

Queering Access: Non-Traditional Families and Reproductive Rights

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When considering access to health services, some conceptions of morality seem to conflict with principles of justice and equity of access. This poses a particular problem for ethical reviews of access to reproductive technologies access. When considering policy formation about access to reproductive technologies, we must consider the value judgments that inform what has happened to date. Often these value judgments are implicitly determined, and yet translate into policy that negatively affects equity of access.

In this article, I will challenge the concept of the 'traditional' nuclear family as it is used in access to reproductive technologies. The concept of 'the traditional family' is an illusion based in hegemonic cultural normativity. It is this cultural normativity that we often mistake for morality. I plan to tease out a narrative showing that to grant access to health services based on the way people live their lives is to make a moral judgment that further excludes social outcast groups. I will raise questions about the same sex marriage campaign in the United States; I am not convinced that the pursuit of marriage rights is the correct strategy in a struggle that is ultimately about reproductive, parental, family, property and health rights as much as it is about marriage as an end goal. Individuals have reproductive and health rights because they are human, not because of their relationship status.

Most women who are denied access to reproductive technologies tend to have one thing in common: the absence of a husband. In Peterson's analysis of access issues to assisted reproductive technologies (ARTs), he begins by listing those who have been denied access to ARTs: single women, lesbians, and poor women.¹ Women granted access to ARTs also

fit a particular social mold: "the predominance of white, middle class, able bodied women living as heterosexual couples is evident across private IVF clientele."²

The ethical questions regarding access to ARTs are many. Who should decide who gets access to reproductive technology: the patient, the individual physician, an ethics committee? Who should pay for it? A liberal view of health rights would allow a woman to sell her eggs if she sees a benefit for herself, but do we accept a society whereby only some women are compelled by circumstances to sell their eggs in the first place? How does denial of access to ARTs constitute a value judgment? Does denial of access re-marginalize marginal social groups? Conversely, should access be unrestricted? How should marginalized social groups most effectively advocate for themselves when it comes to reproduction and families? How do we decide which, or whose, morality should determine access to ARTs?

In the US, lack of regulation leaves access decisions to physicians in ART clinics. Peterson states that physicians performing IVF treatments consider themselves to be responsible for the potential child's welfare, such that they reject women who are not in heterosexual, married relationships because of the potential child's assumed psychological need for a father figure; this assumption contradicts the lack of evidence that children raised in 'non-traditional' families suffer negative psychological effects.³ Physicians arbitrarily determine patient access without ethical guidance or evidence. According to a 2001 survey, only 31% of ART clinics use ethics committees to make access decisions; as a result



of this lack of ethical resources, individual provider social judgments on the basis of patients' sexual orientation, marital status, or provider personal beliefs often determine patient access.⁴

The basis upon which access decisions are often made is often not a moral basis at all, but one of cultural normativity that is perceived as morality. The 'traditional family', I argue, does not exist in the form commonly imagined: mother, father and children, living as a self-encompassing entity. It never existed, save some cultural moments in our collective memory: i.e. *The Dick Van Dyke Show*. Stephanie Coontz explores the cultural myth of family in her book *The Way We Never Were*.⁵

Today, the marriage rights movement, grounded on issues that cut across race, gender and ethnicity boundaries, uses marriage as an overarching rallying point. This approach is problematic and exclusive. The color politics of the nuclear family are weighty; the black experience in the US required families to take on creative, diverse and extended structures. Of the privileges tied to heterosexual marriage and the nuclear family, health care access is a major one; access decisions that are based on nuclear family normativity are therefore oppressive to people of color. As Dorothy Roberts has extensively documented, black women have a long history of subjection to violations of procreative freedom. We have only to look to the 1990s to find legislation proposed across the country to provide monetary incentives to black mothers who accept contraceptive hormonal implants.⁶

Let there be no illusion; the state is all up in our pants.⁷ Any person outside of the 'traditional family' model should consider their reproductive rights to be tentative at best. This probably includes you, me, our loved ones, and future colleagues and patients. Because we are future physicians, as practitioners we will bear access decisions individually. How can we approach this?

Of the recent attempts to ensure non-traditional family rights, the same sex marriage campaign is prominent. This campaign is too limited in its scope,

and has become simplified to the usual dualistic level of politics in the US. You are either for or against, and anyone who considers herself to be liberal or socially progressive must be for gay marriage, right? Dean Spade and Craig Willse manage an online collection of critical consideration of the gay marriage campaign and the politics of color entitled "I Still Think Marriage is the Wrong Goal."⁸ Criticisms of the marriage campaign cited by Spade and Willse particularly arise from LGBT communities of color. The Audre Lorde Project (ALP), for example, has issued a statement that,

"Communities of color and others in the United States have long had a history of building support networks, families and communities that differ from dominant society's portrayal of family as a simple nuclear unit. Extended families, and many other types of family units, have long been a tradition and source of strength against oppression within our communities. Same-gender couples... should enjoy the same right to choose to marry, build families, and raise children.... We believe that this also includes the responsibility of those who choose to be part of families (*regardless of marital status*) to build and nurture relationships based on principles of equality...." [emphasis added]⁹

While calling for an end to discrimination in the civil marriage system, the ALP affirms that individuals should have the right to build families that "do not mirror nuclear family structures."¹⁰ Perhaps the largest setback to the marriage campaign, California's Prop 8 banning same sex marriage is understood in popular discourse to have passed due to immigrant and minority voters. Spade and Willse point out that this conversation, which implies that communities of color are homophobic, conceals the gay politics behind the marriage campaign.¹¹ To fully appreciate the issues at stake that are concealed by the rhetoric, it is useful to understand what is meant by "gay" vs. "queer."¹² This undertone doubly marginalizes queer people

of color, and falls short of framing the salient problem. "Why isn't Prop 8's passage framed as evidence of the mainstream gay agenda's failure to ally with people of color on issues that are central to racial and economic justice in the US?" Spade and Willse ask.¹³ Marriage as an end goal fails to address the reproductive, family, parental, property and health rights that form the subtext of the gay marriage movement.¹⁴ These are intimately tied to our fundamental rights as human beings, and cannot be obtained in full through a campaign based on marriage.

If we embrace the fundamental right of all of our patients to equality of access to our services, can we be justified in backing the marriage campaign? Laura Erickson-Schroth, former Chair of the American Medical Student Association's National Committee on Gender and Sexuality, explains how she parts from the same sex marriage campaign platform's usage of health care benefits:

"I support same-sex marriage, but I do so because I believe marriage is a right, not because it will give health care access to one more group of people, while others remain uninsured. Family and marriage should not be tied to human rights like health care."¹⁵

The gay marriage campaign fails to draw parallels between other groups with similar struggles of health care and reproductive rights access, including poor and immigrant families, same sex families, and those who choose to remain single.¹⁶ The gay marriage campaign utilizes health coverage through the family as a campaign point, and hence accepts the classification of certain types of individuals and families as second-class citizens by virtue of their choice on how to form a family structure.¹⁷

Determining a patient's access to reproductive technologies based on her relationship status -like providing health care coverage through the family-creates a pool of second-class citizens based on a value judgment regarding lifestyle. I don't think most

people are willing to accept this result, which comes about by leaving individual physicians and clinics to judge for themselves a patient's ART access amidst a foundation of normativity masquerading as morality. The gay marriage movement needs to queer itself, because the reproductive, family, parental, property and health rights that shape the struggle and the platform are held in common with all non-traditional families, concentrated in communities of color and immigrant communities, including unmarried people. I hope that as physicians, we will be able to critically analyze those decisions that fall to us, and use our collective voice to normalize justice in patient access.

About the Author

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3. Peterson, 282.
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5. Stephanie Coontz, *The Way We Never Were: American Families and the Nostalgia Trap*, (Ann Arbor: University of Michigan, 2000).
6. Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*, (New York: Vintage Books, 1999), 109.
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8. Dean Spade and Craig Willse, "I Still Think Marriage is the Wrong Goal," *Makezine*, [<http://makezine.enoughenough.org/prop8.html>] accessed 11 August 2009.
9. The Audre Lorde Project, "ALP Position Statement on Marriage," (14 September 2000), [<http://www.alp.org/whatwedo/statements/marriage>] accessed 11 August 2009
10. Ibid.
11. Spade and Willse.
12. "Gay" here describes a political agenda that sustains the binary of heterosexual/homosexual, and is somewhat exclusive by mirroring nuclear family relationships. "Queer," by contrast, indicates an inclusivity of a spectrum of sexual and gender orientations, and embraces nontraditional relational structures.
13. Spade and Willse.
14. This focus on common struggles is something that defined Harvey Milk's campaign and the Epstein (1984) documentary, but was a bit less prominent in the recent movie, *Milk*.
15. Laura Erickson-Schroth, "Health Care and the 'Family'," *AMSA Focus: The American Medical Student Association Newsletter*, (April 2009), [<http://www.amsa.org/news/focus/0409.cfm>] accessed 12 August 2009.
16. Ibid.
17. Ibid.