” women. In fact, certain countries required you to be married to adopt. One of the benefits of China was that they allowed single women to adopt. In fact, as she stared at us approvingly, she told us that because of how we look, it would be possible for us to go to China together to pick up our baby. In other words, neither of us looked too stereotypically like lesbians (butch dykes) to jeopardize our ability to take home a baby. What a backhanded way to be relieved. She didn’t mean to be insulting or homophobic. She was just trying to ensure that as many abandoned babies as possible got adopted. We had already met a lesbian couple who had adopted a baby from China who had not passed the “dyke test.” Only one of them had gone to China. The other one still feels as if she missed out on a crucial experience as well as the initial two weeks of bonding.

“Why international?” Many friends have asked. “Why not adopt domestically?” The answer for us was simple. In domestic adoptions, the biological mother must choose you. Even heterosexual couples must wait an undetermined length of time. As a lesbian couple, we would most likely wait much longer. More importantly though, the biological mother can change her
mind for a period of time after the baby comes to live with us. Giving up a baby that we had already become attached to was absolutely not an option for us. We knew that adopting in China would be long and arduous. But we knew also, that if we succeeded in jumping through all the hoops, there would be a baby at the other end that no one could take away from us. Besides, the vast majority of the abandoned babies in China are girls. It appealed to us to adopt a child who had most likely been abandoned simply because she was a girl. We knew that the Chinese babies were fairly healthy compared to babies in other countries and that they were typically not exposed to drugs and alcohol. We had met several adopted Chinese girls and were smitten.

THE PAPERWORK.

Because China requires the petitioner to be at least thirty-five years old, only I was qualified to be the petitioner. This meant that I would be the legally adoptive parent. As far as China was concerned, Rachel was a person who lived with me to help defray the costs of inordinately high Bay Area real estate. She was a person who needed to prove she had no criminal record and no communicable diseases. She was not the other parent. She was not my committed life partner. She was just a person living in the house. Unlike married straight couples, we could not adopt as the family that we are. Over and over, this situation hurt us. Even though we knew that one day the child would be our daughter, it was very difficult for us. It is difficult to be told that to become a parent, you must deny your true self, your true existence, your love, your partner, your life. Becoming a parent started with an untruth. When the social worker came to do the home studies, a humiliating process in and of itself, we had the extra layer of knowing he was writing lovely reports that did not reflect the truth. He was very nice to both of us, knew Rachel too would be a mother to our child, but he focused all his energy on me. Did I ever have a boyfriend? Did we go to the prom? This relationship (that he conjured up) didn’t work out and I wanted a child anyhow, he wrote to China. Apparently it was the right thing to write.

Meanwhile, we worked our way through reams of paperwork. One of the biggest hurdles we had to overcome was financial. Married couples can petition to adopt based on both spouses’ income and all of their accumulated assets. As a ‘single’ petitioner, I was only permitted to show my income and separate assets. The social worker didn’t even want me to list our joint checking accounts! I was not earning very much money; this was a substantial blow. It would have been so much easier to fulfill this requirement if we could have combined our incomes. We were afraid that the INS would not approve us and that we would have to start all over in a country where Rachel could be the petitioner. I felt devalued and angry that once again we were being mistreated. Rachel felt invisible. Eventually, the agency found a non-homophobic INS agent who was used to gay people adopting. She understood that, in reality, both of our assets would contribute to the well-being of this
child and she allowed us to submit evidence of our joint accounts. We took a deep breath and continued.

Once all of the paperwork was completed and we received our INS approval, we dealt exclusively with the liaison agency that would actually be taking us to China. Every phone call, every interaction could only be made by me. Unlike the domestic agency, they never knew Rachel existed. When finally, 13 months into the process, they called to tell us the exciting news that they had found our baby, they wouldn’t tell Rachel because I was not at home. More salt in the wound.

THE CHINA TRIP

When we went to China with our group of 53 adults, we took extra precautions to not appear like a lesbian couple. I took off my gold ring that looked like a wedding ring. Rachel took off our actual wedding ring. She covered the Silence = Death stickers on her camera with shiny animal stickers. Rachel even put barrettes in her hair the day we went to pick up our daughter and I wore a pink T-shirt. Some people figured it out anyhow and we swore them to secrecy and discretion (something neither of us was accustomed to). We didn’t want the wrong person, either a conservative member of our group or a Chinese official to hear anything that might tip them off. It was difficult to talk to people. Instead of saying, “we,” I had to say “I,” and I felt like my life was a bookshelf with all the lesbian titles turned around. Once we were given our wonderful daughter, only I carried her in her snuggly. They handed her to me and Rachel snapped the glowing picture. Fortunately, a friend who knew immediately snapped a picture of the three of us together as a family. I had still one more humiliating interview at the American Consulate, where the baby and I were separated from Rachel and they scrutinized my tax returns. I was given a lecture and felt like I’d slid across the finish line by the slimmest of margins. It wasn’t until we landed at the San Francisco Airport, that I breathed easily. We had done it.

For a little while longer, I will still be the sole legal parent. But meanwhile, we are out and open as a family of three. Talya has two mamas and everyone knows. We are participating in California’s Re-Adopt program. Following that, we apply for citizenship for her and then we begin second parent adoption whereby Rachel will legally become Talya’s mother. This last adoption is more of the same. It is expensive. It requires more home studies. There is an automatic denial issued to all lesbians and gays no matter how qualified we are. Then you petition the court and because we live in the Bay Area, Rachel is eventually granted legal permission to adopt her own child. And we are happy that we can do it. But why should we or anyone else have to go through all of this? If we could get married, we wouldn’t have to. Even my friend writing the anti-gay-marriage paper conceded that when it comes to having children, gays and lesbians are greatly harmed by not being able to marry. Imagine the outrage, if a court told your mother that your father could
not be considered the legal parent of their children unless he submitted to home
studies, hired a lawyer and appealed to the mercy of a court!

About a week after the elections, I spoke to my mother on the phone. She
was very supportive about what happened in Hawaii. I told her that I’d been
surprised by the results there. She, however, was not surprised. “The world
isn’t ready for gay marriage yet,” she said. “People are ignorant. They think
that gay people are abnormal unless they’ve come in contact with them.
Besides, there are so many conservative people in Hawaii and more moving
there all the time.” She vehemently disagreed that this was our only chance to
get legally married. “People are always naysaying everything. There’ll be
another chance. You’ll see.” Meanwhile, she told me not to go to Hawaii for
my vacation. “Go somewhere more supportive of gay people.” My mother
has come a long way since I first told her I was getting married to a woman.

Sure enough, Mom’s predictions are being echoed elsewhere. In a recent
letter I received from the Human Rights Campaign, one of the largest gay and
lesbian organizations pursuing the right of same-sex marriage, there was much
optimism. The governor of Hawaii, angry at the viciousness of the anti-gay
forces in the recent battle there, has announced that he will introduce a
comprehensive domestic partnership proposal in the next legislative session. It
is not the same as achieving the right to marry, but it is far ahead of where we
have been so far. One of the attorneys on the Baehr case claims in this letter
that “the rights and responsibilities of marriage could still be granted to gay
people under a different name in Hawaii . . . by a combination of the Baehr
case and the domestic partner bill that the governor has promised. The fight is
not over but neither is it lost.”

Meanwhile, Rachel and I decided to take matters into our own hands.
Saddened by our continuing inability to get legally married, we felt it was high
time to celebrate what we have attained. We survived the years of trying to
bring a baby into our lives. We survived the Chinese adoption process. We
have a wonderful daughter who brings us and our extended families
tremendous joy every day. We have remained loving and committed through it
all. To commemorate these milestones, we went out this November and
bought ourselves a third ring. The artisans of the ring are from New Zealand,
land of Xena Warrior Princess who knows how to fight the good fight. These
are our illegal engagement rings. Defiantly, we will wear them until gays and
lesbians can legally marry.

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13. See Foley, supra note 1.