What happened to the Marriage Alternatives?

Same-sex Couples in the U.S and the Distinctiveness of Marriage

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ABSTRACT:

Objectives: Our goal is to understand if U.S. adults with same-sex partners viewed marriage and domestic partnership differently, and if so why.

Background: The retreat from marriage in the U.S. is a fundamental preoccupation of American social science. In a classic 2004 essay, Andrew Cherlin argued that marriage in the U.S. was in a process of deinstitutionalization, in part because the distinctiveness of marriage (compared to cohabitation) was shrinking. Marriage itself was controversial in gay rights circles, so it was not clear if and how same-sex couples would embrace marriage once they earned the right to marry.

Method: We compare marriage to a domestic partnership institution that was created to offer a set of state rights similar to marriage. This is a conservative test of marriage's distinctiveness. We examine marriage and domestic partnership through the eyes of same-sex couples in the U.S., who until recently were excluded from marriage. We use administrative data on California domestic partnerships and American Community Survey data on marriages to compare same-sex couples' uptake of domestic partnerships and marriages when both were freely available starting in late June, 2013. We use data from the nationally representative How Couples Meet and Stay Together survey of 2022 to examine the relative preference of adults with same-sex partners for marriage or domestic partnership, and how they justified their preferences.

Results: Given the choice between marriage and domestic partnership, California same-sex couples overwhelmingly chose marriage. Same-sex couples were very attentive to the regulative, normative and cultural advantages of marriage over domestic partnership.

Conclusion: Marriage in the U.S. remains distinct from the relevant alternatives, and by this measure marriage as an institution remains strong.

Key words: Intimate Relationships; LGBTQ; Marriage; Quantitative Methodology; Same-Sex Marriage

What Happened to the Marriage Alternatives?

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INTRODUCTION:

By many demographic measures, marriage in the US is in decline. Age at first marriage is at an all-time high (U.S. Census Bureau, 2022). Extramarital childbirth is near an all time high in the U.S. and for African Americans, the majority of births are to women who are not married (Acs et al., 2013). While the US divorce rate has declined from a peak in the 1980s (Stevenson & Wolfers, 2007), it remains higher than many of our peer countries (Cherlin, 2009). Because marriage is a venerable and fundamental institution (Goldthorpe, 1987; Grossberg, 1985), the meaning of the demographic delay, decline, or retreat from marriage (Bloome & Ang, 2020; Stevenson & Wolfers, 2007) is hotly debated. For some scholars, the demographic decline of marriage implies nothing short of the slow decomposition of American society (Wilson, 2002; Moynihan, 1965; Wilcox, 2024). Other scholars see resilience in the institution of marriage as marriage adapts to a changing society (Coontz, 1997; Rosenfeld, 2007; Stacey, 1998). See Amato et al (2007) for the history of the debate between the marital decline perspective and the marital resilience perspective.

In a classic essay titled "The Deinstitutionalization of American Marriage," Andrew Cherlin (2004) defined the institutional vitality of marriage in part by marriage's distinctiveness from other types of unions. Cherlin argued that marriage in the US was becoming more like nonmarital cohabitation, and therefore marriage was on a path of deinstitutionalization. Nonmarital cohabitation is an emerging institution, formally illegal as recently as the 1970s in some US states (Mahoney, 2005), with few established rules and norms. Cherlin's (2004) view

that marriage was deinstitutionalizing in the U.S. was motivated in part by the greater retreat from marriage in Europe, citing Kiernan (2002). Kiernan found that the institutional distinction between marriage and cohabitation was eroding quickly in Europe, and that in Sweden and Denmark there already was no distinction between marriage and cohabitation. Cherlin (2004) also argued that the entry of same-sex couples into marriages or marriage-like arrangements was a potential force for the deinstitutionalization of marriage because same-sex couples lacked the traditional gender division of labor, and were less supported by their families of origin.

In a follow-up essay, Cherlin (2020) found that he had underestimated the way in which the legalization of same-sex marriage (subsequent to *Obergefell v Hodges*, 2015) had elevated the institutional distinctiveness of marriage. Cherlin (2020) recognized that the social movement for same-sex marriage required marriage equality advocates to highlight the advantages of marriage over all competitor institutions.

Cherlin (2020) argued that same-sex marriage might reinforce the institution of marriage, but demographic data on the marriage choices of same-sex couples has been lacking. We introduce administrative data from California documenting how same-sex couples chose between marriage and domestic partnership when both were available. We supplement the administrative data from California with nationally representative data from adults in same-sex unions describing whether they preferred marriage or domestic partnership, and why.

Unlike adults with different-sex partners who had the privilege of knowing that marriage was accessible to them and therefore had the privilege of taking marriage for granted, US adults with same-sex partners were excluded from marriage until recently. Adults with same-sex partners, being historically excluded from marriage, had to consider every aspect of marriage, from the regulative, the normative, and the cultural (the three pillars of institutions according to

Scott, 2008), in order to try to approximate the rights of the institution of marriage through commitment ceremonies, health directives, power of attorney agreements, joint tenancy holdings, and more (Ocobock, 2024; Reczek et al., 2009; Hertz & Doskow, 2014). Just as immigrants bring a fresh outsider's perspective to their second country, so too immigrants to the realm of legal marriage can sometimes have a greater awareness of the contours and rules of marriage, having had to study the institution from the outside. Same-sex couples' former outsider status makes them an especially important group for testing the attractiveness of marriage.

In DiMaggio and Powell's (1983, p.153) classic essay on institutional isomorphism, they noted that new categories of workers in established jobs, such as Jewish naval officers or women stockbrokers, faced intense pressure from the established workforce to assimilate and follow the previously established norms. Unlike Jewish naval officers or women stockbrokers who were strangers assimilating into jobs where they lacked a prior frame of reference, gay and lesbian adults have always known about marriage. Given the low frequency of same-sex couple parents compared to different-sex couple parents (Rosenfeld, 2015; Simmons & O'Connell, 2003) in the U.S., gay and lesbian youth were overwhelmingly raised in families headed by heterosexual parents (Pillard et al., 1982). Gay youth therefore had nearly as much socialization (as children) to the institution of heterosexual marriage as heterosexual youth had.

Scholarship in the new institutionalism argues that the cultural values of institutions in general, and of marriage in particular, could make marriage as an institution more stable and more able to assimilate new groups than we would otherwise expect (Meyer & Rowan, 1977; Zucker, 1977; Lauer & Yodanis, 2010). Among all institutions, marriage has an especially strong culture. Weddings have tremendous ceremonial importance. A wedding is the most culturally freighted, the most rigorously planned, and often the most expensive single event that individuals

organize. The choice of marriage partner is profoundly consequential, and parents and religious orders have historically invested heavily in influencing spousal matches (Rosenfeld, 2007).

The new institutionalism predicts that marriage equality would lead to the assimilation of same-sex couples into the norms and culture of marriage. The possibility of gay, lesbian, and queer peoples' assimilation into marriage in the U.S. was not welcomed by everyone. Activists in the religious Right of the U.S. bitterly opposed the way that marriage equality had the capacity to elevate the status of same-sex couples, since it was fundamental to their thinking that the Bible described homosexuality as a sin, and therefore homosexuals could not be equals with heterosexual people (Dobson, 2004; Fetner, 2008). On the Left of the political spectrum, some gay rights leaders opposed gay marriage because they viewed marriage as too conservative, too patriarchal, and too traditional (Frank, 2017; Rosenfeld, 2021).

GAY RIGHTS THEORIES OF MARRIAGE

Theory 1: Gay Rights Anti-traditionalism

The gay rights movement emerged in the 1960's with activist roots in the sexual liberation movement, student radicalism, the feminist movement, and the early homophile movement (D'Emilio, 1998; Hirshman, 2012). Activists within the gay rights movement of the late 1960s and the early 1970s, such as members of the Gay Liberation Front (GLF), considered marriage to be an oppressive, patriarchal institution that was diametrically opposed to the liberation of gay and lesbian people. In the words of early gay rights activist Carl Wittman (1970: 4), whose work was circulated by the GLF, "traditional marriage is a rotten, oppressive institution." Some gay activists considered the inability of gay people to marry to be a liberating privilege of being gay (D'Emilio, 2014, p.231 quoting filmmaker John Waters).

In the post-1990 era when marriage equality started to be taken more seriously in public opinion and then in courts, the Left anti-traditionalist critique of marriage was renewed by scholars like Nancy Polikoff (1993: 1536), who wrote

> "I believe that the desire to marry in the lesbian and gay community is an attempt to mimic the worst of mainstream society, an effort to fit into an inherently problematic institution that betrays the promise of both lesbian and gay liberation and radical feminism."

Polikoff (2008) argued that "marriage is not the answer" for gay and lesbian adults. Consistent with Critical Legal Studies (Levitsky, 2015; Unger, 1983), scholars in the anti-traditionalist Left argued that joining or even attempting to reform marriage would only legitimize and reify the existing inequalities of marriage. Instead, they promoted an alternative to marriage: domestic partnership (Polikoff, 2008; Ettelbrick, 1989). The writers from the anti-traditionalist Left made strong normative arguments for why gay, lesbian, and queer people ought to resist assimilation into the tradition-steeped roles and obligations of marriage: "Shaped in a patriarchal system that looks to ownership, property, and dominance of men over women as its basis, the institution of marriage long has been the focus of radical feminist revulsion" (Ettelbrick, 1989, p.9). In place of marriage, the anti-traditionalists held domestic partnership in high regard as an institution:

> "The lesbian and gay community has laid the groundwork for revolutionizing society's views of family. The domestic partnership movement has been an important part of this progress insofar as it validates non-marital relationships... We must keep our eyes on the goals of providing true alternatives to marriage and of radically reordering society's view of family." (Ettelbrick, 1989, p.17)

Gay rights anti-traditionalists had a clear sense of the distinctiveness of marriage compared to cohabitation and compared to domestic partnership. Gay rights anti-traditionalists also feared the cultural power of marriage to assimilate same-sex couples into the roles and norms of marriage. The normative pull of marriage was central to what Duggan (2002) referred to as homonormativity. The fight for marriage equality like the fight for the right of gay people to serve in the military was, in Duggan's (2002, p.189) view, "… a kind of political sedative- we get marriage and the military then we go home and cook dinner, forever."

Theory 2: Incrementalism

Whereas gay rights anti-traditionalism is an idealistic political theory, incrementalism is a practical political theory whose practicality depends on the specific political context. In the case of gay couples' struggles for formal governmental recognition of their unions, incrementalism meant fighting for domestic partnership rights in political circumstances where full marriage equality was out of reach. The chief theoretical case for incrementalism was made by William Eskridge (2002) in *Equality Practice*, a book that emerged from his work with the lawyers for the plaintiffs in the late 1990s battle for same-sex marriage in Vermont (on incrementalism more generally, see Sunstein, 1996).

In 1999, the Supreme Court of Vermont in *Baker v State* ordered the Vermont legislature to create an equivalent set of formal union rights for same-sex couples, either through marriage or through "a parallel 'domestic partnership' system or some equivalent statutory alternative." (*Baker v. State*, at 867). Vermont named their domestic partnerships civil unions. Civil unions lacked the portability of marriage to other states, lacked recognition by the US federal

government, and lacked the social and cultural value of the marriage institution that welcomed different-sex couples. The plaintiffs knew that marriage equality was not politically feasible in Vermont in 1999, so they decided after some debate (Kaufman, 2015) to pursue an incrementalist path and to support civil unions as the best outcome they could achieve.

Ten years later, in 2009, the Vermont legislature made Vermont the fourth U.S. state to have marriage equality (after Massachusetts, Connecticut, and Iowa) and Vermont was the first to do so legislatively without having been forced to do so by the judiciary. The Vermont Civil Union experience from 1999 to 2009 made marriage equality more politically feasible in Vermont in 2009, which is exactly the way the advocates believed that incrementalism was supposed to work. In Eskridge's (2002, p.xii) words, "equality comes on little cat's feet."

Incrementalism theory is consistent with situations where civil marriage and domestic partnership options coexist as relationship statuses with different degrees of formal commitment and obligation (the 'menu of options' approach, see Eskridge, 2002, p.121-126) as eventually occurred in California. Offering a menu of both civil marriage (with all its rights, obligations, and traditionalist baggage) and domestic partnership would in theory allow couples with incrementally greater or lesser commitments (and variable degrees of conformity with the traditional norms of marriage) to choose the option most appropriate for them.

Theory 3: Equality Without Compromise

Marriage's expressive component is fundamental to the cultural dimension of the institution of marriage (Karst, 1980). The expressive function of marriage conveys the idea of commitment between the spouses and also conveys the acceptance by society of the couple's

commitment to each other. Exclusion from civil marriage conveys the opposite: societal *disapproval* of the couple's commitment.

In 1989, Thomas Stoddard (p.12) wrote a seminal argument in favor of marriage equality: "…marriage is, I believe, the political issue that most fully tests the dedication of people who are not gay to full equality for gay people, and also the issue most likely to lead ultimately to a world free from discrimination against lesbians and gay men."

In the opening paragraph in the majority's 2003 marriage equality decision in *Goodridge v. Dept of Public Health*, Massachusetts Chief Justice Marshall wrote, "The Massachusetts Constitution affirms the dignity and equality of all individuals. It forbids the creation of second-class citizens." If same-sex couples were excluded from marriage, inclusion in a domestic partnership regime would reify gay citizens' status as second-class citizens, stuck in a segregated area of family law. The achievement of equality without compromise implies both equality before the law (for same-sex couples who married), i.e. equality in the regulative pillar of marriage, and also equal standing in the culture and society, which is equality in the cultural and cognitive pillar of marriage.

The fight for marriage equality required advocates to drive a hard rhetorical wedge between two institutions, marriage and domestic partnership, the latter of which had been created to be similar to the former (Murray, 2013). Whereas the argument for incrementalism emphasized the similarities between marriage and domestic partnership on the regulative dimension, the argument for equality without compromise emphasized the broad gulf between marriage and domestic partnership on the cultural dimension. As Judge Vaughn R. Walker wrote (having accepted the arguments of marriage equality advocates) in his 2010 trial decision in

Perry v. Schwarzenegger (p. 970-971), the decision that eventually made California a marriage equality state in 2013 when all appeals had run out,

> "Domestic partnerships lack the social meaning associated with marriage, and marriage is widely regarded as the definitive expression of love and commitment in the United States."
>
> and
>
> "The availability of domestic partnership does not provide gays and lesbians with a status equivalent to marriage because the cultural meaning of marriage and its associated benefits are intentionally withheld from same-sex couples in domestic partnerships."

The three gay rights theories of marriage we describe here (anti-traditionalism, incrementalism, and equality without compromise) have been described before (Frank, 2017; NeJaime, 2014; Eskridge, 2002; Wolfson, 2004). Our contribution is to offer empirical tests for the first time from population level data about how same-sex couples in the U.S. chose between marriage and domestic partnership, and why.

The construction of California's domestic partnership institution

In the 1980s, gay rights activists and sympathetic officials in California worked to create legal recognition of a marriage alternative for same-sex couples, resulting first in a municipal domestic partnership program in Berkeley, CA in 1984. Berkeley's program at first was modest in scope: it allowed city workers to extend their health benefits to same-sex and different-sex partners alike (NeJaime, 2014, p.114-120).

The movement to expand rights for same-sex couples led eventually to the establishment and legal recognition of domestic partnerships state-wide (Cummings & NeJaime, 2010; NeJaime, 2014). California's first domestic partner registry (passed as Assembly Bill 26) took effect on January 1, 2000 and created a process for registration and termination of domestic partnerships through the Secretary of State of California. The main benefits of AB 26 were to force California employers to treat employees' domestic partners the same as employees' spouses for the purpose of employer-sponsored health insurance, and to allow domestic partners the right of hospital visitation. The first version of California's domestic partnership registry was open to same-sex couples (both adults unrelated by blood), and different-sex couples both over the age of 62 (and unrelated by blood). In the subsequent legislative term, California expanded the rights and duties of domestic partners to include joint and second-parent adoption rights, health care surrogacy rights, some spouse-like survivorship rights, and more.

California's AB 205 of 2003 extended "the rights and duties of marriage to persons registered as domestic partners on and after January 1, 2005," making domestic partnership and marriage as similar along the regulative dimension as the California legislature could make the two institutions. The delay from September 19, 2003 when the bill was signed by the Governor gave the California Secretary of State time to write to all the existing domestic partners in California and inform them of the changes. The rights and duties of marriage (that the state of California could provide or guarantee) proved to be more than some couples with domestic partnerships had bargained for. California is a community property state, meaning assets earned during the partnership were to be jointly owned and equally divided after a partnership dissolution. Domestic partner dissolutions spiked in 2004 before the changes of AB 205 went into effect (see Figure 2 below).

In 2010, California's ban on same-sex marriage (imposed by voter referendum in 2008) was ruled unconstitutional in *Perry v Schwarzenegger,* though the decision in *Perry* was stayed until Proposition 8's supporters' final appeals were rejected by the US Supreme Court on grounds of lack of standing in *Hollingsworth v Perry* in June of 2013.

Beginning in late June, 2013, following the Supreme Court decision in *Perry*, the 9th Circuit stay of Judge Walker's trial decision was lifted, and California became a marriage equality state. California became in mid-2013 an ideal place in which to test the relative attraction of marriage and domestic partnership to a substantial population of same-sex couples who had ample opportunity to know of both options for formalizing their unions. California was unique in offering marriage equality and a robust domestic partnership option concurrently. Vermont stopped issuing civil unions in the same 2009 state legislative act that made Vermont a marriage equality state. Massachusetts never had a state domestic partnership regime that offered anything like the rights and benefits of marriage before becoming a marriage equality state in 2004 (Levi, 2000). Some state legislators had feared that a domestic partnership program that competed with marriage (and was available also to different-sex couples) would undermine the institution of marriage.

HYPOTHESES:

We present hypotheses in the spirit of formalizing tests to determine which theoretical argument is better represented in the data. We acknowledge that in the diverse population of Americans with same-sex partners, a variety of motivations for (or against) marriage or domestic partnership will exist.

Hypothesis 1: Non-distinctiveness of Marriage. Same-sex couples will have viewed marriage and domestic partnership as equivalent institutions, and acted accordingly.

Hypothesis 1 is most consistent with what Cherlin (2004) has described as the deinstitutionalization of marriage. Domestic partnership was developed by California to duplicate the benefits and obligations of marriage that California could provide, contributing to the possibility that partnered adults would see the two institutions as similar. Because both marriage and domestic partnership draw their authority from the government, DiMaggio and Powell's (1983, p.155) theory of institutional isomorphism suggests that marriage and domestic partnership should be especially isomorphic. Nonmarital cohabitation, deriving no authority from the government, would be expected to be less isomorphic with marriage.

Hypothesis 2: Distinctiveness of Marriage. Same-sex couples perceived marriage and domestic partnership as different and distinctive.

Corollary 2a: Preference for Marriage. Given a perception of distinctiveness between domestic partnership and marriage, same-sex couples overwhelmingly chose marriage. The reasons for preferring marriage are various. Marriage is the higher status arrangement, offers more rights, and is more legible to others.

Corollary 2b: Preference for Domestic Partnership. Given a perception of distinctiveness between domestic partnership and marriage, some same-sex couples will have preferred domestic partnership. Domestic partnership has advantages of a more modest set of obligations, a lower level of implied commitment, and reduced traditional baggage.

Corollary 2b, same-sex couple preference for domestic partnership, is what the gay rights anti-traditionalists were hoping to see, but they feared Corollary 2a, that same-sex couples would choose marriage and assimilate to its values, norms, and culture. The advocates of marriage equality expected and hoped for Corollary 2a, that same-sex couples would take advantage of the rights and cultural status of marriage to elevate themselves to equal status within a society dominated by heterosexuals. The incrementalists were working towards a society in which same-sex couples would be able to choose freely between marriage (consistent with Corollary 2a) and domestic partnership (consistent with Corollary 2b).

THE DATA:

a) Marriage and Domestic Partner data from California

Our California analysis employs data from four sources. The first source is a database obtained from California's Secretary of State, containing a list of all 79,076 non-confidential active (as of November 5, 2020) domestic partnerships filed in California from January 3, 2000 to November 5, 2020, including names of both partners, file date, and address of each couple. The domestic partner registry data contain neither gender nor age information. In order to distinguish same-sex couples from different-sex couples we rely on a second data source: the comprehensive Social Security Administration (hereafter SSA) database on the gender distribution of U.S. births by first name and gender for years 1930-2019, with 96,000 distinct names.

We defined same-sex couples as both partners having greater than 95% probability of being male or both partners having greater than 95% probability of being female based on their names. Compared to a less strict 50% gender-name cutoff, the 95% cutoff reduces the number of

identifiable same-sex couples by 10.6%. In Appendix Table 1 we show that setting the gender-name cutoff to 50%, 90%, and 95% all yield the same substantive results, because most people have had names that are strongly gendered. Of the 79,076 domestic partnerships recorded in the dataset, we code 49,439 as same-sex couples, and 16,228 as different-sex couples. In the domestic partnership data 13,409 couples were coded as unknown (as between same-sex and different-sex) because at least one first name was missing or was listed only as an initial or was spelled in a way that did not match any names in the SSA database, or else at least one of the two partners had a name that was less than 95% associated with male or female births in the SSA database. Of the 79,076 domestic partnership records, 1,790 were for partners who lived outside of California and the remaining 77,286 were for California residents including 48,310 same-sex couples. Of the 48,310 California same-sex domestic partnerships, 50.8% were granted to female-female couples, and 49.2% were granted to male-male couples. We include only California residents in the domestic partnership analysis.

Although there are names that are somewhat gender ambiguous (Morgan, 83% female; Toby, 81% male; Joey, 89% male), the vast majority of people have names that are more gender-specific than Morgan, Toby, or Joey. The name distribution is remarkably bimodal by gender, based on SSA data as Figure 1 shows. Of the 75,034 identifiable names of partner 1 in the domestic partner registry data, only 3,613/75,034 (4.8%) were names that were less than 90% male or less than 90% female in the SSA data. The bimodal gender distribution of first names allows us to identify same-sex couples in the domestic partner registry data with some confidence (Heerwig & Gordon, 2018). Changes in domestic partner policies over time that affected same-sex and different-sex couples differently (see Figure 2) give us added confidence that same-sex couples are identified accurately in the data.

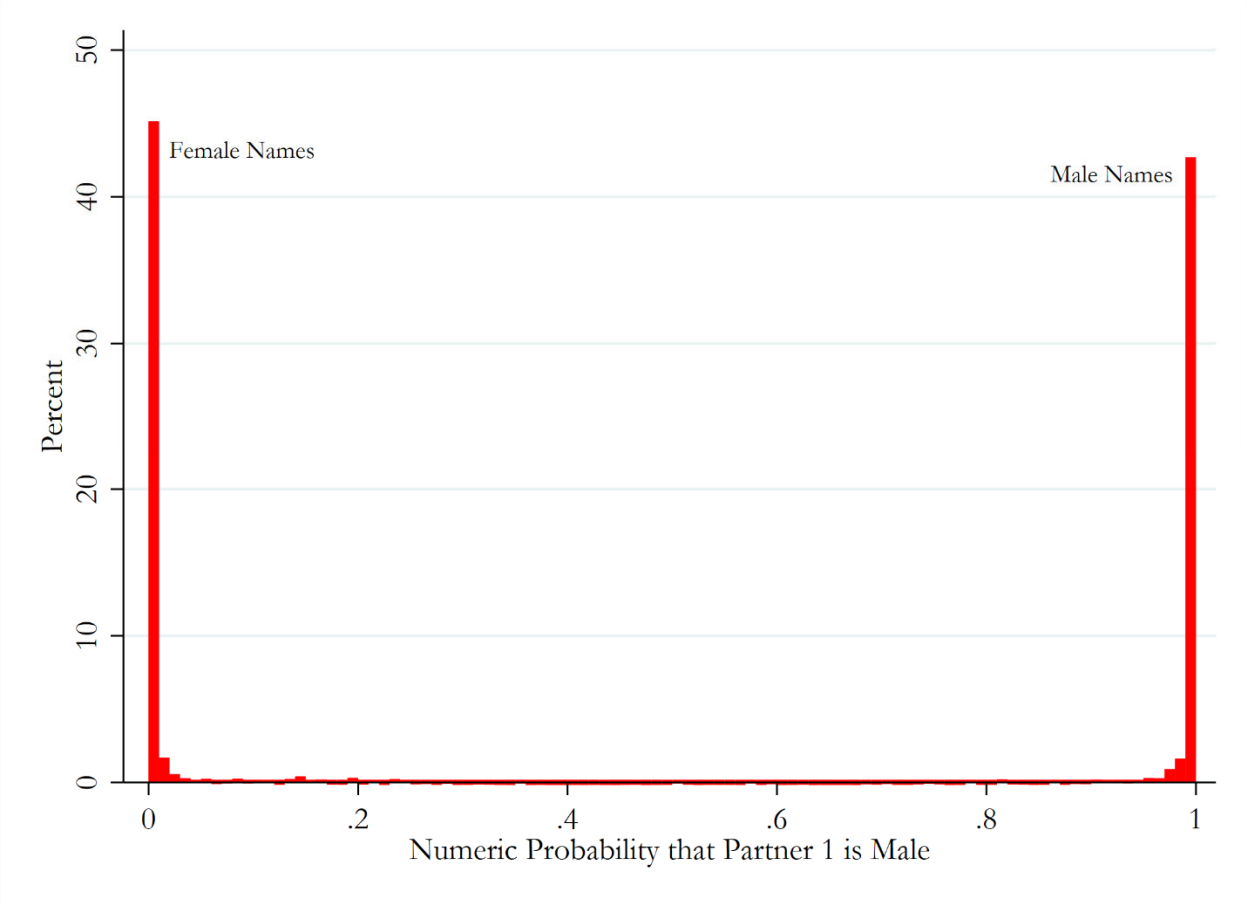

Figure 1. Bimodal distribution of names by gender
Source: California Domestic Partnership data from California Secretary of State. First names matched to SSA gender birth name file, 1930-2019

In the appendices we redo our analyses of California administrative domestic partnership data with two less strict criteria for assigning gender based on names. We loosened the gender-name cutoff from 95% to 90% and then to 50%, yielding the same substantive results. The 50% threshold allowed us to identify every couple whose partners had names listed in the SSA database as either same-sex or different-sex, restoring 10.6% of the data to the analysis. Because names are so gendered to begin with (see Figure 1), the strictness of the gender-name threshold had no substantive impact on the results. In order to distinguish as accurately as possible between

same-sex and different-sex couples, we used the 95% gender-name threshold and accepted the 10.6% data loss.

The third dataset we use is the American Community Survey, ACS 2013-2018 (Ruggles et al., 2023), which identifies same-sex married couples based on a question about whether respondents had been married in the past year. The ACS is fielded throughout the year, and survey month is not part of the public data. We assume that marriages reported in ACS calendar year X were evenly spread across the 12 months of year X. For same-sex marriages reported for residents of California in ACS 2013, we apply those marriages to the last 6 months of 2013, since California became a marriage equality state in late June, 2013. With weights applied, the ACS describes the entire US population with errors that we will account for and quantify.

The fourth dataset is a yearly (through 2013) total of California domestic partnership dissolutions, combining same-sex and different-sex partnerships, derived from Badgett and Mallory (2014) and from background data provided by that report's first author. From 2000 to 2013, 15% of California's registered domestic partnerships were dissolved.

b) Nationally representative data on attitudes towards marriage and domestic partnership

The fifth data source we use consists of closed-ended and open-ended questions from the How Couples Meet and Stay Together (HCMST) survey of 2022 (Rosenfeld et al., 2023). The survey was fielded online in March and April of 2022 to English-speaking adults who were part of the Ipsos KnowledgePanel. Members of the Ipsos KnowledgePanel were recruited by address-based sampling and were given Internet access and a device to answer questions if they did not have Internet access or a device of their own. Unlike Internet opt-in surveys, KnowledgePanel is nationally representative and can be used to draw inferences about the US population. The

minimum age in HCMST 2022 was 22 years, and the completion rate was 83.2%, as subjects in the panel are expected to respond to surveys and are compensated for doing so. Research has found representative internet panels such as the KnowledgePanel to be equal to or better than the previous standard nationally representative Random Digit Dialing telephone surveys in terms of data quality and representativeness (Chang & Krosnick, 2009; Fricker et al., 2005).

Self-identified gay, lesbian, and bisexual adults were over-sampled in the HCMST surveys. Of the 1,722 respondents, 1,337 subjects were in romantic relationships of all types and durations and of these 92 were same-sex relationships. Of the 92 subjects in same-sex unions (formal and informal), 38 lived in states that had some form of domestic partnership legislation. Subjects in same-sex unions were asked two questions about marriage and domestic partnership with respect to their current partner by name. The first was a closed-ended question:

"If you had a choice today or in the future between being married to [partner_name] or having a domestic partnership with [partner_name], and you could only have one, which one would you choose?" Three choices were offered:

1) I would prefer to be married; 2) I would prefer to be domestic partners; 3) I would choose neither

The next question was open-ended: "**Why** do you prefer [marriage/ domestic partnership/ neither]?"

RESULTS:

Part 1: California Marriages and Domestic Partnerships

Figure 2 shows the number of California domestic partnerships (not dissolved as of November, 2020) by month filed by same-sex couples and by different-sex couples, respectively. In January, 2000, the first month that domestic partnerships were available in California, 889 same-sex couples and 26 different-sex couples filed for domestic partnerships. In its earliest incarnation with the age restrictions on different-sex couples, California domestic partnerships were mainly registered to same-sex couples.

When the rights for domestic partners were expanded in mid-October 2001 as a result of Assembly Bill 25, there was another sharp increase in same-sex couples filing for domestic partnerships, peaking with 755 same-sex couples filing for domestic partnerships in January of 2002, followed by a slow decline in registrations. In 2003, there were an average of 356 same-sex couple domestic partnerships registered per month. In 2005, there were an average of 330 same-sex domestic partnerships registered per month.

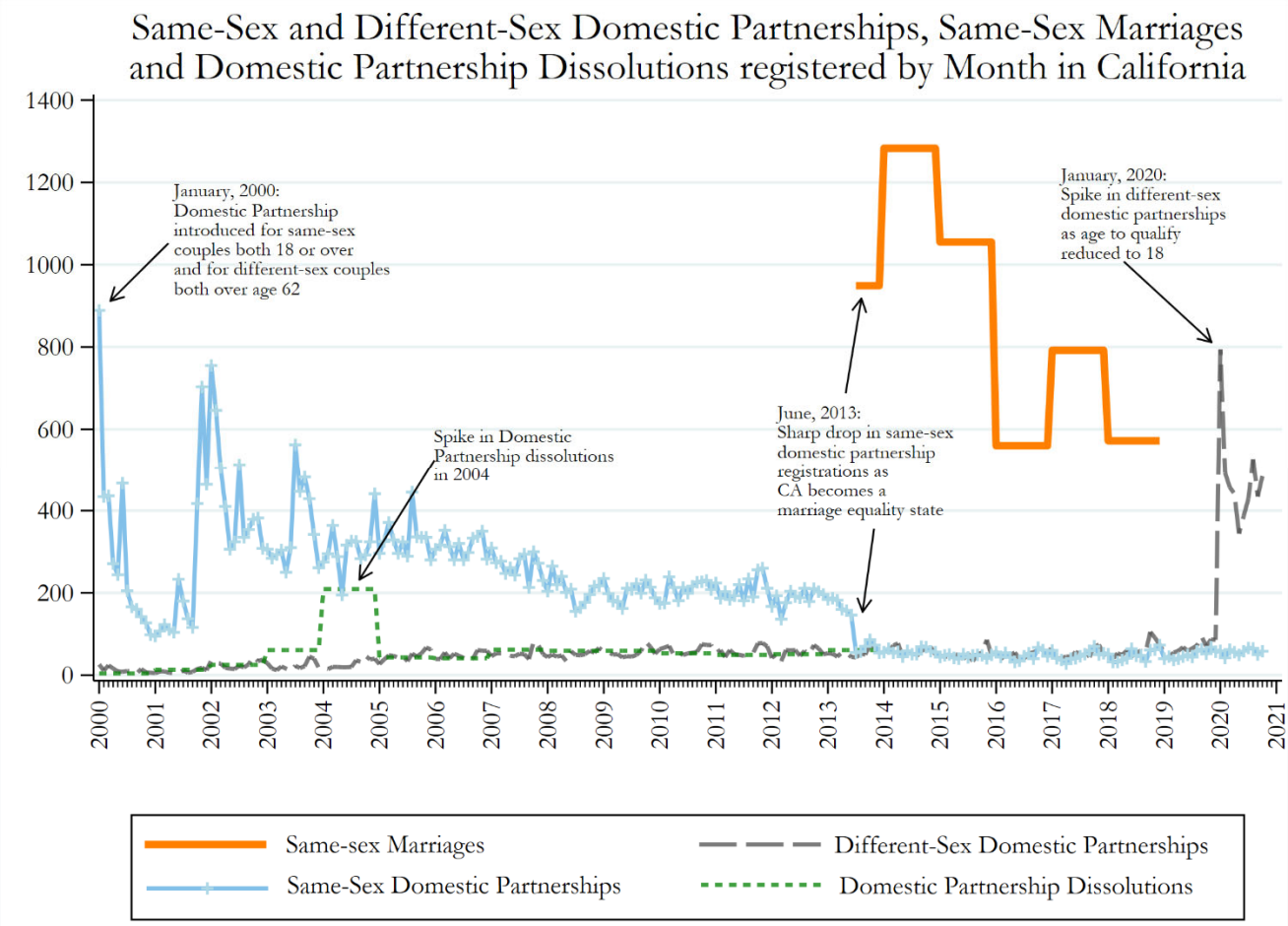

Figure 2. Domestic Partnerships and Same-Sex Marriages in California by month.
Source: California DP data (for same-sex and different-sex couples) from California Secretary of State. Marriage data from the ACS via IPUMS (Ruggles et al., 2023). DP dissolution data via Badgett and Mallory (2014).

California AB 205 of 2003 expanded domestic partnership rights to include "all the rights and duties of marriage." There were 2,513 dissolutions of California domestic partnerships in 2004 (accounting for 10% of the total number of previously registered partnerships, and constituting 27% of all dissolutions through 2013) in the runup to AB 205 taking effect. According to Badgett and Mallory (2014, p.134), the 2004 California surge in domestic partner dissolutions may have been due to couples wanting to avoid the marriage-like community property implications of AB 205.

Couples seeking dissolution of their domestic partnerships in 2004 may have been demonstrating that they entered into domestic partnerships considering domestic partnership to be an intermediate relationship formalization status short of marriage, consistent with Corollary 2b and with one interpretation of incrementalism. Incrementalist advocates saw domestic partnerships as a useful halfway measure. Some couples apparently preferred the halfway measure of domestic partnership to the full set of rights and obligations associated with civil marriage. We document below in our analysis of 2022 survey data some individuals explaining their preference for domestic partnership for precisely this reason.

The most important transition visible in Figure 2 occurred between June and July of 2013, because the end of June, 2013 is when California became a marriage equality state subsequent to *Hollinsgsworth v. Perry*. In April, 2013, 160 same-sex domestic partnerships were registered in California, followed by 157 in May, and 146 in June, 2013. In the immediate aftermath of *Hollingsworth*, in July of 2013 there was a sharp drop off as California registered only 55 new same-sex domestic partnerships.

What were same-sex couples doing instead of filing for domestic partnerships in the second half of 2013? They were marrying. California recorded an average of 949 same-sex marriages per month (95% confidence interval 737-1162 marriages per month) in the second half of 2013. In the 12 months of 2014, California same-sex couples averaged 57 new domestic partnerships per month, compared to 1,283 (95% confidence interval 1101-1462) new same-sex marriages per month. When California same-sex couples were given a choice between marriage and domestic partnership, they were choosing marriage over domestic partnership by a ratio of more than 22-to-1. California same-sex couples clearly understood the distinction between

marriage and domestic partnership (consistent with Hypothesis 2) and given the choice, they preferred marriage overwhelmingly (consistent with Corollary 2a).

Many of the same-sex couples in California who could have wanted domestic partnerships already had domestic partnerships in 2013 (since domestic partnerships first became available for same-sex couples in 2000), while marriage equality (without the looming threat of reversal) was new in California in 2013. Furthermore, the victory of marriage equality in California was very much in the news. The day after the US Supreme Court's decision in *Hollingsworth v Perry*, the Los Angeles Times had a banner headline on page 1: "Gay Marriage Wins." The San Francisco Chronicle front page headline was "Celebrations in S.F. after historic rulings." The Attorney General of California, Kamala Harris, showed up in San Francisco City Hall on June 28, 2013, to marry the plaintiffs in the case, Sandy Stier and Kris Perry with news media all around (Rosenfeld, 2021, p.152). The immediacy of the news about marriage equality in California could have spurred a temporary preference for marriage among same-sex couples.

News cycles are fleeting, however. Looking past the initial spike of same-sex marriages in 2013 and 2014, same-sex marriage reached a steady state of 641 (95% confidence interval 564-718) same-sex marriages per month in California, averaging together 2016, 2017 and 2018. The rate of entry into same-sex domestic partnership in 2016-2018 averaged 48 new same-sex domestic partnerships registered per month. The ratio of new same-sex marriages to same-sex domestic partnerships in 2016-2018 was (641/48) or 13.4 to 1. Even after the initial spike of California same-sex marriages in 2013, the number of new same-sex marriages registered to California couples dominated the number of new same-sex domestic partnerships registered in California every month, by a wide margin.

The rate of different-sex California marriages (not shown in Figure 2) also dramatically outnumbered the rate of different-sex California domestic partnerships. During the 2008-2019 period, when different-sex domestic partnerships were limited to partners of persons over age 62, 13.0 times more different-sex California marriages were entered into in the same age group compared to different-sex domestic partnerships. In 2020, when California domestic partnerships became available to different-sex couples with partners age 18 and over, new different-sex marriages outnumbered new different-sex domestic partnerships by 28.0 to 1.

Table 1 documents the results of a Poisson regression (Agresti, 1996) predicting the natural logarithm of the count of same-sex domestic partnerships in California, by month. The regression results substantiate four patterns that are visible in Figure 2. First, there was a general decline over time in same-sex domestic partnership registrations in California, as the initial rushes created by each expansion of rights cleared.

Second, the first month domestic partnerships were available (January of 2000) the number of registered domestic partnerships was especially high. Third, expanded rights granted to domestic partnerships starting in mid-October of 2001 substantially increased the number of same-sex couples registering for domestic partnerships. Fourth, and most relevant for our purposes here, the *Hollingsworth v. Perry* decision in late June, 2013 (making California a marriage equality state) had an immediate effect of lowering the number of same-sex couples registering for domestic partnerships.

Table 1 reports a coefficient for the effect of *Hollingsworth* of -0.86, meaning that starting in July of 2013 the availability of marriage equality reduced the count of same-sex domestic partnership registrations by an incident rate ratio of $e^{-0.86}=0.423$, that is a reduction of more than half even taking the slow decline over time in domestic partnership registrations into

account. It is worth noting that the counts of same-sex domestic partnerships are large enough in California (48,307 registrations over the course of 250 months) and the changes observed are dramatic enough so that the effects of the policy changes measured in Table 1 have high statistical significance. The Z-score of -39.2 associated with the effect of marriage equality on the decline of same-sex domestic partnership registrations beginning in July, 2013, has a two-sided P value smaller than 10^{-323}, which is smaller than the smallest number Stata software can represent in double precision arithmetic. Table 1's three asterisks, showing the traditional cutoff for the P values as less than 0.001 understates the statistical significance of Table 1 predictors.

Table 1: *Coefficients from a Poisson regression predicting the log count of same-sex domestic partnerships registered in California, by month*

Predictor	Coefficient	Z-score
Trend over time	-0.0070	-55.3***
Dummy variable for January, 2000 (first month of DP availability)	1.38	37.4***
Expanded DP rights (starting November, 2001)	0.80	44.0***
Effect of Hollingsworth v. Perry (starting July, 2013)	-0.86	-39.2***

Source: California Domestic Partnership database, same-sex couples identified probabilistically by first names' comparison to the SSA name-by-gender database. N of months=250; N of observed same-sex domestic partnerships=48,307.
*** P<0.001, two tailed tests.

The sudden availability of marriage for same-sex couples in California in late June, 2013, made domestic partnership instantly less attractive. Given a choice between marriage and an expanded domestic partnership institution that offered all the same California benefits as marriage (but not necessarily the same benefits as marriage for couples when they left California, and no federal benefits), same-sex couples in California overwhelmingly chose marriage

(consistent with Corollary 2a). Some same-sex couples continued to register as domestic partners (consistent with Corollary 2b) after California became a marriage equality state, but at a much lower rate.

Although the California data show a clear and dramatic preference among same-sex couples for marriages over domestic partnerships (from July of 2013 forward, when both options were similarly available), the domestic partner data and the census data are silent as to the *motivations* of individuals to choose one kind of formal union over another. In the next section we explore the motivations of U.S. adults in same-sex unions for choosing or preferring marriages or domestic partnerships.

Results Part II:

US survey data from 2022 on attitudes towards marriage and domestic partnership

In this section we report on results from the HCMST 2022 survey. Of the 92 HCMST 2022 subjects in same-sex relationships, 91 answered the closed-ended question about preference between marriage and domestic partnership and 81 answered the open-ended question explaining their preference. Table 2 shows a breakdown of the 91 closed-ended answers. Sixty-one of the 91 subjects answered that they preferred marriage, 20 subjects preferred a domestic partnership, and 10 preferred neither. Among the already married subjects, preference for marriage was nearly universal. Among the subjects who were not married, preferences were about evenly split between marriage (18 subjects) and domestic partnerships (20 subjects).

The preponderance of subjects' stated preferences for marriage over domestic partnership in Table 2 (marriage preferred over domestic partnership by 3-1) is consistent with the California marriage and domestic partnership data illustrated in Figure 2, and consistent with Corollary 2a

and Hypothesis 2. While marriage was preferred by most same-sex couples who formalized or who wanted to formalize their unions, a subset of same-sex couples still saw domestic partnership as a viable or preferable way to formalize their unions (consistent with Corollary 2b).

Table 2 shows a similar number of same-sex married partners, 44, and same-sex nonmarital partners, 47, in the HCMST 2022 data. In Appendix Table 2, we show that among different-sex couples in HCMST 2022, married couples outnumbered nonmarital couples by more than 4 to 1. Marriage is, for now, a much more numerically dominant institution for different-sex couples than for same-sex couples in the U.S. A similar pattern is shown in Appendix Table 4, using data from the American Community Surveys (ACS; and note the ACS only includes coresident couples). For coresident couples in the 2022 ACS there were 62 million different-sex married couples and 8.9 million different-sex nonmarital cohabiting couples in the U.S. (a ratio of 7:1), compared to 828,000 same-sex married couples and 532,000 same-sex nonmarital cohabiting couples (a ratio of 1.6:1).

In recent years, for different-sex couples in the U.S., nonmarital cohabitation has become more common while marriage (as a percentage of couples) has declined (Horowitz et al., 2019; Manning et al., 2021). For same-sex couples, whose access to legal marriage is more recent, the trend is in the opposite direction: since *Obergefell*, the number same-sex married couples has increased as a percentage of all same-sex couples (see Appendix Tables 2 and 4).

The greater numerical preponderance of marriage for different-sex couples (compared to same-sex couples) is also reflected in the difference in relationship duration between married and nonmarital couples. In Table 2, the average relationship duration for married same-sex couples was 15.4 years, compared to 12.7 years for the nonmarital same-sex couples. Appendix Table 2 shows that different-sex married couples had average relationship duration of 29.4 years,

compared to 9.5 years for different-sex nonmarital couples, with the same HCMST 2022 data. If couples sort themselves into marriage selectively for longer-term commitments, as has been true for different-sex couples in the U.S., that is one demographic indication of the relatively high degree of distinctiveness of marriage compared to nonmarital couplehood for different-sex couples.

Table 2: *Reported preference between marriage and domestic partnership for adults in same-sex unions*

	Relationship status: Married in 2022	Relationship Status: Not married in 2022	Total
Number who prefer marriage	43	18	61
Number who prefer domestic partnership	0	20	20
Number who prefer neither	1	9	10
Weighted Median relationship duration (years)	15.4	12.7	14.0
Weighted Percentage living together in 2022	100%	63%	80%
Unweighted N	44	47	91

Source: How Couples Meet and Stay Together 2022 survey

We now turn to the open-ended answers, which were inductively coded (Thomas, 2006), identifying any themes that were present, yielding eight codes across 81 text answers in Table 3. Answers were short: the median answer had only 10 words. Basic themes were deduced from the answers despite their brevity. More than one code can apply to each answer; the average was 1.2 codes per answer. Table 3 shows the codes from most common to least common.

When we examine survey subjects' open-ended answers, a diverse and nuanced set of perspectives about marriage and domestic partnership emerge. The most common theme offered in the open text answers about marriage and domestic partnership was the theme of marriage's

practical and legal advantages (the regulative pillar of marriage) over domestic partnership (offered by 29 of the 55 subjects who favored marriage).

One subject wrote, as a reason for preferring marriage, "Taxes, shared assets, benefits of marriage (can make decisions, medical POA [Power of Attorney] not needed, etc)." The portability advantage and the federal benefits of marriage (unmatched by state-regulated domestic partnerships) were well understood by adults with same-sex partners, demonstrating an understanding of the regulative distinctiveness of marriage (Haas & Whitton, 2015).

Table 3: *Reasons for preferring marriage, domestic partnership, or neither, and the number of subjects whose answer was coded as containing this reason*

Themes identified in the open-ended answers:	Subject preferred Marriage	Domestic partnership	Neither	Total
Marriage provides more substantive and legal benefits compared to domestic partnership	29	0	0	29
Marriage represents a higher level of relationship commitment compared to domestic partnership	18	3	0	21
Marriage has symbolic value and is a matter of equal rights. Same sex couples need to be treated equally to heterosexual couples	17	0	0	17
Marriage is more favorably viewed among friends and family	9	0	0	9
Domestic partnerships are just as good as marriage	1	5	0	6
Subject does not believe in marriage (but provides no reason why)	0	5	1	6
Subject criticizes marriage as too traditional, too religious, or generally socially retrograde	0	5	0	5
Subject and partner are keeping the relationship casual, therefore no formalization is appropriate	0	0	5	5
N: Total of subjects who preferred this relationship formalization and who answered the open-ended question	55	18	8	81

Source: codes applied to 81 open-ended answers from HCMST 2022 about why subjects in same-sex relationships prefer marriage or domestic partnership. Note: subject answers can be coded for more than one code so number of codes does not equal the number of respondents.

The second most common theme identified in open-ended answers about marriage and domestic partnership was the theme that marriage represents a higher level of interpersonal commitment than domestic partnership does, which relates to the normative value of commitment that marriage represents and institutionally enforces. This theme was present in 21 out of 81 answers. One subject wrote "Marriage, to me, is much more serious than a domestic partnership." Another wrote "Marriage shows that the relationship has a higher level of commitment." Both the normative aspect of marriage (the commitment of spouses to each other) and the cultural dimension of marriage (the importance of signaling to others) are represented in this answer, supporting Corollary 2a.

Three subjects who preferred domestic partnership expressed that they did so explicitly because of the lower level of couples' commitment implied by domestic partnership, consistent with a menu-of-options version of incrementalism, and consistent with Corollary 2b. In other words, some relationships fit the easy-in and easy-out characteristics of domestic partnerships, but the most serious relationships seem to require marriage. In this kind of incrementalism, both marriage and domestic partnership would continue to serve roles formalizing unions at different stages and different levels of commitment.

The third most commonly identified theme, found exclusively in proponents of marriage, was the theme of the symbolic value of marriage. Some subjects framed their preference for marriage in terms of rights: "BC it is a right." And: "The gay community fought long and hard for the right to marry." Another wrote, "While some just see it as a piece of paper, to me it's a symbol of our love and dedication to each other. It's our way of showing the world that while nothing is perfect, we are perfect together no matter what." These answers are consistent with

corollary 2a, and reflect a widespread understanding among adults with same-sex partners of the cultural value of marriage (Rostosky et al., 2016; Haas & Whitton, 2015).

Marriage's intelligibility to others was a key reason making marriage preferable to domestic partnership. Marriage equality advocates had been emphasizing the theme of marriage's intelligibility to friends and family for years, and this theme was coded in 9 out of 55 respondents who preferred marriage in the survey. One gay man wrote, "He proposed to me last year in front of family and friends and I said yes."

In Table 3, the top four most common themes are all consistent with the different institutional pillars of marriage and each describes the distinctiveness of marriage compared to domestic partnership. Fifty-four out of 81, or 67% of respondents had at least one description of the institutional distinctiveness of marriage in their answers, supporting Hypothesis 2.

Among the remaining themes, all were present in fewer than 10% of responses. We highlight here two kinds of answers that were relatively common among supporters of domestic partnerships. One kind of answer (given by five subjects) was a simply stated opposition to marriage without any reason given. This could be interpreted as consistent with gay rights anti-traditionalism, or it could be due to particular aspects of the relationship each subject was in at the time of the survey (i.e., they cannot imagine ever marrying *this* partner). Five more subjects gave answers that criticized marriage for its traditionalism or for its historical ties to organized religion. For instance, "Marriage is an artificial relationship between two people. It is only supported by traditional religious doctrine." This kind of answer is clearly most consistent with Corollary 2b. Combining the expressive anti-traditionalists and the ambiguously anti-traditionalist answers together there are between 5 and 10 gay rights anti-traditionalists among these 81 respondents, with a maximum of 10/81=12% support for anti-traditionalist theories.

Six of the 81 respondents, or 7% of respondents explained that marriage and domestic partnership were not different enough to matter. Hypothesis 1, the hypothesis of the non-distinctiveness of marriage and domestic partnership had very modest support among same-sex couples in 2022.

DISCUSSION

California same-sex couples, who were well situated to know the institutions of marriage and domestic partnership, overwhelmingly understood the distinctiveness of marriage, and they overwhelmingly chose marriage over domestic partnership when both options were available. Even given the fact that marriage and domestic partnership were identical for rights and benefits within California after June 2013, the normative and cultural dimensions of marriage were powerfully attractive to same-sex couples. As the new institutionalists have argued, institutional cultures makes institutions surprisingly distinctive and resilient. Marriage, having an especially strong culture rich with customs and celebratory moments imbued with meaning, including engagement announcement, wedding, rings, and anniversaries, is an especially resilient and distinctive institution compared to a new institution like domestic partnership.

The stated preference for marriage among the majority of adults with same-sex partners in the U.S. reflects a predominantly practical and conventional set of relationship formalization strategies. The most prominent rationale for marriage among US adults with same-sex partners was Equality Without Compromise, because marriage (rather than domestic partnership) provides the best set of practical benefits for partnered people and their children. Marriage benefits are more portable between states, more accessible federally, and more translatable across countries. Second, marriage has symbolic value that domestic partnerships cannot match.

Equality (with rights and recognition granted to different-sex couples) is the core idea in marriage equality. Third, marriage because of its historical persistence is intelligible to family, friends, and coworkers in a way that domestic partnership is not. The assimilation (however incomplete) of same-sex couples into the institution of marriage is an outcome that gay rights anti-traditionalists had long feared.

Cherlin (2020) argued that the movement for marriage equality seemed to have reinforced the institution of marriage, and we offer new evidence to support this theory. Even for the minority of same-sex couples who preferred domestic partnership over marriage, they mostly did so for reasons that reinforced the distinctiveness of marriage. They wanted a less committed relationship, or else they recognized and resisted the traditional culture of marriage, as the gay rights anti-traditionalists would have wanted them to do. Opposition to the traditionalism of marriage is another way of recognizing the distinctive culture of that institution.

The spike in California domestic partnership dissolutions in 2004, in the run-up to California granting domestic partners all the rights and obligations of marriage, is an additional piece of evidence that some couples have chosen domestic partnership specifically for its intermediate status. As the incrementalists understood, a menu of both marriage and the more lightweight domestic partnership institution can serve the interests of more couples than marriage alone.

Few US respondents with same-sex partners in 2022 claimed that marriage and domestic partnership were not meaningfully distinctive institutions. People with same-sex partners and same-sex attraction had to fight for the right to marry. Before being granted the right to marry, people with same-sex partners had to study marriage as outsiders in order to understand how its rights, privileges, norms, and cultural status could be replicated if needed. As Americans whose

lack of privilege to marry forced them to know the institution closely, gay, lesbian, and queer Americans have proven to be careful students of the distinctiveness of marriage.

Cherlin (2004) famously predicted that marriage and nonmarital cohabitation might eventually become indistinguishable in the U.S. as the norms and importance of marriage eroded. But as Cherlin (1992) himself has noted, marriage and family systems have a history of frustrating our best predictions. No one predicted the baby boom, for instance. The test of distinctiveness between marriage and domestic partnership (the latter designed to formally replicate marriage in some important regards) is a much more conservative test of marriage's distinctiveness than the test that Cherlin proposed in 2004, comparing marriage to the unregulated institution of nonmarital cohabitation. And yet, in our more conservative test (of marriage compared to domestic partnership) we find ample evidence of the distinctiveness of marriage, in the regulative, normative, and cultural dimensions.

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