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Journal

Signs: Journal of Women in Culture and Society, 36(4)

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Publication Date

2011-11-01

Peer reviewed



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Reviewed work(s):

Source: *Signs*, Vol. 36, No. 4 (Summer 2011), pp. 793-798

Published by: [The University of Chicago Press](http://www.press.uchicago.edu)

Stable URL: <http://www.jstor.org/stable/10.1086/658500>

Accessed: 18/04/2012 19:57

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Separated and Not Equal: Binational Same-Sex Couples

M. V. Lee Badgett

The global debate about same-sex marriage has focused largely on same-sex couples' desires and needs for two kinds of recognition: legal recognition, which enables them to tap into the package of rights and benefits of marriage granted by the state and third parties (such as employers), and cultural recognition, which enables them to create meaningful family relationships that will be recognized by the couple themselves and by their families and communities. Between material rights and cultural recognition comes a more profound effect of legal recognition for same-sex partners that allows couples to exist and to persist, namely, that of immigration rights.

According to one list, at least eighteen countries grant some kind of immigration rights to same-sex partners of citizens: Australia, Belgium, Brazil, Canada, the Czech Republic, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, South Africa, Spain, Sweden, and the United Kingdom (Johnson 2009). Two other countries—Argentina and Portugal—have recently granted marriage rights to same-sex couples, and still others offer immigration rights to same-sex couples in certain situations. In most cases, immigration rights for partners flow from access to marriage or to a marriage-like institution known by many names across countries, such as civil partnership, registered partnership, or life partnership. Other countries on the above list

have recognized immigration rights for partners without moving to provide a more expansive form of recognition.

While these twenty countries' actions represent significant progress and at least a few potential havens for same-sex couples yearning to live together, rights of movement remain severely limited for couples in every country. For instance, in almost 80 percent of the thirty-five thousand binational same-sex couples in the United States, both partners come from a country that does not give immigration rights to unmarried couples (Gates 2005).¹ Those limitations have become more obvious and heart-breaking as more binational couples have formed and become publicly visible. The development of a global gay rights movement has gone hand in hand with the development of a global gay tourism economy, leading to gay cruises, travel adventures, international events, and other venues for binational boy-meets-boy or girl-meets-girl combinations. When those relationships deepen, binational couples face not the common question of whether it is time to move in together, but of whether it is even possible to live together in one place.

We can see the link between immigration and legal recognition quite clearly in data from two countries that legally recognize same-sex couples: Norway and Sweden. Notably, these data suggest that the immigration issue might be most pressing for gay men, perhaps because the global gay economy has largely catered to gay men rather than lesbians (Puar 2002; Eskridge and Spedale 2007). In Norway, only 19 percent of female couples that registered as partners involved one Norwegian and one non-Norwegian, while 43 percent of male registered partnerships were binational (Andersson et al. 2006, 88). In Sweden, 22 percent of married different-sex couples and 30 percent of female registered partnerships were binational couples, while 45 percent of male couples were binational (Andersson et al. 2006, 88).

The importance of immigration rights for same-sex couples comes through very clearly in qualitative data as well. While writing a book on same-sex marriage in Europe and the United States (Badgett 2009), I interviewed several Dutch couples who were self-identified love exiles, living in the Netherlands because it was their only option for being together. Unlike couples with two Dutch partners, the binational couples had all chosen to marry or register as partners, suggesting the same link between marriage and immigration implied by the Nordic data, although

¹ The United States is notably absent from the list of nations granting immigration rights, even though five states and the District of Columbia allow same-sex couples to marry. Immigration law is a federal matter, and the federal Defense of Marriage Act does not allow the federal government to recognize marriages by same-sex couples.

in only one case was the decision directly related to the non-Dutch partner's immigration status. Even with their relatively privileged position as couples eligible to live together in the Netherlands, these binational couples remained acutely aware of being second-class global citizens.

Most obviously, their freedom of choice about where to live was circumscribed. If a binational couple wants to live together rather than apart, they face a difficult choice. Instead of choosing a country to live in based on which partner has the best job prospects or most options, or alternating the country of residence over time, many same-sex couples have only one option, at best. Several couples I interviewed discussed their residential decision-making process, and the need for legal recognition was the first criterion applied to desirable countries.

Even within the European Union, these same-sex couples still face limits despite the flexibility that EU citizens have to move to other EU countries. The EU directive on free movement gives EU citizens the right to live in any EU country for three months, but the longer stays allowed for work raise the issue of who counts as family for purposes of residence permits. The rules for entry, residence rights, and equal treatment for the same-sex partners of EU citizens moving for work have not yet been fully specified even for married same-sex couples, much less for those in registered partnerships or unmarried relationships (Bell and Baraldi 2008). As a result, same-sex couples in the European Union face uncertainty even with respect to the treatment they will receive in the countries that recognize same-sex couples in some way, uncertainty that may still constrain choices.

As grateful as non-Dutch partners often were for the right to live in the Netherlands with their Dutch partners, they clearly felt that they were somewhat trapped, or at least that they had few options. Several non-Dutch women I interviewed had given up professional positions and had accepted lower-paying, lower-status, and less stable jobs in the Netherlands. The costs of lost professional training and the periodic need for expensive travel to maintain family relationships put financial burdens on the couple. In addition to the financial burdens, the emotional burden of distance when family members were aging or sick also took its toll on the people I interviewed.

Although couples bemoaned the difficult, costly, and constraining choices that they had to make, they reserved special scorn for the symbolic violence that they routinely experience in travel to the United States. Filling out customs forms on the plane can cause a feeling of dread upon remembering that even a couple that is married in the Netherlands (or in Massachusetts, for that matter) does not count as a family and requires

separate individual forms. Worse yet, jet-lagged couples confront new challenges at the border. Arriving passengers face U.S. Customs and Border Protection lines that send the families of U.S. citizens to one line and international visitors to another. Some same-sex couples dutifully separate at that point, each going through the “appropriate” line.

For others, though, such a dilemma represents an opportunity for resistance. One married binational couple I interviewed, Martha and Lin McDevitt-Pugh, refuses to play along with the passport line dilemma. Martha and Lin, who were married in the Netherlands, confidently march through the U.S. citizens’ line and present their passports together, offering to show their marriage certificate to surprised border officials. What happens? “Well, yes, we do go through together and they always ask what our relationship is, and we say we’re married, and they get quiet,” Martha noted. “They always ask Lin all the mandatory questions, and they send us through very quickly. They don’t usually want to go into it much.” Other border officers have responded positively to learning that Dutch gay couples can marry. (Presumably the surprise has lessened over time as the issue of marriage equality regularly appears on the front pages of newspapers across the United States.) In the meantime, Martha and Lin’s example has inspired other binational same-sex couples to do the same when arriving in the United States, despite the risk that the noncitizen partner will be turned away as being likely to overstay his or her tourist visa.

Love exiles can also push to change the legal constraints more directly through lobbying and other political activities designed to change laws and policies. One way to think about the political path to recognized rights for same-sex couples in Europe, North America, Australia, New Zealand, and Latin America is a sort of pincer action. Pressure on one side comes from local, state, or provincial governments, which are often the first level of recognition for same-sex couples, although typically a level not granting significant rights. In the United States, the city of West Hollywood, California, was the first to offer a domestic partner registry to same-sex couples in 1985, with little offered in the way of benefits (Traiman 2008). Likewise, years of local action preceded the Netherlands’ implementation of registered partnerships and opening up of marriage (Waldijk 2001; Van Velde 2003). Eventually, as these cases show, states and national governments often get involved in this incremental approach.

The second source of pressure can come from the national policy side. In the United Kingdom and Australia, national governments gave immigration rights to same-sex couples before a broader legal status was available to same-sex couples (Department of Immigration and Citizen-

ship 2009).² This incremental approach suggests that countries like the United States can achieve progress toward immigration equality for same-sex couples without recognition of the right to marry at the federal level, and there have been several legislative efforts attempting to achieve this particular goal.

At some point, the two strategies—incremental change building up from local to national recognition of all rights for same-sex couples and incremental change building down from specific federal rights—meet somewhere in the middle as state or national governments begin to grant larger packages of rights, benefits, and obligations that move toward marriage. This incremental and piecemeal strategy, taking countries one at a time, is probably the best political plan available until some critical mass is reached and an international treaty of mutual recognition of same-sex relationships becomes feasible. In the meantime, the actions of individual same-sex couples who challenge politicians and immigration officials will help to play a role in educating and pushing for change, even as those same couples bear the enormous personal, financial, and familial costs of living in love exile.

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² Indeed, as of this writing, no such federal status is offered to same-sex couples in Australia. On the situation in the United Kingdom, see the UK Lesbian and Gay Immigration Group, "A Brief Outline of UK Lesbian and Gay Immigration Group," <http://www.uklgig.org.uk/history.htm>.

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The Mobility of Corporate Lesbians

Lin McDevitt-Pugh

The mobility of corporate lesbians is an issue that has not been explored in feminist studies, in gay and lesbian studies, or in management studies. Contemporary studies on the glass ceiling do not look at

I am grateful to the Company Pride Platform (<http://www.companyprideplatform.org>) for sponsoring my research and to the corporate LGBT network leaders and human-resources representatives of six transnational corporations in the Company Pride Platform for participating in my research, which was conducted in partial fulfillment of my MBA at Henley Management College. I also acknowledge Saskia Wieringa for her research support and Marie Leafhead for her guidance throughout the research process. Research on a topic like this, treading where no academic has been before, benefits from the outstanding contributions of many managers, activists, and people who dare to have their experiences written down for the benefit of the many. For her outstanding contribution to Love Exiles, her commitment to getting the exiles back to the United States, and her commitment to the concept We Are One, I acknowledge my wife, Martha McDevitt-Pugh.

[Signs: *Journal of Women in Culture and Society* 2011, vol. 36, no. 4]

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