

SOCIAL RITES OF MARRIAGE¹

Suzanne A. Kim and Katherine A. Thurman

The legal consequences for same-sex couples who have married in the United States are numerous and profound. As legal rhetoric and scholarly research on marriage suggest, the social dimension of marriage—apart from the concrete legal benefits marriage affords—is significant. Despite what we understand about law’s impact on people’s lives and people’s influence on legal institutions, scholars know little about the ways in which same-sex couples socially experience legal marriage, since it has become a reality in a majority of U.S. states.

This paper, the first in an ongoing, mixed-methods research project that examines the intersection of law and the social domain in the context of same-sex marriage, begins to fill a critical gap in socio-legal literatures on marriage and formal recognition of same-sex relationships. We discuss here early themes emerging in our exploratory research that is part of a larger project entitled Marriage Equalities: Gender and Social Norms in Same-Sex and Different-Sex Marriage.

We focus in this paper on negotiations surrounding discursive practices associated with marriage—for the latter, taking up two language-based domains in marriage. These domains are decision-making concerning surnames and terminology used to refer to one’s marital partner.

Modes of self-presentation provide a window into the interplay of legal status, social norms, concepts of tradition, and gender, and reveal a richly diverse picture of transition to formal legal recognition in the context of longstanding—and continued—

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- Instructor and Doctoral Candidate, Department of Sociology, Rutgers University.

marginalization and discrimination. We situate our early findings in relation to fundamental questions we explore about relationships between marriage, hierarchy, and gender, as well as about intersections of legal and social recognition.

INTRODUCTION

At the time of writing, 37 states plus the District of Columbia offer marriage rights to same-sex couples,² and by the time this article is published the number will have grown, perhaps even to cover all states in the U.S.³ The legal, economic, and social consequences for the estimated 252,000⁴ same-sex couples who have married in the United States are profound.⁵ As marriage becomes available to a rapidly increasing number of same-sex couples, scholars are currently exploring the implications of this change in the law.⁶

² *Summary of Laws Regarding Recognition of Relationships of Same-Sex Couples*, NAT'L CTR. FOR LESBIAN RTS. (Feb. 24, 2015), http://www.nclrights.org/wp-content/uploads/2013/07/Relationship_Recognition_State_Laws_Summary.pdf.

³ The U.S. Supreme Court granted certiorari on January 16, 2015 on the four cases from the Sixth Circuit in which courts upheld marriage bans. *Obergefell v. Hodges*, 772 F.3d 388 (6th Cir. 2014), *cert. granted*, 83 U.S.L.W. 3607 (U.S. Jan. 16, 2015) (No. 14-556); *Tanco et al. v. Haslam*, 772 F.3d 388 (6th Cir. 2014), *cert. granted*, 83 U.S.L.W. 3608 (U.S. Jan. 16, 2015) (No. 14-562); *DeBoer et al. v. Snyder*, 772 F.3d 388 (6th Cir. 2014), *cert. granted*, 83 U.S.L.W. 3608 (U.S. Jan. 16, 2015) (No. 14-571); *Bourke v. Beshear*, 772 F.3d 388 (6th Cir. 2014), *cert. granted*, 83 U.S.L.W. 3608 (U.S. Jan. 16, 2015) (No. 14-574).

⁴ As of the most recent date for which the Census Bureau has collected data, there are about 252,000 married same-sex couples in the U.S. *Table 2: Household Characteristics of Same-sex Couple Households by Relationship Type: ACS 2013*, U.S. CENSUS BUREAU, <http://census.gov/hhes/samesex/data/acs.html> (follow “2013” hyperlink) (last visited April 8, 2015); Hunter Schwarz, *Married same-sex couples make up less than one half of one percent of all married couples in the U.S.*, WASH. POST, (Sept. 22, 2014), <http://www.washingtonpost.com/blogs/govbeat/wp/2014/09/22/married-same-sex-couples-make-up-less-than-one-half-of-one-percent-of-all-married-couples-in-the-u-s/>.

⁵ *See United States v. Windsor*, 133 S. Ct. 2675 (2013); *United States of America v. Windsor*, 2013 WL 275686 (U.S.) (U.S., 2013) (Married individuals have “financial benefits that promote enhanced economic and financial security compared to unmarried individuals. . . . deriving from tax laws, employee benefits, death benefits, and entitlement programs. In addition, married couples enjoy special rights and privileges that buffer them against the psychological stress associated with traumatic life events. . .”). *Id.* at 271-72. *See also Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013); *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 961-62 (N.D. Cal. 2010) (“Under federal law alone, there are 1,138 statutory provisions that consider marital status in determining the award of various benefits, rights, and privileges.”); M.V. Lee Badgett, *Social Inclusion and the Value of Marriage Equality in Massachusetts and the Netherlands*, 67 J. OF SOC. ISSUES, 316, 317 (listing legal and economic for benefits for couples who marry, including economic gains through insurance).

⁶ *See, e.g., Susan Frelich Appleton, Leaving Home? Domicile, Family and Gender*, 47 U.C. DAVIS L. REV. 1455 (2014) (considering the effect of same-sex marriage on

Legal discourse in support of marriage rights for same-sex couples has focused on legal and social harms from unequal access to marriage, and conversely, and understandably, legal and social benefit from access to marriage. The host of legal benefits that same-sex couples gain from marriage are numerous and concrete.⁷ Moreover, legal rhetoric has identified a number of social benefits gained from the recognition that marriage affords to couples.⁸

To the extent that the impact of law is felt in daily life and law's subjects also shape legal institutions and norms, we know very little about the ways same-sex couples socially experience legal marriage since it has become a reality in all but 13 states.

Research on the day-to-day of marriage in the United States has focused almost exclusively on different-sex couples,⁹ and research

conceptions of domicile); Mary Patricia Byrn & Morgan L. Holcomb, *Wedlocked*, 67 U. MIAMI L. REV. 1 (2012) (discussing how for different-sex couples, legally ending their marriage is possible as a matter of right, but for married same-sex couples state DOMAs (Defense of Marriage Acts) present a stumbling block, preventing access to divorce in some states); Courtney Joslin, *Modernizing Divorce Jurisdiction: Same-Sex Couples and Minimum Contacts*, 91 B.U. L. REV. 1669 (2011) (offering arguments against the domicile-based jurisdictional rule for divorce, which prevents access to divorce for many same-sex spouses because they cannot divorce in their home states if their state law precludes recognition of same-sex marriages or out of state because the anomalous jurisdictional rule); Allison Anna Tait, *Reinventing Marital Partnership* (draft on file with author) (considering marital property in the context of same-sex marriage).

⁷ See *Windsor*, 133 S. Ct. 2675; *United States of America v. Windsor*, 2013 WL 275686 (U.S.) (2013) (Married individuals have “financial benefits that promote enhanced economic and financial security compared to unmarried individuals. . . . deriving from tax laws, employee benefits, death benefits, and entitlement programs. In addition, married couples enjoy special rights and privileges that buffer them against the psychological stress associated with traumatic life events. . . .”). *Id.* at 271-72.

⁸ See *Goodridge v. Department of Public Health*, 798 N.E.2d 941, 968 (Mass. 2003) (“The exclusive commitment of two individuals to each other nurtures love and mutual support; it brings stability to our society. For those who choose to marry, and for their children, marriage provides an abundance of legal, financial, and social benefits.”). *Id.* at 948. See also *In re Opinion of the Justices to the Senate* 802 N.E.2d 565, 571–72 (Mass. 2004) (“[m]arriage also bestows enormous private and social advantages on those who choose to marry ... [and] is at once a deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family.” (citing *Goodridge*, 798 N.E.2d at 941)).

⁹ See SUZANNE BIANCHI, JOHN P. ROBINSON, & MELISSA A. MILKIE, *CHANGING RHYTHMS OF AMERICAN LIFE* (2007) (offering data from surveys of American married different-sex parents over the last four decades which indicates that despite increased workloads outside of the home—mothers today spend at least as much time interacting with their children as mothers did decades ago); PHILIP BLUMSTEIN & PEPPER SCHWARTZ, *AMERICAN COUPLES: MONEY, WORK, SEX* (1983) (offering large-scale research for American Couples focused on different-sex married couples, different-sex nonmarital couples, and same-sex nonmarital couples); ARLIE HOCHSCHILD, *THE SECOND SHIFT* (2003) (discussing the two-job family in

on similar domains for same-sex couples in the United States has been focused on same-sex couples who are not married.¹⁰ This can be

terms of different-sex married couples and the dichotomy facing working mothers to incorporate family life into career life); STEPHANIE COONTZ, *MARRIAGE, A HISTORY: FROM OBEDIENCE TO INTIMACY OF HOW LOVE CONQUERED MARRIAGE*(2005) (tracing the evolution of marriage from ancient times to modern times and detailing its dramatic changes); KATHLEEN E. HULL, *SAME-SEX MARRIAGE: THE CULTURAL POLITICS OF LOVE AND LAW* (2006) (research on commitment based on same-sex couples prior to legalization of marriage); Sondra E. Solomon, Esther D. Rothblum & Kimberly F. Balsam, *Pioneers in Partnership: Lesbian and Gay Male Couples in Civil Unions Compared with Those not in Civil Unions and Married Heterosexual Siblings*, 18 J. OF FAM. PSYCHOL. 275, 275-87 (2004) (comparing civil unions between lesbians and gay men in Vermont during the first year legislation made this available with lesbians and gay men in their friendship networks who had not had civil unions, and also with heterosexual married men and women consisting of the civil union couples' siblings and their spouses); Sondra E. Solomon, Esther D. Rothblum & Kimberly F. Balsam, *Money, Housework, Sex, and Conflict: Same-Sex Couples in Civil Unions, Those Not in Civil Unions, and Heterosexual Married Siblings*, 52 SEX ROLES 561, 561-75 (2005) (examining the division of finances, the division of household tasks, relationship maintenance behaviors, sexual activity, monogamy, and conflict among same-sex couples who had had civil unions in Vermont, same-sex couples who had not had civil unions recruited from their friendship circles, and married heterosexual couples recruited from among their siblings).

¹⁰ See, e.g., CHRIS CARRINGTON: *NO PLACE LIKE HOME* (2002) (detailing domestic decision-making and allocation in gay couples' lives); MIGNON R. MOORE, *INVISIBLE FAMILIES: GAY IDENTITIES, RELATIONSHIPS, AND MOTHERHOOD AMONG BLACK WOMEN* (2011) (exploring the ways that race and class have influenced how gay women of color understand their sexual orientation, find partners, and form families); MAUREEN SULLIVAN, *THE FAMILY OF WOMAN: LESBIAN MOTHERS, THEIR CHILDREN, AND THE UNDOING OF GENDER* (2004) (chronicling the experience of thirty-four families headed by lesbian mothers whose children were conceived by means of donor insemination); Victoria Clarke, Maree Burns & Carole Burgoyne, *Financial affairs? Money management in same-sex relationships*, 37 J. OF SOCIO-ECONOMICS 481-501 (2008) (offering a qualitative analysis of how 22 co-habiting same-sex couples manage and think about their finances); Rachel H. Farr & Charlotte J. Patterson, *Coparenting Among Lesbian, Gay, and Heterosexual Couples: Associations With Adopted Children's Outcomes*, 84 CHILD. DEV. 1226 (2013) (describing how lesbian and gay parents participated more equally than heterosexual parents during family interaction); Lawrence A. Kurdek, *Are Gay and Lesbian Cohabiting Couples Really Different From Heterosexual Married Couples?* 66 J. OF MARRIAGE & FAM. 880 (2004) (comparing partners from gay and lesbian cohabiting couples without children longitudinally with both partners from heterosexual married couples with children); Mignon R. Moore, *Gendered Power Relations among Women: A Study of Household Decision Making in Black, Lesbian Stepfamilies*, 73 AM. SOCI. REV. 335 (2008) (evaluating the common view that two elements of feminist egalitarian ideology—economic independence and the equal distribution of housework and childrearing—are the defining features of lesbian-headed households); Stephanie Jill Schacher, Carl F. Auerback & Louise Bordeaux Silverstein, *Gay Fathers Expanding the Possibilities for Us All*, 1 J. OF GLBT FAM. STUD. 31 (2005) (proposing that by degendering parenting, reconceptualizing family, and reworking masculine gender roles, gay fathers are expanding role norms in novel ways that may serve as alternative models for all families); Solomon et al., *Pioneers in Partnership: Lesbian and Gay Male*

explained by the almost universal lack of availability of marriage rights in the United States for same-sex couples until the past several years. Prior research on married same-sex couples has focused on couples in Europe.¹¹ The findings in this research, although instructive, cannot necessarily be imported to a study of marriage in the United States, due to differences in culture, politics, and social structure.

As legal rhetoric and ample social scientific research on marriage suggest, the social dimension of marriage—apart from the concrete legal benefits marriage affords—is significant. Our project furthers the emerging literature on U.S. same-sex couples in marriage¹² by examining the social experience of same-sex couples in

Couples in Civil Unions Compared with Those not in Civil Unions and Married Heterosexual Siblings, supra note 8; Kimberly F. Balsam, Theodore P. Beauchaine, Esther D. Rothblum & Sondra E. Solomon, *Three-year follow-up of same-sex couples who had civil unions in Vermont, same-sex couples not in civil unions, and heterosexual married couples*, 44 DEV. PSYCHOL. 102 (2008).

¹¹ See M.V. LEE BADGETT, WHEN GAY PEOPLE GET MARRIED: WHAT HAPPENS WHEN SOCIETIES LEGALIZE SAME-SEX MARRIAGE (2009) (focusing on married same-sex couples in the Netherlands). Due to the various differences in culture, politics, and social structures between the U.S. and the Netherlands, lessons from the Netherlands cannot necessarily be imputed to the U.S. Our project focuses on the U.S. and will also present a more current perspective on same-sex marriage. See also WILLIAM N. ESKRIDGE, JR. & DARREN R. SPEDALE, GAY MARRIAGE; FOR BETTER OR FOR WORSE?: WHAT WE’VE LEARNED FROM THE EVIDENCE (2006) (marshaling data and personal experiences of same-sex couples to explore the debate concerning and experiences of same-sex marriage and legal recognition of same-sex couples in Scandinavia). Eskridge’s and Spedale’s work is focused on the legal benefits of marriage and legal recognition, rather than social practice. *Id.* Moreover, it does not focus on U.S. couples. *Id.* See also Adam Isaiah Green, *Queer Unions: Same-Sex Spouses Marrying Tradition and Innovation*, CAN. J. OF SOC. 35(3) (2010) (drawing on in-depth interviews of married same-sex spouses in Canada to explore how same-sex couples encounter traditional norms of marriage).

¹² See, e.g., PAMELA LANUTTI, EXPERIENCING SAME-SEX MARRIAGE (2014) (providing an understanding of how the legal and cultural debates and advances and limitations on same-sex marriage are experienced by gay, lesbian, bisexual, and transgender (GLBT) people, same-sex couples, and their social networks); KIMBERLY D. RICHMAN, LICENSE TO WED (2014) (examining the meanings of marriage for couples in the two first states to extend that right to same sex couples: California and Massachusetts); Badgett, *supra* note 4, at 316-34 (providing statistical analysis of how the right to marry promotes social inclusion of same-sex couples in Massachusetts and the Netherlands); Jennifer B. Clark et al., *Windsor and Perry: Reactions of Siblings in Same-Sex and Heterosexual Couples*, 62 J. OF HOMOSEXUALITY 993, (2015) (an exploratory study of the reactions of individuals currently or previously in same-sex couple relationships and a heterosexual sibling who is currently or previously married to the Supreme Court decisions in U.S. Supreme Court decisions in U.S. v Windsor (570 U.S. 307) and Hollingsworth v Perry (570 U.S. 399)); Abigail Ocozbek, *The Power and Limits of Marriage: Married Gay Men’s Family Relationships*, 75 J. OF MARRIAGE & FAM. 1 (2013) (detailing how gay men married in Iowa experience marriage, specifically how it affects the men’s relationships with their families of origin).

marriage, including perceived changes in daily life from marriage, decision-making about cultural practices often associated with marriage, and decision-making concerning division of labor—the latter two domains being markedly gendered historically in different-sex marriage. This article, the first in an ongoing exploratory mixed-methods research project that examines the intersection of law and the social domain in the context of same-sex marriage, begins to fill a critical gap in socio-legal literatures on marriage and formal recognition of same-sex relationships by documenting early experiences of same-sex couples in legal marriage.

This article highlights preliminary themes in our exploratory research on how same-sex couples do marriage, focusing here on negotiations concerning discursive practices associated with marriage. This article takes up two language-based domains in marriage—decision-making concerning surnames and choices in terms used to refer to one’s marital partner, such as “wife,” “husband,” “spouse,” or other options. These modes of social practice¹³ provide an opportunity to examine what factors might influence how couples present themselves socially in the context of legal status change.

Surname practices provide a clear and gendered social practice that people encounter upon marriage. That almost all American women take their husbands’ surnames upon marriage raises the question of how same-sex couples engage this default, if at all, upon marriage. To date, no researchers have studied this question. In the group of 48 individuals, comprising 24 married same-sex couples, we have interviewed thus far, name-changing has occurred seldom and, more interestingly, the transition to legal marriage has generally failed to occasion serious discussion of whether to make surname changes.

Formal legal recognition aside, the married same-sex couples we have interviewed adopt situational approaches to whether and how to use terms such as “wife”, “husband”, “spouse”, or “partner” in referring to their marital partner to others. As with name-changing, no researchers have examined this mode of self-presentation by married same-sex couples. Situational uses of marital terms reveal couples negotiating the gap between formal legal and social recognition. Specifically, contextual uses of relationship status terms suggest ongoing, dynamic negotiation of coming out in the context of marriage, and reveal couples in the transition to marriage engaging longstanding—and continued—exclusion and marginalization.

¹³ We use the term social practice as distinct from formal legal rules. For purposes of this discussion, we focus on the ways that people organize their lives in relation to the legal institution of marriage, and indeed, what they think of as constitutive of marriage. See generally Katharine B. Silbaugh, *The Practice of Marriage*, 20 WIS. WOMEN’S L.J. 189 (2005) (addressing the relationship between socially practiced marriage and legally consequential marriage).

Part I of this article reviews relevant areas of literature bearing on our inquiry into the social experiences of same-sex couples in marriage. Part II sets forth the methodology for this exploratory research, including characteristics of the group interviewed. Part III discusses preliminary findings and analysis. Part IV briefly concludes.

I. EXISTING LITERATURE

By focusing on the effects of formal, legal status change on social life, this study engages the questions raised in socio-legal literature about the recursive relationship between law and legality on one hand and lived experience on the other. Patricia Ewick's and Susan Silbey's *The Common Place of Law* illuminates the complicated and varied ways in which people engage, resist, and defer to law.¹⁴ These interactions draw attention to the impact of legal interventions on everyday life,¹⁵ as well as the construction of social norms, in relation to, and separate from formal law.¹⁶

The law of family is no exception to the dynamic relationship between social life and legal regulation.¹⁷ Family law both reflects and reinforces social conceptions of marriage. And marriage itself, with its hybrid identity rooted in concepts of status and contract, public and private,¹⁸ provides a rich opportunity to consider how people construct and are constructed by legal institutions.

To date, there is little published work on the social effects of legal marriage on same-sex couples. Kimberly Richman's excellent 2014 book, *License to Wed*, does examine the relevance, meaning,

¹⁴ See PATRICIA EWICK & SUSAN SILBEY, *THE COMMON PLACE OF LAW* (1998) (offering collected accounts of the law from more than four hundred people of diverse backgrounds in order to explore the different ways that people use and experience the law). See also, Patricia Ewick & Susan S. Silbey, *Narrating Social Structure: Stories of Resistance to Legal Authority*, 108 AM. J. OF SOC. 1328-1372 (2003) (proposing that resistance to legalized authority is enabled and collectivized by the act of storytelling, which temporally and socially extends the incident beyond the individual).

¹⁵ See, e.g., Lawrence M. Friedman, *Coming of Age: Law and Society Enters an Exclusive Club*, 1 ANN. REV. LAW & SOC. SCI. 1, 1-16 (2005) (discussing the field of study known as law and society, which focuses on the actual forces that produce law and on the impact of legal interventions).

¹⁶ See, e.g., ROBERT ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991) (demonstrating that people largely govern themselves by means of informal rules or social norms which develop without the aid of a state or other central coordinator).

¹⁷ See JOANNA L. GROSSMAN & LAWRENCE M. FRIEDMAN, *INSIDE THE CASTLE: LAW AND THE FAMILY IN 20TH CENTURY AMERICA* (2011) (discussing how changes in society have reshaped and reconstituted twentieth-century family law).

¹⁸ See NANCY F. COTT, *PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION* (2000) (describing the dual identity of marriage as both a public institution and a private contract).

and effects of marriage for same-sex couples.¹⁹ This study, however, takes as its focus marriage during an earlier and less stable time in the development of marriage recognition for same-sex couples. Indeed, the couples surveyed and interviewed who were married in California, and who comprise the bulk of individuals from whom information was collected, were married during the “winter of love” in San Francisco in 2004 and later that year had their marriages involuntarily annulled. Even the Massachusetts couples whose voices we also hear in Richman’s work spoke during a time of greater uncertainty about the state of marriage law for same-sex couples nationally. For these reasons, it makes sense that Richman’s work does not focus on the everyday in marriage—because there was no such thing for most same-sex couples, and certainly not for the San Francisco couples whose marriages were invalidated.²⁰ The dearth of literature on the everyday of marriage for married same-sex couple extends to an absence of literature on everyday domains in which marriage has shown significant genderedness amongst different-sex couples.

Legal scholars have long suggested that greater legal inclusion could result in salutary changes in the social institution of marriage. Indeed, in the midst of significant intra-community debate about the wisdom of pursuing marriage as a LGBTQ rights issue,²¹ legal scholars Nan Hunter²² and William Eskridge²³ posited in the 1990s that the admission of same-sex couples into marriage promised to correct for the gender hierarchical nature of marriage as conventionally constructed.²⁴

¹⁹ RICHMAN, *supra* note 11.

²⁰ Lee Badgett has studied the impacts of legal marriage on social inclusion v. exclusion, based on married couples in Massachusetts and in the Netherlands. M.V. Badgett, *supra* note 4, at 316-34. Abigail Ocobock’s qualitative research involving gay men married in Iowa explores the impacts of marriage on the men’s relationships with their families of origin. This research helpfully illuminates the power and limits of marital status in gaining support from family members. Ocobock, *supra* note 11. Pamela Lanutti’s recent book, drawn from research involved marital and non-marital couples does examine, in part, general impacts of marriage on couples’ daily experiences, but does so based on couples marrying or contemplating marriage at an earlier point in the development of marriage equality, and does not examine social practices. LANUTTI, *supra* note 12.

²¹ For a brief account of the debate, see Suzanne A. Kim, *Skeptical Marriage Equality*, 34 HARV. J.L. & GENDER 37 (2011) (arguing that same-sex marriage provides a chance to challenge heteronormativity).

²² Nan Hunter, *Marriage, Law, and Gender: A Feminist Inquiry*, 1 LAW & SEXUALITY 9, 17 (1991) (“I argue . . . that legalizing lesbian and gay marriage would have enormous potential to destabilize the gendered definition of marriage for everyone.”).

²³ William Eskridge, *A History of Same-Sex Marriage*, 79 VA. L. REV. 1419, 1434 (1993) ([T]he social construction of marriage is dynamic. Linked as it is to other institutions and attitudes, marriage will change as they change.”).

²⁴ While the formal law of marriage aspires toward gender egalitarianism, marriage among different-sex couples still displays a significant amount of gender role specialization. This specialization is particularly pronounced in the context of

The “deinstitutionalization” account of marriage, as articulated by sociologist Andrew Cherlin, similarly suggests that the emergence of same-sex marriage could invite invention, opportunity, and greater egalitarianism in marriage.²⁵ At the very least, same-sex couples must “actively construct a marital world with almost no institutional support”²⁶ and “negotiate new ways of acting”²⁷ in marriage.

That negotiation must take place along a range of axes in the social domain. To the extent that people mediate power or powerlessness through language,²⁸ names and terms provide a useful prism through which to view questions of identity and status in the context of marriage. We focus in this article on two areas of social practice in marriage—surname practice and terminology usage.²⁹

Scholarly attention to surname practices has focused on different-sex married couples.³⁰ Name-changing in different-sex marriage is a particularly prominent and sticky marital norm, with the default set along clear gender lines. At least 90 percent of American female spouses adopt their male spouses’ last names upon marriage.³¹

symbolic or cultural practices of marriage, like engagements, marriage ceremonies, and last-name practices. *see* Laura K. Scheuble et al., *Trends in Women’s Marital Name Choice: 1966-1996*, 48 *NAME: A J. OF ONOMASTICS* 105, 105-114 (2000), as well as in structural practices like division of labor. BIANCHI, *supra* note 8, at 1 (2006); BLUMSTEIN & SCHWARTZ, *supra* note 8; HOCHSCHILD, *supra* note 8, at 1 (1989).

²⁵ *See* Andrew Cherlin, *The Deinstitutionalization of American Marriage*, 66 *J. OF MARRIAGE & FAMILY* 848, 848 (2004). In contrast with research on heterosexual couples, research on same-sex couples may suggest greater egalitarianism. According to Blumstein and Schwarz, *supra* note 8, gay and lesbian couples are more likely to share cooking and chores than heterosexual couples. Solomon, Rothblum, and Balsam (2004) showed more recently that same-sex couples in civil unions tend to fight more fairly than different-sex couples. Solomon et al., *supra* note 8, at 275-87. These same couples reported higher levels of happiness (in the form of reduced conflict and greater intimacy) than different-sex married couples. Balsam et al., *supra* note 9, at 102-117.

²⁶ Cherlin, *supra* note 24, at 851.

²⁷ *Id.* at 848.

²⁸ *See, e.g.*, Lawrence A. Hosman & Susan A. Siltanen, *Powerful and Powerless Language Forms: Their Consequences for Impression Formation, Attributions of Control of Self and Control of Others, Cognitive Responses, and Message Memory*, 25 *J. LANGUAGE SOC. PSYCHOL.* 33, 34 (2006).

²⁹ The focus on the everyday practice of names and term usage draws inspiration from Dorothy E. Smith’s work by inviting examination of how social relations (here, as mediated through legal change) structure people’s lives. DOROTHY E. SMITH, *THE EVERYDAY WORLD AS PROBLEMATIC* (1987).

³⁰ *See, e.g.*, Suzanne A. Kim, *Marital Naming/Naming Marriage: Language and Status in Family Law*, 85 *IND. L.J.* 893, 917 (citing studies regarding marital name changing practices).

³¹ G.E. Gooding and R.M. Kreider, *Women’s Marital Naming Choices in a Nationally Representative Sample*, 31 *JOURNAL OF FAMILY ISSUES* 681-71 (2010). *See generally* Claudia Goldin & Maria Shim, *Making a Name: Women’s Surnames at Marriage and Beyond*, 18 *J. ECON. PERSP.* 143, 144 (2004); Laurie K. Scheuble & David R. Johnson, *Married Women’s Situational Use of Last Names: An*

Little attention has been paid to same-sex couples' name practices. Among committed same-sex couples, name-changing has been described as “a strategy for securing external recognition and acceptance of family status by outsiders.”³² Name keeping has been cited as a strategy “to preserve each partner’s individual identity,”³³ (including professional identity), avoid hassle and confusion,³⁴ and resist heteronormativity.³⁵ We have found little academic scholarship that focuses in depth on relationship terminology usage in same-sex couples.³⁶

II. DESCRIPTION OF THE STUDY

This preliminary analysis is based on data gathered from 48 individuals, comprising 24 married same-sex couples. All couples were married in New York or New Jersey and currently live in New York, New Jersey, or other states that recognize same-sex marriages.

Data was gathered in two ways: (1) through in-depth, semi-structured interviews ranging from 1.75 to 3.5 hours long; and (2) through a secure, online questionnaire. The interviews covered a range of topics, including background information about each member of the couple and their relationship; perceived changes to subjects' lives and relationships resulting from marriage; decision-making about cultural practices often associated with marriage, including engagement, wedding rituals, terminology usage, and naming practices; and decision-making about division of household and childcare labor.

Spouses were interviewed together. With the exception of two interviews, which were conducted via videoconference, all interviews were conducted in-person. Where time permitted, spouses were also given an opportunity to speak separately with the interviewer in a follow-

Empirical Study, 53 *SEX ROLES* 143 (2005); Laura Hamilton et al., *Marital Name Change as a Window into Gender Attitudes*, 25 *GENDER & SOC'Y* 2, 145 (2011).

³² Elizabeth A. Suter & Ramona Faith Oswald, *Do Lesbians Change Their Last Names in the Context of a Committed Relationship*, 7 *JOURNAL OF LESBIAN STUDIES* 71, 71 (2003).

³³ *Id.*

³⁴ Victoria Clarke et al., *Who Would Take Whose Name? Accounts of Naming Practices in Same-Sex Relationships*, 18 *J. CMTY. APPLIED SOC. PSYCHOL.* 420, 420 (2008) (British study reporting that one of the sixteen couples interviewed reported sharing a last name with the remaining participants either saying no to name change or indicating no decision on name change or that name change was a future possibility).

³⁵ *Id.*

³⁶ See, e.g., A. Steven Bryant & Demian, *Relationship Characteristics of American Gay and Lesbian Couples: Findings from a National Survey*, 1 *J. OF GAY & LESBIAN SOC. SERVS.* 101, 105 (1994) (examining, in part, terms of address of same-sex couples like “lover” or “partner/life partner”).

up session immediately following the joint interview to elaborate on themes explored or responses given in the joint interview.³⁷

The questionnaire, completed by spouses individually, sought additional biographical information and qualitative data through open-ended questions and quantitative data about decision-making and division of household and childcare labor. In this article, we discuss only preliminary themes with respect to decision-making about terminology usage and naming practices.³⁸

Subjects were recruited through a variety of means. These included outreach to secular wedding officiants, clergy, wedding planners, LGBTQ rights advocacy organizations and local community organizations, professional organizations for LGBTQ communities and businesses, and social and sports meetup groups for LGBTQ communities (including parents, couples, and people of color). Subjects were also recruited through snowball sampling³⁹ and limited word of mouth.

Prior to scheduling an interview, subjects were screened to ensure that they met the criteria for inclusion. In order to be interviewed, subjects had to be married to someone of the same sex in New York or New Jersey, have been in a committed relationship for at least one year prior to legal marriage, living in a state recognizing same-sex marriage, and both be English-speaking.

The non-representative sample in this preliminary study consists of thirteen (54%) same-sex female couples and eleven (46%) same-sex male couples. Recent data from the state of New York⁴⁰ reveal that from 2011-2013, 9,067 same-sex couples were married in the state.⁴¹ Of these couples, 5,473 (60.4%) were female and 3,594 (39.6%) were male.⁴² In

³⁷ This approach reflects an interest in gathering couples' joint narratives but also hearing from less vocal members of couples. Gill Valentine, *Doing household research: interviewing couples together and apart*, 31 *AREA* 67, 71 (1999).

³⁸ Despite the constraints that interview-based data can pose, due to observed gaps between self-reports and life as lived, an interview approach supplemented by a combined open-ended and closed-ended questionnaire best suits our objective to gather narratives from individual partners in couples about influences and experiences in marriage, including couples' dialogue about social practices associated with marriage. See generally Christopher Carrington, *NO PLACE LIKE HOME: RELATIONSHIPS AND FAMILY LIFE AMONG LESBIANS AND GAY MEN* (1999)

³⁹ For the value of snowball sampling for hard to reach or minority populations, see ROWLAND ATKINSON & JOHN FLINT, *ACCESSING HIDDEN AND HARD-TO-REACH POPULATIONS: SNOWBALL RESEARCH STRATEGIES*, *SOC. RES. UPDATE* 1 (2001); Jean Faugier & Mary Sargeant, *Sampling hard to reach populations* 26 *J. OF ADVANCED NURSING* 790, 790 (1997); Ilan H. Meyer & Patrick A. Wilson, *Sampling lesbian, gay, and bisexual populations*, 56 *J. OF COUNSELING PSYCHOL.* 23, 23 (2009) (characterizing LGBTQ communities as hard to reach).

⁴⁰ These data do not include New York City and exclude couples for whom the sex of one spouse was unknown.

⁴¹ See e-mail from Larry Schoen, Dir. Vital Statistics, N.Y. State Dep't of Health, to Elizabeth Ehret, Research Assistant to Suzanne Kim, Rutgers School of Law – Newark (Date & Time) (on file with author).

⁴² *Id.*

New Jersey, from 2013-March 2015, 5,859 same-sex couples were married.⁴³ National data regarding the sex, race, economic, and other characteristics of married same-sex couples is difficult to obtain because, until recently, the U.S. Census Bureau counted same-sex couples as cohabitating (unmarried) households.⁴⁴

However, according to the U.S. Census Bureau's 2013 American Community Survey, there were 726,600 total same-sex households in the United States.⁴⁵ Of these households, 34.6% (251,695) were made up of married same-sex spouses and 65.4% (474,905) were households made up of unmarried same-sex couples.⁴⁶ Of the households in which the same-sex couple was married, 53.3% (134,160) were female and 46.7% (117,535) were male.⁴⁷ The 2012 American Community Survey, which did not distinguish between married and unmarried same-sex couples, revealed that there were 639,440 same-sex couple households,⁴⁸ 52.2% (333,646) of which were female and 47.8% (305,794) of which were male.⁴⁹

Of the 48 individuals interviewed, 75% (36) identify as non-Hispanic white/Caucasian⁵⁰; 12.5% (six) as Hispanic or Latino; 4.2% (two) as Asian American; and 8.3% (four) as biracial. One (2.1%) respondent did not provide a racial or ethnic identification.

In the 2012 American Community Survey, the race of the householder (the person in whose name the housing unit is rented or owned) of same-sex couple households was 85.0% white, 6.5% Black or African American, 2.5% Asian, 0.8% American Indian or Alaska Native,

⁴³ See e-mail from Darrin Goldman, N.J. Dep't of Health & Senior Services, to Katherine Thurman, Rutgers University Department of Sociology (Mar. 30, 2015, 03:15 EST) (on file with author).

⁴⁴ See U.S. CENSUS BUREAU, FREQUENTLY ASKED QUESTIONS ABOUT SAME-SEX COUPLE HOUSEHOLDS 4 (2013), available at https://www.census.gov/hhes/samesex/files/SScplfactsheet_final.pdf.

⁴⁵ Table 3: *Same-Sex Couple Households: 2013 American Community Survey*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/samesex/data/acs.html> (last visited Apr. 7, 2015) [hereinafter *Table 3: Same-Sex Couple Households: 2013*] (follow "2013" hyperlink).

⁴⁶ Table 2: *Household Characteristics of Same-Sex Couple Households by Relationship Type*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/samesex/data/acs.html> (last visited Apr. 7, 2015) [hereinafter *Table 2: Characteristics of Same-Sex Couples by Relationship Type*] (follow "2013" hyperlink).

⁴⁷ *Id.*

⁴⁸ Table 3: *Same-Sex Couple Households: 2012 American Community Survey*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/samesex/data/acs.html> (last visited Apr. 7, 2015) [hereinafter *Table 3: Same-Sex Couple Households: 2012*] (follow "2012" hyperlink).

⁴⁹ See Table 2: *Household Characteristics of Same-sex Couple Households by Assignment Status: ACS 2012*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/samesex/data/acs.html> (last visited Apr. 7, 2015) [hereinafter *Table 2: Characteristics of Same-Sex Couples by Assignment Status*] (follow "2012" hyperlink).

⁵⁰ One of the white respondents also identified as Arab-American.

0.2% Native Hawaiian or Pacific Islander, and 2.6% some other race; 2.6% were two or more races.⁵¹ 10.3% of householders were Hispanic or Latino (of any race).⁵² 14.1% of the couples were interracial.⁵³ This indicates that, in particular, Black/African American respondents/couples are underrepresented in the sample. This sample, however, is more diverse than previous research on same-sex couples.⁵⁴

Subjects' personal annual incomes range from \$0-\$600,000/\$700,000. Seven (14.6%) subjects reported making \$0-\$25,000; seven (14.6%) reported making \$25,001-\$50,000; four (8.3%) reported making \$50,001-\$75,000; thirteen (27.1%) reported making \$75,001-\$100,000; five (10.4%) reported making \$100,001-\$150,000; and seven (14.5%) reported making \$150,000 or more. Five (10.4%) respondents either did not report their income or only provided limited income information.

The average income for subjects who reported enough information to be included in the calculation ($n=33$; 68.8%) was \$93,030, which is slightly lower than the \$111,769 average household income reported in the 2012 American Community Survey.⁵⁵

With respect to educational attainment, four (8.3%) respondents reported completing some college; fourteen (29.2%) reported completing a Bachelor's Degree; one (2.1%) reported completing some graduate school, fourteen (29.2%) reported completing a Master's Degree; one (2.1%) reported completing some graduate training beyond a Master's, one (2.1%) reported completing two Master's Degrees, seven (14.6%) reported completing a post baccalaureate professional education (e.g., law school, med school, nurse), and one (2.1%) reported completing a Ph.D.; and five (10.4%) either did not report their highest level of education completed or their highest level of education was not clear. In the 2012 American Community Survey 48.9% of the householders in same-sex couples had at least a Bachelor's degree and both partners had at least a Bachelor's degree in 31.6% of the couples.⁵⁶

Ten of the couples (41.7%) were married in New Jersey, and fourteen (58.3%) were married in New York. Eleven (45.8%) of the

⁵¹ See Table 2: *Characteristics of Same-Sex Couples by Relationship Type*, *supra* note 11.

⁵² See *id.*

⁵³ See *id.*

⁵⁴ See, e.g., Kimberly F. Balsam et al., *Three-year follow-up of same-sex couples who had civil unions in Vermont, same-sex couples not in civil unions, and heterosexual married couples*, 44 DEV. PSYCHOL. 102 (2008); Abbie E. Goldberg & JuliAnna Z. Smith, *Stigma, social context, and mental health: lesbian and gay couples across the transition to adoptive parenthood*, 58 J. OF COUNSELING PSYCHOLOGY 139, 142 (2011). See Moore, *supra* note 9, at 7-9 (discussing the significance of examining race and class in the study of lesbian sexuality and families).

⁵⁵ See Table 2: *Characteristics of Same-Sex Couples by Assignment Status*, *supra* note 13.

⁵⁶ See *id.*

couples were living in New York at the time of the interview and eleven (45.8%) were living in New Jersey. Two (8.3%) were living in a state other than New York or New Jersey, but had been married in either New York or New Jersey.

Nine couples (37.5%) living in New York state lived in New York City, with a population of approximately 8,400,000;⁵⁷ two (8.3%) lived in a smaller city in New York state, with a population of approximately 30,000 people. Five (20.8%) of the couples living in New Jersey lived within about 30 miles of New York City, two (8.3%) lived in cities in New Jersey with populations of approximately 85,000 people, one (4.2%) lived in a town approximately 20 miles from Philadelphia (population ~1,500,000), two (8.3%) lived in a town with about 20,000-30,000 people, and one (4.2%) lived in a rural area with less than 500 people. One (4.2%) of the couples not living in New York or New Jersey lived in a city on the east coast with a population of approximately 630,000; the other couple (4.2%) lived in a city on the west coast with a population of approximately 850,000.

Nine (37.5%) of the couples have children living with them, higher than the 18.1% of same-sex couple households with children in the household reported in the 2012 American Community Survey.⁵⁸ Subjects' ages ranged from 31 to 67, with an average age of 43 years old. This is slightly younger than the average age of the householder in the 2012 American Community Survey (47.8 years old).⁵⁹

Couples were interviewed anywhere from 4 months to 3 years and 7 months after legally marrying, with the average of length of marriage being approximately 1.5 years. The average length of the couples' committed relationship prior to marriage was 9.7 years. Ten (41.7%) of the couples had entered a domestic partnership and/or civil union prior to marriage and thirteen (54.2%) had not; one couple (4.2%) did not indicate whether or not they had entered a domestic partnership or civil union prior to marriage.

This article presents a snapshot of couples in early stages of transitions into legal marriage during a time when marriage rights for same-sex couples began to look increasingly more secure. Unlike the limited amount of previous research examining the motivations for and impacts of marriage, which focuses on same-sex couples during times of greater—and sometimes intense—legal uncertainty,⁶⁰ these interviews were conducted at a time and place when commentators began to assert that “the tide [has] turned” on the issue of same-sex

⁵⁷*State & County QuickFacts New York (city), New York*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/36/3651000.html> (last visited Apr. 8, 2015).

⁵⁸ See Table 2: *Characteristics of Same-Sex Couples by Assignment Status*, *supra* note 13.

⁵⁹ See *id.*

⁶⁰ See Richman, *supra* note 18, and accompanying discussion.

marriage.⁶¹ From August 2014 to May 2015, the number of states allowing same-sex marriage grew from 19 to 37. Potentially increasing feelings of legal security about marriage—based on this momentum—were important for the study’s focus on couples’ lived experiences in marriage.

New York and New Jersey are particularly useful jurisdictions in which to document experiences with marriage. When its legislature passed the Marriage Equality Act in June 2011, New York became the most populous state to grant marriage rights to same-sex couples. This turn signaled a shift in momentum to more widespread marriage recognition rights for same-sex couples. New Jersey followed suit in 2013, making it the fourteenth state to permit same-sex marriage. Because couples in New Jersey were able to legally marry only more recently, speaking to couples who married in this state enhances the opportunity to gather narratives of couples’ decision-making in early stages of their transitions to marriage.

III. NEGOTIATING IDENTITY AS MARRIED SAME-SEX COUPLES

The accounts of the married same-sex couples reveal the diverse ways in which couples navigate the transition to marriage through the discursive practices of naming and term usage. Regarding both names and terms, we see same-sex couples interact with marital, social norms in the context of a new legal status. Where, for many in a regime of legal exclusion, cultural practices serve as a way to enact or “do” family,⁶² we seek to explore what shape social practices take and why in the context of the transition to legal recognition, and how and why couples and individuals construct and negotiate those practices. This analysis highlights areas of further exploration into the relationship between legal and social recognition beyond “in-or-out” policy frameworks of social inclusion or exclusion.⁶³

A. Marital Names: Opting Out (or Buying In)?

Interviewees’ narratives of decision-making about names upon

⁶¹See, e.g., Peter Drier, *Gay Marriage: The Tide Has Turned. Will the Supreme Court Listen?* HUFFINGTON POST, (Nov. 17, 2014), <http://www.huffingtonpost.com/peter-dreier/gay-marriage-the-tide-has-b-6172274.html>.

⁶²Kathleen Hull’s work on commitment rituals indicates the importance of social practice in the form of ritual to instantiate a family or committed relationship identity where the law has failed to do so. HULL, *supra* note 8 (based primarily on research involving couples in Massachusetts before same-sex marriage was permitted).

⁶³See Badgett, *supra* note 4, at 317-18 (describing social science and policy analyst perspectives on “social exclusion” premised on various constraints impeding full participation in society)(citing, *inter alia*, J. PERCY-SMITH, POLICY RESPONSES TO SOCIAL EXCLUSION: TOWARDS INCLUSION? (2000)).

marriage manifest a pattern of opting out of the traditionally gendered marital name bargain or buying into the name-changing cultural norm, but possibly more motivated by political instrumentalism or awareness of a difference in cultural meaning for same-sex spouses to change names than women in different-sex couples to do so.

1. *Name-Keeping as Switched Default*

Of the 24 couples interviewed, only three couples—two female and one male—made any legal changes to their last names upon marriage. In none of the couples did one spouse take on her or his spouse’s surname exclusively, although a spouse in one couple had plans to take her wife’s surname in the future. With the exception of the one couple who had plans to make a future name change, none of the four couples with children born into the relationship made surname changes.

Moreover, more than half (62.5%) reported little discussion or no disagreement about whether to effect any name changes to their names upon marriage, and all of these couples were name keepers. In an additional three couples (12.5%), one or both members of the couple felt strongly about making a name change upon marriage, but in these couples, both spouses kept their names.

The relatively low incidence of name-changing in this group runs counter to the general trend in different-sex marriage, in which name-changing is a nearly universal practice upon marriage.⁶⁴

The few legal cases involving same-sex couples’ name change render salient judicial assumptions that name change is traditionally regarded as one of the fundamental practices of marriage and that name sharing is considered basic to our conception of family.⁶⁵ Name-changing in marriage traces its roots to coverture’s erasure of a

⁶⁴ See G.E. Gooding and R.M. Kreider, *Women’s Naming Choices in a Nationally Representative Sample*, 31 J. OF FAMILY ISSUES 681-71 (2010)(parens); L.K. Scheuble and D.R. Johnson, *Married Women’s Situational Use of Last Names: An Empirical Study*, 53 SEX ROLES, 143-51 (2005)(parenthetical); Goldin and Shim, *supra* note 28 (parenthetical).

⁶⁵ See *In re Bacharach*, 780 A.2d 579, 585 (N.J. Super. Ct. App. Div. 2001) (“Appellant and her partner can exchange rings, proclaim devotion in a public or private ceremony, call their relationship a marriage, use the same surname, adopt and rear children.”); *In re Daniels*, 773 N.Y.S.2d 220, 222 (N.Y. Civ. Ct. 2003) (acknowledging that common surnames can lead to confusion about marital status because names are meant to “reflect familial relationships”); *In re Bicknell*, 771 N.E.2d 846, 847-49 (Ohio 2002) (accepting same-sex couple’s desire for their family to “have a unified name in the eyes of the law” as reason for name change); *In re Miller*, 824 A.2d 1207, 1213 (Pa. Super. Ct. 2003) (granting name change where the purpose of change was for same-sex couple “to demonstrate their level of commitment to each other and to the children that they planned to have”).

married woman's identity separate from her husband's.⁶⁶ While the law of marriage is formally neutral, women and men in different-sex marriage encounter robust external social norms and internal expectations influencing gendered name-change outcomes.⁶⁷

A tentatively emerging picture of a switched default in name-changing might reflect an assumption that name-changing is something that simply lacks relevance to same-sex couples, especially when legal recognition is otherwise available. As one respondent, Steven, said, “We don't feel it's that important, really.” Indeed, in a British psychology study examining same-sex couples' attitudes toward name change, the laughter accompanying responses to questions about name change “confirmed [the authors'] suspicions that name practices are of little importance for many non-heterosexuals.”⁶⁸ The case against name-changing may be stronger when couples do not need to find substitutes for legal status. Suter's and Oswald's early study involving same-sex, committed couples showed couples using name-sharing as a way to gain recognition as a family.⁶⁹

Of couples who kept their names unchanged upon marriage,⁷⁰ the most common reasons were that they never thought about it or the issue did not come up. A majority of couples also identified different-sex married couples as a reference point for their decisions not to change their names. Couples pointed to female friends who kept their names or perceptions of general trends of name-keeping by women in different-sex marriage.

⁶⁶ The oft-quoted Blackstone commentary on marriage explains this concept of civil death:

[T]he husband and wife are one person in law: that is, the very being of legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs everything; . . . and her condition during her marriage is called her coverture. Upon this principle, of a union of person in husband and wife, depend almost all the legal rights, duties, and disabilities, that either of them acquire by marriage.

WILLIAM BLACKSTONE, 1 COMMENTARIES 442 (emphasis in original).

⁶⁷ See Suzanne A. Kim, Marital Naming/Naming Marriage: Language and Status in Family Law, 85 IND. L.J. 893, 944–45 (2010). While during the 1980s and 1990s more women in different-sex marriages were keeping their last names than previously, women continue to change their last names to their husbands' upon marriage and, by some counts, this practice began increasing in the 1990s, despite the absence of formal legal imperatives for wives to change their last names. Goldin & Shim, *supra* note 28.

⁶⁸ Clarke et al., *supra* note 31 at 427–28.

⁶⁹ Suter & Oswald, *supra* note 29, at 71.

⁷⁰ This does not count those who made changes socially or plan to make changes in the future.

Given the fact that in reality women in different-sex couples seldom keep their names,⁷¹ this feature of couples' accounts may suggest something about the couples' peer networks, but also about the influence of peer networks on one's "active construct[ion of] a marital world," to borrow from Cherlin.⁷²

Many of the reasons for name-keeping here correspond with those articulated for name-keeping in the sparse literature available on same-sex couples' naming in the committed relationship context.

Identity-based reasons for name-keeping emerged in interviews with nearly half of the couples. These reasons included keeping names as a means of cultural identification, expressing personal identity, and signifying ties with families of origin. Dan described his and Andrew's decision not to change names in terms of his conception of his marriage as comprising two individuals, without claims of ownership over one another:

Dan: [W]e're- we're both individuals and...that's also something we talk about is that...we both wanna...be...we don't wanna be smothered by each other. We wanna let each other flourish and so...um even...like if he wants to explore how he feels about someone else um...that's fine because we don't- we have always um said that we want our relationship to always be natural. And...if...one of us...gets with someone else and starts having feelings...then what we have is not real and we shouldn't try to keep it...artificially and so...um... you know I-- even...before we were married if he had feelings for someone, I'd say "Go, go explore them." You know and if you wanna be with this person, you know...it would- it would hurt but I don't want you to like think that I'm holding you back. And um...we're here to help each other grow. And be better people. And if we're- if we're jealous of each other or we're like...you know not letting someone...um...grow...in their experience and in their life...then that's not what we're about and so that's why we're very open and transparent and...it takes a lot of confidence and courage and...um...because I think a lot of those emotions those--and that all comes back to the name and the fact that we don't own each other. Even though we're married, you know we're still individuals and...um...we still...need to grow. Cause the minute you stop growing, that's when you're dead.

In addition to individual identity-based reasons, affinity for or being used to one's given surname justified name-keeping by nine

⁷¹ Name-keeping (or other nonconventional name choices) in different-sex marriage occurs more often among women who married later in life, are better educated, are more career-oriented, and hold more liberal gender role values. Johnson & Scheuble, *supra* note 28, at 727; *see also* Hamilton et al., *supra* note 28 (identifying gender role attitudes, educational level, among other factors as correlating with views on marital names).

⁷² Cherlin, *supra* note 24, at 851.

couples. For example, Tad expressed a deep connection to his name: “I’m so connected to my name... maybe if I didn’t like it...it would be, I’d feel differently, but I always feel like it would be a shame for me to have to give up my name, I like it!” Couples also reported an appreciation for a spouse’s last name as a marker of that spouse’s individual identity.

An overlapping factor for some couples was past experience with marital name changing, which has not been expressed in prior research on same-sex couples’ name-changing. These couples included the three of the four members of the group who had previously been married—all in different-sex marriages (two women and one man). Mary remarked, “I’m not changing my name again. It’s just not happening. It’s a pain in the neck, and it’s just to me not...it’s not...for me, the name is not what marriage is about.”

On a related note, perceptions of administrative burden or general inconvenience associated with name-changing manifested in the narratives of several couples who were name keepers. Interestingly, perceived administrative burden cuts against name-keeping in studies of wives’ name changing in different-sex marriage, taking into account the effect of names in contexts like children’s schools and doctors’ offices.⁷³

Couples also reported that their ages factored into their thinking about how to approach their names in marriage, with couples suggesting that name changing may be easier to contemplate for younger couples. This reasoning spanned the age spectrum from 38 to 65 years old (with the average participant age being 45 years old).⁷⁴

Gender-related concerns factored into three couples’ thinking about name-changing, with couples pointing to the influence of feminism or concerns about women being expected to change their names. Subjects also indicated that they would not change their names if they were in different-sex marriages or questioned the practice of marital name-changing overall.⁷⁵

Couples also articulated their name decisions in terms of aesthetics (available naming options being unappealing given the couple’s given surnames), feeling married without having to change names, and family wishes (fear of family response from name-changing or a desire to respect family wishes to “carry on” the family name).

⁷³ Suter & Oswald, *supra* 29, at 72.

⁷⁴ This finding is supported by Johnson and Scheuble’s work tracing name-keeping, in part, to marriage later in life. Johnson & Scheuble, *supra* note 28, at 727.

⁷⁵ This finding corresponds with research on female name-keepers in different-sex marriages, who tend to hold more liberal, less traditional social views. Johnson & Scheuble, *supra* note 28, at 751.

2. *Name alterations*

While the relative number of legal name changes in the group was low (3 of 24), the group also encompassed some forms of non-legal change. Two couples expressed a desire to effect legal change in the future and one couple described their name change as social. In none of these couples did anyone exclusively adopt the last name of one's spouse, although one of the future name alterers⁷⁶ stated an intention to do this. This section focuses on themes articulated in name alterers' narratives explaining their decisions.

a. Legal change

Legal changers made changes on their marriage certificates, with changes including hyphenation (joint or single) or adding one's spouse's last name to one's own.

In one female couple, one spouse adopted a hyphenated name consisting of her given surname and her spouse's given surname. A male couple jointly adopted a hyphenated surname, consisting of each of their given surnames. In another female couple, one spouse added her spouse's surname to her surname name with no hyphenation, resulting in two last names.

i. Name-hyphenating as Political Act or Honor

Name-hyphenating functioned for the couples who made this legal choice as a means, at least partially, to engage the tradition of a shared name, to send a political message, or to honor one's spouse.

The male couple who jointly hyphenated, Nick and Will, is among the youngest of the couples in the interview group, with an average age of 32 years old. The other female couple in which one member, age 36, added that of her wife, age 43, through hyphenation is also younger than the average subject age of 45. While both couples hyphenated on their marriage certificates, they do not hyphenate consistently in all domains of their lives. This may suggest a possible distinction between using names for recognition vis-à-vis the state as opposed to with regard to other communities.

These couples reported discrete sets of reasons for pursuing their respective naming choices. Nick described his and Will's joint hyphenation in terms of the political act it represents, describing it as "another sort of political fuck you to people"—"to be like, 'I have a hyphenated name because I got gay married.'" Nick and Will do not

⁷⁶ For purposes of this discussion, I will refer to name "alterations," as opposed to "changes," to describe the practices of couples who pursued options other than name keeping. This is to distinguish from the use of name "changing" to describe the practice of wives replacing their husbands' last names for their birth names.

use their hyphenated name widely, but they do use it on their marriage certificate and on Facebook.

Nick and Will also articulated joint hyphenation as a means of engaging the “tradition of a family name,” pursuing “a symbolic way of showing people that you have joint families,” and also celebrating “chosen family.”⁷⁷

Victoria incorporated her wife Lee’s surname by hyphenating it with her own upon marriage. Given her negative feelings about Victoria’s family of origin, Lee was uninterested in adopting Victoria’s surname. But for Victoria, hyphenating her surname with Lee’s allowed her to bear a name she admires: “I love her name[...] I thought it would be an honor to her if I would take her name.” Victoria, too, uses her legally hyphenated her name in a limited capacity; no one at work knows about it, although her family does.

While many couples either explicitly or implicitly situated themselves outside of or against the traditional practice of name-changing, the two couples who hyphenated each engaged tradition, but in different ways. Victoria’s invocation of the language of honor, resonates with that of women in different-sex marriages in older studies who describe their pride in “hav[ing] the name of a man whom I like and respect” and refer to feeling “honored to share his name.”⁷⁸ Whereas Victoria adheres to tradition, Nick and Will deploy the marital name tradition of a shared name to highlight their prior exclusion. These discrepant approaches suggest the need for future study of the role of tradition among name-changers in the negotiation of the transition to marriage.

ii. Name adding

Adding one’s spouse’s last name to one’s own, resulting in two last names—the choice of one woman in the group—reflects a balance between attempting to hold on to one’s last name and to have a name shared by both spouses and contemplated children. Like name keepers who acknowledged the role that children might play in their decision-making, Delia framed her decision to add Jess’s last name to hers in terms of the desired outcome for the family she and Jess intend to start. Similarly to some name keepers, Delia and Jess also voiced opinions about different-sex couples’ practice of women engaging in name-changing. Like Nick and Will, who were among the youngest interviewees in the group, Delia (age 33) and Jess (age 32) were among the youngest in the sample.

⁷⁷ While Nick and Will do not have children and do not intend to do so, they would prefer any children to share the same hyphenated name as them to show that the children do not just belong to one parent or the other, but that “this is a nucleus.”

⁷⁸ Karen A. Foss & Belle A. Edson, *What’s in a Name? Accounts of Married Women’s Name Choices*, 53 W. J. SPEECH COMM. 356, 360-1 (1989).

Racial identity played a role in Delia’s and Jess’s decision about which of their two names to adopt as their future children’s last name. Both multi-racial, Delia⁷⁹ and Jess⁸⁰ found Jess’s last name appropriate because “it’s short, it’s easy to spell and it’s ethnically ambiguous so it matches both of us and it will match our kids.” With this decision made, it was “easy” for Delia decide what to do with her name.

While Delia disliked not having a shared name in her family growing up and noted others’ confusion about how to address her family, she did not feel ready to give up her name entirely when she got married—hence the decision to have two last names. Highlighting resulting confusion and disorder from her name change (“is that a middle name?”), Delia expressed regret for this choice, however, wishing she had “just made a clean break” and had just “dropped [her] name all together.”

Reminiscent of Nick’s and Will’s deliberate effort to transgress social norms through their shared name, Delia and Jess expressed consciousness of how context affects the meaning of social practice. While Delia described her name decision as “easy,” she did note that the fact that she and Jess are a same-sex couple made a difference in her thinking about pursuing a name practice reminiscent of different-sex marriage. “I mean I think if we were straight,” she said, “I would not have changed my last name.” She continued, “I feel like that would be tacky, it’s seemed like it was okay in this respect.”

Jess reported that friends who expressed critical views about women changing their names (“it’s just so tacky when women change their names—just because you’re married doesn’t make you property...it’s so weird”) also found it acceptable that Delia was changing her name because she and Jess are gay.

b. Potential alteration

Like Jess and Delia, Beth and Connie focused on their desire for a shared name between themselves and with their child to explain Beth’s intention to change legally her last name to Connie’s after the adoption of their child is finalized.⁸¹ Like Victoria, who hyphenated her wife’s last name with hers, Beth also referred to the “honor” to her wife Connie by having their family bear Connie’s last name. In

⁷⁹ Delia is Hispanic, white, and black/African. For purposes of gathering demographic data, we have used ethnic/racial categories borrowed from the 2010 Census.

⁸⁰ Jess is white, Asian/Asian American.

⁸¹ The other couple that has contemplated a future legal change, Leigh and Mel, both socially hyphenate their last names. Leigh and Mel explained their hyphenation in terms of the desire to “be a unit too and then like have any kids like reflect that too. Because kids were always in the works.”

addition, the couple explained their choice in terms of Connie's greater attachment to her surname than Beth's to hers.

c. Social alteration

Perception of the administrative difficulty of formally changing one's name and a countervailing desire for recognition influenced the decision of one couple to hyphenate socially only. For Phoebe and Caroline, joint social hyphenation permitted them to keep their names but also be able to convey their identity as a couple:

Phoebe: Not that- not that a hyphenated last name m- makes you a married couple.

Caroline: No but it still shows some sort of...real commitment.

As Caroline said, "I mean we're married. Nice to have a little recognition for it."

3. Influence of Children

The prospect of children seemed to influence couples' narratives about their name decision-making. This is evident among those who kept and those who altered (legally, socially, and potentially). Only one of the seven couples with children living with them changed names upon marriage, however, and none of the four couples with children born into the relationship changed names at the time of interview.

Among name-keepers, several couples suggested that the outcome or process of decision-making on their name-keeping might be different if they did have or were to have children. For example, Andrew, who along with his husband Dan, kept his last name upon marriage, referred to the idea of the "family name" coming into play if they were to have children together. Andrew explained, "To me the last name, it's the family name. So for me I - I carry the name of my family 'cause I'm a part of that unit. If we decide to create our own unit, um then we would wanna think about what is the name that we would give to our child?" On a related note, Mack and Jill indicated that their decision for their child to have the non-gestational mother's last name was a way to project family connection to the outside world.

A preference for a shared name with actual or contemplated children also influenced Delia's decision to add Jess's name to hers and Beth's decision to change her name to Connie's in the future. Beth expressed a desire to "be on the same page" name-wise and to facilitate "a greater sense of identity, in terms of the family unit." Beth and Connie referred to thinking about the name decision in terms of what the "family name" would be. Beth described a shared name as "just another sign to the outside world of the fact that we're a

unit...and that we're both her parents," said Beth. She also expressed the desire to avoid uncertainty about her parental status if her last name differed from Connie's and their daughter's.

This suggests that, within same-sex marriage, naming of children may function similarly to the way it did for committed same-sex couples who sought to forge a family identity in the face of legal prohibition.⁸²

B. Marital Terms: Coming Out as Married Same-Sex Couples

The picture of marital term usage that emerges from our interviews shows the frequent gap between legal and social equality. While in Richman's work, couples overwhelmingly reported feelings of transformation in their "social, interpersonal and civic experience of validation,"⁸³ the couples we interviewed articulated a messier picture of ongoing and dynamic management of new legal status in the context of longstanding and continued exclusion. Decision-making about what terms to use and when to do so unfold within continuing processes of self-identification, which brings with them nuanced negotiation.⁸⁴ The portrait that begins to emerge here gives more detail to the simplistic inclusion/exclusion framework that Badgett questions for understanding the effects of marriage equality.⁸⁵ In this way, the couples in this study share the complicated experiences that the men in Ocobock's study conveyed in managing relationships with their families of origin after getting legally married.⁸⁶

1. *When to Come Out: Situational Term Usage*

Preliminary analysis suggests that the individuals in the married same-sex couples we interviewed generally selected among the following terms to refer to their marital partner—spouse, wife/husband, or partner. Individuals held diverse opinions about these terms, but those in a majority of the interviewed couples

⁸² Suter & Oswald, *supra* note 29, at 71. *See also* HULL, *supra* note 8 (examining the role that commitment rituals play in instantiating family in an era of prohibition of same-sex marriage).

⁸³ Richman, *supra* note 18, at 154.

⁸⁴ We do not suggest that the linear "coming out" narrative is the only paradigm for revealing and expressing one's identity, but use it as a framework for understanding the stakes involved in the decision-making over terminology usage. For critiques of the dominant coming out narrative, *see* Nathaniel M. Lewis, *Remapping Disclosure: Gay Men's Segmented Journeys of Moving Out and Coming Out*, 13 SOCIAL & CULTURAL GEOGRAPHY 211-231 (May 2012); Robert Espinoza, "'Coming Out' or 'Letting In'? Recasting the LGBT Narrative," THE HUFFINGTON POST (Oct. 11, 2013, 9:00 AM).

⁸⁵ Badgett, *supra* note *supra* note 4, at 316-34.

⁸⁶ *See* Ocobock, *supra* note 19, at 1.

reported situational usage of terms, reflecting ongoing negotiation of “coming out” about marital status or same-sex orientation or both. While that process is a continuation of the daily decision-making about how to introduce one’s same-sex partner, the names and terms traditionally associated with marriage bring new challenges and possibilities. Couples reported fear and discomfort with using gender-specific marital terms but also sought to use them to convey broader messages and to identify as LGB. Overlapping factors influencing what terms to use in a given situation included feelings of safety or comfort, desire for privacy, assessment of other people’s feelings, perceptions of “appropriateness,” and in-group or out-group interactions.

Assessments of threat might lead toward using the gender-neutral “spouse” instead of “husband” or “wife” to provide cover. For instance, Tad referred to making a “judgment call”—“If I felt like I might freak somebody out, or, it hasn’t happened, but God forbid, if it felt unsafe or something, I might use ‘spouse.’” Craig similarly described “sussing out the situation” before deciding whether to mention his husband.

Lee discussed using “wife” with family or friends, but using “spouse” when in professional settings: “Because you know, the world we live in today. Let’s be realistic. You know...it’s not something that’s completely accepted. And you know, I want an individual, if I’m networking or whatever, to get to know me not who I’m married to. So you know. So I feel bad come later on. So the person has the opportunity to meet me, meet Lee. Me—you know my characteristics—as I’m defined as an individual.”

On a related note, the desire for privacy might militate toward using “partner,” given the curiosity that marital terms might invite in cross-cultural contexts. Charles spoke of seeking to avoid questions when he visits his native Italy about how he can be married, when same-sex marriage is not permitted there. Scott similarly referred to being less open about using “husband” in his native Mexico because same-sex marriage is not widely accepted throughout the country.

On the other hand, gender-specificity is important for some subjects in facilitating “coming out” in particular circumstances. Although he might use “spouse,” when he does not feel safe, Tad described sometimes using “‘husband’ to make the point that I’m gay.” And while he prefers the term “spouse,” Tom will not use it “if it would not be clear to the person I was speaking with that the spouse was a man. I wouldn’t want someone to hear the word spouse and think I meant my wife.”

Some subjects drew a distinction in what terms they will use based on whether they are speaking with other gay people or with heterosexual people or outside entities. For instance, Will might use “boyfriend” with other gay people but might otherwise use “husband”

for “shock value.” Julia reported using “spouse with straight people to avoid the [traditional role] assumptions about ‘wife’” but using “wife with gay people because there are fewer assumptions.”

Similarly, Victoria drew a distinction based on whether she is interacting with outside entities, describing how she prefers “wife” but will use “spouse...if it’s more of a business discussion, you know, if I’m in the bank or on the phone yelling at some creditor. You say I’m the ‘spouse’—not ‘wife’—because then they won’t take you seriously.”

2. *Coming Out as a Married Same-Sex Couple: Term Preferences*

Individual subjects hold divergent views on preferred relationship terms post-marriage—wife/husband, spouse, or partner.⁸⁷ Term preferences coalesce around the following themes—meaning-based reasons, instrumental reasons, feeling-based reasons, and aesthetic reasons. Themes may overlap with one another to some degree, and conflict may arise within categories. Indeed, the overlap and conflict that arises reflects the dynamic negotiation in which subjects engage in the transition to marriage.

a. Meaning-based reasons

Although they do not necessarily agree on meanings of terms, individuals interviewed engage history through the meanings they ascribe to particular terms and also seek accuracy in terminology.

i. Engaging History

The place in history of the terms “husband,” “wife,” and “partner” factored into some couples’ narratives about term preferences. For instance, some couples reported resistance to the terms “husband” and “wife” due to perceived traditional gender-based role assumptions associated with these terms. For Jill, these terms “lock[] you into a kind of role, or assumptions of certain roles, and it’s just not comfortable.” Nancy, who prefers to use “partner,” referred to a “kind of...prescribed definition of what a wife is.”

Perceptions of “husband” and “wife” as markers of outmoded, societal delineation of gender roles animated other subjects’ views of these terms. Nick identified these roles as rooted in power differentials, with the term “husband” connoting “an obligation to be subservient to him.” Relatedly, Nancy’s spouse Ellen pointed to the traditional meaning of wife, as “convey[ing] ownership.” Phoebe explained her dislike of terms like “husband”/“wife”: “I have a friend

⁸⁷ Only one individual mentioned occasionally using “boyfriend.”

who, when she talks about her husband, she doesn't call him by his name, she says my husband sounds very um [...] Like owning- or taking ownership of someone."

For Zack, these terms suggest a gendered vision of dependency and domesticity—"the word 'husband' implies that someone's taking care of you;" for Zack's spouse Lance, "the wife is somebody who is domestic and stays at home and, uhm, I think even those rules have changed and—and—are out of date." Similarly, Caroline, who struggles with the term "wife" since being married, said, "I just think of wife as a- as an old-fashioned woman who stays at home." Assumptions about gender roles in marriage may prompt the question that Peter has received, "'Oh well, then, who's the wife?'"

Historical context also emerges as a factor in continuing to use "partner" in marriage. Nancy explained her preference for "partner" in connection with reclaiming a term of oppression: "I just feel more comfortable with partner. And I feel like there's like a- like I kinda own that term. Our people kinda own it. You know what I mean?...So like when straight people say 'my partner,' it just doesn't-it doesn't like- ...Well it doesn't have like the historical like kinda of like- we had no other term, like this is our term...And so I don't wanna let that go and be like you know wife husband kind of thing. Cause I feel like it defines who we are."

For Nancy the transition to legally married status must account for historically and socially-rooted meanings: "I mean I just feel like-like...while like legally you are like in their terms, it's not- it's not our term." While Ellen, Nancy's spouse affectionately said, "Nancy's gay lingo is in the 80s," Nancy responded with: "But it's still ours...I feel like when you say partner, it—it conjures up much more of a...historical basis like much more of a struggle of what we've had to go through than—than like this kind of very easy like 'wife.'"

ii. Seeking Accuracy

Couples also describe their preferences in relation to which terms are most accurate or unambiguous. For some, there is no other option than to use "wife" or "husband." Mary said that she prefers "wife" "'[c]ause she's my wife. I don't know what else to call her...'cause that's what she is!" Susan, married to Mary, similarly explained her use of "wife" as self-evident: "nothing else registers...it's just, it is." Keith pointed to the inevitability of using "husband": "[I]t's my husband, that's what it is—he's not my wife. He's my husband, there's two choices to me." Also focusing on aptness, Lance described partner as "inappropriate" since marriage.

Despite what terms they find most apt, Nina and Dara described resistance to their preferences:

Nina: People refer to her as my partner, and it pisses me off. Cause she's my wife.

Dara: It's weird when people—yeah they do that to us like more often than not, like a lot of people, straight people will—they know we're married, but they're like how is your partner doing or how is your girlfriend doing? And I'm like, she's my wife, you were at my wedding. Remember? Like (laughs) it's just weird, yeah.

Although often preferring other terms, some individuals find that “partner” holds valuable and accurate meaning. For example, Rachael “love[s] the phrase ‘partner’ because of what it connotes,” although she chooses to use “wife.” Similarly, Penelope generally dislikes the term “partner,” but concedes that “the true meaning of it is like exactly why we married each other.” And in Nancy’s view, “partner” is more accurate because “gay relationships tend to be more equal.”

Post-marriage, terminology usage may turn on which terms have clear and unambiguous meanings. To Margaret, “wife” is clear and succinct: “I love wife even more cause it says, ‘I am married to a woman,’ and I don’t even have to say that sentence, they just know.” On the other hand, the gender-specific nature of “wife” occasioned a conversation between Mel and Leigh, the latter who identifies as genderqueer and whose sex assigned at birth is female, about what term to use. While they ultimately agreed to use “wife” and “wife,” Leigh and Mel went through a process after marriage of discussing various alternatives because, as Leigh said, “I don’t usually like to put a gender on things.”

Eric emphasized the fact that “people understand what [husband] means,” and it “conveys the status of the relationship.” Not so, for many, with “partner,” which conveys too little and can confuse. Beyond the usual uncertainty about whether “partner” means “business partner” (or Mack jokingly asks, “What am I? A cowboy?”), partner is not gender-specific enough. Several couples referred to straight couples using the term “partner,” which makes it difficult to convey and determine whether relationships are same-sex or different-sex. Nick pointed to the dilution of the meaning of the term: “I always find ‘partner’ strange because, you know, there’s a lot more openness about queer relationships and a lot of people are PC, that someone will say ‘partner’ and I go ugh ‘are you gay or are you not’? Is your partner someone of the same sex? You’re not giving me enough to work with here. That’s why I hate to use partner.”

b. Instrumental reasons

Beyond engaging particular substantive meanings, subjects might adopt certain terms for instrumental reasons. This includes gaining safety, asserting the legitimacy of one’s relationship, claiming

LGBTQ history, taking a political stand, or identifying as gay.

Connie described greater safety in introducing Beth as her “wife,” situating it in the context of the fear she generally feels because of her sexual orientation. Connie described being “a little less afraid in public” since marriage. The ability to use “wife” facilitates coming out:

You know the thing about being a lesbian is you're always coming out of the closet your entire life, no matter, you know, every time you meet somebody new or you're in a new situation and...I just feel like it's easier just...it's self explanatory, you say hi, this is my wife, [Beth], and my daughter []. Y'know, I felt- it just needs so much less, uhm, and...a lot of the other stuff doesn't matter anymore. Y'know, hi, y'know....hi this is my girlfriend, [Beth], of 10 years, and this is our daughter [...] and it just, it- again, it just feels much more legitimate and it's, for me it's just...it's a lot easier. And...a lot easier to explain and share, I feel like.

According to James, using “husband” to describe Russ has finally helped to facilitate more parental acceptance of his relationship. Similarly, Dan prefers “husband” because “it just carries a weight with it that oh, you know this person is....legitimately...with you.”

While Nancy uses “partner” because of the meaning it holds for her, her terminology usage may also be viewed as instrumental, insofar as she seeks to honor LGBTQ struggles through her discursive choice.

On the other hand, Malcolm described “husband” as “sound[ing] more like it's an LGBT...claimed word.” Similarly, Leigh pointed to the political effect of using “wife”: “I like that it's a little subversive,” she said. “You know and it's like the most traditional thing in the world but it's so not.” James also supported using “husband” because “it's a right we earned” and is “hopeful” that his use of the term will have an impact on highlighting continued unequal treatment of same-sex couples.

For Rachael and Jenna using “wife” is an important public statement about same-sex marriage:

[Rachael]: I- you know I actually think it's pretty- well I actually think it's pretty important to use wife because we are legally married and can be legally married...but I think....it's important for us to say we are married, right? Especially to people that are...not our friend group, but people, random people you meet to be like, oh this is my wife. Uhm...I think that's important

[Jenna]: Yeah, I think it adds an extra level of dimension, uhm...in the conversation of....not only are we partners but we're actually-

[Rachael]: Yeah. We're really married

[Jenna] [simultaneously]: We're married

[Rachael]: Deal with it.

Ellen, who is often perceived as straight, feels that she has “to put it out there more.” She said she must “use language more,” and referring to her “wife” enables her to identify as gay. Although she was initially uncomfortable with the term because of its associations for her with notions of ownership, she began to use it because, “I wanted people to know that like not only that I could be a wife, but I could have a wife...And they just had to deal with it.” Mel also described the gender-specific “wife” as useful in coming out. “People either really know that I’m queer or they really don’t,” she said. “So when I say...wife...um...it’s like it’s crystal clear what I’m talking about.”

c. Feeling-based reasons

Individuals’ and couples’ narratives reflect both positive and negative emotions associated with using particular terms. Brian reports that “[husband]...feels special.” Similarly Melissa, who prefers using “wife,” explained, “[I]t makes me smile....It feels so good to be able to say.” For Andrew, “husband” evokes thoughts of his relationship with Dan and their wedding, “So it’s a very, it’s a very happy thing for me to say,” he said. “[I]t’s that word that um...where I get to exercise my responsibility for someone that I’m committed to for life.”

Others referred to their discomfort with using “husband” or “wife.” Will characterized “husband” as “too awkward.” Charles “struggle[s] to say ‘husband,’” saying it “feels strange.” The word makes him think of the word for “husband” in his native Italian and conjures images of his father.

Similarly, Craig says about “husband” that “it feels very uncomfortable to say in front of people. And I think it’s because I don’t know how they’re gonna react.” Despite this fear, Craig tries mainly to use the term—or say nothing at all.

For Russ, using “husband” initially “was a little bit of a struggle.” While Russ now uses “husband” he said, “I think - I think for me like I said it was more about...it came to this idea of I don’t wanna make people feel uncomfortable um you know.”

But I- I guess I liken it a little bit to um kinda public displays of affection. You know James has always been a lot easier for James to like hold my hand in the street or kiss me in public and for me it’s always been a lot more...um...difficult. I wouldn’t say difficult, ’cause that’s too strong a word but um I often look to see who’s looking you know as if we’re doing something wrong. So I think there’s some, there’s still some internalized...you know um...I guess internalized homophobia a little uh of that you know that I try to overcome...

Despite his struggle with “husband,” Russ decided to use the term because “trying to couch it in any other way, feels a lot like um...going back in the closet a little bit.”

d. Aesthetic reasons

Aesthetics factor into some individuals’ and couples’ explanations for their term preferences, with terms being described as “sterile,” “creepy,” or “sound[ing] better” (“partner”); “overly formal” (“husband”); “not a nice word,” “too generic,” “too legalistic,” or “too artificial” (“spouse”).

3. *Managing Reactions*

Using gender-specific marital terms like “husband” and “wife” involves managing reactions for some subjects. Response management may be viewed within the context of the stigma management framework from sociology and psychology⁸⁸ and more broadly in the context of Erving Goffman’s impression management.⁸⁹ While individuals reported little reaction from the terms they use, they also discussed strategies for avoiding adverse ones. “The delivery determines the response,” said Margaret, “You

⁸⁸ See Joanne M. Kaufman & Cathryn Johnson, *Stigmatized Individuals and the Process of Identity*, 45 SOC. Q. 807 (2004) (providing a theoretical analysis of identity development and discussing the complexity of identity negotiation and disclosure among gay and lesbian individuals, specifically detailing how romantic relationships can aid in identity development but also complicate social interactions by confronting many heterosexuals’ “phantom acceptance” of gays and lesbians); Michèle Lamont & Nissim Mizrahi, *Ordinary people doing extraordinary things: responses to stigmatization in comparative perspective*, 35 ETHNIC & RACIAL STUD. 365 (2012) (offering a qualitative cross-national review of coping strategies individuals adopt in response to social stigma by analyzing how individuals make sense of their experiences and determine how to respond; how they negotiate and transform social and symbolic boundaries; and how responses are both enabled and constrained by institutions, national ideologies, cultural repertoires and contexts); Sophie Berjot & Nicolas Gillet, *Stress and Coping with Discrimination and Stigmatization*, 2 FRONTIERS IN PSYCHOL. 33 (2011) (presenting a model for how individuals facing identity threats, such as discrimination or stigmatization, appraise and cope with these threatening situations and how these coping strategies protect and /or enhance the personal and social identity of these individuals); Caitlin T. Miller & Cheryl R. Kaiser, *A Theoretical Perspective of Coping With Stigma*, 57 J. SOC. ISSUES 73 (2001) (describing stigmatized individuals behavioral responses to stigma-related stressors and the adaptiveness of these responses).

⁸⁹ ERVING GOFFMAN, *THE PRESENTATION OF SELF IN EVERYDAY LIFE* (1959) (illustrating how individuals consciously try to control how they are perceived by observers through the use of “fronts”).

say it calmly and confidently, like nobody bats an eye.” Penelope, married to Margaret, adopts a similar approach: “when you say it and you land it, like people can’t--they can’t--they don’t get a say in it.”

Martin described his “little trick” in conversation. He might start off by saying, ““Oh, it’s actually husband,”” then “keep the stare for a little bit. Is- is it’s nice, I’m being cordial, but also just letting you know, *try it*...Alright, now we can continue. It’s (laughs) and it’s--it seems to...help. In- in just establishing yes...yes it’s ‘husband’...and I’m not afraid.”

Managing reactions to gender-specific marital terms on a micro-level is less relevant in the context of macro-level management that couples have already done in their lives. For instance, Tom and Malcolm described themselves as mostly interacting with people who already know them, so changing terminology and reactions to terms was less relevant to them. Ellen described that macro-level management in her life, “I mean we’ve been fortunate to be able to create these lives for ourselves where we can...be accepted and people are somewhat knowledgeable about what’s going on, and how they’re supposed to act.”

IV. CONCLUSION

In this exploratory study, we seek to highlight preliminary themes in how couples manage, negotiate, and construct the social domain in legal marriage. Given the near absence of information about same-sex couples’ experiences of marriage, particularly as same-sex marriage becomes increasingly more available, our research seeks to lay the foundation for understanding same-sex marriage as lived.

Beyond the context of marriage, this work seeks to explore the vast gaps that can exist between social and legal recognition. We present the beginnings of a story about how individuals manage this discrepancy as law continues to evolve toward fuller formal equality. Lending texture of the day-to-day to scholarly intuitions about the relationship between the legal and the social in same-sex marriage is important for a variety of reasons.

Public opinion has swung dramatically in favor of same-sex marriage, and at some points this past fall, it looked like a week could not go by without another state beginning to recognize same-sex marriage. Our inquiry, however, attends to the ways in which longstanding legal exclusion produces profound and lasting social inequality and physical and social threat that individuals must continue to navigate in the seemingly quotidian. This project also furthers the goal of family law scholars who work in the critical theory tradition to ensure that law attends carefully to people’s lived experience in their familial and intimate lives. Thirdly, our

examination encourages further inquiry into the content of evolving socio-legal institutions like marriage—to uncover what we’re all talking about when we talk about marriage.