

January 2014

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PETER NICOLAS

*Jeffrey & Susan Brotman Professor of Law and Adjunct Professor of Gender, Women & Sexuality Studies,
University of Washington*

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Recommended Citation

PETER NICOLAS, *The Sneetches as an Allegory for the Gay Rights Struggle: Three Prisms*, 58 N.Y.L. SCH. L. REV. (2013-2014).

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PETER NICOLAS

The Sneetches as an Allegory for the Gay
Rights Struggle: Three Prisms

58 N.Y.L. SCH. L. REV. 525 (2013–2014)

ABOUT THE AUTHOR: Jeffrey & Susan Brotman Professor of Law and Adjunct Professor of Gender, Women & Sexuality Studies, University of Washington. The author wishes to thank Tom Cobb, Mary Fan, Kara Noel, Kate O'Neill, Kellye Y. Testy, and Mary Whisner for their valuable comments and suggestions.

I. INTRODUCTION

In 1953, Theodor Seuss Geisel—more commonly known by his pen name “Dr. Seuss”—published a one-page poem, coupled with a single illustration, entitled “The Sneetches,” in *Redbook* magazine.¹ The story was about two groups of birds living on the beaches of the mythical land of Aw-Waw Hoo: the Star-Belly Sneetches—who had stars on their bellies—and the Plain-Belly Sneetches—who did not.² The story made clear that—save for those small stars—the two groups of Sneetches were identical, but that the Star-Belly Sneetches believed their stars made them superior. As a result, the Star-Belly Sneetches excluded the Plain-Belly Sneetches from their social activities, provoking an angry response from the latter.³

In 1961, Seuss revised the story and published it with other stories in book form.⁴ This expanded version of the story differed in several important ways from the original. First, the Sneetches were no longer identified as birds from the mythical land of Aw-Waw Hoo, but were instead depicted as more people-like creatures who “could be from anywhere,” both indicating the universality of the story and drawing a closer nexus between the story and human behavior.⁵ Second, in the original story each of the two groups of Sneetches were depicted (in pictures and in words) as “equally haughty” to the other, while in the 1961 version the social stratification between the two groups was clear, with the mood of the Plain-Belly Sneetches changed from anger to dejection.⁶ Third, the 1961 version introduced a new character, Sylvester McMonkey McBean, who approached the dejected Plain-Belly Sneetches and offered to use his special machine to put stars on their bellies for a fee, which they all promptly did, making them indistinguishable from the Star-Belly Sneetches. This development greatly upset the original Star-Belly Sneetches, who continued to believe they were superior, but could no longer easily distinguish themselves from the “inferior” Plain-Belly Sneetches.⁷ McBean then offered to remove the stars from the original Star-Belly Sneetches so they could once again distinguish themselves from the original Plain-Belly Sneetches. This cycle of removing and affixing stars on the bellies of the Sneetches continued until they had spent all of their money and gone through the machines so many times that they were no longer sure who was who.⁸ Finally, although the original version of the story ended in a standoff between the two groups, with no resolution of the

1. Dr. Seuss, *The Sneetches*, REDBOOK, July 1953, at 77.

2. *Id.*

3. *Id.*

4. See DR. SEUSS, *The Sneetches*, in *THE SNEETCHES AND OTHER STORIES* (1961).

5. See TALES FOR LITTLE REBELS 208 (Julia L. Mickenberg & Philip Nel eds., 2008).

6. See CHARLES D. COHEN, *THE SEUSS THE WHOLE SEUSS AND NOTHING BUT THE SEUSS: A VISUAL BIOGRAPHY OF THEODOR SEUSS GEISEL* 309 (Random House 2004).

7. *Id.*

8. See *The Sneetches*, *supra* note 4.

prejudice, the 1961 version ended happily, with the Sneetches ultimately reconciling and agreeing “that Sneetches are Sneetches.”⁹

Since *The Sneetches* was published, different minority groups, particularly Jews¹⁰ and African Americans,¹¹ have used the story as an allegory for discriminatory treatment suffered at the hands of the majority. Indeed, there is conflicting evidence about whether the story was intended by Seuss as a commentary on the treatment of Jews during the Holocaust or instead on the treatment of African Americans during the civil rights struggle of the 1950s and 1960s.¹² The date when each version of *The Sneetches* was published—coupled with the substantive changes made to the story—provides strong evidence that it was a story about the civil rights struggle of African Americans. This makes sense, because the original version of the story was published while *Brown v. Board of Education* was winding its way to the U.S. Supreme Court, and the 1961 version was published well after that decision had created at least somewhat of a “happy ending,”¹³ which is consistent with the happy ending added to the second version of *The Sneetches*.

However, it is perhaps because the theme of discrimination by the majority against minority groups is universal in nature that the story works as an anti-Holocaust allegory even if inspired by opposition to racism against African Americans,¹⁴ and vice versa.¹⁵ Indeed, *The Sneetches* has been invoked as an allegory for other circumstances such as the ethnic war in Bosnia¹⁶ and the discrimination experienced by shorter children.¹⁷ Moreover, both the original and 1961 versions of the story help explain maturing civil rights battles, because they represent different phases in that maturation process.

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9. See *id.*; TALES FOR LITTLE REBELS, *supra* note 5, at 208.
 10. See, e.g., Dinitia Smith, *Bestowing a Moral Imagination on a World of Children*, N.Y. TIMES, Oct. 24, 2004, at A3, available at <http://nyti.ms/1f0ytXe>.
 11. See, e.g., EARNEST N. BRACEY, *American Popular Culture and the Politics of Race in Dr. Seuss' The Sneetches*, in ON RACISM: ESSAYS ON BLACK POPULAR CULTURE, AFRICAN AMERICAN POLITICS, AND THE NEW BLACK AESTHETICS 81, 81–88 (2003).
 12. Compare Jonathan Cott, *The Good Dr. Seuss*, in OF SNEETCHES AND WHOS AND THE GOOD DR. SEUSS: ESSAYS ON THE WRITINGS AND LIFE OF THEODOR GEISEL 99, 118 (Thomas Fensch ed., 1997) (noting that, in an interview, Seuss indicated that the story “was inspired by my opposition to anti-Semitism”), with Walter C. Metz, “Show Me the Shoah!": *Generic Experience and Spectatorship in Popular Representations of the Holocaust*, 27 SHOFAR: INTERDISC. J. JEWISH STUD. 16, 29–31 (2008) (providing evidence that Seuss was surprised when someone indicated to him that the Star-Belly Sneetches would remind people of the Holocaust, and concluding that it was instead inspired by discrimination against African Americans), and JUDITH MORGAN & NEIL MORGAN, DR. SEUSS & MR. GEISEL: A BIOGRAPHY 173–74 (1995) (noting that Seuss nearly abandoned the book after someone told him he thought the story was anti-Semitic, suggesting that Seuss had not necessarily focused in on it as a book about discrimination against Jews).
 13. See COHEN, *supra* note 6, at 219.
 14. See Metz, *supra* note 12, at 30.
 15. See PHILIP NEL, DR. SEUSS: AMERICAN ICON 59 (Continuum Int'l Publ'g Grp. 2004) (2003).
 16. See IRENE TUCKER, THE MOMENT OF RACIAL SIGHT: A HISTORY 1 (2012); *Seuss Stories Will Be Used to Foster Tolerance in Bosnia*, READING TODAY, Oct./Nov. 1998, at 7.
 17. See Basil J. Zitelli, *Sneetches and Growth Hormone*, 140 J. PEDIATRICS 493, 493–95 (2002).

THE SNEETCHES AS AN ALLEGORY FOR THE GAY RIGHTS STRUGGLE: THREE PRISMS

In this essay, I invoke both versions of *The Sneetches* as an allegory for the modern struggle for gay¹⁸ rights in the United States viewed through three different prisms. The first and most obvious of these prisms is the battle between the heterosexual majority and the gay minority represented by the two groups of Sneetches. Members of the majority seek to distinguish themselves with markers of social acceptance such as marriage, parenting, and military service, as well as access to certain other markers of social acceptance, including the ability to donate blood and become members in private organizations such as the Boy Scouts.

The second prism is the struggle between two different minority groups—gays and African Americans—with members of the latter group rejecting the former's efforts to draw analogies to its own civil rights struggle. Finally, the third prism is the struggle between two different sub-groups within the gay minority: assimilationists and non-conformists. The latter is critical of what it views as the former's insecurity in seeking mere formal equality by erasing valuable differences that set gays apart. Indeed, in this last struggle, some non-conformists have come out against the rights of gays to marry or serve in the military.

Part II of this essay provides an overview of Social Dominance Theory, which posits that humans are psychologically predisposed to develop and maintain group-based social hierarchies. Part III uses *The Sneetches* and the insights of Social Dominance Theory as a way of explaining the first prism—the struggle between the heterosexual majority and gay minority. Parts IV and V use these tools to explain, respectively, the second prism—the struggle between African Americans and the gay community, and the third prism—the struggle between assimilationists and non-conformists within the gay community. Part VI explores the question of who in the battle over gay rights is represented by Seuss's Sylvester McMonkey McBean.

In this essay, I demonstrate that as one changes focus from the main story about the struggle for gay rights (the first prism) to the stories of the two sub-battles within that struggle (the second and third prisms), the groups represented by the Star-Belly and Plain-Belly Sneetches change on a superficial level. Yet, on a deeper level, I demonstrate that each group involved in these struggles—African Americans, assimilationist gays, and non-conformist gays—simultaneously internalizes the discriminatory impulses of the Star-Belly Sneetches and the insecurities of the Plain-Belly Sneetches. Relying on the insights of Social Dominance Theory, I conclude that *The Sneetches* is not merely a story about a struggle between different classes within society, but also about a struggle within each of us as individuals. These insights provide each side in the battle over gay rights with a reason to further reflect upon possible subconscious motivations for both its positions and its methods of advocacy, and to reconsider both in light of those reflections.

II. THE INSIGHTS OF SOCIAL DOMINANCE THEORY

In considering why it may be so important for the Star-Belly Sneetches to differentiate themselves from the Plain-Belly Sneetches—and in turn, to better

18. In this article, I will use the term "gay" to mean "lesbian" as well.

understand the struggle for gay rights in the United States—it is instructive to consider the insights of Social Dominance Theory.¹⁹

This theory posits that humans are psychologically predisposed to develop and maintain group-based social hierarchies.²⁰ The basic structure of all such hierarchical systems includes a dominant group at the top and a “negative reference group” at the bottom.²¹ The dominant group is characterized by its possession of the lion’s share of “positive social value,” consisting of “all those material and symbolic things for which people strive.”²² The negative reference group is defined by its possession of a disproportionate share of “negative social value,” which includes “low power and status” as well as “severe negative sanctions.”²³ The hierarchy is typically based on arbitrary, socially constructed characteristics.²⁴

Such group-based social hierarchies are developed through individual and institutional discrimination, as well as through “hierarchy-enhancing legitimizing myths” coupled with “behavioral asymmetry” between the dominant and subordinate groups.²⁵

“Hierarchy-enhancing legitimizing myths” refer to values, beliefs, and stereotypes that provide moral and intellectual justification for maintaining or increasing levels of inequality among social groups.²⁶ “Behavioral asymmetry” refers to the difference in behavior between those in the dominant and subordinate groups, which manifests itself in two key ways. First, those in the dominant group possess a high degree of in-group favoritism whereas those in the subordinate groups are more likely to possess out-group favoritism, or a preference for the dominant group over their own group.²⁷ The “famous doll experiment” cited by the U.S. Supreme Court in *Brown v. Board of Education*²⁸—in which black children demonstrated a preference for white dolls over black dolls—is a classic example of behavioral asymmetry.²⁹ Second, those in the subordinate groups tend to adopt negative stereotypes as behavioral scripts, and thus engage in self-destructive behavior that is used to justify continued social stratification.³⁰ Moreover, those within the subordinate group who seek to break from those stereotypes

19. See generally JIM SIDANIUS & FELICIA PRATTO, *SOCIAL DOMINANCE: AN INTERGROUP THEORY OF SOCIAL HIERARCHY AND OPPRESSION* (2001).

20. See *id.* at 38, 56, 301.

21. See *id.* at 31; Jim Sidanius, Erik Devereux & Felicia Pratto, *A Comparison of Symbolic Racism Theory and Social Dominance Theory as Explanations for Racial Policy Attitudes*, 132(3) *J. Soc. PSYCHOL.* 377, 379 (1992).

22. SIDANIUS & PRATTO, *supra* note 19, at 31.

23. *Id.* at 32.

24. See *id.* at 33.

25. See *id.* at 39, 43, 45–46.

26. See *id.* at 45–47, 104–05.

27. See *id.* at 44, 228.

28. *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 n.11 (1954).

29. See SIDANIUS & PRATTO, *supra* note 19, at 228.

30. See *id.* at 44, 260–61.

sometimes face pressure from others within the group who accuse them of in-group disloyalty such as “trying to act White,” a concept known as “oppositional identity.”³¹

Another aspect of Social Dominance Theory is worth emphasizing. The impulse to reinforce and reproduce hierarchical social structures is not limited to those in the dominant group. Those in the subordinate groups likewise seek to establish their supremacy over other subordinate groups so that they, too, can have a “negative reference group” below them.³²

Much of what this theory teaches about human behavior can be found in the 1961 version of *The Sneetches*. First, there is a social hierarchy in the story, with the Star-Belly Sneetches as the dominant group and the Plain-Belly Sneetches as the negative reference group. Second, the classification is based on an arbitrary and socially constructed characteristic: whether Sneetches have stars on their bellies. This arbitrary classification is evidenced by the original Star-Belly Sneetches’ ability to turn around and declare the *absence* of a star to be the acid test for superiority.³³ Third, the hierarchy is reinforced by the original Star-Belly Sneetches, who tell legitimizing myths about the inferiority of the Plain-Belly Sneetches to one another, to their children, and to the Plain-Belly Sneetches. Fourth, there is behavioral asymmetry between the two groups of Sneetches, with the original Star-Belly Sneetches displaying a high degree of in-group favoritism and the original Plain-Belly Sneetches displaying a strong desire to be more like the dominant out-group. In turn, much of what is found in the 1961 version of *The Sneetches* can be found in the story of the struggle for gay rights in the United States. It is to that story—with the insights of Social Dominance Theory in mind—that this essay now turns.

III. HETEROSEXUAL SNEETCHES VERSUS GAY SNEETCHES

*If marriage rights carry the presumption that gay and straight marriages are morally equivalent, then individuals cannot bracket the question of homosexuality’s moral status If heterosexuals share ownership of marriage with “inferior” homosexual couples, then the institution’s value as a signifier of status declines.*³⁴

In *The Sneetches*, Seuss remarks that, given how small the stars on the Star-Belly Sneetches are, “[y]ou might think such a thing wouldn’t matter at all.”³⁵ Yet he then goes on to demonstrate how the Star-Belly Sneetches took this one difference and made it the *sine qua non* of what it means to be a Sneetch, using it to justify excluding the Plain-Belly Sneetches from such important Sneetch social functions as “frankfurter

31. *See id.* at 181, 259.

32. *See id.* at 52–53, 232–33, 302.

33. *See The Sneetches, supra* note 4 (emphasis added).

34. GARY MUCCIARONI, SAME SEX, DIFFERENT POLITICS: SUCCESS AND FAILURE IN THE STRUGGLES OVER GAY RIGHTS 26 (2008).

35. *The Sneetches, supra* note 4.

roasts . . . or marshmallow toasts.”³⁶ Similarly, in the United States, members of the heterosexual majority have taken the one difference³⁷ between themselves and gays and used it to justify denying the latter markers of social acceptance.

Unlike the stars on the bellies of Sneetches, sexual orientation is not readily apparent, but becomes visible only when someone seeks to express that orientation.³⁸ For this reason, the heterosexual majority has created visible markers akin to the stars of the Star-Belly Sneetches as a way of differentiating it from the gay minority, and has enacted laws designed to prevent the latter from having those markers. For example, gays have been excluded from marriage (wedding rings and marriage licenses),³⁹ service in the military (uniforms and badges),⁴⁰ parenting (children),⁴¹ the ability to donate blood (stickers that read “be nice to me I gave blood today”),⁴² and from participation in organizations such as the Boy Scouts (uniforms and badges).⁴³ These markers of social acceptance serve double duty as analogies for both the “stars” the Plain-Belly Sneetches are denied and the “frankfurter roasts . . . or marshmallow toasts” from which they are excluded.

Moreover, as gays have achieved some success in challenging such laws in the judicial and legislative arenas, they have been met with new methods of differentiating gays from the rest of society. For example, when state courts began to hold that equal

36. *See id.* at 7.

37. *See, e.g.,* *Romer v. Evans*, 517 U.S. 620, 633 (1996) (“Amendment 2 confounds this normal process of judicial review. It is at once too narrow and too broad. It identifies persons by a single trait and then denies them protection across the board.”); *Goodridge v. Dep’t of Pub. Health*, 798 N.E.2d 941, 962 (Mass. 2003) (“The ‘marriage is procreation’ argument singles out the one unbridgeable difference between same-sex and opposite-sex couples, and transforms that difference into the essence of legal marriage.”).

38. *See Windsor v. United States*, 699 F.3d 169, 183–84 (2d Cir. 2012), *aff’d*, 133 S. Ct. 2675 (2013).

39. *See, e.g.,* GA. CONST. art. 1, § 4, ¶ I(a) (“This state shall recognize as marriage only the union of man and woman. Marriages between persons of the same sex are prohibited in this state.”); 23 PA. CONST. STAT. ANN. § 1704 (West 1996) (“It is hereby declared to be the strong and longstanding public policy of this Commonwealth that marriage shall be between one man and one woman. A marriage between persons of the same sex which was entered into in another state or foreign jurisdiction, even if valid where entered into, shall be void in this Commonwealth.”).

40. *See* 10 U.S.C. § 654(b)(1) (2010) (“A member of the armed forces shall be separated from the armed forces . . . if . . . [t]he member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts . . .”), *repealed by* Don’t Ask, Don’t Tell Repeal Act of 2010, Pub. L. 111-321, § 2(f)(1)(A), 124 Stat. 3515, 3516 (2010).

41. *See, e.g.,* FLA. STAT. ANN. § 63.042(3) (West 2003) (“No person eligible to adopt under this statute may adopt if that person is a homosexual.”), *invalidated by* Fla. Dep’t of Children & Families v. Adoption of X.X.G., 45 So. 3d 79 (Fla. Dist. Ct. App. 2010); MISS. CODE ANN. § 93-17-3(5) (West 2013) (“Adoption by couples of the same gender is prohibited.”).

42. *See* U.S. Food & Drug Admin., *Blood Donations from Men Who Have Sex with Other Men Questions and Answers*, <http://www.fda.gov/biologicsbloodvaccines/bloodbloodproducts/questionsaboutblood/ucm108186.htm> (last visited Feb. 14, 2014) (“Men who have had sex with other men . . . at any time since 1977 . . . are currently deferred as blood donors.”).

43. *See* *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000) (holding that the Boy Scouts have a First Amendment right to exclude gay youth and adults from their organization); *Boy Scouts of America Equal Access Act*, 20 U.S.C. § 7905 (2013).

protection and due process principles found in their state constitutions required legislators to extend the rights, responsibilities, and privileges associated with marriage to gay couples,⁴⁴ legislatures responded by creating alternatives to marriage for same-sex couples—such as domestic partnerships and civil unions—that allowed continued differentiation.⁴⁵ Moreover, even as gays achieved success in persuading state courts and state legislatures to grant them the right to marry,⁴⁶ those marriages were given limited effect as a result of the enactment of the unprecedented⁴⁷ Defense of Marriage Act,⁴⁸ which denied federal recognition of such marriages⁴⁹ and excused sister states from recognizing such marriages,⁵⁰ thus differentiating “real marriages” from, say, “Massachusetts Marriages.” A similar volley has taken place over anti-discrimination laws, with legislative and judicial victories being countered with statutory⁵¹ and constitutional⁵² exemptions from such laws.

In *The Sneetches*, Seuss focuses on the impact that the Star-Belly Sneetches’ discriminatory conduct has on the adult Plain-Belly Sneetches’ children, too. He writes, “When the Star-Belly Children went out to play ball, / Could a Plain Belly get in the game . . . ? Not at all.”⁵³ In much the same way, the collateral consequences

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44. See, e.g., *Goodridge v. Dep’t of Pub. Health*, 798 N.E.2d 941 (Mass. 2003); *Baker v. State*, 744 A.2d 864 (Vt. 1999); *Bachr v. Lewin*, 852 P.2d 44 (Haw. 1993).
45. See, e.g., 2000 VT. LAWS P.A. 91 (H. 847) (codified as amended at VT. STAT. ANN. tit. 15, § 1201–07 (West 2013)) (extending all of the rights, responsibilities, and privileges of marriage to same-sex couples, but using the label “civil unions”); 1997 HAWAII LAWS ACT 383 (H.B. 118) (codified as amended at HAW. REV. STAT. § 572c-1–572c-7 (West 2013)) (creating a limited domestic partnership registry); see also *Opinions of the Justices to the Senate*, 802 N.E.2d 565 (Mass. 2004) (holding that a proposal by the Massachusetts legislature that would extend all of the rights, responsibilities, and privileges of marriage to same-sex couples using the label “civil unions” would not satisfy the requirements of the Massachusetts Constitution).
46. See, e.g., 2011 N.Y. SESS. LAWS ch. 95 (McKinney) (codified at N.Y. DOM. REL. LAW § 10-a–10-b (McKinney 2014)); *Kerrigan v. Comm’r of Pub. Health*, 957 A.2d 407 (Conn. 2008).
47. See *Windsor v. United States*, 699 F.3d 169, 186 (2d Cir. 2012), *aff’d*, 133 S. Ct. 2675 (2013); *Massachusetts v. U.S. Dep’t of Health & Human Servs.*, 682 F.3d 1, 12 (1st Cir. 2012); *In re Levenson*, 587 F.3d 925, 933 (9th Cir. 2009); *Dragovich v. U.S. Dep’t of Treasury*, 872 F. Supp. 2d 944, 956–57 (N.D. Cal. 2012); *Golinski v. U.S. Office of Pers. Mgmt.*, 824 F. Supp. 2d 968, 1000 (N.D. Cal. 2012).
48. See *Defense of Marriage Act*, Pub. L. 104–99, 110 Stat. 2419 (1996) (codified at 1 U.S.C. § 7 (1996); 28 U.S.C. § 1738 (1996)), *invalidated by United States v. Windsor*, 133 S. Ct. 2675 (2013).
49. See 1 U.S.C. § 7 (1996).
50. See 28 U.S.C. § 1738C (1996).
51. See, e.g., N.Y. DOM. REL. LAW § 10-b (McKinney 2014) (creating a religious exception to the state’s public accommodation laws allowing businesses to refuse to “provide services, accommodations, advantages, facilities, goods, or privileges for the solemnization or celebration of a marriage”).
52. See, e.g., *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000) (holding that the Boy Scouts have a First Amendment right to exclude gays, state anti-discrimination laws to the contrary notwithstanding).
53. See *The Sneetches*, *supra* note 4.

that discrimination against gays has on their children has been a recurring theme in litigation involving same-sex marriage⁵⁴ and same-sex parenting.⁵⁵

As indicated in the opening quote in this Part, supporters of such restrictive laws view marriage and the other markers of social acceptance used to differentiate gays from heterosexuals as ways of signaling the lower social worth of the latter vis-à-vis the former. Allowing gays to display such markers of social acceptance would—in the view of some—dilute the value of those markers:

The use of the symbolic associations that accompany the word “marriage” by same-sex couples arguably would have the same diluting effect upon the meaning of traditional marriage as the use of “Exxon” on different products and services would.⁵⁶

Just as *The Sneetches* can be viewed through the lens of Social Dominance Theory, so too can the battle for gay rights. First, the heterosexual majority has historically invoked “legitimizing myths” to justify discrimination against gays. For example, gay men are characterized as “promiscuous,” a characterization that has been used to justify their exclusion from marriage,⁵⁷ blood donation,⁵⁸ and lawful sexual activity.⁵⁹ Similarly, they are characterized as sexually “predatory,” a characterization that has been used to justify their exclusion from service in the military⁶⁰ and membership in the Boy Scouts.⁶¹ Second, some gay men engage in promiscuous sexual conduct—behavior that many advocates of legalizing same-sex marriage view as a byproduct of the refusal to accord formal recognition to same-sex relationships⁶²—thus fulfilling

54. See, e.g., *Sevcik v. Sandoval*, 911 F. Supp. 2d 966, 1003 (D. Nev. 2012) (noting that complaint alleges “children [of same-sex couples] suffer both tangible and dignitary harms”); *Pedersen v. Office of Pers. Mgmt.*, 881 F. Supp. 2d 294, 335–36 (D. Conn. 2012); *Golinski v. U.S. Office of Pers. Mgmt.*, 824 F. Supp. 2d 968, 992–93 (N.D. Cal. 2012); *Kerrigan v. Comm’r of Pub. Health*, 957 A.2d 407, 474–75 (Conn. 2008); *In re Marriage Cases*, 183 P.3d 384, 425 (Cal. 2008); *Conaway v. Deane*, 932 A.2d 571, 648 (Md. 2007) (Raker, J., concurring in part and dissenting in part); *Lewis v. Harris*, 908 A.2d 196, 216–17 (N.J. 2006); *Andersen v. King Cnty.*, 138 P.3d 963, 1018–19 (Wash. 2006) (Fairhurst, J., dissenting); *Hernandez v. Robles*, 7 N.Y.3d 338, 379 (2006); *Goodridge v. Dep’t of Pub. Health*, 798 N.E.2d 941, 963–64 (Mass. 2003); *Baker v. State*, 744 A.2d 864, 882 (Vt. 1999).
55. See, e.g., *Sharon S. v. Superior Court*, 73 P.3d 554, 568–69 (Cal. 2003); *In re Jacob*, 86 N.Y.2d 651, 658 (1995).
56. David Crump, *The Dilution Problem and Other Arguments Against Same-Sex Marriage: How Persuasive Are They?*, 9 AVE MARIA L. REV. 221, 235–36 (2011).
57. See George W. Dent, *No Difference? An Analysis of Same-Sex Parenting*, 10 AVE MARIA L. REV. 53, 64 (2011); Lynn D. Wardle, *A Response to the “Conservative Case” for Same-Sex Marriage: Same-Sex Marriage and “The Tragedy of the Commons”*, 22 BYU J. PUB. L. 441, 455–60 (2008).
58. See Michael Christian Belli, *The Constitutionality of the “Men Who Have Sex With Men” Blood Donor Exclusion Policy*, 4 J.L. Soc’y 315, 368 (2003).
59. See *State v. Walsh*, 713 S.W.2d 508, 512–13 (Mo. 1986).
60. See Heather S. Ingrum Gipson, *“The Fight for the Right to Fight”: Equal Protection & The United States Military*, 74 UMKC L. REV. 383, 405–06 (2005).
61. See Stephen Clark, *Judicially Straight? Boy Scouts v. Dale and the Missing Scalia Dissent*, 76 S. CAL. L. REV. 521, 557 n.177 (2003).
62. See generally Andrew Sullivan, *The Marriage Moment*, ADVOCATE, at 60–63 (Jan. 20, 1998).

the stereotype, or “behavioral asymmetry,” used to justify continued discrimination against them. Finally, as will be discussed below, Social Dominance Theory helps explain the side-battles in the fight for gay marriage taking place between gays and African Americans, as well as within the gay community.

IV. AFRICAN AMERICAN SNEETCHES VERSUS GAY SNEETCHES

*Please stop carpet-bagging on our civil rights movement*⁶³

The current battle over marriage rights for gay couples is not the first time laws regulating marriage have been used by the majority to differentiate socially worthy and socially unworthy couplings. It is preceded by a long history of not merely prohibiting but also criminalizing interracial marriage. It was not until 1967 that the U.S. Supreme Court, in *Loving v. Virginia*,⁶⁴ declared such laws to be unconstitutional.

In *Loving*, the Court found the state’s miscegenation laws to be constitutionally infirm for two reasons. First, the Court held that the laws—by drawing distinctions based on the race of the individuals involved—constituted race discrimination, thus subjecting them to strict scrutiny under the equal protection clause, which they did not satisfy.⁶⁵ Second, the laws interfered with the “fundamental” right to marry protected by the due process clause.⁶⁶

It is no surprise that advocates of same-sex marriage have invoked *Loving* to challenge laws prohibiting same-sex marriage, as *Loving* provides several independent bases for challenging such laws. First, one can challenge such laws on the ground that they constitute sex discrimination in violation of the equal protection clause. The *Loving* Court held that although laws banning interracial marriage were applied equally to whites and non-whites, the laws drew race-based classifications and were therefore subject to strict scrutiny. Similarly, although laws banning same-sex marriage are applied equally to men and women, the laws draw sex-based classifications and should therefore be subject to heightened scrutiny.⁶⁷ Second, one can challenge such laws on the ground that they constitute sexual orientation discrimination, and can draw analogies between race-based and sexual orientation-based discrimination to argue for heightened equal protection scrutiny.⁶⁸ Third, one can challenge such laws on

63. Ben Neary, *Wyoming House Panel Advances Domestic Partnerships*, ASSOCIATED PRESS (Feb. 5, 2013), <http://bigstory.ap.org/article/wyo-lawmakers-see-movement-gay-rights-issues> (quoting Lynn Hutchings, an African American member of the Wyoming legislature, commenting on a proposed bill to legalize same-sex marriage).

64. *Loving v. Virginia*, 388 U.S. 1 (1967).

65. *Id.* at 7–12.

66. *Id.* at 12.

67. See, e.g., *Goodridge v. Dep’t of Pub. Health*, 798 N.E.2d 941, 970–71 (Mass. 2003) (Greaney, J., concurring); *Baker v. State*, 744 A.2d 864, 906 (Vt. 1998) (Johnson, J., concurring in part and dissenting in part); *Baehr v. Lewin*, 852 P.2d 44, 67–68 (Haw. 1993).

68. See, e.g., *In re Marriage Cases*, 183 P.3d 384, 440–44 (Cal. 2008); *Kerrigan v. Comm’r of Pub. Health*, 957 A.2d 407, 431–61 (Conn. 2008).

the ground that, just like the miscegenation laws, bans on same-sex marriage interfere with the fundamental right to marry as protected by the due process clause.⁶⁹

When gays invoke the “*Loving* analogy”⁷⁰ in the legal and political spheres, they sometimes receive an angry response from some members of the African American community. For example, during a 2013 debate in the Wyoming legislature over two bills—one to extend marriage rights to same-sex couples and another to create a parallel domestic partnership scheme—Lynn Hutchings, an African American member of the Wyoming legislature, responded to what she described as efforts by gays to equate their struggle for civil rights to that of mixed-race couples in the 1960s with a plea to “stop carpet-bagging on our civil rights movement.”⁷¹

To be sure, Ms. Hutchings does not represent the view of all, or even most, African Americans.⁷² Yet it is no secret that Ms. Hutchings’s view is shared by a significant number of people within the African American community, who—influenced by church leaders within their community—oppose both the drive for same-sex marriage and the efforts by gays to analogize the struggle for racial equality in the United States with gay equality. The objections raised by this segment of the African American community to the *Loving* analogy are threefold. First, they note the significant differences in the history between the two groups, pointing to the history of slavery, Jim Crow laws, and segregation, as well as the fact that interracial marriage was not merely unrecognized but actually criminalized.⁷³ Second, they distinguish the innate nature of race from what they perceive to be the volitional or behavioral nature of homosexuality.⁷⁴ And third, they draw attention to the difference in the visibility of the traits of homosexuality and race respectively, noting that “[h]omosexual orientation is not necessarily visible but ‘[r]ace is never invisible.’”⁷⁵

69. See, e.g., *In re Marriage Cases*, 183 P.3d at 419–34.

70. See generally David Orgon Coolidge, *Playing the Loving Card: Same-Sex Marriage and the Politics of Analogy*, 12 *BYU J. Pub. L.* 201 (1998).

71. Neary, *supra* note 63.

72. Recently, numerous prominent leaders within the African American community, including President Barack Obama, have come out in favor of same-sex marriage. African American voters—who traditionally have been one of the voting blocs most likely to oppose same-sex marriage—have recently come closer to mirroring the split in the general population on the issue. Perhaps the most striking symbol of African American support for the right to same-sex marriage is a statement issued by Mildred Loving—the African American woman who brought the legal challenge that bears her name. On the fortieth anniversary of the *Loving* decision, Loving expressed her support of the right of same-sex couples to marry, writing, “That’s what *Loving*, and loving, are all about.” See Mildred Loving, *Loving for All: Prepared for Delivery on June 12, 2007, the 40th Anniversary of the Loving v. Virginia Announcement*, available at http://www.freedomtomarry.org/page/-/files/pdfs/mildred_loving-statement.pdf.

73. See Lynn D. Wardle & Lincoln C. Oliphant, *In Praise of Loving: Reflections on the “Loving Analogy” for Same-Sex Marriage*, 51 *How. L.J.* 117, 144–45 (2007); Chandan Reddy, *Time for Rights? Loving, Gay Marriage, and the Limits of Legal Justice*, 76 *FORDHAM L. REV.* 2849, 2851, 2863–64 (2008).

74. See Angela Onwuachi-Willig, *Undercover Other*, 94 *CAL. L. REV.* 873, 879–80 (2006).

75. See *id.* at 881–82. Wardle & Oliphant, *supra* note 73, at 146 (quoting Chelsea Jennings, *Gay Rights Civil Rights: Comparing the Fight for Gay Equality to the Civil Rights Movement Glosses over Unique Experience*

THE SNEETCHES AS AN ALLEGORY FOR THE GAY RIGHTS STRUGGLE: THREE PRISMS

Race is the most obvious example of a visible characteristic, and in deciding whether to apply heightened scrutiny to other types of classifications, the Court has frequently drawn analogies to race. For example, the Court has held that “[g]ender, like race, is a highly visible and immutable characteristic that has historically been the touchstone for pervasive but often subtle discrimination.”⁷⁶ Indeed, the Court has held that the absence of “an obvious badge” militates against applying heightened scrutiny,⁷⁷ and a number of lower courts have followed suit, noting that “homosexuals generally are not identifiable ‘on sight’ unless they elect to be so identifiable by conduct (such as public displays of homosexual affection or self-proclamation of homosexual tendencies).”⁷⁸

In arguing for constitutional protection, African Americans and other minority groups experience the struggles of *both* the Star-Belly and the Plain-Belly Sneetches.

of African Americans, SODAHEAD (May 25, 2006), <http://www.sodahead.com/united-states/gay-rights-civil-rights/blog-18050/?link=ibaf&q=&esrc=s>. These three objections track three of the factors that the U.S. Supreme Court has identified in deciding whether to accord heightened scrutiny to a given classification under the equal protection clause. First, the Court has identified a history of discrimination as one of the key considerations in deciding whether to accord heightened scrutiny. *See Bowen v. Gilliard*, 483 U.S. 587, 602 (1987); *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 313 (1976); *Lyng v. Castillo*, 477 U.S. 635, 638 (1986); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973); *Frontiero v. Richardson*, 411 U.S. 677, 684–85 (1973) (plurality opinion). In addition, the objection based on the differential history—and specifically the history of slavery—is relevant to the power of Congress to enact legislation prohibiting private discrimination pursuant to Section 2 of the Thirteenth Amendment, under which Congress can enact legislation designed to eradicate the “badges and incidents of slavery.” *See City of Memphis v. Greene*, 451 U.S. 100, 124–25 (1981); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 439 (1968); *The Civil Rights Cases*, 109 U.S. 3, 20 (1883). Second, the Court has viewed as a relevant consideration the question whether the characteristics that define the group are immutable and determined merely by the accident of birth. *See Bowen*, 483 U.S. at 602; *Lyng*, 477 U.S. at 638; *Frontiero*, 411 U.S. at 686. Third, the Court has held that the question whether the trait that defines a group are “obvious” or “visible” is pertinent in deciding whether to apply heightened scrutiny to laws that discriminate against that group. *See Bowen*, 483 U.S. at 602; *Lyng*, 477 U.S. at 638; *Frontiero*, 411 U.S. at 686 (“[I]n part because of the high visibility of the sex characteristic, women still face pervasive, although at times more subtle, discrimination . . .”); *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938) (indicating that “prejudice against *discrete* and insular minorities” is a condition calling for “more searching judicial inquiry”) (emphasis added).

76. *Caban v. Mohammed*, 441 U.S. 380, 398 (1979).

77. *See Mathews v. Lucas*, 427 U.S. 495, 506 (1976).

78. *Equal Found. of Greater Cincinnati, Inc. v. City of Cincinnati*, 54 F.3d 261, 267 (6th Cir. 1995), *vacated on other grounds*, 518 U.S. 1001 (1996); *see also Sevcik v. Sandoval*, 911 F. Supp. 2d 996, 1011 (D. Nev. 2012) (“[T]he continued discrimination against women in 1973 was largely due to the high visibility of the sex characteristic, a visibility that the characteristic of homosexuality does not have to nearly the same extent as gender.”); *Steffan v. Cheney*, 780 F. Supp. 1, 6 (D.D.C. 1991) (“Even if it were maintained that his sexual preference for men was a distinguishing characteristic, nothing in the record indicates that the plaintiff overtly ‘exhibited’ such a characteristic. In fact, he kept his sexual preference secret . . .”), *aff’d*, *Steffan v. Perry*, 41 F.3d 677 (D.C. Cir. 1994). *But see Windsor v. United States*, 699 F.3d 169, 183 (2d Cir. 2012), *aff’d*, *Windsor v. United States*, 133 S. Ct. 2675 (2013) (noting that many of the categories for which heightened scrutiny is applied—including “alienage, illegitimacy, and national origin”—involve “characteristics [that] do not declare themselves, and often may be disclosed or suppressed as a matter of preference,” and concluding that “[w]hat seems to matter is whether the characteristic of the class calls down discrimination when it is manifest”).

In order to obtain heightened scrutiny under the equal protection clause they must point to the visibility of the trait that defines the minority group, and therefore, like the Star-Belly Sneetches, African Americans and gays draw attention to the visible “stars” on their bellies.⁷⁹ However, although African Americans, gays, and members of other minority groups seek to point to the visible differences between themselves and the majority as a means of seeking the protections of the equal protection clause, many also wish to eradicate or mask those differences. Therefore, like the Plain-Belly Sneetches, the story of *The Sneetches* also highlights the willingness of members of minority groups to suppress their differences to fit in:

Too often, the anger and depression associated with being a member of the out-group becomes desperation to join the privileged, even if it means forgetting (or despising) what we are Some turn to skin lighteners or plastic surgeries, while others attempt to purge their accents or deny their sexual preferences⁸⁰

Thus, *The Sneetches* represents the dual tension faced by members of minority communities. In order to obtain the protections of the legal system, they must point to the very differences that are the source of discrimination against them, but their desire to fit in also causes them to minimize and even erase those differences. The Sneetches’ repeated visits to McBean’s machine illustrate the competing internal tensions faced by members of minority communities.

Although this peculiarity of U.S. constitutional law explains why African Americans might want to point to the presence of their “stars,” the same rationale does not explain why some African Americans might want to point out the *absence* of such “stars” in other minority groups, such as gays. Race is firmly established as a classification subject to strict scrutiny review under the equal protection clause, and the application of that heightened scrutiny to other classifications would not diminish the legal claims of African Americans.⁸¹

Social Dominance Theory partially resolves that aspect of the tension between the African American and gay communities. As explained above, the impulse to reinforce and reproduce hierarchical social structures is not limited to those in the dominant group. Subordinate group members likewise seek to establish their supremacy over other subordinate groups so that they too can have a “negative reference group” below them. By reinforcing discriminatory legal schemes against gays, African Americans—who for so long have served as the “negative reference

79. See *Windsor*, 699 F.3d at 183–84 (concluding that when same-sex couples seek to marry, they become “visible” for equal protection purposes).

80. Tanya Jeffcoat, *From There to Here, from Here to There, Diversity is Everywhere*, in DR. SEUSS AND PHILOSOPHY: OH, THE THINKS YOU CAN THINK! 93, 93 (Jacob M. Held ed., 2011).

81. One caveat is that the Court’s switch from suspect *classes* to suspect *classifications* has diminished the legal interests of African Americans, as that switch has given Caucasians the ability to invoke strict scrutiny to challenge affirmative action programs. See generally *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995). However, recognizing *different* classifications, such as sexual orientation, as suspect classifications would not diminish the legal interests of African Americans. See *Kerrigan v. Comm’r of Pub. Health*, 957 A.2d 407, 502 n.25 (Conn. 2008) (Borden, J., dissenting).

group” for other subordinate groups⁸²— can arguably have their own negative reference group, allowing them to move up in the comparative social hierarchy.

By supporting the denial of marriage and similar rights to gays, this segment of the African American community aligns itself with the “positive social value” associated with society’s dominant group, namely, Caucasians. Accordingly, this segment of the African American community internalizes aspects of both the Star-Belly and Plain-Belly Sneetches, but in a *different* way than described above; they internalize the insecurities of the Plain-Belly Sneetches and the discriminatory impulses of the Star-Belly Sneetches, which together impel them to simultaneously align themselves more closely with the dominant group and to make gays their negative reference group.

Social Dominance Theory applied in this context has much in common with “internalized racism” or “internalized oppression.”⁸³ The latter posits that victims of majoritarian racism internalize that racism in three ways. First, the victims internalize the negative stereotypes about their own race created by the majority,⁸⁴ or engage in “conscious and unconscious acceptance of a racial hierarchy in which whites are consistently ranked above People of Color.”⁸⁵ As a result, minorities distance themselves from other members of their group who engage in what has been perpetuated by the majority as conduct or appearance stereotypically associated with that group.⁸⁶ Second, those who break from some of the negative stereotypes attributed by the majority to their group—by performing well academically, for example, in the African American community—are accused by other members of their group of “trying to be white.”⁸⁷ Third, they “introduce, tolerate, and proliferate” oppression of other oppressed groups.⁸⁸

The theory of internalized racism within the African American community provides an additional valuable insight regarding the particularly negative treatment experienced by those with an intersectional identity as both African American and gay. One of the legitimizing myths historically perpetuated to justify discrimination against African Americans has been to portray “black sexuality as ‘reckless, irresponsible, and dangerous.’”⁸⁹ As Beverly Greene, a professor of psychology at St. John’s University, explains:

82. See SIDANIUS & PRATTO, *supra* note 19, at 231–33.

83. See generally SUZANNE LIPSKY, *INTERNALIZED RACISM* (Rational Island Publishers 1987).

84. See *id.* at 4–7.

85. Lindsay Perez Huber et al., *Naming Racism: A Conceptualized Look at Internalized Racism in U.S. Schools*, 26 CHICANO-LATINO L. REV. 183, 184 (2006).

86. See LIPSKY, *supra* note 83, at 5–6.

87. See *id.* at 8 (internal quotations omitted).

88. *Id.* at 11.

89. Beverly A. Greene, *Heterosexism and Internalized Racism Among African Americans: The Connections and Considerations for African American Lesbians and Bisexual Women: A Clinical Psychological Perspective*, 54 RUTGERS L. REV. 931, 952 (2002).

For African-Americans who have internalized the negative stereotypes of their sexuality, sexual behavior outside of dominant societal norms can be experienced as a negative reflection on all African-Americans. There may be an exaggerated desire or pressure to model the behavior that appears normal to the dominant culture. . . .

Because acceptance of lesbian sexual orientations is inconsistent with the dominant culture's ideal, African American lesbians may be experienced as an embarrassment to African Americans who strongly identify with the dominant culture. . . .

Homophobia allows African Americans who have internalized sexual/racial stereotypes to distance themselves personally, and as a community, from the sexual stigma that the dominant culture has associated with Black identity, particularly stereotypes of Black sexuality. This distancing behavior allows some segments of the African American community to maintain their hope for legitimacy and full incorporation into the dominant culture's power structure.⁹⁰

Neither Social Dominance Theory nor theories regarding internalized racism can fully explain the reasons why a significant number of African Americans oppose gay rights. "Heterosexism, like other forms of social prejudice, has multiple determinants,"⁹¹ and opposition to gay rights by African Americans can be explained by various other factors, such as the stronger religious orientation of African Americans and the influence of religion on their thinking.⁹² Nonetheless, Social Dominance Theory provides valuable insight that helps to explain at least one facet of the anti-gay views espoused by some African Americans.

V. GAY SNEETCHES VERSUS GAY SNEETCHES

*The image of the good gay is never invoked without its shadow in mind—the bad queer . . .*⁹³

Many outside of the gay community assume that high-profile battles, such as those over the rights of same-sex couples to marry and openly serve in the military, are supported by all gays. In fact, the battle *within* the gay community over these issues has been just as fierce, dividing it into two camps, which, for ease of discussion, will be referred to as assimilationist gays and non-conformist gays.

Assimilationist gays believe that the best way to achieve equality is to eradicate formal discrimination by the government on the basis of sexual orientation, particularly the bans on same-sex marriage and open military service by gays.⁹⁴ Once heterosexuals see that gays are "just like them"—that they too fall in love, marry, and

90. *Id.* at 953–54.

91. *Id.* at 932.

92. *Id.* at 947–49.

93. Michael Warner, *Normal and Normaller: Beyond Gay Marriage*, 5 *GLQ* 119, 131 (1999).

94. See ANDREW SULLIVAN, *VIRTUALLY NORMAL: AN ARGUMENT ABOUT HOMOSEXUALITY* 169–87 (Vintage Books 1996).

serve as soldiers in the military—gays will be embraced as equals.⁹⁵ Under the assimilationist gay approach, if marriage and serving in the military are analogous to the stars in *The Sneetches*, eliminating these legal barriers for gays means that some gays will have stars and some heterosexuals will not. We will thus arrive at the day when “neither the Plain nor the Star-Bellies [know] / Whether this one was that one . . . or that one was this one,” and we will have the happy ending from the 1961 version of *The Sneetches*.⁹⁶ In 1997, writer and editor Andrew Sullivan, a proponent of this view, declared that after achieving legalization of same-sex marriage “and a couple of other things . . . we should have a party and close down the gay rights movement for good.”⁹⁷

In contrast, non-conformist gays have viewed the goal of the assimilationist gays as a fool’s errand, and have contended that no matter how much formal legal progress gays make, they will always be viewed as inferior by the heterosexual majority.⁹⁸ Although gays, like heterosexuals, would be able to marry, the presence or absence of the stars would still be evident, and in the minds of the majority there would always be marriage and “marriage.”

Moreover, non-conformist gays contend that equality sought through assimilation comes at too high a cost.⁹⁹ Non-conformists identify what they view as superior about gay culture—rejection of monogamy and more equitable relationship structures—and contend that marriage, an institution built on a history of subjugating women to men,¹⁰⁰ is a vehicle for the state to impose monogamy. They further argue that this will destroy the positives of “queer” relationships such as lack of hierarchy and non-exclusivity.¹⁰¹ Non-conformists, noting the history of state regulation of gay relationships via the sodomy laws, are also wary of re-inviting state regulation into the

95. *See id.*

96. *The Sneetches*, *supra* note 4.

97. *See* OUT FACTS: JUST ABOUT EVERYTHING YOU NEED TO KNOW ABOUT GAY AND LESBIAN LIFE 21 (David Groff ed., 1997); *accord* Warner, *supra* note 93, at 158.

98. *See* Paula L. Ettelbrick, *Since When Is Marriage a Path to Liberation?*, in LESBIAN AND GAY MARRIAGE: PRIVATE COMMITMENTS, PUBLIC CEREMONIES 20, 26 (Suzanne Sherman ed., 1992) (“We must not fool ourselves into believing that marriage will make it acceptable to be gay or lesbian.”).

99. *See* Yuvraj Joshi, *Respectable Queerness*, 43 COLUM. HUM. RTS. L. REV. 415, 425 (2012) (“[Q]ueer liberationists reject assimilation because of its normalizing costs . . .”); Warner, *supra* note 93, at 122 (“If the campaign for marriage requires wholesale repudiation of queer culture’s best insights on intimate relations, sex, and the politics of stigma, then it is doing more harm than marriage could ever be worth.”).

100. Suzanna Danuta Walters, *Take My Domestic Partner, Please: Gays and Marriage in the Era of the Visible*, in QUEER FAMILIES, QUEER POLITICS: CHALLENGING CULTURE AND STATE 338, 347 (Mary Bernstein and Renate Reimann eds., 2001); Ettelbrick, *supra* note 98, at 20.

101. *See* Walters, *supra* note 100, at 348–49; Elizabeth Peel & Rosie Harding, *Civil Partnerships: A New Couple’s Conversation*, 14 FEMINISM & PSYCHOL. 41, 42–43 (2004); Nancy D. Polikoff, *We Will Get What We Ask For: Why Legalizing Gay and Lesbian Marriage Will Not “Dismantle the Legal Structure of Gender in Every Marriage”*, 79 VA. L. REV. 1535, 1536 (1993) (stating that this type of assimilationist behavior “is an attempt to mimic the worst of mainstream society”).

sphere of their personal relationships via the marriage laws.¹⁰² Similarly, legalizing open service in the military comes at the high cost of supporting an aggressive U.S. military policy that those on the left generally oppose.¹⁰³

Non-conformists generally critique assimilationists for their efforts to merely “ape” or mimic the heterosexual majority.¹⁰⁴ They view this as a character weakness, a degree of insecurity that results in a willingness to give up their true identity in exchange for social acceptance by the majority.¹⁰⁵ Under the non-conformist view, the absence of a star is a *good* thing to be celebrated. The non-conformist vision reflects the original version of *The Sneetches*, in which the two groups of Sneetches were “equally haughty” to one another because each deemed itself superior to the other. Indeed, non-conformist gays and anti-gay activists have much in common, in that they both agree that gays *are* different. Representative of this view was Paula Ettelbrick, a prominent legal expert in the gay rights movement:

As a lesbian, I am fundamentally different from nonlesbian women. That’s the point. Marriage, as it exists today, is antithetical to my liberation as a lesbian and as a woman because it mainstreams my life and voice. I do not want to be known as “Mrs. Attached-To-Somebody-Else.” Nor do I want to give the state the power to regulate my primary relationship.¹⁰⁶

Yet perhaps the most interesting critique by the non-conformists is a concern that they will be marginalized if same-sex marriage is legalized. Non-conformists have argued that marriage would divide the gay community into two different groups: the “good gays” who marry, are monogamous, and raise a family, and the “bad queers” who do not fit that mold.¹⁰⁷ Moreover, non-conformists believe that legalization of same-

102. See Katherine M. Franke, *Longing for Loving*, 76 *FORDHAM L. REV.* 2685, 2685–89 (2008). See generally Katherine M. Franke, *The Domesticated Liberty of Lawrence v. Texas*, 104 *COLUM. L. REV.* 1399 (2004).

103. See generally *AGAINST EQUALITY: DON’T ASK TO FIGHT THEIR WARS* (Ryan Conrad ed., 2011).

104. See John P. Elia, *Queering Relationships: Toward a Paradigmatic Shift*, 45 *J. HOMOSEXUALITY* 61, 70, 77 (2003); Peel & Harding, *supra* note 101.

105. See Joshi, *supra* note 99, at 417–22.

106. See Ettelbrick, *supra* note 98, at 22. Assimilationist gays don’t see things this way, and accuse non-conformists of sharing the sins of the Star-Belly Sneetches: “By identifying as queer, lesbians and gay men do exactly the same thing that the most virulent homophobes do: they make their sexual orientation hyper-important, more important than any single factor should be in a complex human personality.” David Link, *I Am Not Queer*, in *BEYOND QUEER: CHALLENGING GAY LEFT ORTHODOXY* 266, 274 (Bruce Bawer ed., 1996); see also Dale Carpenter, *Straight Acting*, 9 *MINN. J.L. SCI. & TECH.* 803, 808 (2008) (“But note how the critique of straight acting, in its rejection of performance and straight identity, is itself encouraging a certain performance and constructing an identity. . . . The critique of straight acting becomes a means of policing gay identity itself. Gay liberation becomes its own prison.”).

107. See Gayle S. Rubin, *Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality*, in *THE LESBIAN AND GAY STUDIES READER* 3, 15 (1993) (“Most homosexuality is still on the bad side of the line.”); Walters, *supra* note 100, at 349 (“Gay marriage . . . might simply demonize nonmarried gays as the ‘bad gays’ (uncivilized, promiscuous, irresponsible) while it reluctantly embraces the ‘good gays’ who settle down and get married.”); Peel & Harding, *supra* note 101, at 42 (“What concerns me is that civil partnerships might become the yardstick against which all lesbian and gay relationships are judged. Other lesbian and gay relationship forms may be seen as less legitimate.”); Catherine Donovan, *Why Reach for the Moon? Because the Stars Aren’t Enough*, 14 *FEMINISM & PSYCHOL.* 24, 24 (2004) (“I fear that

sex marriage will make it easier to deny the rights associated with marriage to unmarried same-sex pairings,¹⁰⁸ pointing, for example, to the elimination of domestic partnership benefits in states that have legalized same-sex marriage.¹⁰⁹

By critiquing the legalization of marriage, non-conformist gays have the same insecurity that they accuse the assimilationist gays of having. Non-conformists express concerns about being marginalized by other gays and by society generally. They want to keep the respectable-looking gays—respectable-looking, that is, in the eyes of the heterosexual majority—in the “gay ghetto” with them because they recognize that they *need* them there to help lift everyone, including non-conformists, out of it. In other words, they recognize that *nobody* will advocate for the rights of unmarried, non-conformist gays once the assimilationist gays have obtained the right to marry.¹¹⁰ By opposing marriage rights for same-sex couples, non-conformists will force assimilationists to fight for rights for unmarried couples, thus helping non-

this strategy concedes a major part of the argument of the anti-same-sex-marriage-pro-sanctity-of-heterosexual-marriage coalition: that other kinds of relationships do not have the same commitments, responsibilities, and value as those created in marriage.”); Jade McGleughlin & Sue Hyde, *Can a Diamond Ever Be Gay?*, 9 *STUD. GENDER & SEXUALITY* 184, 190, 192 (2008) (“[L]egitimizing certain kinds of unions surely delegitimizes others We do not want to be the good gays cast against the ever more marginalized group that chooses (or has no choice about) other ways to live and love. And yet marriage does that.”).

108. See Elia, *supra* note 104, at 70–71 (“Aping heterosexual marriage is likely to afford gays and lesbians a modicum of societal approval and rewards more so than those with sexual minority status who do not fit the mold of the socially expected and authorized relationship construction (e.g., monogamous, long-term, similar background, relationships). In essence, the respect, dignity, rewards and privileges afforded to non-heterosexuals are commensurate with how closely they approximate heteronormative practices.”) (citations omitted); Joshi, *supra* note 99, at 444–45 (“The state might, for example, point to married lesbians and gays as exemplary minorities whose integration into society should be commended, and censure non-married queers as failed minorities whose deviance from the norm should be condemned. . . . By readjusting the parameters of unlawful (and lawful) discrimination, marriage equality may render discrimination claims by unmarried queers less legally cognizable, and even implicitly sanction discrimination against them.”); Warner, *supra* note 93, at 143 (“Squeezing gay couples into the legal sorting machine will only confirm the relevance of spousal status and leave unmarried queers looking more deviant before a legal system that can claim broader legitimacy.”).
109. See Paula L. Ettelbrick, *Wedlock Alert: A Comment on Lesbian and Gay Family Recognition*, 5 *J.L. & POL’Y* 107, 130 (1996); Katherine M. Franke, *Marriage Is a Mixed Blessing*, *N.Y. TIMES*, June 24, 2011, at A25, available at http://www.nytimes.com/2011/06/24/opinion/24franke.html?_r=0; Tara Siegel Bernard, *Some Companies Want Gays to Wed to Get Health Benefits*, *N.Y. TIMES*, July 9, 2011, at B1, available at <http://nyti.ms/114iE6c>.
110. See Ettelbrick, *supra* note 98, at 25–26 (“If the laws changed tomorrow and lesbians and gay men were allowed to marry, where would we find the incentive to continue the progressive movement we have started that is pushing for societal and legal recognition of all kinds of family relationships?”); Nancy D. Polikoff, *The New “Illegitimacy”: Winning Backward in the Protection of the Children of Lesbian Couples*, 20 *AM. U. J. GENDER SOC. POL’Y & L.* 721, 722 (2012) (“[P]arentage recognition derived from marriage will reduce the urgency of advocating protecting parent-child relationships on more suitable grounds.”); Ryan Conrad, *Against Equality, in Maine and Everywhere*, in *AGAINST EQUALITY: QUEER CRITIQUES OF GAY MARRIAGE* 43, 48 (Ryan Conrad ed., 2010) (“Once privilege is doled out to middle class gay couples, are they going to continue on to fight . . . for comprehensive queer/trans inclusive sex education, or to free queers unjustly imprisoned during rabidly homophobic sex-abuse witch hunts? Doubtful is an overstatement.”).

conformists to achieve their goals. Although non-conformists present themselves as “equally haughty,” just as the Plain-Belly Sneetches were in the original version of the story, in reality non-conformist gays share the insecurities that the 1961 version of the Plain-Belly Sneetches had of being left out.

Assimilationist gays are also drawing distinctions between “good gays” and “bad queers” as a way of furthering their legal rights. As Jonathan Rauch, an advocate of same-sex marriage, has written:

If gay marriage is recognized, single gay people over a certain age should not be surprised when they are disapproved of or pitied. That is a vital part of what makes marriage work. It's stigma as social policy. If marriage is to work it cannot be merely a “lifestyle option.” It must be privileged. That is, it must be understood to be better, on average, than other ways of living.¹¹¹

As with the tensions between heterosexuals and gays and between gays and African Americans, Social Dominance Theory also helps to explain many of the tensions between assimilationist and non-conformist gays. First, assimilationist gays arguably possess many of the characteristics that the theory identifies as associated with subordinated groups. By seeking the right to marry, join the military, and the like, assimilationists can be perceived by some—correctly or incorrectly—as preferring the out-group (the heterosexual majority) to their own group. Second, the accusation by non-conformist gays that the assimilationists are merely trying to “ape” heterosexuality constitutes the adoption of an oppositional identity,¹¹² akin to the accusation that assimilationist African Americans are merely trying to “act White.” Third, those assimilationist gays who critique the “lifestyle” of non-conformist gays use non-conformist gays as a negative reference group to ensure they are no longer at the bottom of the social hierarchy.¹¹³

Like African American opponents of gay rights, both assimilationist and non-conformist gays internalize the insecurities of the Plain-Belly Sneetches and the discriminatory impulses of the Star-Belly Sneetches. For the assimilationist gays,

111. See Jonathan Rauch, *For Better or Worse?*, in *SAME-SEX MARRIAGE: PRO AND CON: A READER* 170, 179 (Andrew Sullivan ed., Vintage Books 2004).

112. See Carpenter, *supra* note 106, at 808 (“But note how the critique of straight acting, in its rejection of performance and straight identity, is itself encouraging a certain performance and constructing an identity. It is an oppositional identity, a rejection of everything associated with a world of people you imagine hate you.”).

113. Regarding this last point, this would hardly be the first time that assimilationist gays created a negative reference group within the broader community of sexual minorities as a means of furthering their own interests; indeed, there is a long history of assimilationist gays using transgendered persons as a negative reference group. See Tobias Barrington Wolff, *Civil Rights Reform and the Body*, 6 HARV. L. & POL'Y REV. 201, 213 (2012); Katrina C. Rose, *Where the Rubber Left the Road: The Use and Misuse of History in the Quest for the Federal Employment Non-Discrimination Act*, 18 TEMP. POL. & CIV. RTS. L. REV. 397, 434 (2009); *A Life of Service: An Interview with Mia Yamamoto*, 13 ASIAN PAC. AM. L.J. 1, 19 (2008); Elvia R. Arriola, *Staying Empowered by Recognizing Our Common Grounds: A Reply to Subordination and Symbiosis: Mechanisms of Mutual Support Between Subordinating Systems*, by Professor Nancy Ehrenreich, 71 UMKC L. REV. 447, 451–53 (2002); Shannon Minter, *Do Transsexuals Dream of Gay Rights? Getting Real About Transgender Inclusion in the Gay Rights Movement*, 17 N.Y.L. SCH. J. HUM. RTS. 589, 601–07 (2000).

these two forces drive them to align themselves more closely with the dominant group (heterosexuals) while making non-conformist gays their negative reference group. For the non-conformist gays, these two forces drive them to speak about the superiority of queer culture to straight culture and oppose the legal developments that would make them the out-group vis-à-vis assimilationist gays.

VI. WHO IS SYLVESTER MCMONKEY MCBEAN?

As indicated in Part I, in the 1961 version of *The Sneetches*, Seuss introduced readers to Sylvester McMonkey McBean, who played off the weaknesses of the Star-Belly and Plain-Belly Sneetches by offering to add or remove stars from their bellies—for a fee—as a way of eradicating or reemphasizing their differences, and consequently the hierarchical scheme. Through the McBean character, *The Sneetches* goes beyond telling a story about the discriminatory impulses and insecurities of humans, and “makes a statement about those who have a vested interest in keeping people divided and at war.”¹¹⁴

In the battle over gay rights, who is McBean? While an exhaustive answer to that question is beyond the primary scope of this essay, I offer the following provocative hypothesis that is worth exploring in a future essay.

Within the gay rights arena, a professional class of proponents and opponents of such rights—lobbyists, politicians, attorneys, advocacy groups, authors, and academics—has developed and grown over the years.¹¹⁵ While nearly all entered this battle with pure ideological intentions, over time at least some portion of this group has come to depend for their collective livelihood and relevance on the continued prejudice of the majority coupled with the minority’s need to be included. The professional classes that have grown on all sides of this issue depend upon one another—and the discriminatory impulses and insecurities of humans—for their perpetuation. Even after such organizations serve the purpose that caused them to come into existence, they move on to new causes and battles and renew the calls for donations.

For example, during the 2012 campaign battle over legalizing same-sex marriage in Washington State, supporters of legalization would frequently send emails to other supporters with ominous warnings about the strength of the opposition, and would ask them for three dollars to help fight back,¹¹⁶ an amount ironically reminiscent of McBean’s sales pitch to the Plain-Belly Sneetches: “You want stars like a Star-Belly Sneetch . . . ? My friends, you can have them for three dollars each!”¹¹⁷ After the battle for marriage rights in Washington was fought and won,

114. JAMES W. KEMP, *THE GOSPEL ACCORDING TO DR. SEUSS* 68 (2004).

115. As an author and academic specializing in sexual orientation and gender identity law, I include myself within this group.

116. *See, e.g.*, E-mail from Zach Silk, Campaign Manager, Wash. United for Marriage (Oct. 6, 2012, 12:47 EST) (on file with author).

117. *See The Sneetches, supra* note 4.

organizations on either side of the issue did not disband, but instead moved on to fight other battles.¹¹⁸

This is not to cast aspersions on the individuals who have fought these campaigns, and who are responsible for many of the important civil rights gains experienced by gays in recent years. Rather, it is simply to highlight the fact that one can have both benevolent and self-serving motives even when engaged as a professional in such altruistic endeavors as the battle for civil rights.

VII. CONCLUSION

In this essay, I have invoked the universal themes found in Dr. Seuss's *The Sneetches* as a vehicle for describing the struggle for gay rights in the United States. I have demonstrated that in this struggle there has been not only a battle between the heterosexual majority and the gay minority, but also sub-battles between the African American and gay communities and within the gay community itself.

I have demonstrated that each of these groups simultaneously internalizes the discriminatory impulses of the Star-Belly Sneetches and the insecurities of the Plain-Belly Sneetches. Relying on the insights of Social Dominance Theory, I have sought to demonstrate that *The Sneetches* is not merely a story about a struggle between different classes of people within society, but also about a struggle within each of us as individuals. We all seek to improve our standing in the social hierarchy by fighting laws created by the majority designed to maintain their superior rank and by replicating that social hierarchy vis-à-vis groups whose civil rights battles are in the more embryonic stages. I have identified a similar set of dual impulses—altruism and self-preservation—for those engaged as professionals in the battle for civil rights. Those competing forces do not make us inherently good or bad people, but rather help to explain, at least in part, why we act as we do.

These insights do not necessarily lead to the conclusion that any of the competing sides in the battle over gay rights *should* change their positions. Rather, they provide each side with a reason to further reflect upon what may be subconscious motivations for its positions as well as its methods of advocacy, and to reconsider both in light of those reflections.

118. See, e.g., Michelle Garcia, *Washington: Marriage Opponents Take on Surrogacy*, ADVOCATE (Dec. 19, 2012, 6:58 PM ET), <http://www.advocate.com/politics/marriage-equality/2012/12/19/marriage-opponents-washington-take-surrogacy>; E-mail from Equal Rights Wash. to author (Nov. 21, 2012, 18:56 EST) (on file with author).