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The Christian Influence Over Secular Understandings of Marriage in the United States: A Critical Analysis of Augustinian Theology

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THE CHRISTIAN INFLUENCE OVER SECULAR UNDERSTANDINGS OF MARRIAGE IN THE UNITED STATES: A CRITICAL ANALYSIS OF AUGUSTINIAN THEOLOGY

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In matters that are obscure and far beyond our vision, even in such as we may find treated in Holy Scripture, different interpretations are sometimes possible without prejudice to the faith we have received. In such a case, we should not rush in headlong and so firmly take our stand on one side that, if further progress in the search of truth justly undermines this position, we too fall with it. That would be to battle not for the teaching of Holy Scripture but for our own, wishing its teaching to conform to ours, whereas we ought to wish ours to conform to that of Sacred Scripture.

- St. Augustine

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Introduction

September 1, 1996 marked the first time the United States put forth a legal definition of marriage, through the Defense of Marriage Act (DOMA). Marriage, Congress posits, is "only a legal union between one man and one woman as husband and wife."[1] DOMA was the direct, federal response to the litigation of same-sex marriage in Hawaii, it effectively denied homosexual couples marital recognition and delegitimized previous marital ceremonies performed.[2] DOMA aimed to restrict the concept and practice of marriage to heterosexual and monogamous couples. The federal enactment of DOMA prompted states to enforce the traditional union between one man and one woman.[3] As a result of DOMA, no U.S. states recognized same-sex marriage until 2003.[4]

In 2013, an important section of DOMA that restricted marriage to heterosexual couples was struck down. Despite the progress made in granting homosexual couples the right to marry, the original DOMA continues to define contemporary connotations of marriage. The very formation of DOMA suggests that there is a specific form of marriage that is acceptable for practice in the United States.

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[1] U.S. House. 104 Congress, 2nd session. *H.R. 3396, Defense of Marriage Act.* ONLINE. GPO Access. Available: http://www.gpo.gov/fdsys/pkg/BILLS-104hr3396enr/pdf/BILLS-104hr3396enr.pdf [5 November 2014].

[2] Until the late twentieth century, homosexuals lived in fear of hatred and loss of rights such as "loss of employment, social ostracism, loss of professional license (including the license to practice law), police harassment, and possibly even imprisonment and rape within prison" solely based on their sexual orientation, see William N. Eskridge Jr., "Backlash Politics: How Constitutional Litigation Has Advanced Marriage Equality in the United States," *Boston University Law Review* 93 no. 275 (2013): 276, accessed October 14, 2014.
Even the nation's military prohibited gay, lesbian, and transgender individuals from openly enlisting in the military. The government created a framework where discrimination was socially acceptable under the "Don't Ask, Don't Tell" (DADT) policy of 1993. DADT was repealed only recently on December 22, 2010, see U.S. Army, "Don't Ask, Don't Tell", accessed November 11, 2014, http://www.army.mil/dadt/.

[3] William N. Eskridge Jr., "Backlash Politics," 284.

[4] 18 November 2003 marks the first time same-sex marriage was legalized in the U.S., by Massachusetts. ProCon.org, "Gay Marriage: Pros and Cons," accessed October 13, 2014. http://gaymarriage.procon.org/view.timeline.php?timelineID=000030.

In this thesis, I seek to contextualize the exclusivity of traditional marriage presented by DOMA. I investigate the use of Christian beliefs applied to the American legal system, consequently becoming the foundation of American commonsense. I draw out the ways in which Augustinian thoughts on marriage have inadvertently been used to justify institutional favoritism toward heterosexual, monogamous couples. Through examining the Christian-American lens that shapes our understanding of traditional marriage, I argue that previous and current *secular* opposition to non-traditional marriage is fundamentally grounded in Christian faith, furthermore, American cultural understanding of marriage is unconsciously lined with Augustinian thought.

I focus on how Christian marital practices that carry Augustinian ideals historically parallel the American understanding of marriage, closely examining the blurred line between the Christian and civil practice of marriage. The blurring of the line arises when this Christian framework is imposed on the non-Christian and non-traditional public through institutional, economic, and social favoritism toward traditional couples.[5]

In this thesis, I seek to paint a picture of a nation that has integrated Christian values into the very fabric of its culture. By specifically looking at marriage, I show how American beliefs are not only Christian but also uniquely Augustinian. I am not asserting that Augustinian beliefs were knowingly implemented into American culture, but I seek to show how it was Augustinian thought that justified legislation on traditional marriage and pervaded into American commonsense. I will unpack Augustine's three goods of marriage and show the ways in which each good has been

[5] Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2002), 11.

applied in legislation through one's cultural commonsense. Then I will take each Augustinian good of marriage and link it to its significance to the heart of marriage: friendship.

Learned "Commonsense"

In this section, I show how American commonsense is uniquely Christian, which has been used to enforce traditional marriage principles. Socialization in the United States, includes not only assimilation in the form of Americanization, but also to a certain extent, "Christianization."

What is Commonsense?

Before delving into the heart of my argument, I analyze a study conducted by American anthropologist Clifford Geertz to illustrate how commonsense is a cultural construct. In *Religion as a Cultural System,* Geertz evaluates key symbols in specific cultures. He studies these symbols from a psychological context by looking at different social categories, including the commonsensical.[6] By creating this category, Geertz is identifying commonsense as a particular product of culture that can be objectively compared to another culture's commonsense.[7]

Geertz shows the cultural formation of commonsense by analyzing people of three different cultures and their perception of sexuality and gender. He evaluates the Navaho, Pokot, and American responses to the birth and life of intersexual human beings. Intersexual humans comprise "about two or three percent of human beings",[8] generally characterized by, but not restricted to, both male and female traits including external genitalia and breasts.[9] The Navaho culture glorifies intersexual humans with

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[6] Cott, *Public Vows,* 110-111.
[7] Clifford Geertz, "Common Sense as a Cultural System," *The Antioch Review* 33 no.1 (1975): 8, accessed November 30, 2014, doi: 10.2307/4637616.
[8] Geertz, "Common Sense," 13.
[9] Ibid.

"marvel-and-respect."[10] They are believed to possess all knowledge and wisdom, existing in both maleness and femaleness.[11] On the other hand, the Pokot people of an East African tribe reject intersexual humans and brand them as "simple errors."[12] As a result, they are either killed at birth or ostracized by society.[13] Finally, Americans neither praise nor neglect intersexual humans, they simply go unacknowledged as a category of gender; if acknowledged, exposure to an intersexual human may result in "horror."[14] Americans pressure intersexual humans to suppress their sexuality at a young age by choosing a single gender role and even undergoing surgery.[15] Through these three cultural responses, Geertz shows how a commonsensical category as basic as gender is learned by one's surroundings.

Geertz wonderfully portrays the way in which commonsense is a cultural category of learned responses based on one's surroundings. This is important to recognize in order to understand one's own commonsensical responses, which may seem natural to oneself and the context in which one responds. Geertz suggests that commonsense "is what the mind filled with presuppositions…concludes."[16] These presuppositions induced by cultural components—such as politicians, society, educational institutions, and the media—shape one's commonsense.

Taking Geertz analysis of commonsense one step further, others has suggested that American commonsense is also Christian. Professors Ann Pelligrini and Janet Jakobsen assert that Americans have not truly liberated their minds from Christian thought, but have reframed modern secular principles so as to fit traditional religious values. They posit, "secularization has not so much meant the *retreat* of a

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[10] Ibid., 16.
[11] Ibid., 15.
[12] Ibid., 16.
[13] Ibid.
[14] Ibid., 14.
[15] Ibid.
[16] Ibid., 16.

religion from the public sphere as its *reinvention*."[17] Pelligrini and Jakobsen suggest that religion continues to play a large role in shaping social norms and morals; which are maintained by "tolerating" or coexisting with people of other walks and result in "structural inequality."[18] Their claim is supported by the fact that the majority of Americans believe religion to be "fairly important" in their lives, the most practiced religion in the United States is Christianity.[19] The American participation in religious activities, in addition to the institutional implementation of Christian morals, produces social compliance that integrates Christian beliefs into one's daily life.[20]

In the United States, political actors also play a role in shaping one's Christianized commonsense, particularly in regards to marriage. Although marriage may present itself as a neutral, institutional structure, the very definition and exclusivity of marriage parallels the Christian understanding. The U.S. Bill of Rights was drafted in 1791, guaranteeing citizens rights such as freedom of religion. Despite the fact that this is an unchanging and fundamental documented right, the application of this right has been subject to the interpretation of those in office. The American Constitution is not only a system of laws but also a system of humans. It is a system shaped by human interpretation, which leaves it susceptible to manipulation of those in power.

The reality of nineteenth century America revealed little separation between the Protestant Christian Church and the secular State. Every state in America identified as Protestant, thus, the men who controlled the state were unanimously

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[17] Janet Jakobsen and Ann Pellegrini, *Love the Sin: Sexual Regulation and the Limits of Religious Tolerance* (New York: New York University Press, 2003), 21.
[18] Ibid., 58.
[19] Linda J. Waite and Evelyn L. Lehrer, "The Benefits from Marriage and Religion in the United States: A Comparative Analysis," *Population and development review* 29 no.2 (2003): 285, accessed December 1, 2014, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2614329/.
[20] Jakobsen, *Love the Sin,* 50.

Protestant Christians and naturally argued from the Christian framework.[21] In the early Republic, society was susceptible to Protestant values by,

> Not only the shape of the laws…but also the nature of the debates, which seemed unconcerned about the rights of religious minorities as we understand them today, but certainly concerned about the powers of diverse Protestant religious communities, who were unequally vested in the powers of state.[22]

Within the political realm, there was no question that Christian morals premised political debates. Protestant communities were encouraged to "be Protestant," by acting Protestant and exercising Protestant beliefs both inside and outside the home. On the other hand, non-Protestant communities were to practice their beliefs in private. The Mormon community was only allowed to be Mormon in theological beliefs but was restricted from freely practicing all tenets of Mormon faith.

The homogeneity of the Protestant population "othered" non-Christian walks of life. Othering drew a thick line between "us" and "them" as an effective way to suppress a group of people by dehumanizing, demeaning and demonizing another group.[23] University of California, Santa Barbara Religious Studies Professor Phillip Hammond refers to American othering as "Republican Protestantism," "based on the notion not only that Protestant Christianity was the only tradition represented in society, and not only was it the only one worth being represented in society, but also that it was the only one with the wherewithal to build, improve, and maintain that

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[21] "The two other traditions practiced at this time were Catholicism, with a small minority, and Judaism with an even smaller number, see Phillip E. Hammond, David W. Machacek, and Eric Michael Mazur, *Religion on Trial: How Supreme Court Trends Threaten Freedom of Conscience in America* (Oxford: AltaMira Press, 2004), 48.
[22] Hammond, *Religion on Trial,* 48.
[23] Thomas Ryba and Vern Neufeld Redekop, *René Girard and Creative Reconciliation* (Plymouth: Lexington Books, 2014), 286.

society."[24] With this mentality, mainstream American society naturally and easily "othered" religious convictions while favoring Protestant beliefs and practices.

This was accomplished by passing certain laws and bills that reinforced Christian values on marriage. Defenders of traditional marriage have unconsciously employed explicit Augustinian traits that are linked to marriage, including monogamy,[25] heterosexuality, childbearing,[26] and indissolubility.[27] These values are advanced by the media, accepted by society and seamlessly transformed into a cultural norm, which have been created through a political agenda to carry a certain, Christianized sense of morality.

The American Interpretation of Marriage

An institution that most Americans expect to engage in, at some point in their lives, is marriage. The marital union has traditionally consisted of one male and one female coming together, with the intention of sharing lives and building a family. This institutional notion matches the Christian practice where the married, heterosexual couple becomes "one flesh" under the law, pooling together resources and finances, and being absorbed into one person—"the husband."[28] This type of marital framing was justified on the grounds of the Christian will.[29]

Beginning in the nineteenth-century, there was a shift in the cultural understanding of marriage that challenged its patriarchal structure.[30] Gender roles and criteria of marriage were challenged in the twentieth-century. The rise of the free

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[24] Hammond, *Religion on Trial,* 48.
[25] The one trait that has been accepted by the entire American public, including the formal body of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS), is monogamy, see Cott, *Public Vows,* 113.
[26] Cott, *Public Vows,* 124.
[27] Kristin Celello, *Making Marriage Work: A History of Marriage and Divorce in the Twentieth-century United States* (Chapel Hill: University of North Carolina Press, 2009), 16.
[28] Cott, *Public Vows,*11.
[29] Ibid.,10.
[30] Cott, *Public Vows,*11.

lovers advocated sex outside of marriage and sexual liberation, breaking away from traditional expectations of church and state. With an emphasis on love rather than institutional relationships, they sought to move pre-marital sex and sex without marriage from taboo to normality.[31] As a result, they began to delink sex and marriage. This added to the growing rate of adultery and infidelity, which became an insignificant matter to the government, shown by its little regulation. The idea of permanence began to fade away and divorce was legalized, moving the union of marriage from absolute permanence to potential permanence.[32]

In theory, however, the law continued to favor patriarchal, monogamous marriages by giving men more benefits and rights in the public sector. American historian Nancy Cott supported this claim with the contradiction between theory and practice of Congresspersons. The Economy Act of 1932 contained an "exclusionary trend with Section 213…which prohibited two people of the same family from holding federal employment at the same time…in practice Section 213 meant dismissing from federal jobs those wives whose husbands also worked for the government."[33] Although there was an institutional framework of gender equality, the patriarchal culture suggested otherwise.

In the mid-twentieth century, legal marriage had become an equal playing field for both men and women, eliminating institutionalized ideas of the patriarchy, gender roles, rights over the other's body, and permanence.[34] Marriage moved from having institutional guidelines and state regulation on morality to a private type of "malleable arrangement," shifting from institutionalized expectations to the couple's

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[31] Ibid., 69.
[32] Ibid., 48.
[33] Cott, *Public Vows,*173.
[34] Through the 1964 Civil Rights Act, women were given the right to work without being discriminated against, which gave both spouses the potential to be economically independent, see Cott, *Public Vows,* 174.

private desires in relationship.[35] However, the state maintained a theoretic standard of marriage to uphold its reputation of "national morality."[36]

I recognize there are other religions and people who endorse traditional marriage, similar to that of Christianity. Although the tradition of heterosexual, monogamous marriage is not unique to the United States, the understanding of traditional marriage stems from the Western practice of Christianity, but I will also show how that this understanding is specifically Augustinian.

Augustine on Marriage

I suggest that debates around traditional marriage, in particularly the nineteenth and twentieth-century, have employed the Christian-Augustinian notions of marriage. I juxtapose American marriage policies to the Augustinian goods of marriage, to show how the dominant understanding of marriage strongly parallels the thoughts of St. Augustine.

I have chosen to use St. Augustine's criteria on marriage to represent how the majority of American Christians understand traditional marriage. Augustine is a fourth century theologian from Roman Africa, with texts on marriage, sex, and faith. He is known for developing the way the Western Church has practiced Christianity by combining faith, truth, and intellect.[37] His works relating to marriage include *On the Good of Marriage, Confessions,* and *The Excellence of Marriage.* Augustine's perspective on marriage and faith were challenged by the Jovinians and Manicheans, and continues to be debated by modern-day philosophers and theologians. As a result of protests from different religious fronts, he offers a thorough analysis of marriage.

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[35] Ibid., 208.
[36] Ibid., 21.
[37] Ryan Topping, *St Augustine* (London: Continuum International Pub. Group, 2010), 5.

Grace

I begin with the crux of Augustinian theology, which is founded on grace. It is through grace that Augustine came to understand sexual purity. Grace is the Christian idea of God's redemption for humans, including the newfound ability to resist sinful temptations; it is the act of reforming and redeeming the fallen will.[38] Augustine shares his personal struggles with sexual temptation before offering ways to avoid sin in spite of one's own lust.

Augustine's best-known work and autobiography, *Confessions,* refers to his encounter with grace and escape from his sexual struggle and insatiable lust. As a man once controlled by lust, he has fully experienced the sinful draw of sex outside of marriage, which compelled him to take up sexual relationships with concubines.[39] Finally, he surrenders his fallen will and turns to grace. Augustine concludes that grace enables humans to exercise the good of their free will, as it empowered him to exercise morality in regards to sexual purity.[40]

Through his struggle, Augustine gains a new understanding of the functions of and expectations for a marriage. He asserts that an individual remains pure either through abstinence or sexual intercourse in a marital union.[41] The marital union offers an outlet for lust, while helping a person avoid acts of fornication and adultery.[42] Augustine's criteria for one's sexual purity in marriage is aimed at keeping a person sinless, while his principles of marriage aspire to create a strong companionship between husband and wife. In *The Excellence of Marriage,*

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[38] Carol Harrison, *Rethinking Augustine's Early Theology: An Argument for Continuity* (New York: Oxford University Press, 2008), 242.
[39] Augustine, *Confessions* (New York: Oxford University Press, 1998), 4.2.
[40] Augustine, *On Grace and Free Will,* trans. Peter Holmes and Robert Ernest Wallis (Buffalo, NY: Christian Literature Publishing Co., 1886), 8, accessed November 1, 2014. http://www.onthewing.org/user/Augustine%20-%20Grace%20and%20Free%20Will.pdf.
[41] Ibid.
[42] Ibid.

Augustine outlines the standards of marriage through three goods: offspring (*proles*), fidelity (*fides*), and sacrament (*sacramentum*).[43]

In this next section, I analyze the three goods of marriage and demonstrate how they are played out in the U.S. through legal cases and institutional structures.[44]

The Three Goods of Marriage

To Augustine, marriage is the strongest bond of friendship. Augustine describes friendship as "the bond that unites two persons in mutual sympathy" united through "human sympathy" and "the gift of the Holy Spirit through grace."[45] It is this bond of friendship that I draw on. Historically, the institution of marriage emphasized procreation, enforced fidelity, and made permanence difficult to escape through stringent divorce policies. However, with the progression of social norms, gender equality, and a general acceptance toward homosexual sexual orientation, marriage has shifted from indirectly drawing on Augustine's three goods institutionally implemented in the public realm to the good of friendship fostered in the private realm.

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[43] Augustine, "The Excellence of Marriage," in *The Works of Saint Augustine: A Translation for the 21st Century. Marriage and Virginity: The Excellence of Marriage, Holy Virginity, The Excellence of Widowhood, Adulterous Marriages, Continence*, ed. John E. Rotelle and trans. Ray Kearney, (New City Press: Hyde Park, NY, 1999), 30.

[44] Lisa Fullam, "Toward a Virtue of Ethics of Marriage: Augustine and Aquinas on Friendship in Marriage," *Theological Studies* 73 no.3 (2012): 663, accessed October 14, 2014, doi: 10.1177/004056391207300309.

[45] Allan Fitzgerald and John C. Cavadini, *Augustine Through the Ages: An Encyclopedia* (Grand Rapids: Wm. B. Eerdmans Publishing Co, 1999), 372.

Proles

In his writings on marriage, Augustine emphasizes the friendship that marriage should bring. *On the Good of Marriage* begins by looking at marriage between man and woman as a bond joined by God who "created the one out of the other, setting a sign also of the power of the union in the side."[46] Each of goods of marriage was intended to strengthen the God-willed bond between husband and wife. I will show the ways in which the American government has regulated, institutionalized, and at times, misinterpreted, these Augustinian goods of marriage.

The Sacredness of Sex in the Augustinian Context

For Augustine, the first good of marriage is the good of *proles* or procreation, intended by God as the first fruit of marriage for the purpose of populating the earth.[47] However, procreation does not justify sex, the freedom to engage in sinless sex was justified through marriage. He describes the significance of procreative act of marriage with the following excerpt,

> For this purpose are they married, that the lust being brought under a lawful bond, should not float at large without form and loose; having of itself weakness of flesh that cannot be curbed, but of marriage fellowship of faith that cannot be dissolved…For, although it be shameful to wish to use a husband for purposes of lust, yet it is honourable to be unwilling to have intercourse save with an husband, and not to give birth to children save from a husband.[48]

[46] Augustine, "On the Good of Marriage," In *Seventeen Short Treatises of S. Augustine, Bishop of Hippo,* trans. by John Henry Parker, (F. and J. Livington: London, 1847), 275.
[47] Augustine, "The Excellence of Marriage," 17.
[48] Augustine, "On the Good of Marriage," 280.

The marital couple remains pure and sinless, even if they choose to have sex for pleasure and without the intention of procreating. [49] Augustine strongly encourages procreation, although having a child does not validate a marriage. He makes it clear that if a couple desires a child but is unable to procreate, the couple may not separate or commit adultery with the intent of having a child.[50] He argues that marriage is "tied for the purpose of having children, it is not untied for the same purpose of having children."[51] It is better for a couple to remain childless than to engage in physical intimacies with other individuals. This claim shows that the good of the marital relationship between the couple is prioritized over the ability to procreate. Augustine is more interested in the relationship itself than in the good of procreation, which emphasizes the companionship between two people that cannot be jeopardized for the sake of having children.

The Sacredness of Sex in the United States

Until the twenty-first century, U.S. laws and court cases around same-sex marriage included the argument that the marital union must include the potential to procreate, emphasizing the heterosexual nature of man and woman, rather than invalidating a marriage based on age or fertility. However, throughout the decades, institutional laws guarding traditional marriage have shifted from defending procreation to sanctioning a marriage based on the friendship of two people.

I begin with a brief history of the significance of sex in the United States before delving into particular court cases that implemented these ideals.
I illustrate how the institutional standard of marriage included the potential to procreate as a pre-requisite through the court case *Baker v. Nelson.* Then I look at the

[49] Augustine, *The Works,* 33.
[50] Ibid., 38.
[51] Ibid.

regulation of sexual intercourse reserved exclusively for heterosexual couples and denied to homosexual couples through the Supreme Court case *Bowers v. Hardwick.* I conclude by analyzing modern day perceptions of sexual conduct decided through *Lawrence v. Texas* that show the institutional shift from procreation to friendship.

Perceptions of Sex in American Society

Similar to the Augustinian notion of sex reserved for a married couple, until the late twentieth-century, sex was also presumed to be a sacred activity in the U.S. The act was so revered that there were laws in place regulating who could engage in sex, how sex could be practiced and what types of sex were forbidden.[52] Sexual activity was only permitted between one man and one woman.

Baker v. Nelson

The first lawsuit seeking a same-sex marriage license was rejected on the grounds that homosexual couples lacked the ability to procreate. In 1971, the Supreme Court of Minnesota denied the gay couple, Richard John Baker and James Michael McConnell the right to a marriage license. The Court argued, "The institution of marriage as a union of man and a woman, uniquely involving the procreation and rearing of children within a family, is as old as the book of Genesis."[53] The Court employed explicitly Christian language to rule against the legalization of same-sex marriage, emphasizing the potential to procreate, which, these men could not fulfill.

Throughout the decades, however, the gay community has gained more support, attention and success in their appeals for same-sex marriage. Their journey

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[52] Before the ruling of Supreme Court Case *Lawrence v. Texas* in 2003, the government had the authority to regulate the sexual conduct of citizens, see "Bowers v. Hardwick," accessed November 1, 2014, http://www.law.cornell.edu/supremecourt/text/478/186.

[53] Boston College Law School, "Richard John Baker and Another v. Gerald R. Nelson," accessed November 14, 2014, http://www.bc.edu/bc_org/avp/law/st_org/lambda/baker.htm.

demonstrates the institutional shift of the interpretation of marriage, from requiring procreative aspects to emphasizing companionship.

Bowers v. Hardwick

The 1986 Supreme Court case *Bowers v. Hardwick* depicts the legal regulation of citizens' sexual activity. In 1982, Michael Hardwick was arrested for engaging in acts of sodomy with another male, while in the privacy of his own bedroom.[54] Anti-sodomy laws were initially created "to prohibit non-procreative sexual activity more generally, whether between men and women or men and men,"[55] and were practiced by 24 states and the District of Columbia, making "those sex acts a felony punishable by a prison term of from one to 20 years."[56] The regulation and enforcement of sodomy laws were created without the intent of discriminating against one's sexual orientation but to uphold the American moral code.

However, under Chief Justice Warren Burger, *Bowers* reinterpreted sodomy laws exclusively to discriminate against homosexual acts. Hardwick's arrest was justified on the grounds that sodomy—oral and anal sex—violated a Georgia statute. The following year, Hardwick in addition to a married couple, John and Mary Doe, challenged the statute outlawing sodomy.[57] The Georgia court dismissed the Doe family, asserting that they lacked standing and had "not been arrested or threatened with arrest for sodomy."[58] Their dismissal suggested that the state had no interest in

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[54]Thomas B. Stoddard, "*Bowers v. Hardwick*: Precedent by Personal Predilection," *University of Chicago Law Review* 54 Rev.648 (Spring 1987), accessed November 27, 2014.
[55] Cornell, "Bowers."
[56] Al Kamen, "High Court to Review Rights of States to Regulate Adults' Sexual Activities; Constitutional Issue Addressed for First Time in Sodomy Case," *The Washington Post*, November 5, 1985.
[57] Cornell, "Bowers."
[58] Cornell University Law School, "Bowers v. Hardwick," accessed November 1, 2014. http://www.law.cornell.edu/supremecourt/text/478/186.

regulating sexual activity between heterosexual, married couples, but felt a moral obligation to regulate sexual activity between homosexual couples.[59]

The *Bowers* decision denied homosexuals the right to engage in acts of sodomy, discriminating against their sexual orientation and upholding the Georgia statute against sodomy.[60] The original intent of this statute held all citizens accountable—whether homosexual, heterosexual, married, and unmarried couples—without discrimination.[61] However, the Burger Court's rejection of the Doe case, revealed its issue not with sodomy but specifically with homosexual relationships. Its decision reinforced the institutional criminalization of homosexual humans by prohibiting them, in stark contract to heterosexuals, from engaging in non-procreative sex.[62]

The Burger Court further defended its position on traditional marriage through ideals of the ancient law and religious morals. Chief Burger posited, "There is no such thing as a fundamental right to commit homosexual sodomy."[63] Chief Burger insisted that sodomy contradicts values encapsulated in "Judeo-Christian moral and ethical standards," has been a crime in Roman law, and even criminalized in nineteenth century England.[64] Justice Byron White additionally posited that "the presumed belief of a majority of the electorate in Georgia that homosexual sodomy is immoral and unacceptable."[65] Thus, Court interpreted its heterosexual, Protestant interpretation of marriage as the basis of "morality" to argue against homosexual sodomy.[66]

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[59] Jakobsen, *Love the Sin,* 22.
[60] Cornell, "Bowers."
[61] Stoddard, "*Bowers.*"
[62] Nat Hentoff, "Government and Gay Marriage," *The Washington Post,* January 13, 1996.
[63] Cornell, "Bowers."
[64] Ibid.
[65] *Bowers v. Hardwick,* 478 "U.S." 186 (1986)
[66] Cornell, "Bowers."

The 5-4 decision on *Bowers* outlawing homosexual sodomy was based on the argument that homosexual couples could not procreate. The Court attempted to use several cases such as *Skinner v. Oklahoma* and *Loving v. Virginia* to show the importance of procreation and marriage that sodomy cannot produce.[67] However, "none of the rights announced in those cases bears any resemblance to the claimed constitutional right of homosexuals to engage in acts of sodomy", there was no link between marriage, procreation and homosexual activity.[68]

In *Bowers,* the state employed its Christian understanding of sex, which paralleled the Augustinian model of *proles,* that is, sex between a couple that has the potential to procreate, even if the couple does not choose to engage in procreative acts.[69] The *Bowers* decision reveals its Christianized bias of sex as a sacred activity that should be practiced exclusively between heterosexual couples. The greater message that the *Bowers* ruling sent was that homosexual acts lack federal rights to privacy, justifying this decision by unknowingly applying uniquely Augustinian though of *proles.*

Lawrence v. Texas

Bowers was overruled in 2003 by Supreme Court Case *Lawrence v. Texas* under Chief Justice William Rehnquist. In 1998, the Texas police found John Lawrence engaging in sexual acts of sodomy with partner Tyron Garner, violating the Texas anti-sodomy law.[70] Similar to Georgia's statute, the law's original intention in 1943 prohibited acts of sodomy between both homosexual and heterosexual couples. However, in 1973, the statute decriminalized acts between

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[67] Stoddard, "*Bowers.*"
[68] Ibid.
[69] Cornell University Law School, "Lawrence v. Texas," accessed November 1, 2014, http://www.law.cornell.edu/supct/html/02-102.ZS.html//.
[70] Tony Wright, "U.S. Supreme Court Justices Appear Poised to Overturn Sodomy Ban," *Lawyers Weekly USA,* April 14, 2003.

heterosexual couples while continuing to prevent homosexual acts.[71] In 2003, there were only four states that practiced anti-sodomy laws that "apply strictly to same-sex couples: Texas, Kansas, Missouri and Oklahoma" and nine states whose anti-sodomy statutes applied to everyone.[72] The distinction in anti-sodomy laws blatantly reinforced *Bowers'* claim that gay persons were denied the right to privacy in their own home.

In a 6-3 vote, *Lawrence* won its landmark status by granting homosexual humans the same rights as heterosexual humans: the federal right to privacy.[73] Supreme Court Justice John Stevens recognized that the past ruling of *Bowers* was a sum of personal opinions that unfairly discriminated against the gay community. Justice Stevens argued that the state's opinion on morality and sodomy "is not a sufficient reason for upholding a law" and the potential to procreate does not justify "intimacies of physical relationships."[74] In this decision, the Court deliberately rejected traditional Christian commonsense and the link between sex and procreation, emphasizing one's freedom to engage in consenting sexual acts without the threat of criminalization.

In addition to rejecting anti-sodomy statutes, the Rehnquist Court recognized the relational aspect of same-sex couples. The Court argued, "The liberty protected by the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their private lives and still retain their dignity as free persons."[75] *Lawrence* not only decriminalized homosexuals but also

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[71] Ibid.
[72] Ibid.
[73] *Lawrence* also outlawed the sodomy laws regarding both homosexuals and heterosexuals in all 13 states, See Moni Basu, "Gay sex bans overturned; Landmark ruling fuels hopes of equal treatment," *The Atlanta Journal-Constitution,* June 27, 2003.
[74] *Bowers v. Hardwick;* 478 U.S. 186 (1986)
[75] Wright, "U.S. Supreme Court Justices."

granted them rights to privacy under law.[76] The Court distinguished private rights from marital rights. In this way, it delinked sexual activity from marriage, but it did not delink marriage from childrearing.

The *Lawrence* decision entitled homosexuals to the same respect in their private lives as heterosexual couples. This step towards respect in one's relationship focuses on the pleasure of a companionship instead of the couple's ability to procreate. The progression of rights parallels the Augustinian ideals of a marriage that are focused on companionship rather than on procreative capacity. Although *Lawrence* was not considering the legalization of same-sex marriage, the very decriminalization of same-sex couples was a shift toward a relational focus and a recognition of the historical Christianized bias of the political system.

Fides

Unlike the good of *proles* that Augustine strongly encouraged but did not demand in a marriage, he remained unwavering in the good of *fides. Fides* is the fidelity of and between spouses.[77] It entails sexual exclusivity and self-sacrificial concern for the other, by rejecting one's own sexual impulses toward another person outside of marriage, while dutifully submitting to have sex with one's partner. [78] Marriage is a contractual agreement of promised fidelity between two people. Augustine emphasizes that the full submission to the other will help the marital union

[76] However, Justice Anthony Kennedy stated that this case "does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter" and Justice Sandra Day O'Connor supported this claim in stating that "other reasons exist to promote the institution of marriage beyond mere moral disapproval of an excluded group," see Linda Greenhouse, "Same-Sex Marriage: The Context; Supreme Court Paved Way for Marriage Ruling with Sodomy Law Decision," *The New York Times,* November 19, 2003.
[77] Augustine, *The Good of Marriage*, 4.
[78] Augustine, *The Excellence of Marriage,* 37.

remain faithful, through is trust and sexual satisfaction, while aligning with the will of God.[79]

Augustine further elaborates on fidelity as a spousal duty of constant submission and self-denial. Submission is demonstrated by the denial of rights over one's own body. In *The Excellence of Marriage,* Augustine uses 1 Corinthians 7:4 to state that sexual submission is biblical and godly.[80] Engaging in sexual intercourse to satisfy the desires of one's spouse, despite one's own desires to do so, is an "act of charity."[81] Furthermore, he believes it will minimize the chances of adultery by satisfying the lustful spouse from looking elsewhere. The sexual exclusivity promised between a marital union builds security, trust and friendship in marriage, attesting to one's "holiness" and godliness.[82]

Fides Applied in the United States

In the United States, the very institution of marriage, also demands sexual fidelity through monogamy. The state outlawed practices of bigamy and incest while criminalizing adultery.[83] In theory, sexual fidelity was a moral standard that the state sought to upkeep through federal regulation as the nation was founded on puritan values, implementing morality through fidelity. In practice, however, state surveillance continues to be an ineffective force in ensuring marital fidelity, except in special cases with specific groups of people, such as among the Native Americans and Mormons. First, I look at the ways in which the state compelled Native American men to change their sexual practices that demeaned the face of American morality and second, I give an in-depth analysis on the state's response to polygamy.

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[79] Ibid., 42.
[80] 1 Corinthians 7:4 "The wife does not have authority over her own body, but her husband does; and likewise the husband does not have authority over his own body, but his wife does." See Augustine, *The Excellence of Marriage,* 57.
[81] Augustine, "Excellence of Marriage," 17.
[82] Ibid., 43.
[83] Cott, *Public Vows,* 28.

Native Americans, Politicians, and Missionaries

As Cott has argued, in the early-nineteenth century, the federal government imposed its Christian commonsense regarding marriage and fidelity on the Native American group, the Iroquois. The Iroquois "had their own forms of political authority, sovereignty, and marriage practice," resulting in very little contact with the rest of American society and gaining little obligation to owning Christian commonsense.[84] Unlike their Christian counterparts who embraced monogamy in marriage as a fundamental building block of society, the Iroquois lived without such constructs. Cott posits,

> [The Iroquois] married within complex kinship systems that accepted premarital sex, expected wives to be economic actors, often embraced matrilocal residence and matrilineal descent, and easily allowed both polygamy and divorce with remarriage.[85]

For the Iroquois, marriage was an informal, entry and exit relationship. This produced a culture of casual sex where men partook in bigamy and polygamy . To the American public, including "Christian settlers, missionaries, and government officials, Indian practices amounted to promiscuity" and unintelligibility.[86] To discourage such immorality, Americans labeled promiscuous men who lacked a single, stable nuclear family unit, as lazy and lacking manliness. To teach Native Americans true morality, the government aided Protestant missionaries to spread the Christian morals across reservations and "civilize" the people and transform their adulterous definition of marriage to a moral, Christian practice of monogamy.[87]

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[84] Cott, *Public Vows,* 25.
[85] At this time, only Fault-based divorce existed as a way to annul a marriage.
[86] Cott, Public Vows, 25.
[87] Ibid., 26.

The American intervention in Native American practices is just one example of the federal regulation of marriage and enforcement of Christian, synonymous with American, morals such as fidelity. In addressing the casual sexual relationships that occurred in the Iroquois community, American officials deliberately used Protestant religious communities that aligned with American commonsense, such as Protestant missionaries.

The Mormon Question

I also look at the ways the United States government exercised its Christian commonsense in resisting the Mormon Question. This Question looked at the legality of polygamy, which challenged the good of fidelity and threatened to undermine the very institution of marriage. The backlash to polygamy used Christian commonsense to link the "relationship between the structures of the government created by the Constitution and the structures of Christian morality that made civilized life possible."[88]

In 1843, Joseph Smith, head of The Church of Jesus Christ of Latter-Day Saints (FLDS),[89] claimed to have received "the revelation of celestial marriage", the divine command to practice polygamy.[90] Smith taught the Mormon community the importance of plural marriage and the threat of eternal damnation for those who refuse to practice it. For the next nine years, plural marriage was a heavily guarded secret in the Mormon community. Throughout the 1830s and 1840s, Mormons faced violent backlash from American locals in Ohio, Missouri, and Illinois, which

[88] Gordon, *The Mormon Question,* 3.
[89] Also known as the Mormon Church, formed in the 1820s in upstate New York.
[90] The significance of plural marriage stemmed from the ancestral practice in the Old Testament that fulfilled the godly command to populate the earth and enabled them to reach a multi-tiered heaven, see The Polygamy Dilemma—Is Plural Marriage a Dead Issue in Mormonism?" http://www.mrm.org/polygamy.

escalated to the murder of Smith while imprisoned in Carthage, Illinois.[91] Brigham Young became the new FLDS leader and guided the Mormons to the salt basin of Utah. He was also appointed as the governor of Utah in 1849.[92]

Shortly after becoming leader of the Mormon Church and state, in 1852, Young publicly announced the Mormon practice of plural marriage, confirming the gossip and fears dispersed across the nation. He opened a Pandora's box regarding Constitutional rights and government intervention. For almost two decades, the House and Senate debated religious freedom, the authenticity of the Mormon practice, and government intervention. As a result of political decisions that oppressed Mormons who practiced polygamy, in 1890, the Mormon Church formally rejected this practice.

The notion of plural marriage was the antithesis of fidelity. Anti-polygamist politicians argued "polygamy led to a breakdown of the family, infanticide, a retardation of civilization."[93] It was believed that the adoption of polygamy would disrupt the building blocks of society by fundamentally restructuring the nuclear family and it was the responsibility of the government to defend traditional marriage.

Christian morals were embedded in social conduct and justified political decisions that disenfranchised Mormons. Institutionally, federal agents denied polygamists "the right to vote, run for office, serve on juries, or become U.S. citizens, disinherited the now "illegitimate" offspring of polygamous marriages; limited the Church's ability to hold land or organize emigration, and retracted female

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[91] "A Brief History of Mormonism," http://www.mormonhistoryassociation.org/mormonism.
[92] Ibid.
[93] Stephen Eliot Smith, "Barbarians within the Gates: Congressional Debates on Mormon Polygamy, 1850-1879," *Journal Of Church & State* 51, no.4 (2009): 596, accessed May 9, 2014, doi: 10.1093/jcs/csq021.

suffrage."[94] The government used its unilateral power to oppress the Mormon community until they terminated polygamy as it stood for a practice that refuted the ideals of monogamy and fidelity.

Congressional debates reveal underlying Christian thought in the law-making process. Congressmen and Supreme Court Justices occupied the most influential role in American society with the power to create and enforce laws. In debating over the legalization of plural marriage, in1854, Representative Samuel W. Parker of Indiana argued that it was the "duty as a moral and Christian people" to terminate the practice of polygamy.[95] Explicitly Christian dialogue that took place in the White House reinforces the idea that the judicial system is a system of humans who contribute their personal beliefs to the national agenda.

As a result of the Christianized bias in the political sphere, institutional propositions were created to discriminate against Mormons. These included the Morrill Act, Poland Act, and *Reynolds v. United States*. On June 26, 1856, Congressman Justin S. Morrill of Vermont proposed the Morrill Bill, which outlawed the practice of bigamy, and therefore, polygamy.[96] In 1862, Abraham Lincoln signed the Morrill Act and it effectively became law, banning polygamy in the United States.[97]

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[94] Bruce Burgett, "On the Mormon Question: Race, Sex, and Polygamy in the 1850s and 1990s," *American Quarterly* 57, no. 1: 77. *America: History & Life,* (2005), accessed May 12, 2014.
[95] Representative Samuel W. Parker of Indiana *Congressional Globe,* 33d Cong., 1st sess., 1854, 1091-92.
[96] 34th Cong., 1st sess. (June 26, 1856). *Congressional Globe,* 34th Cong., 1st sess., 1856, 1491.
[97] Part of the Morrill Act stated, "Every person having a husband or wife living, who marries another, whether married or single, in a Territory, or other place over which the United States have exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than $500, and by imprisonment for a term of not more than five years." See Philip B. Kurland, ed., and Gerhard Casper, ed., Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law (Arlington: University Publications of America, Inc., 1975), 76-77.

The Morrill Act gave Congress the power "to regulate marriage in the federal territories" similar to the way state legislatures regulated marriage in states.[98] Congress was given the authority to intervene in a domestic, private institution; through the Morrill Act, marriage between man and woman was subject to regulation of Congress.[99] Despite Congress's efforts in regulating bigamy, the Morrill Act was difficult to implement since polygamists only had one official marriage license and their other marriages were informal. In addition, Utah judges were also practicing Mormons who failed to uphold the law convict polygamist.

To ensure the effectiveness and implementation of the Morrill Act, in 1874, the Poland Act was passed to further enforce the practice of monogamy. It gave power to federal courts in the Utah territory. The Poland Act restricted Mormon control over Utah territory by allowing federal courts to try federal crimes and replacing court juries with at least half non-Mormon members.[100] By commissioning non-Mormon civil servants while stripping Mormons of political leadership positions, Congress strategically reshaped Utah's judicial system to ensure the fostering of Christian commonsense. This deliberate restructuring reveals the national understanding of the Christianized culture that agreed with the significance of fidelity exclusively shown through monogamous marriages.

Another institutional form of discrimination resulted from the Supreme Court case *Reynolds v. United States* in 1879. In 1875, a Mormon by the name of George Reynolds was indicted by Utah for violating the Morrill Act and practicing polygamy. The Utah Supreme Court sentenced him to "two years hard labor and a $5,000

[98] Cott, *Public Vows,* 74.
[99] Ibid.,75
[100] Ibid.,113.

fine."[101] Reynolds approached the U.S. Supreme Court for his acquittal, arguing that he had practiced polygamy out of religious belief and was covered by his First Amendment right to freedom of religion.[102]

Reynolds won its monumental status in being the first Supreme Court Case to discuss religious freedom. Supreme Court Chief Justice Morrison Waite addressed the definition of religion and the protection of one's right to practice religion. He posed the question, "The precise point of the inquiry is, what is the religious freedom which has been guaranteed."[103] Chief Waite asserted that one's constitutional rights of the freedom of religion only encompassed the right to religious *beliefs*, excluding "actions in violation of social duties or subversive of good order."[104] The Court ruled that although one may have certain religious beliefs, they could not be practiced if they impede on one's obligation to the state, especially a practice that is "morally odious."[105] *Reynolds* is remembered as a milestone case for its re-reading of the Constitution and overruling religious duties with social rights.

The Waite Court ruled that the outlawing of plural marriage was constitutional, reinforcing the notion of serving one's national identity before one's religious identity. Chief Waite emphasized that one is free to have his or her own religious beliefs, recognizing that "Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order."[106] Although Congress' power could not outlaw one's belief, it had the power to outlaw the practice of it.[107]

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[101] Paul Finkelman, *Religion and American Law: An Encyclopedia (Garland Reference Library of the Humanities)* (New York: Garland Publishing Inc, 2000): 319.
[102] Ibid.
[103] Reynolds v. U.S., 98 U.S. 145 (1879), 164.
[104] Ibid.
[105] "Reevaluating Reynolds," 1.
[106] Reynolds v. U.S., 98 U.S. 145 (1879), 164.
[107] "Reevaluating Reynolds," 2.

The Mormon Church had three choices as a result of this ruling: (1) to accept the federal government's authority in outlawing polygamy as a religious practice; (2) to outwardly reject the government's authority and continue to openly practice polygamy; or (3) to outwardly accept the federal government's ruling while secretly practicing plural marital relationships. The official Mormon Church chose to formally reject the practice of plural marriage in 1890.[108] President of FLDS, Wilford Woodruff stated, "I hereby declare my intention to submit to those laws, and to use my influence with the members of the Church over which I preside to do likewise…I now publicly declare that my advice to the Latter-day Saints is to refrain from contracting any marriage forbidden by the law of the land."[109] The submission to the federal government positively affirmed Supreme Court's decision that the outlawing of polygamy was *not* an infringement on Mormons' rights. Through Woodruff's concession, the government successfully defeated the Mormon practice of polygamy.

A Wife's Rights

In addition to the issues of polygamy, mainstream American society also struggled with one's rights in a monogamous marriage. An unmarried woman had more rights than a married woman due to the legal oneness between husband and wife.

The lack of woman's rights within a marriage was present in the private sphere as a married woman could not charge her husband of rape. Before the 1970s, the law asserted that husband and wife could not be accused of rape.[110] In other words, a married man who forcibly, sexually assaulted his wife could not be tried for

[108] Despite the formal rejection of polygamy by the Mormon Church, extreme Mormon spliter groups continue to practice plural marriage.
[109] *The Church of Jesus Christ of Latter-Day Saints,* "Official Declaration," accessed November 14, 2014, https://www.lds.org/scriptures/dc-testament/od/1?lang=eng.
[110] Julie Goldscheid, 'United States v. Morrison and the Civil Rights Remedy of the Violence against Women Act: A Civil Rights Law Struck Down in the Name of Federalism,' *86 Cornell L. Rev. 109* (2000-2001): 163, accessed November 8, 2013.

committing rape before the law.[111] The state effectively stripped a wife of any rights to be infringed upon, "[casting] wives as sexual property of their husbands."[112] The law grouped the married couple as one entity rather than two separate people coming together. In theory, this idea of oneness reinforced the Augustinian notion of marriage and sexual submission between husband and wife to promote fidelity. However, in practice, the lack of a wife's rights created loopholes for a legally protected, abusive husband.

Fidelity and "oneness" were encouraged through certain institutional structures until the twenty-first century. In the public sphere, a married woman forfeited her legal rights of personhood. Through marriage, she became a dependent, prevented from ownership of "property, labor, and earnings."[113] Her assets were absorbed into her husband's, as she symbolically relinquished her family name for his. Marriage disenfranchised the wife as her husband became "the political as well as the legal representative of his wife…he became the one *full* citizen in the household."[114] The wife gave up her voice in political matters, being fully and legally represented by the thoughts and desires of her husband. The legal oneness between man and woman made married women legally susceptible to abuse and manipulation by their counterparts.

Coverture was the institutional form of legal oneness between husband and wife. It was not directly an Augustinian ideal but was created as part of the nineteenth century common law, which stipulated "that a married woman did not

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[111] The U.S. legal definition of rape before 2010 was "involved vaginal penetration of a woman by a man through use of force," see Ethan Bronner, 'A Candidate's Stumble on a Distressing Crime', *New York Times,* August 23, 2012, http://www.nytimes.com/2012/08/24/us/definition-of-rape-is-shifting-rapidly.html.
[112] Goldshied, 'United States v. Morrison'. 159.
[113] Ibid., 52.
[114] Ibid., 12.

have a separate legal existence from her husband."[115] Its assertion in the "legal oneness of husband and wife", also paralleled the Christian marital pronouncement of the "one flesh" union.[116]

However, Augustine's understanding of sexual submission did not grant the couple liberty to violate the other's body. Rather, Augustine was identifying lust that could only be satisfied, in purity and without sin, through one's spouse. He premised this idea of sexual submission with companionship, in which the spouses would *voluntarily* forego their own rights to do what was in the best interest of the other.[117] Rather than viewing marriage as a mutual companionship, the federal government perpetuated the patriarchal power dynamic between husband and wife.

The idea of men acting as head of the household and women as the submitter was reaffirmed by Christian and Augustinian beliefs. Augustine posited that there exists a divine hierarchy of Christ to the Church and husband is to wife.[118] He supported this claim with Ephesians 5:22, which read, "Let wives be subject unto their own husbands, as unto the Lord; because the husband is the head of the wife." At first glance, laws that treated a married couple as a unit, seem to carry Augustinian notions of marital oneness. However, the context in which Augustine looked at marital union included the natural bond of friendship, respect, and love in the relationship.

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[115] Harvard Business School, "Women, Enterprise & Society," accessed November 30, 2014, http://www.library.hbs.edu/hc/wes/collections/women_law/.
[116] Cott, *Public Vows,* 11.
[117] Fullam, "Toward a Virtue of Ethics of Marriage," 673.
[118] Augustine, 'Marriage and Desire, in *Answer to the Pelagians,* II (Hyde Park, NY: New City Press, 1998) 1.10.11

Government Roles in Marriage

Institutional structures regulating fidelity and unity have become less stringent with the turn of the twentieth-century. One such factor that contributed to the unwinding of fidelity was the ruling of *Lawrence.* The separation of the government role in one's private life also applied to marriage, by neglecting to carry out laws that criminalized adulterous acts. Despite the fact that adultery is still considered a criminal act in twenty-three states, it is unlikely that any of these will go forth in prosecuting an adulteress as marital matters are dealt in private.[119]

Furthermore, adultery has become so common that some individuals expect to engage in an unfaithful relationship. An Internet survey targeting couples in the U.S. who have been married for less than two years, "were asked about their expectations of infidelity and marriage." Fifty percent admitted that they anticipate infidelity at some point in their marriage.[120] The expectation and acceptance of infidelity has been perpetuated by a culture of premarital sex at a young age and cohabitation.[121] The change in cultural values has created more opportunities to engage in adulterous relationships.

One could assume that the trajectory of the American lifestyle will result in putting away with the institution of marriage altogether. However, despite the cultural norms of cohabitation and adultery, there has been no strong, public proposal to change the definition of marriage to include bigamy or polygamy. Instead, Americans continue to aspire to the traditional ideal of fidelity. The trend of marriage reflects a desire for a faithful and exclusive relationship, reinforcing the Augustinian

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[119] Ibid.
[120] Kelly Campbell and David W. Wright, "Marriage Today: Exploring the Incongruence Between Americans' Beliefs and Practices," *Journal of Comparative Family Studies* 41 no. 3 (2010): 333, accessed October 27, 2014. http://www.jstor.org/stable/41604361.
[121] Ibid., 335.

notion of fidelity that strengthens the marriage bond of friendship. In the last good, Augustine delves into the unbreakable bond of marriage .

Sacramentum

The final good Augustine addresses is *sacramentum,* the "indissolubility of marriage."[122] *Sacramentum* is the one good that is wholly Christian and cannot have the same depth in a nonreligious context. Marriage is, according to Augustine, supposed to reflect the union of Jesus Christ and his Church. Neither procreation, nor any other act, is needed to justify the existence and development of this friendship. . In *The Excellence of Marriage,* Augustine refers to the will of God in sacramentum between husband and wife:

> Every human being is part of the human race, and human nature is a social entity, and has naturally the great benefit and power of friendship. For this reason God wished to produce all persons out of one, so that they would be held together in their social relationships not only by similarity of race, but also by the bond of kinship. The first natural bond of human society, therefore, is that of husband and wife.[123]

He views the bond between husband and wife is sacred in both the natural and spiritual sphere, such that it should not be annulled by a civil marriage contract.[124]

Augustine makes a distinction between the marital validation between a civil state and a Christian union. A marriage by the state does not require permanence whereas a marriage by the Church cannot be undone simply through a civil divorce. If two people are granted a divorce by the state and then remarry, they are committing adultery because their "oneness" was not spiritually dissolved with the

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[122] Augustine, "The Excellence of Marriage," 38.
[123] Ibid., 33.
[124] Ibid., 38.

divorce license and as long as their partner continues to live and their potential for permanence has not been broken.[125] However, if husband and wife divorce and do not find another partner, they would be breaching the indissolubility of marriage, but are not considered adulterers. If the divorced couple reunites without finding other partners, their marriage will be redeemed. Through this thorough explanation of divorce and the indissolubility of marriage, Augustine distinguishes the power of civil practices from the spiritual bond of marriage.[126]

Alternatives to Sacramentum

By the Augustinian definition of marriage, there are many bigamists—people who have divorced through by the state and remarried—in the U.S. The rise in divorce rates may partially be due to shifting marriage from the public to the private realm reflected by the creation of No-Fault Divorce.[127] Prior to the 1970s, divorce was granted reluctantly through the Fault-Based Divorce law. The goal of this law was to protect marriage by minimizing the access to divorce, which depended on a culprit and a victim. The culprit had to be found "guilty" of adultery or cruelty *and* the "other spouse was found "innocent."[128] The victim received generous financial compensations and most likely, custody of the child. In order to undergo divorce, the husband would often stage as the culprit and the wife as the victim, requiring cooperation by both parties before the law.[129]

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[125] Ibid., 38.
[126] Donald X. Burt, *Friendship and Society: An Introduction to Augustine's Practical Philosophy* (Grand Rapids: Wm. B. Eerdmans Publishing Co, 1999), 135.
[127] NWA Marriages, "Covenant Marriage," accessed October 30, 2014, https://www.nwamarriages.com/married-couples/covenant-marriage-license/.
[128] Paul A Nakonezny, Robert D. Schull, and Joseph Lee Rodgers, "The Effect of No-Fault Divorce Law on the Divorce Rate Across the 50 States and Its Relation to Income, Education, and Religiosity," *Journal of Marriage and Family 57* no.2 (1995): 477, accessed October 30, 2014, doi: 10.2307/353700.
[129] Charles J. Reid Jr., "The Augustinian Goods of Marriage: The Disappearing Cornerstone of the American law of Marriage," *BYU Journal Of Public Law*. 18 no.2 (2004): 453, accessed November 1, 2014, http://digitalcommons.law.byu.edu/jpl/vol18/iss2/6.

In 1970, divorce shifted from Fault-based to No-fault based divorce. This meant that a married couple was able to legally divorce on the grounds that they "can no longer function as a married couple." [130] Without the power dynamic of a culprit and a victim, No-fault divorce gave each spouse unilateral power to separate, with little repercussions, no financial compensations, and child custody. It shifted government regulation from the public to the private sphere, with the idea that "the state should refrain from passing judgment on performance in an ongoing marriage."[131] The lack of government regulation and strict institutional structures redefined marriage from a public to a private union, without morals of those in power constantly infused into the marital structure.

Although No-fault divorce law has made it easier for couples to divorce, it has also helped maintain the balance of power within a marriage. The idea of divorce without necessitating justification has created a union where it is more likely that husband and wife stay together keep institutional force, truly allowing a marriage to be a private bond between husband and wife with the safety net of separation and government intervention if trust is violated.

In addition to easy exit in marriage, there is also the alternative of cohabitation, which emulates marriage without the marriage license. This is where "a man and woman live together as though married but without completing any recognized marriage ceremony or meeting the requirements for common law marriage."[132] The cohabitating lifestyle is gaining approval as a legitimate family form. As of 2010, startling 7.5 million people were found to be cohabitating,

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[130] Ibid.
[131] Cott, *Public Vows,* 206.
[132] Antony W. Dnes and Robert Rowthorn, *The Law and Economics of Marriage & Divorce* (Cambridge: Cambridge Unviersity Press, 2004) 118, accessed November 4, 2014.

conveying a 1500% increase of cohabitants from the 1960s.[133] It has also become socially acceptable to have children without being married, 23% of births among women between ages 15-44 occurred within cohabitation.[134] The social acceptance of cohabitation as an acceptable lifestyle and family structure seems to undermine the institution of marriage, without the hassle of government licenses.

Despite the popularity of cohabitation, *The New York Times* Opinion Column postulates that the current appeal for marriage is not so much the desire for a family and stability as much as it is a sign of social status. Professor of sociology and public policy at Johns Hopkins, Andrew Cherlin, analyzed the "economic inequality and the level of marriage inequality."[135] He found that "professionals are more likely to marry and less likely to divorce than are less educated workers."[136] This is due to the stable income that professionals receive in addition to the income of their partners as opposed to someone with a high school diploma. There is a high correlation between white-collar professionals and their marriage rate compared to low-paid industrial workers and a "modest" marriage percentage.[137] Marriage has become a mark of social status for individuals.

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[133] Ibid.
[134] Robert Weise, "Marriage: The Divine and Blessed Walk of Life," *Concordia Journal 40* no.1 (2014): 48, accessed October 20, 2014.
[135] Andrew Cherlin, "The Real Reason Richer People Marry," *The New York Times*. December 6, 2014, accessed November 3, 2014. http://www.nytimes.com/2014/12/07/opinion/sunday/the-real-reason-richer-people-marry.html?_r=1.
[136] Ibid.
[137] Ibid.

Covenant Marriage

In addition to marriage and cohabitation, there is also a specifically Christian form of marriage called covenant marriage, created to ensure the permanence between man and woman.[138] Christian values are implemented in covenant marriage by certain requirements such as foregoing one's rights to No-fault divorce and participating in compulsory premarital counseling.[139] This type of marriage is explicitly Christian, embracing Christian values of steadfastness, heterosexuality, unconditional love, and sexual purity.[140]

Despite the different alternatives to and types of marriage that one chooses to participate in, marriage demands fidelity, monogamy, and hope for permanence. In addition to traditional marriage and covenant marriage, there has been growing support for same-sex marriage, focusing on the shift of procreation to relationship.

Marriage Qua Marriage: Belief and Practice

Outside of the idea of monogamy and the permanence of marriage, there has been a restructuring in the marital definition itself through same-sex marriage. The most used arguments against same-sex marriage, "marriage qua marriage," which focuses on the dissolubility of same-sex relationships.[141] Defenders of traditional marriage argue that one cannot redefine marriage; one cannot "marry same-sex couples under the definition of "marriage" because "marriage" carries sacred

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[138] "Covenant Marriage in Arizona," accessed October 30, 2014, http://www.azcourts.gov/Portals/31/Other%20DR/covenant.pdf.

[139] US Legal, "Covenant Marriage Law & Legal Definition," accessed October 30, 2014, http://definitions.uslegal.com/c/covenant-marriage/ .

[140] Covenant Marriage Movement, "Restoring the Covenant of Marriage with the Timeless Principles of God's Word," accessed October 30, 2014, http://covenantmarriage.com/what-is-a-marriage-covenant/.

[141] I have chosen to focus on marriage qua marriage because it is the most objective argument I have come across. Other arguments against same-sex marriage tend to pull subjectively on the identity of homosexuals drawing on false premises. For example, there is an argument based on the idea that "women domesticate men." This argument is largely irrelevant to modern-day society as it presupposes women to play a domestic role in a family's private lives and women are growing in the workforce. See John G. Culhane, "Uprooting the Arguments against Same-Sex Marriage," *Cardozo Law Review 20* no. 4 (1999): 1192, accessed December 2, 2014.

symbolism that same-sex couples, by nature of being a same-sex couple, are simply unable to fulfill.[142]

Princeton professor Robert P. George is famous in the Christian world and notorious in the gay community for being the most outspoken critic against the legalization of same-sex marriage. I show how his arguments are lined with marriage criteria put forth by St. Augustine.

George begins by distinguishing two different types of marriage practices: conjugal marriage and revisionist marriage. Conjugal marriage is an exclusive commitment between a man and a woman, who fulfill their marital duties by procreating and child rearing. George argues that marriage is specifically reserved for heterosexual couples because of their potential to create a "distinctive" family structure, while adhering to the "norms of monogamy and fidelity."[143] On the other hand, revisionist marriage is the union between a couple, "who commit to romantically loving and caring for each other."[144] In this comparison, George draws the distinction between a marriage that requires absolute commitment, duties, and dedication and another that is based on sporadic emotions and lacks permanence.

George defends traditional marriage with the definition of marriage, taking the form of marriage *qua* marriage. He asserts that a conjugal marriage is that of romantic exclusivity, fidelity, and child rearing whereas a revisionist marriage is whimsical, emotion-driven, and sexual. The flaw that he sees in revisionist marriages is that it does not contribute anything to "real marriage" simply by validating one's emotions through the institution of marriage.[145]

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[142] Ibid.
[143] George,"What is marriage?", 246.
[144] Ibid., 247.
[145] Ibid.

George explains "real marriage" as a three-fold development including: "first, a comprehensive union of spouses; second, a special link to children; and third, norms of permanence, monogamy, and exclusivity."[146] A comprehensive union is the oneness of sexual intercourse between man and woman that has the potential of leading to procreation, in addition to the sharing of lives and resources.[147]

George's argument contains many strands of Augustinian thought. In regards to *proles,* both Augustine and George recognize that the act of having children does not legitimize the marriage. Rather, it is the potential of child bearing through the sexual union *in coitus* that seals a marital union rather than simply a sexual engagement. If the couple has children, the mutual efforts in raising their children become not only a choice, but also a discipline of sorts, as the relationship is orientated toward childrearing.[148] Augustine's second good of *fides* is reflected by George's argument of conjugal marriage, which looks at the potential to procreate as a complement between man and woman. Augustine understood the bond between man and woman as a deep kinship that is the building blocks and "natural bond" of society.[149] Lastly, *sacramentum* is depicted by the discipline of commitment that George believes cements conjugal marriage. He posits that conjugal marriage requires discipline of sexual exclusivity and a discipline of care. Augustine also argues for the indissolubility of marriage, an "*unchangeable*" consistency that "*cannot be terminated.*"[150]

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[146] Ibid., 252.
[147] Ibid., 253.
[148] Ibid., 259.
[149] Augustine, *The Excellence of Marriage,* 33.
[150] Burt, *Friendship and society*, 85.

Conclusion

Despite the development of the concept of marriage, the fundamental ideas of fidelity and monogamy have remained unchanged. The groundbreaking ruling that struck down a section of DOMA in *Windsor v. United States,* however, reveals just how progressive the U.S. has become. The repeal gave same-sex couples "the same federal health, tax, Social Security and other benefits that heterosexual couples receive" in states that recognize same-sex marriages.[151]

Edie Windsor and her partner, Thea Spyer, had been together for forty years. Yet, when Spyer passed away, Windsor was rejected rights over the inheritance left for her by her partner. Windsor and Spyer's partnership embraced both fidelity and permanence, even without having children. Their partnership is perhaps more admirable than a heterosexual couple's partnership with children because they were able to engage in fidelity and permanence for the sake of the other.

The relationship between Windsor and Spyer is possibly an ideal Augustinian marriage: a strong friendship that inspires fidelity and permanence that may be strengthened through child rearing. Augustine stated that sex, and thus procreation, was not essential to marriage. Although sex is permitted in a marital context, a marriage's priority is to cultivate the bond between man and woman, the bond of friendship.[152] In growing friendship, Augustine emphasizes fidelity and permanence, faithfulness of contracting parties, supplemented by the promise of unending love that offers security and strengthens friendship.

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[151] Dylan Matthews, "The Supreme Court struck down part of DOMA. Here's What you need to know," *The Washington Post,* June 26, 2013, accessed November 20, 2014. http://www.washingtonpost.com/blogs/wonkblog/wp/2013/06/26/the-supreme-court-struck-down-doma-heres-what-you-need-to-know/.

[152] Fullam, *Toward a virtue of ethics of marriag,*: 672.

I have attempted to show the ways in which American society has operated through Christian commonsense, specifically and uniquely with an Augustinian lens. The social understanding of marriage shows how Augustinian thoughts parallel the American legislation. Legislative examples within the United States have inadvertently reinforced Augustine's goods of marriage. Different Supreme Court cases, demonstrate how the potential to procreate was initially a necessary tenet of marriage. Additionally, fidelity was federally regulated through laws such as Fault-based divorce. Lastly, the appeal of marriage symbolizes stability and permanence. Marriage has shifted from historically echoing sentiments of the Augustinian goods to the twenty-first century emphasis on relationship and friendship. The expansion of the definition of marriage demonstrated by the victory for the gay community in *Windsor* has shown that the heart of Augustine's goods of marriage seek friendship.

Bibliography

Augustine. *Answer to the Pelagians, II: Marriage and Desire, Answer to the Two Letters of the Pelagians, Answer to Julian,* edited by John E. Rotelle, translated by Roland J. Teske. Hyde Park, NY: New City, 1998.

Augustine. *Confessions.* Translated by Henry Chadwick. New York: Oxford University Press, 1998.

Augustine. *On Grace and Free Will.* Translated by Peter Holmes and Robert Ernest Wallis. Buffalo, NY: Christian Literature Publishing Co., 1886. Accessed November 1, 2014. http://www.onthewing.org/user/Augustine%20%20Grace%20and%20Free%20Will.pdf.

Augustine. "On the Good of Marriage." In *Seventeen Short Treatises of S. Augustine, Bishop of Hippo,* translated by John Henry Parker, 274-308. F. and J. Livington: London, 1847.

Augustine. "The Excellence of Marriage." In *The Works of Saint Augustine: A Translation for the 21st Century. Marriage and Virginity: The Excellence of Marriage, Holy Virginity, The Excellence of Widowhood, Adulterous Marriages, Continence*, edited by John E. Rotelle and translated by Ray Kearney, 29-64. New City Press: Hyde Park, NY, 1999.

Basu, Moni. "Gay sex bans overturned; Landmark ruling fuels hopes of equal treatment." *The Atlanta Journal-Constitution,* June 27, 2003.

"Bowers v. Hardwick." Accessed November 1, 2014, http://www.law.cornell.edu/supremecourt/text/478/186.

Bowers v. Hardwick, 478 "U.S." 186 (1986).

Bronner, Ethan. "Adultery, an Ancient Crime that Remains on Many Books." *New York Times.* November 14, 2012. Accessed November 19, 2014. http://www.nytimes.com/2012/11/15/us/adultery-an-ancient-crime-still-on-many-books.html?_r=0.

Buamgardner, Paul. "Reevaluating Reynolds: The Constitutional Case for Religiously Motivated Polygamy." *Journal of Politics and Law* 6 no. 1 (2013): 1-14. Accessed May 10, 2014. doi: 10.5539/jpl.v6n1pl.

Burgett, Bruce. "On the Mormon Question: Race, Sex, and Polygamy in the 1850s and 1990s." *American Quarterly* 57, no. 1 (2005): 75-102. Accessed September 14, 2014. doi: 10.1353/aq.2005.0002.

Burt, Donald X. *Friendship and Society: An Introduction to Augustine's Practical Philosophy.* Grand Rapids: Wm. B. Eerdmans Publishing Co, 1999.

Campbell, Kelly and David W. Wright. "Marriage Today: Exploring the Incongruence Between Americans' Beliefs and Practices." *Journal of Comparative Family Studies* 41 no. 3 (2010): 329-345. Accessed October 27, 2014. http://www.jstor.org/stable/41604361.

Cavadini, John C. and Allan Fitzgerald. *Augustine Through the Ages: An Encyclopedia.* Grand Rapids: Wm. B. Eerdmans Publishing Co, 1999.

Celello, Kristin. *Making Marriage Work: A History of Marriage and Divorce in the Twentieth-century United States.* Chapel Hill: University of North Carolina Press, 2009.

Cherlin, Andrew. "In the Season of Marriage, a Question. Why Bother?" *New York Times,* April 27, 2013. Accessed November 3, 2014. http://www.nytimes.com/2013/04/28/opinion/sunday/why-do-people-still-bother-to-marry.html?pagewanted=all.

Cherlin, Andrew. "The Real Reason Richer People Marry." *The New York Times.* December 6, 2014. Accessed November 3, 2014. http://www.nytimes.com/2014/12/07/opinion/sunday/the-real-reason-richer-people-marry.html?_r=1.

Cornell University Law School. "Bowers v. Hardwick." Accessed November 1, 2014. http://www.law.cornell.edu/supremecourt/text/478/186.

Cornell University Law School. "Lawrence v. Texas." Accessed November 1, 2014. http://www.law.cornell.edu/supct/html/02-102.ZS.html//.

Cott, Nancy F. *Public Vows: A History of Marriage and the Nation*. Cambridge, MA: Harvard University Press, 2002.

"Covenant Marriage in Arizona." Accessed October 30, 2014. http://www.azcourts.gov/Portals/31/Other%20DR/covenant.pdf.

Covenant Marriage Movement. "Restoring the Covenant of Marriage with the Timeless Principles of God's Word." Accessed October 30, 2014. http://covenantmarriage.com/what-is-a-marriage-covenant/.

Culhane, John G. "Uprooting the Arguments against Same-Sex Marriage," *Cardozo Law Review 20* no. 4 (1999): 1119-1212. Accessed December 2, 2014.

Dnes, Antony W. and Robert Rowthorn. *The Law and Economics of Marriage & Divorce.* Cambridge: Cambridge University Press, 2004. Accessed November 4, 2014.

Eskridge Jr., William N. "Backlash Politics: How Constitutional Litigation Has Advanced Marriage Equality in the United States." *Boston University Law Review* 93 no. 275 (2013): 275-323. Accessed October 14, 2014.

Finkelman, Paul. *Religion and American Law: An Encyclopedia (Garland Reference Library of the Humanities).* New York: Garland Publishing Inc, 2000.

Fullam, Lisa. "Toward a Virtue of Ethics of Marriage: Augustine and Aquinas on Friendship in Marriage." *Theological Studies* 73 no.3 (2012): 663-692. Accessed October 14, 2014. doi: 10.1177/004056391207300309.

Geertz, Clifford. "Common Sense as a Cultural System." *The Antioch Review* 33 no.1 (1975): 5-26. Accessed November 30, 2014. doi: 10.2307/4637616.

Goldscheid, Julie. "United States v. Morrison and the Civil Rights Remedy of the Violence against Women Act: A Civil Rights Law Struck Down in the Name of Federalism." *86 Cornell L. Rev. 109* (2000-2001): 163. Accessed November 8, 2013.

Gordon, Sarah Barringer. *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth Century America.* Chapel Hill: The University of North Carolina Press, 2002.

Greenhouse, Linda. "Same-Sex Marriage: The Context; Supreme Court Paved Way for Marriage Ruling with Sodomy Law Decision." *The New York Times,* November 19, 2003.

Harrison, Carol. *Rethinking Augustine's Early Theology: An Argument for Continuity.* New York: Oxford University Press, 2008.

Harvard Business School. "Women, Enterprise & Society." Accessed November 30, 2014. http://www.library.hbs.edu/hc/wes/collections/women_law/.

Hentoff, Nat. "Government and Gay Marriage." *The Washington Post,* January 13, 1996.

Jakobsen, Janet, and Ann Pellegrini. *Love the Sin: Sexual Regulation and the Limits of Religious Tolerance.* New York: New York University Press, 2003.

Kamen, Al. "High Court to Review Rights of States to Regulate Adults' Sexual Activities; Constitutional Issue Addressed for First Time in Sodomy Case." November 5, 1985. *The Washington Post*.

Kurland, Philip, edited by Gerhard Casper. Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law. Arlington: University Publications of America, Inc., 1975.

Matthews, Dylan. "The Supreme Court struck down part of DOMA. Here's what you need to know." *The Washington Post.* June 26, 2013. Accessed November 20, 2014. http://www.washingtonpost.com/blogs/wonkblog/wp/2013/06/26/the-supreme-court-struck-down-doma-heres-what-you-need-to-know/.

Nakonezny, Paul A., Robert D. Schull, and Joseph Lee Rodgers. "The Effect of No-Fault Divorce Law on the Divorce Rate Across the 50 States and Its Relation to Income, Education, and Religiosity." *Journal of Marriage and Family 57* no.2 (1995): 477-488. Accessed October 30, 2014. doi: 10.2307/353700.

NWA Marriages. "Covenant Marriage." Accessed October 30, 2014. https://www.nwamarriages.com/married-couples/covenant-marriage-license/.

ProCon.org. "Gay Marriage: Pros and Cons." Accessed October 13, 2014. http://gaymarriage.procon.org/view.timeline.php?timelineID=000030.

Redekop ,Vern Neufeld and Thomas Ryba. *René Girard and Creative Reconciliation.* Plymouth: Lexington Books, 2014.

Representative Samuel W. Parker of Indiana *Congressional Globe,* 33d Cong., 1st sess., 1854, 1091-92.

Reid Jr., Charles J. "The Augustinian Goods of Marriage: The Disappearing Cornerstone of the American law of Marriage." *BYU Journal Of Public Law.* 18 no.2 (2004): 449-478. Accessed November 1, 2014. http://digitalcommons.law.byu.edu/jpl/vol18/iss2/6.

Reynolds v. U.S., 98 U.S. 164.

Rist, John M. *Augustine: Ancient Thought Baptized*. Cambridge: Cambridge University Press, 1994.

Smith, Stephen Eliot. "Barbarians within the Gates: Congressional Debates on Mormon Polygamy, 1850-1879." *Journal Of Church & State* 51, no.4 (2009): 592-616. Accessed May 9, 2014. doi: 10.1093/jcs/csq021.

Stoddard, Thomas B. "*Bowers v. Hardwick*: Precedent by Personal Predilection." *University of Chicago Law Review* 54 Rev.648 (Spring 1987). Accessed November 27, 2014.

The Church of Jesus Christ of Latter-Day Saints/ "Official Declaration." Accessed November 14, 2014, https://www.lds.org/scriptures/dctestament/od/1?lang=eng.

Topping, Ryan. *St Augustine.* London: Continuum International Pub. Group, 2010.

U.S. House. 104 Congress, 2nd session. *H.R. 3396, Defense of Marriage Act.* ONLINE. GPO Access. Available: http://www.gpo.gov/fdsys/pkg/BILLS-104hr3396enr/pdf/BILLS-104hr3396enr.pdf [5 November 2014].

U.S. Legal. "Covenant Marriage Law & Legal Definition." Accessed October 30, 2014. http://definitions.uslegal.com/c/covenant-marriage/ .

Waite, Linda J., and Evelyn L. Lehrer. "The Benefits from Marriage and Religion in the United States: A Comparative Analysis." *Population and development review* 29 no.2 (2003): 255–276. Accessed December 1, 2014.

Weise, Robert. "Marriage: The Divine and Blessed Walk of Life." *Concordia Journal 40* no.1 (2014): 46-57. Accessed October 20, 2014.

Wright, Tony. "U.S. Supreme Court Justices Appear Poised to Overturn Sodomy Ban." *Lawyers Weekly USA,* April 14, 2003.

34th Cong., 1st sess. (June 26, 1856). *Congressional Globe,* 34th Cong., 1st sess., 1856, 1491.