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## Once in the Closet, Now in the Courts

Why Marriage? The History Shaping Today's Debate Over Gay Equality George Chauncey  
Basic Books: 200 pp., \$22

Why Marriage Matters America, Equality, and Gay People's Right to Marry Evan Wolfson  
Simon & Schuster: 242 pp., \$22

David J. Garrow, David J. Garrow is the author of the Pulitzer Prize-winning "Bearing the Cross," a biography of the Rev. Martin Luther King Jr.

Gay marriage is one of today's most hotly debated issues. In May, Massachusetts extended the right to marry to lesbians and gay men. On Thursday, a California court voided thousands of gay marriages performed in San Francisco. President Bush is calling for a constitutional amendment to limit marriage to male-female couples. So far such an amendment has no chance of winning congressional approval, but efforts to add anti-gay provisions to individual state constitutions are moving forward across the country.

Why is gay marriage now a front-page issue, and where did it come from? Right-wing critics blame "activist judges," but the Massachusetts court that mandated marriage equality was directly inspired by last year's historic U.S. Supreme Court ruling in *Lawrence vs. Texas*, which struck down the nation's few remaining state sodomy statutes and declared that gay Americans cannot be treated as second-class citizens. Conservative Justice Anthony M. Kennedy, a Republican from California and a devout Roman Catholic, wrote the opinion.

Just 17 years earlier, the high court issued an opposite, virulently homophobic decision, *Bowers vs. Hardwick*, which upheld the criminal statutes now voided by *Lawrence*. *Bowers* made it seem as if gays would remain the social outcasts that it claimed they always had been.

Yet over the last two decades, gays and lesbians have entered the U.S. cultural and civic mainstream. There also has been a remarkable blossoming in scholarship on gay and lesbian history, books that recaptured and brought to light a forgotten American past. One of the most notable was George Chauncey's "Gay New York," an eye-opening account of how, in the decades before 1930, gay men were openly visible and widely accepted participants in the city's social and cultural life.

Now Chauncey, a University of Chicago historian, turns his expert eye to how the evolution of gay life since then has brought the marriage issue to the fore. "Why Marriage?" is a short book, but it is a tour de force of historical analysis and explanation, essential for anyone eager to understand current political arguments.

Only with the onset of the Depression and its effect on men's status as family breadwinners, Chauncey explains, did gays encounter the widespread social ostracism and intense legal persecution that drove them underground into all-but-invisible lives until the late 1960s. "Anti-gay discrimination," he writes, "is a unique and relatively short-lived product" of the 20th century and "is neither natural nor inevitable."

Fifty years ago, gays "confronted a degree of policing and harassment that is almost unimaginable to us today" and which now "is almost entirely forgotten." David K. Johnson's "The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government" is a heart-wrenching reminder that homosexuals faced brutal employment discrimination and endless police hostility. Though the McCarthy era is remembered for the targeting of alleged Communists, far more government employees were fired for being gay than for sympathizing with the Soviet Union.

The severity of that repression, Chauncey says, stimulated the first gay political activists to speak out publicly in protest. Their initial assimilationist agenda, emphasizing that homosexuals were hard-working and patriotic Americans, not child molesters or "security risks," turned into an embrace of gay identity and pride soon after the African American freedom struggle likewise shifted from an integrationist to a cultural-pride orientation. The "coming out" of hundreds of thousands of gay Americans to their straight friends and neighbors "normalized" homosexuality, Chauncey says, by "showing outsiders that homosexuals were not so different" as they had imagined.

Beginning in the early 1980s, two tidal waves washed over gay America. The AIDS crisis "led to an unprecedented mobilization of gay men" on behalf of those who fell ill and in protest against government disinterest. About the same time, with "the astonishingly rapid appearance of what everyone soon called the lesbian baby boom," gay people emerged as two-parent families. "The mass experience of child-rearing and death," Chauncey writes, magnified both gays' visibility in society and their painful interactions with officials, who seldom treated unmarried partners with the deference accorded legal spouses.

The greater public presence of gay couples led to increased heterosexual support for gay rights but also to a heightened awareness by these couples that they didn't have "the same recognition, protections, or rights that heterosexual couples took for granted." In the early 1970s, a handful of pioneering gay couples unsuccessfully attempted to secure marriage licenses, but aside from the network of gay congregations that made up the Metropolitan Community Church, no other gay organization pursued marriage prior to the mid-1990s.

Even a decade ago, Chauncey notes, advocating gay marriage was a "distinctly minority position in the lesbian and gay movement," notwithstanding widespread support from "lesbians and gay men at the grassroots level." When several Hawaiian couples approached the Lambda Legal Defense and Education Fund, the premier gay rights litigation group, in early 1991 seeking counsel to file a right-to-marry case, Lambda wouldn't let its attorney Evan Wolfson, a strong supporter of marriage equality, take the case.

A local lawyer for the American Civil Liberties Union, Dan Foley, did file the Hawaii lawsuit. But few gay activists gave it much thought until May 1993, when the Hawaii Supreme Court, in what Chauncey terms a "historic breakthrough," ruled that banning gay marriage appeared to violate the state's equal rights guarantees.

The Hawaii decision launched Wolfson on a passionate crusade to convince other gay activists that the right to marry should be pursued and could be attained. Opponents of gay marriage succeeded in amending Hawaii's Constitution before the state courts completed their review of the case under the new equality standard, but Wolfson's Pied Piper devotedness bore fruit elsewhere, as lawyers from Gay and Lesbian Advocates and Defenders (GLAD) filed similar constitutional lawsuits challenging gays' exclusion from marriage in Vermont, then in Massachusetts.

The Vermont case ended in partial victory in 2000, as the state Legislature enacted "civil unions" in response to its high court's command that the state provide gays with all of the benefits and protections of marriage, even if not the actual name. Like California's Domestic Partner Rights and Responsibilities Act of 2003, the Vermont result eliminated many of the tangible inequities experienced by gay families. However, absent the full legal status of marriage -- and recognition of that status by federal government entities like the Internal Revenue Service -- gay equality was an unrealized dream.

The political battle was fully joined when Massachusetts' high court declared last November that only real marriage could meet America's standard of equality. Comparable suits are now pending in many states, including California, where the ruling that San Francisco's mayor cannot authorize same-sex marriages didn't address the more fundamental constitutional issue.

In "Why Marriage Matters," Wolfson articulates the pioneering arguments that have made him one of the nation's most influential gay activists. He eschews terms such as "gay marriage" or "same-sex marriage," because those might imply something unique or different. "We don't want 'gay marriage,' we want marriage" period, he pointedly declares.

Chauncey and Wolfson cogently contend that their opponents' arguments fail when carefully examined, especially the claim that marriage must be restricted to male-female couples in order to encourage child-bearing. As Wolfson puts it, "no state requires that non-gay couples prove that they can procreate -- or promise that they will procreate -- before issuing them a marriage license." Likewise, they say, opponents' claim that a male-female household is the optimal setting for child-rearing runs counter to consistent research findings that children raised by same-sex couples experience no detectable disadvantages. What's more, Wolfson writes, "there are at least a million kids being raised by gay and lesbian parents in this country" who are indisputably disadvantaged by their families' inability to secure the legal protections and benefits that automatically accrue to heterosexual parents.

The core issue in marriage equality, Wolfson writes, is "whether the law should continue to have a gay exception to the way we treat families." Opponents of gay rights, Chauncey concludes, understand that marriage is "the ultimate symbol of the equality they would deny to gay people."

Though Chauncey states that "nothing in history is inevitable," he and Wolfson note that public opinion polls consistently show that younger Americans overwhelmingly support ending marriage discrimination. This suggests that in the long run, marriage equality is indeed inevitable, even if so astute a historian as Chauncey refuses to predict the future. \*

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