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# On the Right Side of History: How Lesbian and Gay Activists Galvanized Culture and Politics to make Massachusetts the First State with Legal Same-Sex Marriage

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On the Right Side of History: How Lesbian and Gay Activists Galvanized  
Culture and Politics to make Massachusetts the First State with  
Legal Same-Sex Marriage

by

Jaime McCauley

A Dissertation  
Submitted to the Faculty of Graduate Studies  
Through the Department of Sociology, Anthropology, and Criminology  
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2012

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## **AUTHOR'S DECLARATION OF ORIGINALITY**

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## ABSTRACT

In November 2003 the Massachusetts Supreme Judicial Court sent issued a controversial ruling in favour of same-sex marriage in *Goodridge v. Massachusetts Department of Public Health*. In the decade preceding the *Goodridge* decision, the majority of US states had passed Defense of Marriage Act statutes, barring recognition of same sex marriage, and in the years following *Goodridge* many states passed constitutional amendments to define marriage between one man and one woman. What sets Massachusetts apart from the rest of the United States on this issue? Through the analysis of Massachusetts newspaper reports, archival material, and interviews with lesbian and gay movement leaders, this dissertation explores the social and political factors in Massachusetts that enabled this state to emerge without a Defense of Marriage Act in place, to win a legal battle to establish legal same-sex marriage, and to fight off attempts to establish an amendment that would have overturned the *Goodridge* decision. Evidence indicates that 1) cultural and demographic factors facilitated the early emergence of a lesbian and gay rights movement in Massachusetts, 2) throughout the 1970's and 1980's activists gained strategic capacity and cultivated elite and grassroots allies, 3) by the 1990's the victories of the lesbian and gay movement established policy legacies and contributed to cultural change in favour of lesbian and gay people and families, and 4) during the struggle for same-sex marriage in the 2000's activists successfully drew on the accumulated strategic skills, allies, and resources amassed over decades of movement activity to not only win same-sex marriage rights but to defeat several attempts by opponents to overturn legal recognition of same-sex marriage. This study illuminates the interaction between culture, structure, and agency and underscores the critical importance of engaging political structures, employing broad-based cultural tropes, and making informed strategic decisions to advance movement success.

To Lisa for everything.

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## CHAPTER 1: BACKGROUND

### Introduction

The United States boasts one of the oldest, largest, and most heavily funded lesbian and gay rights movements in the world (Rimmerman 2002, Rayside 2008, Smith 2009). Yet securing even basic rights for lesbian and gay people in America, such as protection against employment discrimination, has proceeded at an uneven pace. Establishment of lesbian and gay rights varies greatly across the US, by region, by state, and within states. In addition, when lesbian and gay activists win battles to establish rights, these movement successes are often challenged by an equally well-organized and well-funded opposition movement (Fetner 2008, Rayside 2008, Rimmerman 2020, Smith 2009). This now-familiar pattern creates a patchwork system of rights and benefits for gay and lesbian people where moving from one state, city, or municipality to another may leave a lesbian or gay person with more, less, or in many cases, no rights or protections under the law. Such is the case for everything from anti-discrimination measures for lesbian, gay, bisexual or transgender (LGBT) persons, domestic partner benefits, adoption and parenting rights, and, most recently, same-sex marriage.

When the first court case concerning gay marriage was filed in Minnesota in 1972 by Jack Baker and James Michael McConnell, gay rights were not advanced enough for same-sex marriage to emerge as

a “threat” to the established order. The couple appealed the court decisions against them to the United States Supreme Court, which dismissed the case without fanfare “for want of a substantial federal question” (Case 2005). After this the issue of same-sex marriage mostly lay dormant until 1993 when the Hawai’i Supreme Court ruled in favour of extending marriage rights to same sex couples in *Baehr v. Lewin*. After decades of advances in LGBT rights, this ruling did indeed signal a real challenge to established gender and family order and gay marriage emerged at this time as a lightning rod of cultural and political contention. The *Baehr* ruling caused a flurry of legislative activity around the country, resulting in “Defense of Marriage Act” (DOMA) statutes eventually being passed in 41 US states and at the federal level. These statutes restrict marriage exclusively to one man and one woman and assert that states holding DOMA statutes (as well as the federal government) will refuse to recognize a marriage between people of the same sex from any other state (<http://www.domawatch.org/stateissues/index.html>). The establishment of DOMA statutes and constitutional amendments banning same-sex marriage continued throughout the 1990’s even though in Hawai’i the *Baehr* decision was overturned by popular referendum and subsequent approval of a state constitutional amendment against same sex marriage.

The topic of gay marriage simmered through the late 1990's and into the early 2000's. By 2003 most states had passed DOMA statutes and those that had not could rely on the federal level DOMA (although Hawai'i, Alaska, and Nevada went a step further in amending their state constitutions) and this seemed to settle the issue of same-sex marriage for most Americans. There was considerable controversy when Vermont passed a civil unions bill in 2000, but nothing like the fury unleashed in November 2003 when the Massachusetts Supreme Judicial Court ruled in favour of plaintiffs' right to marry their same-sex partners in *Goodridge v. Department of Public Health* (Rayside 2008, Smith 2009). Like *Baehr* before it, the *Goodridge* decision whipped up a national fervour against legal recognition of same-sex relationships, and in a critical election cycle the "threat" of gay marriage earned special mention by President G. W. Bush in his State of the Union Address as well as a prominent place in the campaign rhetoric of politicians across the country. By election day 2004, thirteen states had amended their constitutions to limit marriage to one man and one woman. According to the National Gay and Lesbian Task Force, as of January 2012 there are thirty eight states that have Defense of Marriage Act statutes prohibiting same-sex marriage, twenty nine states with constitutional amendments that ban same-sex marriage, six states where legally recognized marriages may be performed for same-sex partners (plus the District of

Columbia), four states that will recognize same-sex marriages performed in other states, and thirteen states that offer some limited rights and/benefits to same-sex couples (The National Gay and Lesbian Task Force 2011). Because there are some states that have DOMA and/or a constitutional amendment and at the same time offer limited benefits to same-sex couples, the numbers listed above are greater than the number of US states.

In this complicated and messy picture Massachusetts emerges as a special case. In the aftermath of *Baehr*, one or more pieces of anti-gay-marriage legislation were passed in the United States nearly every year from 1993-2002 (The National Gay and Lesbian Task Force 2011). Massachusetts not only fought off several attempts at establishing DOMA starting in the late 1990's, but later emerged as the first (and for several years the only) state to recognize full and equal marriage rights for its gay and lesbian citizens in November 2003. Most importantly, Massachusetts activists successfully defended marriage equality against forces seeking to dismantle this new and hard-won right. When the rest of the country was moving to restrict the marriage rights of lesbian and gay people, how did Massachusetts buck this trend? Answering this question requires attention to several areas of inquiry:

- 1) What unique array of *social and cultural forces* shape the field of play for LGBT rights and gay marriage in this state?

- 2) What particular set of *institutional and political structures*, opportunities, and/or constraints must social actors contend with, whether for or against same sex marriage?
- 3) How did supporters of same-sex marriage develop successful *strategies* to win their protracted battle for marriage equality?

To answer these questions I use historical data gathered from both mainstream and lesbian and gay newspapers, lesbian and gay archival material, and interviews with marriage equality proponents active in the struggle for same-sex marriage in Massachusetts.

Many scholars have sought to analyze the exceptional resistance to gay marriage in the US (Adam 2003, Cahill 2007, McVeigh and Diaz 2009, Rayside 2008, Rimmerman 2007, Schwartz and Tatalovich 2009, Smith 2009). They have developed an array of variables that explain why such fierce opposition to same-sex marriage exists. Few scholars have questioned how battles for same-sex marriage are won (in the cases where such battles have been won). By first mapping these patterns of resistance, we can later explore how Massachusetts marriage proponents successfully rearranged these patterns to achieve marriage equality.

### Same Sex Marriage in the US

When it comes to looking at why the United States seems particularly resistant to establishing legal rights for same sex couples, there are several explanations. These explanations generally focus on

political, religious, and cultural factors and how these variables exert pressure on political institutions. Based on previous research, a profile emerges of regions where opposition to gay marriage is strongest.

Instructive here is Bayliss Camp's (2006) county level analysis of anti-gay marriage referenda passed during the 2004 election; such referenda were more likely to pass in counties with higher percentages of evangelical Protestants and Republican voters, lower levels of education and income, and fewer residents in urban areas. These patterns are corroborated by other studies and polls. Variables like age, race, religious beliefs, education, income, and political party affiliation have all been connected one way or another to support or resistance to gay marriage (Pew Forum on Religion and Public Life 2009). These identifiers are more than mere demographics; the presence or absence of particular religious groups, for example, exerts an influence on culture that may very well impact the policy implication for LGBT rights initiatives, including marriage.

Religious beliefs play an important role in American politics and are consistently correlated with gay marriage, as well (Fetner 2008, Rayside 2008, Smith 2009). The influence of conservative religious denominations in American politics has been described as "unusual" in terms of "the resources marshalled for Christian advocacy, in the strength of religious conservatism and its

organizational presence, and in the persistence of raucous debate over the role of religion in the public arena” (Rayside and Wilcox 2011: 5). Evangelical Protestants are most likely to oppose same sex marriage and Unitarian Universalists and Reform Jews are among the most likely to support it, while groups like mainline Protestants and Catholics are more closely divided over the issue (Hull 2006, Pew Research Center 2009). The relatively large percentage of evangelical Christians in the United States has long been used as a an explanatory variable in discussions of prominent American cultural values and beliefs (Lipset 1996), including beliefs about homosexuality and gay marriage (Adam 2003, Rayside 2008, Schwartz and Tatalovich 2009, Smith 2009). Evangelical believers comprise 26% of the population of the United States, making it the largest religious group in the country (Pew Forum on Religion and Public Life 2009).

Perhaps more important than numbers alone is the power this group wields in the political arena, particularly on issues of social policy like abortion and gay rights. These two issues have emerged as arguably the most divisive issues in American politics. In turn, these issues energized a formerly sectarian group of believers, evangelical Christians, into one of the most influential voting blocks in American politics (Fetner 2008, Schwartz and Tatalovich 2009). The political power of evangelical Christians is unique to the United States. In Canada, for example, religious conservatives are much less influential.



Even the current Prime Minister Stephen Harper, an evangelical Christian himself, “has remained largely silent on his religious beliefs” (Rayside and Wilcox 2011: 4).

American evangelicals are often strident proponents of “traditional family values”. This translates to a political platform advocating the use of government policy in order to establish the patriarchal, nuclear family as the primary family form. For those who espouse the family values platform, gay marriage is just the most recent in a long line of perceived threats to the nuclear family including, but not limited to, the sexual revolution, feminism, abortion rights, gay rights, single parenting, and divorce (Hull 2006, Fetner 2008, Rimmerman 2002). While many evangelical Christians advocate the “family values” platform, one need not be evangelical to support such policies at the ballot box. Though evangelicals may lead the charge against gay rights in general and same-sex marriage in particular, they clearly understand how to frame their arguments in ways that foster broad support. This way their claims will resonate with “individuals leery of imposing one set of religious values on all citizens” (McVeigh and Diaz 2009). A so-called “values voter” may come from any religious group or race or social class or other demographic category, and gay marriage as a moral issue certainly has cross-over demographic appeal.

Many Americans, not just Christian and not just conservative, are unsettled by living in a rapidly changing society and in some cases this can cause people to imagine a mythic past when things seemed simpler, purer, the future more certain, and communities more stable. This mythic past often involves beliefs about a time when gender, family, community, and race relations were clear cut-- even if imperfect. Those most likely to feel the pinch of shifting economic structures and to feel threatened by changing family norms tend to have less education and fewer employment opportunities. This fuels the desire to reach back to a time when the nation and its families were strong, and supported by “traditional family values”. Indeed, this is one of the primary conclusions of Arlene Stein’s in-depth analysis of the controversy over a gay rights bill in small town Oregon (a place she calls “Timbertown”).

Stein (2001) characterizes most residents of “Timbertown” as decent, hard working people, many of them displaced workers who have lost jobs and livelihoods as part of larger economic shifts over which they have no control. There was a time when the men in this community could count on walking out of high school and into a job in the logging industry, a good paying job with health care benefits and a pension plan, a job where a man could put in an ‘honest day’s work’ and get an ‘honest day’s pay’, and earn enough to support a family so his wife could ‘stay home with the kids’. Now this way of life is under

threat by those perceived to be outsiders: environmentalists who would rather protect owls than jobs, yuppies who move to the country for small town life only to replace the local hardware store with a yoga studio, and feminists and minority group members challenging the traditional male-breadwinner family structure and taking jobs from deserving white men with their affirmative action programs. And now the gays want rights, too? Enough is enough, many Timbertowners say.

For the men and women of Timbertown perhaps their anger is misplaced, but their problems are viscerally real. The people of Timbertown felt they had

listened...to blacks, women, lesbians, and gays whine about their problems. But who was talking about *their* pain? Who was talking about the fact that they couldn't support their families, that their wives had to go to work, that their houses and cars were being repossessed, that they were forced to abandon their families, their communities in search of work, and that the jobs they could get paid pitifully low wages, and offered few benefits or guarantees? (Stein 2001: 116)

Because of this, even Timbertown residents who did not strongly identify with Christian themes could identify with the anti-gay rights rhetoric of "special rights". Those who opposed the gay rights measure in Oregon were successful in portraying lesbian and gay people as "strangers" and "others" unfairly demanding superior power through minority group status, and threatening the foundations of hard work and traditional family values subscribed to by the townspeople. In many ways, Stein's observations characterize

the struggle for gay rights in communities across the United States, including the struggle for marriage equality.

Similarly, other scholars have made it clear that general attitudes about race, gender and sexuality in general are often connected to beliefs about same sex marriage in particular. Taking a macro-level view, Barry Adam (2003: 795) asserts that in America, “national identity and pride are caught up with masculinist ideologies of strength and belligerence...lesbians and gay men are cast as transgressors upon the sacred space of gender and national identity”. Evidence for this view can be found in resistance to allowing gays to serve openly in the military and the habitual linking of homosexuality to national security crises, notably during Cold War McCarthyism, when gays were expunged from public service and blacklisted in many other industries. Gays were scapegoated again during the gay marriage debate in the 2004 election cycle. At a time where national security and the war in Iraq were primary voter concerns, President Bush made the link between traditional gender roles and national security explicit in his 2004 State of the Union Address when he said, “A strong America must value the institution of marriage”, and, “Our nation must defend the sanctity of marriage.” Here Bush’s defensive stance characterized same-sex marriage as a threat not just to individual family units but to the nation itself.

More recently, McVeigh and Diaz (2009: 895) find evidence that “traditional sex and gender roles within a community can promote opposition to same-sex marriage in a way that leads many to see a breakdown in social organization as both a cause and consequence of non-traditional values, including values that promote tolerance of same-sex marriage”. These findings illustrate how claims made by opponents of same-sex marriage (positioning gay marriage as a “threat to the family”, exhorting voters to “protect the children” from gay marriage) are more likely to resonate with people embedded in cultures and communities where support for traditional gender roles is very strong. When this type of logic is applied to establishing LGBT rights, from anti-discrimination policies to domestic partner benefits to marriage, gays and lesbians are frequently positioned as one more undeserving ‘other’ demanding unearned benefits and privileges from society because of an “immoral” lifestyle choice (Adam 2003, Cahill 2007, Stein 2001).

A picture emerges from these demographic and cultural characteristics that illuminates the seat of resistance to same sex marriage in the United States. Yet, while the gay marriage panic influenced opinion and policy on same sex relationships throughout the 1990’s, Massachusetts emerged in 2003 with the first legal recognition of same sex couples in the United States. The question then becomes whether a different set of variables was at play in

Massachusetts that enabled activists there to successfully turn the tide against the resistance to gay marriage seen elsewhere in the United States.

### Explanations for Social Movement Success

There is a range of theories explaining the success or failure of social movements, including the movement for advancement of LGBT rights and same sex marriage. Many of these social movement theories focus on political, structural, or institutional factors and their influence on movement outcomes. These explanations analyse social actors' ability to take advantage of political opportunities and/or openings in political systems to explain the success of social movements, in this case the lesbian and gay movement's quest for legal marriage (Buechler 2000, McAdam, McCarthy and Zald 1996, Tarrow 1998). Also, Miriam Smith (2008: ix) analyses the gay marriage movement in the US using historical institutionalism, a method of "focusing on the role of political institutions and structures and the legacies of previous polities in shaping the trajectory of the lesbian and gay rights movement over time". Here I'll look at how political structures and opportunities shape LGBT activism and the gay marriage movement, and how marriage proponents make strategic choices within particular cultures and structures to advance their cause.

Explanations for the success or failure of social movements have been dominated by theories focusing on factors like political processes and opportunities, mobilising structures, resource mobilization, and framing (McAdam, McCarthy, and Zald 1996, Tarrow 1998). While these theories privilege structural explanations for movement success, more recent strands of social movement theory have sought to build more comprehensive theoretical positions which include analysis of broader cultural factors that movements must contend with, as well as emphasizing the agency and strategic choices made by social movement actors themselves (see Goodwin and Jasper 2004, Mansbridge and Morris 2001). Most scholars agree that a “synthetic” approach is needed to fully explain the emergence, rise, and fall of social movements within the particular structural, cultural, and historical locations in which such movements are inevitably embedded (McAdam 1996, Poletta 2004, Smith 2009). This is indeed the case for gay marriage activism as each theoretical tradition offers insight into the trajectory of the gay marriage movement, but in reality the paradigmatic foci of each theory (opportunity, structure, culture, etc.) act together to define an overall climate that LGBT movements must engage in order to wage successful rights campaigns.

Political opportunity and political process models of social movement activity generally stress the importance of factors such as acquiring resources (especially financial and/or political support from elites), taking advantage of openings or vulnerabilities in political

institutions or structures, and the interpretive processes by which movements become “framed” in a particular way. For example, Sidney Tarrow (1998: 7) argues “changes in political opportunities and constraints create the most important incentives for initiating new phases of contention” and that the “outcomes of such contention depend not on the justice of the cause or the persuasive power of any single movement, but on their breadth and on the reactions of elites and other groups.” Importantly, the very structure of the political system itself influences how social movement actors think about politics, and informs the strategies and approaches available to movement actors (Meyer 1996: 279). Therefore, when activists perceive some “dramatization of a system’s vulnerability or illegitimacy” or “a glaring contradiction between a highly salient cultural value and conventional social practices”, movement activity is more likely to occur (McAdam 1996: 25).

In his analysis of the gay marriage movement in the US, David Rayside (2008: 29) asserts that political structures and processes are important, “The unusual fragmentation of authority within all levels of American government impedes radical change, but creates entry points through which gains can be secured in particular locations and times”. The “entry points” that Rayside refers to are available for movement supporters to engage, but counter-movements may also use these structural openings to their own advantage. For example, “Populist mechanisms such as referenda also create openings for Christian right opponents to enact barriers to LGBT rights, further slowing the pace



towards inclusion of sexual minorities” (Rayside and Wilcox 2011: 8). In this way, when taking advantage of vulnerable political structures, “protesting groups can unwittingly create political opportunities for their opponents” (McAdam 1996: 59). This is especially true for gay marriage in the US; every time a step is made in favour of gay marriage we see an energized conservative movement prepared to strike back against the “gay agenda” (Fetner 2008).

The use of popular referenda is a unique component of the American political structure and backlash to gay rights victories often utilizes a ballot initiative or popular referendum, “a [structural] tool the religious right is well equipped to wield” (Rayside 2008: 144). The 2003 Massachusetts Supreme Judicial Court decision in favour of gay marriage was a victory for LGBT activists that subsequently created an opportunity for the gay marriage counter-movement. Despite the existence of federal DOMA legislation, “social conservatives in congress recognized the potential of using the same-sex marriage issue to mobilize their political base” (Rimmerman 2007: 285). Additional amendments have been in each election cycle since 2004. Passing amendments to ban a phenomenon that only exists outside of legal reality appears to be a redundant measure that is mostly symbolic. However, DOMA statutes may be overturned legislatively but amendments must be overturned via popular referendum, therefore giving amendments more “teeth”.

Framing is often seen as the cultural component of the more structurally oriented political process-opportunity and resource

mobilization theories. Social movement actors utilize important cultural symbols to “frame” an issue in a way that will mobilize constituencies and articulate, define, or construct movement claims and grievances (McAdam, McCarthy, and Zald 1996, Tarrow 1998). The gay marriage movement is no exception to these typifications of movement framing processes. According to Tadlock, Gordon, and Popp (2007) the iconic cultural frames most at issue in gay marriage are traditional values vs. equal rights. Tadlock and his colleagues argue that both “individuals and the media use frames to organize and simplify their attitudes and evaluations of an issue” and, knowing this, “interest groups attempt to frame issues in a way that is favourable to their position [and] are successful to the extent that they are able to get the media to adopt their frame when reporting about the issue and also in getting the public to adopt their frame when thinking about the issue” (Tadlock, Gordon, and Popp 2007: 196). Both pro- and anti- gay marriage activists use tropes of freedom, equality, and family to bolster arguments for their position.

Although political process and opportunity models have typically dominated social movement theory, they are not without their critics. For example, framing analysis was developed by political process and opportunity theorists to answer what critics have called their overly structural analytics. Yet, even after the addition of framing analysis questions and considerations about this approach remain unanswered. For example, what accounts for the uptake of particular frames in various times and places but not others? How are political structures themselves

mediated by cultural elements other than framing (Poletta 2004)? How do the agency and strategy of social movement actors come into play (Ganz 2004)? Critics of the political process/opportunity model argue that if we analyze social movements as a

shifting playing field, with various institutions, cultural constructions, and strategic players, we can see that political action (and the impulses, grievances, and interests that go into it) is both channelled and created in a variety of ways without having to lapse into [political opportunity] “window” metaphors. Institutions inspire and demand action as well as constrain it. (Goodwin and Jasper 2004: 12).

Indeed, the political process and opportunity model can explain much about the trajectory of gay marriage activism, but comprehensive considerations of culture and agency are central to the analysis as well. For example, the research I’ve presented so far suggests the uptake of a particular frame may be more or less successful depending on variations in demographic patterns and regional cultural attitudes; in some regions conservative religious arguments are most successful, in some areas “special rights” may be the resonant frame, and in some cases the equality frame will win the day (Gozemba 2006, Hull 2006, Stein 2001). Activists also use skill and strategy to frame arguments in a way that will resonate with their constituents. For example, Massachusetts’ activists skilfully (and successfully) co-opted the “family values” frame to argue that *all* families should be valued and protected, including lesbian and gay families. Although LGBT activists elsewhere also attempted this strategy with less success, Massachusetts had cultural elements in place that facilitated the uptake of LGBT family friendly frames. Specifically,

early LGBT rights successes had created cultural space for LGBT families to be more visible in Massachusetts than elsewhere, and a series of court decisions, like second parent adoption and de facto parenting rights, created legal support and definition for LGBT families that still exists in few other places.

Taking steps to advance cultural analyses in social movement theory, Francesca Poletta (2004) urges social movement scholars to consider the way political opportunities and structures are intertwined with culture. Here culture is defined as the “symbolic dimension of all structures, institutions, and practices (political, economic, educational, etc.); symbols are signs that have meaning and significance through their interrelations; the patterns of those relations is culture” (Poletta 2004: 100). This definition emphasizes the influence of culture beyond framing. Whereas framing analysis may explain how some constituencies become mobilized and how movement actors socially construct their grievances, a broader conception of culture reveals that political structures, the elite actors within those structures, and the movement activists that challenge those structures “are suspended in webs of meaning” (Poletta 2004: 100). This point is made salient by considering populism or populist ideology as a cultural value in the US and the use of popular referenda and citizens’ initiatives to repeal gains made by gay marriage activists: populist frames are often used to argue against gay marriage (i.e. “Let the people vote” was a frame used by opponents of gay marriage in Massachusetts) and the strength of these

frames is reinforced by political structures that enable the use of referenda to repeal gay rights initiatives (Adam 2003, Cahill 2007, Gozemba 2007, Rayside 2008). Also, regional differences in attitudes about LGBT rights and gay marriage in the US indicate that social movement actors may be constrained and/or aided by the regional cultures and “webs of meaning” in which they are embedded. Such regional/cultural particularities affect the uptake of certain frames, the success or failure of certain strategies, and the political opportunities and resources available to activists (Hull 1999, Stein 2001).

Agency is another primary component in the success of LGBT activism in general, and for gay marriage in particular, yet remains under-attended to in much of social movement theory and research. Part of the political process and opportunity model acknowledges that social movements do not just react to political opportunities, they also create them (Gamson and Meyer 1996, McAdam 1996, Tarrow 1998). However, critics of such models argue that the use of agency and strategy in social movements needs greater theoretical consideration. According to these critics, the mere presence of an opportunity is no indication that a movement will act on that opportunity, or that if it does, whether activists will be successful. In the LGBT rights movement when an opening appears in the political structure, there is often a rush of movement *and* counter-movement activity. Which side is successful in filling that opening is dependent on the agency and strategic choices of social movement actors, and their ability to execute strategic moves that

resonate within the cultural “webs of meanings” where social movement activity occurs.

Movement success cannot be explained by opportunity alone. Consideration must be given to the agency expressed by social movement actors and the strategies they develop to take advantage of existing structures and opportunities or to create new ones (Ganz 2004, Morris 2004). Moreover, this is a reflexive relationship between opportunity and strategy where “environmental change may generate the opportunities for social movements to emerge, but the outcomes and legacies of such movements have more to do with the strategies actors devise to turn these opportunities to their purpose, thus reshaping their environment” (Ganz 2004: 182). James Jasper (2005) positions activists in “fields of strategic contestation, along with many other types of players” and catalogues a series of strategic choices that must be made about organizing, setting goals, choosing tactics, and more. Importantly, Jasper (2005: 4) emphasises the interplay of culture, structure, and agency when he asserts, “structured arenas shape players, players’ decisions, and the outcomes of interactions... all strategic action is filtered through cultural understandings, but at the same time cultural meanings are used strategically to persuade audiences”. This is analytically important to the gay marriage movement, where previous strategic gains (e.g., state-wide domestic partner benefits, anti-discrimination ordinances) contribute to cultural change, thus creating a cultural climate where gay marriage may be accepted, or at least

tolerated.

To illustrate, Arlene Stein (2001) bases her analysis on the idea that anti-gay measures were passed in Oregon because many Timbertowners already felt that their way of life was threatened by various groups of “outsiders”. Those who opposed the gay rights measure in Oregon tapped into these already existing emotions and successfully portrayed (i.e. “framed”) LGBT folks as one more group of “strangers” and “others” endangering the townspeople’s way of life. In Massachusetts it was more difficult to demonize lesbian and gay people as shadowy “strangers in our midst” because Massachusetts activists had been at the forefront in creating a culture where LGBT people were visibly embedded in communities (Gozemba 2006, The History Project 1998). The legalization of gay marriage in Massachusetts was the culmination of decades of social movement activity that, in many ways, made gay people and gay families “mainstream”, or at least not “strangers” to be feared and excluded.

Lastly, Miriam Smith’s use of historical institutionalism to analyse lesbian and gay rights movements in the US and Canada is instructive. Smith (2008: 13) advances historical institutionalism as complementary to political process models in two important ways: that “political opportunity is dynamic and historically shaped and constructed; and the idea that political institutions and legacies of previous policies form institutional structures that undergird the features identified in classic

analyses of political opportunity”. This argument is similar to the point made by Ganz (2004): that past movement victories increase chances for current movement success, except where Ganz emphasizes the effect of movement successes on environment or culture, Smith emphasizes the institutional legacy of movement successes (or failures) and its impact on the success or failure of current movement activity.

Smith positions her historical institutionalism as structural, yet her analysis illustrates Francesca Poletta’s (2004: 97) assertion that “structures are cultural”. In her comparison of the movements to establish gay marriage in the US and Canada, Smith emphasizes the general importance of marital status in the US. She argues that although the US and Canada are similar in making certain assumptions about gender and family relationships (the primacy of the male breadwinner model, for example), Canadians do not generally imbue marital status with the same level of cultural and political import found in America. The importance of this point is echoed by Rayside and Wilcox (2011: 19) who note that “from the 1970s until the mid-1990s, Canada and most of its provinces substantially narrowed the differential treatment of formal marriage and heterosexual cohabitation”, creating a policy legacy that “reduced resistance to according gay and lesbian couples the right to marriage”. Likewise, there are some rights conferred upon Canadians as citizens, like health care, Americans only have access to those rights through employment or marriage (Smith 2009: 113-114).

Additionally, Smith highlights how the politics of race, gender, and



sexuality are intertwined in the US. A host of legal relationship issues-- marriage, recognition of heterosexual common law relationships, the status of children born out of wedlock-- are "linked to anxieties about the black family and the American welfare state," making "debates over marriage not just a question of religious attitudes in the US; they are also a question of racial attitudes and the gender politics of regulating sexuality." (Smith 2009 :114-115). This, too, is a point underscored by Rayside and Wilcox (2011: 18) who observe that "the race based fears and anxieties that permeate American political life may also fuel opposition to other human rights claims." The cultural primacy placed on marriage (that is, "traditional" heterosexual marriage) as well as cultural attitudes about race, gender, and sexuality are written into American policies, political structures, and institutions.

As challengers to these dominant cultural values and institutions, marriage equality proponents must learn to strategically engage both cultural and structural elements to be successful, remain nimble enough to defend successes against counter-movement activity and, eventually, build on prior successes in ways that continue to advance the movement for full equality. Here I argue that the interaction of structure, culture, and agency is the key to the success of the Massachusetts LGBT movement in winning and defending marriage equality. There existed in Massachusetts cultural elements that early on tolerated some degree of queerness, and early LGBT activists were able to exploit these cultural openings to begin building a movement. As the movement grew activists

built on movement successes, learned from movement failures, and used this knowledge to hone their strategic skills. Over a period of thirty years of activism, the Massachusetts LGBT movement penetrated political structures that were formerly closed to them, strategically engaged and overcame many prominent arguments against LGBT rights, and, in doing so, created a cultural base of acceptance, or at least tolerance, for LGBT people and a general belief that LGBT people deserve equality before the law. This does not mean that winning marriage was easy for activists in Massachusetts, but it means that when the time came to fight on this front of the “culture war”, there was an army of elite and grassroots allies and supporters to be mobilized, an arsenal of strategies and tactics to be executed, and veteran movement leaders who knew how to wield these weapons effectively. The stakes in the battle for marriage equality in Massachusetts were high and outcome may have been uncertain, but no one was going to back down from the fight.

### Methods

The primary questions I am considering here are: 1) What are the social and historical forces at work undermining resistance to LGBT rights and gay marriage in Massachusetts, 2) What political structures, opportunities, and constraints helped to shape an environment where the trend against gay marriage could be turned, 3) Which specific frames and strategies were successfully used by activists to win rights and benefits, including marriage, for same sex couples in Massachusetts?

Historical data includes both primary (oral or written testimony of eyewitnesses, original documents, etc.) and secondary sources (oral or written testimony of people not present at the moment of the original event, journal articles, newspaper stories, etc.) (Berg 2001: 214). Both types of sources, for example articles in the gay and mainstream press and archival data from LGBT and marriage rights organizations, were used here to explicate the successful implementation of gay marriage in Massachusetts. Primary sources include interviews with activists who were directly involved in the movement for LGBT rights and gay marriage in Massachusetts. Secondary sources include legal documents, newspaper accounts, and other sources that analyze and assess the actions and strategies contributing to the success of the gay marriage movement in the Massachusetts. These sources were amassed and catalogued prior to interviewing LGBT activists involved in the struggle for same sex marriage in Massachusetts. Interview data then informed the material chosen for final analysis. For example, documents that highlighted key turning points identified by activists were used to triangulate interview data. To answer the questions listed above, I use data from major Massachusetts newspapers, archival data from The History Project (a Boston area group dedicated to preservation of the region's LGBT history), and interviews with thirteen Massachusetts activists.

Documents on Massachusetts history generally, and Massachusetts LGBT history specifically, identify cultural factors that gave rise to early spaces and places in Massachusetts that were more or less tolerant of what we might call “queer” activity. Women’s colleges, for example, where “passionate friendships” or “Boston marriages” between women were relatively common. These documents also outlined the place of Massachusetts in social movement history as a breeding ground for leaders of various social and reform movements throughout American history, making it less surprising that a lesbian and gay rights movement might develop earlier in this region than in other areas of the U.S. Newspaper articles, primarily from Massachusetts’ major newspapers, *Boston Globe* and *Boston Herald*, chronicle the rise of the lesbian and gay rights movement from the early 1970’s onward, culminating in the struggle for gay marriage. Most articles I used here were accessed electronically using the NewsBank/NewsFile database. The *Boston Globe* electronic archives started in 1973 and the *Herald’s* archives go back to 1991. I performed repeated searches using phrases like gay rights, domestic partner benefits, defense of marriage act, gay marriage, same sex marriage, and others. Over time and across databases a total of 25 searches were performed that produced significant results. I combed through these sources and narrowed the field down to roughly 512 articles that informed my analysis. Articles

were narrowed down to those that most specifically identified key proponents and opponents of LGBT rights and same sex marriage, provided the most detailed description of strategies and tactics utilized by those for or against LGBT rights and gay marriage, and/or highlighted key advances or setbacks in the historical trajectory of LGBT rights advances leading up to the struggle for same sex marriage. Additionally, I downloaded and transcribed several videos from the websites of Gay and Lesbian Advocates and Defenders and MassEquality.

Other print materials used in my analysis were from archives at The History Project, as well as the personal archives of activist Lisa Thompson. The History Project archive was particularly useful for accessing material from social movement organizations (SMO's) like the Religious Coalition for the Freedom to Marry and the Freedom to Marry Coalition. These organizations disbanded after winning the right to marry in Massachusetts in 2007 and I was unable to track down any representatives who were willing to participate in an interview. Hence, the material from the archive was the only available information.

Additional archival material came from activist Lisa Thompson. Ms Thompson donated the use of her personal gay marriage archive for my research. Among the documents contained therein were newspaper articles from where she resides in western Massachusetts

as well as personal correspondence between herself and elected officials, communication from the SMO's that she was involved with, fellow activists, friends and family. The only material quoted from such correspondence is that of emails distributed by SMO's. Because such correspondence is intended to reach mass email lists, and is the result of a crafted message on the part of SMO's, it falls closer to the realm of public information for which the informed consent of the individual sending the email is not required. I did not quote any personal correspondence from individuals who did not give informed consent to their thoughts and writing being included in the study. I considered the materials donated by Ms. Thompson particularly important as they represented some insight into activism that took place outside of Boston, where the majority of my interviews subjects live.

Historical research methods are straightforward in many ways, but still contain epistemological assumptions that must be deconstructed. For Gaye Tuchman (1994: 306), one of these assumptions involves the idea that "a methodology includes a way of looking at phenomena" that specifies how a method "captures" an "object" of study. She further stresses that "one must have a point of view, including an interpretive framework that includes some notion of the 'meaning' of history". At issue is, of course, the reality that history often has many meanings. Activists may interpret the

meaning of an event differently than a journalist, and activists may interpret the meaning of an event differently from each other. The initial stage of research involved newspaper database searches and reading documentary histories of the struggle for same sex marriage in Massachusetts, including accessing material from Massachusetts LGBT organization websites as well as websites of organizations opposed to same sex marriage (i.e. Massachusetts Family Association). From this material I was able to identify a list individuals and organizations whose names appeared most frequently and were described as having a major impact on the fight for marriage equality. To prepare for the next stage of research, collecting interview data, I sent emails to several organizations where I identified major players to target for interviews: MassEquality, The Freedom to Marry Coalition, Gay and Lesbian Advocates and Defenders, Massachusetts Gay and Lesbian Political Caucus, and Religious Coalition for the Freedom to Marry. I also contacted several legislators who were integral in securing marriage equality for Massachusetts residents. Using these initial contacts I secured several activist interviews, and one legislator interview. These interviews were conducted in the greater Boston area during the month of June in 2009. While performing interviews in Boston, I made several additional contacts at local LGBT events and via snowball sampling for a total of thirteen interview subjects.

The group of respondents included six men and seven women, ranging from 23 to 68 years of age (average age was 48). All respondents identified as either gay or lesbian. The sample was well-educated: one respondent was in the process of completing his Bachelor's degree and the rest had completed at least a Bachelor's degree or higher for a total of five BA/BS degrees, three MA degrees (one of these was a Ph.D. candidate at the time of the interview), two JD degrees, and two Ph.D.'s. The sample is also generally well off financially; on the lower end of the income scale is the Ph.D. candidate who reported income at around \$10,000 annually. Two respondents reported annual incomes in the \$30,000 dollar range, two in the \$60,000 dollar range, one in \$70,000 range, three respondents reported making about \$100,000 dollars per year, and two reported earning over \$200,000 per year. One respondent chose to answer with "middle income" and one answered "upper middle". For purposes of comparison, the average annual income in the US is 43,000 (United States Census 2000c). Six respondents were married, five single, one listed "domestic partnership", and one "partnered". In terms of religious beliefs, three respondents were Jewish, one Jewish and Buddhist, one Buddhist, one identified as a "casual" Episcopalian, one Pagan, one non-practicing Catholic, one who identified as "kind of" Catholic, and four with no religious affiliation. Twelve respondents identified their race as "white" or "Caucasian", of these



one listed an ethnic identity of “Irish-American” and another identified ethnically as “French Canadian, Irish, and English”. One respondent identified racial status as “Black”. Four subjects are life-long Massachusetts residents, one has lived in Massachusetts for over 50 years, one over 30 years, five for 20 years or more, one for more than 10 years, and one for 7 years.

This small sample was by no means representative of the Massachusetts lesbian and gay population, nor was it representative of lesbian and gay activists in Massachusetts. However, the combined experience of this group added up to nearly 100 years of political activism and advocacy for LGBT rights and other social justice issues in Massachusetts. Each interview respondent worked on some level (from volunteer to director) at one or more of the following organizations: Gay and Lesbian Advocates and Defenders (GLAD, the legal advocacy group that filed and won the case for gay marriage in Massachusetts), the Massachusetts Lesbian and Gay Political Caucus (MGLPC), MassEquality, North Shore MassEquality, The History Project, the LGBT Aging Project, and the National Organization for Women (NOW). No matter what their title, or whether they were new to activism or had been active for thirty years, each interview subject attended rallies, wrote letters to local newspapers and to their elected officials, and personally lobbied elected officials. Nine of the interview subjects held a leadership position in one or more organizations as

director, chairperson, board member, executive committee member, or paid employee. Four respondents could be described as participants rather than leaders, or as one of them states, “Not the ring leader, but part of the great marching army”. The first hand observations and perspectives of each respondent are instructive in rounding out the historical record on the struggle for gay marriage in Massachusetts.

The interview data provided an important and necessary complement to the analysis of documents on LGBT rights and gay marriage in Massachusetts. The interviews took the shape of what is often referred to as a semi-structured or semi-standardized interview. Bruce Berg (2001: 70) describes such interviews as the “implementation of a number of predetermined questions and/or special topics... typically asked of each interviewee in a systematic order, but the interviewers are allowed freedom to digress”. Given such a deeply nuanced topic as gay marriage, an allowance for probing and digression was essential. The interviews themselves cover several themes. The structured interview questions were:

- What strategies did your organization use to build a base of supporters? Which were most successful?
- How did your organization gain access to the financial resources necessary to launch and sustain a campaign for gay marriage?

- What strategies did you use in order to gain access to and support from key legislators?
- What makes Massachusetts different from other states that do or do not recognize or allow gay marriage?
- What is the future of gay marriage in America?
- Can activists in Massachusetts offer any tactical or other lessons for activists in other states?

Most interviews lasted about an hour, depending on the experience level of the interview subject and how much he or she wanted to tell me. One interview was as brief as 45 minutes; another continued over several one to two hour-long sessions.

The Research Ethics Board at the University of Windsor approved this study. Codes of ethics governing research on human subjects place primary emphasis on informed consent, privacy, and confidentiality for research participants (for example, see Christians 2005: 144-145). All respondents in this study signed an informed consent form that outlined the research study and any possible risks of participation. Each respondent was also given the option of remaining anonymous. In every case, respondents declined anonymity because their names had already been made public in one way or another due to their activism. In every case, they were proud of the role they had played in the movement for gay marriage and had no desire to separate their identity from what they had done

previously or what they might say in an interview. On one occasion, a participant assumed that the informed consent form was equivalent to a media consent form and was prepared to actually sign away the rights to what she might say in the interview! I took care to explain that this was not the case, and, in fact, the form she was signing was there to protect her rights, not limit them. Participants did occasionally ask that certain anecdotes or names of public officials remain off record. In these cases, I respected the request of my informants.

Beyond issues of informed consent, privacy, and confidentiality, some methodologists require researchers to question the power relations and issues of trust that arise in qualitative research, particularly interview research. Fontana and Frey (2005) call on researchers to be reflexive about the interview process and to avoid exploiting subjects by contextualizing their own identities as researchers, as well as the social, historical, and political contexts in which the research takes place. When I completed these interviews only a handful of US states had legalized same-sex marriage (even now, the total number of states where same sex marriage is recognized stands at six). That the strategies and tactics used in Massachusetts might hold some important insight for activists working for marriage in other states was not lost on me, or my research participants. That the research took place in a social and

historical moment where the results could help advance activism for same-sex marriage outside of Massachusetts was an important backdrop for the study. Of course, the inverse is also true: that opponents of same-sex marriage may also gain insights into the strategy of lesbian and gay activists and work to turn those strategies to advance their own cause.

Additionally, the participants in my study were aware of my own identity as an ally in the struggle, a lesbian, and a woman born and raised in the American Midwest employed at a university in the American South (even though I was working to complete my degree at a Canadian university). In some ways I feel I represented a carrier of a message that my respondents might send from Massachusetts to activists elsewhere in America, places where the struggle for LGBT rights and same-sex marriage had been less successful. In my interactions with my informants, I was clear that my research, as a dissertation project designed to fulfil the requirements of a Ph.D. program, primarily benefited me. However, I discussed with some of my informants the possibilities of disseminating my findings beyond the academy and we agreed that in this way their contributions to my work may very well benefit a broader base LGBT activists and perhaps advance the movement even further.

I began the project with the intent of writing an analysis of the contemporary movement for same-sex marriage, however, my

interview informants made clear that the story of how Massachusetts won gay marriage starts not in 2003, but in the 1970's with gay and lesbian politicians like Barney Frank and Elaine Noble being elected as state representatives, or in 1989 with the passage of the lesbian and gay civil rights bill. One participant was quite clear on this point, "The real issue is what's happened [over the past thirty years] to create an environment in which the institutions are in place [and] the relationships are in place" (interview respondent Elyse Cherry). Some activists even reached back as far as John Adams writing equality into the Massachusetts' constitution to explain why Massachusetts became a frontrunner for LGBT rights and gay marriage. Over and over these informants said that gay marriage was successful here because of the history and culture of Massachusetts. They said that, yes, what activists did made a difference, but it made a difference because of a particular set of historical and social conditions that made Massachusetts unique. It was then that I began reaching back further into Massachusetts history to explain the full trajectory of the lesbian and gay (and later bisexual and transgender) movement. Therefore, the first several chapters examine the historical, social, and political impact of the series of rights struggles and victories that paved the way for marriage equality in Massachusetts; how these events lead from fighting for individual rights, to couple rights, to family rights, and then marriage; and how they created a policy legacy and SMO

repertoire of tactics that enabled activists and allies to ultimately win the battle for marriage equality.

One final note on terminology, I use the terms “lesbian and gay movement” or “lesbian, gay, bisexual, transgender (LGBT) movement” in historical context. For example, the addition of bisexual and transgender issues occurred after initial organizing for lesbian and gay rights began. As my sources reflect the lesbian and gay movement becoming more inclusive, I use the signifier LGBT. Importantly, some critics argue the current inclusion is still incomplete and/or inadequate. When it comes to same-sex marriage specifically I limit the discussion to “lesbian and gay” because marriage equality may not be considered a primary goal of transgender, queer, and gender-queer advocates.

Some argue that marriage, even same-sex marriage, is inherently unequal and exclusive to many, especially to transgender and other gender non-conforming people who still lack basic non-discrimination protections in employment, housing, and other areas and for whom these basic rights are more essential than marriage ([http://katebornstein.typepad.com/kate\\_bornsteins\\_blog/2009/12/open-letter-to-lgbt-leaders-who-are-pushing-marriage-equality.html](http://katebornstein.typepad.com/kate_bornsteins_blog/2009/12/open-letter-to-lgbt-leaders-who-are-pushing-marriage-equality.html)). For example, at the time gay marriage was passed in Massachusetts, transgender people were struggling with basic rights protections in that state (and still are in a majority of states). Some national groups,

like the National Centre for Transgender Equality, do have a platform for family recognition but transgender rights groups assert the need for a transgender person to be able to marry according to their gender rather than biological sex, and this is a different type of recognition than that offered by same-sex marriage

(<http://transequality.org/Issues/family.html>). My language is an attempt to honour critical and/or excluded voices on this issue in the LGBT community. These voices are essential to advancing a movement whose goal is inclusivity and equality for all people. These marginal voices in the “mainstream” LGTB movement deserve to be heard and represented in future research, research I hope to be a part of.

Another potential problematic of this research is the use of movement frames that emphasize similarities between same sex couples and their families and traditional heterosexual families. My analysis shows that the lesbian and gay family values frame was integral in Massachusetts’ victory on same-sex marriage, yet there is a risk to this frame that is acknowledged by activists and writers who also critique the primacy of same-sex marriage as a goal of the LGBT rights movement. Specifically, utilizing such tropes may win an advance in rights for those lesbian and gay couples who fit the mould, but may further marginalize lesbian, gay, queer, genderqueer, and transgender individuals (and their relationships) if they do not fit into



the lesbian and gay family values paradigm. For example, feminist theorist Gayle Rubin (1984: 11) describes a hierarchy of sexuality where married, monogamous, heterosexuals comprise the core of what she describes as a “charmed circle” and homosexual relationships fall outside that circle.

For queer critics of same-sex marriage, the question becomes whether lesbian and gay activists are reifying that hierarchy by privileging the right of lesbian and gay people in married, (presumably) monogamous, homosexual relationships to become a part of the charmed circle rather than fighting for the inclusion of multiple forms of sexual and relational expression (D’Emilio 2007). When living in a society where certain benefits are conferred through marriage (health insurance, social security and pension benefits, and immigration rights, among others) the creation of a marital status for same-sex couples undergirds “coercive elements of society” (Colker 1991: 321) that may push couples into marrying who would, in fact, rather prefer not to be married (Colker 1991, D’Emilio 2007, Kitzinger and Wilkinson 2004). Furthermore, even most married same-sex couples would likely fall outside of the ‘hockey mom’ archetype celebrated in the Massachusetts ad campaign. These are perspectives that must be considered and addressed by the larger gay and lesbian movement, and in research about the movement.

What I present here is necessarily only a piece of a much larger picture. In my work I am acting in the way that Denzin and Lincoln (2005) conceptualize as a research bricoleur. In this vision of qualitative research the “interpretive ‘bricoleur’ produces a bricolage—that is, a pieced-together set of representations that is fitted to the specifics of a complex situation” (Denzin and Lincoln 2005: 4). In taking evidence from newspapers and other archival data, correspondence, and activists’ statements I am piecing together a particular construction of this historical movement success. I have done my best to represent this construction as completely and accurately as possible, by “crystallizing” (Denzin and Lincoln 2005: 6) the various points of view on how the LGBT movement achieved success in fighting for gay marriage in Massachusetts. However, by focusing on explanations for movement success I am primarily representing those who were most active in the fight for marriage, therefore the facets of this crystal are made up of those who most supported gay marriage. The voices of those most opposed to gay marriage structure the story being told and are reflected in the crystallization, even though they do not make up the core of the crystal.

### Overview

The rest of this dissertation traces the development of the LGBT movement in Massachusetts. I work to show how this

movement is embedded in particular historical and social contexts that led to its eventual success in the struggle for same-sex marriage, and explore how these contexts shaped the opportunities available to and strategies used by social movement activists. In chapter 2, I situate Massachusetts in the history of social reform movements, changing attitudes about family and family structures, and early roots of Massachusetts' lesbian and gay communities. Chapter 3 chronicles the rise of a post-Stonewall movement for lesbian and gay rights in the 1970's and 1980's. This period of time is crucial for movement development as this is when activists win their first major victory, the passage of the gay civil rights bill. This early movement activity and eventual victory is credited with paving the way for the eventual success of the same sex marriage struggle. Chapter 4 highlights a shift in strategy for the LGBT movement in Massachusetts during the 1990's. During this time frame, movement goals shifted from individual rights to family rights, leading to important legislative outcomes and court decisions that laid the foundation for making a case for legal recognition of same sex marriage in Massachusetts. In chapter 5, the fight for marriage heats up when *Goodridge v Massachusetts Department of Public Health* is filed, and LGBT rights opponents fight to establish a series of Defense of Marriage Acts. This requires LGBT rights activists to channel all of the energy, resources, and knowledge they have accumulated into fighting off DOMA

attempts that become even more acrimonious after the Supreme Judicial Court decides in favour of same-sex marriage. The last chapter, chapter 6, offers a concluding analysis of the strategies and tactics central to creating a moment where marriage could be won for same-sex couples.

Quotes from activist interviews are interspersed with historical and documentary evidence. For the sake of brevity and flow throughout the rest of the document, I will offer a brief biography of each participant here.

- Bruce Bell: Long-time supporter of LGBT rights groups, lobbied on behalf of Gay and Lesbian Advocates and Defenders (GLAD) and MassEquality and is currently a staff member at GLAD.
- Ryan Brown: Field organizer for MassEquality.
- Elyse Cherry: Board member of Gay and Lesbian Advocates and Defenders in the 1990's. Participated on behalf of MassEquality during the marriage struggle in the 2000's.
- Gary Daffin: Co-chair of the Massachusetts Gay and Lesbian Political Caucus (MGLPC). He first became involved with this organization in 1989.
- Pat Gozemba: Co-chair of The History Project (a group dedicated to preserving Boston's LGBT history) and long-time political activist on behalf of civil rights issues, anti-war issues, the women's movement,

the LGBT movement, and the environment. Co-author of *Courting Equality: A Documentary History of America's First Same-Sex Marriages*.

- Amy Hunt: Former director of the Massachusetts LGBT Aging Project, and Creative Director of MassEquality's "It's Wrong to Vote on Rights" ad campaign. Also worked with MGLPC.
- Buzz Harris: Worked with the National Gay and Lesbian Task Force and local Boston-based LGBT rights groups for twenty years, served a board member of MassEquality during the marriage struggle in the 2000's.
- Arline Isaacson: Co-chair of the Massachusetts Gay and Lesbian Political Caucus. She began working for the organization in 1983 and acted as lead lobbyist during the marriage struggle in the 2000's.
- Lisa Poss (Thompson): Producer of "It Takes A Team" video project to reduce homophobia in sports. Lisa was active on behalf of MassEquality and the Freedom to Marry Coalition during the marriage struggle.
- Pat Ould: Board member of The History Project and a founder of North Shore MassEquality.
- Carl Sciortino: Openly gay legislator (2005-present) and advocate of same-sex marriage. Worked with MassEquality, GLAD, MGLPC, and other groups during marriage struggle.

- George Smart: Member of the Massachusetts Gay and Lesbian Political Caucus, lobbied for same-sex marriage on behalf of Gay and Lesbian Advocates and Defenders and MassEquality.
- Ellen Zucker: Participated in LGBT advocacy with the National Organization for Women and the American Civil Liberties Union throughout the 1980's and 1990's. Participated on behalf of MassEquality during the marriage struggle in the 2000's.

## CHAPTER 2: MASSACHUSETTS, MARRIAGE, AND CHANGING FAMILY FORMS

### Introduction

Social movements do not come out of nowhere. As James Jasper (1997: 60) states, “To explain the social movement, we need to explain why certain individuals come together at certain times and places and do things together.” For many years, social movement scholars focused on structural explanations for the emergence of social movements, for example, a movement’s capacity for resource mobilization and/or the presence of widening political opportunities (for example Tarrow 1997, McAdam, McCarthy, and Zald 1996). In more recent social movement scholarship, an increasing emphasis has been placed on the cultural contexts that might facilitate (or constrain) the uptake of social movement activity in various ways. For example, Francesca Poletta (2004: 100) asserts, “Culture plays an important role in creating political opportunities,” and Goodwin and Jasper (2004: 28) argue that “culture permeates the political opportunities and mobilizing structures” available to social movement actors. In fact, Jasper (1997: 59) says, “structures themselves are reducible to culture and resources” because structures and institutions would not exist if they were not themselves supported, ideologically and materially, by the cultures in which they are embedded. When considering the rise of an LGBT rights movement, and, eventually, a movement for same-sex marriage, in Massachusetts,

we must consider some of the broad cultural elements that facilitated the uptake of LGBT movement activity in this state.

There exist several critical components of Massachusetts history and culture that fostered the emergence of a lesbian and gay culture and, later, a political movement to establish rights for LGBT people. While these elements may not have always been directly related to sexuality per se, they contributed to an overall atmosphere that accommodated organizing around issues of family, gender, and sexual orientation, and paved the way for the eventual legal recognition of same sex marriage. These critical elements include mutually reinforcing areas of culture and structure that gave rise to a politically active citizenry in Massachusetts and contributed to a long history of social movement and reformist activity on many different types of issues (Brown and Tager 2000). This penchant for activism and social reform became intertwined with broad changes in family structure long before same-sex marriage became an issue, yet these earlier controversies about “the family” created a context for both supporters and opponents of same-sex marriage to formulate culturally resonant frames and strategies.

### **Industrialization and changing cultural, gender, and family norms**

As the development of capitalism and the processes of industrialization and urbanization become entrenched in a society,



important changes occur in family, gender, and sexuality. As Barry Adam observed, more and more people move into urban areas to find work, away from the watchful eyes of parents or other family members, women have opportunities to earn wages of their own, “and the constraints and responsibilities of family ties... give way to personal freedoms and individualistic ethic” (Adam 1995: 3). These changes and the new freedoms associated with them ultimately set in motion the beginnings of a lesbian and gay culture, and later a movement for LGBT rights.

This new world for gay and lesbian people represents the culmination of a series of broad shifts in family structure that occurred along with industrialization. Many of these shifts caused social unease in a way that may be comparable to the unease currently felt by many over gay marriage (Coontz 2005, Cott 2000). In the broadest sense, “a free market system, technological developments, the huge well-off middle class [and] urbanization... all have been important elements of change; and they are also linked in complex chains of causation... [giving] rise [to] the *individual* as the locus of duties and rights.” (Friedman 2004, emphasis in original). This development had a significant impact on family law and custom, not least because “family law has indeed moved from status to contract” and where “marriage was once a matter for kinship to decide,” it is now a decision to be made by the individuals to be

married (Friedman 2004: 6). Once marriage became less completely embedded in extended family structures and instead became a matter of two individuals entering into a private, contractual relationship based on mutual consent, the institution was forever changed.

In the late eighteenth century, Stephanie Coontz (2005: 146) argues, several “seismic” changes in marriage began and this new form of more individualized marriage, based on love, emerged in Western Europe and North America. Due to the spread of wage labour, young people gained a degree of independence from familial ties and pressure because, for example, a young man no longer had to wait to marry until he inherited land or a business from his father and young women could use their wages to build a dowry for themselves (Coontz 2005: 146). In addition, “the freedoms afforded by the free market economy had their parallel in new political and philosophical ideas” as “influential thinkers across Europe championed individual rights,” leading, eventually, to a more “secular” view of marriage as a “private contract” (Coontz 2005: 146). This new emphasis on individual rights and freedoms set in motion a series of social changes, including changes to gender and family norms, that caused ripples of controversy at nearly every turn.

These developments led to a revolutionary social upheaval that overturned thousands of years of marital tradition and caused widespread fear over the collapse of civilization itself, namely, the

“love match”. The love match, the idea that individuals could choose for themselves whom they were to marry without parental approval, horrified “traditionalists of all political stripes”, many of whom feared that the “the social order is entirely overturned” and because of this instability, “all families are trembling.” (Coontz 2005: 152). The love match, and its assumed inherent instability, also wrought increased concerns over the prevalence of divorce. In 1888, for example, Massachusetts’ lawyer Frank Gaylor Cook began a reform movement for the purpose of strengthening the family against the “lax marriage and divorce laws” that he identified as the “prime causes of the all-too-apparent social disintegration,” and the New England Divorce Reform League (later the National League for the Protection of the Family) was formed to assuage the “marriage crisis” (Grossberg 1985: 84, 90). The historical path from the development of the love match in the 1800’s to same sex marriage in the 2000’s is not necessarily a linear one, but this link establishes same sex marriage as only the newest manifestation of a long line of changes to family norms that have been the cause of social distress.

As love became increasingly regarded as the primary basis for marriage, love also came to be a highly valued and idealized emotional component of friendship (Coontz 2005). This, combined with industrialization’s effect of redefining economic and social conventions facilitated the emergence of the ‘Boston marriage’, or

romantic friendship, among women. The development of opportunities for women to materially support themselves allowed at least some women to choose not to marry, and to live with another woman instead (Eskridge 2003). In a social context where love is the primary emotion undergirding not only romantic heterosexual relations but friendships between members of the same sex as well, women could express strong, even passionate, feelings for one another without raising suspicions about inappropriate physical intimacy (Rupp 1980, Smith-Rosenberg 1975).

Boston marriage is a term coined in the 1800's to describe romantic friendships or intimate relationships between women. The social acceptability of these relationships rested on the assumption that such relationships were non-sexual, and certainly this may have been the case for many women who entered into them, although there is sufficient evidence to suggest that there was physical intimacy occurring in at least some such "marriages" (Eskridge 2003, Faderman 1981, Rupp 1980). Carroll Smith-Rosenberg (1975: 24) reminds us that although the bonds of these intimate friendships were "physical as well as emotional", and even had a "sensual" component, what is most important is not the potential for sexual activity but that such relationships, and the passionate feelings accompanying them, were normal in their social and historical context as long as the women went on to marry men. However, women who chose such

relationships with other women over marriage to a man were defying the gender norms of the day, regardless of the presence or absence of physical intimacy. The phenomenon of romantic friendships, of course, was not limited to women in Boston or even Massachusetts, but there were enough of them in Boston and around the state that “Boston marriage” became a generic term to describe the phenomenon. This suggests something unique about social circumstances in Massachusetts that allowed for such relationships to bloom.

While any two women could presumably enter into what might be called a ‘romantic friendship’, a Boston marriage (where the women declare commitment to each other and live together) could only be undertaken by women who had some way to support themselves without attachment to a male breadwinner (Eskridge 2003). This effectively limited the Boston marriage to upper class and/or educated, professional women. Women’s colleges, for example, often provided a place for women to meet, as well as a means for professional women to earn wages and live together without the support of a husband. In fact, there is evidence that in other parts of Massachusetts the Boston Marriage was renamed the ‘Wellesley marriage’ after the Seven Sisters school of the same name. At Simmons College there was an annual ritual involving a mock

wedding between two female students complete with a “groom” and “groomsmen” in tuxedos (The History Project, 1998).

These types of relationships were not for women only. A high number of wealthy, educated professionals in Massachusetts meant that men might engage in “companionate friendships” as well. Although norms around masculinity meant that close relationships between men were scrutinized in a way that women’s romantic friendships were not, there is ample evidence of men forming intimate (though perhaps not always sexual) relationships with other men. The Boston-based gay and lesbian history organization, The History Project, chronicles many such relationships that flourished in the 1800’s in communities of artists and writers, and in theatre societies (for example, see *Improper Bostonians*, 1998). Again, whether these relationships were sexual is difficult to know, but, most importantly, these relationships defied the general conventions and expectations of gender and family norms of the time, thus indicating a certain level of “queer” activity woven into Massachusetts history.

The thrust of industrialization and Enlightenment thinking continued in the direction of individual rights. Over the course of the 1900’s many fears over the institution of marriage were played out against advances in women’s rights. Despite social concerns regarding the love match, marriage had retained its position as the center of emotional life for men and women. As women continued to

press for equal rights at the turn of the 20<sup>th</sup> century, “once again observers worried about the future of marriage... the combined assaults of sexual freedom and women’s political emancipation seemed likely to topple marriage from... the center of people’s emotional commitments” (Coontz 2005: 201). For instance, as the women’s suffrage movement gained momentum, it became clear that “the marital model in which the individuality and citizenship of the wife disappeared into her husband’s legal persona had to go, logically, once women gained the right to vote in 1920” (Cott 2000: 157). During the 1930’s, because of the Great Depression, “the once red hot concerns about the future of marriage were put on the back burner” (Coontz 2005: 218). However, tensions lingered over fears that women were displacing men in the workforce in the 1930’s and “wives with jobs became the target of economic discrimination” (Cott 2000: 172). The 1940’s presented its own challenges to gender and marriage when WWII separated families and women entered into the workforce in record numbers, and, again in 1948 when the California Supreme Court struck down laws against inter-racial marriage (Cott 2000: 184-185). While the 1950’s brought a brief reprieve from these decades of tumult, society erupted and social norms changed again throughout the 1960’s and 1970’s.

In the 1960’s the sexual revolution and the women’s rights movement served to restructure many aspects of gendered behaviour

and romantic/marital relationships. For example the 1960's saw the relaxation of divorce laws, and, in many states, the establishment of no-fault divorce. Although women's rights proponents "did not speak for the no-fault principle [they] did press for subsequent reforms treating post-divorce arrangements such as child custody, child support, alimony, and the division of marital assets" (Cott 2000: 206). By the 1970's, the idea that couples could "redefine marriage on their own terms resounded appealingly", for example, as evidenced by the titles of books such as *Beyond Monogamy*, *The Extramarital Sex Contract*, and *The Love Contract: Handbook for a Liberated Marriage* (Cott 2000: 208).

At the same time, economic trends in the 1970's continued to put pressure on traditional marriage as de-industrialization hit men's manufacturing jobs particularly hard, drawing women into the workforce by necessity if not by choice, again changing prescriptions for conventional gendered behaviour (Coontz 2005: 258). Stephanie Coontz (2005: 262) sums up the momentous changes in gender and family norms this way:

In less than twenty years, the whole legal, political, and economic context of marriage was transformed. By the end of the 1970's women had access to legal rights, education, birth control, and decent jobs. Suddenly divorce was easy to get. At the same time, traditional family arrangements became more difficult to sustain in the new economy. And new sexual mores, growing tolerance for out-of-wedlock births and rising aspirations for self-fulfillment changed the cultural milieu in which people made decisions about their personal relationships.



Despite growing cultural unease over such rapid change in fundamental social institutions and in spite of the best efforts of a conservative backlash designed to re-assert 'traditional family values' during the 1980's and 1990's, these changing conditions could not be reversed. These conditions represent the culmination of social processes set in motion centuries ago with the development of free market economics and individual rights, and these same processes contributed directly to the emergence of lesbian and gay identities, communities, and, eventually, an LGBT rights movement.

### **Massachusetts Cultural Contexts**

Cultures are ultimately created, maintained, challenged, and changed by the people who live in them. But the extent to which the people making up a culture are educated, the religions they practice, the political parties or ideologies they are loyal to, and other factors go a long way in determining the structures and beliefs that challengers must engage to achieve social change (Camp 2006, Rayside 2008). In Massachusetts these variables coalesce in a way that facilitated the eventual rise of a powerful movement for lesbian and gay rights. When it comes to support for gay rights and gay marriage, some of the most consistent demographic correlations are education, religion, income, political affiliation (conservative or liberal) and geographic location (urban or rural). That is, the more

educated, more politically liberal, more urban, and less religious (or, at least, less fundamentalist) a person is the more likely he or she is to support gay and lesbian rights, including same-sex marriage (Camp 2006, Rayside 2008). Each of these factors has an important historical relationship to Massachusetts that sets this state apart from many others.

Perhaps Puritanism is the most obvious religious trait associated with Massachusetts because the Massachusetts Bay Colony was founded by Puritans escaping religious persecution in England, . When considering Americans overall resistance to gay marriage and generally weak support of gay rights, some people still blame the “Puritanical influence” of the first colonists. However, by the mid-eighteen hundreds the Puritans had split into two groups, the Unitarians and what is today the United Church of Christ, and these religious bodies are among the most liberal in modern Christendom (Unitarian Universalist Historical Society 1999). In fact, Unitarian Universalists and the United Church of Christ are consistently among the most supportive religious denominations when it comes to gay and lesbian rights and same-sex marriage (Pew Forum on Religion and Public Life 2009, Association of Religion Data Archives 2011, Rayside 2008). Perhaps most importantly, early Puritan values like education and respect for authority set Massachusetts apart from the evangelical Christian beliefs and practices most likely to be found

across the expanding US frontier, so that as the Puritans evolved into Unitarians, their religious legacy became one of liberalism, tolerance, and cosmopolitanism (Brown and Tager 2000: 148).

Evangelicalism remains strong particularly across the US Midwest and south, and this strain of Christianity is typically quite resistant to LGBT rights and same-sex marriage (Fetner 2008). Currently, 26% of Americans identify as Evangelical Protestants, and in some individual states (e. g. Tennessee, Arkansas, and Oklahoma) this percentage tops 50% of the population (Pew Forum on Religion and Public Life 2008). Evangelical denominations tend to believe most strongly in a singular version of 'traditional family values', based on a particular interpretation of Christian scripture which they believe advocates the Biblical and familial authority of the male-dominated, breadwinner/homemaker, nuclear family. In addition, many evangelical Christians believe that America is a Christian nation (as defined by their own interpretation of Christian scripture) founded on Christian values and that this should be reflected in the laws of the land. Most importantly, evangelical leaders are often politically well-connected nationally and locally in states with large evangelical populations. For followers of this particular faith tradition, there is a direct line between the pulpit and politics (Fetner 2008, McVeigh and Diaz 2010). Regions with large populations of evangelical Christians are the areas where gay and lesbian rights are

most strongly opposed. Few such states have any legal protections in place for gay people, not even basic protections against discrimination in housing or employment, and anti-gay marriage amendments have typically passed in these states by very high margins.

In religious terms, present day Massachusetts is most often associated with the Roman Catholic Church. Because of the influx of immigrants from predominantly Roman Catholic European countries (most notably Ireland, but also Italy and Poland) over the course the late 1800's and throughout the 1900's Roman Catholics became the predominant religious group in Massachusetts (Brown and Tager 2000, Peirce 1976). Today, 43% of Massachusetts residents identify with Roman Catholic Church. The next highest group is "unaffiliated" (17%), followed closely by "Mainline Protestant" (15%), and then "Evangelical Protestant" (11%) (Pew Forum on Religion and Public Life 2008). This configuration of denominations is important because evangelical Protestants are the religious group that most consistently and vehemently opposes LGBT rights and same-sex marriage. This group also has the most political influence when it comes to staving off or reversing advances in such rights (Fetner 2008, Rayside 2008, Rimmerman 2002). Of course, the Roman Catholic leadership is also a staunch opponent of LGBT rights and same sex marriage, but while evangelical believers present a fairly united front on the issue (81%

opposed), Catholics tend to be somewhat more evenly split on the issue (45% opposed) (Pew Forum on Religion and Public Life 2008).

Education is another uniquely important part of Massachusetts history, from colonial times to the present, and educational attainment continues to set this state apart from most others. The earliest known U.S. laws regarding education were passed in Massachusetts in 1642 (requiring that all children be taught to read and write) and 1647 (requiring that communities provide teachers and schools to instruct children), and are considered the first compulsory education laws in the American territory (Dejnozka 1982, Katz 1976). While these laws laid down rules regarding compulsory education, they are not the same as the compulsory education laws we know of today which require free, universal public education. It was more than 200 years later that those laws were put in place, also established first in Massachusetts. In 1852 Massachusetts became the first state that required parents to send their children to public school; it would take 66 years before the rest of the country caught up in 1918 (Katz 1976). Even today Massachusetts' early commitment to education is borne out in the state's consistently high levels of educational achievement and attainment. For instance, in 2009 average education attainment values for the United States were the following: 85.3% of the population had earned a high school diploma or more, 27.9% had earned a Bachelor's degree or more, and 10.3%

had an advanced degree or more. In Massachusetts, 89% of the population has earned at least a high school diploma, 38.2% have earned a Bachelor's degree or more, and 16.4% of Massachusetts have been awarded

Advanced degree. (United States Census 2000a)

The implications of this emphasis on education are important for establishing the conditions for the eventual emergence of gay and lesbian culture. For one, an educated population likely facilitates Massachusetts residents earning higher incomes than residents of many other states. Census data shows that Massachusetts consistently scores high on both measures of education and income (United States Census 2000a,b). Not only is income a consistent correlate with support for LGBT rights and same sex marriage (Camp 2006), but this combination of education and wealth is important in an historical sense as it contributed to early community development, organizing, and resource mobilization opportunities for lesbian and gay rights.

Massachusetts is also set apart from many other US states as a leader in political activity in social justice and reformist causes.

Commitment to social justice and reform has long been a part of the history of the Bay State. Apparently, "more than in most places, the people of the Bay State became involved with the general issues that excited concern...as Massachusetts emerged as a nursery for the

missionaries of a hundred causes” (Brown and Tager 2000: 144). Early causes ranging from abolition, women’s suffrage, temperance, improved treatment for mentally ill persons, public health issues, prison reform, labour rights, and later causes such as resistance to McCarthyism, opposition to the Vietnam War, feminism, and gay rights were supported in large measure by activists and social reformers from the Bay State. In fact, leaders of many such reform movements were born and bred in Massachusetts. However, not all Massachusetts’ political activity was in pursuit of what we might call progressive social justice. Racial and ethnic tension has been known to flair up over the course of Massachusetts history, especially in response to increased competition for jobs during tight economic times. During such times some Massachusetts residents utilized their penchant for political organizing to push back *against* social justice reforms. For example, there was intense resistance to racial integration efforts in Boston (Brown and Tager 2000: 248, 297). At the same time that some politically active, social justice minded Massachusetts citizens rallied *for* racial integration, other politically active citizens fought back quite strongly in opposition to these changes. Later when it came to advances in LGBT rights, a similar pattern emerged. While many groups of politically active, social justice minded Massachusetts citizens supported the advancement of

LGBT rights, many equally politically active citizens worked vigorously to dismantle those advances.

As Massachusetts weathered the transition from a traditional farming community to an urban, industrial center, the state emerged on the forefront of many types of social change. Industrialization and urbanization are known to induce important changes in family structures, to foster women's independence, and encourage labour organizing. These are true in terms of general social change and also contributed to change in Massachusetts specifically (Adam 1995, Brown and Tager 2000). Although the increased economic competition associated with these processes can contribute to discord amongst racial, ethnic, or religious groups, eventually urban, industrial centers become known for acceptance, or at least tolerance, of diversity in all its forms (Camp 2006, Nicholson-Crotty 2006, Rayside 2008). Indeed, for as long as attitudes about homosexuality have been studied greater acceptance of gay people and gay rights are found in industrial urban centers and, to a lesser extent, college towns (Camp 2006, Rayside 2008). Massachusetts is a largely urban state. Since the very first United States census, Boston has been one of the largest urban centers in the United States, only recently dropping in ranks to the twentieth largest city in America in the 2000 census (United States Census 2000b). By the mid-1800's urban life became predominant in Massachusetts; by 1875 farming was surpassed by



manufacturing as the leading occupation and source of income, and religious and ethnic homogeneity gave way to diversity. Although tension between groups arose from time to time, in general, with the changes brought by industrialization “innovation and variety became characteristic of religious and social life as well as economic activity” (Brown and Tager 2000: 113). As Massachusetts took its place on the cutting edge of industrialization, the result was drastic demographic, cultural, and political changes in the Bay State.

### **The Emergence of Gay and Lesbian Communities**

As Barry Adam (1995) observes in his examination of the rise of lesbian and gay activism, coinciding with the normative changes in heterosexual romantic and marital relationships, the broad social changes attributed to industrialization and its emphasis on individualism and individual rights heralded far-reaching changes for lesbian and gay relationships as well. Urbanization meant that large metropolitan areas emerged as beacons of freedom for those living away from the potentially harsh judgement of family members back home. These places became potential centers for lesbian and gay communities to develop, and these communities could later be drawn from to support social movement activity. Indeed, by the early 1900’s there was an established network of bars, baths, social clubs, theatres, music halls, etc., where gay and lesbian people could meet and greet in many cities, including Boston (Adam 1995: 43). Early on these social

spaces would have necessarily been clandestine, though there is evidence of “tolerance of open homosexual subcultures and interest in female-impersonating entertainers,” at least through the 1930’s when increased emphasis on heterosexual bonding and marriage led to greater stigmatisation of same-sex relationships and sexual activity (Coontz 2005: 206). Even as tolerance for gays and lesbians diminished and same-sex sexual activity became increasingly medicalized and criminalized, these early community spaces served as important seeding grounds for later movement activity (Adam, 1995).

Organizing for gay rights in Boston (and in a few other large metropolitan areas) began in earnest in the 1950’s. This is more than a decade before the Stonewall Riots, the event that is often considered the birth of the gay and lesbian movement. The first known attempt to start a gay rights organization was in 1957 when Prescott Townsend, after holding weekly social meetings on the discussion of homosexuality at his home throughout the 1950’s, established a branch of the Mattachine Society in Boston. Due to personal conflicts, Townsend broke with the Mattachine Society in 1962 to form the Boston Demophile Society (Bullough 2002, The History Project 1998). The Mattachine Society in Boston sponsored discussions, lectures, and newsletters. Although many gay Bostonians may have been unaware of these activities, for those who participated in them it was often “their first substantive evidence that homosexuality was a widespread

phenomenon that could be discussed as something other than a crime” (The History Project 1998: 198). These early attempts at organizing built a foundation for later movement activity, putting Boston (and other metropolitan areas) ahead of the curve when the lesbian and gay rights movement began picking up momentum.

By 1969 a spirit of protest against injustice was gripping America. Throughout the 1960’s there were demonstrations against the Vietnam War, in support of Civil Rights for African Americans, and against the oppression of women, and Massachusettans were visibly involved in each of these issues. As reformist fervour gripped not only Massachusetts, but much of the nation, it was only a matter of time before the accommodationist strategies of the likes of the Mattachine Society gave way to the revolutionary politics of gay liberation. A major shift occurred at the time of the “Stonewall Riots” of 1969, when a group of working class lesbians, gay men, and drag queens refused to quietly accept a police raid at the Stonewall Inn in New York. This was a defining moment in gay history, often cited as the beginning of the modern LGBT rights movement. However, “while the Stonewall riots of 1969 came to represent a symbolic, defining moment in the history of the movement, the roots of gay liberation had already taken hold in Boston” (The History Project 1998: 198). It is these “roots of gay liberation” outlined above, i.e., early community building and organizing, that allowed the post-Stonewall

lesbian and gay rights movement in Boston to grow into a force to be reckoned with.

Because of its early organizing, the lesbian and gay rights movement in Boston emerged on the crest of a wave of post-Stonewall zeitgeist, well positioned to challenge the political and cultural structures set out before them. Throughout the 1970's, 80's, and 90's LGBT activists launched a series of rights campaigns that they (eventually) won; learning along the way how to deal with setbacks, strategize for success, and defend themselves against attacks from a growing counter-movement. The gains made by the movement in this period set the stage for the battle for marriage equality.

### **Conclusion**

James Jasper (1997: 50) describes culture as “a set of rules we can use according to our own intentions.” As the Massachusetts LGBT rights movement developed, both proponents and opponents attempted to marshal culture in their favour. LGBT activists were able to win successive rights battles over the course of the 1970s, 80s, and 90s, culminating in the struggle for same-sex marriage in the 2000s. LGBT movement activists were successful in advancing their rights agenda in part because of the foundation laid by the early organizing activity outlined above. This early activity provided a jump-start to the LGBT movement in Massachusetts in several important ways.

Notably, early organizing enabled the development of networks of people sympathetic to lesbian and gay rights and these networks could be tapped for resources. The development of networks and their potential for resource mobilization is important for the success of social movements (Jasper 1997: 62, Tarrow 1998: 131). Over time, movements not only build networks and accumulate resources, they develop strategy and a sense of agency, or “artfulness” when it comes to deploying strategic choices (Jasper 1997: 64, Ganz 2004). With these networks, resources, and strategic knowledge in place, movements are more likely to take advantage of emergent political opportunities, to create opportunities for themselves, and/or to fend for themselves in times of constricting opportunities (McAdam 1996). Early organizing sowed the seeds that would eventually grow into the resources, and strategies needed for consistent successful advancement of LGBT movement goals, though it would take some years of cultivation before the full capacity of these resources and strategies would be reached. In the next chapter, I chronicle the early years of the gay and lesbian rights movement in Massachusetts and highlight some of the key successes (and setbacks) that shaped this movement into the political force that eventually won same-sex marriage rights for lesbian and gay couples in Massachusetts.

## CHAPTER 3: POST-STONEWALL COHESION AND LGBT MOVEMENT DEVELOPMENT

### Introduction

Social movements are most likely to be successful when activists successfully tap into the culture(s) and institutions in which they are embedded and mobilize the resources at their disposal to create political and social change (Goodwin and Jasper 2004, McAdam, McCarthy, and Zald 1996). By the end of the 1950's lesbian and gay activists in Massachusetts had developed networks and had begun early organizing that would enable them to take advantage of the moment that a political opportunity opened for the advancement of lesbian and gay rights. Such an opportunity might be a change in institutional access for challenging groups, a shift in elite alliances, or a change in available allies (Tarrow 1998: 71). Social movement theorist Francesca Poletta (2004: 108) also describes political opportunities as “constitutional provisions for the use of political power, collective memories, and other cultural norms.” In a way that few lesbian and gay people could have imagined in the 1950's, such opportunities, and activists' abilities to take advantage of them, would change the parameters of lesbian and gay life dramatically over the next two decades.

Beginning in the late 1960's, Massachusetts activists became well practiced in making use of political opportunities, and though the success of their struggles would never be guaranteed, the strategic

savvy with which they fought each one would ensure a lasting impact on the culture around them. To the extent that lesbian and gay activists were successful in their political objectives, the policy and legal debates leading up to each success, as well as political change itself, would leave what Miriam Smith (2008: 10) calls “policy legacies” that would shape future political opportunities, strategies, and outcomes for the lesbian and gay rights movement. The policy legacies left by early activism from the 1970’s onward are important in that “contemporary policy and legal debates and discourse are shaped by the past policies or policy legacies which have been institutionalized in ways that shape and structure the ongoing process of political conflict” and social movement goals (Smith 2009: 10). These early policy legacies set in motion political and cultural changes that were integral for the later success of same-sex marriage.

The 1960’s and 1970’s were a period of rapid change and development for the lesbian and gay rights movement. In the 1960’s tension grew among the homophile movement over “whether the role of homophile organizations was to provide emotional support to homosexuals and create safe social spaces to gather... or to make demands on the state to end its harassment of gay men and women” (Fetner 2008: 15). By the late 1960’s, inspired by the New Left, antiwar activists, and the Black Power movement, gay activists could be heard calling for more radical change (Fetner 2008, Adam 1995).

It was this spirit that carried the day during the Stonewall Rebellion. For three days in 1969 the Stonewall Inn was the site of a standoff between New York City police and a rag-tag bunch of butches, nellys, and drag queens who refused to be lead off to jail in quiet shame (Rimmerman 2002: 55). This rebellion may have left the Stonewall Inn itself a burned out shell of a building, but from those ashes rose the spirit of gay liberation (Adam 1995: 81). Veering away from the assimilationist strategies of the early homophile organizations, gay liberation issued a direct challenge to the heteronormative social order, insisting that sexual norms be “subverted and eliminated” (Fetner 2008: 16), struggling to “free the homosexual in everyone” (Adam 1995: 84), and demanding that “even the most unassimilated needed to be represented as part of the gay and lesbian movements” (Rimmerman 2002: 55).

By the early 1970’s gay liberation groups existed in most major cities across the US, including Boston, where activists organized Boston’s very first “all gay march and demonstration” in 1971 (Adam 1995, Mitzel 1971). The gay liberation era itself was short-lived. The collapse of the New Left and the rise of the New Right pushed lesbian and gay activists away from the liberationist goal of eliminating sexual and gender norms (Fetner 2008: 16), giving way to the less radical legal rights strategy. Gay liberation had an important and lasting influence on the future development and strategy of the gay



rights movement, and perhaps it is a sign of movement maturity that activists began to take on the challenge of civil rights and legal reform (Adam 1995, Fetner 2008, Rimmerman 2002). In Massachusetts, the changes in the movement during the late 1960's and into the 1970's inspired the formation of new groups, coalitions, and alliances that would later be instrumental in winning marriage equality.

Decades of early organizing meant activists in Massachusetts, particularly in Boston, were well positioned to act on the new spirit of gay liberation and equality. By 1972 a number of bills addressing discrimination against gay people was filed with the clerk of the Massachusetts legislature by Representative Barney Frank . Meanwhile, concerted grass roots organizing activity was taking place as well. For example, 1973 saw the formation of the Massachusetts Gay Political Caucus (a state House lobbying group); the Gay Community News was first published in 1973; in 1974 Boston elected the first openly gay person to be elected to any position in American history by voting Elaine Noble into office as state representative; in 1978 Gay and Lesbian Advocates and Defenders was formed to fight for gay rights through the judicial system; and in 1979 the Lesbian and Gay Parents Project was formed (Adam 1995, The Advocate 1973, Gozemba and Kahn 2007, Marks Ridinger 1996). In fact, so many new gay rights organizations were formed in Massachusetts in the 1970's that embodied the liberatory, out-and-proud, politically

active spirit of the times, that older, pre-Stonewall organizations that focused on quiet assimilation, like the Homophile Union of Boston, collapsed (Fetner 2008, Marks Ridinger 1996).

On the other hand, it took well over a decade for any of those initial gay rights bills to be passed, Massachusetts state representative Elaine Noble faced threats to both her office and her life during her campaign, and representative Barney Frank remained closeted until the late 1980's. But during the 80's the persistence of the Massachusetts LGBT movement began to pay off: Gerry Studds came out of the closet amidst scandal in 1983 and was re-elected; gays were barred from foster parenting in 1985 but succeeded in challenging the discriminatory policy in 1990; in 1989 the gay civil rights bill was finally passed after having been re-introduced in every legislative session since 1973 (Gozenba and Kahn 2007). These early rights struggles were critical to the development of a gay rights movement strong enough to eventually win marriage equality and then fight off the anti-gay forces working to roll back marriage rights for same sex couples.

These early battles and their outcomes-- the eventual wins, as well as the losses and stalemates along the way-- highlight a nexus between culture, structure, and agency that began to coalesce in the Massachusetts gay rights movement. Many analyses of social movement success focus on structural explanations for movement

success: resource mobilization, political opportunities, and /or cultural framing (i.e. McAdam, McCarthy, and Zald 1996, Tarrow 1998). But most scholars acknowledge that just because resources or political opportunities exist does not mean that they will be acted on, or if acted upon, won. Political structures and opportunities exist for, and can be created by, both movements and counter-movements to utilize, and both movements and counter-movement strive to ingrain culturally relevant frames into the minds of citizens. Cultural variables must be in place that give traction to the strategies used by activists to advance their agenda. Though political and cultural conditions in Massachusetts are in many ways favourable to civil rights struggles, the outcome of the fledgling gay rights movement was by no means certain. This stage in the development of the lesbian and gay rights movement in Massachusetts sees social movement actors testing which strategies work best with the cultural elements in which they are embedded. This creates a feedback loop, whereby activists' strategic choices create positive cultural change, and continued cultural change leads to additional opportunities to advance lesbian and gay rights.

Sidney Tarrow (1998: 71) argues most strongly that social movement activity "is more closely related to opportunities for – and limited by constraints upon – collective actions" than individuals' subjective experience of economic or social inequality. Other

theorists emphasize a synthesis of political opportunities (i.e. changes in institutional structures or informal power relations), mobilizing structures (formal or informal entities that move or facilitate individuals to engage in collective action) and framing processes (strategic portrayals of the movement and the world that legitimate movement activity) that give rise to social movement action (McAdam, McCarthy, and Zald 1996: 2-6). It is most important to remember that while in some cases political opportunities and mobilizing structures exist outside of movements, there are many cases where movements themselves create their own political opportunities and develop their own vehicles for collective actions. Importantly, as this analysis of LGBT activism in Massachusetts will show, “political opportunities and mobilizing structures are heavily influenced by strategic considerations, by the choices movement leaders and activists make” and that all of the above (political opportunities, structures, frames, strategies) are mediated by culture (Goodwin and Jasper 2004: 28). It is because Massachusetts’ activists learned over many years to skilfully manipulate this kaleidoscope of factors that this state became the first in America to legally recognize same sex marriages.

Social movement theorist Doug McAdam (1996: 32-33) argues the Stonewall Riot occurred during a time when political opportunities for gay and lesbian people were constricting rather

than expanding, but that the gay rights movement likely benefitted from the “ideational, tactical, and organizational” lessons of earlier movements, such as the civil rights movement and the women’s movement. Given the long history of reform and social movement activity in Massachusetts, such lessons should be well embedded in the collective memory of most politically aware citizens, and certainly those that are politically active (Brown and Tager 2000). Of course, “mobilization does not necessarily depend on expanding opportunities...opportunities, when they are important [it is because they arise from] situationally specific combinations and sequences of political processes” (Goodwin and Jasper 2004: 15). What happened in New York at the Stonewall Inn in 1969 became a “political opportunity” for lesbian and gay people in Boston only because it inspired and energized a group of people who had been organizing and developing networks for decades to increase their visibility and political activity, and by doing so, they were able to create additional opportunities for themselves.

When I spoke with activists in Massachusetts about gay marriage, they were clear about one point in particular: that the struggle for marriage was successful because of the thirty years of gay rights activism that preceded it. Massachusetts activists emerged riding the crest of gay consciousness and activism that bloomed after 1969, and built on the foundation of Massachusetts’ historically

reformist and civil rights minded culture. Over the course of the 1970's and 1980's Massachusetts activists learned the ins and outs of the political structure, cultivated allies at elite and grassroots levels, gained resources, and developed cultural frames likely to resonate in their favour. Early losses were used as opportunities to hone strategies for future success, and eventually activists were able to not only take advantage of political opportunities as they emerged, but to create their own opportunities and sustain their victories; all of these skills are crucial to eventually establishing gay marriage.

In this chapter I explore several early movement turning points in detail, for example, the election of lesbian and gay politicians, the battle to pass a gay civil rights bill, and the struggle to regain the right to be foster parents. Each of these early struggles represents a valuable lesson for the burgeoning Massachusetts LGBT movement in accumulating and mobilizing resources; utilizing, creating, and/or sustaining political opportunities; working through times of diminishing political opportunities; developing and successfully deploying resonant cultural frames; and cultivating a repertoire of strategies available to and utilized by lesbian and gay activists in Massachusetts.

### Early Allies Emerge

After Stonewall, as the cry for gay liberation evolved into the struggle for legal rights for gay men and lesbians, early political

opportunities converged with the emergence of elite allies. For example, one respondent, Ellen Zucker, said, “[Winning marriage] doesn’t start in 2004, it starts in 1974. It’s Elaine Noble coming out in the Mid-1970’s as the first openly lesbian or gay member of the Massachusetts legislature”. And Bruce Bell was quick to point out that “having Gerry Studds and Barney Frank as out legislators made [Massachusetts] unique.” These contemporary activists were reinforcing the assertion of social movement theorist Sydney Tarrow (1998: 79) that “challengers are encouraged to take collective action when they have allies who can act as friends in court, as guarantors against repression, or as acceptable negotiators on their behalf”. In this case, the election to Massachusetts State Legislature of Barney Frank in 1972 and Elaine Noble in 1974 gave lesbian and gay activists important allies who could assert equal rights protections and other important advances for the early LGBT movement.

Although Barney Frank remained closeted until the late 1980’s, he was an immediate ally for lesbian and gay constituents in Massachusetts. Frank was first elected in 1972, and that same year filed four anti-discrimination bills on behalf of lesbian and gay citizens, including “a constitutional amendment which would provide equality ‘regardless of sexual preference’ and a measure repealing a variety of existing laws on sexuality” (Marks Ridinger 1996: 211). Frank reintroduced some version of a gay civil rights bill every year

that he was a state representative. Although no such bill passed during his tenure as state representative, the fight for passage of these bills became a defining struggle for the LGBT movement in Massachusetts (Blake 1983a). After being elected as a federal representative in 1981, Barney Frank remained an outspoken supporter of gay rights, pushing for passage of gay rights legislation on the federal level and continuing to support local gay friendly legislation as well. Frank was re-elected to his seat fourteen times, and a poignant 1998 *Boston Globe* article describes Frank's break-up with long-time partner Herb Moses and credits Frank with helping to show that "gays are human beings" (Marcus 1998).

Elaine Noble's election to state office in 1974 was especially significant because she was the first openly gay person to be elected to state office in America ([http://www.outhistory.org/wiki/Elaine\\_Noble](http://www.outhistory.org/wiki/Elaine_Noble)). She called her first campaign "very ugly" and described the various intimidation tactics used against her: "there was a lot of shooting through my windows, destroying my car, breaking windows at my campaign headquarters, serious harassment of people visiting my house and campaign office". Regardless, she won her first term in office with nearly 60% of the vote ([http://www.outhistory.org/wiki/Elaine\\_Noble](http://www.outhistory.org/wiki/Elaine_Noble)). After Noble's election victory, "one group planned-- but later dropped-- an attempt to stop her from being seated on grounds that homosexuality is illegal



in the state”, but despite this initial unease Noble came to be generally accepted by her fellow legislators, being described as “one of the boys” and “a good broad” by her colleagues (Roberts 1977). One may wonder whether other, presumably heterosexual, women colleagues of these legislators would be described in such a way, indicating that acceptance of Noble as a colleague was coloured by their perceptions of her as a lesbian. Nevertheless, being accepted as “one of the boys” is an improvement over being excluded as a result of her sexual orientation. While in office, Noble co-sponsored the gay civil rights bill with Barney Frank, and was also an outspoken supporter of the controversial strategy of school desegregation by bussing ([http://www.outhistory.org/wiki/Elaine\\_Noble](http://www.outhistory.org/wiki/Elaine_Noble)).

The role of Gerry Studds as an openly gay political ally was complicated by the fact that he came out under the pressure of a congressional page scandal. First elected to United States Congress in 1972, Studds was forced out of the closet in 1983 when allegations surfaced that ten years earlier he had sexual relations with a seventeen year old congressional page (Chavez 1983). Studds was censured by congress but won re-election in his district where he continued to serve until the mid-1990's. After coming out, Studds became an outspoken supporter of gay rights issues. However, gay rights opponents sometimes used his sexual misconduct charge as a

rallying cry against LGBT anti-discrimination bills and other gay friendly legislation (Blake 1983c).

These three individuals, Barney Frank, Elaine Noble, and Gerry Studds, were certainly not the only political allies that LGBT activists had, nor, arguably, were they the most important. But each played an instrumental role in advancing gay rights in Massachusetts, especially Noble and Frank for introducing the first gay civil rights bill and continuing to re-introduce the bill and support it year after year. After Noble and Frank left the state legislature, other allies emerged who continued to support and fight for this bill in coalition with LGBT activists over a seventeen year struggle in the Massachusetts State House on Boston's Beacon Hill.

Starting in 1973 gay rights activists stayed the course as the civil rights bill periodically advanced only to be met with new setbacks, until it finally passed in 1989. With each passing year, activists gained additional allies, created new opportunities, and learned new strategies with which to thwart opponents. The battle for the gay civil rights bill forged the Massachusetts gay rights movement into 'a force to reckoned with'. By the time this bill passed in 1989, the Massachusetts lesbian and gay movement had emerged as a finely tuned machine with enough political weight to win the advances it set out to achieve, and nimble enough to fight back against opponents who sought to roll back movement gains. These

skills would prove essential for each victory this movement would win, especially the victory for marriage equality.

### Battling for Basic Rights

The importance of the gay civil rights bill in Massachusetts's LGBT history and activism cannot be underestimated. Arline Isaacson, who began lobbying on Beacon Hill in 1983 with the Massachusetts Gay and Lesbian Political Caucus, emphasised, "That which happened in the 80's took on enormous importance in the marriage years. It had enormous impact on the fight, the strategy, the coalition work, and the final outcome. What we learned in the process was extremely valuable in terms of field organizing, marketing, and volunteer recruitment." The passage of this bill also underscores the assertion of political theorist Miriam Smith (2008: 11) that the legacies of previous policies shape the structure of political opportunities in the future . As Bruce Bell, who works with Gay and Lesbian Advocates and Defenders (GLAD) pointed out, "If there isn't any protection from discrimination it's very difficult [to participate in political action] because people are afraid of coming out for fear that they could lose their job, lose their housing." Thus, informants in this study felt passage of this bill was important for several reasons: developing lasting legislative relationships, informing strategy decisions, and giving people the freedom to be "out", visible, and active in their communities.

Perhaps the primary lesson of the gay civil rights bill was persistence. First filed in 1973 by Barney Frank and Elaine Noble, it took ten years for the gay rights bill to pass the Massachusetts House of Representatives. Throughout the 70's, because of the lobbying efforts of the Massachusetts Gay Political Caucus and the perennial sponsorship of the legislation by Frank and Noble, the number of allies in the legislature continued to grow. Legislative allies cultivated by Frank and Noble were significant in that after Frank and Noble left the House in 1978 and 1981 respectively, the bill continued to be filed and supported by other legislators. With the support of allies like Representatives Tom Vallely, Barbara Gray, Bruce Bolling, and others the gay civil rights bill was finally passed by the House in 1983.

Media coverage of the gay civil rights bill in the early 80's indicated that legislative debate centered on whether representatives could put aside misgivings about possibly sending a message that they might condone homosexuality versus believing that a person should not be discriminated against for any reason. For example, one of the 1981 co-sponsors of the bill, Barbara Gray, a Republican, said, "We're not saying we condone a life-style. What we're saying is that if they [homosexuals] are discriminated against, they should have redress" (Boston Globe editorial 1981a). While opponents like William Flynn charged that, "Approval of this bill is putting the House's stamp of approval on a perverted lifestyle" (Boston Globe editorial 1981b),

other opponents claimed that the bill would lead to affirmative action programs for gay and lesbian workers and worried that passing a non-discrimination bill would make Massachusetts a “mecca” for gays. A Republican from the town of Wellesley, Massachusetts, Royall Switzler, exclaimed, “They’ll be dancing in the streets, these men and women, dancing in each other’s clothes. If that’s what you want, vote for this bill” (Boston Globe editorial 1981a). Thomas Valleley stayed on point by drawing a line between approving of homosexuality and disapproving discrimination: “We don’t allow discrimination against religions, but we certainly don’t agree with all religions” (Boston Globe editorial 1981b).

After the bill passed the House in 1983, it continued to gain momentum as it headed toward final passage by the Senate, and opponents broadened the scope of their attacks, continuing to stoke fears of impending gay affirmative action programs and playing on paranoia over child abuse. To secure passage of the bill in the House, Valleley amended the bill to assure opponents that, “There is nothing in this that requires affirmative action...or prohibits firing (a homosexual) for failure to perform a job” (Boston Globe staff 1983). Opponents added several of their own amendments: one that would “deny protection to members of an organization promoting relationships between men and boys and to those who have been convicted of child molestation”; another specifying “that anyone who

commits a sexual act against a child is not protected by the proposed law and that criminal activity by a tenant in an owner occupied home would be grounds for eviction regardless of sexual preference”, and another to ensure that “public and private employees who have sexual relations with a minor of the same sex would not be protected by the law and could be fired” (Boston Globe staff 1983).

The victory proved to be short lived. In the same Senate chamber where during previous debates gays and lesbians were referred to as “fags and Lesbos”, called “sick and disgusting” and accused of contributing only “AIDS and herpes” to society, plans were set in motion to kill the anti-discrimination bill (Blake 1983b). Supporters of the bill in the Senate eventually pressured Senate leadership to allow a vote on the bill rather than sending it to the Ways and Means Committee with the intention to kill the bill, only to have the Senator presiding over the vote use a tactic known as a ‘fast gavel’ to ‘railroad’ the bill without actually voting on it (Blake 1983b). This action effectively laid the bill to rest for the 1983 legislative session, but the lessons of this experience were not lost. Recounting this episode, Arline Isaacson, who was new to lobbying at the time, remembered, “They [the Senate] did some parliamentary game playing and we lost. This caused me to determine that I would make sure that parliamentary rules would never be used against us for lack of knowing. They may be used against us because we didn’t have the

power to stop them, but never would it be because we didn't see it coming." This determination had important ramifications for the future of this bill and the future of the LGBT rights and gay marriage in Massachusetts.

Although the bill was lost, this period of movement activity shows that LGBT activists were honing their skills by engaging in the cultures and structures in which the movement was embedded and developing strategies to take advantage of and create opportunities to advance movement objectives. Movement development in these areas may be integral to the eventual success of movement objectives, according to social movement theorists. For example, theorist Mayer N. Zald (1996: 266) argued, "social movements exist in a larger societal context [and] draw on stock images of what is an injustice, for what is a violation of what ought to be". By framing grievances in ways that emphasized that discrimination is always wrong, activists were drawing on Massachusetts' "deep traditions of fairness and equality"(Gozemba and Kahn 2007: 36). Additionally, William Gamson and David Meyer (1996: 282) suggested, "we can think of political opportunity structure, as other structures, as dynamic rather than static [and] there is a mutually sustaining relationship between institutions and culture". Thought of in this way, it becomes possible to conceptualize ways to penetrate political structures by using cultural values. For example, the way that tropes of discrimination

were used to gain legislators' support of the civil rights bill, or the various ways political and/or movement actors used parliamentary tactics to influence the legislative process.

Once we accept that structures are dynamic and permeable, the next step is strategizing how to influence these structures to achieve a desired outcome. According to the theoretical perspective of Marshall Ganz (2003: 182) "environmental change may generate the opportunities for social movements to emerge, the outcomes and legacies of such movements have more to do with the strategies actors devise to turn these opportunities to their purposes, thus reshaping their environment", including the shape of the political institutions and structures that make up that environment. This last point supports the nexus of culture, structure, and agency that is central to my analysis. As the struggle for the gay civil rights bill continued throughout the 1980's the Massachusetts LGBT movement became increasingly adept at strategically deploying cultural elements to penetrate more deeply into institutions; gaining allies, creating opportunities, and mitigating setbacks along the way; acquiring skills that were vital to eventually winning the struggle for marriage equality.

Of course, as theorist Sidney Tarrow (1996: 89) reminded us, "political opportunities are fickle friends". That is, as movements gain momentum, increase their ranks of allies, and mine opportunities for



success, they may unwittingly create opportunities for their own opponents. After being narrowly defeated by parliamentary manoeuvring in 1983, the gay civil rights bill faced a series of increasingly complicated setbacks before finally being passed in 1989. First, in 1984 the religious battle lines of the gay rights debate were drawn when four of the Catholic Bishops issued a statement of opposition to the gay civil rights bill. The *Boston Globe* reported that, after remaining largely silent on the bill, the Catholic Church issued a statement against passage of the gay rights bill on the grounds that it would “legitimate a ‘homosexual lifestyle’ ...however, the bishops also went on record to oppose the ‘unjust treatment of homosexuals’” (Franklin 1984). The same article included a counter-argument that “some religious organizations actively back the bill” with a quote from a Unitarian minister emphasizing that the bill did not ask for “special favours, but simply equal protection under the law” (Franklin 1984).

As the story of gay rights continued to unfold in Massachusetts, religious groups, especially the Catholic Church, became increasingly important players. For example, the outspoken opposition of the Church toward the gay civil rights bill prompted some to wonder if the “opposition of Bishops would kill” the bill (Wessling 1984). Although many religious leaders continued to oppose the bill, some religious groups supported the anti-discrimination measure, and at least some of the opposed favoured an amendment allowing for

religious exemption from the legislation rather than killing the bill altogether (Associated Press 1985). Confronting outright (and increasingly well organized) opposition to gay rights from religious leaders may have created a drag on momentum for the gay rights bill, but it also helped activists identify and solidify relationships with religious allies. This early work on the civil rights bill was important in building a social movement structure that could withstand the next challenge to gay and lesbian rights.

#### Fighting Back on Foster Care

As gay rights advanced, lesbian and gay issues increasingly became part of the public sphere. This had the effect of creating scrutiny in places where previously there had been none. One such area was the foster care system. This created a political opportunity for opponents; as Tarrow (1998: 87) points out, such opportunities move in “dialectic between movements and counter movements.” At the time, the Massachusetts Department of Social Services had no policy on record regarding the sexual orientation of potential foster parents. As such, social workers in Massachusetts were free to place children in foster care with gay and lesbian parents, and had done so without controversy until 1985. This changed abruptly when the *Boston Globe* featured a story titled, “Some Oppose Foster Placement with Gay Couple” on May 8, 1985. By two o’clock that afternoon, the Department of Social Services had removed the children from the

home of Donald Babets and David Jean Roxbury, and the next day Governor Michael Dukakis demanded a review of foster care policy in the state.

Foster care policy was ripe to become an area of contention given the extensive domain that foster parents in the United States typically have over the children in their care. Once a child is removed from the home of a biological parent by Child Protective Services, legal custody is remanded to the state's child welfare agency, in this case the Massachusetts Department of Social Services. When the child is placed in a foster home, legal custody is retained by the state child welfare agency; however, through that agency foster parents, not biological parents, are able to make decisions for the foster child regarding schooling, healthcare, and other issues (<http://www.legalmatch.com/law-library/article/foster-parent-rights.html>). In this context, in many cases a foster parent has the same rights as a biological parent, and, in addition, may enact proceedings to terminate the rights of the natural parent, pending state approval (<http://www.legalmatch.com/law-library/article/foster-parent-rights.html>). Given the potentially powerful influence of foster parents over the children in their care, this system became a screen onto which society projected its anxieties over gay and lesbian people in general, and gay and lesbian parents in particular.

The original *Globe* article, described as sensationalistic by many in the gay community, included some commentary in support of the gay foster parents (for example, from the church pastors who recommended that the couple be approved for foster parent status to begin with) and some commentary against, mostly from neighbours who questioned whether gay foster homes are “normal and healthy” (Cooper 1985g, Gozemba and Kahn 2007: 45). To distance itself from the ensuing uproar, the *Globe* defended its coverage of the story in an editorial piece making such claims as, “no power on earth will ever change the immutable natural law involving conception of babies and the optimum environment in which this law dictates they be raised”, taking care to point out that “there is a potential for abuse of male children by some gay men” (Farrell 1985).

Just two weeks after the initial story broke, the Massachusetts House of Representatives voted to ban gay foster parents altogether (Cooper 1985e). As the Massachusetts Senate debated whether to uphold the outright ban on lesbian and gay foster parents that was approved in the House, the Massachusetts Department of Social Services announced a new policy on foster care. The new policy emphasized the importance of placing children in “traditional” family settings, essentially creating a hierarchy of potential foster care families in which gay and lesbian foster parents, while not banned

outright, were explicitly designated as a last resort (Black 1985, Cooper 1985f).

In the context of the foster care debate many LGBT allies were put in a defensive position, especially those in the legislature. Facing criticism from opponents of gay foster parents, elected officials like Bruce Bolling, a supporter of the civil rights bill, was forced to backtrack, making statements like, “I never said I supported the placement”, explaining that he stood up for the two gay parents because “they were being discriminated against” (Stack 1985). Nevertheless, some officials voted against a strict policy against gay foster parents because it also denigrated single parent households. For instance, Representative Gloria Fox, who was very clear that she was “definitely against gay parenting” (Cooper 1985e), voted against the measure proposed in the House because it also targeted single parents. While undeniably caught off-guard, the lesbian and gay community could draw on the repertoire of tactics learned in passing the civil rights bill to overturn a policy that would categorically deny gay and lesbian people the opportunity to be foster parents.

Suddenly finding themselves at the center of a debate over their worthiness as parents, and indeed, as people, the gay and lesbian community experienced this series of events as a “moral shock”, described by James Jasper (1998: 106) as “an unexpected event or piece of information [that] raises such a sense of outrage in a person

that she becomes inclined toward political action". Although the removal of foster children and subsequent tightening of foster care policy with the explicit intention of squeezing out gay and lesbian foster parents would appear to be a *constricting* opportunity for the gay and lesbian movement, it in fact served to mobilize the gay and lesbian community. Gay and lesbian citizens in Massachusetts responded with a broad and enduring campaign against the policy and against Governor Dukakis (who had previously been considered an ally to the LGBT community).

The foster care debacle unleashed a relentless barrage of movement activity including the use of militant tactics, such as protests outside the governor's home and sit-ins at his office. One of the first responses by activists was the formation of the Gay and Lesbian Defense Committee, the group that led the Foster Equality campaign (Gozemba and Kahn 2007: 47). The first recorded protest on the matter took place at the State House on Beacon Hill on May 28, less than three weeks after the *Globe* story that started it all. The Gay and Lesbian Defense Committee, Gay and Lesbian Advocates and Defenders, the Massachusetts Gay and Lesbian Political Caucus were all there. One activist said, "We were unprepared for it" but predicted that the new restrictive foster policy would unite those targeted-- gays, lesbians, single parents-- who were willing to fight against their

categorical denial of consideration for foster parenting privileges (Boston Globe staff 1985).

While legislative allies were equivocating under pressure during the foster care debacle, new allies emerged. Women's groups, social workers, and children's advocacy groups all testified in favour of lesbian and gay parents. In testimony, organizations like the Massachusetts Society for the Prevention of Cruelty to Children spoke in favour of "non-traditional" families, and representatives from the Child Welfare League of America stated that, because foster children had been placed with gay and lesbian foster parents so far without incident, the new policy of taking children away from gay foster parents "seems to fly in the face of what is current good practice" (Black 1985). As months passed, the gay and lesbian community also built support from psychiatrists and psychologists who spoke in favour of gay foster parenting and supplied information and statistics to challenge the stereotype of gays as child predators. Organizations that vocally opposed the restrictive new policy against gay and lesbian foster parents and publically challenged Dukakis to produce evidence that gay and lesbian foster parents caused harm to children included the National Association of Social Workers, the Massachusetts Psychiatric Society, the Massachusetts Psychological Association, Women for Economic Justice, Simmons College of Social Work, and at

least one representative of the Boston School Committee (Cooper 1985b).

Meanwhile, the Gay and Lesbian Defense Committee kept the pressure on, and ramped up its use of confrontational tactics. On June 20 the group staged a sit in at the governor's office. Dukakis left by the side door to avoid the protestors but the next day announced his readiness to arrange a meeting with the group (Bryson 1985a, Ryan 1985). When the group finally met with Dukakis on June 22, it was on a day when the governor had already faced gay protestors during a morning speech in Cambridge, again at an afternoon event in Provincetown, and still again as he spoke at his office with the Gay and Lesbian Defense Committee while an additional sixty protestors remained outside his office door chanting and singing. During the meeting GLDC activists demanded Dukakis produce evidence supporting his assertions against gay and lesbian and single parents. When he couldn't do so the activists vowed to step up their campaign against the policy, some vowing to "fight Dukakis himself" (Cooper 1985c). This was no empty threat. As the foster care controversy continued, protests and demonstrations continued to dog Dukakis' days as governor and escalated yet again when Dukakis became a presidential candidate in 1988.

#### AIDS Complicates Civil Rights Advances



Amidst the furor over foster care, another setback occurred for the lesbian and gay movement-- AIDS. The fear and uncertainty whipped up during the early years of the AIDS crisis was turned into powerful ammunition against lesbian and gay rights. In this climate, with the foster care debate raging and AIDS hysteria taking hold, perhaps it was inevitable that some of the momentum for the gay civil rights bill would be lost. When the time came again to debate the civil rights bill on Beacon Hill, opponents asserted that if the bill passed "Boston might become the mecca for AIDS" and some supporters of the bill began to waiver because "it's not just a civil rights or discrimination question...it's a very serious public health issue" (Cooper1985a). Again, allies fought back, staying on message and keeping the focus on discrimination. For example, Representative Tom Valley shot back at opponents saying, "What's this got to do with AIDS? You shouldn't use AIDS as a cover for discriminating against people" (Cooper 1985a). In the end this was not enough to calm the nerves of legislators jittery over foster care and AIDS. One unnamed legislative supporter of the gay civil rights bill predicted that because of unease over AIDS and foster care, there would be no "clear debate on civil rights for gays" and the bill would be "croaked" (Cooper 1985a). This was indeed the case, and the bill failed to pass the House in 1985 (Cooper 1985d).

The onset of the AIDS epidemic was exploited by the religious right and social conservatives in a way that ratcheted up fear and homophobia across the US. Early on, the AIDS crisis was generally considered to cause a significant setback for the national gay and lesbian rights movement; Massachusetts is no exception. Arline Isaacson called AIDS “a disaster [for the gay rights bill], we were doing fine and then the AIDS crisis came and [support] went down because everyone thought that gay people were going to make them sick.” On the other hand, respondent Elyse Cherry pointed out, “the AIDS crisis led to a whole different level of mobilizing within the gay community.”

The AIDS crisis was another example of a time when movement activity flourished even as political opportunities appeared to shrink. This phenomenon is one of the conceptual holes in political process opportunity theory. One explanation for why movement activity may at times increase when opportunities appear to wane is that “constricting political opportunities generate emotions that facilitate protest” (Gould 2004: 164). Gould argues that AIDS activists were able to successfully harness the anger, grief, and fear that built up in the gay community as friends and lovers died while the crisis was ignored and/or used as an excuse to denigrate gay and lesbian people by society at large. As the debates about gay civil rights, AIDS, and foster care raged on, gay and lesbian citizens in Massachusetts lived in

an environment where they were regularly harangued as unfit parents, dangerous to children, sick, disgusting, and undeserving of even basic legal protections. Rather than back down, activists and allies fought back. Mobilizing the energy of an “outraged” community, “the foster care controversy and the AIDS crisis forced the gay and lesbian community to regroup and build stronger allies”, and because of this “in the late 80’s, through the work of the gay community in educating lawmakers and the public, compassion replaced fear and a less hostile environment emerged” (Gozemba and Kahn 2007: 48). In addition, addressing these stereotypes in the 1980’s made it difficult for opponents to make them “stick” in later lesbian and gay rights struggles, including the struggle for marriage.

### The Tide Turns

Several turning points took place in 1986 and 1987 on the way to the more “compassionate environment” referred to above, eventually leading to the success of the gay rights bill and the loosening of foster care restrictions against lesbian and gay parents. These turning points occurred as the Massachusetts gay and lesbian rights movement began to hone their strategic prowess, continuing a multi-pronged approach that repeated tactics which had proven successful and developed new tactics as necessary. For example, the Gay and Lesbian Defense Committee kept up their confrontational tactics against the foster care policy, regularly holding protests and

demonstrations at the State House and keeping the pressure on governor Dukakis, showing up at his speeches around the state and holding sit-ins at his office where activists were repeatedly arrested for trespassing (Boston Globe staff 1986a). Activists continued the strategy of lining up allies who pressed for change in the foster care policy, again keeping the pressure on Dukakis. The *Boston Globe* (Associated Press 1986) reported this statement made by activists at a rally against the foster care policy:

In the year and a half since he wrote the policy, Dukakis has not produced a shred of clinical data to support his contention that traditional heterosexually married couples are the ideal family setting for foster children. In the meantime, social workers, labour unions, political organizations, feminists, child care experts and gay and lesbian activists have raised their voices again and again, asking Dukakis to rescind this injurious policy. The voters of the state, therefore, have no choice but to unequivocally tell him, in this lacklustre election year, that he must change his policy or suffer political consequences.

This statement suggested the continued use of some previous strategies (i.e. direct action, demonstrations, and building allies), but it also revealed the beginning of a shift in framing strategy for the gay and lesbian movement.

As an increasing number of allies began to speak up for gay and lesbian foster parents, it undermined the state's argument that denying gay and lesbian people the chance to foster was in the best interest of the child. This created what Mayer Zald (1996: 268) described as a "cultural contradiction", a situation where "the realities

of behaviour are seen to be substantially different than the ideological justifications for the movement”. Recognizing this logical fallacy in the state’s policy, activists strategically shifted their framing of the foster care debate in order to force the state’s hand. Arline Isaacson explained: “A lot of people wanted to argue that we had the right to be parents, and it was a totally wrong construct. That frames the debate about “me” and “us” but it always has to about the best interest of the kids. So we said, ‘Yes, you can ban us [from being foster parents] *if* it is in the best interest of the children’. It’s an unproveable [sic] premise, and we knew the regulatory agencies were our allies. So we created a win-win situation.” This is a good example of the Goodwin and Jasper’s (2003: 28) theoretical assertion that “political opportunities and mobilizing structures are heavily shaped by strategic considerations, by the choices movement leaders and activists make”. When lesbian and gay activists made this tactical shift they were actively seeking new ways to create opportunities for themselves both in the political structure and public sphere- and they succeeded.

By harnessing the ‘best interests of the child’, gay and lesbian activists and their allies in the foster care issue tapped into a ideology that had come to define nearly all aspects of legal decision making concerning child and family welfare. The “‘best interests of the child’ became a judicial yardstick used to measure all claims for children” in

the 1800's (Grossberg 1985: 239). Over time, children have increasingly come to be viewed as individuals with individual human rights that must be protected, and because children cannot protect their own rights they must be protected by the state (Friedman 2004: 96, 142). Throughout the 1900's the number of children available for adoption and foster care surged as "courts monitored parents and children, enforcing new standards of family life and overseeing arranging the removal and the treatment of children from homes that failed" (Grossman 1985: 279). Taking children away from "failed" families allowed the state the opportunity to create a new family in its place. Unfortunately, it was not always easy to determine the 'best interests of the child' and the values used to determine such interests have been and remain in dispute (Friedman 2004: 103, Grossberg 1985: 267). The controversy over foster parenting in Massachusetts situated gay and lesbian people at the nexus of this dispute over what, exactly, is in the 'best interests' of children, and pushed the boundaries of this controversy even further by forcing the state and its citizens to reckon with a larger question: What, exactly, is a family? That made settling the foster care issue particularly important in Massachusetts lesbian and gay history, because it established a path for future gay and lesbian family recognition and legal rights, including the right to marry.

As gay and lesbian activists argued that the stability, care, and love offered by gay and lesbian foster parents was in the best interests of the child the Massachusetts Supreme Judicial Court issued a ruling that lent some official credence to their statements. Social movement theorists Goodwin and Jasper (2003: 28) argue that “strategic decisions depend heavily on interaction between movements and other players”. In this case activists were able to use the court decision to their advantage. The above strategic shift in framing devices picked up momentum for the movement when the state was questioned about an apparent cultural contradiction by the Massachusetts Supreme Judicial Court (SJC). When the state asked the SJC to throw out a lawsuit filed against the foster care policy by Donald Babets and David Jean Roxbury, the couple that was forced to give up their foster children, Chief Justice Thomas Morse reasoned: It is “anomalous and ‘perplexing’ that the state acknowledged that the two children’s ‘emotional and physical condition improved dramatically’ because of the ‘exceptional’ care given to them by the gay couple, ‘and now the state comes into court postulating that its preference for married couples is rationally related to a legitimate purpose” (Howe 1986). More momentum was gained in favour of gay foster parents when a state appointed advisory panel on foster care, after hearing the testimony of gay activists, social workers, and child advocates, recommended changing the foster parent policy (Witcher

1986). This was not enough to turn the tide completely, however. Governor Dukakis ignored the recommendation of his own advisory panel and failed to loosen restrictions on gays and foster parents as the panel had recommended (Witcher 1987a).

After this, momentum for overturning the foster care policy appeared to sputter, but at the same it began to build for the civil rights bill. By 1986, gay and lesbian rights activists had been pressing for passage of an anti-discrimination bill for over a decade, steadily building public and legislative support, only to be derailed by the vitriol unleashed during the AIDS crisis and foster care controversy. As gay and lesbian activists grappled with the new challenges thrust in their path, ground began to shift on the old civil rights bill for a number of reasons. One is that the debates over AIDS and foster care forced gay activists, allies, and the public to confront the basest and ugliest stereotypes of gays and lesbians head on. Actively confronting stereotypes of gays as disease-laden, dangerous child abusers meant activists worked hard to get out honest portrayals of gays and lesbians.

For the media, covering the stories about AIDS or foster care meant exploring every angle, including the angle presented by gay activists and their allies. It is important to note that around this time the *Boston Globe* showed a marked increase in positive and/or sympathetic coverage of gay and lesbian people and issues. For



example, the *Globe* reported on discrimination against gays and lesbians in the workplace (Adams 1986), interviews with people living with AIDS (Adams 1987a), coverage of lesbian and gay families, including feature stories about children with gay parents (Thomas 1987, Adams 1987b), as well as reports on a shortage of foster parents in the state (Witcher 1987b). While the *Globe's* coverage of gay issues, including foster parenting, certainly did not become predominantly positive, such in depth reporting likely made a difference. For example, portrayals of gay and lesbian parents who wanted the best for their child like any other parent, raised questions about whether categorically excluding gay and lesbian people from foster parenting was truly in the children's best interest. Similarly, analyses of discrimination in the workplace helped make the case that a civil rights bill was necessary.

Another potential reason that the gay civil rights bill gained momentum was that the struggle over foster care created what social movement theorists call a "radical flank effect". Radical flank effects occur "when the presence of extremists encourages support for moderates as a way of undercutting the influence of the radicals...the end result is often state support for legislative or policy changes once deemed far too radical" (McAdam, McCarthy, and Zald 1996: 14). Most gay and lesbians activists would probably not define the fight over foster care as "radical". Gay and lesbian people had been foster

parents for years before the furor erupted that forced foster children to be taken out of gay and lesbian homes. For gays and lesbians this struggle was a fight to restore a previously held right (the right to not be categorically excluded as potential foster parents) that was taken away unfairly rather than a push for radical new movement gains. However, for legislators, policy makers, and members of the general public uncomfortable with the idea of gay and lesbian rights in general, allowing gay people the privilege to work without fear of being arbitrarily fired likely felt less radical than allowing gay and lesbian people to be foster parents.

Lastly, the trajectory of the gay and lesbian movement had become increasingly influenced by Michael Dukakis' presidential ambitions. Throughout the 1980's Dukakis had been an ambivalently for the gay and lesbian movement. He was a supporter of the civil rights bill, and was consistently reported as having pledged to sign the bill if it crossed his desk. On the other hand, Dukakis was the primary progenitor of the restrictive foster care policy and a steadfast opponent of loosening the restrictions on placement of children with gay foster parents once those restrictions were set in place. However, since introducing his controversial foster care policy in May of 1985, gay and lesbian rights activists relentlessly protested at Dukakis' speeches and events, held multiple sit-in's at his office, and organized numerous demonstrations against the policy. It is clear that Dukakis

had damaged relations with a once reliable contingent of supporters, who, now that they'd been alienated, had protested angrily against him for two full years and showed no sign of letting up. While holding steady against foster care, Dukakis took a more active role in support of the gay civil rights bill, publicly urging its passage, making personal phone calls to legislators, and distributing letters of support to every House member assuring them that the bill "comments in no way on whether homosexuality is good or bad, or right or wrong" (Boston Globe staff 1986b, Black 1987a, Boston Globe staff 1987). This did little to patch his frayed ties to the gay community.

As Dukakis' presidential ambitions became clearer, gay and lesbian activists threatened to organize protests at Dukakis' events nationwide. Massachusetts lesbian and gay rights organizations eventually enlisted the help of the National Gay and Lesbian Task Force to create a "Duke-Watch" at the Iowa and New Hampshire Democratic primary contests and other campaign events (Mohl 1987a). While Governor Dukakis's sudden surge of commitment to gay civil rights did not impress the Gay and Lesbian Defense Committee, it may have held sway with some key legislators: for the first time since 1983 the gay civil rights bill passed the Massachusetts House of Representatives on May 5, 1987 (Black 1987a).

In the debates that ensued in this round of fighting over the gay rights bill, opponents recycled the old criticism that passing the bill

may “endorse a homosexual lifestyle” but they had some new tropes up their sleeve as well. Over the course of the 1980’s the religious right formed groups like the Christian Coalition, Focus on the Family, and Concerned Women for America; these groups grew to become an increasingly powerful counter-movement seeking to roll back gains won by both the women’s movement and the lesbian and gay rights movement (Fetner 2008). As the debate swung back to the gay civil rights bill in Massachusetts, phrases popular with national Christian Right organizations like “family values” and “traditional values of America” appeared to be used to argue against the gay anti-discrimination measure for the first time (Black 1987b). These new tactics of gay rights opponents were not enough to stop the momentum built up in favour of the bill, and on the day of the vote all sides agreed that the Senate contained enough supporters of the bill that it would pass if voted on. The only chance for opponents to win was to kill the bill in committee, and with the Senate leadership lined up against the bill’s passage, that was exactly what they did (Phillips 1987).

As the Senate used parliamentary delay tactics to kill the bill, the debate continued to play out in the State House and in the public sphere. The Catholic Church increased its vocal opposition and defended editorials from lay leaders that regurgitated every possible negative stereotype or association against gays: promiscuous,

unhealthy, dangerous, diseased (Ribadeniera 1987). Meanwhile, the American Jewish Congress and Massachusetts Council of Churches became more vocal in support of the bill, releasing a statement against the “increasingly vitriolic” tone of the debate and urging passage of the gay rights bill in the name of “civil justice” (Franklin 1987). Legislators also continued activity for and against the bill. A leading opponent, for example, distributed an anti-gay rights book that “depict[ed] homosexuals as promiscuous individuals who indulge in bizarre sexual habits and are a threat to children” (Frank 1987b). The *Boston Globe* continued to offer in-depth reporting of both sides; one week the paper featured an interview with Arline Isaacson, lobbyist and co-chair of the Massachusetts Lesbian and Gay Political Caucus (Frank 1987a), the next week an interview with leading gay rights opponent (and distributor of the books described above), Senator Arthur Joseph Lewis, Jr. (Sleeper 1987), and the week after that a story that Senator Lewis’s nephew had publicly come out as gay (Mohl 1987b).

Lesbian and gay activists kicked off 1988 with a protest at the State House where several were arrested for chaining themselves in the gallery. The protestors criticized the Senate’s stalling tactics on the civil rights bill and demanded an apology from Arline Isaacson for failing to get the bill passed (Phillips 1988). Unfortunately the action was condemned by most legislators and used to rationalize continued

suppression of the civil rights bill. Although when allegations later surfaced that State House police officers had punched and kicked the activists, some sympathy was generated for the movement (Quill 1988, Feeney 1988). Energized by a recent march for gay rights in Washington, DC and outraged that the bid for civil rights was thwarted, yet again, members of groups like Mass Act Out and the Greater Boston Lesbian and Gay Political Alliance pledged a broad offensive designed to keep pressure on legislators to finally pass the anti-discrimination measure (Adams 1988, Golden 1988).

In addition to a vow of increased militancy by activists other important elements shifted in early 1988 as well. A gay rights supporter, Rep. Bruce Bolling, showed off his own knowledge of parliamentary tactics by blocking some key bills (an important foreshadowing of a later strategy integral to the eventual passage of the gay rights bill). The *Globe* reported that polls showed nearly 70% of Massachusetts residents supported passage of the civil rights bill, as well as a majority of House and Senate members (Golden 1988). Governor Dukakis was seeking to “mend fences with the gay community” and ramped up his support of the bill yet again, writing letters to legislators arguing that the civil rights bill was necessary for “the protection of the civil rights and freedom of all our citizens” (Mansfield 1988). All that was needed now was to budge the Senate leadership who were holding the bill in committee, seeking to delay or

kill it one more time. No one budged, and the bill died yet again. At the end of the 1988 legislative session, a key gay and lesbian ally in the legislature, Sen. Michael Barrett, “filed a package of Senate rules changes aimed at changing the practices that helped kill the bill in previous sessions” (Loth 1988).

By the 1989 legislative session, even the bills strongest opponents knew they could not hold it up forever. Rep. Marie Parente, a staunch opponent of the bill, conceded that she and her likeminded “colleagues feel it is a *fait accompli*” (Malone 1989). Indeed, the bill passed in the House on March 28, 1989 and cleared the next hurdle, endorsement by a Senate panel, on May 16. In June, there was an attempt to delay the bill by attaching an amendment forcing a referendum, but the amendment was voted down (Phillips 1989a). One major difference in the fight this time was that lesbian and gay legislative allies increased attempts at using parliamentary rules to their own advantage, for example calling for a cloture vote<sup>1</sup> to force a vote on the bill (though the cloture vote was lost), supporting an amendment for religious exemption from the bill (a move that took some force out of religious opposition to the bill), and making a “tactical decision to move the whole gay rights bill as a budget amendment” so that delaying the vote indefinitely was not an option (Phillips 1989b). By this time, even opponents of the bill were tiring

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<sup>1</sup> A cloture vote is a parliamentary move to bring debate to an end on a particular bill so that the legislature must vote.

of the increasingly elaborate legislative stunts used to delay a vote, and the bill was released from committee on September 26, voted on and passed by the Senate on October 12, 1989. Even as the ink dried on Governor Dukakis' signature making the bill a law, opponents vowed to "go to the voters" and hold a referendum on the issue (Phillips 1989b).

What makes the Massachusetts movement truly unique is not just its ability to win rights, but its ability to fend off challenges to those new rights. When anti-gay opponents were unsuccessful in blocking pro-gay legislation outright, they were successful in overturning such legislation via referendum (Fetner 2008, Rayside 2008). After the gay rights bills passed muster in Massachusetts, opponents tried on two separate occasions to bring a referendum to the voters. The first effort to overturn the law was thrown out by the attorney general due to the religious exemption amendment, as the state constitution "stipulates that certain issues such as religious practices...cannot be subject of a referendum" (Phillips 1989b). Including this amendment was primarily a strategic decision to assuage religious opposition to the bill, however "some strategists for the gay rights bill were aware that the amendment...would make the statute immune from a referendum to appeal it", and leading opponents of the bill reported feeling "mousetrapped" by the



amendment (Phillips 1989b). This is an example of activists and allies strategically gaming the political structure to meet their own ends.

The other major 1980's battle for lesbian and gay activists, foster care, was settled on April 5, 1990 when the Dukakis administration reversed its controversial 1985 anti-gay foster care policy. Efforts to thwart the reversal in the legislature fell short, but this issue was swept up in another round of referenda when in 1991 petitions were filed to challenge the new gay and lesbian civil rights law and other gay friendly advances. This time the Committee to Restore Traditional Morality filed a series of petitions: one removed the phrase "sexual orientation" from the anti-discrimination law, another sought to ban discussion of homosexuality in schools, a third banned public advertising of the "homosexual lifestyle", a fourth banned gays and lesbians from foster care, and the last would ban legal recognition of homosexual unions (Biddle 1991a). Here again opponents overreached and the petitions were ruled unconstitutional on various grounds, such as violating free speech and infringing on the ability of the Massachusetts Commission Against Discrimination to hear cases (Biddle 1991b). Importantly, leaders of both major political parties in Massachusetts publicly opposed the changes proposed by the petitions (Biddle 1991a).

On the heels of these victories, the gay and lesbian movement headed into the 1990's having established itself as a force to be

reckoned with. The explanation for this movement's success is more complicated than the suggestion that a window of opportunity appeared and they acted on it, though external political opportunities were no doubt important. The success of the lesbian and gay movement in Massachusetts was a result of the complex interaction between cultural elements, political structures, and the agency of activists. In the end, it was the strategic decision making of lesbian and gay activists that won the day. After being active for nearly twenty years, lesbian and gay movement leaders had developed intimate knowledge of the culture and structures in which they were embedded. This knowledge was what allowed them to finally win the gay civil rights bill, as movement leaders developed strategic thinking that "is reflexive and imaginative, based on ways leaders learn to reflect on the past, attend to the present, and anticipate the future" (Ganz 2003: 180).

When the civil rights bill finally passed it was due to several factors. Certainly not least was that over the course of twenty years of lobbying and activism, the movement had succeeded in changing the culture and garnering increasing support for gay and lesbian rights. Of course, political institutions exist in a cultural structure and "the strategies used by advocacy groups and social movement organizations are structured by the institutional openings available to them" (Smith 2009: 161). While these tactics and strategies might

have been tried in other states at the time, different cultural configurations would have made their success difficult in many areas. The presence and power of religious and political groups that oppose LGBT rights is stronger throughout much of the United States than it is in Massachusetts, thus hindering the availability of political opportunities, resource mobilization, or other ways to build momentum for political and/or cultural change. For instance, in 2011, still fewer than half of US states offer the basic anti-discrimination protections in that were won by gay and lesbian activists in Massachusetts in 1989

([http://www.thetaskforce.org/reports\\_and\\_research/nondiscrimination\\_laws](http://www.thetaskforce.org/reports_and_research/nondiscrimination_laws)).

### **Conclusion**

The cultural influence of the gay and lesbian movement is refracted through existing political structures, and also changes them. As Miriam Smith argues (2008: 195), “Understanding the institutional context in which contending social movements as political actors are operating assists us in thinking about the ways in which we might work successfully within the realities of these institutions.” For example, part of this understanding in Massachusetts is considering that as years went by allies were amassed in the House and Senate who could manipulate a bill and/or ensure that when a vote was held, the measure passed. But in addition to gaining allies (and votes)

other key elements to the successful passage of the bill included the strategic decision made by activist Arline Isaacson and Senator Tom Barrett to attach the bill to the budget, ensuring that opponents could not delay a vote indefinitely, and the decision to add the religious exemption amendment so that, once passed, the bill could not be subject to a referendum. This is why movement theorists Goodwin and Jasper (2004: 37) assert that “local knowledge of constituencies, opponents, and third parties with which one is interacting” is so important: in this case activists used this knowledge to anticipate a referendum attempt by opponents and were able to include a measure to thwart these efforts in advance.

As important as the gay civil rights bill was as an offensive victory that proved the movement could achieve advances it sets out to win, the foster care struggle was equally important as a defensive victory. Foster care was a victory that proved that the movement could successfully challenge counter movement attacks. The controversy over foster care underscored the reality that “enormous collective action can burst forth precisely during times when the political authorities close ranks, and when heavy repression is unleashed” (Morris 2003: 236). The decision to enact a restrictive policy against gay and lesbian foster parents caught the gay and lesbian movement off guard and forced activists to think and strategize on their feet. As the controversy grew, activists learned to

harness the influence of external actors (social workers, child advocacy groups, and, eventually the Supreme Judicial Court) and engaged a highly salient cultural frame, “the best interests of the child”, and then turned that frame in their favour. This turn exposed the logical fallacy behind the state’s restrictive policy. Because all social actors and institutions are suspended in “webs of meaning” (Poletta 2003: 102), shifting the tone of the debate so that “the best interest of the child” no longer included the automatic exclusion of gay and lesbian foster parents created openings for the movement to garner support in the culture at large as well as within political structures. Because political and cultural spheres are connected, gains made in either area can be used to influence the other. For example, when there are cultural shifts in favour of gay rights, they can be used to influence shifts in political institutions and policies, i.e., it was, in part, the enormous pressure exerted on the Dukakis administration from the cultural sphere that eventually led to the reversal of the foster care policy restrictions. Conversely, political institutions and policies can exert pressure for cultural change.

The reason that these particular struggles are so important theoretically is that “political institutions and policy legacies are the unseen structures behind the vociferous battle between same-sex marriage advocates and defenders” (Smith 2009: 159). Therefore, when the battle over marriage heated up, the lesbian and gay

movement had developed relationships, strategies, and frames necessary to win. As Elyse Cherry said, “We had individuals and institutions all the way back to the 1970’s who could play an insider game. Part of how we got to 2003 without DOMA is because along the way those relationships were created”. Those relationships included connections to legislators, but also allies in the religious community, labour organizations, and other grassroots action groups who would go to bat on behalf of the lesbian and gay community. Another respondent, legislator Carl Sciortino, was blunt about the impact of the legacies of these policies, “Having non-discrimination so early led to the ability to have other advances”, including marriage. Partly because gay and lesbian people did not need to live in fear of losing their jobs or their home, they were able to be out and act on behalf of their own rights and interests.

Another important legacy is that the arguments and frames used by opponents of gay marriage had already been debunked by gay and lesbian activists and allies. When same-sex marriage opponents used arguments that gays and lesbians were harmful to children or a threat to the family, those arguments had already been addressed during the foster care debate and, as Bruce Bell observed, “the legislature had already conceded that gay people are ok to parent so those arguments didn’t hold water”. Bruce’s statement also underscores the interaction between culture and structure, and the

ability of legislative decisions to influence culture (Goodwin and Jasper 2004, Smith 2009). Mayer Zald (1996: 269) argued that this is important because “movements and counter-movements not only are involved in mobilization contests to demonstrate who has the most support and resources at their command, they are involved in framing contests attempting to persuade authorities and bystanders of the rightness of their cause”. When there is a previous policy decision in your favour, it helps to persuade others of the rightness of your cause (Smith 2009).

Lastly, these early battles contributed to the “collective memory” of the lesbian and gay movement. This collective memory can be powerfully utilized by movement actors (Poletta 2003: 108). For example, the fight for the civil rights bill and other early battles created what Ellen Zucker called “a sort of muscle knowledge in the community that could be flexed again” when the time came to win the battle for marriage. This muscle knowledge would be worked throughout the 1990’s as gay and lesbian movement goals shift from individual rights to family rights, and the battle for marriage and against DOMA comes to the fore.

## CHAPTER 4: FROM INDIVIDUAL RIGHTS TO FAMILY RIGHTS

### Introduction

Nothing succeeds like success. The Massachusetts LGBT movement ushered in the 1990's energized by the passage of the civil rights bill and the elimination of the discriminatory foster parenting policy. Winning these struggles indicated a significant change in the political climate for lesbian and gay rights in Massachusetts. Theoretically, shifting political momentum in favour of lesbian and gay rights is integral for movement success because "the broad political environment in which the movement is embedded will constitute constraints/opportunities affecting [movement] development" (McAdam, McCarthy, and Zald 1996: 12). On the heels of these legislative victories activists shifted their aim from individual rights to family rights. Now established and gaining momentum, success came again in the form of domestic partner benefits in the city of Cambridge and a Massachusetts Supreme Judicial Court decision awarding adoption rights to gay couples in 1992.

Miriam Smith's (2008: 25) application of historical institutionalism to the lesbian and gay movement emphasizes that political and legal policy decisions such as these lay down a foundation for future advances in lesbian and gay rights, yet she makes clear these political and judicial institutions "exist in a cultural structure". Due to the influence of national politics and the growth of



organizations dedicated to resisting the cultural change sought by women's rights and gay rights groups, the 1990's would prove to hold significant challenges for the advancement of LGBT rights in spite of this decade's auspicious beginning.

As the LGBT movement grew stronger over the course of the 1970's and 80's, so, too, did the counter-movement against LGBT rights grow in strength and numbers. Throughout the 1980's in particular, the Christian Right and other groups that sought to protect or restore 'traditional family values' coalesced into a well-oiled political machine prepared to fight the 'homosexual agenda' across the United States (Fetner 2008: 60, Hunter 1990: 90). Many activists in the counter-movement were veterans of anti-feminist and anti-abortion movements, where they felt continually moved to act in order to defend traditional values and morality from a growing number of perceived attacks on multiple fronts (D' Emilio and Freedman 1997). Because many of them had past movement experience, countermovement activists were able to draw on a vast store of strategic and political knowledge, and were culturally savvy as well (Fetner 2008: 59, Smith 2009: 27). By the 1990's the countermovement was striking back against gains made for gay rights, and working fast to head off advances that may be coming down the pike.

With the LGBT movement and the religious right developing simultaneously, a new “cycle of contention” emerged in the fight for gay and lesbian rights. According to social movement theorist Sidney Tarrow (1998: 142) a cycle of contention refers to a “phase of heightened conflict across the social system: with a rapid diffusion of collective action from more mobilized to less mobilized sectors; a rapid pace of innovation in the forms of contention; the creation of new and transformed action frames; a combination of organized and unorganized participation”. This cycle of contention coalesced in Massachusetts in the 1990’s when local struggles for domestic partnerships were folded into national hysteria and backlash to pro-gay marriage court decisions in Hawai’i. This tension set in motion the introduction and defeat of a Massachusetts DOMA statute, and, later, set the stage for the battle over legalization of gay marriage in Massachusetts. Within such cycles of contention “organizations and authorities, movements and interest groups, and members of the polity and challengers interact, conflict, and cooperate... the outcome depends less on the balance of power and the resources of any pair of opponents than on the generalized structure of contention and the reaction to it of elites, opponents, and potential allies” (Tarrow 1998: 143). Given the complex interaction of these political and cultural forces across the US and in Massachusetts, it turns out contenders on both sides had their work cut out for them.

*New Decade, New Strategy, New Challenges*

After winning individual rights in 1989, activists were considering their next steps. At this point in time, “marriage didn’t even pass the laugh test”, said Arline Isaacson, co-chair of the Massachusetts Gay and Lesbian Political Caucus, “but there was this new thing called domestic partner benefits. The first protection we chose to go after was a bite size version of domestic partner benefits.” The fight to secure domestic partner benefits consumed much of the 1990’s for lesbian and gay activists in Massachusetts. Much like the decade long struggle leading up to the passage of the gay civil rights bill, winning domestic partner benefits was characterized by intense push and pull between activists and opponents, and contained significant wins and losses for both sides. While activists were careful to frame domestic partner benefits as an issue of “equal pay for equal work” rather than relationship recognition per se, the shift from individual rights to couple rights alarmed opponents. Movement activity, including framing, conveys information about movement formation and strategy, thereby “communicating information about what they do... diffusing collective action ... creating political space for kindred movements and counter movements, and producing incentives for elites and third parties to respond to” (Tarrow 1998: 72). No matter how it was framed, fighting for domestic partner

benefits clearly signalled a shift in strategy that rattled opponents, and even some allies.

While marriage may not have passed the “laugh test” for lesbian and gay activists, the issue was a serious one for opponents of lesbian and gay rights. It was so serious that domestic partner benefits were immediately opposed because, according to one senator, it would “downgrade the institution of marriage by putting it on a par with nonmarital relationships. Even though others might look at it as something that spreads fairness through society, it is actually overlooking the uniqueness of marriage” (Fehrstrom 1991). When Governor Bill Weld, a libertarian-leaning Republican, issued a 1992 executive order that extended modest domestic partner benefits (like bereavement leave) to state employees the repercussions were immediate. Weld became the “target of right wing rage” because “recognizing same-sex relationships” put Weld “at odds with President Bush’s pro-family agenda” (Fehrstrom 1992). Neither side could have known at the time, but this foreshadowed much of the tone and rhetoric that would emerge later in the struggle for gay marriage. Indeed, the tone and rhetoric shaping this issue was itself a reflection of shifting cultural and political forces.

The late 1980’s and early 1990’s ushered in a period of struggle over what some call the “culture wars” that featured “battles over the family, art, education, law, and, politics” (Hunter 1990).

Underlying the culture wars was a fight to define America itself, a fight primarily about “national identity-*over the meaning of America*” (Hunter 1990:50, emphasis in original). This larger battle to define America, in turn, had a “decisive impact on the family [including] the limits (if any) of legitimate sexuality [and] even what constitutes the definition of a family in the first place” (Hunter 1990: 50). Some scholars have challenged Hunter’s assertion that tension over moral ‘wedge issues’, like homosexuality or abortion, amounted to what can be called a culture war (Fiorina 2005). However, attention to such issues played a significant role in the national cultural and political discourse of the United States.

Even local movements are embedded in national cultures, and these cultures shape movement opportunities, strategies available to activists to make the most of such opportunities, and the political structure and environment in which opportunities appear and strategies are to be executed. For Francesca Poletta (2004: 102), proper attention to culture requires “attention to cultural traditions, ideological principles, institutional memories, and political taboos that structure the behaviour both of political elites and challengers”. Opposing lesbian and gay rights is a central ideological position to those who might consider themselves ‘culture warriors’ and as national attention turned to such issues, ‘culture war’ rhetoric seeped into lesbian and gay rights struggles in Massachusetts.

The emergence of the 'culture wars' coincided with the growth of the religious right. As the religious right and its coexisting organizations (i.e. the Christian Coalition, Concerned Women of America) came of age, a new passion was infused into debates over women's rights and lesbian and gay rights in particular. The growing influence of these groups had important cultural and political consequences in the national political arena, within the Republican Party, and in Massachusetts. Nationally, the goal of the Religious Right was to establish a "Christian commonwealth that both sustained and enforced a particular vision of morality" and this "animated their commitment" to organizing for traditional family values (D'Emilio and Freedman 1997: 363).

The vehicle chosen by those within the Religious Right to manifest their agenda was the Republican Party. According to D'Emilio and Freedman (1997: 362), "the impact of the Christian Right on American politics remained indirect and attenuated until the 1988 presidential campaign of Pat Robertson", whose "ambitious political agenda included a conservative takeover of the GOP" (Fetner 2008: 68). As a result of the influence of evangelical leaders like Robertson and their supporters, "many moderate Republicans were squeezed out of the party" and "the new social conservatism of the religious right competed with and sometimes replaced the fiscal conservatism of the old guard Republicans, and it competed directly

with the libertarian leanings of many in the party” (Fetner 2008: 68). This explains the particular tension that Bill Weld faced for his (limited) support for gay rights in Massachusetts, and the growing reluctance of Republicans of all stripes and socially conservative Democrats in Massachusetts and elsewhere to support even modest gay rights initiatives.

### *Fighting for Domestic Partnership Benefits*

In this climate, the fight for domestic partner benefits became a long slog for activists in Massachusetts. In Boston proper, Councillor David Scondras filed the “Family Protection Act”, designed to extend benefits to domestic partners in same-sex or heterosexual relationships, in 1991. However, the first city to succeed was Cambridge, just outside of Boston, in 1992, followed later by neighbouring municipalities Brewster and Brookline. Municipal or city domestic partner benefit policies provided benefits to those employees of the municipality or city itself, but had no jurisdiction over private employers. Boston city council went back and forth over the issue for several years in the 1990’s. The Family Protection Act was sidelined once in 1995 when the mayor’s chief legal adviser counselled that state law made it illegal to offer health insurance to city employees if those same benefits were not also offered by the state. Mayor Menino later mandated benefits in 1998, which were down when a lawsuit was brought against the city in 1999 by the

conservative American Center for Law and Justice (Gozemba and Kahn 2008). A statewide domestic partner benefits bill was introduced in 1993, but languished throughout the 1990's despite the best efforts of activists and legislative allies.

At first, advocates were successful in framing domestic partner benefits in terms of financial benefits, rather than relationship recognition. In doing so, activists chose what Sidney Tarrow (1998: 110-111) calls an "injustice frame" with the intent of locating such a frame "at the intersection between a target population's culture and their own values and goals". When frames are successful, they may become "master frames" that are used as "symbols...to justify and dignify collective action" (Tarrow 1998: 146). In this case the target population was elected officials who ostensibly believed in equal pay, or at least were required to follow the law as it guaranteed equal pay for equal work, and had the power to institute domestic partner benefits for city and state employees. By arguing that gay and lesbian employees have a *right* to the same pay and benefits package as their heterosexual co-workers, activists drew on the "American concept of 'rights'", a concept that has been used as a master frames by SMO's since the 1960's (Tarrow 1998: 146).

Proponents argued that equal pay for equal work included equal benefits, and opponents countered that it was simply too expensive to extend benefits to domestic partners. When moral



arguments were made, the benefits master frame generally overshadowed them. Even the staunchest opponents stuck to the bottom line that domestic partner benefits amounted to a costly “special privilege” for lesbians and gays that forced taxpayers to “pick up the tab for this stroll down the alternative lifestyle lane” (Fehrstrom 1992). One commentator pointed to potential fraud (i.e. that individuals not in a relationship would claim one another as domestic partners to gain access to health insurance or other benefits) as a reason to oppose the measure: “It goes way beyond making Boston the ‘Niagara Falls’ for gay honeymooners. The scam potential here is unbelievable. It’s going to be world-class fraudarama” (Carr 1992). In fact, even the Catholic Archdiocese’s criticism played up the fiscal sensibilities of the matter by calling the appeal for domestic partnerships, “a political ploy by a vocal, well-financed, advantaged class in our society who want to force our society to accept ‘gay lifestyles’ as normal, while at the same time taking advantage of the state by finagling money to support their friendships “ (Marchoki 1992).

That the domestic partner debate took this tone is in part a reflection of LGBT activists’ strategy to frame the benefits as “equal pay for equal work” rather than relationship recognition, so when “traditional family values” arguments were raised they did not quite fit into the conversation as initiated by the LGBT rights movement.

For example, in a hearing on the state domestic partner bill Arline Isaacson of the Massachusetts Lesbian and Gay Political Caucus asked legislators to imagine two employees at the same firm, “The one who just got hired is able to have his wife’s [insurance] covered by the company, but the one that’s been there for twenty-five years can’t have his partner covered. That’s discrimination” (Gozemba and Kahn 2008: 50). Yet, despite activists’ careful strategizing, the debate shifted as the news broke and tension built over the gay marriage case winding its way through the Hawai’i court system. The tide turned again in Massachusetts as the nation reacted to the distinct possibility of legal gay marriage in Hawai’i and the strength of that reaction was felt from coast to coast.

#### *Hawai’i Shifts the Debate*

As the cycle of contention over relationship recognition and family rights for lesbian and gay people intensified, so did the reaction of lesbian and gay rights opponents. One key component of such cycles is “the diffusion of a propensity for collective action from the initiators...to antagonists...countermovements are a frequent reaction to the onset of contention” (Tarrow 1998: 145). For this reason, the development of the lesbian and gay movement for marriage and family rights cannot be understood outside of its relationship to the counter-movement it was forced to contend with. In the case of the lesbian and

gay rights movement, “opposing movements, by shifting political venues, disputing social movement claims, lobbying politicians, and introducing new frames, alter the political context, and create new problems for activists, or new opportunities” (Fetner 2008: xvi).

Because of the interactive and dynamic relationship between the lesbian and gay movement and its countermovement, decisions of Hawai’i courts in favour of gay marriage led to a series of what movement theorist Aldon Morris (2004: 245) calls “transformative events” for both contenders. Morris (2004: 245) argues that such events are important because they “can produce radical turning points in collective action and affect the outcome of social movements”. The initial court decisions in Hawai’i led to increased activism on the part of gay rights opponents who were shocked into action by the thought of same-sex weddings. This mobilization on the part of gay rights opponents illustrates “the role of opposing movements in setting agendas and selecting the issue that requires focus at a given point in time” (Fetner 2008: 99). Marriage was not a serious part of Massachusetts lesbian and gay activists’ agendas in 1996, yet the galvanized opposition to gay marriage meant activists had to contend with marriage and its consequences whether they wanted to or not.

Because cycles of contention are characterized by “broad sectoral and geographic diffusion” (Tarrow 1998: 144), Massachusetts

lesbian and gay activists experienced several consequences related to the Hawai'i gay marriage fight. First, as Religious Right rhetoric and tactics gained traction nationally this increased the effectiveness of such strategies against domestic partnership benefits in Massachusetts, eventually culminating in the repeal of domestic partner benefit policies enacted in Boston, Brookline, Cambridge, and Brewster with a lawsuit filed by the right-wing American Center for Law and Justice in 1999 (Gozemba and Kahn 2008). Second, the prospect of legal gay marriage raised the stakes and energized the anti-LGBT rights faction while ramping up emotional investment in domestic partner benefits and marriage debates for LGBT activists and their opponents in Massachusetts. Third, it awakened lesbian and gay people in Massachusetts to the possibility of legal marriage, leading to the formation of new groups like the Freedom to Marry Coalition. These advances in turn influenced strategy development and movement cohesion.

The gay marriage debate in Hawai'i reverberated across the United States. Massachusetts activists believed that "the legislature was still uncomfortable with gay relationships" and were careful to continue to frame domestic partner benefits in terms of equal pay rather than relationship recognition (Gozemba and Kahn 2008: 49), but with the nation's eyes now locked on Hawai'i, marriage was in the air and there was no escaping it. State after state enacted Defense of

Marriage Act statutes, and the federal government was gearing up to do the same. Meanwhile, in Massachusetts the domestic partner benefit debate was folded into the national drama over gay marriage, and frames shifted away from discussions of benefits and budgets and began to focus more on relationship recognition and defending the family, morality, and civilization from the destructive consequences of the gay agenda. In addition, the controversy over gay marriage was easily exploited as a wedge issue during the 1996 election cycle.

As tension grew over gay marriage in Hawai'i, coverage of this issue overwhelmed coverage of domestic partnership benefits in Massachusetts's news, and the major newspapers reflected the uptake of these frames. Media outlets, of course, "are far from neutral bystanders in the framing of movement events", and while movement or countermovement activists may find a sympathetic ear among journalists, "more often, however, the media choose to frame a story in a certain way because it sells newspapers or attracts viewers" (Tarrow 1998: 116). As the controversy over gay marriage rippled across the country, Massachusetts's media dove in.

In Boston, the *Herald* was generally most critical of gay issues, including domestic partner benefits and gay marriage. In the *Herald*, opinion columnists and editors overwhelmingly took the side of the opposition. For example, in addition to opposing gay marriage, columnist Don Feder swung an election year jab at Republicans as he

exclaimed in his column, “It’s the social issues, stupid!” and criticized the Republican party for taking what he considered to be a weak stance on social issues like gay rights and gay marriage. Feder then quoted a representative of the Family Research Council who said, “There’s no sense that the [Republican] party understands the anxiety level in Middle America. Sometime this summer, Hawai’i’s Supreme Court will probably rule that the state must sanction homosexual unions, forcing every other state to recognize gay marriages contracted there” (Feder 1996). Just days later, the *Herald’s* editorial staff weighed in and criticized the Hawai’i Supreme Court for “flouting tradition, religion, and common sense” and asked incredulously, “Whoever thought the day would come when marriage would have to be defined?” (Boston Herald 1996).

The *Boston Globe* offered a less critical, but still deeply ambivalent view of the prospect of gay marriage. For example, a *Globe* editorial piece observed that “many people are content with the traditional marriage model of man, woman, and children. With the institution under strain from divorce and unwed motherhood, they feel no need to stretch it further. Legal improvements in the status of gay people can be made without redefining this bedrock institution of society” (Boston Globe 1996). And one *Boston Globe* writer, who in other columns was generally supportive of gay rights, stated flatly, “If

Hawai'i legalizes gay marriage, the honeymoon is likely to be brief. And the backlash harsh" (Goodman 1996).

These responses to the gay marriage controversy in Massachusetts reflected an overriding concern in the United States at the time that 'the family' was under siege. This sentiment was repeatedly raised in media coverage during the 1996 election, and not just in reference to gay marriage. Journalist David Shribman observed that both Democrats and Republicans increasingly invoked the language of the "the family" with two goals in mind "first, to buttress the family at a time when it seems to be under siege, and, second, to be rewarded by voters for saying such things" (Shribman 1996). Shribman's observation showed that "the 'family issue' emerged as a way to talk about a lot of issues at once, quality of life, job security, the economy, and lifestyle changes" and that "people are worried about what will happen to us as a nation" if family bonds continue to put under pressure (Shribman 1996).

This generalized national anxiety about 'the family' made a ready frame for opposition to gay marriage. As a commentator from the *Herald* explained, "Marriage has been under siege again for some time. No-fault divorce, a sex-saturated culture, and fiscal and social pressures have sundered many a marriage. Many Americans are wrestling with the pain of broken families...[and] fatherlessness has spawned America's most destructive problems", he lamented, "Why

don't we move to strengthen this irreplaceable institution? Well, we should. Yet we are being asked to pretend that two men could replace a mother in a child's life or two women a father" (Bauer 1996). Given the predominant cultural anxiety over the family, the family values frame resonated deeply with many Americans.

While lesbian and gay activists and allies in Massachusetts had worked hard to frame their arguments for domestic partner benefits in terms of equal pay, as gay marriage became the dominant issue they lost the ability to control how their issues were framed. Marriage and family are powerful cultural symbols, and the possibility of gay marriage in Hawai'i inspired both movement and countermovement agents to utilize marriage and family as frames of contention. This, in turn, inspired action on both sides of the battle for marriage because "it is the combination of new frames embedded within a cultural matrix that produces explosive collective action frames" (Tarrow 1998: 122). Although this was a framing strategy that Massachusetts lesbian and gay rights activists had wished to avoid, the shift in frames was not entirely negative. In fact, in the midst of all the negative talk about gay marriage threatening the family and through the din of cries to restore traditional family values, positive portrayals of lesbian and gay families began to emerge.

In Boston, it was the *Globe* that began including positive coverage of gay families and gay marriage. For example, in September



1996 the *Globe* featured a story titled “Is Anything Wrong with this Picture? In the South End, a couple wants to seal their love with marriage, in Congress, lawmakers try to stop them.” The text of this article referred to the “emotional benefits” and “concrete advantages” conferred by marriage, and asserted that being unable to marry leaves this couple “perpetually second class and vulnerable” (Sege 1996). Articles such as this implicitly asked that if the benefits of marriage are so great for society, why not strengthen the institution by making it more inclusive, rather than less so? Even the court testimony from the Hawai’i case made clear that “children of single parents, foster parents, adoptive parents, step-parents, and same-sex couples could be raised with the same level of success as that of a heterosexual couple” (Associated Press 1996). Having these ideas on the table in 1996, controversy notwithstanding, made them part of the collective consciousness so that in 2003 these images and arguments were familiar to many Massachusetts residents. It is important that Massachusetts gay and lesbian activists and allies continued pressing for family rights, including domestic partner benefits and later, marriage, throughout the gay marriage panic that engulfed the United States in the 1990’s. This continued action kept positive images of lesbian and gay families in the media, and in the collective consciousness of Massachusetts residents, even after the case in Hawai’i was closed.

*Emotions Intensify, Opportunities Close...and Open*

Throughout 1996 national anxiety continued to build over the impending marriage decision in Hawai'i, and in September of that year a national Defense of Marriage Act was passed in Congress and the Employment Non-Discrimination Act (known as ENDA, a bill to create national employment protection for lesbian and gay people) was defeated. Political opportunities, whether expanding or constricting, have emotional effects on social movements actors, and may inspire citizens who have yet to take part in social movement activity. As a political opportunity opens, it "might generate feelings like hope or pride or might legitimize emotions like anger or indignation" and even constricting opportunities can "generate emotions that facilitate protest" (Gould 2004: 164). Given the cultural weight carried by the intensely personal nature of relationships, marriage, and family, the ups and downs of the marriage debate, in conjunction with the drama being staged against gay marriage in the national theatre, generated a series of emotions for lesbian and gay people and these emotions led many to act in their own defense.

In such a volatile climate for lesbian and gay rights nationally and locally, Massachusetts activists experienced many emotions that inspired movement activity. For example, after the vote that enacted DOMA and blocked ENDA, one headline read "In Boston, Community

Responds with Anger” as activists and allies staged protests, criticized lawmakers for “demagoguery”, and promised to fight the bill in court (Leung 1996). This anger also inspired proactive responses, such as increased publicity and participation in groups like the Boston Freedom to Marry Coalition. Sidney Tarrow (1998: 111) calls anger a “vitalizing” emotion that is “likely to be present in triggering acts of resistance”, but also emphasizes the mobilizing qualities of other emotions, like love. Love, of course, is a primary motivation for relationship formation and marriage, thus attacks on marriage may inspire an personal, emotional response that could lead people to action. Amelia Craig, then executive director of GLAD, identified love as a motivation to take action against anti-gay marriage forces when she said, “The decision to get married should belong to the couple in love, not the state” (Leung 1996). It could be said that love, as much as identity, in a sense, undergirds all LGBT movement activity and that love can be turned to anger when LGBT relationships and families are targeted and attacked.

Emotions like anger and love, then, also served as a primary motivator for action in the movement for gay marriage, even when political opportunities appeared to be diminishing. In fact, it is precisely when opportunities appear to be diminishing that it may be most important to remind people “that the indignities of everyday life are not written in the stars-- that they can be attributed to some agent

and that the actions they take collectively can change that condition” (Tarrow 1998: 111). So emotion is important to inspire action and keep up the morale of activists, but it is more than that, as well. Emotions do not occur in a vacuum. Verta Taylor (1995: 227) argues that emotions are also “a site for articulating the links between cultural ideas, structural inequality, and individual action.” Emotions not only inspire individuals to participate in social movements, but emotions can help individuals understand their actions in a broader social context. As the backlash to gay marriage in Hawai’i brought gay and lesbian people under attack across the country, it complicated the conditions faced by Massachusetts activists. Activists’ emotional responses to these changing circumstances in turn influenced actions and strategy for future movement gains.

Despite the apparent setbacks posed by the passage of DOMA, the defeat of ENDA, and the increasingly vitriolic rhetoric against gay marriage, the court rulings that favoured gay marriage in Hawai’i opened activists’ eyes to the possibility of winning marriage equality. Although the Hawai’i gay marriage saga ended with gay marriage banned in the state (though gay couples were extended some rights and benefits of marriage via domestic partnerships) and led to a string of DOMAs enacted across the country, Gay and Lesbian Advocates and Defender’s (GLAD) Mary Bonauto (lead council on the case that won marriage rights in Massachusetts) described the

Hawai'i Supreme Court decision supporting gay marriage as an emotional and strategic turning point. She said, "When the Hawai'i Supreme Court ruled in May of 1993 that a marriage case by three couples should not be dismissed because it looked like discrimination...it was a jaw dropping experience, like 'Whoa!'" (GLAD panel discussion "From Civil Unions to Marriage" 2009). The historical record shows, and my informants corroborated, that events in Hawai'i did not signify an overall shift in movement strategy for Massachusetts activists. As the debate over same-sex marriage in Hawai'i played out, fighting for domestic partner benefits remained the primary goal of Massachusetts activists. However, events in Hawai'i did sow the seeds for the movement for marriage that would come later, for example, by inspiring the eventual creation of new social movement goals and generally encouraging activists to envision new possibilities for the future.

The battle for gay marriage in Hawai'i began winding down in July 1997. In spite of a series of favourable court rulings, in the end gay marriage was banned in the state. However, in the process Hawai'i became the first state to "offer benefits to couples who aren't allowed to wed...reciprocal benefits that also apply to cohabiting couples [or others] such as a widow and an adult son to siblings or to roommates" (Associated Press 1997). By 1998, a Defense of Marriage Act had been implemented federally as well as in a majority of US states, and voters

in Hawai'i and Alaska succeeded in passing constitutional amendments against gay marriage.

These events illustrate Gamson and Meyer's (1996: 277) assertion that political opportunities are "relatively volatile, shifting with events, policies, and political actors". By the time all was said and done in Hawai'i, tension over gay marriage was reduced from a boil to a simmer but it remained quite clear that the issue would not be fading away anytime soon. While many Massachusetts activists continued to work on winning domestic partner benefits in Boston and state wide, other advocates, having watched Hawai'i come so close to achieving marriage equality, set their sights on winning marriage rights. The next phase of the struggle for same sex marriage occurred closer to home in Vermont.

Some Massachusetts activists were involved in this struggle through GLAD, a regional organization that operate throughout New England, and most realized that an advance in gay and lesbian rights in one state could help build momentum for advances in other states. Indeed, if Hawai'i shifted the field of play, what happened next in Vermont was a game changer, and events in both states played integral roles in bringing marriage to Massachusetts. Importantly, GLAD, while headquartered in Boston, operated regionally across the New England states. In this region, lesbian and gay activists had been active for decades and achieved policy gains essential to creating a

political and cultural climate more conducive to advancing LGBT rights than found in other parts of the country. Because “climates are less volatile than policy windows” (Gamson and Meyer 1996: 282), the New England region seemed like a reasonable place to stage the next front in the battle for gay marriage.

As the case in Hawai'i was being wrapped up, Mary Bonauto of GLAD and Beth Robinson, a lawyer and LGBT rights advocate in Vermont, recognized the political opening created by the events in Hawai'i. In the words of Mary Bonauto, “It was looking like Hawai'i was in tough shape and it really did make sense not to put all of one's eggs in any one state and to really think about bringing marriage to the mainland...it made sense to say ‘Yes, we should take another risk here. We can't just let this opening close on us’” (GLAD panel 2009). Using lessons gleaned from the struggle for marriage in Hawai'i, Vermont was strategically chosen as the next state in which same sex marriage might be likely to succeed. Beth Robinson reflected on the lessons from Hawai'i that influenced movement strategy in Vermont,

Massachusetts learned a lot from what we did and didn't do in Vermont and, likewise, we learned from Hawai'i. [We learned] you can have the best legal arguments in the world and they may be made vulnerable by a political response. One of the first things we looked at when we were thinking of filing the case was ‘What's the constitutional amendment process in Vermont?’ It was quite easy in Hawai'i and that turned out to be an unfortunate fact. Turns out in Vermont it was pretty challenging. Once we built some infrastructure we focused on making sure there was no chance that 2/3 of the Senate would vote for an amendment. We did our work in the executive

branch and with the attorney general's office and other places. The biggest factor [in deciding when to file the case] was feeling like we had done the work we needed to do to deal with the political response we might have." (GLAD Panel 2009).

This shows that activists were very aware of what "fickle friends" policy windows and political opportunities could be, and made strategic choices to create an opportunity for gay marriage and/or to enhance opportunities perceived to be already available. Having witnessed the spectacular opening and shutting of one such opportunity in Hawai'i, activists were ready to take a chance in Vermont, but only after studying and engaging the political structures in place there in order to lay the groundwork for success.

On July 22, 1997 the *Boston Globe* reported that three gay couples in Vermont filed suit for marriage, citing the guarantees of equality in the state charter (Canellos 1997). Lawyers for the plaintiffs in Vermont clearly drew on cultural elements most likely to resonate with residents of the state, politicians, and judges, interpreting the state charter to say that "the government is, or ought to be, instituted for the common benefit, protection, or security of the people [and] that if a benefit is provided to anyone it must be provided for all", and citing cases where Vermont courts previously recognized various types of non-traditional families (Canellos 1997). Vermont activists fighting for marriage were able to draw on earlier experiences and strategic responses that had been successful in



engaging the culture and politics of their state (for example, see Bernstein 2002). In the end, Vermont succeeded in civil unions rather than marriage, but these civil unions represented the most advanced level of LGBT equality at the time and the events in Vermont played an important role in bringing marriage to Massachusetts.

In theoretical terms, a social movement is “a field of actors, not a unified entity” so “movements often have a range of actors pursuing numerous strategies” (Gamson and Meyer 1996: 283). As activists in Vermont made the case for marriage and the case subsequently wound its way through the courts there, in Massachusetts activists continued the fight for domestic partner benefits. The domestic partner benefits struggle limped along, hampered by continued challenges and disagreements about the appropriateness of including benefits for non-married heterosexual couples in the bill. In 1998 Boston Mayor Tom Menino issued an executive order extending domestic partner benefits to city workers inclusive of same-sex couples and unmarried heterosexual couples. This was made null by Governor Paul Cellucci’s veto of the measure on the grounds that making benefits available to *heterosexual* partners “undermines marriage” and “contributes to fatherlessness” (Battenfeld and Kreiger 1998). This was Cellucci’s personal interpretation of the family values frame. He insisted he would sign the bill only if it was amended so that domestic partner benefits were “limited to same-sex couples [because

otherwise] it will encourage heterosexual couples to get these benefits. We have to say that marriage is important” (Kreiger and O’Brien 1998). Cellucci insisted he supported LGBT rights, but his stance nevertheless held back the advancement of legislation that would have benefited LGBT individuals and their families.

While domestic partner benefits legislation languished in Massachusetts, the LGBT movement and its opponents were catalyzed as events continued to unfold in Vermont. As the case crept toward the Vermont Supreme Court, all eyes turned to Vermont to see what would happen there. The *Globe* featured several articles highlighting the arguments set forth for and against marriage in the Green Mountain State. One of these highlighted the plight of a couple raising a young daughter, comparing the anti-gay marriage laws to now unconstitutional anti-miscegenation laws, and also included the opinions of the group Take it to the People, who wanted to allow a statewide vote on the issue (Shea 1998). From the *Herald* there was the prolific Don Feder arguing that the “Vermont judiciary is poised to rewrite Genesis” and warning that the Vermont case “could end up legislating gay marriage not just for its state, but for the entire nation” (Feder 1998). In the midst of this heightened controversy, a Defense of Marriage Act bill was filed in Massachusetts.

*A Defense of Marriage Act for Massachusetts?*

Although a federal level DOMA was enacted in 2006, this law in and of itself was not enough to stop same-sex marriage from being legally recognized in the United States outright. However, if a state were to legalize same-sex marriage the federal DOMA would limit the benefits of marriage that would be available to the couple.

Specifically, in a state where such a marriage was legally recognized, the couple would receive all of the state level benefits of marriage but none of the federal benefits of marriage, for example, social security benefits of a spouse upon their death. For this reason, despite the existence of a federal DOMA, opponents of gay marriage in Massachusetts remained determined to enact a DOMA in the Bay State.

By the time a DOMA bill was filed in Massachusetts, 29 other states had already passed one. This made Massachusetts a latecomer to the DOMA game; but as the case in Vermont picked up momentum, things began to hit close to home for conservative Massachusetts residents. As the *Herald's* Don Feder (1999) illustrated, "The [gay] movement only needs a victory in one state. Then, gay couples from other states will flock there for a license and ceremony, return home and demand recognition of their unions... It is crucial for states to be on record defining marriage as it has been understood for millennia." The *Globe* reported "Battle Lines Form Over Same Sex Marriage Bill", however these were the same battle lines that had been drawn over

gay rights in Massachusetts for some time. Supporting the bill were the Catholic Church and other conservative religious groups and socially conservative organizations, like the Massachusetts Family Institute (backed by the national Focus on the Family organization) and this reflected the battle lines drawn over gay rights and gay marriage issues around the nation. Notably, the Catholic Church carries more weight in Massachusetts than it does in other regions, and conservative evangelical traditions are less strong here than in other places. However, what makes Massachusetts different is the number and strength of religious groups that came out *in favour of* gay marriage.

While the Roman Catholic Church does exert a great amount of pressure on culture and politics in Massachusetts, Massachusetts is also home to a number of diverse religious traditions including mainline Protestant denominations, Reform Jews, and other religious groups that are more favourably disposed to LGBT rights. For Doug McAdam (1996: 25), cultural factors, such as the presence of diverse religious traditions, are important because they can “create opportunities for movement activity” (McAdam 1996: 25). For example, the Unitarian Universalist church is headquartered in Massachusetts and this denomination led the way, with the United Church of Christ and the Reconstruction and Reform branches of Judaism, by performing gay marriages in Massachusetts, in some

cases, since the 1970's (albeit marriages that were not legally recognized) (Ribadeniera 1998).

While conservative religious groups across the country were busy working against gay marriage, these religious groups, along with representatives of mainline Protestant Churches like the United Methodist Church and the Presbyterian Church, were organizing in support of gay marriage. Because the influence of evangelical Christian groups and other religious opponents of gay marriage was less pronounced in Massachusetts than elsewhere in the US, denominations that supported same sex marriage were more successful in shifting the debate in Massachusetts. When DOMA was filed in Massachusetts, religious leaders from these and other religious groups formed the Religious Coalition for the Freedom to Marry and presented 200 signatures from clergy members supporting gay marriage in testimony on Boston's Beacon Hill (Ribadeniera and Robertson 1999).

In general, DOMA arguments in Massachusetts took shape in a way similar to the arguments used across the US. Those against gay marriage claimed that it threatened the family, defied tradition, and/or went against religious teaching, and those in support of gay marriage cited freedom, equality, and justice in their favour (Nelson 1999, Ribadeniera and Robertson 1999). However, given the strength of the LGBT movement in Massachusetts and the allies they had with

religious leaders, political leaders, and other important constituencies, this fight would prove more difficult for DOMA proponents than were most other DOMA fights that took place across America.

### *The Role of Massachusetts' Supreme Judicial Court*

As activists struggled over the course of the 1990's to win legislative victories for domestic partnerships and family recognition, the Massachusetts Supreme Judicial Court issued a series of important rulings. Drawing on the historical institutionalist perspective, court decisions, even minor ones, are important because "other political institutions interact with courts...react to, and make judgments about court rulings", and furthermore, "political opportunities are themselves ... dynamically and historically shaped and constructed by...legacies of previous policies" like court decisions (Smith 2009: 13). The decisions made by the Massachusetts Supreme Judicial Court (SJC) in the 1990's indicated the court's readiness to identify lesbian and gay families as a legitimate and legally viable family form even though other political institutions (legislative, executive) were not yet on the same page. These rulings were included in media coverage, but not given the same attention in the major Massachusetts papers as compared to the local debate over domestic partner benefits and the national panic over gay marriage. These SJC decisions were nonetheless essential to building a series of precedents for

recognition of LGBT families that laid the foundation for legalization of gay marriage.

The first ruling of major import was when the SJC decided in favour of second parent adoption for lesbian and gay parents in 1993. Later, in 1998 the court strengthened its position on same sex parenting when it ruled in support of the rights of 'de facto parents'. This decision was handed down in favour of the ex-partner of a lesbian mother who was denied visitation rights to the biological child of her former partner. Although the non-biological mother had not adopted the child legally, the SJC declared, "the nonbiological mother is essentially a parent because she helped raise the child and paid for almost all the family's expenses" (Ring 1999). In a 4-2 ruling, "the SJC recognized 'de facto parents' as the reality of 'the modern family'" (Lawrence 1999). This decision had implications for de facto heterosexual parents, as well, but by issuing the decision specifically in support of a non-biological parent in a same-sex relationship, the court made clear that it took seriously the need to establish clear legal rights and recognition for lesbian and gay families.

The Court also recognized the changing nature of the modern family in its ruling on domestic partnerships. After wrangling over the issue for the better part of the decade, the issue was finally brought before the court by a lawsuit against the City of Boston. The court issued a mixed ruling here, as far as gay rights were concerned.

Legally the domestic partner laws in Boston had to be declared unconstitutional because they were “inconsistent” with state law (Marantz 1999). However, the Court “urged lawmakers to address ‘new social and economic realities’ [because] the category of covered dependents of city employees, as defined by the legislature in 1955 and 1960, no longer fully reflects all household members for whom city employees are likely to have continuing obligations to provide support” (Marantz 1999). For LGBT activists, this was a sign that the court was a potentially a friendly one for a gay marriage case. However, no plans for a marriage case were set in motion right away, as activists remained fixated on the gay marriage case in Vermont. In December 1999 the Vermont Case was decided in favour of equality for lesbian and gay families but the court left the details of implementation to the legislative branch.

### *Conclusion*

The 1990’s closed with the same ambivalent spirit that prevailed through much of the decade in terms of advancement of LGBT rights. The Massachusetts SJC had recognized the need to support changing family structures, but domestic partner benefits were eliminated for city workers across greater Boston. The Vermont Supreme Court recognized the equality of gay families, but those same families were forced to watch with bated breath as their fate was decided in the legislature. And a DOMA bill was being pushed through



the Massachusetts legislature, with both supporters and opponents of the bill now energized by the recent court rulings in Massachusetts and Vermont.

While the 1990's may appear to have ended in a stalemate for gay and lesbian activists in Massachusetts, this decade was important in terms of setting a course for the struggle over same sex marriage that would begin in earnest in the 2000's. In the 1990s, in the face of a growing countermovement and a climate of diminishing political opportunities, Massachusetts activists held their ground. In Sidney Tarrow's (1998: 89) theory of social movements he argues that because political opportunities "migrate from...movements to countermovements...then something more durable is necessary to turn contention into a sustained social movement." There are, in fact, several things necessary for a sustained social movement to emerge, "the forms of contention that people employ to gain support...the collective action frames that dignify and justify their actions; and the mobilizing structures that reinforce challengers" (Tarrow 1998: 90). Over the course of the 1990's, gay and lesbian rights activists continued to build their strategic repertoires (i.e. forms of contention), developed collective action frames that would justify their demands for equal rights on individual and family terms, and they continued to cultivate the mobilizing structures necessary to carry on a sustained cycle of contention in which they sought to

advance rights claims at the same time they defended gains already won against increasingly powerful counter-movement opponents.

Although activists were not successful in every attempt to advance gay and lesbian rights in the 1990's, their movement was strong enough to ensure that setbacks remained temporary. For example, when the conservative American Center for Law and Policy brought a lawsuit against the city of Boston's domestic partner benefit policy and succeeded in striking the policy down, this was no doubt a loss for the gay and lesbian movement. Yet, at the same time that the SJC ruled the policy unconstitutional, the Justices included in their legal opinion that the laws as they stood did not reflect the current reality of modern families and should be changed in the legislature. Thus the decision created a political opportunity for gay and lesbian activists to exploit. In the next decade, the Massachusetts lesbian and gay movement utilized their forms of contention, collective action frames, and mobilizing structures to create and sustain an opportunity to establish legal recognition for same sex marriages in spite of intense counter-movement pressure to institute a Defense of Marriage Act.

## CHAPTER 5: ANYBODY'S GAME: THE BATTLE FOR MARRIAGE

### Introduction

As the new millennium opened the Massachusetts LGBT rights movement remained gridlocked with the religious right and the state. This was a stalemate that either side could win or lose. In the Bay State, LGBT activists were still struggling to advance domestic partner benefits, opponents of LGBT rights were struggling to advance DOMA, and legislative allies of both sides were pushing and pulling against each other. Everyone with a stake in this game kept an eye on Vermont as that state's legislature struggled to honour a December 1999 court decision declaring that same sex couples are entitled to the same rights as married ones.

In *Baker v State* the Vermont Supreme Court "justices left room for heated debate, by giving lawmakers the option of allowing gays to marry or of creating a parallel system" and as that debate took place interested Massachusetts residents were paying steadfast attention, knowing that "Vermont's choice could set a national precedent" (Good 2000). In April, when the Vermont legislature finally approved a civil union bill described in the *Boston Globe* as the "closest thing to gay marriage in America", LGBT activists in Massachusetts celebrated "an historic moment in the history of gay rights while opponents bashed Vermont's move as an assault on the institution of marriage" (Lawrence 2000). This brought new energy to gay rights struggles

taking place in Massachusetts, where supporters of gay rights, like Mary Bonauto of GLAD, were inspired by what she called “a new era of understanding” and opponents of gay rights, like C.J. Doyle of the Catholic Action League of Massachusetts, declared “the Vermont bill underscores the need for Massachusetts and other states to pass ‘defense of marriage’ acts” (quoted in Lawrence 2000).

While Vermont was strategically chosen as a state where same-sex marriage was winnable, the final outcome of civil unions was one about which many activists felt ambivalent. On one hand civil unions were a significant advance in lesbian and gay rights; on the other civil unions did not guarantee the same rights as marriage. Given this outcome, in pressing for marriage in Vermont, New England activists may have overestimated their chances of success. Beth Robinson, lead attorney on the case that led to civil unions in Vermont, was philosophical when reflecting on the *Baker* decision, “The civil union case always makes me shudder because it wasn’t actually a civil union case. It was a marriage case and we didn’t win but we didn’t lose. We came out with this middle ground decision...civil union” (GLAD Civil Union to Marriage Panel, 2009). However, that “middle ground decision” was central to breathing new life into mobilization for gay marriage in Massachusetts.

Regardless of the outcome, William Gamson and David Meyer (1996: 284-285) contend that “Activists systematically overestimate

the degree of political opportunity and if they did not, they would not be doing their job wisely. Their job is to convince potential challengers that action leading to change is possible and desirable.” That was exactly the outcome in Vermont. The end result may have fallen short of marriage, but the establishment of civil unions worked to convince activists elsewhere to continue to press for marriage equality. For LGBT rights activists in Massachusetts, the civil union case in Vermont was another “transformative event” that energized activists as it revealed how a well organized campaign could win rights that few had previously imagined possible (Morris 2004: 245). In this case the establishment of “the most comprehensive set of legal protections for same sex couples in the country” in neighbouring Vermont embodied transformative energy for activists in Massachusetts (GLAD Civil Union to Marriage Panel 2009). Trying to build momentum on top of the new civil union legislation in Vermont, Massachusetts activists lobbying for domestic partner benefits incorporated this decision into their framing of why such benefits should be granted, asserting that events in Vermont “demonstrate that Massachusetts is falling behind in protecting civil rights” (Weiss 2000).

While many activists continued lobbying for domestic partner benefits up front, other activists were thinking beyond domestic partner benefits and strategizing ways to win marriage rights for

same sex couples in Massachusetts. For example, coverage in the *Boston Globe* and the *Boston Herald* featured action on domestic partner benefits, while the LGBT press included additional coverage of groups seeking full marriage rights. For activists seeking marriage, the resistance to domestic partner benefits in Massachusetts indicated that their window of political opportunity remained closed. However, when civil unions were legally recognized in Vermont it was viewed by some as evidence of a significant cultural and political shift that may be exploited as a political opportunity.

After the Vermont case was decided, activists in Massachusetts watched for signs of cultural or political shifts indicating the time was right to press beyond domestic partnership benefits. Advocating for marriage would involve intense interactions with legislative, political, and cultural institutions so the decision to press for marriage had to be made strategically. Here activists illustrated Francesca Poletta's (2004: 103) position that political structures themselves are cultural and "rather than seeing political structures, states, and actors, as separate from the insurgents who confront them" we should see "mobilization potential in their linkages". In response to political, structural, and cultural change symbolized by civil unions in Vermont, Massachusetts activists began to press for those same changes at home. The strategic choices being discussed by activists at this time relied heavily on the cultural and political structures they had to

engage to be successful, and not all activists were convinced that mobilization for marriage would be successful in Massachusetts.

When considering political structures and opportunities to win a marriage case in Massachusetts, activists like Mary Bonauto at GLAD focused on potential *openings* in the political structure. In a 2009 panel discussion sponsored by GLAD, Bonauto reflected that the decision to file *Goodridge* was based, in part, on past Massachusetts Supreme Judicial Court rulings where the court emphasized “equal protection and due process”, “equality provisions in the Massachusetts Constitution”, as well as “cultural reasons why gay people are part of the fabric of the community” in Massachusetts (GLAD From Civil Union to Marriage Panel, 2009). On the other hand, there were some activists who pointed out political and structural *constraints* that would make winning marriage difficult. Arline Isaacson of the Massachusetts Lesbian and Gay Political Caucus was initially hesitant about opening a campaign for marriage. She recalls telling her fellow activists, “If we go for marriage, I can guarantee there will be an initiative petition for a constitutional amendment in a nanosecond. And the way initiative petitions work in this state we will not be able to stop it. If they get the signatures against us, they’ll only need 25% of the legislature to vote with them, not even a majority. We’ll be creamed.” The stakes here are undoubtedly high as getting “creamed” in a fight against a constitutional amendment is a

significant loss. Overturning a constitutional amendment is no small undertaking, and gathering the political and public support to do so could easily take a decade or longer. As LGBT activists considered strategies to advance their rights, their countermovement opponents were ramping up strategies against them.

For LGBT rights opponents, the creation of civil unions in Vermont amounted to a “moral shock” (Jasper 2007) that led to increased mobilization efforts to enact a Defense of Marriage Act in Massachusetts. Isaacson recalls, “Once civil unions happened in Vermont the movement for DOMA here became hotter.” Considering “domestic partnership benefits an assault on both the conscience and pocketbook of voters...conservatives believe there’s even more at stake now, since the Vermont Legislature approved civil unions of gay couples” said C.J. Doyle of the Catholic Action League of Massachusetts (quoted in Weiss 2000), speaking for opponents of domestic partnerships and other forms of providing relationship and legal rights for same sex couples. Now both sides were keeping an eye on the other as they anticipated their opponents’ next move and planned for ways to advance their own agendas.

By that time, LGBT activists, with the support of legislative allies like Tom Birmingham and Byron Rushing, had successfully defeated a string of proposed Defense of Marriage Acts starting in Massachusetts in the late 1990s. These bills had so far been defeated



because they were far-reaching enough to eliminate any possibility of providing benefits for same sex couples, and even many conservative-leaning legislators voted against such bills in order to preserve some benefit option for same sex couples in the future, however token. However, another legislative DOMA attempt had just been introduced by conservative Democratic Representative John H. Rogers, this time for a constitutional amendment that would ban gay marriage.

LGBT activists were aware that if DOMAs continued to be introduced and defeated in the legislature, the spectre of an initiative petition drive became an increasingly real possibility. With a ballot initiative gay marriage opponents could establish DOMA via the ballot box, and allies in the legislature would have few options for blocking such an initiative. How long could they keep winning? The actions taken by movement leaders do not happen in a vacuum, social movement strategy “develops in interaction with an ever changing environment, especially the actions and reactions of other actors” (Ganz 2004: 182). In this case the anticipation that opponents would start an initiative petition against gay marriage drove the strategies of LGBT activists. According to Mary Bonauto, “After Vermont we were absolutely planning on moving forward in Massachusetts but something really hastened our timing and making sure we got the case prepared and filed. That was we almost had a constitutional amendment vote that would have come to fruition in 2004” (GLAD

panel, 2009). Therefore, Bonauto and GLAD filed *Goodridge v Massachusetts Department of Public Health* in April 2001 on behalf of seven same-sex Massachusetts couples that had been denied marriage licenses.

When GLAD initially filed the case in Suffolk Superior Court, it was expected that any decision lower courts made would likely be appealed to the Massachusetts Supreme Judicial Court. Bonauto argued that denying the rights and benefits of marriage to same-sex couples violated Massachusetts' law under the equal protection clause of the Massachusetts constitution (*Goodridge v Department of Public Health* 2003: 8). Massachusetts state attorney general Tom Reilly's counter arguments were that "same sex couples cannot procreate on their own and therefore cannot accomplish the 'main object' of marriage... as historically understood", that the "various statutory benefits of marriage that plaintiffs seek to obtain were also designed with heterosexual marriage in mind" and "limiting such benefits to opposite-sex couples conserves the commonwealth's scarce resources, undoubtedly a legitimate state interest" (Reilly 2001).

The *Goodridge* case was not chosen at random. The name of the case comes from the lead plaintiffs, Hillary and Julie Goodridge. The Goodridges were (they have since divorced) an attractive middle class lesbian couple with a young child and they, like several of the other plaintiffs in the case, represented the ideal of traditional nuclear

family in every way except that they were a same sex couple. Same-sex marriage advocates knew the choice of plaintiffs was important because once chosen they would become, “ambassadors for gay and lesbian families across the state, putting real faces on what for some was a frightening concept” (Gozemba and Kahn 2008: 61). Nor was the timing of the case chosen at random, “Mary Bonauto filed the *Goodridge* case in 2001, in part because she knew the anti-gay marriage ballot initiative was on the horizon [and] the lawsuit would serve as an education tool, mobilising gay men and lesbians as well as allies in the fight for same-sex marriage” (Gozemba and Kahn 2008: 61). By filing in 2001, Bonauto and Glad were gaming the timing of an SJC decision against the timeline of the initiative petition process thus ensuring that if an initiative petition drive were started, the case for gay marriage would be decided first.

LGBT rights opponents were not caught off guard by this, and had a follow up strategy at the ready. According to Arline Isaacson, “they anticipated we were going to file a lawsuit, and we did file a lawsuit, and the inevitable happened. In 2001 our opponents announced they were coming in with an initiative petition.” LGBT rights opponents, first shocked into action by the *Baker v State* case and the establishment of civil unions in Vermont, then again when GLAD filed the *Goodridge* case in Massachusetts, announced in July 2001 that they were gathering signatures to allow citizens to vote on a

constitutional amendment that would ban gay marriage in Massachusetts. Mary Bonauto acknowledged that when *Goodridge* was filed same sex marriage “was still ahead of many people’s comfort level, but for Massachusetts it was the right case to bring at the time” (GLAD From Civil Unions to Marriage panel, 2009). Indeed, it looks this way in hindsight, but at the time, with LGBT rights opponents already angry over domestic partnerships and civil unions and with many allies ambivalent, at best, about gay marriage, success was anything but certain. It was a risk, but there were several factors at play that made pushing the envelope with *Goodridge* a reasonable risk to take.

Importantly, Massachusetts’ LGBT activists had in place what many theorists consider keys to movement success. Political process and resource mobilization theorists, for example, identify political opportunities and availability of organizational resources as integral to movement mobilization and success. Accordingly, any change in the “relative openness or closure of the institutionalized political system, the stability of that broad set of elite alignments that typically undergird a polity, the presence of elite allies, [and/or] the state’s capacity and propensity for repression” can create political opportunities that encourage mobilization (McAdam, McCarthy, and Zald 1996: 10). Once an opportunity for action appears, the fate of social movements is “heavily shaped by their own actions” so that if a

movement is not sufficiently organized it may not succeed in co-opting a given opening in the political structure (McAdam, McCarthy, and Zald 1996: 15).

Other social movement theorists assert that political process theories over-emphasize political structures and downplay the importance of culture and agency in social movement outcomes. From this perspective, what are often perceived as political opportunities “are better analyzed as strategic rather than structural”; such an analysis should “entail attention to timing [and] the choice of tactics within repertoires” (Goodwin and Jasper 2004: 16). Additionally, Goodwin and Jasper (2004: 28) emphasize, “culture permeates the political opportunities and mobilizing structures of process theorists” and “meanings and emotions keep social networks alive, and do much of the work normally credited to ‘structures’”. Taken together this means that a movement has the best chance for success if it recognizes a political opportunity (or creates one), is sufficiently organized to mobilize its resources (human and financial, elite and grassroots) to capitalize on such an opportunity, and makes the right strategic choices so that its mobilization resonates with the broader culture (including drawing on symbols, images, and discourses with emotional import) in which the movement is embedded. The presence of this combination of factors proved

essential to winning equal marriage rights for same sex couples in Massachusetts.

One of the primary advantages of the Massachusetts' LGBT activists, as opposed to LGBT activists in other states, was the longevity of the movement and its history of mobilization. This meant activists had policies in place that they could build on to advance additional rights claims (Smith 2009), as well as an accumulation of resources (both human and financial) to draw from. Individuals like Arline Isaacson and Mary Bonauto, for example, had been working for LGBT rights in Massachusetts since the 1980's and the organizations they represented had been around since the 1970's. The long-term presence of these and other organizations meant that activists in Massachusetts had cultivated a cadre of elite allies in the State House, as well as others outside of politics who might be called 'financial elites', in addition to alliances cultivated among other types of grassroots and social movement organizations. Such linkages to well-positioned elites in the political and social structures of Massachusetts were essential to creating and sustaining political opportunities and reflect the strategic choices made by activists for many years. Long-time activist and former GLAD board member Elyse Cherry said,

When the moment came [to fight for marriage] there were twenty years of relationships in place. We had business and a lot of the legislature, we had lots of clergy and religious organizations [who supported LGBT rights]. There was this huge panoply of organizations from inside the LGBT

community and from outside the LGBT community [working together].

Therefore, after sensing an opportunity to go for marriage, Massachusetts activists were sufficiently well organized to seize the day and mobilize the political and financial resources they had cultivated for decades in order to make winning marriage viable. Cherry emphasized that it was the result of strategic decisions made by movement leaders to “create an environment in which the institutions are in place, the relationships are in place, and the connections made between the legislators” in the years leading up to the *Goodridge* case that made same sex marriage possible in Massachusetts.

Another long-time activist, Ellen Zucker, who began working for LGBT rights in the 1980’s via the American Civil Liberties Union and the National Organization for Women, cites cultural variables that aided in the success of LGBT rights campaigns in Massachusetts. She said,

I think the thing that is powerful in Massachusetts is a mobilized progressive core that you don’t have in other states- thanks to universities, thanks to a history from the Adamses<sup>2</sup> on up, that is counter-balanced to the old institutions and old style power broking. In terms of creating social change this creates the ability to have outside forces working in a way [to

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<sup>2</sup> Referring to John Adams, Massachusetts’ delegate to the Continental Congress where he advocated for American independence from England, he also assisted in writing the Declaration of Independence and served as second president of the United States. His son, John Quincy Adams, was a Massachusetts representative to the federal government and was the sixth president of the United States.

create public pressure] on political insiders. The gay rights movement had a mobilized progressive constituency on whose shoulders it could go forward.

This illustrates the interconnectedness of political structures, culture, and strategic choices of activists because by building on a cultural variable, i.e. the presence of a politically progressive core, LGBT activists created a base for engaging political structures and pressuring political insiders. Moving forward into an analysis of the battle for gay marriage in Massachusetts requires sensitivity to “the historically and situationally contingent combinations and sequences of processes and events that give rise to...collective action” (Goodwin and Jasper 2004: 27). That is, the interaction between culture, structure, and agency.

When *Goodridge* was filed, LGBT activists were well aware that they would be cashing in on every ounce of political, cultural, and organizational capital they had accumulated over the years. For all of the resources at their disposal, they were facing a counter-movement that was equally matched or, considering the weighty cultural and political influence of opponents like the Catholic Church and the financial backing of national traditional family values organizations, one that completely outflanked them in terms of resources. The struggle over same sex marriage in Massachusetts would engulf the state for the next several years culminating in a heated emotional battle like none that came before, a battle that would only be decided



after a dizzying array of twists, turns, advances, retreats, and reversals of fate. As it began, it was anybody's game.

On April 12, 2001 the news broke that GLAD had filed *Goodridge v. Massachusetts Department of Public Health* after several gay and lesbian couples “applied recently for marriage licenses at city and town clerk’s offices and were rejected” (Abraham 2001b). The case was filed in Suffolk Superior Court, but was fully expected to be appealed to the Massachusetts Supreme Judicial Court. This initial article from the *Boston Globe* foreshadowed many of the strategic framing devices that would be used over the next several years as the gay marriage struggle took its course in Massachusetts. Gay marriage proponents argued “unequal treatment is inconsistent with the Massachusetts constitution” and, referring to civil unions, that “separate institutions are inherently unequal”, while opponents of gay marriage decried the suit as evidence of gays and lesbians pushing an agenda to “deconstruct and break down society’s framework regarding sexuality and relationships” by utilizing the “liberal, activist court system” (Abraham 2001b). Most telling was that, from the outset, “both sides have hitched their wagons to the cause of family values”(Abraham 2001b). Such framing devices highlight the “interactive effect between opposing movements: the effect that each movement has on the other, the impact of the interaction on social movement goals [including] creating new framing opportunities”

(Fetner 2008: 121-122). As supporters and opponents of gay marriage swung into action themes of freedom, equality, justice, family, religion, and democratic values emerged as the dominant focal points that shaped the debate.

In the immediate aftermath of the *Goodridge* case being filed, the pending marriage case caused a “radical flank effect”, where pressure for some right or benefit previously considered “extreme” pushed moderates to adopt positions that they formerly shunned (McAdam, McCarthy and Zald 1996: 14). This effect created forward motion in the lagging domestic partner benefits campaign as the prospect of gay marriage made domestic partner benefits more palatable to people like acting Massachusetts Governor Jane Swift, who, after having “taken some heat for her opposition to same sex marriage,” hastily announced her support for domestic partner benefits”(Abraham 2001c). Similarly, Boston City Council member Jim Kelly, considered to be “the conservative lion of the council”, in a change of position, indicated that he might “look favourably on benefits for same sex partners” (Schweitzer 2001). As the possibility of gay marriage became more real in the minds of Massachusetts residents, domestic partner benefits (and, later, civil unions) came to be viewed by many as a more acceptable and moderate position to hold. Such changes of heart led to increased pressure to bring the domestic partner benefit bill to a vote, and also increased a sense of

optimism that even if there were a negative outcome to the gay marriage case there might be some advancement in other movement goals. However, any positive outcome was by no means certain.

At the same time that Rep. John Roger's legislative DOMA bill was pending in the Massachusetts House of Representatives (a so-called super DOMA that would not only eliminate gay marriage but would nix domestic partner benefits as well), gay marriage opponents announced in July 2001 that they would begin collecting signatures for a ballot initiative for a constitutional amendment that would ban same-sex marriage and domestic partner benefits (Abraham 2001a, Gedan 2001). On the day that the Massachusetts Citizens Alliance held a press conference to announce their initiative petition drive, Mary Bonauto and Arline Isaacson were in the audience. Isaacson recalled,

The key was in how they would word it. Mary and I were really paying attention to understanding the ramifications, and the wording would make all the difference to having any chance of succeeding against it. Thank God they were greedy. They went too broad. They knocked out not just marriage but all the benefits...domestic partner benefits, civil unions, everything.

With past attempts to eliminate same-sex marriage, LGBT advocates could typically count on enough allies in the legislature who wanted to leave open the possibility for *some* benefits to defeat a bill that would eliminate *all* benefits. This strategy so far had worked to defeat both legislative and constitutional DOMA attempts, yet Isaacson admitted,

“I was still scared shitless because I figured the odds were hugely stacked against us winning, but at least the fact that they went broad gave us one little tiny way in to a possible pathway to defeat it.” With this, LGBT activists swung into action for what would prove to be one of the most heated rights battles in Massachusetts history, even before the Supreme Judicial Court reached a decision on *Goodridge*.

Mobilizing against the ballot initiative to create a constitutional amendment banning same-sex marriage required the formation of a formal “ballot question committee”, so a loose coalition of Massachusetts activists’ groups that had been meeting together for years under the informal title “the group of groups” became MassEquality. The “group of groups” coalition that became MassEquality drew from organizations such as the Freedom to Marry Coalition, Massachusetts Gay and Lesbian Political Caucus, Gay and Lesbian Advocates and Defenders, the Religious Coalition for the Freedom to Marry, and the American Civil Liberties Union, so at its inception MassEquality not only represented a broad cross-section of the LGBT community but also had access to the consolidated resources, volunteers, and allies of nearly every major LGBT and LGBT supportive organization in Massachusetts. Marshalling these resources and strengthening them proved necessary as “Massachusetts plunged into a nasty, expensive street fight over the local DOMA” (Gozemba and Kahn 2008: 57). Particularly under such

high-pressure conditions “the tactical choices leaders make matter...leaders must make choices about the nature of inter-organizational relations...about whom to build external allies with, and about how to deal with the opposition. [In addition to] exploiting the external political structure [and] media coverage” (Morris 2004: 242). By utilizing the collective knowledge and resources of the LGBT community and its allies, activists made decisions and developed strategies and frames that had political import and cultural resonance.

In strategizing to beat the DOMA legislation “lesbian and gay organizations began to frame lesbian and gay rights in terms of relationships and families” (Fetner 2008: 112). This strategy was particularly useful in a state like Massachusetts, where previous policy decisions had already put in place protections for lesbian and gay families (like second parent adoption rights). From the theoretical perspective of historical institutionalism such policy legacies “do not dictate outcomes” but they do “create a number of different possibilities and pathways for political action” (Smith 2009: 172).

Institutional recognition and the existence of previous policies that protect lesbian and gay families paved the way for activists to focus on the danger the current measure posed to lesbian and gay families because it could potentially eliminate all forms of benefits. For example, the *Boston Globe* reported “gay advocates say the petitions could harm citizens who are not part of traditional families”

and quoted Mary Bonauto, “These measures attempt to stop the clock and pretend all families resemble Ozzie and Harriett. We have no quarrel with those families. But the truth is families come in all shapes and sizes” (Marantz 2001). That the ballot initiative was harmful to children and families of lesbian and gay people was the message that advocates of gay marriage wanted to impart both to the public and to politicians who would have to vote on the measure in order to send it to the ballot. Since *Goodridge* had not yet been decided, lead lobbyist Arline Isaacson’s strategy was to focus on “benefits, benefits, benefits.” She explained,

We can’t frame it as debate about marriage. It has to be about the benefits. Since they were greedy when they drafted it and they threw in benefits, that’s what we were going for because that’s where we would get the most sympathy and support. We would go to legislators and talk about families and kids denied benefits of insurance and hospital visitation rights. Legislators would be sympathetic [to these issues] even if they didn’t support marriage.

Focusing on benefits allowed activists to avoid the more controversial marriage debate, for the moment, while preserving the possibility of winning marriage in the future by defeating the current DOMA attempt.

The air of uncertainty under which Massachusetts activists had to make decisions created “the conditions under which strategic capacity may matter most” (Ganz 2004: 192). In this environment, movement leaders continued to develop new and novel strategies to

protect their rights. One of the more controversial tactics used by activists to make the public aware of DOMA's potential to harm LGBT families was called "truth-squadding". Arline Isaacson explained this tactic, "Essentially, while they're gathering signatures against us, we have volunteers who stand there and say to the potential signer, 'I'd like to ask you not to sign, and here's why...'. So we're giving them two points of view when they're presented with the paper to sign. It was incredibly successful" (personal interview, 2009). In fact, this strategy was described by a *Globe* reporter (Ebbert 2001) who observed a woman at a shopping centre being approached by a petitioner who asked if she believed in traditional marriage. As the woman answered that, yes, she did believe in traditional marriage, she was then approached by an LGBT ally who explained, 'The measure proposed in the petition could threaten health benefits offered to same-sex partners and their children'. This then caused the woman to change her mind about signing, saying, 'I think marriage is between a man and a woman, but I don't want children to suffer'".

This tactic was not successful enough to stop gay-marriage opponents from gathering the signatures needed for their petition drive, but it did keep them from getting as many signatures as they otherwise would have. Perhaps more importantly, the truth squad volunteers observed that petitioners, many of whom were paid employees of a signature gathering firm, were using trickery by asking

people to sign a petition against horse slaughter and then slipping the anti-gay marriage petition underneath it (Ebbert 2001, 2002). This fraud was exposed, and activists set up a website listing the names of who had signed onto each petition, causing many people to come forward and claim that they had never intended to sign an anti-gay marriage petition. Unfortunately for LGBT activists, the petitions could not be recalled but some of the moral high ground of the campaign against gay marriage was ceded.

Once signatures are gathered and certified by the Attorney General, a ballot initiative must be passed by 25% of the legislature in two consecutive constitutional conventions held in successive legislative sessions. As testimony began in the months leading up and into the constitutional convention cycle the proceedings were heated and, at times, acrimonious. An email message sent to supporters of MassEquality (and forwarded via other organizations like The Freedom to Marry Coalition) described what to expect if attending the constitutional conventions and advised supporters how to behave,

During the last Convention a few weeks ago the anti-gay proponents of this measure showed up at the State House in buses prepared to cause a disturbance if they did not get the win they wanted when they wanted it. When Senate President Tom Birmingham postponed the Convention-- by just a few weeks!-- the mob erupted. The court officers had to physically remove them from the visitors Gallery. The mob then followed Birmingham to his office, blocked him in, and chanted "We want a vote!" for well over an hour... They also made inflammatory, provocative public accusations about "the homosexuals" who were there... If you think it will be difficult for you to stay calm, unaffected, and IGNORE any provocation,



PLEASE stay home. The Gallery is a place for quiet, respectful observation.

Activist Amy Hunt described attending these hearings and constitutional conventions as “torturous”. She says, “It was torturous personally to go up to the state house and see signs that were reportedly about *you* and everybody all up in a tizzy about *you*.”

Similarly, Arline Isaacson remembered the anger of gay marriage opponents,

They were in the gallery screaming and yelling, ‘Let the people vote!’ They were screaming at legislators. There was so much anger it really shook them and we lost votes, I could tell. They started screaming at me. I didn’t care, but it was hard for legislators to take.

This, in turn, reinforced the strategy of LGBT activists to continue to present themselves as a calm, peaceful foil to their opponents’ anger and vitriol.

When the constitutional convention reconvened, activists knew they could not convince over 75% of the Massachusetts legislature to vote against the initiative on its merits so they had to kill the bill using parliamentary tactics. To do that they had to rely on the alliances they had cultivated with legislators. Now and in the future, despite whatever other strategies and tactics were developed by activists, “the structure of political opportunities, as defined by both the enduring and volatile features of a given political system, can be expected to play a major role in the ongoing fortunes of the

movement” (McAdam, McCarthy, and Zald 1996: 12). This time, political allies came through for gay marriage advocates in several important ways, but later this would not be the case.

Having political allies in the State House benefitted LGBT activists in many ways, leading up and into the reconvened constitutional convention on the Massachusetts DOMA petition. First, before an initiative petition goes to a constitutional convention it is assigned to a committee that studies the initiative and issues a report. The Senate president at the time was Tom Birmingham, a long-time LGBT ally. Birmingham assigned the petition to a committee whose chairperson was known to support LGBT rights, the Joint Committee on Public Service. The committee chair took input from Arline Isaacson and other advocates and came out with a report favourable to the LGBT community that focused on the potential loss of benefits rather than gay marriage per se. The committee report called the proposed amendment, “discriminatory, and harmful to families and children” and recommended the legislature reject the measure (Abraham and Klein 2002). Second, while the Speaker of the House, conservative Democrat Tom Finneran, was an opponent of LGBT rights, the second in command, Democrat Sal DiMasi, was an ally of the LGBT community. DiMasi used his position to put together a team of “whips” in the house to win over moderate to conservative Democrats and convince them to vote to kill the bill.

Finally, on the day of the constitutional convention in July 2002, Tom Birmingham called the measure “wrong-hearted, mean-spirited, discriminatory, and unfair”. Rather than calling for a vote on the ballot initiative itself he called for a vote to adjourn the constitutional convention, which a majority of the legislature supported, effectively killing the DOMA petition (Gozemba and Kahn 2008: 59). The good news for the LGBT community was that they had once again escaped DOMA, thanks in large part to political ally Tom Birmingham who put his own position on the line to kill the bill. Activist Elyse Cherry recalled, “Tom Birmingham really fell on his sword for us.” The bad news was that Birmingham later lost his bid for governor to conservative Republican and gay marriage opponent Mitt Romney and was replaced as Senate President by conservative Democrat Robert Travaglini, who opposed gay marriage.

Lesbian and gay Massachusettans exhaled a collective sigh of relief after having dodged yet another DOMA bullet, but with the SJC’s *Goodridge* decision still outstanding, activists knew the calm would not likely last long. The pending *Goodridge* case ensured that same sex marriage remained on the agenda, and before long another DOMA round began when another attempt to ban gay marriage was launched, this time in the form of a constitutional amendment introduced by Representative Philip Travis. Amendments initiated by legislators must be supported by 50% of the legislature in two

constitutional conventions, rather than the 25% needed to endorse a citizens' petition to amend the constitution via the ballot box.

However, the recent shifts in State House leadership had favoured gay marriage opponents, so success was far from certain. Nevertheless, LGBT activists, buoyed by the defeat of the last DOMA bill and anticipating the SJC decision on *Goodridge v Massachusetts Department of Public Health*, continued to build on the momentum of those successes. At the time, they were anticipating the seriousness of future challenges as they gathered allies in the State House and the public alike, and strategized for success.

By now the frames that emerged early on in the controversy over gay marriage had solidified: family, religion, and democratic values. Both supporters and opponents of gay marriage utilized these frames, but, of course, did so in very different ways. The debates boiled down to protecting "traditional marriage" versus protecting all families, espousing religious doctrine against gay marriage versus religious doctrine in support of gay marriage, and demands to "let the people vote" versus appeals for "no discrimination in the constitution" (Gozemba and Kahn 2008: 76). In gearing up to fight another round of DOMA related constitutional conventions, LGBT activists focused on fine-tuning the frames and strategies they believed most likely to lead to success.

Throughout the marriage campaign activists used careful framing and strategizing to upend that most common trope used against them: family values.

Flipping the script on the family values frame and making it work for lesbian and gay families rather than against them was a strategic choice on the part of Massachusetts activists. Their success at doing so reflected their advanced movement status, where “in the mature movement, framing processes are more likely (1) to be shaped by conscious, strategic decisions on the part of SMO’s, and (2) to be the subject of intense contestation between collective actors representing the movement, the state, and any existing countermovements.”

(McAdam, McCarthy, and Zald 1996: 16). That the strategic focus was on “family” was no surprise given that ‘family values’ has often been used to undermine gay right struggles, including the anti-gay marriage position that legal recognition of same sex couples somehow undermines or threatens traditional families. In Massachusetts, activists were able to strategically deploy “family” and “family values” by using the poignant experiences of the plaintiffs in the *Goodridge* lawsuit to highlight the potentially devastating risks that face many lesbian and gay families who lack the benefits and protections offered by marriage in the United States.

Personal stories were often used to make the case that all families deserve the protection and benefits of marriage. For example,

the lead plaintiffs in the case, Julie and Hilary Goodridge, were well aware of what was at stake in the struggle for marriage because of what that they experienced during their daughter's birth: "In 1996, when Julie Goodridge was going through the extremely difficult birth of her daughter, Annie, her partner, Hillary, was facing one barrier after another in getting to her side. Medical officials at the hospital did not recognize her as family, and only tears and lies overcame the resistance" (Rayside 2008: 142). As the Massachusetts SJC prepared to hear arguments on the *Goodridge* case, activists reiterated that the plaintiffs "wish[ed] to marry for the same reasons as heterosexual couples: to publicly dedicate themselves to each other and to legally protect their relationships. Four of the couples in the case have children together and they argue that their children deserve the same legal protections as children born to married parents" (Burge 2003). That *all* families deserve protection became the rallying cry to counteract the rhetoric from opponents who asserted that gay marriage somehow posed a threat to traditional families.

Nearly every activist I spoke with emphasized the strategic importance of building support for LGBT families by sharing personal stories with legislators and the public. Former MassEquality board member, Buzz Harris, described studying pro-gay-marriage television ads that ran in other states and putting that knowledge to use in Massachusetts, "So our ads just put our families out there and said,

‘This is who we are, this is where we live, and this is what we do. And this is our kid if we have a kid. And here’s how our relationship not being legally recognized affects us.’ The tone was very low key and matter of fact, it felt like a neighbour talking with you over coffee”.

Amy Hunt, former director of the LGBT Aging Project in Massachusetts and Creative Director for MassEquality’s “It’s Wrong to Vote on Rights” ad campaign, lobbied for gay marriage on behalf of the Massachusetts Gay and Lesbian Political Caucus. Amy described what she felt was the most successful way of framing gay marriage:

focusing on children and families:

Since Harvey Milk the other side has picked up ‘the children’ and made a run at us and said, ‘Look what you’re doing to the kids.’ Children are the weapon of choice and I believe they like it because it taps into a fear that a lot of straight people have. And I think we have been intimidated by that and cowed by that for thirty years. But for the first time, we had the kids on our side. I shot an ad with an adult kid who had been raised by lesbian moms and one with a little kid who had an extended family, this grandma and grandpa, who did not want see this kid get teased and bullied on the playground. So we took kids and we redefined the state and religious issues. We took their very reliable frame of children and said, ‘Fine, let’s talk about kids ‘cause we have them, too, and we raise them, and we do a pretty damn good job. And, by the way, we have extended families. I have a mother and brother and sisters and I went to all their weddings and they would like to come to mine.’

Importantly, activists focused not only on families with children, but pressed legislators and the public to think of many different types of families. Another activist, George Smart, who lobbied on behalf of MassEquality and GLAD, recounted that before

lobbying, “We all got together ahead of time and talked about what arguments would be most compelling, so the people with kids would talk about kids and bring pictures of their kids.” George and his partner, Bruce, did not have children but still had a compelling story to illustrate that their family needed the protection of marriage as much as any other. “Bruce and I talked about the fact that he had [an illness that can cause paralysis] early on in our relationship and he had become paralyzed for several months from the eyebrows down. We were at a hospital that, in 1988, had never dealt with gay people before and suddenly they had to deal with this openly gay couple.” In her activism efforts, Amy Hunt also used her knowledge from the LGBT Aging Project to advocate for marriage by raising awareness about the risks for elderly couples not protected by marriage. She succeeded in getting a story in the *Boston Globe* about the benefits of marriage for lesbian and gay senior citizens, and also used this knowledge to inform her lobbying experience,

I’d talk to legislators and I’d say, ‘Do you know how MediCare works? Let me tell you what actually happens when someone needs to go into a nursing home costing hundreds of thousands of dollars a year. How much do you think they actually pay before they come to the state and say, ‘help me’, and how do you think the state manages their money as they deliver that health care, and do you know we have all these rules and regulations that help to protect a legally married spouse? When we go through that process are we going to throw Bob’s ‘friend’ Sam out on the street to help Bob? Is that the business we’re in? Because that’s what would happen to an elderly gay couple who didn’t have a marriage license.’ And [one legislator’s] jaw just dropped and he turned to his chief of staff and said, ‘Is that right?’ And the guy said, ‘Yes, this is what



happens.' I talked about that [when lobbying] and it really did stun [the legislators].

These framing strategies encouraged legislators and the public to think about gay families in a whole new light, and over the course of the next several years this frame proved very effective in changing the hearts and minds of Massachusetts residents who were at first hesitant about supporting gay marriage.

The other frame most commonly used against gay rights and gay marriage was religion. Indeed, opponents of gay marriage in Massachusetts mobilized behind conservative religious arguments against gay marriage but these arguments failed to “stick” as well in Massachusetts as they did in other regions. There were several reasons for this. One of these was the religious culture of the New England region.

New England’s fundamentalists, who generally opposed gay rights, are less influential and well organized than they are in much of the rest of the country... [and] while Catholicism is officially opposed to civil recognition of same sex pairs, Catholics have proven that they don’t always follow the letter of the law of their faith. And some of New England’s oldest and most established religious denominations-- Unitarians, Congregationalists, and Reform Jews especially-- see the work toward same-sex marriage as part of their long time dedication to civil rights struggles. (Graff 2001).

These were among the reasons why the anti-gay-marriage campaigns that were so successful in other US regions struggled with success in this state.

In Massachusetts, Unitarians had consistently been on the forefront of religious communities in support of LGBT rights and had even been performing marriages for same sex couples beginning in the 1990's (though these unions were not legally recognized). As the stakes continued to be raised in the fight against DOMA in Massachusetts, Unitarian pastors were among the first of those taking a public stand in support of gay marriage. Several Unitarian pastors even refused to sign state marriage licenses for heterosexual couples until marriage equality had been won for gay and lesbian couples (First Unitarian Church press release 2002, Carbone 2003). Other long-time religious allies include the United Church of Christ, Episcopalians, and Reform Jews.

These denominations were early supporters of the gay marriage movement in Massachusetts, and leaders of these groups were instrumental in forming the Religious Coalition for the Freedom to Marry (RCFM). This organization amassed hundreds of signatures from clergy representing denominations as varied as Unitarian, American Baptist, Jewish, Pagan, Quaker, Presbyterian, Episcopalian, Buddhist, and even a few Catholics, on a document stating, "We draw on many faith traditions to arrive at a common conviction: we are resolved that the State should not interfere with same-gender couples who choose to marry and share fully and equally in the rights, responsibilities, and commitments of civil marriage" (RCFM

Declaration of Religious Support for the Freedom of Same-Gender Couples to Marry). This document was presented as evidence to legislators to combat the notion that gay marriage was somehow anti-religion.

The group also launched campaigns to garner public support, for example, by forming a sub-group called Roman Catholics for the Freedom to Marry and creating a special statement for Catholic supporters of gay marriage that emphasized “Catholic teaching on social justice” and “remembering that Roman Catholics were once denied civil rights, treated with suspicion, and ridiculed”(RCFM Roman Catholic Statement Supporting Marriage Equality for Same-Sex Couples in Massachusetts). At the very least, this information made clear that there was no religious consensus on gay marriage.

The most consistent, long time opponent of gay rights in Massachusetts was, in fact, the Roman Catholic Church. The Roman Catholic Church carried so much political and cultural weight in Massachusetts, in particular, that it could be described as what Aldon Morris (2004: 237) calls an “agency-laden institution”, an institution that “houses cultural and organizational resources that can be used to launch collective action”. Unfortunately for LGBT activists and their allies, the Catholic Church consistently mobilized these resources in favour of the countermovement. Throughout the gay marriage controversy, the Catholic Church issued statements against domestic

partner benefits, civil unions, and marriage for same sex couples, even as polls indicated that Massachusetts residents, “including many Catholics, are increasingly in favour of extending full marriage rights to gays” (Lewis 2003a, Lewis 2003c).

However, in the midst of the gay marriage debate the Church sex abuse scandal became breaking news. As it became known that the Roman Catholic Church hierarchy had been involved for decades in extensive cover-ups regarding priests who had sexually abused children in their parishes, the Church lost some of its moral, political, and cultural authority in the region. In the sense that “the broad political environment in which the movement is embedded will continue to constitute a powerful set of constraints/opportunities” (McAdam, McCarthy and Zald 1996: 12), this scandal changed the political environment for LGBT activists by weakening the authority of the Church and giving some legislators, who in the past would have been unlikely to vote against the Church, a chance to make a break in time to vote in favour of gay marriage. Activist Amy Hunt recalled lobbying Catholic lawmakers at the time,

The child abuse scandal made [the Church] far less effective than they might have been. Catholic lawmakers who otherwise would have said to me, ‘I’m sorry there’s nothing I can do, I’ve been talking to my priest...’ instead came over and started crying because he’s incredibly disappointed in the Church that he lost his faith in.

It is difficult to call this very unfortunate event a political opportunity for LGBT activists, but it did serve to loosen the extent to which the

Roman Catholic Church functioned as a political constraint on mobilization for LGBT rights.

On the other hand, the religious argument against gay marriage was buoyed as the Roman Catholic Church was joined in coalition by Protestant evangelical denominations, including a coalition of local African-American churches. Although Protestants as a group traditionally carried less political and cultural influence in the New England region, this coalition had access to the resources of influential national groups like Focus on the Family and Concerned Women for America. The Massachusetts Family Institute (MFI) was one of the prominent opponents of same-sex marriage, with the support of national groups like Focus on the Family. The MFI's primary position was "in keeping with the Judeo-Christian principles that our society was founded upon" they "strongly oppose any efforts by political activists to normalize homosexual behavior" (<http://www.mafamily.org/issues/human-sexuality/>). The combined resources and influence of these national religious-right political groups made them a formidable opponent to gay marriage in Massachusetts.

Another frame emerged in the constitutional convention cycle that gained traction for opponents, as conservative religious and anti-family arguments did not take root as deeply as they might have hoped. That is the democratic values theme that urged legislators to

“Let the people vote”. This position was put forth in addition to conservative religious arguments against same sex marriage by groups like MassResistance and Let the People Vote. Arline Isaacson recalled that this created an internal rift between activists and some of their legislative allies that she referred to as “good government types” and “process liberals”. These are people who are interested in the democratic process and want to preserve the integrity of that process, especially by foregoing the use of parliamentary tactics to advance a legislative agenda.

This is an important frame because in a politically and historically aware region like New England arguments over democracy carry significant weight. But LGBT advocates have an equally weighty trope on their side: freedom and equality, to be sure, but also that the constitution should not be used to discriminate. Activist Lisa Thompson, who grew up in Boston and now lives in western Massachusetts, observed that Massachusetts residents take their history seriously and that amending the constitution was not something citizens considered lightly, “We’ve been around a long time, we have one of the oldest [state] constitutions, there’s a pride in being one of the early colonies [and a belief that] there’s a historical consequence to everything we do... it is part of the culture of our state.” Ryan Brown, a field organizer for MassEquality, emphasized the focus on equality,

We spent a lot of time finding words and phrases that would resonate within our constituencies. What it came down to is that we had to stop the straight marriage vs. gay marriage so that it was not about marriage for same sex couples, it was about *marriage equality*. This is about equality for everyone. Our opponents, while it was partly about traditional family values, the way they really spun it for the legislature was that our legislature needed to follow through and let the people of Massachusetts vote on this issue. Their campaign was about letting the people vote... I think one of the contributing factors to our success is that marriage equality is such a personal thing, there're emotions around that. There's not a lot of emotions around putting the issue on the ballot.

Another MassEquality activist, Buzz Harris, recalled, "Our newspaper, bumper sticker, our sort of print campaign focused on the message 'No discrimination in the constitution'. We polled several different messages by phone and focus group and this was the one that got us the most traction. I don't think it was as powerful as the television pieces [featuring LGBT families] but it got us some leverage." Later, MassEquality's 2007 "It's wrong to vote on Rights" ad campaign combined the family frame with the democratic values frame, asserting that the fundamental democratic values of America make it wrong to vote on the rights of a minority group, especially rights that protect children and families, even gay ones.

Meanwhile, supporters and opponents of gay marriage were gearing up for a major confrontation as hearings continued on both domestic partnership legislation and the latest DOMA attempt, and the SJC prepared to decide the *Goodridge* case. As gay marriage opponents at the Massachusetts Family Institute called for "marriage

minutemen” to swarm the State House for hearings, legislators, who were being “flooded” with phone calls, letters, and emails from both sides, prepared for “an extremely emotional and contentious” legislative session (Abraham 2003). Not knowing how the court would decide made strategizing difficult, but the longevity of the Massachusetts LGBT movement meant that many activists had accumulated enough skill and knowledge to push on, proving that “in terms of strategy, mastery of specific skills-- or how to strategize-- is relevant, but so is access to local knowledge of the constituencies, opponents, and third parties with which one is interacting” (Ganz 2004: 186). Arline Isaacson demonstrated how, in a time when lobbying was difficult, she used local knowledge to develop effective strategies:

The lobbying was difficult without knowing what the *Goodridge* decision would say. It could say civil unions, marriage, domestic partner benefits, we didn’t know and legislators were getting worried. We needed to inoculate legislators. So we crafted some talking points that would give them some wiggle room, talking points that would allow them to say that they’re against same-sex marriage but not lock them into voting against us. And you can do that by saying things like, ‘I’m against same-sex marriage but I won’t vote to impose my religious beliefs on anyone else.’ There are a whole bunch of ‘buts’ that would inoculate them in that fashion so they wouldn’t be committed to taking a position against us in the constitutional convention.

The SJC was taking longer than expected to decide and legislators grew increasingly nervous that the court would decide in favour of marriage. The longer legislators fretted over marriage, the more their



nerves began to fray and they started to offer “deals” to same-sex marriage advocates. For example, Representative John Rogers, typically viewed as an opponent of gay rights, and who only the year before had proposed an amendment to ban gay marriage, announced the formation of a committee to explore a compromise solution that would ban gay marriage but allow Vermont-style civil unions (Lewis 2003c). This effort caused a mixed reaction among LGBT activists and their legislative allies between those who favoured taking the civil union deal now and those who favoured waiting for the court to decide and taking their chances in the constitutional conventions that would surely follow. They would not have long to wait. Within weeks, the Massachusetts Supreme Judicial Court issued its landmark ruling that lesbian and gay citizens have the right to marry.

On November 18, 2003, the Massachusetts Supreme Judicial Court issued a 4-3 decision on *Goodridge v. Massachusetts Department of Public Health*. The justices declared that the “equal protection and due process provisions of the Massachusetts constitution...guarantee the right for same sex couples to marry” and gave the legislature 180 days to change Massachusetts law to reflect the ruling (Burge 2003). The opinion of the SJC acknowledged “full deference to the arguments made by the commonwealth” but declared the Commonwealth had “failed to identify any constitutionally adequate reason for denying civil marriage to same-sex couples” (*Goodridge v. Massachusetts*

*Department of Public Health* 2003: 3). In relation to the arguments of the state that marriage had historically been understood as a relationship between a man and a woman, the SJC responded that “history cannot and does not foreclose the constitutional question” (*Goodridge v. Massachusetts Department of Public Health* 2003: 16). On the question of procreation, the court responded, “Our laws of civil marriage do not privilege procreative heterosexual intercourse between married people above all other forms of adult intimacy and every other means of creating a family” (*Goodridge v. Massachusetts Department of Public Health* 2003: 39). Additionally, regardless of whether a same-sex couple can procreate on their own, many of them have children and the courts asserted that “the fact remains that children reap a measure of family stability and economic security based on their parents’ legally privileged status that is largely inaccessible, or not as readily accessible, to nonmarital children” (*Goodridge v. Massachusetts Department of Public Health* 2003: 24). Lastly, on whether it is in the state’s economic interest to limit the benefits of marriage to heterosexual couples, the court stated flatly, “an absolute statutory ban on same-sex marriage bears no rational relationship to the goal of economy” (*Goodridge v. Massachusetts Department of Public Health* 2003: 49). Dissenting opinions questioned whether recognition of same-sex couples was in the best interest of the state, argued that the legislature should make changes

to marriage law without interference of the court, and/or were hesitant to rule in favour of social change when there was no scientific consensus on the extent to which such change may be harmful (*Goodridge v. Massachusetts Department of Public Health* 2003). Because the case was decided on state constitutional grounds rather than federal constitutional grounds, it could not be appealed to the Supreme Court of the United States of America.

The *Goodridge* decision reflects a pattern of jurisprudence illustrated in previous family law decisions made by the SJC; specifically, that the court did not create new family forms per se, but recognised family forms, traditional or otherwise, that already existed. For example, in its ruling on domestic partner benefits the court made clear that while it was outside of the SJC's jurisdiction to change the law on domestic partner benefits, it supported such change because the current laws do not reflect the realities of the modern family (Pfeiffer 1999). Similarly, in its decision on *Goodridge*, the court conceded that same-sex families already existed, that many such families had children, and not only was it in the best interest of the state to extend the rights and benefits of marriage to these families, to not do so amounted to a violation of the Massachusetts state constitution. This reflects legal theorist Ronald Dworkin's (1986: 225) view that "legal claims are interpretive judgements and therefore combine backward and forward looking elements; they

interpret contemporary legal practice seen as an unfolding political narrative.” In this case the Massachusetts Supreme Judicial Court looked back and saw same-sex families were already there. They looked back to interpret existing state law and the state constitution, and then looked forward to see the ways in which these families would benefit from legal protection. The SJC took its place in this unfolding political narrative, and made a decision in the case with a nod to the past and future of marriage law in Massachusetts.

Predictably, the LGBT community and allies celebrated the ruling while gay marriage opponents responded with renewed vigilance in fighting for a Defense of Marriage Act. For LGBT activists, the question was how would the legislature react? Arline Isaacson said,

It was a mind-blowing decision for legislators who didn't really see it coming. Most of them didn't think we would *really* have marriage. Legislators who were previously opposed to all gay rights were suddenly tripping over themselves to give us civil unions, and we said, "Thank you very much, but we just want marriage.'

Then House Speaker Tom Finneran asserted three options for the legislature to deal with the ruling within the 180 days allotted by the court, "a constitutional amendment to ban gay marriage, a civil unions bill for same sex partners, or doing nothing and letting the ruling stand" (Lewis 2003b). Finneran did not indicate where he stood, though he had supported efforts to ban gay marriage in the past. Senate President Bob Travaglini came out against gay marriage

but in support of civil unions, and Governor Mitt Romney came out “strongly against gay marriage” while supporting “a parallel track to establish some rights for same sex couples” (Klein 2003, Lewis 2003b).

With the three most powerful lawmakers in the state against gay marriage and a DOMA amendment making its way through the legislature, this was not a comfortable place for LGBT activists and legislative allies who supported gay marriage. The interaction of the three most powerful politicians in the state (the governor, Senate president, and Speaker of the House) would underscore the observation that potentially “volatile elements [of political opportunity structures] are more useful in understanding the process of interaction between the opening and closing of political space and the strategic choices of movements” (Gamson and Meyer 1996: 289). Finally, in an effort to seek some middle ground the Massachusetts Senate created a “sweeping civil unions bill that...provides all the protection, obligations, and benefits of civil marriage” and sent it to the SJC for an advisory opinion to ask if such legislation would be in line with the court’s decision.

If Vermont’s civil unions were a “moral shock” for gay marriage opponents, the *Goodridge* decision pushed them one step further. One potential extension of moral shock was “attack mode”. Moving from moral shock to attack mode requires that “inchoate anxieties or fears

must be transformed into moral indignation or anger toward concrete policies and decision makers” (Jasper 1997: 107). Mobilizing a constituency into attack mode “requires activists to weave together a moral, cognitive, and emotional package of attitudes. By framing the problem [in such a way as to] suggest a moral judgment: disregard or abuse of humans by bureaucracy. The proper emotion shifts from dread to outrage. There is someone to blame” (Jasper 1997: 107). In this case, the target of gay marriage opponents’ outrage became “unelected judges [who] have usurped the power of the legislature” and gay marriage opponents increasingly used criticism of “activist judges” to assert “that Bay State voters should be allowed to vote on this divisive issue, not the Supreme Judicial Court” (Lewis 2004d). Despite being weakened by the child sexual abuse scandal, the Roman Catholic Church also swung into attack mode, launching what the four Massachusetts bishops described as an “unprecedented effort to mobilize the state’s 3 million Catholics” including the distribution of “mailings to 1 million households urging laypeople to speak out in favour of a state constitutional amendment defining marriage as a union between one man and one woman” (Paulson 2004).

With Massachusetts Democrats split on gay marriage and a pending Constitutional convention on Representative Travis’ DOMA amendment, LGBT activists mobilized their supporters and sought to consolidate their lobbying efforts. Gay marriage opponents had

recently formed the Coalition for Marriage, and had the backing of national groups whose budgets dwarfed those of even national LGBT rights organizations. Pro-gay marriage activists knew grassroots mobilizing would be key, and in early 2004 gained the support of national gay rights groups who contributed money to hiring a campaign director who spearheaded the grassroots mobilization effort at MassEquality. As opponents like MassResistance and Let the People Vote cried out to “Let the people vote” on a constitutional amendment to ban gay marriage, MassEquality countered with, “The constitution-- defend it, don’t amend it” (Gozemba and Kahn 2008: 69). In addition to the support of the Religious Coalition for the Freedom to Marry, the public support of labour unions buoyed activists and added a much needed counterweight to the claims of the opposition that their side alone could claim both religious high ground and that only they spoke for average, hard working, tax paying citizens.

As the February 2004 constitutional convention concerning Rep. Travis’s constitutional amendment approached, the SJC made clear that civil unions were not an acceptable compromise, saying such unions would create “an unconstitutional, inferior, and discriminatory status for same-sex couples” and that “separate is seldom, if ever, equal” (Lewis 2004c). The African American civil rights movement had seared into the American collective conscience

that 'separate is not equal', and by engaging this past cultural trope the court reinforced the "mutually sustaining relationship between institutions and culture" and at the same time shaped the politics and culture of the present day (Gamson and Meyer 1996: 282). With the constitutional convention less than two weeks away, the SJC, by doing away with civil unions, had "eliminated any wiggle room for a very nervous political establishment to deal with what is perhaps the most politically and emotionally charged issue that has come to Beacon Hill in decades", and the *Boston Globe* described a legislature "in turmoil" (Phillips 2004). LGBT activists were also in turmoil over the upcoming vote, Arline Isaacson recalled,

It was horrible timing because the legislature was still in panic mode. There has never been such a white hot, intensely passionate battle over anything in the last twenty years. Never had I seen so many legislators torn about what to do. Never had I seen so many legislators struggling. Never had I seen so many legislators cry.

On the day the constitutional convention convened, the area in and around the State House was packed with thousands of supporters (many of whom sang patriotic songs and held signs urging legislators to "Defend the constitution-- Don't amend it") and perhaps just as many opponents of gay marriage (of whom many shouted and held signs saying "Let the people vote", prayed, and otherwise invoked conservative religious reasons to oppose gay marriage).



In an effort to ease the tension in the legislature, Senate President Travaglini and Senate minority leader Brian Lees had announced an alternative amendment to be voted on at the constitutional convention, one that would ban gay marriage but would also establish full and equal civil unions (Philips and Lewis 2004). Neither gay rights activists, who, now having marriage, felt civil unions were a step back, nor their conservative opponents, who opposed any legal recognition for same sex couples, supported the Travaglini-Lees version of the amendment. Then, in a surprise move, as he opened the convention Speaker of the House Tom Finneran announced his own amendment that would ban gay marriage but would “allow the legislature to create civil unions at a later date, if they so chose” (Klein 2004a). Finneran’s amendment was defeated after several hours of deliberation but the Travaglini-Lees compromise was left hanging in the air.

Here activists’ strategic capacity was imperative because of the uncertainty in the political and cultural climates at the time; “under conditions of uncertainty, the capability to generate new algorithms, when rooted in a deep understanding of the environment, is more strategically valuable than the capacity to apply known algorithms, no matter how expertly” (Ganz 2004: 195). Utilizing their deep understanding of the Massachusetts legislature and political process, leading lobbyists Norma Shapiro of the ACLU and Arline Isaacson of

the MGLPC immediately began to advocate a novel and controversial strategy to kill the Travaglini-Lees amendment that they called the “yes, yes, no” strategy. They urged their allies in the State House to vote yes on the Travaglini-Lees amendment that would ban gay marriage but guarantee civil unions in the first round of constitutional conventions. This would kill the Travis amendment that would have banned gay marriage altogether. The Travaglini-Lees amendment passed which then required the constitutional convention process to begin again, this time to decide the fate of the Travaglini-Lees version of the constitutional amendment. Legislative supporters were asked to vote yes on the Travaglini-Lees amendment again at the first convention, then pull their support and vote no on the amendment at the second constitutional convention so that the SJC’s *Goodridge* decision would stand.

This was controversial because it meant that legislative allies were essentially voting for an amendment to ban gay marriage (even though it would allow civil unions), but lobbyists were able to convince them to make this strategic vote that (they hoped) would end up preserving the SJC’s marriage decision. Arline Isaacson explains the rationale behind this strategy:

The goal was to buy us time to get to the next legislative session. We knew in the intervening year [between legislative sessions], we’d have more time to lobby and win more votes. Time was on our side. Plus, people would be married and that would change how people viewed it. Then it wouldn’t be so threatening or so bad and more legislators would vote with us.

As alliances and strategies shifted, the first round of constitutional conventions in February 2004 ended and activists regrouped for the start of the next constitutional convention cycle in March.

Over the next month, both sides continued to rally and push to gain support and votes in the legislature. LGBT allies stood outside of polling places at the March presidential primary and urged gay marriage supporters to contact their legislators, MassEquality continued to run television ads in support of marriage while their volunteers knocked on doors in “swing communities” around greater Boston, at the same time gay marriage opponents used churches to organize voter drives and focused on radio advertisements against gay marriage, and citizens on both sides of the issue took out ads in their local papers (Abraham 2004a, DeMarco 2004, Jacobs 2004, Weiss 2004). When the constitutional convention re-convened in March 2004, gay marriage supporters again took pains to take the high road, remaining peaceful and singing patriotic and civil rights anthems like God Bless America and We Shall Overcome, which contrasted sharply with the angry shouting and demeaning signs held by many of their opponents.

At the end of the convention, it appeared that the controversial yes, yes, no strategy had worked: essentially LGBT activists lost marriage that day but Isaacson said, “We lost in a way that was really a win. We beat the bad amendment, and in the end we had an

amendment that took away marriage but guaranteed civil unions and it drove our opponents crazy.” Crazy enough, in fact, that opponents announced yet another petition drive for a ballot initiative that would ban gay marriage *and* civil unions if approved (Abraham 2004c). Perhaps most importantly, however, activists had the advantage of time to win over the hearts and minds of legislators and their fellow citizens before the current constitutional convention resumed for the final vote and the Travaglini-Lees amendment in the 2005 legislative cycle.

When the March constitutional convention ended with the passage of the Traveglini-Lees compromise, both sides were disappointed. One legislator recalled, “When the vote was announced there was no cheering, only an eerie silence in the chamber as legislators drifted out” (Gozemba and Kahn 2008: 95). LGBT activists and allies, though, had won what they needed most-- time. Before the next constitutional convention in 2005, not only did activists have time to educate the public and lobby legislators to win votes, perhaps most importantly, lesbian and gay couples began getting married.

When the legislature had not acted to change marriage laws in the 180 day timeframe set out by the SJC, Governor Mitt Romney reluctantly ordered town clerks to issue marriage licenses to same-sex couples in accordance with the Court’s ruling on *Goodridge* (Lewis 2004b). When lesbian and gay couples began getting married on May

17, 2004, gay families dominated the news cycle for the entire week. Gay marriage opponents held “scattered protests” on what some of them called “marriage destruction day”, but those counting on a “backlash to the legalization of same sex marriage in Massachusetts to help them marshal public support” were likely disappointed (Klein 2004b). Observers noted, “The positive public spirit that enveloped the entire state seemed immune to the negative predictions of gay marriage opponents, who forecast the end of civilization as we know it. With same-sex couples in every community in the state publicly declaring their love, it was becoming increasingly difficult to cast them in the role of enemy citizens” (Gozemba and Kahn 2008: 107).

As public opinion polls showed support increasing for gay marriage, momentum continued to build for gay marriage proponents in another important way: elections. As Ganz (2004: 181) asserts, “a critical strategic goal of those contesting power is to find ways to turn short-term opportunities into long-term gains by institutionalizing them”, and what better way to institutionalize a political opportunity or legislative gain than by ensuring that your political and legislative allies retain their elected positions? Knowing that legislators who voted for civil unions in Vermont had faced severe repercussions at the polls, activists in Massachusetts were determined to protect their legislative allies. They knew they could not afford to lose a single vote heading into the next constitutional convention.

As early as June it became clear that gay marriage was “already fuelling campaign fireworks” and was likely to continue to dominate the election cycle leading up to the vote in November (Kocian 2004). However, MassEquality was working with a highly motivated base of volunteers and utilized those volunteers in campaigns across the state to protect legislators who supported gay marriage. MassEquality Field Organizer Ryan Brown recalls, “We got involved in over 350 elections. To this day no legislator lost their seat because of their vote for marriage equality. We had 200,000 members across the state and we would tell our members to get involved in a race because we really needed to protect that person.” In fact, not only did gay marriage supporters in the legislature keep their seats, LGBT advocates actually gained some additional legislative allies.

One of these new legislative allies was openly gay Carl Sciortino, who describes the way his incumbent opponent “went very anti-gay [in his campaign]. Going into November his whole campaign was focused on my being gay and my support of gay marriage and it backfired heavily on him. We won two to one.” The November elections ended in a net increase of two same-sex marriage supporters in the Massachusetts legislature, and not long afterward anti-gay Speaker of the House Tom Finneran resigned and was replaced by LGBT ally Sal DiMasi. According to Sidney Tarrow (1998:79), “Challengers are encouraged to take action when they have

allies who can act as friends in court, as guarantors against repression, or as acceptable negotiators on their behalf". Thus the legislative restructuring that occurred gave LGBT activists cautious optimism heading into the next constitutional convention cycle.

As time passed leading up to the next constitutional convention, polls continued showing an increase in support for gay marriage (Phillips 2005). Reports indicated that in the time that passed since lesbian and gay couples had been getting married, "The news is how little news there really has been. Almost everyone calmed down. Couples got married and went on with their lives. It got hard to remember what all of the fuss was about" (Walker 2005). Of course, for LGBT activists the "fuss" remained over the pressing need to defeat the Travaglini-Lees amendment in the next constitutional convention, and after that defeating the initiative petition that was being circulated to put an anti-gay-marriage amendment on the 2008 ballot.

During this time, activists had also been working on outreach and education, for example, explaining why civil unions relegated LGBT couples and families to second-class status. This was particularly important because they needed to convince legislators to vote against the civil union compromise bill in the upcoming constitutional convention. Some activists conceded that this was something they had to understand themselves first. For example,

Bruce Bell who worked with GLAD, said, “For a while I didn’t understand the difference. I was like, well, we’re going to get the same rights, who cares? But at the federal level, federal law only talks about marriage. And then there’s the whole separate but equal thing.” The idea that civil unions were separate from and unequal to marriage created a “cultural contradiction” that activists utilized for mobilization. Here it was themes of equal marriage rights for gay and lesbian couples coming up against the idea of creating a separate institution to administer those rights.

The very phrase “separate but equal” draws on the history of legal segregation and the struggle for racial equality in the United States, and thus held particular significance for African American legislators like Diane Wilkerson, who gave an impassioned speech early on in the debate over gay marriage invoking her family history and experience with segregation in the American South. In her emotional delivery of that speech, she concluded, “I could not in good conscience ever send anyone to that place from which my family fled”, referring to the second class status conferred by the establishment of separate institutions for white and non-white racial groups in the Jim Crow era. Another African American ally in the State House, Byron Rushing, a long time supporter of LGBT rights, convinced his office mate in the House, Doug Peterson, to support gay marriage by asking him, “Doug, if we said to African Americans, you can have all the rights



and benefits of marriage, but we're going to call it civil unions, how would you vote?" (quoted in Gozemba and Kahn 2008: 85).

Openly gay legislators were also important in establishing through personal interactions with other legislators that the separate but equal strategy was anything but equal. For example, conservative Republican Shaun Kelley emerged as a vocal ally to the LGBT community because of his friendship with openly gay Democrat Liz Malia (Gozemba and Kahn 2008). Interactions between legislators were integral in winning the votes needed to make the yes-yes-no strategy work by convincing legislators to vote against the Travaglini-Lees amendment in the end.

While it appeared that enough votes might have been accumulated to vote down the Travaglini-Lees civil union amendment in the next constitutional convention, the petition drive under way ensured this would not be the last battle in what had seemingly become a war of attrition over gay marriage in Massachusetts. Activists pulled out all the stops. In addition to lobbying legislators, holding rallies, canvassing neighbourhoods door-to-door, and buying advertisements, activists Norma Shapiro of the ACLU, with Arline Isaacson and Bill Conley at MGLPC, went as far as seeking out "gay siblings and children of legislators to convince their relatives to vote against the amendment" and even spent the summer months leading

up to the convention driving these family members “far and wide to meet legislators” (Gozemba and Kahn 2008: 115).

The relentless strategizing worked. As the constitutional convention reconvened on September 15, 2005, Senate minority leader Brian Lees, co-sponsor of the civil union amendment about to be voted on, announced that he had come to oppose his own amendment. In addition to “more than 7000 letters, emails, and telephone calls” he received from constituents, what changed his mind was that, “Gay marriage had begun and life has not changed for the citizens of the Commonwealth with the exception of those can now marry who couldn’t before. This amendment was an appropriate measure of compromise a year ago but it is no longer today” (Gozemba and Kahn 2008: 119). The legislature voted 157-39 to defeat the separate but equal amendment, leaving the SJC’s decision intact. The crowds at the State House cheered at the defeat of the convention on the Travaglini-Lees amendment. However, lesbian and gay activists had little time to celebrate their victory because a citizen’s petition drive was under way to gather signatures to put an anti-gay marriage amendment on the ballot.

On December 7, 2005 the anti-gay marriage group Vote On Marriage delivered enough signatures to put the anti- gay marriage amendment on the ballot for the next election (Helman 2006). The referendum would appear on the ballot in 2008 if approved by just

fifty legislators in a constitutional convention cycle. With the increase in public and legislative support for gay marriage coming to fruition with a win in the latest constitutional convention, some LGBT activists and allies felt confident that the upcoming initiative petition could be beaten with an up or down vote in the constitutional convention and preferred this to using parliamentary tactics to beat the petition in the constitutional convention cycle to follow. Others were less optimistic.

In the last constitutional convention LGBT activists needed only 51% of the legislature to vote with them on legislatively introduced amendments. To beat a citizens' initiative petition in the constitutional convention, they would need over 75% of the legislature on their side. Field Organizer Ryan Brown explains what activists were up against, "We needed to convince 151 legislators to not only support marriage equality but to vote the way we needed them to vote in order to prevent the question from being put on the ballot, which is a whole other battle." Brown, with MassEquality volunteers, pounded the pavement, knocked on doors in key districts, handed out cards for constituents to mail into their legislators, and even dialled legislators on his personal cell phone so that constituents could leave messages for their representatives. At the same time Arline Isaacson of the MGLPC, Norma Shapiro of the Massachusetts ACLU, and others continued their lobbying efforts at the State House

and strategized ways to beat the initiative petition at the ballot box, should it come to that.

Even as this was taking place, the contention and vitriol around the issue had all but disappeared from the Massachusetts public sphere and instead tension emerged among activists themselves. Gamson and Meyer (1996: 283) point out “justifications for strategic choices center on definitions of *relative* opportunity, and these are recurrent issues of contention in movements...consensus, then, is...typically a contentious process and the definition of opportunity is often at the center of what is most contentious.” In this case, some activists and allies wanted to strategize a way to beat the ballot initiative using parliamentary tactics, while other saw an opportunity to debate the issue and have an up or down vote in the legislature on its merits. Arline Isaacson was not optimistic, “We knew we did not have enough votes in the legislature to defeat it. We needed to delay the vote and ultimately not have a vote. We got a delay in May, and another in June or July. We were really buying time forever, time to get votes.” On the other hand were those allies that Arline referred to as “process liberals”, who supported gay marriage but were also concerned with the integrity of the democratic process and preferred to forego parliamentary manoeuvring if there was a chance to win on an up or down vote on the issue. This created a tension within the movement that former MassEquality board member Buzz Harris

describes as a “larger impediment than any other opposition in Massachusetts. It was difficult and painful, but we did manage to contain it.”

While activists managed to delay the constitutional convention for a time, eventually Senate President Bob Travaglini lost patience. In November 2006, activists and their legislative allies, with the help of Speaker of the House Sal DiMasi, convinced legislators to vote to recess the constitutional convention until the last day of the legislative session. With a supportive Senate President, such a recess vote would have killed the initiative petition but rather than letting the bill die on that last day of the session in January 2007, Travaglini immediately called for a vote, and the referendum passed. Arline Isaacson recalled, “We did not have to lose on January 2 even though we didn’t have the votes. It was simply, totally, because of Bob Travaglini that we lost because if he had been willing to help us even a little bit that day we could have prevailed and it would have been over.” The next constitutional convention on the initiative petition would be held in June 2007.

Activists had one last chance at the June constitutional convention to defend marriage in the legislature, rather than at the ballot box. MassEquality ramped up the pressure yet again. Ryan Brown remembered,

We didn’t waste our time or resources generating contacts to legislators who were already on our side so we focused on

those who were not with us. We focused on key districts and organized meetings in those districts. If we knocked on someone's door and they were an opponent, we simply said, 'Thank you for your time.' We needed to find the people that were going to convince their legislators to vote with us.

That banning gay marriage would harm gay families remained centre stage in the campaign. MassEquality developed and released its "It's Wrong to Vote on Rights" ad campaign featuring same sex couples, their children, and, in one case, their parents, speaking in support of same sex marriage and making the statement that it is wrong to vote to take away their right to be married. Same sex couples continually reminded legislators what was at stake for their family in this vote. Inside the legislature allies worked with advocates to develop the most effective lobbying strategies. Representative Carl Sciortino recalled,

We had a steering committee of 5 or 6 representatives and senators that met on a regular basis with the key organizations including MassEquality, the Massachusetts Gay and Lesbian Political Caucus, the ACLU, GLAD, the Freedom to Marry Coalition, and the Religious Coalition for the Freedom to Marry. As colleagues we were able to find out from legislators what their private personal struggles were with the issues, what they were really thinking and not just what they were saying to the press, but what they were struggling with personally. That was really useful in how we directed our advocacy.

According to Ryan Brown, activists were able to use this information from legislative supporters to develop "very specific plans for each of those other legislators" whose votes they needed to win. He continued, "We developed a multi-faceted strategy that was

individualized for every single legislator.” It was the interaction of political opportunities, presence of elite allies, and strategic savvy of activists that made winning gay marriage in Massachusetts possible.

Same-sex marriage proponents were also bolstered by the election of gay marriage supporter Deval Patrick as Governor and the resignation of Senate President Bob Travaglini, who was replaced by LGBT ally Teresa Murray. Of course, such “changes in some aspect of a political system [can] create new possibilities for collective action”, as indeed they did in this case (McAdam, McCarthy, and Zald 1996:17). With the most powerful politicians in Massachusetts now supporting gay marriage, the tide began to turn. For six months, the lobbying and meetings with legislators continued non-stop. Even so, as the time drew near for the last constitutional convention on June 17, 2007 everyone knew that the outcome of vote was too close to call. Arline Isaacson said, “It was the community that got us to the precipice” but described Patrick, DiMasi, and Murray as “the last breath of air that pushed it over the right way.” According to MassEquality, the “three leaders, along with gay rights activists, spent the last several days [prior to the constitutional convention] intensely lobbying a dozen or more state representatives and state senators who had previously supported the [anti-gay marriage] amendment but signalled that they were open to changing their positions” (MassEquality email 2007).

Patrick, DiMasi, and Murray had decided the morning of the constitutional convention that they had enough legislators on their side to win and that they would beat the amendment in an up and down vote, rather than using parliamentary tactics like calling for an adjournment. The politicians were more confident than the activists, so Arline Isaacson developed a system to have legislators who were strong supporters of marriage equality stand near other legislators to make sure that they did not waver and/or vote against marriage:

Their job was to not leave them alone for a minute where they might be overwhelmed by self-doubt or accessible to pressure from our opponents. So some of them spent the entire morning in this legislator's office or that legislator's office talking to them and telling them, 'You can do it. It's the right thing to do.' Euphemistically holding their hands the entire time and babysitting them, and it worked. It really worked.

Ryan Brown echoed Arline when he described how activists

Pulled out all the stops at the very end. Those allies we had in the State House, once they put their vote in we had sort of a buddy system where they would go over to somebody who had never voted with us before and would just stand over them. Carl Sciortino, for instance, who is a gay legislator, would stand there and say, 'Are you really going to vote against my rights?'

In the end it worked, all of the lobbying, door knocking, advertising, letter writing, and strategizing worked. In the final constitutional convention the initiative petition attempt was voted down 151-49, without a vote to spare. With the vote that close the legislators who had changed their position were the key to winning. Ryan Brown remembered,



Being in the State House that day was the result of years and years of work and so much resources and time and energy. And that one final moment the State House went silent, and there were some of those key legislators that we needed to have and we saw green lights go up next to their names. We had never seen green lights next to their names before. It was just amazing.

Carl Sciortino described the moment when he realized they won and described his interaction with another legislator, Paul Loscocco, whom Sciortino had been trying to win over prior to the vote,

When I saw the votes being counted and I realized we had won I started crying, and then I turned to him because I realized how he had voted and that he had switched, he switched unbeknownst to any of us, and HE was crying, and I said, 'Paul, what finally clicked?' And he was just crying and said, "I knew it was the right thing to do and I couldn't live with myself if I didn't do the right thing.'

Another important swing vote came from Representative Paul Kujawski who described his change of heart this way,

I'll never forget the day I was riding into work and a very good friend of mine called, a very strong supporter. She said, 'Paul, I need you.' She said, 'Paul, my daughter is gay and we didn't know what was wrong with my daughter and there wasn't anything wrong with her.' She said, 'I know the way you have voted in the past and I need you to change your vote on this issue.' And I said, 'Lynn, you can sleep easy tonight.' [During the vote at the constitutional convention] you could sense there was a 'wow' to some of those green lights or red lights go up that people didn't expect, and mine was one of those. (MassEquality video *Thank You Massachusetts* 2008).

And Republican Senate Minority Leader Richard Tisei summed up his position this way,

There are a lot of families out there who have children that are same sex couples and those kids deserve the same sort of rights and protections under the law. I'm glad I was on the right side of history, and I'm glad that our state was, and our legislature." (MassEquality video *Marriage Equality Works* 2008).

Changing the votes of key legislators was the result of activists taking advantage of political opportunities and creating strategies that engaged the culture in which they were embedded.

The story of the success of gay marriage in Massachusetts revolves around the interaction of culture, structure, and agency. As Marshall Ganz (2004: 182) puts forth, "Environmental change may generate the opportunities for social movements to emerge, but the outcomes and legacies of social movements have more to do with the strategies actors devise to turn these opportunities to their purposes, thus reshaping their environment." The history of the Massachusetts LGBT movement is one of activists continually taking advantage of opportunities, creating opportunities, and pushing forward in a way that sustained both political and cultural changes that, in turn, increased chances for future movement success. Activists in Massachusetts were able to win gay marriage because of the resources, knowledge, and expertise they had accumulated for thirty years. Utilizing these resources in the struggle for gay marriage eventually created a momentum for this next milestone in LGBT rights; once that milestone was in sight activists began to feel that

history was on their side. And once it became clear that history was indeed on their side, legislators who were once adversaries became allies in part because of the intense work by advocates to expand the notion that a same-sex marriage “ally” could be pro-family, pro-religion, working class, Republican, etc., but also because, in the words of Republican Representative Paul Loscocco, “It was the right thing to do”.

## CHAPTER 6: CONCLUDING ANALYSIS

### Introduction

The previous chapters gave a long-view historical account of the social, political, and cultural forces that cultivated one of the most powerful regional LGBT rights movements in America, and how this movement accomplished what no other had done in the US before (and few have done after): establishing full and equal legal marriage rights for same sex couples. Remarkably, Massachusetts' activists achieved this at a time when the majority of American states, as well as the federal government, had already passed Defense of Marriage Act legislation and/or constitutional amendments against same sex marriage. This concluding analysis will take a closer look at the specific factors that fuelled anti-gay-marriage sentiment across the US and assess how Massachusetts became an outlier to these trends in three important ways 1) the social and historical forces at work undermining resistance to gay marriage, 2) the political structures, opportunities, and constraints that created an environment where the trend against gay marriage could be turned, and 3) the specific frames and strategies used by activists to win marriage rights for same sex couples in Massachusetts.

There are many social forces in Massachusetts that might insulate this state against what some have called the "gay marriage panic" in the US (Adam 2003). In their analyses of United States

resistance to gay marriage, both Barry Adam and David Rayside emphasize considerable regional variation in factors contributing to such resistance (Adam 2003, Rayside 2008). Rayside (2008: 164) specifically states in his analysis, “the areas where attitudes are more favourably disposed to homosexuality and gay rights are more likely to see policy changes on relationship issues” and that this “favours activists in the Northeast particularly”. The characteristics that favour development of attitudes more conducive to LGBT rights advancement in the Northeast, as opposed to the rest of the US (especially the Midwest and Southern states) include several cultural, ideological, and demographic variables. In Massachusetts, there are trends in religious and political party affiliation, urbanity, income, and education; and an orientation towards civil rights and social justice. These characteristics stand apart from other factors that stoke resistance to gay marriage across America.

#### Demographic/Cultural Factors

In comparative analyses of international or regional support for or resistance to LGBT rights and same-sex marriage several demographic characteristics consistently correlate with support for gay marriage. Bayliss Camp (2006) and David Rayside (2008) each emphasize that support for gay marriage is closely related to measures of income, education, and urbanity. Camp (2006: 11), for example, in his county level analysis of voting patterns in anti-gay

marriage referenda in the US finds support for his hypothesis that “with a higher degree of urbanization and diversity we should expect more socially tolerant, or liberal, views on issues such as the legal recognition of homosexual relationships.” Further, Rayside (2008: 164-165) points out that “large cities [and] regions with ethnically diverse populations are more likely to have inclusive policies on sexual orientation.” Also, Camp (2006: 21) finds that the “effect for income is surprisingly strong” in that the higher the income in a particular area the less support there is for anti-gay marriage legislation. Given the strength of these associations, when we look at Massachusetts, a state that US census data consistently confirms is one of the wealthiest, most educated, and, anchored by cosmopolitan Boston, heavily urban states in the country, it becomes more clear why this state should emerge on the forefront of the gay marriage movement (United States Census 2000b).

Additionally, outside of large urban centres, both scholars find that college towns tend to be more supportive of gay rights and gay marriage than other areas (Camp 2006, Rayside 2008). There are 4,431 degree granting colleges in the United States, and the small state of Massachusetts is home to over 191 of them (Boston Globe staff 2009). Many of these institutions are located in the state’s rural, western region. For instance, in the western Massachusetts city of Amherst, home of the University of Massachusetts, Amherst, students

comprise 80% of the city's population, and there are seventy cities across the state of Massachusetts where students are 25% or more of the population (<http://zipatlas.com/us/ma/city-comparison/percentage-college-students.htm>). This may balance out any loss of support for gay marriage moving out away from urban Boston, as students and residents of college towns across the state pick up the slack. The observations of MassEquality field organizer Ryan Brown support this connection:

People who lived in the city were supportive right off the bat. Once we got into western Massachusetts, where it's more rural, there wasn't the initial support [but] it was easy to convince them why they needed to support our cause. Education came into play, too, [even] older people that had been to college were more supportive than those who had not been to college.

Another activist, Lisa Thompson, born and raised in Boston and now living in western Massachusetts, described the cultural dynamic in western Massachusetts this way, "It's this pocket where you have a lot of really highly educated people coming and going, but a lot of people love it out in western Massachusetts and they don't want to leave. I'm one of those people. Overall, we have a very highly educated state, even in rural areas." This illustrates not only which demographic factors are correlated with support for gay marriage are prominent in Massachusetts, but also that demographics are often overlapping indicators of support or opposition to LGBT rights and gay marriage. For example, it is not only whether one lives in a rural or urban area,

but there is an intersection with education, income, and potentially other factors, as well.

Camp (2006), Rayside (2008), and Adam (2003) also identify a certain pattern of economic factors other than income associated with regional support for gay marriage. For Adam and Rayside, this is the strength of labour unions. Both of these scholars argue that the general weakness of labour in the United States is an important reason for the slow uptake of national recognition of gay and lesbian rights and same sex marriage in particular. Adam (2003: 265) credits Canadian labour unions for advancing support for gay marriage because of labour's ability to effectively "break the ice" by initiating protections for gay and lesbian employees in the workplace as well as publicly supporting gay rights initiatives in the political arena. Rayside (2008 :161) echoes this argument when he asserts, "Canadian unions have been a world leader in taking up sexuality issues. Some U.S. unions have made important moves on these and other equity issues, but the reach and visibility of the activism has been modest." Additionally, union membership is much higher in Canada (and many other industrialized nations) than it is in the US (Adam 2003, Rayside 2008).

Regionally speaking in the US, however, union membership is above average in Massachusetts and the political power of these organizations is comparatively stronger. According to the US Bureau



of Labor Statistics nearly 16% of Massachusetts workers are union members, while the national average is 12.4% (United States Bureau of Labour Statistics 2011). All told, Massachusetts is home to 525 union locals, with over 555,000 individual union members (<http://www.unions.org/unions/MM>). Indeed, the public support of unions, including the AFL-CIO and SEIU, was important for passage of the two most significant pieces of lesbian and gay rights legislation in Massachusetts history: the gay and lesbian civil rights bill in 1989 and gay marriage in 2007 (Boston Globe Staff 1989, Lewis 2004a, Lewis 2004c). The role of labour in LGBT rights advancement has been overlooked and deserves more attention in social movement literature. However, for the purposes of this study the historical record offers little more than a few specific references to labour union support (they are cited above). Additionally, while my informants considered public support of labour unions to be an important component of their final success, it was political and religious allies whom they described as being most closely involved in the strategizing, lobbying, and other actions specifically taken to advance same-sex marriage in Massachusetts.

Taking a slightly different angle, Camp's (2006: 11) economic analysis focuses on the extent to which a region has moved into a post-industrial economic base, and he found support for his hypothesis that the greater the extent to which a region has "moved

toward a post-industrial economic base, the lower the support for marriage restriction laws”. Here too, we find Massachusetts to be a state where characteristics correlated with support for gay marriage continue to add up. Brown and Tager (2000: 275) identify a long-term economic shift in Massachusetts leading away from industrial labour towards education, health, and financial service industries that “transformed Massachusetts workers from primarily blue-collar factory laborers to white collar professionals, up-scale service employees, and numerous low wage workers.” Part of this trend may be attributed to high levels of education in Massachusetts; however, growth in the service industry also includes the expansion of employment in low-wage occupations, like restaurant work or the hospitality industry, that do not require workers to have advanced levels of education. While service industry growth may seem at odds with data suggesting the importance of union strength in Massachusetts, given that many people associate union membership with blue-collar workers, the Service Employees International Union Massachusetts State Council, for instance, lists its membership at “over 75,000 strong” (<http://www.seiuma.org/about/members.cfm>). No doubt, investing in these non-industrial areas of the economic sector, in addition to having strong unions to protect worker benefits and wages, likely helps cultivate Massachusetts as one of the wealthiest states in the nation.

The observations of Massachusetts activists who worked on the gay marriage campaign reflect the work of these scholars. For example, when asked what he thought made Massachusetts more likely to recognize gay marriage than other states, MGLPC Co-Chair Gary Daffin explained, “We have a very well-educated population. We have a high tech employer base, so I think we have a fairly wealthy community here. For some reason I think that contributes to people being able to see LGBT rights as something not personally threatening to them.” Similarly, Ryan Brown, a field organizer for MassEquality, remembered the importance of union support for same-sex marriage, “Labour unions rarely ever got involved in [relationship recognition] issues like this. This time, we had labour unions across the entire state organizing on our behalf. They would bring huge groups of people to come support us.” Lastly, former MassEquality board member Buzz Harris supported the assertion that diversity and education are important indicators of support for marriage equality. Originally from the American South, Harris observed, “This state is much more heterogeneous than any other place I’ve lived. People are conscious of their immigrant past, and there is still a lot of immigration today. So I think people are used to being around people that are different than them whether it is culturally, linguistically, religiously; there is much more religious diversity here, and there is a huge academic community.” Each of these activists experienced first

hand the way that demographic characteristics can shape people's attitudes about gay marriage, and their experiences supported existing evidence explaining, at least in part, why Massachusetts was able to succeed against the US DOMA trend where other states had failed.

In international analyses exploring why, when most of the rest of the industrialized world has in place some legal recognition for same sex couples, the US seems to put up such spectacular resistance to gay marriage, religion, particularly the strength of conservative Protestantism in the US, is at the forefront of many explanations. Citing the high rate of evangelical Protestantism in the United States, Seymour Martin Lipset (1996: 63) posited, "Americans, in harmony with their sectarian roots, have a stronger sense of moral absolutism than Europeans and even Canadians", countries where evangelical Protestants are fewer in number. Similarly, David Rayside (2008) and Miriam Smith (2008) emphasize the impact of religion in creating differing outcomes for gay marriage in the US and in Canada. For example, Smith (2008: 92) points out that, "In both Canada and the US, Christian Right (and other conservative religious organizations) intervened as third parties...in lesbian and gay rights cases. In the US, however, the role of the Christian Right has been much more extensive." Similarly, Rayside (2008: 164) acknowledges that while conservative religious groups did protest against same sex marriage

in Canada, in the US, “The weight of religious conservatism is a potent force of resistance...but it does vary by locale. In those regions where the religious right is weaker, pro-gay activism is enhanced by the real possibility of securing gains.” This suggests religion is important for regional analyses as well.

To illustrate, in his intra-US analysis Bayliss Camp (2006: 19) found that religion in and of itself predicted a full one third of the variance in voting patterns on gay marriage referenda, and more specifically, “moving from a relatively liberal locale, one with a fewer than average number of evangelicals...to a more conservative locale...produces about a 3% shift in the vote outcome on a marriage restriction referenda.” These points are central to exploring the difference made in Massachusetts, where a rather distinctive set of religious forces were afoot as compared with the rest of the nation. Religion is also a complicated factor to explore because religion acts as more than a demographic variable; it is a cultural and political variable as well.

Indeed the secular force of religion is a unique part of American culture and politics, particularly the influence of evangelical Christians (Lipset 1996, Rayside and Wilcox 2012, Smith 2009). The advancement of women’s rights and lesbian and gay rights in the 1960s and 1970s inspired evangelical Christians to get active in politics. This was a role that evangelical communities had previously

shunned, preferring to live in opposition to the immoral secular world and developing their own church networks, bible institutions, religious retreats, and media outlets (Fetner 2008: 8). Sociologist Tine Fetner (2008: 8-9) describes the evangelical religious right as being “pulled” into secular party politics in the 1970s because of involvement in the “anti-feminist movement, the pro-life movement, and the anti-gay movement”. Throughout the 1970s and 1980s groups like the Moral Majority, the Heritage Foundation, and the Christian Coalition drew on previously established networks in the evangelical community and eventually coalesced into a powerful force that exerted intense pressure on American culture and politics, and made evangelical leaders like Jerry Falwell, Pat Robertson, James Dobson, and others successful in bending the ears of US politicians and presidents for the last thirty years (Adam 2003, Fetner 2008, Rayside and Wilcox 2012). In Massachusetts, however, the reach of the evangelical religious right is diminished as it gets refracted through the powerful influence of the Roman Catholic Church, and this has important cultural and political consequences for same-sex marriage.

Across the United States about 26% of the population identifies as evangelical Protestant, but Massachusetts has a disproportionately small number of evangelicals, just 11% (Pew Forum on Religious and Public Life 2008). This follows Barry Adam’s (2003: 263) assertion

that, “The particular strength of conservative Protestantism and Mormonism in the Rocky Mountain and southern states and to a lesser degree in the Midwest is borne out in the legislative record” on lesbian and gay rights, as we see a much friendlier record on gay rights in Massachusetts than we would in most, if not all, other states. Moreover, Massachusetts, the long-ago adopted homeland of English Puritans, was the later birthplace of the Unitarian Church and the United Church of Christ, the two denominations that developed out of the splintering of the early-American Puritan Church. David Rayside (2008: 154) maintains that the Unitarian Church and the United Church of Christ “had often been on the forefront of mainstream Protestant debates on issues related to homosexuality.” In fact, these denominations had been recognizing same sex relationships for years prior to the gay marriage “panic”, some as early as the 1970’s (Religious Coalition for the Freedom to Marry, People of Faith Testimony: Rejoicing in Marriage Equality 2006: 40). Other mainline Protestant denominations like Presbyterians, Episcopalians, and Lutherans also recognize lesbian and gay unions and/or actively support some degree of gay and lesbian civil rights in general (Rayside 2008: 153). Mainline Protestant denominations, such as these, account for 15% of Massachusetts religious believers- just under the national average of 18% (Pew Forum on Religion and Public Life 2008).

Evangelical Protestants did, of course, mobilize against gay marriage in Massachusetts by teaming up with the most powerful religious entity in the state, the Roman Catholic Church. The Roman Catholic Church can certainly claim the lion's share of religious believers in Massachusetts at 43%, which is well above the national average of 24%; however, Catholics (somewhat famously) do not always adhere to Church doctrine. In 2008, despite the Church's official position against gay marriage, some 42% of Catholics nationwide supported equal marriage rights for same sex couples compared to only 17% of evangelical protestants (Lewis 2003c, Pew Forum on Religious and Public Life 2008). Church officials in Massachusetts, however, pulled out all the stops in fighting gay marriage by issuing public proclamations, writing letters to the editor, taking out ads, mailing anti-gay-marriage literature to parishioners urging them to act against same sex marriage, holding voter drives at churches, and the like (Abraham 2004b). Activist Lisa Thompson recalled, "I have family members that are church-going Catholics; the amount of horrible, hateful videos and written materials that were distributed by the Catholic Church to my family members was awful." Each activist I spoke with identified the Roman Catholic Church as the primary opponent to gay rights and gay marriage in the state.

Despite the intense mobilization of the Catholic Church, there is evidence to suggest that Catholics are not "distinctly conservative



on questions of sexuality” (Rayside and Wilcox 2012: 11). For example, Bayliss Camp (2006: 23) found nationwide evidence in his 2006 analysis of county level data on anti-gay-marriage voting patterns, that, “by and large, Catholic voters are not as antipathetic to the idea of gay marriage as they are portrayed to be in the press”, and the “effects of the percent mainline Protestant are comparable to the size of the Catholic coefficient”. It is worth noting that the gay marriage struggle in Massachusetts reached its height around the time that the priest child sexual abuse scandal was in full swing and this may have dented the Church’s moral authority, causing even devout believers to question a formerly revered institution. Indeed, Arline Isaacson recalls that the Church scandal caused “a lot of legislators to question views of the Church to which they had previously strongly adhered.” This scandal, combined with the tendency for Catholics to stray from the admonitions of the Church hierarchy, gave activists some traction in challenging the Roman Catholic Church’s antipathy to same-sex marriage. An additional point to consider is the potential number of nominal Catholics, who may be claimed by the Church regardless of their adherence to its teachings.

Massachusetts is also home to a politically active Jewish community. Reconstructionist and Reform Jewish communities have been particularly supportive of gay rights and gay marriage. For example, “Reconstructionist rabbis in the United States voted

overwhelmingly in 2004 to support the extension of civil marriage to include same sex couples [and] many Reform rabbis have also performed marriages in their synagogues” (Rayside 2008: 154). Nationwide, Jews account for 2% of the US population, and in Massachusetts 3% of the population identifies as Jewish (Pew Forum on Religious and Public Life, 2008). Even as a relatively small proportion of the population, the Massachusetts Jewish community played an important part in fighting for marriage equality and several rabbis played key roles in the formation and governance of the Religious Coalition for the Freedom to Marry. In fact, Jewish activists played such a prominent part in the struggle for marriage equality that one of my respondents recalled a board member of one LGBT organization, herself Jewish, who joked that the board was “over-Jewed”, implying the board needed more diverse religious representation.

Strong religious opposition can often mean the death knell for gay rights legislation in regions where numbers of conservative evangelical Protestants in particular are at or above average (Camp 2006). Conversely, the religious diversity in Massachusetts was effectively utilized in support of gay marriage. The active presence of a number of diverse religious traditions supporting marriage equality led to the creation of the Religious Coalition for the Freedom to Marry. Formed in 1998, by the height of the marriage battle in 2006 the

group listed “more than 700 clergy, congregations and faith-based organizations from twenty-two faith traditions that support marriage equality for same sex couples” (Religious Coalition for the Freedom to Marry, People of Faith Testimony: Rejoicing in Marriage Equality 2006: i). The RCFM was active in lobbying and outreach efforts, and the value of their presence can hardly be understated. One of my interview participants, Amy Hunt, stated, “The Religious Coalition was a rock star. They did a lot of work for a lot of years that was incredibly helpful.” And Arline Isaacson recalled,

By the time we got to the constitutional convention in 2007 they [the RCFM] had made it to 1000 [clergy members]. The symbolism of having 1000 clergy on our side was powerful not just because of the number. The reason it’s so important is that it changes the nature of the debate. Previously it had been gay people versus religion, but with more religious people on our side it became religion versus religion. This changes the nature of what you’re asking legislators to vote on. You’re asking them, ‘Do you want to be in the position of choosing which religion prevails?’ And no legislator does. Even the most Catholic legislator in the most Catholic district doesn’t want to be saying, ‘I’m choosing Catholics over Protestants’. So that dynamic shifted. And the RCFM folks were willing to take on the Catholic Church and write to them in a public forum and say, ‘We respect your views, but please don’t impose your views on our religious beliefs.’ That changed the dynamic totally.

While LGBT rights proponents in other regions had religious allies to be sure, the more conservative religious composition of those regions often made it difficult to effectively mobilize against deep religious opposition to gay marriage. Across the United States, just 12 states have a percentage of evangelical Protestants below 21%, and each of

those states perform markedly better on gay rights measures than states that are greater than 21% evangelical (with the exception of Utah, which is dominated by Mormons- another religious affiliation decidedly opposed to gay rights) (Pew Forum on Religion and Public Life 2009, The National Gay and Lesbian Task Force 2011). Religion is by no means the only explanation for anti-gay-marriage sentiment, but clearly religion is one decisive factor.

Among denominations where most support is found for same-sex marriage, there are varied theological perspectives on homosexuality and same-sex marriage. Among Christian churches the Unitarians have long held a theological position in support full LGBT equality. Unitarians established the Office of Bisexual, Gay, Lesbian, and Transgender Concerns in 1973 based on the “First Principle” of the Unitarian faith: “to affirm and promote the inherent worth and dignity of every person”, and issued a statement specifically supporting same-sex marriage in 1996 (Unitarian Universalist Association of Congregations 1996). On the other hand, mainline Protestant churches in the United States have “moved toward a more positive view of sexual diversity but often only in small steps and with much conflict” (Rayside and Wilcox 2012: 11). That said, many such denominations have developed somewhat progressive, if complicated, theological views on same-sex marriage. For example, the Episcopal Church does not have an official stance on same-sex marriage, per se,

but in 2006 issued a statement in which the church declared its "support of gay and lesbian persons as children of God" and stated its opposition to "any state or federal constitutional amendment" prohibiting same-sex marriages or civil unions (General Convention 2006). Lutheran doctrine officially defines marriage as a covenant between a man and woman, but in 2009 there was a statement approved at the Lutheran Church in America Bi-annual Churchwide Assembly to allow congregations "to recognize, support and hold publicly accountable lifelong, monogamous, same-gender relationships" if they chose. The Methodists' official position does not recognize same sex marriage, but there is evidence of movements within the congregation to change the official position (Pew Forum on Religion and Public Life 2010). Among mainline Protestant groups, the United Church of Christ offers the most unequivocal endorsement of same-sex marriage on the theological grounds that, "the life and example of Jesus of Nazareth provides a model of radically inclusive love and abundant welcome for all" (UCC resolution 2005).

Jewish congregations were also important supporters of same-sex marriage in Massachusetts. Among the Jewish faith, positions on homosexuality are often implicitly filtered through a theology that emphasizes human rights, social justice, and the God-given dignity of all human beings. For example, the Reconstructionist Jewish tradition cites human rights as one rationale for its support of same-sex

marriage (Tuttle 2008), and takes pride in having “long been a leader in liberalizing Jewish approaches to homosexuality” (Harris 2008). Similarly, The Union for Reform Judaism Central Conference of American Rabbis issued a resolution in which they declared support for same-sex marriage stating, “the relationship of a Jewish, same gender couple is worthy of affirmation through appropriate Jewish ritual”, but also declared support for rabbis who choose not to ordain such unions, “We support the decision of those who choose to officiate at rituals of union for same-gender couples [and for] those who do not” (Central Conference of American Rabbis 2000). Additionally, citing the “God given dignity of all human beings” the Committee on Jewish Laws and Standards, the central authority for the Conservative Jewish tradition, issued a controversial statement that did not recognize same-sex marriage but offered explicit support for the choice of rabbis who do ordain such unions (Committee on Jewish Law and Standards 2006).

The conservative religious voices most in opposition to same-sex marriage also have several prominent rationales for their position. In this case, The Massachusetts Family Institute has been identified as a state affiliate of Focus on the Family, a national group founded by influential evangelical Christian author James Dobson. Focus on the Family describes itself as a “global Christian ministry dedicated to helping families thrive by providing resources that help couples to

build healthy a marriage that reflect God’s design” and defines its core beliefs around the idea that “**all people are of infinite value**, regardless of age, development, appearance or ability” ([http://www.focusonthefamily.com/about\\_us.aspx](http://www.focusonthefamily.com/about_us.aspx), emphasis in original).

While the LGBT affirming religious groups cited above use beliefs about the inherent worth and dignity in all human beings as a rationale to support same-sex marriage and other rights for the LGBT community, Focus on the Family and its affiliates use the same rationale to support conversion therapy for lesbian and gay people and mobilize against same-sex marriage. To illustrate, as opposed to the inclusiveness and acceptance of Unitarian doctrine, the Massachusetts Family Institute indicates their “compassion... for those struggling with same-sex attraction” by urging them “to change their choice of lifestyle through the work of Exodus International, Love Won Out and Parents and Friends of Ex-Gays and Gays” (<http://www.mafamily.org/issues/human-sexuality/>). Additionally, Focus on the Family defines marriage as a divine order from God based on the creation story in the Biblical Book of Genesis and the New Testament Gospel of Matthew: “[Marriage] is ordered as the union of a man and a woman in marriage—heterosexual and monogamous—an order that Jesus unambiguously reaffirmed in Matthew.” (Foster, cited at

[http://www.focusonthefamily.com/marriage/gods\\_design\\_for\\_marriage/marriage\\_gods\\_idea/the\\_divine\\_order\\_to\\_marriage.aspx](http://www.focusonthefamily.com/marriage/gods_design_for_marriage/marriage_gods_idea/the_divine_order_to_marriage.aspx)).

Although affiliated with Focus on the Family, the Massachusetts Family Institute does not specifically identify itself with a particular religious tradition or denomination but states its relationship to “Judeo-Christian values”. Perhaps this is a result of the presence of other prominent religious groups in Massachusetts that diminishes the influence of the evangelical Christian contingent in that state. Identifying with broad Judeo-Christian values rather than exclusively evangelical Christian interpretations of Scripture leaves greater possibilities for coalition building with socially conservative Jewish traditions and Roman Catholics. Indeed, the view of the Massachusetts Family Institute on same-sex marriage reflects the position of the evangelical Focus on the Family as well the position of prominent Catholic groups. The MFI’s official statement on same-sex marriage:

Since the primary purpose of marriage is the procreation and nurturing of children, marriage can only be the union of a man and a woman. The concept of an alternative definition that includes same-sex couples is fundamentally flawed. It is a travesty that a Massachusetts court decided to thrust a radical social experiment upon an unwilling populace by legalizing same-sex “marriage.” This government endorsement of motherless and fatherless families is both reckless and dangerous. A maturing child needs the gender-specific influences of both a mother and a father. (<http://www.mafamily.org/issues/marriage-and-family/same-sex-marriage/>)



Similarly, while Roman Catholic groups voicing opposition to same-sex marriage draw on appeals by the Pope for Catholics to “stand up for marriage”, they are similar to evangelical groups in that they declare, “same-sex unions are not marriages [and] same-sex marriage will undermine the capacity of marriage as a civil and social institution to protect children”

([http://www.catholicvote.org/index.php?/site/issues\\_details/marriage\\_and\\_family/](http://www.catholicvote.org/index.php?/site/issues_details/marriage_and_family/)).

On each factor identified with support for gay marriage- higher income levels and education, strong labour unions, a post-industrial economic base, below average numbers of evangelical Christians, a diverse population, largely urban- Massachusetts scores higher than most US states. The presence of and interaction between these factors helps to maintain a culture where citizens of Massachusetts are more likely to be accepting of LGBT people and, by extension, there is greater likelihood that Massachusetts residents will be supportive of LGBT rights claims, including same-sex marriage. But demographic characteristics in and of themselves do not explain the advancement of activist agendas, policy decisions and legislation in favour of same-sex marriage. These must be explained by considering local political institutions and the strategies that activists use to successfully engage them.

### Politics, Political Opportunities, and Political Constraints

In Camp's (2006) analysis, the largest predictor of whether or not a person might vote for anti-gay marriage referenda is party affiliation; the higher the percentage of Republican voters in any particular county the more likely that anti-gay marriage referenda were to pass. This would likely surprise few people with even a passing interest in American politics as the Republican Party has "for three decades...portrayed itself (with few exceptions) as explicitly anti-gay" (Rayside 2008: 32). Both Camp and Rayside suggest party effects in attitudes reflect the polarization of American politics, especially around moral issues. Camp also finds that party affiliation interacts strongly with religion and this reflects Barry Adam's (2003: 264) assertion that the "relationship between the Republican Party and the Christian Right has helped consolidate conservative Protestant influence beyond its numerical voting weight". Further, when it comes to gay rights, religious "fundamentalists have built an efficient institutionalized system of cultural reproduction, propagating a cosmology that constructs homosexuality as one element in a semiotic chain of 'moral decline'" (Adam 2003: 264). This creates a significant challenge to advancing lesbian and gay rights through the legislature at the federal level and in many states where Republicans compose a significant percentage of the legislature.

Republicans are generally the weaker party in Massachusetts, and there is evidence to suggest that Massachusetts Republicans are more likely to be fiscally conservative rather than socially conservative (Graff 2001, Lewis 2002). However, only a few Republicans have bucked the national party line to advance lesbian and gay rights in the Bay State. Notable exceptions include libertarian leaning Republican Governor Bill Weld in the 1990's, and, importantly, the handful of Republican legislators who came to publicly support same sex marriage through the long course of the same-sex marriage struggle in the 2000's.

The Democratic Party is generally more likely to favour lesbian and gay rights, but by no means does it present a united front for such rights the way Republicans present a united front against them. Even in states where Democrats may be strong contenders for public office there is a possibility that they will be socially conservative, and this is especially true in the South (Rayside 2008: 33). Although Rayside (2008: 33) argues that "Democrats are stronger in the North-eastern states than elsewhere, and these Democrats are more likely to lean left than their counterparts in most other regions", the fact remains that several of the Massachusetts DOMA bills and amendments were sponsored and/or whole-heartedly supported by powerful socially conservative Democrats like Tom Finneran and Bob Travaglini. However, while Finneran and Travaglini proved to be quite

obstructionist, liberal Democrats Deval Patrick and Sal DiMasi in particular were vital to the success of gay marriage in the end.

This split in the Democratic Party in Massachusetts is at least partly related to religious influence on politics, but in this region it is the Roman Catholic Church rather than Protestant Evangelicals with whom LGBT activists must contend. Even so, the “prominence of conservative religiosity even in the most progressive of American regions means that victories [for LGBT rights] can only be won with enormous effort” (Rayside 2008: 34). This is certainly the case in Massachusetts where, despite its solid ‘blue state’ status, the struggle for marriage equality lasted nearly a decade during which the LGBT movement was forced to fend off repeated DOMA attempts. The last of these attempts hinged on the votes of a handful of conservative legislators of both parties, several of whom changed their position at the last minute to narrowly defeat an attempted ballot initiative that would have potentially banned same-sex marriage in Massachusetts by *just one vote*.

Of course, the story here is not that there were DOMA attempts in Massachusetts, but that LGBT activists and their allies were actually able to fight back and win against them. This is due in part to the political structure of Massachusetts and the opportunities within this structure that activists were able to exploit, or create. Across the US, the fragmented structure of the political system creates a number of

openings for political activism by social movements- and counter-movements (Rayside 2008, Smith 2009). This is one factor that accounts for the patchwork legislative record of gay rights in the US where the system of political checks and balances in place “gives legislatures more leverage over policy making than is characteristic of parliamentary systems [and] within legislatures individual legislators have much more freedom than their counterparts in other countries” (Rayside 2008: 31). The separation of powers in federal and state governmental structures means that legislatures may override LGBT friendly court decisions, and if that fails there is always the citizens’ petition/ballot initiative. However, Massachusetts activists are well positioned to fight back because of the longevity and experience of those driving the movement.

The ballot initiative is a particularly unique element of the US federal and state governmental structure. Reflecting the strength of American populism and underpinned by an ideology of popular democracy, “many state constitutions provide mechanisms for ballot initiatives and referenda [and] there is a long history of using ballot initiatives, recall, election of judges and other measures of popular democracy” to push back against unpopular court decisions (Smith 2009: 17-19). In many other countries, “conservatives and evangelicals lack institutional levers or pressure points to counter the decisions of the courts” (Smith 2009: 18). In comparison to Canada

and most other liberal, Western democracies, the fragmentation of American political structures “translates into a comparatively permeable political system that privileges social movements [but] by providing so many veto points, the political system also advantages advocates of the status quo” (Rayside and Wilcox 2012: 20). For American LGBT activists, as well proponents of other types of group rights claims, this means that advances in civil rights are rarely safe from counter-attack.

These basic structural facts are as true in Massachusetts as they are for the rest of the country. However, the structure of the ballot initiative process itself in Massachusetts gives activists greater odds of mobilizing against it. Referring to the Proposition 8 vote that banned same-sex marriage in California, activist Lisa Thompson said, “I’m actually not surprised California changed the constitution because it’s really easy for them to do it, where as here it’s not so easy.” The ballot initiative process in Massachusetts is a multi-step process. Enough signatures must first be gathered to show citizen support for the initiative and then the petitions must be certified by the Attorney General’s office before being sent to the legislature. Once in the legislature, a ballot initiative must be approved by 25% of legislators in two constitutional conventions (joint meetings of the House and the Senate) that take place in two consecutive legislative sessions. That the bar for legislative approval of a ballot initiative is

set quite low (25% of the legislature) is an advantage for the petitioners; that the process is quite lengthy is an advantage for opponents of the petition. For Activist Amy Hunt, when it comes to the ballot initiative petition process, “The magic thing here was time.” She, too, compared the process with that of California,

[In California] you can win a valid court case and they [opponents] can generate a ballot question in two or three months. You don’t want that. That’s one of the reasons I believe it started in Massachusetts, because it was hard to generate a valid petition and there was already an extraordinary structure in place to fight against it.

Hunt’s observations touch on both the structural and strategic advantages of Massachusetts activists, i.e., not only was the initiative petition process complicated for gay marriage opponents, but there was an experienced network of SMOs, activists, and legislative allies ready to fight an initiative petition when it came.

The real advantage of LGBT activists in Massachusetts was their experience and deep knowledge of the political system and its vulnerabilities. This gave them the tools necessary to manipulate the system in their favour. Referring to the constitutional convention process, Arline Isaacson quipped, “You know that old song ‘There are Fifty Ways to Leave Your Lover’? Well, there are fifty ways to kill a con-con.” A political opportunity or structural vulnerability may be meaningless if activists are ill-prepared to capitalize on it, but Massachusetts activists had thirty years of accumulated knowledge,

thirty years of accumulated experience, and thirty years of coalition building and contact-making. This group was well positioned to take advantage of any opportunity. According to Miriam Smith (2008: 191), “Political institutions themselves produce different forms of politics [and] institutional structures play a shaping role in movement strategizing.” Gay marriage was made possible in Massachusetts because of activists like Arline Isaacson, Mary Bonauto, and others who had been engaged with Massachusetts political and legal institutions for many years and were well informed and well prepared to strategize for success on multiple levels in order to win marriage and fend off the anticipated attempts to overturn it. When the time came to develop a strategy to engage any particular aspect of Massachusetts political institutions, for instance to win in court, to kill a “con con”, or to change a legislator’s vote, these activists were equipped to do so.

Additionally, activists in Massachusetts were boosted in the struggle for marriage equality by existing policies that recognized and protected LGBT individuals and families. This is exceedingly important because “past policies are institutionalized in ways that reflect current debates”, and are “play[ed] out through legal doctrine and jurisprudence”, thereby shaping possibilities for future movement (or counter-movement) success (Smith 2009: 172,175). So, for example, because many Americans believe that “queer sexuality



challenges the heterosexual family, it is cast in [the same sex marriage debate] as a threat to family, social and even national stability” (Smith 2009: 171). However, in Massachusetts the courts and the legislature had been recognizing and protecting lesbian and gay families for nearly a decade, starting in the 1990’s when gay and lesbian couples overturned a discriminatory foster parenting policy, again when the SJC recognized second parent adoption, and still again with the legal recognition of de facto parenting rights.

In fact, when making the decision to go for a gay marriage case in Massachusetts, Mary Bonauto and GLAD made the decision, in part because, “Massachusetts is a state that is committed to equality and it’s a state where gay and lesbian families are no stranger at any branch of government, and those things matter” (GLAD Civil Union to Marriage panel: 2009). Therefore, when the time came to fight for marriage, it did not work for opponents to somehow position lesbian and gay people and their families as “the ‘enemy’ of common folk”, as had worked successfully for opponents in many other DOMA campaigns (Adam 2003: 269), because in Massachusetts gay and lesbian families had already established, with the force of the law behind them in many ways, that they *were* common folk, a fact repeatedly emphasized by the LGBT movement throughout the struggle for marriage equality.

In many cases, progress on same sex marriage in the US has been limited “by the absence of more elementary rights protections in much of the country” (Rayside 2008: 70). The presence or absence of anti-discrimination protection creates a policy legacy that may help or hinder advancement on relationship recognition; therefore in the United States “same-sex marriage is a potent issue for the lesbian and gay communities in part, because, in many jurisdictions, it is legal to discriminate against lesbians and gays in areas such as employment and housing” (Smith 2009:5). Indeed, less than half of US states currently bar discrimination on the basis of sexual orientation and/or gender identity, leaving LGBT people at risk in their employment, housing, and/or other ways should they be discriminated against ([http://www.thetaskforce.org/reports\\_and\\_research/nondiscrimination laws](http://www.thetaskforce.org/reports_and_research/nondiscrimination_laws)).

Recall, however, that Massachusetts was out front on anti-discrimination measures as well, passing a statewide lesbian and gay civil rights bill in 1989. Many activists specifically mentioned the importance of having the civil rights law in place. Gary Daffin of MGLPC describes the long-term significance of the bill this way,

Gay civil rights allowed more and more people in the state to be out and to feel like the government was on their side a little bit, or that we were at least making progress. After that we passed the hate crimes law and as we worked on domestic partnerships, more people got engaged with LGBT rights in the broader community. The culture became more accepting, and politically, for elected officials, it became less and less okay to

be anti-gay, and it chiselled away at the hard anti-gay folks in the legislature.

Securing anti-discrimination policies in housing and employment, and other initiatives in support of lesbian and gay rights, are not only significant policy changes; they leave what Miriam Smith (2008) refers as “policy legacies” that activists can build on future success. Such initiatives are important in leading to cultural change as well by making it safer for lesbian and gay people to be out in their communities. For example, Pat Ould of North Shore MassEquality credits early gay rights victories with making lesbian and gay people “more comfortable coming out and not being worried about retribution in terms of their job. There had been a lot of rights already won [before marriage], adoption, foster care, employment protection, there was a lot in place already...that set the stage for marriage.” In addition to policy legacies, these early victories that made it “more comfortable” for lesbian and gay people to live openly contributed to important cultural changes as well.

Moreover, any legislation that makes it easier for gay and lesbian couples to be “out” in their communities is likely to have some political and cultural impact. This is a fact highlighted by Camp (2006: 26), who finds “strong evidence that the number of same sex households in a locale makes a significant difference...the more visible we [LGBT people] are, the more of a difference we make” in levels of

support for gay marriage. For an example of the way that simply being out can make a difference, consider this statement by activist Elyse Cherry who recalls from her lobbying experience, “There were legislators who would say, ‘My district doesn’t really support gay marriage but I’m really stuck because my kids are now going to hockey practice with somebody whose got gay parents and I can’t figure out why I should treat them differently.’” Just knowing lesbian and gay couples forced legislators to grapple with this issue on a personal level, not only a policy level. Thus, lesbian and gay people can increase the odds for the LGBT movement success in fighting for additional rights just by being out. In turn, fighting and winning incremental rights battles educates activists about the political and cultural structures that they must engage to be successful, and enables them to hone their tactics and strategies so as to maximize chances for future success. Massachusetts had legislation in place as early as 1989 that made it easier for lesbian and gay people to be out and politically active and activists continued to build on this success. This is another crucial piece of the explanation for why gay marriage was made legal first in Massachusetts.

### Frames and Strategies

There are two overlapping approaches to the strategies used by activists to establish same sex marriage in Massachusetts: political and cultural. When Arline Isaacson says “there are fifty ways to kill a

con con” she is referring to political approaches and parliamentary tactics that can be used within a political structure to advance or block legislation. These tactics are central to movement success, but can be risky and may work only in circumstances where political insiders are willing to pull strings (within the legal rules of legislative proceedings) to ensure things might go a certain way (for example, see the “yes-yes-no” strategy described in chapter 5). Knowledge of what strings are available to be pulled and knowing which ally is most likely to pull them shapes political movement strategies. Indeed, “political institutions and policy legacies are the unseen structures behind the vociferous debate between same sex marriage advocates and defenders”, and “the strategies used by...social movement organizations [are] structured by the institutional openings available to them” (Smith 2009: 159, 161). Political institutions and policy legacies structure the debate but the debate does not end in the political realm; it spills over into culture and the two spheres act (and react) upon each other. Because of this, even the cultural strategies used by activists were shaped by the political institutions and structures that activists must engage, as much as those same strategies were designed to engage the hearts and minds of legislators and their constituents.

One example of the connections between culture, political structures, and movement strategy is the relationship between

populist ideology and popular democracy, especially the ballot initiative process. Populism is both structural and cultural in the US and manifests itself in many of the frequently utilized frames and discourses against gay marriage, as well as the prominent use of ballot initiatives and referenda as way to bring the issue of gay marriage 'to the people' (Adam 2003, Rimmerman 2002). Populist ideologies have long been used to mobilize opponents against LGBT rights. For example, consider Christian Coalition founder Pat Robertson's "populist crusade to turn America back to its 'moral roots' [and] 'traditional family values'" (Rimmerman 2002: 136). In addition, Rayside (2008: 31) identifies the American system as unique in its use of referenda to decide public policy and points out that "religious conservatives have been particularly intent on putting questions before state electorates to prevent or roll back measures that recognize sexual diversity". Sean Cahill (2007: 165) notes, "Since 1974 antigay activists have deployed more than one hundred ballot measures and initiatives [and] the overwhelming majority were approved". Cultural support for populist ideologies and populist political structures reinforce each other, and this plays itself out in both the frames used to argue against gay rights and gay marriage and the political institutions and structures used to roll back advances made by LGBT activists.

Populist ideology and the popular democratic structural opportunities in the US political system account for the viability of such discourses and frames against gay marriage, yet activists in Massachusetts were able to strategize against the typical success of this framing strategy of their opponents. Gay marriage opponents had been victorious in other states by mobilizing populist discourses against gay rights and gay marriage in several ways. One of these is the “special rights” argument, where gay and lesbian individuals and couples are cast as “privileged, spoiled, and demanding ‘special rights’” for a “lifestyle” that many do not approve of, or even find dangerous and/or threatening to the “traditional family” (Adam 2003: 269). After constructing gay rights and gay marriage this way, opponents then “mobilized a constituency that identified itself as the victims and outcasts of unfeeling liberal elites, including gay people among them” (Adam 2003: 269). Certainly this was a strategy tried by opponents of gay marriage in Massachusetts, but it failed to take off because political and cultural conditions in Massachusetts are different than those of other states.

Casting lesbian and gay people as a threat to an entire way of life or culture is most likely to succeed in regions where a great deal of social anxiety already exists, especially anxiety over economic and social change, and where suspicion is already high in regards to racial, immigrant, and/or other “outsiders” (Adam 2003, Smith 2009, Stein

1999, Rayside 2008). Given Massachusetts' status as a wealthy state with a stable economy, with a history of immigration, and a reasonably large amount of diversity, these arguments, while put forth with fervour by some citizens of the state, are less likely to be successful with the majority of mainstream Massachusetts residents. Also, these arguments are often floated with an attachment to conservative religious beliefs about the danger of moral decline, and there is a cultural orientation regarding religious expression that is unique in Massachusetts. According to Legislator Carl Sciortino, "The religious heritage of the [Northeast] region tends to be a very personal expression. It's sort of a Puritanical tradition of [Massachusetts] where you might have strong religious beliefs but they're yours, they're private, you're not meant to force them on other people." In this case, such an attitude about religious beliefs could very well work against the uptake of other religiously based arguments that attach same sex marriage to an overall 'moral decline' that threatens the family and society.

The second reason that populist "special rights" and "family values" arguments are less likely to take root in Massachusetts is that the LGBT movement here has already successfully mobilized against, debunked, and neutralized these arguments in previous rights battles. The special rights and family values arguments had been levelled at LGBT rights campaigns in Massachusetts since the fight for the civil



rights bill in the 1980's and throughout the struggle over domestic partnerships in the 1990's. Arline Isaacson recalls,

A lot of the arguments used against marriage we had tackled one or two decades earlier. In the 80's we tackled 'special rights' around the gay civil rights bill. When it came to marriage, that came up in a lot of other states, but it didn't come up in this state. We had already beaten that one back.

This and other earlier rights victories meant that Massachusetts citizens had already dealt with most anti-gay arguments and had seen them defeated. Activist and GLAD employee Bruce Bell points out that by the time same sex marriage came to the fore in the 2000's, "the legislature had already conceded that gay people were ok to parent and so forth. So a lot of those [anti-family] arguments didn't hold water." Because of these earlier decisions affirming gay and lesbian and gay couples and their families, such families had been visibly embedded into the fabric of everyday life in Massachusetts for many years. Buzz Harris says, "The 'protect our children' stuff they were trying to get in there, but they dropped it pretty quickly because it just wasn't working for them."

To most residents of Massachusetts, lesbians and gay people are not scary strangers, or outsiders demanding "special rights". They are the two dads of your daughter's friend from her soccer team; they are the lesbian moms who drive their son to hockey practice every morning just like you do. They are a couple who want to know that they can visit each other in the hospital should one of them fall ill, a

couple who wants to know that one of them will be able to keep the house should the other go into a nursing home. These are the 'special rights' of gay marriage, and it is these rights that activists chose to highlight in their lobbying and advertising. Indeed, when asked what the most successful strategy was almost every activist I spoke with emphasized the 'personal stories' such as these, that 'put a human face' on the issue.

The other side to the populist argument against gay marriage was 'Let the people vote'. This is a frame that had support from prominent conservatives, and perhaps was popular because it did not outwardly criticize lesbian and gay people or same-sex marriage, but rather emphasized that 'the people' should be able to vote on such an important issue. President George Bush led the charge by responding to the *Goodridge* decision in his 2004 State of the Union Address with this statement, "A strong America must value the institution of marriage. Activist judges, however, have begun redefining marriage by court order, without regard for the will of the people... On an issue of such great consequence, the people's voice must be heard." In Massachusetts, for those who did not mobilize around religious reasons to oppose the SJC's decision on marriage, 'Let the people vote' was the frame most utilized. Because it did not necessarily condemn gay and lesbian people or their families, this frame could have held more popular appeal with the democratically minded Massachusetts

public. However, LGBT activists effectively challenged this with two counter-frames: 'It's wrong to vote on rights' and 'No discrimination in the constitution'.

Massachusetts activists had been building the argument for marriage around the freedom to marry and asserting the equality of lesbian and gay families since the beginning of the marriage struggle. This took the form of mobilizing around the idea that lesbian and gay people should be free to choose a partner of the same sex, that the resulting relationships and families are equal in worth to those of heterosexual couples, and that these relationships deserve the same legal rights and protections as any other. While some scholars have found that the "presence of the morality frame lessened the effect of the equality frame" (Tadlock Gordon, and Popp 2008: 196), in Massachusetts the morality frame was not very strong. While the morality and 'family values' frames failed to take off for opponents, the 'Let the people vote' frame did gain some traction. Especially later in the marriage struggle when supporters were trying to kill the initiative petition in the legislature, this became the frame to beat. At this point activists developed the 'It's wrong to vote on rights' campaign.

The 'It's wrong to vote on rights' campaign successfully merged the family equality frame with democratic values in a way that would provide a populist counter-punch to the 'let the people vote'

argument. This campaign specifically featured a series of ads that each highlighted a gay family or family members; one featured two dads and their daughter, in another parents of a lesbian spoke lovingly of their daughter, her partner and the child they had together, and the last featured the grown son of a lesbian couple who spoke of how much it meant to him that his moms were finally able to marry. In each two-minute spot the featured family or family members spoke about the importance of family and that it was wrong to vote on the rights of these families. The point of this campaign was to link fundamental democratic values of freedom and equality to gay and lesbian families and they were successful, in part, because these ads were developed well after *Goodridge* and after gay marriages had been happening for the better part of a year. These ads brought home the point that passing a referendum against gay marriage now would be voting to take away rights that already existed. This is exactly what Mary Bonauto and the legal team at GLAD were banking on when they filed *Goodridge* in April 2001. Believing that if they could win marriage before their opponents succeeded in putting the issue on the ballot, then people would see gay marriage was not so scary or threatening after all. And they were right.

Focusing on family matters and arguing that lesbian and gay families deserved the same protection as heterosexual families turned out to be a very effective strategy. Long-time activist and co-author of

*Courting Equality: A Documentary History of America's First Legal*

*Same-Sex Marriages*, Pat Gozemba reflected,

I think for a long time LGBT people felt that having a spotlight shining on their lives and revealing what their lives were like was not going to be helpful, and in the end it was very helpful. The more people revealed about their day to day life-- their life in their neighbourhood, their life in their job, their kids in school, being elders and worrying what's going to happen when one of them has to go in a nursing home-- that kind of thing. More of a focus on the personal really actually helped us a whole lot.

There is evidence that making the personal political in such a way helped sway legislators and constituents. Activist Lisa Thompson recalls a speech she heard by a legislator who had changed his mind to support gay marriage. She paraphrases the speech this way,

'I have had person after person after person come into my office saying what a difference it would make in their lives if they could get married. And what a difference it would make in their children's life in they could get married. And I've had people come into my office and tell me they are against gay marriage and I've asked 'How will this decision affect you personally?' And they cannot say anything concrete. But these other people tell me concrete ways that this will improve their lives. So how could I possibly vote to harm a group of people, if it is not going to harm anyone else? How could I do that?'

Another activist, Ellen Zucker, a lawyer, explains how she came to hear of an individual who was influenced to support gay marriage after seeing one of the

"It's wrong to vote on rights" segments,

I was working on a case, and one of the court clerks asked me, 'You're the one who does the gay stuff, right?' And I said, 'Yeah, yeah, that's me.' And she said, 'My husband is a hockey player,

and when he grew up, every day his mom or dad would take him to hockey practice at 5:30 in the morning. And when my husband saw that ad with that young man who talked about his moms taking him to hockey practice, my husband watched that ad and said, 'Fuck it, they should just be able to marry.'

The experiences of these activists underscore the importance of 'putting a face' on the issue. Making the personal political is a strategy that was successful with legislators and the public alike. This also relates to Camp's finding that being out and visible creates an understanding that can lead to support for LGBT rights and gay marriage.

The "No discrimination in the constitution" frame became particularly important when the fight against the ballot initiative was in full swing. According to Gary Daffin, activists "laid out this argument not as, 'Are you for gay marriage?' per se, but 'Do you want to write discrimination into the constitution?'" This frame is important because it helps legislators and individuals who might experience some cognitive dissonance while trying to sort out their personal discomfort around gay marriage with their basic belief in equal rights. Daffin continues,

This helped tremendously both in the legislature and with regular folks. When they started seeing people get married this helped them overcome their emotional reaction. I think some people thought that this wasn't a good argument, but in the end it was.

This frame drew on Massachusetts' historical pride and pride in its constitution. Several activists reflected on why this frame was significant. Lisa Thompson cites "a sense of pride" that comes from "being one of the first colonies" and having "one of the oldest constitutions". Mary Bonauto urged activists to "get a feel for the true history and narratives about the history of the state" and described the importance of history to Massachusetts culture this way,

[Founding father] John Adams, being from Massachusetts, had a role in writing the Massachusetts constitution, and the Massachusetts constitution influenced the federal constitution. [Because of] John Adams... we have several equality provisions in the Massachusetts constitution and we can rely on all of them. (GLAD "From Civil Unions to Marriage Equality" panel 2009)

That LGBT activists in Massachusetts can draw an historical line back to John Adams and use his writing to argue in favour of equal rights is very powerful. To be sure, opponents would dispute the argument that Adams' writing can be used to justify gay marriage. However, it would be impossible to prove whether any founding father would be for or against gay marriage if they were writing in the present day. This ambiguity may actually help to ensure that the frame sticks just enough to give it a degree of traction.

Activists in Massachusetts were successful with these frames and strategies because they were a good cultural fit and not only built on the foundation of previous policy legacies and movement successes, but drew on dominant cultural ideologies as well. The

success of the family equality frame was made possible in Massachusetts because this was not, in fact, the first time that lesbian and gay families had been under scrutiny. Certainly, the debates over foster care and domestic partnerships had brought attention to lesbian and gay families. But this time, activists had more control over the images. Also, the struggle for gay marriage occurred over a decade after lesbian and gay families were first thrust under the spotlight during the foster care debate in the 1980's. After LGBT activists (eventually) won the fight to overturn a discriminatory foster parenting policy and then went on to win other LGBT family friendly court and policy decisions, Massachusetts residents had some time to adjust to the idea of lesbian and gay families in a way that facilitated the uptake of these family oriented frames during the gay marriage debate.

Of course, the successful uptake of any particular frame is contingent on cultural resonance. Mayer Zald (1996: 266) tells us, "Social movements occur in a larger social context. They draw on cultural stock for images of what is an injustice, for what is a violation of what ought to be." One cultural element that helped LGBT activists and allies is what many of them described as a 'libertarian' attitude in the Northeast. For instance, Pat Ould, an activist in Salem, Massachusetts and one of the founders of North Shore MassEquality describes what she calls the "Yankee individualism" that characterizes



the Northeast, “That sort of thing where, when people can come to that level of understanding, that nobody should be able to tell anyone else how to live their life. I think that worked to our benefit.”

Similarly, MGLPC Co-Chair Gary Daffin says that,

There are some Conservative Tea Party people I know personally who think the idea of two men sleeping together makes them sick...but they were staunch defenders of the notion that people should have equal rights. They can make a distinction where they have their own issues but they realize that they don't have the right to prevent other people from having basic civil rights.

This kind of 'live and let live' attitude became more pronounced after same sex couples began getting married in 2004. Legislator Carl Sciortino says that after 2004 gay marriage opponents lost their enthusiasm, “It was just not really an issue. It was like, ‘Yep, you go get married, do your thing, I don't care. What about my job? What about the economy? What about my health care?’ They moved on.” Gary Daffin had the same observation, “In the end, people didn't see any harm to themselves. People just didn't really care in the end. Most people were on the side of, ‘What the heck? It's not hurting me.’”

While these statements may reflect a cultural orientation toward libertarian tendencies, they also underscore the connections between culture, strategy, and institutions emphasized by Miriam Smith (2008) in that the political structure of the constitutional convention process gave people time to see that gay marriage would not, in fact, be

harmful to themselves or their family despite the claims made by gay marriage opponents.

Massachusetts has often been on the forefront of social justice causes, and many citizens of the state are proud of this history (Brown and Tager 2000). This is something that MassEquality field organizer Ryan Brown reflected on when asked what makes people in Massachusetts more likely than those in other states to support gay marriage, “Massachusetts prides itself on being the first in many different social movements. Maybe it was an issue of pride.” For or against marriage, everyone had an awareness that history was being made in Massachusetts. At one point, there was a shift in the struggle for marriage when activists began to feel the momentum tip in favour of marriage equality. Activists did not know they would win-- they could not, would not know until the last vote was cast to defeat the amendment-- but, as the vote drew near, they began to feel “empowered by the confidence, however vague, that they *have history on their side*” (Hirschman 1991: 158, emphasis in original, cited in Gamson and Meyer 1996: 286). As this momentum shifted, even many same sex marriage opponents came to feel that they wanted to be on the right side of history.

For a state whose citizens take pride in their history and their role in progress, the idea that they were contributing to history was a poignant frame. Ellen Zucker describes the shift this way, “At some

point we had the momentum. At that point, the final closing arguments were simply, 'Do you want to be on the wrong side of history?' And none of them did. No one wants to be the one to stand in the way of progress. So at that point, progress became a tactic."

Lisa Thompson's take on this strategy was to tell legislators that voting for the amendment would be "a mistake". She explains,

There's a legacy of making mistakes and having to fix them, like our part in slavery and our part in burning women accused of witchcraft. So I said, 'Let's not do anything we'll have to apologize for later.' One of my strategies with the legislators was, 'Don't be on the wrong side of history. If you vote for the amendment, you're going to apologize to the next generation for this.'

Arline Isaacson used a similar strategy for legislators who were struggling with the upcoming vote. Isaacson's strategy involved providing diverse contexts for rebuttal of the anti-gay marriage amendment so that legislators could find one that fit for their constituencies:

I would say to them, 'I need you to think about twenty years from now when your kids are older and they ask you what you did about gay marriage. What are you going to say to them? Are you going to say that you didn't like gay marriage and that it was against your religious beliefs but that you didn't think discrimination should be added to the constitution? How are you going to explain this moment?' It was another crying thing for legislators. Easily a dozen legislators who had previously voted against us came back to me and said, 'Thinking of it that way caused me to change my vote.' If they could view it in a historical context that changed everything for them.

Being on the right of history is a frame that works in

Massachusetts where there is a general sense of pride in the

state's progressive history and participation in social reform movements (Brown and Tager 2000), where even conservative legislators like Republican Richard Tisei (quoted in the chapter 5) says he is glad that he and the state of Massachusetts were on the "right side of history" in supporting same-sex marriage. This reflects the culmination of the factors outlined above. Conversely, in states where opposition to gay marriage is rooted in religion, for example, many legislators would take pride in being that person who stopped progress on something that they believed causes 'moral decline' and is genuinely harmful to families and the nation. But these conservative religious and moral arguments, while present, never took off in Massachusetts because they did not resonate with the many other cultural variables afoot in the state. Arguments about freedom, equality, and real family values were the frames that resonated here and these frames carried the movement to victory in the struggle for marriage equality.

In the years since Massachusetts became the first state to legally recognize same-sex couples several other states have done the same. The total now stands at six states (Connecticut, Iowa, Massachusetts, New Hampshire, New York, and Vermont) in the US where marriage equality is the law of the land, and all but two of these are in the New England region. This supports the observation

of Laumann, Gagnon, Michael, and Michaels (1994) that the New England states are among the most progressive when it comes to sexuality and sexual freedom. While this dissertation has focused on the case of Massachusetts as the first state with legal gay marriage, clearly there are regional variables at play across New England. For example, when it comes to religious variables, many of the Northeastern states share characteristics that set them apart from other US regions that are most resistant to LGBT rights (Pew Forum on Religious Life<sup>23</sup> 2008). Also, New England states rank similarly on national measures of education and income.

There exists some regional variation within New England states in these measures, and the intra-region differences reflect the larger relationship of these variables with support for same-sex marriage. For example, Maine scores less high on education and income, and Maine is the only New England state where same-sex marriage is not legally recognized (same-sex marriage was approved by the legislature in 2009 then later repealed via a closely contested referendum) (The National Gay and Lesbian Task Force 2011). However, the differences in education, income, religiosity, and political affiliation within New England are nothing like the stark contrast between the New England region and the American South (where some anti-gay marriage amendments were passed by margins of 75% or more) (measureofamerica.org 2011, Pew Forum

on Religion and Public Life 2008). That same-sex marriage was first made legal in Massachusetts certainly reflects many unique aspects of this state, but Massachusetts is embedded in the larger New England region, and this entire region is exceptional in a number of ways when compared to other regions of the United States, particularly in the case of LGBT rights.

It does appear that public opinion has tilted increasingly in favour of gay marriage in national surveys. (Pew Forum on Religion and Public Life 2010b) As opinions shift across the U.S., how will the fight for marriage equality take shape in other regions? Will activists in other states be able to seize the moment when a political opportunity emerges? Will they be able to strategize and engage their local cultures to marshal success? The answers to these questions are far from certain.

If we are to learn anything from the successful Massachusetts movement, it is that persistence pays off. Even in other states where cultural variables may be formidably stacked against the advancement of LGBT rights, it is important to remember that cultures are not static; they are permeable. In Massachusetts, it took over a decade to pass the gay and lesbian civil rights bill, after which activists wrangled for a decade fighting for domestic partner benefits, and after that

spent nearly as long fighting off attempts to establish DOMA. Marriage equality was not won overnight. There were more than thirty long years between the time that Barney Frank and Elaine Noble first sponsored the gay civil rights bill 1974 and when the Massachusetts legislature defeated the anti-gay marriage amendment in 2007. Activists fought hard all those years, but no matter whether they won and lost each battle, they never stopped learning and strategizing. They never stopped fighting. Yes, Massachusetts is unique in that there were cultural conditions in place that LGBT activists could build on to gain support for movement initiatives over the years. However, there must be unique cultural conditions in any region that can somehow be turned in favour of LGBT rights and/or marriage equality given the right combination of political opportunity and movement creativity.

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