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The Sacra of LGBT Childhood

Kim Hai Pearson*

Introduction

First, I wish to extend my thanks to Professor Joan Shaughnessy and the students of the *Washington and Lee Journal of Civil Rights and Social Justice* for inviting to me to participate in this symposium on child welfare. I would also like to thank Professor Amy Dillard for moderating our panel and doing a wonderful job of organizing us so that our topics build on each other.

I've had hearts and minds in my thoughts a lot lately because scholars like to look back at cause advocacy and think about what makes people change their behavior. We're at a point now where we can survey the change in opinions and attitudes about marriage equality and think about how change happens. Some believe a key step to achieving greater equality is reaching people's hearts (seeing the effects on laws and policies on family and friends), and not just trying to appeal to an abstract idea of rights-based justice.¹ The same principle applies to LGBT children in foster care. There is an important body of legal research about LGBT children in foster care that gives us data about their experiences and insight into why their outcomes tend to be so negative.² It is troubling that mainstream culture does not prioritize mobilizing people to help prevent abuse, sexual

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1. See *Heads and Hearts: What Victorious Gay-Marriage Campaigners Can Teach Others*, THE ECONOMIST, Feb. 1, 2014, available at <http://www.economist.com/news/united-states/21595464-what-victorious-gay-marriage-campaigners-can-teach-others-heads-and-hearts>.

2. See, e.g., Talia Yasmeen Stoessel, *Addressing the Harm of Silence and Assumptions of Mutability: Implementing Effective Non-Discrimination Policies for Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Foster Care*, 17 U. C. DAVIS J. JUV. L. & POL'Y 79 (2013); see also Larisa Maxwell, *Fostering Care for All: Towards Meaningful Legislation to Protect LGBTQ Youth in Foster Care*, 1 TEX. A& M L. REV. 209 (2013); Miriam Aviva Friedland, *Too Close to the Edge: Lesbian, Gay, Bisexual, and Transgender Youth in the Child Welfare System*, 3 GEO. J. GENDER & L. 777 (2002).

assault, reparative therapy, and other similar experiences these children experience. I argue that LGBT children are not conceptually considered children in a way that would create a moral imperative for society to prevent the harms visited on them. What does it mean to be conceptualized as a child? How do we know if some children are not conceptualized as children in a meaningful sense according to the law?

To find answers to those questions, I interrogate parenting norms, specifically as they relate to children's sexuality and gender development. Parenting norms that are socially and legally enforced³ tell us which parents are good and what kind of childhood needs to be protected and nurtured. If we think about parenting as a project where people aim for certain outcomes in their children, shaping their behavior and by extension their children's behavior,⁴ we can see that there is an implicit belief that parents have the power to shape children and reach desired outcomes. The common belief that parents shape children's personalities comfortably coexists with the studies that show children's personalities are innate.⁵

Earlier in the symposium, when Dr. Megan Fulcher presented her research about how childhood outcomes are measured, I found myself jotting down the list of behaviors that parents engage in to produce good outcomes. Like many parents, I wonder if I'm doing everything I can to help my kids. Better yet, if a scientist can tell me how they measure good childhood outcomes, then I can modify my behavior and try to improve my kids' chances of turning out well. More than just producing good outcomes, such as "I want my child to be happy" or "I want a healthy child," the increasing pressure on parents to modify their behavior to produce certain kinds of children, tells society which children are favored and disfavored.

3. See generally Kary Moss, *Substance Abuse During Pregnancy*, 13 HARV. WOMEN'S L.J. 278 (1990) (showing that social enforcement of parenting behaviors are encouraging women who are pregnant to limit alcohol intake and smoking, moving away from corporal punishment for children, and heightened surveillance of children to protect them from predators).

4. See, e.g., KRISTEN RACE, *MINDFUL PARENTING: SIMPLE AND POWERFUL SOLUTIONS FOR RAISING CREATIVE, ENGAGED, HAPPY KIDS, IN TODAY'S HECTIC WORLD* 6–7 (2014); see also PO BRONSON & ASHLEY MERRIMAN, *NURTURESHOCK: NEW THINKING ABOUT CHILDREN* 6–7 (2011) (reviewing recent developments in parenting studies to posit that parenting behaviors are backfiring).

5. See generally ANN HULBERT, *RAISING AMERICA: EXPERTS, PARENTS, AND A CENTURY OF ADVICE ABOUT CHILDREN* 3–15 (2004) (reviewing experts' contradictory and confusing parenting advice); see also Kim Pearson, *Mimetic Reproduction of Sexuality in Child Custody Decisions*, 22 YALE J.L. & FEMINISM 66 (2010) (discussing the persistent belief that parents model behaviors for children).

Professor Elizabeth Emens considers this implicit valuation of childhood outcomes when she looks closely at how children with disabilities are framed as negative outcomes.⁶ She provides poignant examples of discomfort with disability, such as the statement: “If I had to live like you [referring to a disabled person], I think I’d kill myself.”⁷

As pressure to parent well mounts, there’s greater emphasis on children’s human capital⁸ rather than their participation as workers in society. Sociologist Viviana Zelizer described the shift in childhood from being “useful to priceless” in the nineteenth century as “sacralized childhood.”⁹ This term refers to the point in time when a child’s value changed from economic to sentimental. Protection of sacralized childhood continues to ratchet up, as evidenced by the intense pressure to produce good outcomes seen in parenting norms.¹⁰ If parenting norms are part of a system that promises to produce certain types of children, it is valuable to critique the system.¹¹ A critique helps reveal how the system necessarily produces less desirable outcomes¹² and what interventions can be designed for those who are treated as poor outcomes.

6. See Elizabeth Emens, *Framing Disability*, 2012 U. ILL. L. REV. 1383, 1389–90 (2012).

7. *Id.* at 1389.

8. See Jerry Z. Muller, *Capitalism and Inequality: What the Right and the Left Get Wrong*, FOREIGN AFFAIRS, March/April 2013, available at <http://www.foreignaffairs.com/articles/138844/jerry-z-muller/capitalism-and-inequality> (discussing how the family is the workshop for producing human capital as formal equality changes the workplace).

9. See VIVIANA A. ZELIZER, PRICING THE PRICELESS CHILD: THE CHANGING SOCIAL VALUE OF CHILDREN 1–5 (1994).

10. See JENNIFER SENIOR, ALL JOY AND NO FUN: THE PARADOX OF MODERN PARENTHOOD 9–10 (2014) (suggesting that sacralized childhood, the focus on children as future assets, and the growing emphasis on protecting the psychological well-being of children as reasons for increased pressures on parents).

11. See, e.g., MADELINE LEVINE, TEACH YOUR CHILDREN WELL xvii–xviii (2012) (providing concrete suggestions to parents about developing children’s growth and real well-being based on research that shows the negative impact that pressure to attain high achievements has on children’s lives.); BRIGID SCHULTE, OVERWHELMED: WORK, LOVE, AND PLAY WHEN NO ONE HAS THE TIME 32–33 (2014) (critiquing American parenting pressures, especially experienced by women who spend more time with their children than “mothers did in the 1960s” and who do more carework and housework than men); Sarah Kendzior, *How Baby Boomers Ruined Parenting Forever*, QUARTZ (Nov. 12, 2014), <http://qz.com/293849/how-baby-boomers-ruined-parenting-forever/> (critiquing parenting norms based on privilege so that “[h]elicopter parenting is opportunity hoarding repackaged as parental devotion”).

12. See KATHRYN BOND STOCKTON, THE QUEER CHILD, OR GROWING SIDEWAYS IN THE

Parenting norms tend to reflect gender norms.¹³ Mainstream parenting norms about childhood sexual and gender development affect how society perceives sacralized childhood. This, in turn, determines which children are pushed outside of sacralized childhood or fall through the cracks—helping us understand why LGBT foster children are treated as though they are less worthy of parental, state, and legal protections.¹⁴ LGBT foster children could be seen as a paradigmatic example of “despoiled” or “failed” outcomes when looking at parenting norms writ large as the means of producing “successful” children. If we reframe the problem of improving LGBT children’s experience in foster care to improving mainstream parenting norms, we might have a better understanding about how

TWENTIETH CENTURY 3 (2009) (positing that conservatives “juxtapose their children with ‘homosexuals’ to oppose LGBT advocacy, making homosexuality necessary to defining good outcomes for their children”); see also SCHULTE, *supra* note 11, at 33 (describing how “panic-inducing headlines on studies linking mothers’ employment to childhood obesity, slower learning, lower test scores, and risky behavior” may explain why parents never feel like parenting efforts are sufficient.)

13. See LISE ELIOT, *PINK BRAIN BLUE BRAIN: HOW SMALL DIFFERENCES GROW INTO TROUBLESOME GAPS—AND WHAT WE CAN DO ABOUT IT* 64–67, 70–72 (2009) (describing a study where female infants’ physical abilities were underestimated by their parents based on gender, and a study that suggests parents of male infants excuse slow language development because of gender); Judith H. Langlois and A. Chris Downs, *Mothers, Fathers, and Peers as Socialization Agents of Sex-typed Play Behaviors in Young Children*, *CHILD DEVELOPMENT*, Dec. 1980, at 1217 (observing parents’ use of negative language, withdrawing, or punishing boys for playing with a cooking sets and a dollhouse instead of with trucks and soldiers). For examples of popular parenting books about gender and parenting, see, e.g., PEGGY ORENSTEIN, *CINDERELLA ATE MY DAUGHTER: DISPATCHES FROM THE FRONT LINES OF THE NEW GIRLIE-GIRL CULTURE* 9 (2012); LEONARD SAX, *GIRLS ON THE EDGE: THE FOUR FACTORS DRIVING THE NEW CRISIS FOR GIRLS—SEXUAL IDENTITY, THE CYBERBUBBLE, OBSESSIONS, ENVIRONMENTAL TOXINS* 8–9 (2011) (critiquing cultural forces that negatively impact girls’ development, such as early sexualization, hyper-connectedness to online media, obsessive behavior, and environmental toxins); LEONARD SAX, *BOYS ADRIFT: THE FIVE FACTORS DRIVING THE GROWING EPIDEMIC OF UNMOTIVATED BOYS AND UNDERACHIEVING YOUNG MEN* 9–12 (2009) (critiquing cultural forces that may be contributing to boys increasingly being “adrift, flowing wherever the currents in the sear of his life may carry him—which may be no place at all”); NIOBE WAY, *DEEP SECRETS: BOYS’ FRIENDSHIPS AND THE CRISIS OF CONNECTION* 11–12 (2013) (studying and critiquing a culture that “refuses to see boys (and men, girls, and women) as more than a set of gender, and in the case of boys of color, racial stereotypes”); Emma Mustich, *‘The Mask You Live In’: Jennifer Siebel Newsom Documentary Will Examine Masculinity*, *HUFFINGTON POST* (July 16, 2013), http://www.huffingtonpost.com/2013/07/16/the-mask-you-live-in-jennifer-siebel-newsom-masculinity_n_3599812.html (discussing the relationship between gender norms surrounding masculinity and the upbringing of boys).

14. See Stoessel, *supra* note 2, at 85–89 (citing a study wherein 78% of youth reported it was unsafe to openly self-identify as gay or lesbian in group homes).

sexualized abuse¹⁵ and reparative efforts¹⁶ against LGBT foster children both operate to conceptually push children outside of sacralized childhood. If we can then change the boundary of sacralized childhood so that childhood itself is the qualifying factor that leads to protection, we could create the circumstances for widespread moral outrage. That moral outrage would lead to actions and practices that prevent childhood harms against all children rather than maintaining a system that offers safety for the select few who remain within the narrowly defined circle of protection.

I'll briefly give a little more detail about sacralized childhood and mainstream parenting norms. Then, I'll tie both together to show how they exert pressure on each other to determine which children may safely enjoy social and legal protections. Finally, I'll talk about the two main strains of negative outcomes experienced by LGBT foster children to consider how they are outgrowths of being pushed outside of sacralized childhood.

At the turn of the nineteenth century, the value of children changed from economic to sentimental.¹⁷ A child was no longer expected to contribute to the family's finances, but "provide love, smiles, and emotional satisfaction."¹⁸ With this shift came laws and policies that were geared towards the protection of childhood, like child labor laws and a separate juvenile criminal system.¹⁹ Some track this shift in value with the creation and sentimentalizing of childhood sexual innocence because children were defined against adults, as developing into adults, and as being relatively less formed.²⁰ Sacralized childhood now means something more than just loving your child instead of expecting your child to contribute to household finances. Parenting norms tell us that there is a persistent valuation of the

15. See Friedland, *supra* note 2, at 802–03. Interviews with LGBT youth in foster care reveal that LGBT youth in out-of-home care face sexual assault, pressure to provide sexual favors, intimidation, and harassment from other residents, foster parents, and group home staff. *Id.*

16. See Stoessel, *supra* note 2, at 89–90. Reparative therapy is based on the belief that sexual orientation can and should change so all children can be heterosexual. See *id.* Qualitative data shows that many LGBT youth have been "subjected to conversion or religious therapy by foster parents." *Id.*

17. See ZELIZER, *supra* note 9, at 1.

18. *Id.*

19. STOCKTON, *supra* note 12, at 16, 38.

20. See, e.g., GERALD P. MALLON, LET'S GET THIS STRAIGHT: A GAY AND LESBIAN AFFIRMING APPROACH TO CHILD WELFARE, 8 (2000) (observing that professionals who treat children believe that children are too young to have a sexual orientation at the same time they believe they are heterosexual).

interaction between parents and children to help shape childhood outcomes.²¹

Sacralized Childhood, It's Not for Everyone

Parenting norms aimed at protecting childhood²² have been ratcheting up, resulting in helicopter,²³ tiger,²⁴ free range,²⁵ and high intensity parents.²⁶ In addition to increasing protection for childhood, these parenting norms are increasingly concerned with producing certain outcomes in children, simultaneously promising and threatening that parental behaviors will support positive outcomes.²⁷ In ratcheting up the pressure to conform to social norms, the line between desired and disfavored outcomes becomes stronger.²⁸ Many of these norms are not just socially enforced, but are

21. See Kim H. Pearson, *Chemical Kids*, 24 TEX. J. WOMEN & L. (forthcoming 2014) (manuscript at 8–12) (discussing parenting norms that encourage parent-child interactions as a method of improving childhood health and educational outcomes).

22. See *id.*

23. See Katie Roiphe, *The Seven Myths of Helicopter Parenting*, SLATE (July 31, 2012), http://www.slate.com/articles/double_x/roiphe/2012/07/madeline_levine_s_teach_your_children_well_we_are_all_helicopter_parents.html (responding to the Madeline Levine parenting book and arguing that helicopter parenting is a natural response to the heightened anxiety that surrounds parenting now).

24. See AMY CHUA, BATTLE HYMN OF THE TIGER MOTHER 3–5 (2011). In her humorous memoir, Chua coined the term “Tiger” parent to describe strict, success-driven parenting that runs counter to less strict “Western” parenting.

25. Lenore Skenazy, *Raising a Free-Range Kid*, PBS PARENTS <http://www.pbs.org/parents/experts/archive/2010/02/raising-a-free-range-kid.html> (last visited Nov. 18, 2014) (advocating that parents allow their children to play and explore).

26. See Richard V. Reeves, *How to Save Marriage in America*, THE ATLANTIC, (Feb. 13, 2014), <http://www.theatlantic.com/business/archive/2014/02/how-to-save-marriage-in-america/283732/> (positing that college graduates are “reinventing marriage as a child-rearing machine for a post-feminist society and a knowledge economy”).

27. See Pearson, *supra* note 21, at 22–23 (using the example of rhetoric about pregnant women’s health choices to explain how parenting norms promise and threaten childhood outcomes). Warnings to women include promises that if women do not smoke, their children will be healthier. *Id.* This promise simultaneously threatens those who smoke while pregnant with social stigma, possible criminalization, and negative health effects for children. *Id.*

28. See David Rosenberg, *In Kids’ Rooms, Pink Is for Girls, Blue Is for Boys*, SLATE (Apr. 9, 2013), http://www.slate.com/blogs/ behold/2013/04/09/jeongmee_yoon_the_pink_and_blue_project_examines_the_gender_specific_marketing.html (highlighting artist JeongMee Yoon’s “The Pink and Blue Project” which critiques the gender-specific marketing color schemes for boys and girls by photographing children with their things in their homes); Dr. Phil, *My 5-Year-Old Son Prefers Girls’ Clothing and Toys*, DR. PHIL.COM

beginning to be legally enforced, as well. Consider how we treat women who smoke, drink or use drugs during pregnancy; they are criminalized and may have their children removed from their custody.²⁹ There have been cases where children who are overweight have been removed from their homes,³⁰ mothers have been arrested for allowing children to walk to parks³¹ or play outside,³² and a mother arrested for neglect related to veganism.³³ The legal enforcement of parenting norms based on desired childhood outcomes illustrates which childhood qualities are worthy of protection. In the examples I gave, there is a health, or safety basis for encouraging parents to modify behaviors.³⁴ Society at large considers it is better for children not to be exposed to chemicals while in utero and that a healthy weight is better for a child's development. The medicalization of gender identity and sexual orientation continues as it has for generations.³⁵ There are many theories for variant human sexuality. Implicit in parenting

(Dec. 13, 2002), <http://www.drphil.com/articles/article/258> (describing a parent's concern about her young son's preference for playing with Barbie and wearing girl's clothes); Mustich, *supra* note 13.

29. See, e.g., Dorothy Roberts, *Punishing Drug Addicts Who Have Babies*, 104 HARV. L. REV. 1419, 1425 (1991) (arguing that the increasing attempts to criminalize women who use controlled substances during pregnancy targets women, especially African American women, reinforces racist hierarchies and infringes on constitutionally protected reproductive rights;).

30. See Gaia Bernstein & Zvi Triger, *Over-Parenting*, 44 U.C. DAVIS L. REV. 1252, 1261 n. 179 (2011).

31. See Jessica Grose, *Parents Aare Now Getting Arrested for Letting Their Kids Go to the Park Alone*, SLATE (July 15, 2014), http://www.slate.com/blogs/xx_factor/2014/07/15/debra_harrell_arrested_for_letting_her_9_year_old_daughter_go_to_the_park.html (arguing that arresting a parent for allowing her child to walk to the park based on fear of abduction is overreaching by the state.)

32. See Matt Harrigan, *Texas Mom Arrested for Letting Kids Play Outside*, SYRACUSE (Sept. 20, 2012), http://www.syracuse.com/news/index.ssf/2012/09/texas_mom_arrested_for_letting.html (reporting a mother arrested for child endangerment when her children were allegedly unsupervised while playing with motorized scooters).

33. See Mary Elizabeth Williams, *Is Veganism Child Abuse?*, SALON (June 26, 2014), http://www.salon.com/2014/06/26/is_veganism_child_abuse/ (reporting a mother arrested for child neglect because her vegan lifestyle led to her infant's dehydration).

34. See *Tobacco Use and Pregnancy*, CTR. FOR DISEASE CONTROL AND PREVENTION (Jan. 28, 2014), <http://www.cdc.gov/reproductivehealth/TobaccoUsePregnancy/>; *Smoking, Alcohol, and Drugs*, MARCH OF DIMES (July 2012), <http://www.marchofdimes.com/pregnancy/alcohol-during-pregnancy.aspx#>.

35. See AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM-5) (5th ed. 2013) (defining transgender as "gender dysphoria"). Previous editions of the DSM defined homosexuality as a mental disorder and transgender as "gender identity disorder."

norms is the belief that the parent's behavior to some degree is related for the child's outcome.³⁶

If we consider how children's lives in the mainstream imagination have changed from rambling about in the neighborhood to being under constant supervision, some of this change could be laid at the feet of one of the greatest parental fears—the kidnapping and death of a child.³⁷ Even cultural nostalgia about time periods with less intensive parenting, as seen in films like *The Lovely Bones*³⁸ or *Mystic River*,³⁹ are characterized as fraught with rape and death as though violence has always been perpetrated against children, but parents did not always try to protect children like they do now. Professor Kathryn Stockton comments that laws are better aimed at preventing childhood sexual assault than at preventing childhood poverty.⁴⁰ If we look at law and society, there is a strong investment in defining childhood as being devoid of sexuality—and that sexuality develops gradually with age;⁴¹ therefore, disrupting the process is criminal.

36. See Michael C. LaSala, *Gay Men and Their Mothers: Is There a Special Closeness?*, PSYCHOLOGY TODAY (Aug. 23, 2011), <http://www.psychologytoday.com/blog/gay-and-lesbian-well-being/201108/gay-men-and-their-mothers-is-there-special-closeness> (discussing guilt that mothers feel about their children's outcomes); Neil Swidey, *What Makes People Gay?*, UCLA BRAIN RESEARCH INSTITUTE (Aug. 12, 2005), http://www.bri.ucla.edu/bri_weekly/news_050812.asp (overviewing various theories and evidence about the etiology of homosexuality, including the Freudian theory that overprotective mothers and distant fathers were responsible for homosexuality).

37. The tragic story of Jessica Ridgeway's abduction and death is an example of the consistent media coverage about kidnapping as it pertains to parental fears. See Amanda Paulson, *Jessica Ridgeway abduction: Getting a grip on the parenting overreaction*, CHRISTIAN SCIENCE MONITOR (Oct. 15, 2012), <http://www.csmonitor.com/The-Culture/Family/Modern-Parenthood/2012/1015/Jessica-Ridgeway-abduction-Getting-a-grip-on-the-parenting-overreaction>.

38. *THE LOVELY BONES* (Paramount Pictures 2009).

39. *MYSTIC RIVER* (Warner Brothers 2003).

40. See Stockton, *supra* note 12, at 62.

41. See CAITLIN RYAN, FAMILY ACCEPTANCE PROJECT, SUPPORTIVE FAMILIES, HEALTHY CHILDREN: HELPING FAMILIES WITH LESBIAN, GAY, BISEXUAL & TRANSGENDER CHILDREN 16 (2009) (describing the confusion some parents have in understanding sexual orientation in childhood sexual orientation). "Many parents assume that children know they are heterosexual from early childhood. But parents assume - wrongly - that their children have to be adults before they know they are gay." *Id.*; see also Stockton, *supra* note 12, at 30–31 (discussing childhood innocence supported by the American legal system, "the child who, on its path to normativity, seems safe to us and whom we therefore seek to safeguard at all cost"). There are a number of books that express anxiety about young girls' premature manifestations of sexuality and early sexualization. See generally SAX, *supra* note 13; M. GIGI DURHAM, *THE LOLITA EFFECT: THE MEDIA SEXUALIZATION OF YOUNG GIRLS AND WHAT WE CAN DO ABOUT IT* (2008); DIANE E. LEVIN & JEAN KILBOURNE, *SO SEXY SO SOON: THE*

By the same token we see overly determined narratives about gender development. A popular narrative about gender development is that parents who give boys blue clothes and action figure toys and girls pink clothes and dolls will be more likely to have children who develop into gender normative boys and girls. Even though parents have been taught to see a connection between gender norms and gender development, some parents raise concerns that girls are princess-ized⁴² and boys are warrior-ized.⁴³ Children's toys, clothing, school supplies, bedding, and utensils are all helpfully color-coded. Implicit in gender narratives is the expectation and hope that the children following the prescribed gender path will assume their natural heterosexual gender identity.⁴⁴ Obviously, there is resistance to gender stereotypes, with some variation at the margins for boys who like to cook in pink Easy-Bake Ovens⁴⁵ and girls who like to build life size Rube Goldberg machines.⁴⁶ But for the most part, it seems as though

NEW SEXUALIZED CHILDHOOD AND WHAT PARENTS CAN DO TO PROTECT THEIR KIDS, 2009).

42. See ORENSTEIN, *supra* note 13, at 13–15 (providing a history of the Disney promotional scheme rebranding animated female characters under the Princess umbrella). Disney's marketing strategy was then followed by Mattel and Nickelodeon. *Id.*; SHARON LAMB & LYN MIKEL BROWN, PACKAGING GIRLHOOD: RESCUING OUR DAUGHTERS FROM MARKETERS' SCHEMES (2007).

43. See Cordelia Fine, *Why Are Toys So Gendered?*, SLATE (Apr. 5, 2014), http://www.slate.com/articles/health_and_science/new_scientist/2014/04/girl_and_boy_toys_childhood_preferences_for_gendered_toys_are_not_innate.html ("It's not just that vehicles, weapons, and construction sets are presented as 'for boys' . . . Toys for boys facilitate competition, control, agency, and dominance."); C.J. Pascoe & Tristan Bridges, *Stop the War on Pink—Let's Take a Look at Toys for Boys*, GIRL W/PEN (Jan. 1, 2014), <http://thesocietypages.org/girlwpen/2014/01/01/stop-the-war-on-pink-lets-take-a-look-at-toys-for-boys/> (arguing that the "gunnification of boys culture" is not discussed because of parental fear of "boys' gender transgressive behavior."); Anita Sarkeesian, *LEGO & Gender Part 2: The Boys Club*, FEMINIST FREQUENCY (Feb. 6, 2012), <http://www.feministfrequency.com/2012/02/lego-gender-part-2-the-boys-club/> (suggesting that LEGO toys are exclusively aimed at boys and the focus has shifted from building to fighting and conflict.)

44. See Stockton, *supra* note 12, at 3, 30.

45. See Linsey Davis, *Boy-Friendly Easy Bake Oven: Teen Girl Goes to Bat for Little Brother*, ABC NEWS (Dec. 18, 2012), <http://abcnews.go.com/US/boy-friendly-easy-bake-oven-teen-girl-bat/story?id=18003828> (recounting a story of a girl's petition to Hasbro seeking neutral color schemes to encourage boys to cook in the Easy-Bake Oven).

46. See Laura Hudson, *How Goldieblox Made the Amazing Rube Goldberg 'Princess Machine' in Its Viral Video*, WIRED (Nov. 23, 2013), <http://www.wired.com/2013/11/goldieblox-video-rube-goldberg/> (discussing a toy company's ad for "products [that] help teach young girls about engineering principles" featuring a giant Rube Goldberg machine).

mainstream gender norms for children are narrowing at a time when we see more acceptance for adult LGBT marriage and anti-discrimination rights.⁴⁷

Part II—Despoiled and Wayward Children

As we tie together the culture of highly focused parenting with the promise of producing pre-defined, implicit “successful” outcomes,⁴⁸ we are in danger of unintentionally devaluing children who experience alternative outcomes. If mainstream parenting culture continues to reaffirm that heterosexual, gender conforming children are the desired outcome, then variance in children’s outcomes remains negative instead of being neutral. Relatedly, some parents of LGBT children “grieve for the loss of the presumed heterosexual child and all that accompanies that dream.”⁴⁹ Mourning a heterosexual, gender-conforming child who might have been accounts for some parental rejection, just as religious adherents who oppose LGBT advocacy account for the rejection of LGBT children from faith communities. But, large-scale parenting norms may also be undergirding persistent intuitions that LGBT children are a result of failed parenting. Parents who drive out or reject their LGBT children could be seen as parents under the stress of strict gender norms whose parenting efforts have failed to produce the desired outcome of straight, gender-conforming children.

In contrast to the level of care mainstream parenting discourse demands of parents to protect children, LGBT children are conceptually, and often physically, stripped of parents,⁵⁰ and displaced from the realm of

47. *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013) and *United States v. Windsor*, 133 S. Ct. 2675 (2013) are landmark cases for marriage equality. Currently, a growing percentage of states recognize same-sex marriage, have enacted anti-discrimination statutes, or have cases pending to determine the issue. See *States*, FREEDOM TO MARRY (updated Dec. 4, 2014), <http://www.freedomtomarry.org/states/> (providing an interactive map showing states that have enacted same-sex marriage laws); *Non-Discrimination Laws: State by State Information – Map*, ACLU, <https://www.aclu.org/maps/non-discrimination-laws-state-state-information-map> (last visited Dec. 12, 2014) (showing states that have enacted LGBT anti-discrimination laws); *Marriage Litigation*, FREEDOM TO MARRY, <http://www.freedomtomarry.org/litigation> (last visited Dec. 12, 2014) (listing jurisdictions in which same-sex marriage cases are pending).

48. See Friedland, *supra* note 2, at 792–94, (relating LGBT youths’ experiences with parental rejection).

49. *Id.* at 792.

50. See Laura E. Durso & Gary J. Gates, *Serving Our Youth: Findings from a National Survey of Service Providers Working with Lesbian, Gay, Bisexual, and Transgender Youth*

sacralized childhood. The conceptual displacement outside of sacralized childhood may be connected to the nature of care extended to LGBT children living out of their homes. The expressions of outright rejection from stable, adult care⁵¹ at one end of the spectrum of care, and attempts by adults to reform and repair children at the other,⁵² reflect common parental attitudes and responses to LGBT children—tough love and reparative therapy.

LGBT children's experiences and outcomes could be said to embody social anxiety around sexualized children and expectations about parental abilities to determine children's outcomes.⁵³ According to researchers with the Child Welfare League of America, "[m]any parents view their adolescent or preadolescent child's expression or exploration of sexuality as premature and dangerous, and they believe it is their responsibility to suppress or delay the child's sexuality—whatever form it takes."⁵⁴ LGBT children subjected to this worldview may become proxies for a disfavored, spoiled childhood as a "parent's distress is exacerbated when [his or her] child explores or claims a sexual identity that the parent views as deviant or morally repugnant."⁵⁵ The treatment of these outcomes, rather than being treated as positive, desirable outcomes, suggests that non-normative sexual orientation and gender identity outcomes are deserving of treatment reserved for despoiled and wayward children. In regards to foster care, there is concern that children pay the price for societal investment in rehabilitating parents; perhaps that children are just cycling in and out of foster care to satisfy parents' rights advocacy at the expense of children.⁵⁶

Who are Homeless or At Risk of Becoming Homeless, THE WILLIAMS INST. 1, 3–4 (July 2012), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf> (finding that between 30% - 40% of youth served by homeless youth organizations are LGBT).

51. See *id.* at 4 (finding that family rejection and being forced from their homes was the reason most LGBT youth cited for their homelessness).

52. See Stoessel, *supra* note 2, at 85–87; see also Maxwell, *supra* note 2, at 214–15 (“Moral, often religious, opposition to homosexuality may lead foster parents to put LGBTQ youth through reparative therapy, also known as conversion therapy . . . [which] involves procedures thought to cure homosexuality.”).

53. See SHANNAN WILBER ET AL., CWLA BEST PRACTICE GUIDELINES 17 (2006).

54. *Id.*

55. See *id.*; see also Stoessel, *supra* note 2, at 97 (“A common attitude is that it is ‘too soon’ for youth to identify as lesbian, gay or bisexual.”).

56. See John Sciamanna, *Reunification of Foster Children with Their Families: The First Permanency Outcome*, STATE POL’Y ADVOCACY AND REFORM CTR. 3 (Oct. 2013), available at <http://childwelfareparc.org/wp-content/uploads/2013/11/Reunification-of-Foster-Children-with-their-Families.pdf> (noting that 12% of children reenter foster care

LGBT children may not be viewed with the same compassionate lens, which suggests that some parents may feel there is a justifiable basis for rejecting LGBT children or that there is shame when a child's sexual or gender identity is non-normative.⁵⁷ Sadly, the most "frequently cited factor[s] contributing to LGBT homelessness" are family rejection of a child's sexual and gender identity and being forced out of the family home.⁵⁸

If mistaken beliefs about childhood sexual innocence and sexual orientation are conflated or confused, then perhaps children who identify as LGBT are subject to further abuse, often sexual in nature,⁵⁹ because the dominant narratives about children who are sexual is that they are no longer "wholesome," "innocent," and deserving of protection.⁶⁰ Further confusion about the risks LGBT children pose to other children causes adults to treat them as perpetrators or recruiters.⁶¹ LGBT children, instead of being viewed as victims of sexualized abuse, are seen as inherently sexualized. This failure to recognize their status as children first could be related to the poor treatment they receive.⁶²

Similarly, mistakenly caring more for the possibility of a child's outcome rather than the child itself could be a reflection of efforts to shape children.⁶³ The Substance Abuse and Mental Health Services Administration notes that parents' actions are based on what they know and learn from sources like friends, religion, and providers.⁶⁴ When parents

within 12 months of leaving foster care).

57. See WILBER ET AL., *supra* note 53, at 17.

58. See Durso & Gates, *supra* note 50, at 4.

59. See Friedland, *supra* note 2, at 802–03.

60. See Pearson, *supra* note 21, at n. 233 (discussing the treatment of underage sex workers who are often charged, convicted, and jailed for sex crimes rather than receiving treatment consistent with a child victim of sex crimes.)

61. See Friedland, *supra* note 2, at 801 (describing the homophobic reactions of some foster families who express concerns that their LGBT foster child may molest their biological children).

62. See, e.g., *id.*, at 802 for accounts of LGBT youth in foster care being "targeted for verbal harassment, physical intimidation, and sexual favors by the other residents." In other instances, LGBT youth may be perceived as a sexual threat to other children resulting in discriminatory placements and fear about a child's effect on other children. See Maxwell, *supra* note 2, at 213–14.

63. See generally STEVEN PINKER, THE BLANK SLATE: THE MODERN DENIAL OF HUMAN NATURE 381–92 (2003), for an argument against parental behaviors determining children's outcomes.

64. See CAITLIN RYAN, SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., A PRACTITIONER'S RESOURCE GUIDE: HELPING FAMILIES TO SUPPORT THEIR LGBT CHILDREN, 8

receive misinformation or believe gender nonconformity and variant sexuality are negative outcomes, they try to prevent those outcomes.⁶⁵ Reparative therapy as expressions of love for children who have chosen to stray—helping them return to the natural, non-disrupted path towards gender conformity and heterosexuality—has been supported by religious groups.⁶⁶ According to this view, LGBT support groups are not neutral; they are framed as a method for diverting a child from a natural (heterosexual, gender-conforming) developmental path through “encouragement” or “support” in becoming LGBT.⁶⁷

This attitude of redirecting or waiting for children to finish their development without any disruption manifests in the treatment experienced by LGBT youth in foster care. It is not surprising that popular beliefs about parenting extend beyond the point when children are in the care of their parents and into state care where the state is expected to deliver care in lieu of parents. Just as the popular cultural idea of parenting as a mechanism or machinery that promises good outcomes if certain protocols are followed, the belief that children’s development can be redirected by affecting the child’s behavior fits within highly focused parenting logic. Whether it is treating children as despoiled through rejection and sexual assault, or as wayward through conversion therapy, it would be better for the treatment from both ends of the care spectrum to be understood as the fallout of parenting behaviors that purport to affect children’s developmental outcomes rather than the best or natural response to non-normative childhood outcomes.

Conclusion—Best Practices for All Children

Professor Clifford Rosky argues that the state should be outcome neutral when it comes to children’s sexuality.⁶⁸ I build on that argument by focusing on parenting norms as part of the cultural and legal background against which parents and the state, in a parental capacity, make decisions. Targeting parenting norms more broadly so that we do not have only the dismaying end result—LGBT children in foster care, runaways, or

(2014).

65. *See id.*

66. *See* Stoessel, *supra* note 2, at 89–90.

67. *See id.*

68. *See* Clifford J. Rosky, *Fear of the Queer Child*, 61 BUFF. L. REV. 607, 612 (2012).

suicides—could help us think about prevention, but it also reinserts parenting into the dialogue about children’s developmental paths and forces us to think about the state in its role as parent. When the state acts as a parent for children in the child welfare system, the state does not act without reference to parenting norms. This returns us to Currey Cook’s⁶⁹ point about the programming in Utah for LGBT youth. He framed it as a bit surprising that Utah, which has a reputation for being opposed to same-sex marriage, should have better outcomes for LGBT youth in foster care than other systems. He cited the program’s commitment to best practices for all children as the reason behind the outcomes. This is an implementation of a state being outcome neutral and placing the protections around children rather than picking and choosing which children to protect. Aiming interventions at parenting norms that seek to produce certain outcomes in children provides a way to help parents and the state take a neutral stance on childhood sexual orientation and gender identity outcomes. Rather than conceptualizing children as sole actors developing in a vacuum or suffering alone at the hands of the state in the case of child welfare, intervening at the level of parenting norms writ large can help move the boundary of sacralized childhood to rest on the line between childhood and adulthood rather than simply between children we favor or disfavor.

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