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The Intersection of Free Speech, Schools, & Gender Identity

Attack Helicopters and Gender:
Chelsea Manning's *Readme.txt*

Gender & Sexuality in
Harvest Moon



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About the Cover

“Polarized” by Poliwhirl (@poliwhirl61)

This is a microscopic photograph of a human body fluid that I had taken at 400X magnification, under polarized light. The primary objects in this image are two types of crystals: uric acid crystals and cysteine crystals, each one slightly larger than a white blood cell. While the uric acid crystals are mainly seen in their diamond shape, they can occasionally appear hexagonal. The only way to differentially diagnose between the very common uric acid and very rare cysteine crystal is under examination by polarized light. As crystals have certain structures regular structures, polarized light will cause uric acid crystals to change color based on the orientation to the polarization of the light. The cysteine crystals will not change color based on their orientation, as it is a non-polar crystalline structure. The palette of this image is both striking and delicate. I always like to say that there's beauty everywhere if you only look closely, and this image exemplifies that clearly.

Community News for July 2024

- bioCurse came out at work, and everything went great!
- We celebrated Lexy and Ash's birthdays.
- The Blue House Editorial Staff are moving across the country this month!
- Lexy got a new job.

About Next Issue

It's been a busy summer for everyone, including here at BHM. The BHM Editorial staff are moving across the country, and most importantly Lapis will be starting law school! This will lead to a lot of changes in their lives, and ultimately to bigger and better things! Our plans are to have BHM still publish on schedule with minimal delays, despite the huge move and multiple life changes. Lapis worked for a higher than ever standard of quality and presentation, and Poliwhirl will continue to keep that standard going.

Attack Helicopters and Gender: Chelsea Manning's *Readme.txt*

By Brooke (@damorian.)



Figure 1: README.txt (1)

I vaguely remember sitting in my dorm room in 2010, Freshman year, watching a video entitled “Collateral Murder” that I had found on Reddit, which was a relatively new content hub at the time. I would not recommend looking it up, given its gory and graphic content. But briefly, it shows video from an attack helicopter with the radio between American servicemen in the air and on the ground when they mistake journalists and their bodyguards, as well as a family of passersby, for insurgents, killing most of them.

This video was released at an interesting time in the world that’s hard to portray to younger people. In the years post 9/11 there was so much national and political unity, and support for the wars in Afghanistan and Iraq were unbelievably high by today’s standards. President Bush had an over 90% approval rating at one point. Only 1 Congressperson voted against the

war in Afghanistan (2) and the Iraq war passed with more than 2 to 1 in favor. (3) There was this general sense that there were a large group of people in “that” part of the world that “hated freedom” and were “bad guys” and we were the “good guys” and we needed to enact justice for the terrorist attacks committed against the US and elsewhere and share western ideals of liberty and democracy to people forced to live under and around these “bad guys”.

This may be an oversimplification of the broader perspective of the average American, but it certainly lacked the nuance and perspective we have today; that the wars were unwinnable, messy, and created more problems than they solved. That video came out right when people were, at least at scale, questioning the United States’ involvement in the Middle East. For me, “Collateral Murder” reframed the conflicts. It wasn’t as cut and dry as “good guys” and “bad guys”. That video stuck with me and I try to bring this frame of reference to every world conflict I see in the news since then.

CHELSEA'S STORY

This video was leaked by Chelsea (formerly Bradley) Manning, an intelligence analyst in the US army during the Iraq war. She released a memoir in 2022, "README.txt", recalling her upbringing, military service, whistleblowing and subsequent imprisonment, as well as her life as a gay man during "Don't ask/don't tell" (DADT), struggles with gender dysphoria, and her inevitable transition. Keep in mind, discourse surrounding LGBT+ issues was very different just a few years ago. In the mid 2000s, gay marriage was still illegal and hotly debated and "transsexual" issues barely existed in the media at all with "transgender" being new terminology. DADT was 90s policy from the Clinton administration that prevented the military from asking applicants about their sexual orientation, since both homosexual acts and homosexual orientation would get you discharged. The first instance of a court martial for sodomy going back to the Revolutionary War (4) and it being adopted as formal military policy since before World War II. (5)

The impact of her leaks left a wake of controversy. Within the US, the primary concern was that she put US soldiers' lives at risk, but it also helped show the public what was really happening, and that we weren't making real progress. People questioned why someone struggling with their mental health was given access to so much classified material. Anti-gay critics used this as evidence that being gay made you mentally unstable and unfit for service. Abroad, it gave plenty of room for other countries to criticize our involvement in the Middle East. As for Chelsea, some argued she was a traitor and mentally ill, and others that she was a hero acting in the best interests of a country and military that's been unfair to her and people like her.

As a controversial, oversimplified figure in the news, she humanizes herself in her book. The message she's tried to communicate through her actions and through this memoir, is that reality is always more complicated than the media presents. Telling her story, of her upbringing and the reasoning behind her actions, she brings the same transparency to her life's story that she wants the government to bring to their military activities. It's an emotionally hard read, with too many heartbreaking moments that can't help but leave you inspired by Chelsea's strength and resolve.

The second child to two alcoholic parents, her upbringing was not a rosy one. Abused and neglected, reading her accounts, she was mostly raised by her older sister and the internet. Before her time in the military and prior to her transition, she had to deal with queer bullying from her peers, teachers, and her father, her parents' divorce, a move overseas, being the sole caretaker for her dying mother, homelessness caused by a fall-out with her father's new family, being forced to use her body just to survive and stay off the streets, all with the backdrop of unresolved gender dysphoria. She took comfort in online spaces and had grown strong technical skills but was unable to use them in a meaningful way and struggled to find work. She looked to the military as a way to get a fresh start on life. She

knew she would regain her father's approval, and it would provide the stability and financial support she very much needed.

Her time in the military wasn't much of an improvement. Being short and effeminate, the same bullying she was dealing with before persisted, only now she was threatened with being discharged if anyone found out about her sexual orientation when DADT was the law. This was weaponized against her. Other soldiers, including some officers, forced her to do things she didn't want, ranging from boring office politics but even going as far as sexual assault. All of this was on top of the grueling hours of watching combat footage and reading battle reports. During her time as an intelligence analyst she was overworked, working nearly all waking hours, skirting many of the security rules that were in place to get her work done as efficiently as possible.

The years she spent analyzing the reality of the wars made it hard for her to watch the unreality in the news. She was frustrated that what she saw every day was very different than what the American public was being shown. In her own words, "I didn't have an overarching ideological agenda, but I had a clear objective: I wanted to complicate the retrofitted, sanitized version of the war that was spreading like wildfire back home, where any question of a clear narrative was perceived as disloyal." (page 139)

In early 2010 while still in Iraq, she downloaded hundreds of thousands of documents and files she smuggled back to the US on leave, disguised as a Lady Gaga CD and a digital camera's SD card, originally intended to be leaked to traditional media, but she found no traction with them and instead sent them to Wikileaks. She also used this trip back to the US as an opportunity to go out in public as a woman for the first time. She would later use a picture from this outing, along with the following email sent to her supervisor, in an attempt to get discharged:

"This is my problem. I've had signs of it for a very long time. It's caused problems within my family. I thought a career in the military would get rid of it. It's not something I seek out for attention, and I've been trying very, very hard to get rid of it by placing myself in situations where it would be impossible. But, it's not going away; it's haunting me more and more as I get older. Now, the consequences of it are dire, at a time when it's causing me great pain in itself." (page 153)

Rather than report up the chain of command, her supervisor ignored it so Chelsea could continue to serve. Shortly after, with deteriorating mental state, she had a breakdown where she was found curled in a fetal position with a knife, and a few hours later, she assaulted another soldier, resulting in a demotion. She worked in a supply closet for a few weeks before she identified herself as the leaker to Adrien Lamo, a famous gray hat hacker, via a series of chats. Lamo turned these chats over to the FBI and Army, leading to her arrest. (page 156)

The hardest part of this book to read is how she was treated in prison both pre and post-trial. She was held in solitary confinement conditions for a year. Her cell was 6ft by 12ft, with only a bed, a toilet, and no window. She could not see any other prisoners, though she could talk to them. She was repeatedly put on a suicide watch, despite not being actively suicidal, since it allowed the guards to harass her further, including forcing her to stand up if she fell asleep outside of certain hours, and forcing her to sleep and present for inspection nude. She was only allowed to walk one hour per day and was allowed only one book and one magazine. She talks about this time as a torturous experience. It altered her perception of time and broke down her already deteriorating mental state. Luckily, she had a team of lawyers that advocated for better treatment, but she lived in these conditions for nearly two years until she could get hearings to start the trial process. Since there was so much information leaked and it was such a high-profile case, it took the prosecution a considerable amount of time to build a complete case.

She was charged with 22 offenses, the most extreme of which was aiding the enemy, which could have resulted in a death sentence. Though from the beginning of the trial the Army's prosecution team communicated to Manning's defense team that they wouldn't pursue the death penalty (6). Ultimately, she pleaded guilty to 10 charges, and was found guilty of 17 of the original charges, but not aiding the enemy. After already spending 3 years in military prison, prior to the trial's resolution, she was ultimately sentenced for 35 years.

Although her gender dysphoria had been raised as an issue in the trial, her and her defense team didn't want to push the issue by having her come out until it was resolved. A few days after, her team released a statement announcing that she was female and preferred the name Chelsea, along with a request to begin hormone replacement therapy (HRT). A year into her sentence, the courts granted her a legal name change, but the Army said they would still refer to her as male. During this time, she continued to advocate for HRT, consistent with the standards of care for the gender dysphoria she had been diagnosed with by two Army medical specialists, and the right to live as a woman, particularly by being allowed to grow out her hair and wear women's garments. This had been allowed in civilian prisons, but not military prisons, since the military did not allow transgender people to serve or receive treatment for gender dysphoria, and she couldn't be discharged until her sentence was complete. (7)

Although the military prison she was in said they allowed treatment for gender dysphoria, they considered treatment to be therapy alone, absent any changes to gender presentation, hormone therapy, or gender affirming surgery. Manning filed suit, demanding she be allowed HRT, to grow her hair, and to use cosmetic products, consistent with what is allowed in federal prisons. A few months after filing, it was announced that she would begin hormone therapy. In the months and years following, she fought hard for sexual reassignment surgery, which was granted to her after a three day hunger strike, which she ultimately did not receive until after she was released.

In 2017, President Obama commuted her sentence, and she became a free woman for the first time. Reactions in the media and among politicians were mixed, but to her, it was surreal. She didn't believe the government would actually follow through but she was, in fact, released in the middle of the night 120 days after the announcement . By this point she had spent a few years on hormones and interacted with the other prisoners as a woman. But now she was a celebrity, and she had a new identity to grapple with, and a new world she'd have to learn to navigate.

A NEW LEASE ON LIFE

The book ends rather abruptly, given the detailed nature of the rest of her memoir. Since her release, she's stayed in the public eye. She's an activist for government transparency and transgender rights, making her living through speaking engagements and as a security consultant. She ran for Senate in Maryland, though lost in the primary to the Democratic incumbent. On a lighter note, she's been seen DJing (something she did prior to her service) and streaming games on Twitch.

Although I certainly didn't experience the extent of hardship she has, her story is still relatable. Reading through her life and how she describes her upbringing, she really fits into that closeted, introverted, chronically online, technically adept, 4chan user stereotype. Reading this book helped me feel less alone, and I recommend giving it a read if any of that resonates with you. In addition to that, it provides greater context and clarity surrounding the politics of the Iraq war and the impact of Wikileaks, which is something I think a lot of people never fully grasped.

The thing that stuck out to me most in this book is how brave she was in the face of endless adversity throughout her entire life. Much of what she has done, even her being alive, is controversial. Despite that, I recognize her bravery to help this country, future whistleblowers, and the trans community. At her core she's a rebel and her acts of rebellion and the acts of others in the US's history form a deep tradition of forcing progress in our country. What she leaked and what she shared of herself in "README.txt" exposed how little we know of what goes on in our world and in the lives of other people. In her words: *"Now we are all left grappling with our past."* △

Citations for this article can be found starting on page 49.



“Waves” by Lapis (@lapis_lazuli.)

A History of Gender & Sexuality in Harvest Moon & Story of Seasons

By Daya (@dayasan)



You may be wondering how a child-friendly farming series could have much of note in dealing with gender & sexuality, let alone a history which could require any form of analysis. However you may be surprised to learn the series actually has an extensive, complicated and sometimes controversial history of dealing with these topics. It is best however to start at the beginning, after all the series has been around for 28 years, with mainstream releases on 18 different consoles, 21 if you include digital re-releases on the Wii U, PS3 & Vita, with numerous additions, removals and changes between games.

The games revolve around, as you may already know, farming both crops and livestock. The livestock was for milk / eggs / wool however – not for meat – it's child friendly after all. The game almost always begins with your character taking over a derelict farm consisting of little more than a farmhouse, a few outbuildings, and a dirt field. The games run in cycles of 4 months of 30 days, 1 month per season, with each season having different crops, and none in Winter. Mining, fishing and foraging provide other activities. Each day is

condensed down, each hour being around 45-60 seconds of gameplay. With a finite amount of stamina with which to do heavy farm work, it is not quite as relaxing as you may think as you attempt to squeeze as much as you can in before you need to sleep. A main part of the game is the social aspect, with many villagers to increase your friendship level with, and for some of them this can lead into attempting to develop a relationship, which will be important later.

WHAT'S IN A NAME?

I will, however, clarify the name of this series, these games are known as ‘牧場物語’ in Japan, romanized as ‘*Bokujō Monogatari*’ and translated to ‘*The Farm Story*’. The first game was developed by Amccus and further entries by Victor Interactive, occasionally using one of its other names. Victor Interactive later merged entirely into Marvelous Entertainment¹, who then used their own name. The Japanese releases were being published by the developer directly, however lacking a United States arm with which to localise and produce the Western releases, this work went to Natsume, an external company. The series was then released in the West under the name *Harvest Moon*, a trademark owned by Natsume directly⁽²⁾. However in 2011 Marvelous merged with AQ Interactive, itself owner of a western video game publisher called XSeed,¹¹ a publisher Marvelous had worked with previously. Now with no reason to continue collaboration with Natsume, Marvelous decided to do the Western localisation and production itself via XSeed. However the trademark for *Harvest Moon* still belonged to Natsume. This caused a problem, thus a new name for localised entries was born, *Story of Seasons*, trademarked in the US in 2014 by Marvelous⁽³⁾. Confusingly however, Natsume has continued to produce its own farming-sim games using the *Harvest Moon* name (these games being developed by a small developer, Tabot aka Appci), these games are of course, not part of the *Bokujō Monogatari* series and are generally believed to be inferior.¹¹¹ The game series in this article is the series *Bokujō Monogatari* developed by Marvelous – or its previous incarnations – which was localised as *Harvest Moon* until 2014, when it became *Story of Seasons*.

¹ As per the corporate section of Marvelous’ website, where under the heading ‘Marvelous Entertainment Inc.’ the acquisition is dated March 2003⁽¹⁾.

¹¹ Again, as per the corporate section of Marvelous’ website, where under the heading ‘Marvelous Entertainment Inc.’ the merger is dated October 2011⁽¹⁾, the same heading also showing XSeed as being a subsidiary of Marvelous Inc post-merger.

¹¹¹ For example Metacritic scores for the *Bokujō Monogatari* series (not including the 1st game, the Gameboy titles plus ports, re-releases, as these are not present) average score is 73.25⁽⁴⁾/⁽⁵⁾. Natsume’s *Harvest Moon* series however averages to 60.1⁽⁵⁾. Natsume has been accused by fans of creating ‘awful, artless imitations under the *Harvest Moon* name so uninformed fans...would buy it before realizing they’d made a horrible mistake’⁽⁶⁾. Indeed it is notable that upon the *Harvest Moon-Story of Seasons* split, Natsume rushed a game out under the *Harvest Moon* name, before much of the public was aware of the split, the game was *Harvest Moon: The Lost Valley*, a game savaged in the media as being like ‘...a cheap mobile game knock-off...’ and ‘...dull, almost offensively boring...’⁽⁷⁾

This article will, as much as possible, go chronologically. However sometimes the localisation of a title got delayed so much that the next in the series was released in Japan in the time being. So to avoid it becoming too complicated, I will discuss game by game based on its Japanese release date only, regardless of what year it got localised. Also, almost all these games have been re-released either physically or digitally, these will be ignored entirely unless there is a good reason to mention it. I will analyse how the games deal with gender and sexuality, primarily when something on these topics is introduced, removed, or otherwise noteworthy. Additionally highlighting how the media and fans responded to the above, and also any regional differences between releases where they exist. For the purposes of this article, I will almost entirely use the western release title to avoid confusion, including called the series as a whole '*Harvest Moon*'.



Figure 2: Pete, the main character from the first *Harvest Moon* (132)

THE BEGINNING

The first in the series, of course called *Harvest Moon*, was released in August 1996 in Japan for the Super Famicom and brought over to the United States in March 1997. The player character is male(8, p.7) and herein lies the first criticism levelled at the game, Nintendo Power magazine called this gender-lock ‘...one of the few objections...’(9, p.141), but in general this was not considered to be a major problem, the game both sold well and received positive reviews.

As has been mentioned in the introduction, the socialising aspect has always been important to *Harvest Moon*. Indeed the producer and creator of the series, Yasuhiro Wada, has said that ‘...romance and marriage was not something we could really leave out...This was

included in the concept from a very early stage in the development...'(10). Marriage in this game, and the series as a whole, is somewhat simplistic in its structure. By talking to the potential partner, giving them gifts based on their personal likes/dislikes, and going to in-game events such as festivals they will begin to warm to you. This social progress was measured in-game, and for this first game specifically, was viewed by reading their diary(11, p.63). Once their 'love level' is high enough, a marriage proposal is done by giving them an item, a Blue Feather(12). Once married, a child is soon introduced(13, p.58). This courtship method is replicated throughout the series with little change except how to view the progress level.

How Harvest Moon as a series deals with marriage has come in for criticism, its '*...steadfast refusal to follow the pack on gender politics is...less than enlightened. You are a man, and you must marry to progress through the game.*'(14, p.72). Further criticism has been that an '*...important part of the gameplay involves "getting a girl" and having her marry you. "You" are by definition male...you are encouraged to flirt with and date different female characters...*' this part of the game apparently reinforcing '*...conservative beliefs about heterosexuality and "proper" romance.*' (15, p.171). Lastly, in this game specifically, upon marriage, the bachelorettes change sprite, and a comparison shows them to visually lose individuality, becoming identical sprites outside of hair colour and style(16). These criticisms however seem to almost entirely be retrospective, and there was almost no negative reception at the time of the first game with how these topics were handled.

Somewhat noteworthy is one of the marriage candidates, Ann. Unlike the rest of the bachelorettes, she does not act in a way that could be considered 'traditionally' (read: stereotypically) feminine, unlike the other four options. Ann is '*...mechanically inclined and likes tinkering with the hardware...*'(12, p58), is the only one who pre-marriage does not appreciate flowers as a gift(17) and is also the only one not illustrated as wearing a skirt or dress, but instead knee length shorts(18). Whilst not particularly groundbreaking, I do think it is at least somewhat commendable Harvest Moon was making a small attempt at slightly bending gender stereotypes at this early stage.

Upon release Harvest Moon got great reviews with its originality receiving specific acclaim (19, p.55), so it is little surprise it spawned such a long running series. It has however received criticism for its handling of gender, both the player character being fixed as male and how the game approaches courtship and marriage, something that is not entirely unique to this game. Overall, a somewhat mixed start for how the series approaches gender and sexuality, though I do find some of the criticism referenced above to be unnecessarily harsh for a game released in the mid 1990's, considering the lack of contemporary criticism it feels more like retrospective application of modern day gender standards onto an innocent farming video game.



Figure 3: The male and female player characters from *Harvest Moon GB* (133)

EARLY PROGRESS

Just before Christmas 1997, *Harvest Moon* made the jump to handheld gaming in Japan, on the original Game Boy, released as *Harvest Moon GB* (seeing a Western release in 1998). The front cover of the game in both Japan (20) and the United States (21) hinting at what the manual states at the very start (22, p.5), you can now play as a male or female character. The game overall plays similarly to the previous one, there is actually no real difference between the male and female characters, the manual rather proudly (and arguably inclusively) stating that both the boy and girl character ‘...can work equally hard’ (22, p.5).

The introduction of the female playable character was mentioned in the media prior to release in the West. (23, p.76) Despite it being very clear and obvious from the game boxes and manuals, the reception to this was more akin to factual acknowledgement (24, p.29) as opposed to glowing enthusiasm, with references to it.

Additionally, the dating aspect was removed entirely (25, p.137), possibly for space concern due to the incredibly small size of the Game Boy cartridge. However, the introduction of the female character choice was not been hindered by this issue, as mentioned already there is almost no difference in the game itself except the character sprite. The introduction of this was most likely for sales reasons. After all 30% of *Harvest Moon* players are female^{IV} and allowing them to play as their own gender is likely to only have a positive impact on sales.

Harvest Moon GB is the first in the series to allow you to play as a female, however with the marriage aspect removed entirely, there is little difference between genders aside from your character’s sprite. Some early progress at the very least, but maybe some additional differences would have been somewhat more progressive, something to differentiate the

^{IV} As confirmed by the creator, Yasuhiro Wada, when he gave a speech entitled ‘Classic Game Postmortem: *Harvest Moon*’ at the 2012 Game Developers Conference(26, 42:00).

male and female character a bit more so it would feel like your choice impacted the game at least a small amount. Although the way the game did handle it cannot be called unequal, if anything it was too equal and led to it feeling slightly hollow.

A ROUTINE DEVELOPS

Incredibly, three *Harvest Moon* games were released in 1999, all for different systems, yet all entirely individual games. February 2009 bought about the release of *Harvest Moon 64*, of course for the Nintendo 64. For reasons unknown, you can again only play as a male (27, p.73) but on the other hand marriage was re-implemented (28, p.25). There was no criticism at the time of removing the female character, in fact it seemingly went entirely unnoticed. There has been no explanation for not having a female playable character option, I can only assume it was deemed too much effort, as doing so would mean to having to amend much of the dialogue for the marriage options, changing the female dialogue to be platonic and male dialogue to be romantic.

Halfway through the year, *Harvest Moon 2 GBC* was released for the Game Boy Colour. Early Japanese reviews confirming that the ability to play as a male or female character has returned (29, p.98), however much more discussion was focused on the removal of the dating aspect, despite this being the case with the first Game Boy game. Gaming magazines specifically asked 'What happened to finding a wife?' (30, p.130) and that the removal of this aspect of the game made the village itself feel 'empty' (31, p.74). Whilst commendable for the return of a female playable character, the manual again confirms that again, there is '...no difference in abilities...' (32, p.3) between the characters, which again as laudable as it is for equality, the choice again feels completely hollow, with no impact on the game itself, partly due to the removal of dating.

The two games of the series so far which allowed a female playable character also removed dating, whilst no explanation has ever been given I can only think it is either a resource issue. It is possible that allowing both a female character with dating options would almost double the dialogue and events needed within the game and this is not something Marvelous was willing to do, especially considering the lack of any major criticism of removal of the female character. Although, it is also possible that maybe Marvelous just did not know how to make dating work as a female, after all assuming that in-game marriage is followed by a child. Who would look to be the primary caregiver? Japanese media still usually portrayed fathers as playing almost no part in parenting, (33, p.169) it may have been a topic that was deemed easiest to not deal with at all. Whatever the reason may be, a pattern was emerging, a console game involving a male character with dating possible in the game, followed by a handheld game with a female character option but dating is removed entirely.

In December the same year, the first of the series was released on a non-Nintendo console, *Harvest Moon Back to Nature* for the Playstation, and following the above pattern, this one too has a male character (34, p.1), and with a return of dating (35, p.20). Again the removal

of the female character option was seemingly not much of an issue, not being mentioned in previews or reviews of the game at the time.

Overall, these three games introduced little new regarding gender except showing what is seemingly an inability by Marvelous to allow both a female playable character and marriage within the same game, the potential reasons for which already discussed above. The games as a whole did not change very much of note, instead settling into a steady routine instead of introducing marginal quality of life changes and given a new coat of paint.



Figure 4: The wedding of the male and female player characters from Harvest Moon GBC3. (134)

A POSITIVE CHANGE, BUT...

However, the new millennium brought about more than just a new coat of paint, with the release of *Harvest Moon 3 GBC*. The manual explicitly states you can play as a boy or girl and that *'Both characters have specific skills and items. Choose the one that suits your interests.'* (36, p.5). These specific skills and items basically split the game into two parallel sides, when playing as a boy you are responsible for the arable farming, when playing as a girl you are responsible for the animal husbandry (37, p.108). I personally appreciated this change, it made the choice of gender meaningful, neither of them being better, but just different, as well as giving good reason for two playthroughs to experience both lives.

Marriage returned in this game, however there was no choice of partner. Your partner is always the player character you did not choose (38, p.47). As happens in the series, with marriage comes a child, and we get to see how Marvelous confronts the dilemma of how to

deal with a female working mother for the first time. When playing as the boy, you can get married, and have a child (38, p.64), as per previous console games. However, when playing as a girl, upon marriage the game ends entirely (38, p.65), your working life is over and the game is finished. This is still somewhat shocking that this was deemed to be an appropriate way to handle working motherhood, it seems they really could not figure out how to it would work in the game so they simply cut short the female part of the game.

There was no outcry at this, but it is still heavily disappointing even now. I struggle to see how it was deemed acceptable by the developers for this to occur at all. Whilst I definitely wanted to see some difference between the male and female character playthroughs, this is not what I had in mind. Making the game split between arable and livestock dependent on gender was fun, investing and meaningful. This was more than outweighed by simply ending the female game upon marriage, the female character's farming life now deemed to be over and she can presumably focus on her new life as a mother. A very disappointing way to handle the topic. They did not even end the game at childbirth. Just as soon as the wedding occurs, I don't think 'badly handled' begins to get across what happened.

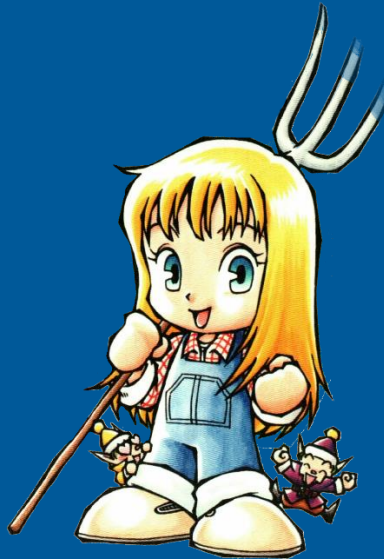


Figure 5: the player character from *Harvest Moon for Girl*. (135)

CRITICISM

The end of the year bought around a Japanese only release for the Playstation, *Bokujo Monogatari: Harvest Moon for Girl*. This was a game where you can only play as a female. (31, p.74) In fact it is merely a female version of *Harvest Moon: Back to Nature*, previously released for the same console. This was the first console entry of the series to allow you to choose a female, something which was heavily requested by fans (40, p.207). The marriage candidates are of course changed to be male and thus introduces entirely new dialogue for them.

However, all is not how it first appears. With a potential problematic element present without even opening the box. Whilst the front of the box has artwork of a female farmer with some animals, the rear of the box – in what is frankly an example of outrageous

laziness – has the male farmer surrounded by villagers, with an asterisk and small sentence at the top edge of the box saying that the main character in this game is a girl (41). Whatever effort was put into the development of the game clearly did not extend to allowing the game to have its own box artwork.

This lack of effort affected the game as well, as just like the female character in *Harvest Moon 3 GBC*, marriage ends the game (42, p.40). Therefore with no male character present, the game itself is missing a whole section compared to the original *version Harvest Moon: Back to Nature*. Unlike *Harvest Moon 3 GBC* this decision led to criticism by players who ‘...labelled the game as sexist’ (43, p.44). The criticism was not limited to merely fans. This issue was actually raised directly to the creator and publisher, Yasuhiro Wada, by a gaming magazine. He responded by saying that it was because they had limited options due to the game design (44, p.18). This is not expanded upon so what limitations these were are unknown. The fact he was asked at all demonstrates some rather deep disapproval over this issue.

Not for the first time, this feels like Marvelous does not know how to deal with post-marriage and childbirth life for a female farming character. Potentially due to being a console title and not a handheld one, they did not escape some deserved criticism. The removal of post-marriage gameplay – considering its inclusion in the male-only version – mirrors *Harvest Moon 3 GBC*, was just as disappointing by its omission and just as unjustifiable.

BOY’S CLUB

2001 bought along the first game of the series for the sixth-generation video game consoles, *Harvest Moon: Save the Homeland* for the Playstation 2. It reverts to only having a male playable character only (45, p.20), of course with females to romance (46, p.30). However, you cannot marry. (47, p.91) This is due to the game playing different to others. The goal is to save the town from being bulldozed and turned into an amusement park. This can be accomplished in various ways (48, p.108), which I won’t go into here. But basically, the game ends after a single year, with the incentive for the player to try for different endings. Thus, there is no real time for courtship to reach a marriage stage, so it was removed entirely. With this, the series jumps back into its safety zone of having only a male character. Which is disappointing after the previous two games having female inclusion. After the criticism received for the previous game, it is possible Marvelous felt it was safer to go back to a male character entirely, though in this instance with marriage not even possible. It would have been just as easy to include the female player choice without having to worry about the post-marriage aspect that has seemingly troubled them so far.

It took two years for the next release, *Harvest Moon: Friends of Mineral Town* for the Game Boy Advance in 2003. Similarly to the previous game, you again play as a male character (49, p.74), and this time marriage has returned (50, p.78). The game plays much the same as a more regular *Harvest Moon* than *Save the Homeland*, and is widely thought of as one of

the best titles, evidently returning to a male only character was not considered an major problem.

The same year introduced *Harvest Moon: A Wonderful Life*, and continuing the theme, it is again a male character (51, p.55). The game made multiple changes overall and feels targeted at a more grown up audience^v, which could have been an ideal chance to re-introduce a female player character. Overall, these three games return to where *Marvelous* seemed to feel safest, with a male playable character, which whilst disappointing, is not entirely surprising given that there is a lack of criticism for dropping a female character option compared to the stronger criticism when it is done badly.



Figure 6: Playable character from *Another Wonderful Life*. (136)

2 STEPS FORWARD...

Harvest Moon: More Friends of Mineral Town was released for the Game Boy Advance in December 2003, this one being another 'female re-release'. This time of the original *Friends of Mineral Town* (57, p.21) and as expected, the potential brides now replaced with potential husbands (58, p.26). This is the third time a female character can marry, so not groundbreaking, but the important part is what happens afterwards. The last time they simply ended the game at marriage for the female character. However, perhaps learning from the mistakes of the past, the rear of box of the Japanese version explicitly states that you can continue playing after marriage (59), the fact they made this point so prominently on the box would indicate they were acutely aware of the previous criticism, and made sure that it was clear and obvious that they have learned from this. As an additional point,

^v For example, your livestock get despondent if you sell their offspring(52.p.14), they can even die if they get sick(53), in fact they actually collapse and die in front of you in a rather dark and upsetting cutscene. The game itself plays over six chapters and yourself and the rest of the village visibly age(54), with one of the villagers passing away of old age leaving her husband to grieve at her grave every day(55, p.57), and at the end of the game, you yourself die of old age and the game ends(56, p.76)

the game has slight dialogue differences outside of the romance options. This is due to you having to fight against some of the prejudices held against a female farmer (60, p.112)

So not just inclusion, but also in-game acknowledgement of the prejudices that female farmers face seems very different to the disappointing *Back to Nature For Girls*. It is worth remembering there is only a three year gap between them. What changed which led to such a dramatic change in how *Harvest Moon* deals with gender? An official Nintendo publication states that the developer took into account fan feedback regarding wanting to continue playing after marriage. (61, p.71) Indeed it has been noted a few times that this change was due to the criticism given over the *Back to Nature for Girl* marriage issue (43, p.44).

The same year bought about another 'female re-release', *Harvest Moon: Another Wonderful Life* for the Gamecube, of course being based on the original *A Wonderful Life* for the same console (62, p.20). Like *More Friends of Mineral Town*, this game is changed to have potential husbands instead of brides (63), and similarly, the game does continue after marriage, including having a child (64, p.178). You may be forgiven for wondering who deals with the parenting while you perform farming tasks. In this game, the responsibility falls on the husband (65, p.126), a remarkably progressive inclusion considering previous mishaps by Marvelous. This game introduced some other minor changes to the game (66, p.83), including you no longer being forced to have the same clothing for the whole year, (67, p.28) which will be relevant later.

Within 3 years, we went from *Back to Nature for Girl*, which removed post-marriage gameplay, to these two female-only games that included full marriage and parenting mirroring the originals and even some acknowledgement in-game of the misogyny that female farmers encounter. This was all due to the developers taking on board the criticism received on previous installments and working to implement changes due to fan feedback. Whilst not entirely free of criticism, such as the release of these games being called a '*...cheap ploy to reissue the same games*' (68, p.92), they are the beginning of a different Marvelous, one listening to fan feedback and attempting to better handle gender issues.

...2 STEPS BACK

In 2004 a third version of *A Wonderful Life* was released, *Harvest Moon: A Wonderful Life Special Edition* for the Playstation 2. This was essentially an upgraded version of the original Gamecube game. However, you can again only play as a male character (69, p.6) though the game prides itself on being a '*Special Edition*', and is noted for having numerous small changes, including some of those found in the girl version of *A Wonderful Life*, including non-fixed clothing (70) and being able to sell the goats. However, despite absorbing some of the minor changes made in the female game, it is unknown why did they not keep the ability to play as a female at all. It seems unlikely with the large amount of data able to be stored on a disc as opposed to a cartridge that it was a data storage issue.

The next year bought about the release of *Harvest Moon DS*, the first for the handheld. Sadly, this one is also a male only game (71, p.24). There were many bride options bunched

into three groups: ‘regular’ bachelorettes who were the villagers; ‘Mineral Town’ bachelorettes who were obtainable by inserting a GBA game into the DS slot whilst playing this game; and ‘special’ bachelorettes. The special bachelorettes were the Harvest Goddess, a Witch, a Mermaid, and an underground princess. They were much harder to win over and were usually listed after (71, p.21-24) or separately (72, p.69) from the regular bachelorettes. The game was otherwise not noteworthy, except for a detail relevant later.

A Wonderful Life Special Edition was an unnecessary step backwards after the remarkably good job Marvelous did on the previous two games. By introducing minor game upgrades from the female-only game *Another Wonderful Life*, but putting it back to a male-only game seems tone-deaf, especially considering the criticism that had been fired at them only a few years before. The subsequent *Harvest Moon DS* was a worrying sign that the series would return to male-only once again despite the progress made in recent years.



Figure 7: Jamie, the androgynous rival farmer. (137)

ANDROGYNY

In 2005 my personal favourite game in the series was released, *Harvest Moon: Magical Melody* for the Gamecube. Thankfully, despite the concerns from the previous two releases, *Magical Melody* had the option of choosing male or female, something published ahead of release in magazine previews (73, p.24). It seems that the developer & publisher knew that failure to allow a female playable character in the previous two games was an embarrassing mistake, and both the Japanese (74) and North American (75) boxes had a specific statement on the back about being able to choose your gender, as well as including artwork of both characters on the front cover. Even the full-page advert proudly states at the top of its points ‘Play as a Boy or Girl!’ (76, p.53) this point is even above the line about planting crops, it feels there was a big push to let everybody know you can again play as a

female character. Similarly to *More Friends of Mineral Town & Another Wonderful Life*, you can again get married and have a child regardless of your chosen gender. (77, p.29)

Notably, there was a 'rival' farmer called Jamie, someone who takes the rivalry rather seriously, who acted very distant or outright rude to you. Interestingly, they are always the opposite gender of your own character (78, p.81). The game handles this by making Jamie's appearance very androgynous and by ensuring gendered pronouns are used sparingly in reference to them. It has been incorrectly claimed by some, presumably due to Jamie's appearance and lack of pronouns, that they are non-binary or agender, however this is entirely incorrect. The reasoning behind Marvelous' handling Jamie in the complicated way they did is unknown, but their gender is fixed as male or female depending on your own, no LGBT implication is ever made.

Magical Melody was a welcome implication that Marvelous was intending to continue with the possibility of a female character, as well as ensuring the female characters game continues post-marriage. Jamie's gender was a somewhat unnecessary and confusing aspect of the game. It could be that Marvelous had something else in mind and cancelled it halfway. Remarkably, this is the first console game of the series to let you choose the characters gender without having separate releases.

SURELY NOT AGAIN?

Only a few weeks after *Magical Melody* came a game for the PSP, *Harvest Moon: Boy & Girl*, the name of which makes it obvious that you can play as either gender character, which was something the rear of the box made very clear as well (79). However this is not a new game, merely it is simply a re-release of *Back to Nature* and *Bokujō Monogatari: Harvest Moon for Girl* (80), the latter fully translated and released outside Japan for the first time. The differences between the two were a different introductory story (81, p.80) with minimal effects on the game, as well as some minor item (82, p.13) and event changes.

The main criticism with the original *Bokujō Monogatari: Harvest Moon for Girl* was that the game ended after marriage, unlike the original male game where you would continue. This decision got a lot of criticism at the time and seemingly was partly responsible for ensuring better female inclusion in the series. This game was a complete 'repack'. Aside from the textual translations for the female name the games were otherwise identical to the original. As a result, despite the original criticism, Marvelous repeated the blunder, the female game again ending post-marriage (83). It can theoretically be explained due to being a simple repack & translation with no other, it seems disrespectful towards any girls who got the game hoping to play the first localised version of *Harvest Moon for Girl*, just to find they miss out on post-marriage gameplay that the boy half of the same game has available. This would seem to be even more so when you consider that Marvelous had already allowed female player characters in *Harvest Moon* to have post-marriage gameplay, starting with *More Friends of Mineral Town*. *Boy & Girl* was a lazy port of the original games, and this situation is purely down to laziness as opposed to anything else.

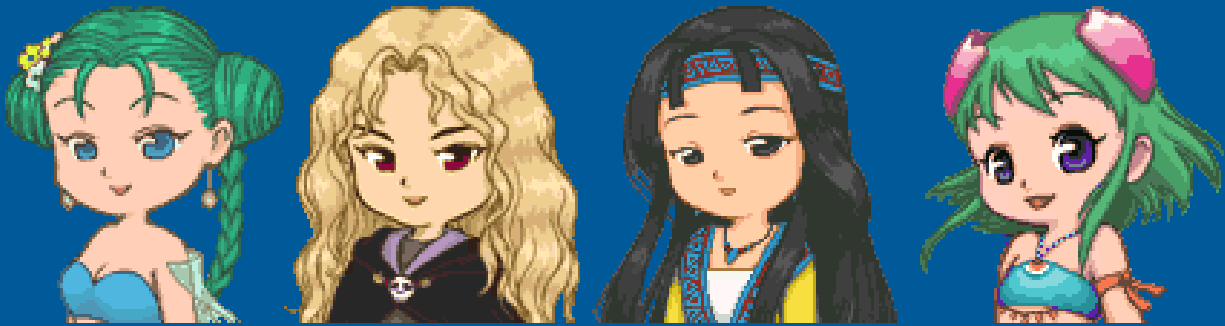


Figure 8: The four 'best friends' candidates from Harvest Moon DS Cute. (138)

A PROPER FIRST

Only a month after *Boy & Girl* came out *Harvest Moon DS Cute* was released, just in time for Christmas. It is the female-only release of *Harvest Moon DS* (84, p.58) and as expected the bachelorettes were replaced by bachelors (85, p.90) as well as some other minor additions such as home decoration and changing clothes (86). Despite some media implying the game is otherwise the same and just as difficult, (87, p.32) Marvelous openly stated that the game had been made slightly easier, (88) which seems a little bit condescending. *Harvest Moon* was hardly known as a difficult game. Thankfully, the game continues post marriage. (89, p.18) Marvelous hopefully learned its lesson for the last time in this matter.

You may be wondering what the title '*A Proper First*' may refer to. This is due to the marriage element. Previously, *Harvest Moon DS* had the three types of marriage candidates: 'regular' villagers; 'Mineral Town' residents visiting from the GBA game; and the 'special' goddess, witch, mermaid and underground princess. As expected, *DS Cute* replaces the female 'regular' villager candidates with male ones, and similarly with the 'Mineral Town' ones. However, instead of replacing the 'special' female ones, *DS Cute* kept them in the game with minor changes. It instead called it the '*best friend*' system. (90, p.135) You move in and live together after you have done all the usual marriage requirements. (91, p.31)

This is a lesbian marriage in all but name, making it unofficially the first glimpse of any homosexuality in the series. This refusal to use the word *marriage*, possibly an element of Japanese conservative values regarding sexuality in video games, does slightly take the shine off this groundbreaking introduction. However even this somewhat clumsy introduction to homosexuality is nothing compared to how it was dealt with during localisation to the United States, where this whole element fell foul of censors and was cut entirely to avoid a Mature rating (43, p.45). This child-friendly farming sim narrowly avoided being rated the same as the horror shooter game *Resident Evil* just because of a de-facto lesbian marriage. It is worth remembering this was not the 1950's, it was 2008 by the time it got localised and the US just was not ready apparently for an unofficial lesbian relationship.

It is fair to say that *Harvest Moon DS Cute* was a first, introducing homosexuality into the series for the first time. It has been said by some this is not actually a lesbian relationship and it really is just best friends. However: you have to go through the 'heart level up' events

with them and fulfil all marriage conditions, you then give them the typical 'blue feather' which had been used as a marriage proposal in the entire series, have a 'best friend' ceremony that is identical to the heterosexual wedding and then you move in and live together. You even get 'given' a child to raise together by the Harvest Lord. (92) It is quite obviously a lesbian relationship, and that is exactly why it got so cruelly cut by the censors. Despite being handled crudely, worded badly, and not localised at all, *DS Cute* still broke new ground with this, and showed the beginnings of Marvelous' willingness to approach sexuality in the series.

SERIES STANDARD

It took two years for the next release, *Harvest Moon DS: Island of Happiness* in 2007 in which you were able to pick your gender at the very start (93, p6) and the game continues after marriage for both genders. Otherwise, the release was unremarkable. The only noteworthy thing is that this began a 'series' standard of equality. The ability to play as a male or female player character – with respective opposite gendered marriage candidates – became the norm. The next game was released later in the same year for the Wii, *Harvest Moon: Tree of Tranquillity*, and as expected this follows the above formula (94, p.12). The 2008 release of *Harvest Moon DS: Sunshine Islands* continued the trend (95), however this was especially unsurprising as it is essentially an expanded version of *Island of Happiness* from the year before (96, p.30).

Later that year, *Harvest Moon: Animal Parade* for the Wii expectedly followed this formula (97, p.7) and the tail end of 2008 had the release of *Harvest Moon DS: Grand Bazaar*, again allowing you to choose the gender of the main character (98, p.47). This lack of change was definitely positive. The ability to simply choose a male or female character – within the same game and without having to buy a separate version – and being able to marry and have a child regardless of the gender chosen, has become an embedded game mechanic at this point, and contrasted against how the series handled it before, and was very welcome.

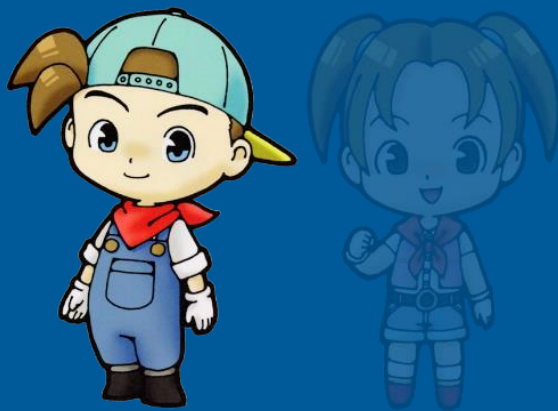


Figure 9: The player characters from *Magical Melody*, but... (138, 139)

A STEP BACKWARDS AGAIN?

These games were punctuated in March 2008 by a re-release of *Harvest Moon: Magical Melody* on the Wii. However the front cover of the box gives away a change. The original box for the Gamecube shows the male playable character seemingly standing on a cow, whilst the female is riding a horse, (75) however this Wii re-release has a baby monkey where the male was, the male character is now riding the horse, and the female absent (99). The ability to play as a female was removed entirely in the move from Gamecube to Wii. Naturally, the marriage

candidates are now female (100, p.30), and of course the rival character Jamie, who was the opposite gender of whoever you chose in the original, is now by default female. Though this does not stop the game treating them in an almost genderless manner in the manual or the game, with almost no pronoun usage at all.

It is not known why this was done, the Wii disc had more space than the Gamecube disc, and aside from some poorly implemented motion controls, there was no other differences between the two games, so it's removal was surely not a space issue. The removal did not go entirely unnoticed by video game media (10, p.79) and the change seems entirely unnecessary, being more work to remove than to keep in, which required rewording the manual and amending the box artwork. Disappointing, considering gender selection was by now a series norm, and the original version of this very game allowed you to do so.

2009 saw the release of the first in the series on a non Nintendo console for a whilst, *Harvest Moon: Hero of Leaf Valley*, for the PSP. The box makes it rather obvious that this is a game where the player character is male and thus your romance options are female. (101) However, this is potentially not the regressive step it may seem, as this is not a 'new' game, instead an enhanced remake of the 2001 Playstation 2 release *Save the Homeland* (102, p.85), itself being a male character only game. Though with this game being a remake with many additions and changes, you would think that adding a female main character option was more than doable compared to some of the other changes introduced. An unsatisfying addition, but one whose lack of inclusion could be excused due to being a remake of a male character only game.

TENTATIVE STEPS

Thankfully, the new decade bought about *Harvest Moon: The Tale of Two Towns* for the DS. The Japanese box makes it clear that there is a return to the series standard, a choice of boy and girl main character (103), and the year after it had an otherwise identical 3DS re-release. Something worth a very brief mention is the character Howard the Cafe owner, who wears make-up and acts in a manner that comes across stereotypically and flamboyantly homosexual (104), however his sexuality is not mentioned in the game or in media.

Harvest Moon 3D: A New Beginning came out in 2012, the first 'brand new' game released for the 3DS, and again, you can choose the gender of the player character. (105) However this also added a very notable option, upon progressing far enough in the game to unlock the tailor, you can change your clothing, with the different clothing types not restricted to gender, so a male character can wear a dress for example. (106) This also extends to hairstyles once the hairdresser is unlocked, meaning for example the male player character chosen can have female hair and clothing, though this does not extend to the clothing worn in the wedding sequence, nor does it change your pronouns or the choice of partners. However it is a bold step forward from *Marvelous* and demonstrates their intention to gradually improve how they deal with gender norms.



Figure 10: Marian, the (definitely!) male doctor from *Story of Seasons*. (140)

REPRESENTATION

Story of Seasons, a 2014 3DS release, is the first use of this series name, due to the previously mentioned split between Marvelous and Natsume. The latter had the trademark *Harvest Moon* in the West. It is however just a cosmetic name change, the gameplay is unaffected, due to being part of the same *Bokujō Monogatari* series, and the ability to choose the characters gender remains. (107)

The notable inclusion here is the town doctor, called Marian, who despite the name and their appearance (especially their female clothing), is gendered male within the game.

Bokumono, an official Japanese website of Marvelous Interactive has a listing for Marian, where it states he is ‘オネエ系’(108), meaning Onē-kei, the term in this context meaning an ‘Okama,’ a flamboyantly gay male, who often crossdresses. (109) The same term was used to describe them in the Japanese video game magazine Famitsu (110, p.101), so this was known within gaming media circles, though from the way Marian looks, dresses and acts, it would be a logical conclusion given the male pronouns.

The last and only previous mention of homosexuality in the series was the ‘unofficial’ lesbian relationships (‘best friends’) possible in *Harvest Moon DS Cute*, the relationships removed entirely during localisation, to avoid the game getting a Mature rating in the United States. However this time, Marian and their sexuality made it over unaltered, the English website confirming the male pronouns (111) and in-game during the cooking festival he even explicitly tells the player that he has a boyfriend. (112) This makes Marian the first confirmed LGBT character in the series, with the ‘best friend’ lesbian partnership in *Harvest Moon DS Cute* purely optional, and Howard in *Tale of Two Towns* not being confirmed as anything specific. Marian is not used in any kind of offensive manner, in fact, they are one of the more memorable characters in the game and being the doctor, will assist you more than most other townsfolk. I feel this is a big step from Marvelous and fan feedback was overwhelmingly positive regarding their inclusion.

JAMIE v2.0

2016 saw the last 3DS release of the series, *Story of Seasons: Trio of Towns*, and as is now series standard, the choice of gender remains within the game (113, p.10). The game also introduced a character highly reminiscent of Jamie from *Magical Melody*, a ‘special’ marriage candidate whose gender is always the opposite of yourself (114), however unlike Jamie their sprite/artwork has changes depending on gender (115), albeit almost unnoticeably. Similar to Jamie, there have been claims that Inari is thus non-binary or agender, however neither of these are the case. Once you choose your character, Inari is a

fixed gender within the game itself, with fixed pronouns and will refer to themselves as wife/husband respectively if married. This isn't exactly new and introducing them as being officially agender would be more interesting and inclusive.

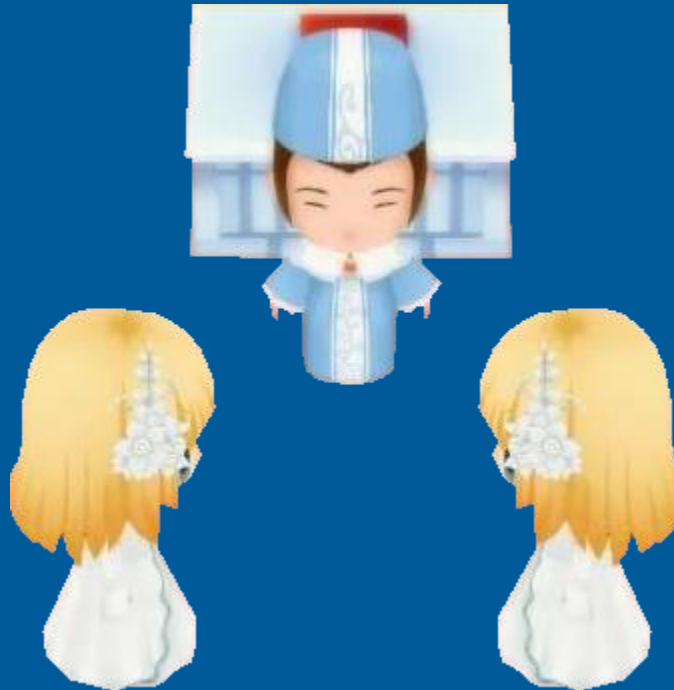


Figure 11: The marriage of the female player character and Jennifer. (141)

GROUND-BREAKING

Story of Seasons: Friends of Mineral Town was released in 2016 for the Switch, Playstation 4, Xbox One and Steam. Due to being a combined remake of *Friends of Mineral Town* and *More Friends of Mineral Town*, you can choose between a male or female character. (116, p.32) The reason this game is ground breaking is that you can now marry any of the possible candidates regardless of your own gender (117, p.66), making this the first 'official' homosexual marriage possible in the series, besides the 'best friends' system in Japan only for *Harvest Moon DS Cute*. What is even more progressive is that you can have a child in the same sex relationship. (118)

In the analysis of *Harvest Moon DS Cute*, I mentioned that the 'best friends' system was removed in localisation to avoid the United States plastering the game with a Mature rating; the mere hint of a lesbian 'best friends' marriage apparently was enough to warrant it. However this time, the roles are almost reversed. Whilst the West had homosexual marriage as an option, in Japan if you choose to date the same gender the game continues with its 'best friends' system (119). XSeed, the division of Marvelous responsible for localisation explained why they implemented marriage instead of copying the 'best friends' system:

'One major change...concerns what has been called the "Best Friends" system in the Japanese release...In our version, this will just be called "marriage," and the relationship between same-sex couples will be given identical treatment to opposite-sex couples. This has been a very long time coming...and the producer has been supportive of our decision from very early in development.'(120)

It is notable of course, that this is not an external company such as Natsume, XSeed was a division of Marvelous itself. The United States localisation went from having the 'best friends' system removed due to censorship to having no gender barriers at all when coming to marriage, with homosexual relationships entirely normalised and being no blocker to having a child. It took 12 years from DS Cute to Friends of Mineral Town Remake for this to happen. Japan, on the other hand, in the same time frame went from being more progressive than the West to less, the only difference now is that the full set of opposite gender candidates are now available for 'best friends' instead of the specific group of 4 that were allowed in *DS Cute*. This really was ground breaking for the series outside Japan, now having homosexual and heterosexual marriage treated identically, and by a localisation team who went out of their way to implement this. It shows how far the series has come, and it could not have happened in a better game, this release being my second favourite of the series (after *Magical Melody*).

NOT QUITE GROUND BREAKING, BUT...

Story of Seasons: Pioneers of Olive Town followed in 2021, released on the same platforms with the exception of Xbox One. Similarly to the previous release you can choose your gender, can marry any of the potential partners and have a child with them.(121) It seems this became a staple of the series, possibly due to the overwhelmingly positive feedback for this inclusion in *Friends of Mineral Town* and the lack of any meaningful criticism. XSeed confessed to being disappointed with its own work during the previous game regarding gender pronouns. They believed that too many gender neutral pronouns were used in order to save time and storage space. Much of the text was gender neutral, so two sets of text were not required, something XSeed made a point of changing in *Pioneers of Olive Town* to make your characters gender choice seem a bit more personal. (122) Similarly to the previous release, The Japanese release kept the 'best friends' system in lieu of homosexual marriage, and again there is no difference aside from the name, (123) Japan was still not ready for homosexual marriage to be referred to as such within the game.

Another return is from the 3DS release *Harvest Moon 3D: A New Beginning*, regarding your clothing and hairstyle choice. Now instead of changing them from default gender clothing upon unlocking the tailor and hairdresser, you can fully customise your appearance at the very start of the game, before you even choose your gender. (124) This meant that you could make your character look masculine, androgynous or feminine, wearing whichever clothing you prefer, with whichever voice you prefer, and be either male or female, regardless of your choices.

Pioneers of Olive Town did not exactly break new ground, but it did bring back the ability to choose any clothing or hairstyle regardless of gender, as well as the ability to alter your voice type and body type as well. In addition, it kept the choice for homosexual marriage, indicating that this may be a staple feature in the series going forwards.

YET MORE GROUND BROKEN



Figure 12: One of the player character options from *A Wonderful Life*. (142)

Story of Seasons: A Wonderful Life came out in 2023, as expected from the name, it was a combined remake of the *Harvest Moon: A Wonderful Life* and *Another Wonderful Life*. Of course the new series standard is present here: choice of gender player character, any choice of potential spouse and the ability to have a child with them. (125) It is easy to simply write this off as being a lack of progress. But by keeping these game choices, it has shown that Marvelous is dedicated to this inclusivity, and has no intention of removing or diluting it, and this is surely something to be praised.

Also retained is the character customisation feature prior to choosing gender, however this time you don't choose your 'gender' but your pronouns, and now including a new option for non-binary players. (126) This is something Marvelous were proud to openly advertise on their website (127), and XSeed themselves made a statement about this non-binary inclusion:

'...farmers who didn't want to conform to a gender binary felt a little left out...' so XSeed ensured that the new game would '...have a non-binary pronoun option when you create your character. This is something our project lead had been wanting to do for a long time...With this new option, we hope that players will be able to create a more authentic version of themselves in the game, if they so choose.'(128)

As for Japan, they kept the addition for a non-binary option during character creation, (129) but the 'best friends' system still remains, (130) a somewhat embarrassing situation at this point, given everyone knows what it really means, and its now three games behind Western games in the series having same-gender marriage.

CONCLUSION & WHAT'S NEXT

The series definitely had a stuttering start in dealing with gender and sexuality. Initial criticism over being too 'male-centric,' essentially misogynist for how it dealt with marriage, and the second game introduced the ability to play as a female character – which gradually became a series staple. However, it took a long time until you got the ability to marry as a female and not have the game end, Marvelous seemingly struggled to decide how to approach a working mother situation. The Japanese release of *DS Cute* introduced the 'best friends' system – homosexual marriage in all but name – but cut it from the American version. What followed was a period of little change until the series hit the 3DS and going forwards, which became much more inclusive. *A New Beginning* allowed you to wear the opposite gender's clothes and the *Friends of Mineral Town Remake* allowed you to marry same-sex villagers. *A Wonderful Life Remake*, the most recent release, included non-binary pronouns.

Has the series now exhausted inclusivity or can further progress be made? A transgender villager could perhaps be introduced, whilst it is easy to fear for how this could be implemented. Marian was dealt with extremely well as the first confirmed homosexual NPC and was very highly received by fans, so I'm willing to believe Marvelous would do a good job. I still believe both Jamie (*Magical Melody*) and especially Inari (*Trio of Towns*) are missed opportunities, instead of having them be the opposite gender to your own character, why not make them non-binary or agender. Based on the last four releases, it is likely the next game will be an entirely new entry released in 2025, followed by a remake of *Animal Parade* or more likely *Magical Melody*, with the latter having Jamie as the rival farmer. These games would be an ideal opportunity to do this.

Despite being a child friendly farming sim, the series has a complex and sometimes controversial relationship with gender and sexuality. However, over time, with some hesitation on occasions, Marvelous began to show progress. Slowly at first, but recently introductions of inclusivity have become much more frequent. The Japanese insistence on the 'best friends' system is a reminder of Marvelous' complicated history with these topics, mirroring the fact same-sex marriage is not recognised in Japan. This is something which is changing, with various district courts ruling that this breaches Japanese equality laws. (131) It is likely that when this changes, Marvelous will swiftly introduce homosexual marriage into the Japanese releases. Meanwhile, the West will wait and see what changes are introduced for the next title, hopefully more diversity in villager sexuality, still something sparsely represented. ♡

SERIES TIMELINE

♥ = Male Playable Character

♥ = Female Playable Character

♥ = Non-binary Playable Character

Harvest Moon (JP 1996, NA 1997) ♥

Harvest Moon GB (JP 1997, NA 1998) ♥ ♥

(First playable female character)

Harvest Moon 64 (JP & NA 1999) ♥

Harvest Moon 2 GBC (JP 1999, NA 2000) ♥ ♥

Harvest Moon: Back to Nature (JP 1999, NA 2000) ♥

Harvest Moon 3 GBC (JP 2000, NA 2001) ♥ ♥

(First playable female character who can marry)

Harvest Moon: Back to Nature for Girl (JP 2000) ♥

(First playable female character on console)

Harvest Moon: Save the Homeland (JP & NA 2001) ♥

Harvest Moon: Friends of Mineral Town (JP & NA 2003) ♥

Harvest Moon: A Wonderful Life (JP 2003, NA 2004) ♥

Harvest Moon: More Friends of Mineral Town (JP 2003, NA 2005) ♥

(First playable female character who has post-marriage gameplay)

Harvest Moon: Another Wonderful Life (JP 2004, NA 2005) ♥

Harvest Moon: A Wonderful Life SP (JP 2004, NA 2005) ♥

(Drops female character for PS2 release despite having features from the female game)

Harvest Moon DS (JP 2005, NA 2006) ♥

Harvest Moon: Magical Melody (JP 2005, NA 2006) ♥ ♥

(Introduces Jamie, the romanceable rival farmer whose gender is fixed as the opposite of you)

Harvest Moon: Boy & Girl (JP 2005, NA 2007) ♥ ♥

(No post-marriage gameplay for female character despite being done previously)

Harvest Moon DS Cute (JP 2005, NA 2008)  

(First de-facto non-heterosexual relationships, Japan only, called 'Best Friends' system)

Harvest Moon DS: Island of Happiness (JP 2007, NA 2008)  

Harvest Moon: Tree of Tranquility (JP 2007, NA 2008)  

Harvest Moon DS: Sunshine Islands (JP 2008, NA 2009)  

Harvest Moon: Animal Parade (JP 2008, NA 2009)  

Harvest Moon DS: Grand Bazaar (JP 2008, NA 2010)  

Harvest Moon: Magical Melody (NA 2008) 

(Drops female character for this re-release for no reason)

Harvest Moon: Hero of Leaf Valley (JP 2009, NA 2010) 

Harvest Moon: The Tale of Two Towns (JP 2010, NA 2011)  

Harvest Moon 3D: A New Beginning (JP & NA 2012)  

(First time clothing and hairstyles are not gender locked)

Story of Seasons (JP 2014, NA 2015)  

(First confirmed non-heterosexual NPC)

Story of Seasons: Trio of Towns (JP 2016, NA 2017)  

(Introduces Inari, the romanceable foxgirl whose gender is fixed as the opposite of you)

Story of Seasons: Friends of Mineral Town (JP 2019, NA 2020)  

(First non-heterosexual relationships, in the West only, remains 'best friends' in Japan)

Story of Seasons: Pioneers of Olive Town (JP & NA 2021)  

(Choose gender after character creation, so face, body, clothing & hair choices are not gender locked)

Story of Seasons: A Wonderful Life (JP & NA 2023)   

(First Non-binary player choice)

Citations for this article can be found starting on page 50.



“Hunkered Hope” by Femivore (@.dorkiana)

The Intersection of Free Speech, Schools, and Gender Identity

By Lapis (@lapis_lazuli.)



In the United States we protect our constitutional rights not just by passing laws but by challenging them. Many would even argue that challenging laws we perceive as unjust is our patriotic duty as American citizens. After all, so goes the axiom, “justice is not a fixed entity, but a dynamic force that must be constantly nurtured and upheld.” (54) There are perhaps no constitutional rights more well known and cherished than those of the First Amendment, which guarantees freedom of religion, expression, assembly and petition. Every year across the country there are hundreds of cases filed with the stated intent of

protecting First Amendment rights^{VI} which in itself is a testament to our proud tradition of self-governance. Just because a case's stated intent is protecting free speech, however, doesn't mean there can't also be ulterior motives.

For better *and* for worse legal activism is an intrinsic part of our society's political apparatus. A wide range of entities from individual attorneys to fully fledged organizations dedicate themselves to advancing a cause by filing cases or representing parties with the aim of striking down certain laws or widening legal protections. Of course, which causes are better and which are worse is largely subjective. For example, the Transgender Law Center is dedicated to changing laws and policies in the interest of queer liberation and stopping discrimination based on gender identity. (1) Conversely, the Alliance Defending Freedom was founded "as a legal defense fund for conservative Christian causes... including overturning *Roe v. Wade*; allowing employer-sponsored health insurance to exclude birth control; rolling back limits on government support for religious organizations; protecting the anonymity of donors to advocacy groups; blocking pandemic-related public-health rules; and establishing the right of a baker to refuse to make a cake for a same-sex wedding."^{VII} (2)

In the past few years there has been a concerted effort to pushback against what conservatives have titled "gender ideology" or "radical gender theory^{VIII}", by which they are referring to the normalization and widespread acceptance of diverse gender identities, gender being distinct from sex, and transgenderism more broadly. (3) One such battleground has been, and continues to be, schools. On June 9th, 2024, a case at the intersection of free speech, schools, and gender identity- *L.M. v. Town of Middleborough*, was decided by the 1st circuit court wherein the Alliance Defending Freedom represented a middle schooler who sued his school's administration for prohibiting him from wearing a t-shirt that said "THERE ARE ONLY TWO GENDERS". Through this First Amendment challenge, the ADF sought not just to resolve a niche legal issue involving negative messages on t-shirts in schools in a circuit that hadn't done so yet, but also to enshrine a legal bulwark allowing trans and non-binary peoples' existence to be openly challenged in the classroom.

^{VI} This was an extrapolation. I couldn't find numbers for First Amendment cases specifically but personally consider it to be a very conservative estimation considering in 2021 alone there were 344,567 civil filings in district courts across the country. (4)

^{VII} Longtime BHM readers may note that both the Transgender Law Center and the Alliance Defending Freedom are connected to the last installment I did for this series, *Framing Trans Prison Reform* (Volume 3 Issue 2 Page 6). The Transgender Law Center worked with the Greisen-Medlock law firm to protect transgender inmates in Colorado in *Raven v Polis*. Additionally, Paula Greisen (whom I interviewed for the article) served as lead trial counsel in the United States Supreme Court case involving Masterpiece Cakeshop in which a gay couple was denied a wedding cake, wherein the Alliance Defending Freedom represented the cake shop.

^{VIII} The usage of words like "ideology" and "theory" is deliberate attempt to dispute the veracity of gender being something distinct from sex and make it seem like a matter of opinion that is open to debate as opposed to fact. Readers should note there have been dozens of studies around this topic and the consensus amongst the scientific community is gender is distinct from sex. *see* <https://sitn.hms.harvard.edu/flash/2016/gender-lines-science-transgender-identity/> and associated links

RELEVANT LEGAL HISTORY

To understand *L.M. v Town of Middleborough*, it's important to have at least a *loose* grasp of the case law surrounding the topic of free speech in schools, because what constitutes constitutionally protected speech for a person who is as an adult on the street is very different than the equivalent for a minor who's a student and on school grounds. In the United States there are two judicial systems, state and federal, that exist separately through a system of government called "Federalism". Federal courts have jurisdiction over state courts on constitutional issues. "While states may afford their citizens greater rights than are afforded by the United States Constitution, states may not abridge the rights afforded by the US Constitution." (36) As a result of this relationship, the case law surrounding limitations to free speech comes from district courts, courts of appeals (circuit courts), and the Supreme Court as opposed to any state courts.

In loco parentis, a Latin phrase meaning "in place of a parent" or "instead of a parent", (10) is a long held common law doctrine.^{IX} In 1765, William Blackstone, a British legal scholar^X wrote that a parent "may delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then in loco parentis, and had such a portion of the power of the parent committed to his charge, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed." (11, 12) To rephrase that in modern terms, in loco parentis is "a legal relationship in which a temporary guardian or caretaker of a child takes on all or some of the responsibilities of a parent" (12) including, to some extent, the right to discipline. This term historically refers to minors, but until the 1960s educational institutions up to universities were "deemed by courts to be acting in loco parentis with respect to their students." (12) This doctrine effectively set a different free speech standard nationwide for minors who are students on school grounds versus adults in the general

Two centuries, an independent country and two world wars later comes the year 1969 and with it, the modern pre-eminent case on free speech in schools, *Tinker v. Des Moines (1969)*.^{XI} Despite running as a "peace candidate" in the 1964 presidential election and promising "we are not about to send American boys 9 or 10,000 miles away from home" (5), in 1965 President Lyndon B. Johnson oversaw the first serious ramp up of troops in the Vietnam War, jumping from 23,300 to over 180,000. (6) That December a group of adults and students in Des Moines, Iowa planned "to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve." (7) However, local school officials became aware of the plan and "in an attempt to pre-empt this action, the principals of the schools implemented a policy that would require children in school to remove armbands." (7) Five children still chose to wear the armbands to school resulting in three

^{IX} "Common law is law that is derived from judicial decisions instead of from statutes." (9)

^X "American courts originally fashioned common law rules based on English common law until the American legal system was sufficiently mature to create common law rules either from direct precedent or by analogy to comparable areas of decided law." (9)

^{XI} Short for *Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)*

being suspended.^{xii} The parents of the children sued the school district in response, and by 1968 the case had made it up to the Supreme Court. In 1969 the court ruled in favor of the parents and students holding that “since First Amendment protections extend to students in public schools, educational authorities who want to censor speech will need to show that permitting the speech would significantly interfere with the discipline needed for the school to function.”^{xiii} (7) The Tinker ruling is historic for several reasons, but for the purpose of this article only two aspects of it are relevant. First is the taxonomizing of unconstitutional forms of expression in schools into two prongs: the “invasion of the rights of others” limitation and the “material disruption” limitation.

“But conduct by the student, in class or out of it, which for any reason — whether it stems from time, place, or type of behavior — materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech” (13)

Second and no doubt the more important of the two is defining the ‘significantly interfere’ bit. Tinker established the ‘substantial disruption test’ which has gone on to inform similar cases in the decades following.

“where there is no finding and no showing that engaging in the forbidden conduct would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school, ^{xiv} the prohibition cannot be sustained.” (13)

This test carved out a pathway for students to successfully fight a school’s in loco parentis argument in the context of the First Amendment^{xv} and provided a means by which judges might assess when a school’s actions cross into the realm of administrative overreach.^{xvi}

^{xii} The 2 students who didn’t receive suspensions were the youngest of the 5 and the only 2 still in elementary school. (7)

^{xiii} Summarized by source, not direct case text

^{xiv} The internal quotation is from 5th circuit court free speech case, *Burnside v. Byars (1966)*, where parents and students from an all-black high school successfully sued their administration to protect their First Amendment right to protest racial discrimination with ‘freedom buttons’. (8)

^{xv} There was a notable First Amendment in schools Supreme Court case prior to this, *West Virginia State Board of Education v. Barnette (1943)*, where the court ruled a Jehovah’s witness family’s children had the right to refuse to salute the flag of the United States in school. This case however is more about the government not being able to compel speech and force unanimity of opinion on a specific topic (15) than it is about students making a statement a school doesn’t want made.

^{xvi} “Administrative overreach, also known as executive overreach, refers to situations where government agencies or officials exceed their legally granted authority or constitutional boundaries.” (14)



Figure 13: “Mary Beth Tinker attends a Des Moines school board meeting with her mother in early 1966” (56)

While Tinker’s ruling has never been overturned, its doctrine is no longer as sweeping as it once was. The Supreme Court in the decades following has generally favored a more restrictive interpretation of it that is constrained by the legal precedent set by a number of other cases since, the directly relevant of which are included here. *Bethel School District v. Fraser* (1986) was a case about a school disciplining a student for making an “elaborate, graphic, and explicit sexual metaphor” (16) during a speech at a school assembly. The court ruled in favor of the school and “concluded that the First Amendment did not prohibit schools from prohibiting vulgar and lewd speech since such discourse was inconsistent with the fundamental values of public school education.”^{xvii}(17) *Hazelwood School District v. Kuhlmeier* (1988) was about a school principal preventing the publishing of two articles in the school’s paper run by students from the journalism II class. The court, once again siding with the school, held “the First

Amendment rights of students in public schools are not automatically coextensive with the rights of adults in other settings, and must be applied in light of the special characteristics of the school environment,” (21) namely pedagogical concerns. (18) Finally, perhaps the most humorous and well known of the bunch, *Morse v. Frederick* (2007) was about a school principal disciplining a student for holding up a “Bong Hits 4 Jesus” banner at a school sponsored event. Following the trend, the court sided with the principal saying the school had the right to prohibit messages that promote using illegal drugs^{xviii}, holding “the speech rights of public school students are not as extensive as those adults normally enjoy, and that the highly protective standard set by Tinker would not always be applied.”^{xix} (19).

Returning to Latin; *stare decisis*, meaning “to stand by things decided”, is the common law doctrine that “requires courts to follow precedents set by other courts.” (20) While lower courts having to follow precedent set by the Supreme Court is fairly obvious, the relationship between the circuit courts is a little more complicated, being one mostly of *persuasive authority*^{xx}, meaning “cases, statutes, or regulations that the court may follow but

^{xvii} Summarized by source, not direct case text

^{xviii} Whether the message was actually encouraging people to smoke marijuana for Jesus Christ, or was instead just a bit of absurdist humor is a matter of opinion to many and largely divided along generational lines.

^{xix} Summarized by source, not direct case text

^{xx} There is a “federal appellate court called the Court of Appeals for the Federal Circuit, which unlike the

does not have to follow.” (20) There are important appellate cases from outside the first circuit whose rulings are applicable to the specific characteristics of *L.M. v. Town of Middleborough* as they also deal with First Amendment issues surrounding messages on apparel worn to school.



Figure 14: Joseph Frederick and friends holding up their “BONG HITS 4 JESUS” banner outside of Juneau-Douglas High School during the Olympic torch relay

Harper v. Poway Unified School District (9th Cir.) (2006) was a case about a student who was disciplined for wearing a shirt that said ““BE ASHAMED, OUR SCHOOL EMBRACED WHAT GOD HAS CONDEMNED” handwritten on the front, and “HOMOSEXUALITY IS SHAMEFUL” handwritten on the back.” (22) Drawing from *Tinker*, the 9th Circuit ruled in the school’s favor asserting that punishing a student for wearing a shirt with anti-gay messages at school did not constitute a violation of the First Amendment as doing so was an invasion of the rights of others (tying back to the two prongs mentioned earlier), specifically gay and lesbian students. According to Stephen Reinhardt,

the 9th circuit judge who wrote the opinion, “Speech that attacks high school students who are members of minority groups that have historically been oppressed, subjected to verbal and physical abuse, and made to feel inferior, serves to injure and intimidate them, as well as to damage their sense of security and interfere with their opportunity to learn.” (23) The Supreme Court later declared the *Harper* decision moot^{XXI} because “*Harper* had since graduated from high school,” (23) but even if a case is moot, the original opinion can still be considered advisory for similar litigation. (25)

Nuxoll v. Indian Prairie School District 204 (7th Cir.) (2008) involved a high school student who wore a shirt to school that said “My Day of Silence, Straight Alliance” on the front and “Be Happy, Not Gay” on the back to protest an event being sponsored by the school’s Gay/Straight Alliance club called “day of silence” which was meant to “draw attention to the harassment of homosexuals” but was prohibited from continuing to do so by a school official who proceeded to ink out the phrase “Not Gay”. (26) The court ruled in favor of *Nuxoll*, saying “that the school officials of the Indian Prairie School District didn’t give a justifiable reason why *Nuxoll* couldn’t wear the shirt”^{XXII} as *Nuxoll* was not “inciting

regional Circuit Courts of Appeal, has nationwide jurisdiction to hear appeals in only certain types of cases including cases involving patent laws and cases appealed from the U.S. Court of Federal Claims and the U.S. Court of International Trade.” (20)

^{XXI} “In law, an issue or case being moot means that it has lost its practical significance because the underlying controversy has been resolved, one way or another.” (24)

^{XXII} Summarized by source, not direct case text

dangerous actions.” (27) The Nuxoll decision made certain salient points that have gone on to play important roles in cases in this genre, including *L.M. v. Town of Middleborough*.

“People are easily upset by comments about their race, sex, etc., including their sexual orientation, because for most people these are major components of their personal identity- none more so than a sexual orientation that deviates from the norm. Such comments can strike a person at the core of his being.” (26)

“we don’t think a school is required to prove that unless the speech at issue is forbidden serious consequences will in fact ensue. That could rarely be proved.” (26)

“From Morse and Fraser we infer that if there is reason to think that a particular type of student speech will lead to a decline in students’ test scores, an upsurge in truancy, or other symptoms of a sick school- symptoms therefore of substantial disruption-the school can forbid the speech.” (26)

From just the relatively small amount of legal history discussed here, it should be clear that a court case about a transphobic t-shirt being worn in school does not exist in a vacuum. Additionally, why a student who is a minor on school grounds has certain constitutional rights such as free speech constrained by the relative maturity of their peers and the nature of the institution they attend should be, if not agreeable, at least understandable. Specific restrictions have been put in place after careful consideration to safeguard the quality of education, dignity, and well-being of every student in the classroom. The fact that protections like *Tinker* exist shows the justice system recognizes on some level that, like adult members of the public, the opinions of children in school have value in the collective discourse. Where to draw the line on acceptable speech will always be controversial. Its continuing to be so is a testament to our devotion as a society to personal liberty.

THE LEAD UP

IMPORTANT NOTE: In the interest of accuracy much of this section has been lifted piecemeal from the verified complaint (31) and district court decision (30).^{xxiii}

Nichols Middle School in Middleborough, Massachusetts, like almost every other public middle school in the country, has a student handbook.^{xxiv} The handbook, among other information, includes a dress code that all students are expected to follow, including a policy that states “Clothing must not state, imply, or depict hate speech or imagery that target[s] groups based on race, ethnicity, gender, sexual orientation, gender identity, religious affiliation, or any other classification.” (33)

^{xxiii} The verified complaint and district court decision can be accessed via <https://dm1119z832j5m.cloudfront.net/public/2023-05/Morrison-v-Town-of-Middleborough-2023-05-19-Complaint.pdf> and <https://casetext.com/case/lm-v-town-of-middleborough> respectively

^{xxiv} The NMS student handbook can be accessed here: <https://nms.middleboro.k12.ma.us/students-and-families/student-handbook>

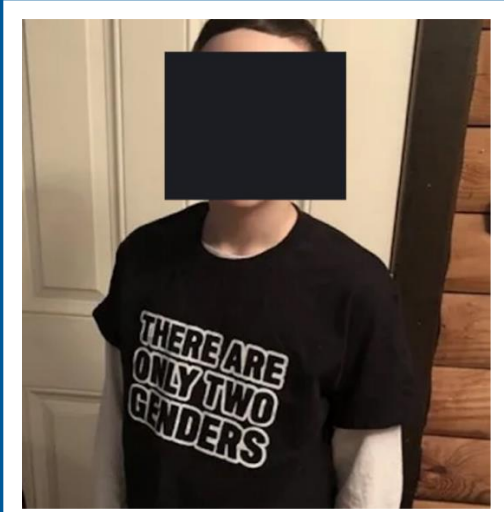


Figure 15: L.M. wearing his “THERE ARE ONLY TWO GENDERS” shirt.

On March 23rd, 2023, a middle schooler who will be referred to as LM^{xxv} showed up to class wearing a t-shirt with “THERE ARE ONLY TWO GENDERS” printed on it. After receiving multiple complaints, during gym class the school’s principal, Heather Tucker, pulled LM out of class and informed him that he would need to remove the shirt^{xxvi} due to complaints and if he didn’t want to, they would have to discuss the matter further in another room. LM indicated he would prefer the latter and was subsequently escorted to another room by Tucker whereupon they were joined by the school’s counselor. Tucker reiterated that because students and staff had complained, he would need to remove the shirt if he wanted to return to class. LM once again refused so Tucker called LM’s father and

explained the situation to him whereupon LM’s father picked LM up from school. LM did not attend classes for the remainder of the day. They were not disciplined for wearing the shirt or missing class. (30) On April 1st LM’s father emailed the district superintendent, Carolyn Lyons, (in part) the following:

“Would you please help me understand why my son was removed from class and ultimately missed out on a day of class instruction. There was nothing about [L.M.’s] shirt that was directed to any particular person. It simply stated his view on a subject that has become a political hot topic. It is a topic that is being discussed in social media, schools, and churches all across our country. My son is now asking me why he is not allowed to express his own political statement when he sees others doing the same every day in their choice of clothes, pins, posters, and speech.” (31)

On April 4th Lyons replied:

“As for how Mrs. Tucker enforced the dress code, I am in support of her position. The dress code does clearly articulate the expectation that the dress code will be governed by health, safety, and appropriateness. That appropriateness comes at the discretion of the building administration. The content of [L.M.’s] shirt targeted students of a protected class; namely in the area of gender identity. While I cannot share the numbers or names of students and

^{xxv} LM’s name has been omitted from the article’s text for ethics reasons and in the interest of preventing any potential harassment being sent their way by readers. It should be noted though that because LM, his family, and his legal counsel, the ADF, have been very upfront and public with his first and last name it has not been possible for me to fully omit it since it appears in some of the source links. That being said, DO NOT harass LM or anyone associated with him.

^{xxvi} While I haven’t been able to find any direct documentation confirming this, pictures taken my LM and his family presumably at the time of the incident show the shirt in question being worn over a long sleeve shirt, so it’s fair to assume the principal wasn’t implying LM should return to class shirtless. (29) Beyond that schools have been known to offer students the choice to turn a shirt with unacceptable content on it inside-out and wear it that way.

staff that complained about this shirt, I can assure you that there were several students and several staff who did.” (31)

On April 13th LM attended a school committee meeting and said the following in regards to the shirt incident:

*“What did my shirt say? Five simple words: “There are only two genders.” Nothing harmful. Nothing threatening. Just a statement I believe to be a fact. I have been told that my shirt was targeting a protected class. Who is this protected class? Are their feelings more important than my rights? I don’t complain when I see ‘pride flags’ and ‘diversity posters’ hung throughout the school. Do you know why? Because others have a right to their beliefs just as I do. Not one person, staff, or student told me that they were bothered by what I was wearing. Actually, just the opposite. Several kids told me that they supported my actions and that they wanted one too.” (30) *

By April 27th LM had lawyered up and his counsel, the ADF, had sent a letter to Lyons that asserted she, and by extension the school and town, had violated LM’s First Amendment rights by preventing him from wearing the shirt in school, effectively censoring him. The letter went on to inform Lyons that LM intended to wear the shirt to school on May 5th and requested he be allowed to do so. (30) On April 29th, the situation had reached the media, and on May 4th, the day before the deadline created by LM, counsel for Middleborough Public Schools replied to the letter sent by LM’s counsel “stating that Under *Tinker v. Des Moines Independent Community School District*, 393 U.S. (1969) and Massachusetts law prohibiting discrimination, harassment, and bullying on the basis of sexual orientation and gender identity, Middleborough Public Schools has, and will continue to, prohibit [the Shirt worn by L.M.] or anyone else [wearing messages] likely to be considered discriminatory, harassing and/or bullying to others including those who are gender nonconforming by suggesting that their sexual orientation, gender identity or expression does not exist or is invalid.”^{xxvii}(30) LM responded by wearing a shirt to school that instead of saying “THERE ARE ONLY TWO GENDERS” said “THERE ARE CENSORED GENDERS” with “CENSORED” having been written on tape that covered “ONLY TWO”. The assistant principal, Jason Carroll (who unlike Tucker and Lyons is not named in the lawsuit), brought LM to his office and together with Tucker gave LM the choice to either keep the shirt in his backpack or leave it there in the assistant principal’s office where he could come get it at the end of the day.^{xxviii} LM put the taped shirt away (presumably in his backpack) and returned to class. On May 9th two other students wore “THERE ARE ONLY TWO GENDERS” shirts to school to show support for LM and were given the same choices by Tucker as were given to LM during the first incident. One student opted to go remove the

^{xxvii} Internal quotations omitted

^{xxviii} Two things of note here. 1) LM removed the shirt while following behind Carroll on the way to the assistant principal’s office. 2) LM was once again wearing a long sleeve shirt underneath the controversial t-shirt

shirt and the other student refused and was picked up by his mother. Neither student was disciplined. (30)



Figure 16: L.M. wearing his “THERE ARE CENSORED GENDERS” shirt.

LM filed a lawsuit through his parents and legal counsel on May 11th claiming his First and Fourteenth Amendment rights were violated. The latter of the two was cited for the Due Process Clause^{xxix} through which the First Amendment's constitutional right of free speech is made applicable to state and local governments, (37) meaning “government agencies and government officials are forbidden from regulating or restricting speech or other expression based on its content or viewpoint.” (37) The complaint made by LM and company alleged the Town of Middleborough’s^{xxx} “application of the Dress Code to restrict the Shirt and the Taped Shirt, but not other messages by Nichols [Middle School] students pertaining to sexual orientation, gender identity, and expression, amounted to impermissible viewpoint discrimination.” (30) Additionally, LM facially challenged the specific dress code policy^{xxxi} meaning they claimed it was “unconstitutional at all times and under all circumstances” (32) and thereby sought the court to declare it *facially invalid* and strike it down entirely.

At this point, when formulating opinions on the nature and motivations of this case, some additional context is valuable. This shirt was not the only politically charged shirt that LM had worn to school, just the one the school deemed to be targeting a specific group and therefore prohibited. Some of the other shirts LM had been allowed to wear include one that said “Don't Tread on Me”, another that said “First Amendment Rights”, and arguably

^{xxix} “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” (38)

^{xxx} Also including the Middleborough School Committee, Carolyn Lyons, and Heather Tucker

^{xxxi} “Plaintiff also asserts that the Dress Code is vague and overbroad on its face.” (30)

the most controversial of the bunch- “Let's Go Brandon.”^{xxxii} (30) Taking that into account, regardless of the order they were worn, the fact that LM knew they were allowed to make political speech in schools but continued to pursue the case anyways could lead people to believe the suit had ulterior motives, namely prying open the floodgates to what many consider to be outright discriminatory speech in order to challenge “gender ideology” in the classroom.^{xxxiii} *This is all, of course, conjecture.*

On June 16th, 2023, the district court ruled in favor of Middleborough, denying LM’s motion for a pre-trial preliminary injunction^{xxxiv} that would have allowed LM to continue to wear the shirt to school while legal proceedings continued. In her decision, Judge Indira Talwani asserted that the school did in fact have sound reasoning to prohibit LM from wearing the shirt as it fell under the “invasion of the rights of others” prong of Tinker. Her rationale, in addition to relying on relevant case law (which has already been touched on in this text) considered LM’s ability to wear the shirt in public outside of school and therefore still express his opinions and factored in the presence of transgender and gender non-conforming youth at Nichols Middle School and the uniquely challenging circumstances encountered by them there and in the education system at large.

“Student survey data collected in June 2022 at Nichols show over 20 individual student comments about perceived bullying at school, feeling unwelcome at school, and expressing specific concerns about how the LGBTQ+ population is treated at school. Lyons is aware of several Nichols students, including members of the LGBTQ+ community, having attempted to commit suicide or having had suicidal ideations, and that these situations have frequently cited LGBTQ+ status and treatment as a major factor. In July 2022, one Middleborough High School student committed suicide. Tucker was informed of the student suicide. Before assuming her position at Nichols, Tucker had met with parents of students and students themselves who have been bullied because of the lack of acceptance of their gender identity. Tucker has also worked closely with students who have been hospitalized for attempted suicide or suicidal ideation or who have self-harmed because of their gender identity. Tucker is aware of several students at Nichols who identify as transgender or gender nonconforming.”^{xxxv} (30)

A month later on July 17th, in order to skip the hassle of a trial that likely would have the same outcome and therefore serve little purpose, LM and the town of Middleborough filed

^{xxxii} “Let’s Go Brandon” is tongue-in-cheek way of saying “Fuck Joe Biden” originating from an incident at a NASCAR race in 2021 where driver Brandon Brown was being interviewed by an NBC Sports reporter and “Fuck Joe Biden” could clearly be heard being chanted by the crowd in the background. In what is now assumed to be an attempt at damage control the reporter suggested the crowd was actually chanting “Let’s Go Brandon”. The incident quickly became a meme that has since been co-opted by the conservative movement. (34) The video can be viewed here:

https://www.youtube.com/watch?v=kQ8asiDn2_A

^{xxxiii} I was unable to verify the order in which the shirts were worn and if the “THERE ARE ONLY TWO GENDERS” shirt was the first controversial one LM had worn.

^{xxxiv} “A preliminary injunction is an interlocutory [temporary] order issued by a judge early in a lawsuit to stop the defendant [Middleborough] from continuing their allegedly harmful actions [stopping LM from wearing the shirt], or commanding them to act in a certain manner to preserve the status quo before the final judgment.” (39)

^{xxxv} Internal quotations and citations removed for ease of comprehension

a joint motion^{xxxvi} to the district court to enter a final judgment based on the ruling on the preliminary injunction thereby letting LM go straight to the appeal to the 1st circuit. (40) This was granted on July 19th (41) and an appeal was subsequently filed on August 4th.^{xxxvii} (42)

THE 1st CIRCUIT DECISION

The district court's ruling, to say the least, was controversial. Thirteen separate organizations submitted 10 amicus briefs^{xxxviii} (including one signed by 15 state attorney generals) to the 1st Circuit Court of Appeals in regard to LM v. Town of Middleborough while the case was still in review. (47) One group consisting mainly of conservative legal organizations advocated for the ruling to be reversed while the other, such as the brief filed by GLBTQ Legal Advocates and Defenders and the Massachusetts Association of School Superintendents^{xxxix} pushed for the ruling to still be affirmed, just on different, more stable grounds. (44) According to Gary Buseck, a senior advisor for GLBTQ Advocates and one of the amicus authors, the district court's ruling relied on a largely underdeveloped area of the law. "We and others were worried about the district court's approach- the rights of others prong of Tinker." (45) While this case was hot news in the legal world, for the most part it fell under the radar of mainstream media, especially liberal media. However, when the appellate decision finally came down on June 9th, 2024, it did so as a big win for the LGBTQ community. In a unanimous decision, the court ruled in favor of the Town of Middleborough. (46)

"Relying solely on Tinker's "invasion of the rights of others" limitation, and thus not Tinker's "material disruption" limitation, the District Court denied the student's motion for a preliminary injunction. On that same basis, the District Court granted the defendants final judgment on all the student's claims, which challenged both the dress code's specific applications and two portions of the dress code on their face. We affirm the District Court's rulings, albeit on somewhat different grounds." (47)

The decision explained "regardless of whether Tinker's rights-of-others limitation applies here, we conclude that Tinker's material-disruption limitation does". Extremely condensed, the circuit court interpreted the Supreme Court's relevant case law post-Tinker as policy

^{xxxvi} The joint motion can be accessed here: <https://dm1l19z832j5m.cloudfront.net/public/2023-08/LM-v-Town-of-Middleborough-2023-07-17-Joint-Motion-For-Final-Judgment.pdf>

^{xxxvii} The final judgement and notice of appeal can be accessed via <https://dm1l19z832j5m.cloudfront.net/public/2023-08/LM-v-Town-of-Middleborough-2023-07-19-Final-Judgment.pdf> and <https://dm1l19z832j5m.cloudfront.net/public/2023-08/LM-v-Town-of-Middleborough-2023-08-04-Notice-Of-Appeal.pdf> respectively

^{xxxviii} Amicus briefs, short for Amicus Curiae briefs (Latin for "Friend of the Court"), are documents submitted to an appellate court by outside parties to weigh in on a case that is currently in review to influence the outcome. (43)

^{xxxix} The amicus brief filed by GLBTQ Legal Advocates and Defenders and the Massachusetts Association of School Superintendents can be accessed via https://glad-org-wpom.nyc3.cdn.digitaloceanspaces.com/wp-content/uploads/2023/11/20231129_L.M-v-Town-of-Middleborough_Amicus.pdf

that validates school authorities' concerns about the serious negative psychological impact of student expression on other students and empowers them to take action to restrict it once they deem intervention necessary. Citing Nuxoll, the court explained that if mutual respect “may well be necessary” to maintaining an adequately functioning educational environment, then messages, even those silently expressed, which demean aspects of students’ personal identities could poison the educational atmosphere “and so result in declines in those students' academic performance and increases in their absences from school -- in other words, what Nuxoll described as symptoms of a sick school . . . [and] therefore of substantial disruption.” (47)

“Insofar as the Shirt does demean the gender identities of students who are transgender or gender nonconforming, we agree with Middleborough it is no less likely to “strike a person at the core of his being” than it would if it demeaned the religion, race, sex, or sexual orientation of other students. . . . So understood, we see no basis for substituting our judgment for Middleborough's as to whether the Shirt demeaned the gender identities of other students at NMS.” (47)

According to the court, LM could no more protest the school’s recognition of pride month with transphobic speech than he could protest black history month by choosing to be racist. These kinds of actions shouldn’t be a question of whether they constitute either an “invasion of the rights of others” or a “substantial disruption” because at the end of the day the difference between the two prongs “may be more semantic than real.” (47) With this decision the 1st Circuit Court gave educators in its jurisdiction the authority to keep transphobic hate out of the classroom and maintain an environment conducive to learning for every child, regardless of their gender identity.

IMPACT & FUTURE

At this point in the text the looming question is obvious: will LM v. Town of Middleborough go to the Supreme Court? While no one can predict the future, the most likely answer is maybe, but probably not. Each year the Supreme Court receives between 7000 and 8000 petitions but will only hear about 80 cases. (48) On top of that, as mentioned earlier in the text, the Supreme Court post-Tinker tends to side with school administrations on free speech cases involving students in schools. That combined with the current 6-3 conservative supermajority’s fondness for needling LGBTQ people comes together to make LM a rather unappealing prospect.^{XL} According to Gary Buseck from GLBTQ Legal Advocates and Defenders, “it feels like ADF has been litigating more in New England lately because they think the first circuit is more liberal and if they do get a loss, it may entice the Supreme Court to take [the case] to reverse the first circuit. . . . ADF has been very successful in the Supreme Court.” (45) In Buseck’s opinion, however, Judge David Barron in deciding LM wrote a very careful opinion which hopefully will dissuade the Supreme Court from taking on the case and reversing it. (45) The day after the circuit court decision, the ADF in

^{XL} see *Fulton v. City of Philadelphia* (2023) <https://www.oyez.org/cases/2020/19-123> and *303 Creative LLC v. Elenis* (2023) <https://www.oyez.org/cases/2022/21-476>

a prepared statement told the press, “The 1st Circuit erred in its decision denying L.M. his right to free speech, and we are reviewing all legal options including appealing this decision.” (49) Ultimately, only time will tell and LM and the ADF have until September 9th to appeal if they choose to do so. (45)



Figure 17: The United States Courts of Appeals and District Courts

The LM ruling will have a far-reaching impact, if indirectly. Its case law is not binding in other circuits, but like Harper and Nuxoll, LM will serve as a persuasive authority on the topic and will likely go on to influence decisions all around the country for years to come. The court allowing educators to keep those kinds of messages out of the classroom is a firm rejection of the conservative notion that transgender and non-binary existence is a matter of opinion and something that can be debated. More than that, the decision closed an avenue by which bad actors with political agendas can intimidate vulnerable children in a learning environment where they are meant to feel safe. Children being able to attain a quality education regardless of their identity should be an apolitical issue and the LM ruling is a step in that direction.

Of late, trans rights rollbacks have weighed heavily on the mind of much of the LGBTQ community. Avenues for gender affirming care have been restricted in many states and in some outright banned for minors. (50, 51) Bathroom bans are making a return (52) and rhetoric calling for the “eradication of transgenderism” (53) has become more commonplace. However, just because bad things are happening doesn’t mean its all bad news and that the fight for queer liberation is a losing one. Recent cases like *Raven v. Polis*, *LM v. Town of Middleborough*, *Kadel v. Folwell*, and more have resulted in stunning victories

for trans people and exist in defiance of those who would use the tools of government to see us erased. After all, *justice is not a fixed entity, but a dynamic force that must be constantly nurtured and upheld.* ♡

META COMMENTARY

My goal with this article was much the same as the goal with the previous installment I did in this series, *Framing Trans Prison Reform*. I wanted to put a spotlight on some good news and more than say what happened, explain why it happened so people know it wasn't a fluke. I'm not an attorney so my explanation of the 'why' was pretty bare bones, but I hope what I wrote was enough to provide the average non-lawyer BHM reader with some insight on a topic that to many is convoluted. I'd like to thank Gary Buseck from GLBTQ Legal Advocates and Defenders for taking the time to speak with me and answer all of my questions. The opinions expressed in this article are my own and should not be considered to be reflective of other BHM contributors, affiliates of the publication collectively or Gary Buseck's. This will likely be my last mid-sized article for at least a few months since doing these is a time consuming process and most of my free time will be occupied with law school starting. Who knows though? Maybe someday I'll be able to write one of these as an attorney and give the topic the justice it deserves. -LL

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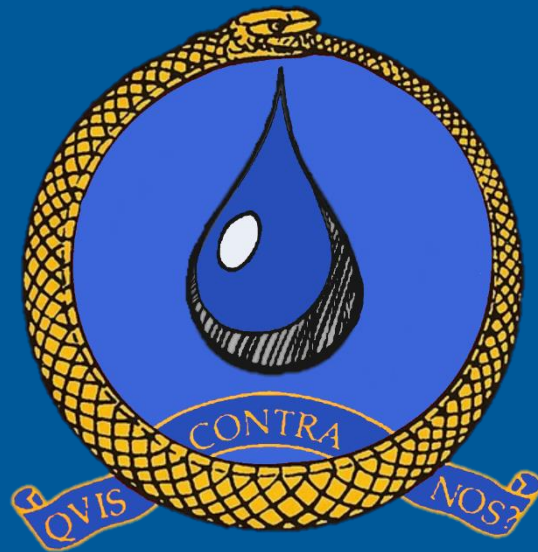
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