Policy Issues Affecting Lesbian, Gay, Bisexual, and Transgender Families

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In the wake of the 2004 presidential election, the passage of thirteen anti-gay marriage amendments that year, and the enormous backlash against gay families that continues into the 2006 and 2008 election cycles, it is pertinent to consider the extent to which the pursuit of same-sex marriage is currently reflective of the LGBT community’s political priorities. Earlier in this book, we discussed the intellectual history of partnership recognition in the LGBT community, noting the resistance of many LGBT scholars and advocates toward same-sex marriage. In this chapter, we will show that these arguments have persisted. Data on the priorities of LGBT African Americans and Asians indicates that although members of these communities support marriage rights, the pursuit of marriage equality also competes with other policy priorities. There are many signs, however, that the push for marriage equality enjoys growing support at the grassroots level. The degree of activism in support of marriage equality by LGBT people of all racial and ethnic backgrounds remains high.

**VOICES FROM THE ACADEMY**

In chapter 4, we discussed the way in which LGBT scholars in the 1970s through the 1990s drew on radical feminist thought and queer theory to develop a functionalist approach to family recognition. Although the functionalist approach has largely been superseded by an approach emphasizing lesbian and gay civil rights (especially within legal and advocacy circles), many LGBT academics continue to emphasize problematic aspects of same-sex marriage, both as a construct and as a policy priority.

While advocates of the civil rights approach have framed the marriage issue as one that is related to the pursuit of LGBT equality, contemporary academic critics argue that the anti-egalitarian and, indeed, anti-democratic impulses are prevalent in the pursuit of same-sex marriage rights. For
instance, Nancy Polikoff, an early feminist critic of same-sex marriage, continues to challenge the rationale behind the state’s giving precedence to marriage over other relationships. She does not believe “that the good of marriage is so profound and basic to a well-functioning society that law and policy . . . [should] single out marriage for ‘special rights’ unavailable to other emotionally and economically interdependent units.” Giving “special rights” and substantial benefits to married couples both creates and reinforces social hierarchy—the antithesis of equality.

Polikoff recommends the rationale behind the Law Commission of Canada’s 2001 report Beyond Conjugality. In a major reappraisal of the relationship between state and society, the commission recommended legal changes to recognize and support all care-based, interdependent personal relationships between adults. Underlying the commission’s reasoning are the liberal principles of autonomy and equality. As Polikoff explains, the principle of autonomy stipulates that “the freedom to choose whether and with whom to form close personal relationships is a fundamental value in free and democratic societies,” and since neither marriage nor other types of conjugal relationships accurately reveal the qualities of “personal adult relationships that are relevant to particular legislative objectives,” the state in a democratic society should not promote some relationships at the expense of others. It follows from this that the principle of equality requires government to, as Polikoff puts it, “respect and promote equality between different kinds of relationships” as well as within relationships. Polikoff maintains that if these principles are followed, the democratic state must support a variety of different family forms.2

For Polikoff, taking democracy seriously means abolishing marriage. She recommends that lesbians and gay men take seriously the analysis of Martha Fineman, a feminist legal scholar who recommends replacing legal marriage with a system that confers legal support and recognition upon relationships between children and their caregivers. In such a system, there would be “complete equality between adult, coupled heterosexual and homosexual relationships,” since neither of these relationship types would receive state recognition. Furthermore, there would be “equality in the protection afforded a lesbian or gay parent providing primary care to a child and that afforded a heterosexual parent providing primary care to a child.” Both of these relationships would be recognized as “performing the public good of the caretaking of inevitable dependents.”3

Like Polikoff, Judith Stacey also regards marriage as profoundly anti-
thetical to “democratic equal regard.” She expresses concern that “pro-marriage advocates rarely confront the undemocratic, zero-sum consequences of their agenda.” Stacey argues:

The more eggs and raiments our society chooses to place in the family baskets of the married, the hungrier and shabbier will be the lives of the vast numbers of adults and dependents who, whether by fate, misfortune, or volition, will remain outside the gates. In my view, this is an unacceptably steep and undemocratic social price for whatever marginal increases in marital stability might be achieved for those admitted to the charmed circle.4

Building on early, functionalist approaches, Stacey challenges policymakers and legal theorists to create a system of registered kinship. Her goal is “to further democratize, pluralize, and de-center marriage, rather than to eliminate it.” She maintains that a system of registered kinship would “build upon a discernible social trend toward legalizing diverse forms of marital and non-marital unions.”5 Unlike domestic partnerships, registered kinship agreements would not require that all the relevant parties cohabit, nor would it restrict eligibility to couples. Rather, they would require self-specified kinship groups to negotiate the terms of their individual agreements and the distribution of rights and duties therein. These relationships would then be recognized and supported by the state.

Not everyone within the LGBT scholarly community shares this antipathy for same-sex marriage rights. Lesbian feminist Cheshire Calhoun argues that marriage and the family should be central, rather than peripheral, to LGBT politics. Calhoun argues that without the right to marry, or the culturally ascribed authority to define what constitutes marriage or family, LGBT individuals are denied a “unique citizenship status.”6 Heterosexism displaces the LGBT community from the public sphere by denying its members self-representation and forcing them to conform to heterosexual norms. Calhoun maintains that through restrictions on same-sex marriage, child custody, and adoptions, LGBT people are also denied access to “a legitimate and protected private sphere, and control over the character of future generations.”7 “When lesbians and gays are constructed as outlaws to the family and are told they cannot marry, they are being told that they are not capable of doing the work of citizens,” writes Calhoun, adding, “Lesbians and gays will not be fully equal until the law recognizes same-sex marriages and equally protects lesbian and gay family life.”8
DATA ON LGBT COMMUNITY PRIORITIES

While many—but not all—academics continue to challenge the LGBT movement’s prioritization of same-sex marriage, polling data tells a more nuanced story. For instance, in a community-wide poll conducted by the National Gay and Lesbian Task Force at Gay Pride Celebrations in New York, Washington, D.C., and Los Angeles in June 2003, 1,471 people were asked what they thought were the three most important issues facing the LGBT community. Partnership recognition was the top priority of Gay Pride attendees, with 32 percent saying that this issue mattered to them. The second most important issue was nondiscrimination, prioritized by 25 percent of respondents. HIV/AIDS prevention and treatment tied for third priority with inclusive hate crimes laws; both these issues were picked by 9.5 percent of respondents. The sample of people being polled was 65 percent white non-Hispanic, 10 percent black, 13 percent Latino/Hispanic, 5 percent Asian, 1 percent Native American, and 6 percent “other.” Marriage and other forms of partner recognition were a priority across racial and ethnic lines.

Other recent polls conducted in the LGBT community, however, reveal greater ambiguity about the importance of partnership recognition relative to other issues. Marriage/partnership recognition was the fifth priority in a recent survey of LGBT Asian Pacific Americans (APAs) in the United States. Asian American LGBT people were predominantly concerned with immigration (40 percent), as well as with hate violence/harassment and media representation (both at 39 percent). Yet since the category of “immigration” may be interpreted to include immigration-related partner protections for binational couples—a benefit of marriage—it may be that there is actually much more support for marriage equality in the APA LGBT community than an initial reading of this data suggests.

This survey’s results also show a discernible gender gap. Over half (52 percent) of the women surveyed said that the most important issue facing APA LGBT people was hate violence and harassment, while only 31 percent of men and 17 percent of transgender respondents said the same. Immigration was also a top concern of women, with 38 percent indicating this was a priority. Marriage/domestic partnership came in third place for women, with 30 percent emphasizing its importance.

In keeping with a trend documented in previous surveys by the National Gay and Lesbian Task Force, HIV/AIDS ranked higher on the list of con-
cerns among men than among women. Similar percentages of men said that their top concerns were media representation (48 percent), HIV/AIDS (45 percent), and immigration (43 percent). By contrast, 24 percent of APA men thought marriage/domestic partnership was a priority.

Polls of the African American LGBT community in many ways confirm the ambiguities of the APA LGBT community. For instance, the National Gay and Lesbian Task Force’s Black Pride Survey sampled nearly three thousand black LGBT people at Black Gay Pride celebrations around the United States in the summer of 2000. Respondents were asked to identify the top three issues facing black LGBT people. HIV/AIDS and hate crime violence were the top two issues. Marriage/domestic partnership was the third most important issue facing black LGBT people. Marriage and domestic partnership were of particular concern to female respondents, who placed the issue into the top three. Men and transgender respondents were less concerned with marriage and domestic partnership than were women.¹¹

As with LGBT Asian Pacific Americans, marriage/domestic partnership was not the most important issue for people responding to the Black Pride Survey. A gender dichotomy is evident in the black community, too. While many other issues superseded partnership recognition as a priority for black gay and bisexual men, black lesbians and bisexual women gave a relatively higher priority to marriage/domestic partnership. This may be because black lesbian couples parent at almost the same rate as black married couples.
and therefore potentially have more to gain from the protections offered by partnership recognition, as we discussed in chapter 2.

BEYOND THE POLLS

While academics tell one story and polls tell another, advocates in the field reveal different perspectives. For instance, Dean Spade, director of the Sylvia Rivera Law Project—an organization that works to guarantee that all people are free to determine their gender identity and expression—has suggested that the push for marriage rights may reflect the goals of a gay white elite rather than of the least privileged members of the LGBT community. He argues that the movement’s current focus on same-sex marriage shortchanges other issues, including transgender discrimination and hate crimes. Meanwhile, Glenn Magpantay, a lawyer who works on Asian American civil rights, notes that although the organizations he is affiliated with have endorsed same-sex marriage, they do not see it as a priority. “Our fear is that other issues more important to us including immigration will be slighted,” he said, adding, “As it is, gay Asians feel overlooked and marginalized within the LGBT community.”

Tensions also persist in the African American LGBT community about “the white queer political machine’s appropriation of the language of the black civil rights movement” in public discourse about marriage. “I don’t ever want to see a white gay man stand before a camera again and equate his struggle to the black civil rights movement,” says Jasmyne Cannick, a prominent African American lesbian and board member of the National Black Justice Coalition. Irene Monroe, another board member of the coalition, reports that although many activists in the African American LGBT community believe that the struggle for same-sex marriage is a civil rights issue, they are concerned that LGBT communities of color have been shut out of the framing process surrounding the marriage debate. “The dominant white queer language of this debate at best muffles the voices of these communities and at worst mutes them,” she writes. Monroe explains,

In other words, in leaving out the voices of LGBTQ (lesbian, gay, bisexual, transgender, and queer) communities of color and classes, the same-sex marriage debate is being hijacked by a white upper-class queer universality that not only renders these marginalized queer communities invisible, but—as it is presently framed—also renders them speechless.
The National Black Justice Coalition is focusing its advocacy on fairness for African–American LGBT families—incorporating a focus not only on same-sex marriage but also on such issues as unemployment, adoption, and HIV/AIDS.\textsuperscript{16}

A Latina lesbian who works in advocacy and represents LLEGO, the National Latina/o Lesbian, Gay, Bisexual, and Transgender Organization, has a different perspective. Imelda Aguirre writes:

The major issues that Latina lesbians face primarily revolve around family. For example, lesbians of color are more likely to have children than white lesbians; therefore, parenting rights are a major issue for us. Because bi-national couples and their families face the real threat of deportation and separation, immigration is also high on our political agenda. Since the right to marry legally will alleviate both these problems, marriage equality is of extreme importance to us.\textsuperscript{17}

\textbf{AT THE GRASSROOTS}

While many academics and advocates have questioned the focus on marriage equality and argued that efforts to achieve access to civil marriage are either intrinsically problematic or supplant other, more critical issues, the push for marriage equality seems to enjoy increasing support among grassroots community members. The marriage struggle has evoked a wave of activism not seen since the days of ACT UP and Queer Nation organizations in the late 1980s and early 1990s. Thousands of LGBT and allied activists have lobbied, protested, knocked on doors, and rallied to educate the public and elected officials about the need for equal marriage rights. Activists cut across racial and ethnic lines—as do plaintiffs in the same-sex marriage lawsuits throughout the country. Despite the lesbian feminist, antimarriage stance that dominated the LGBT movement during the 1970s and 1980s, the majority of same-sex couples who have married in Massachusetts are lesbians. Victoria Brownworth writes:

It doesn’t matter what you think about same-sex marriage—whether you think marriage is a patriarchal institution queers should eschew or you think we should all tie the knot—queers deserve access to the privilege of marriage. If straight people can get married on a whim, lesbians should be able to get married after 52 years of being partnered. It’s called equality.\textsuperscript{18}
The debate over whether or not same-sex couples should be able to access the benefits and protections of marriage emerged within the LGBT community in the late 1980s. However, gay and lesbian couples in the United States have been suing for the right to marry since 1971. Marriage for gay couples emerged as a national political issue during the 1992 presidential campaign. Following gay couples’ successes in the Hawaii courts starting in 1993, religious conservative activists and politicians seized on the issue, making it a central domestic issue during the 1996 presidential campaign. Dozens of state legislatures passed anti-gay marriage laws, as did Congress. By the mid-2000s, forty states had passed such laws; several passed both an anti-gay marriage law and other laws or state constitutional amendments banning other forms of partner protection for same-sex couples. Anti-gay marriage politics have emerged as central in the 2000 Republican presidential primary and in the 2004 primaries and general election. It is likely that anti-gay marriage laws and ballot questions will continue to advance in states across the country through the latter half of the decade.

Within the context of debating gay couples’ right to legally marry, many false claims have been made about gay and lesbian parenting, nondiscrimination laws, and other issues. This is because those groups driving opposition to marriage also oppose any form of legal equality for same-sex couples and LGBT people, including nondiscrimination laws and safe schools programs. Several of the half dozen anti-gay parenting laws currently on the books were passed in the context of debates over civil unions in 2000 and marriage in 2003–4. Other states have also considered anti-gay parenting legislation but not passed such laws. Anti-gay marriage activists make false and inflammatory claims that hurt all LGBT people, even if they do not result in the passage of anti-gay policies. Also, in supporting the anti-gay politics of the anti-gay marriage movement, voters also indirectly support the broader reactionary agenda of the Christian right in this country, such as its efforts to collapse the separation of church and state.

A majority of American voters in 2004 supported either civil unions (35 percent) or marriage (25 percent) for same-sex couples. Yet in most states and at the national level, there is majority opposition to marriage equality. Still, the level of popular support for marriage equality has grown significantly since the question was first asked in the late 1980s.
Massachusetts’ highest court ruled in 2004 that denying gay couples the right to marry violates that state’s constitutional guarantees of equality and due process. It is our view that the Massachusetts court was correct and that the denial of marriage rights to gay couples in most of the United States violates these provisions not only in state constitutions but in the U.S. Constitution as well. We believe that all people deserve what the Constitution terms as the “equal protection of the laws,” not just those who are members of majority groups or those groups that can win a popularity contest. In our view, anti-gay ballot questions—in which the rights of a stigmatized minority are granted or withheld by a majority vote in a secret ballot—represent the majority tyranny about which founding father James Madison warned.\textsuperscript{19} The Bill of Rights, the separation of powers, and an independent judiciary were created in large part to prevent such abuses. Therefore, anti-gay ballot campaigns are fundamentally un-American.

Access to civil marriage has the potential to benefit many LGBT families. By granting gay and lesbian couples full legal equality, states can send a message that LGBT people are full citizens, deserving of the same treatment by our government “of the people, by the people, for the people.” Gay men and lesbians who married would be able to acquire a degree of recognition and economic security that is currently unavailable to them. They would no longer confront massive discrimination over issues ranging from hospital visitation rights to Social Security survivors benefits. Binational couples would be able to utilize immigration benefits to sponsor their spouses for permanent residency or citizenship. The situation of LGBT families with children would improve tremendously, as the children would be guaranteed a legal relationship with both of their parents—during their parent’s marriage as well as in the event of a breakup. In the event of the death of their biological parent, children in these families would be guaranteed a right to maintain a relationship with their surviving parent.

Access to the benefits of civil marriage would be particularly advantageous for low-income families. As we noted in chapter 4, low-income LGBT couples are frequently unable to afford to piece together legal protections for their families—protections ranging from second-parent adoption to domestic partner health benefits. Other LGBT parents living in states that do not currently permit second-parent adoption would also find access to marriage tremendously helpful as a means to enhance their family’s security.

Most same-sex couples raising children are lesbian couples, and a disproportionate percentage of these are lesbian couples of color. Due to the
racial demographics of income, wealth, and poverty in the United States, black and Latino same-sex couples are more likely to be poor and less likely to own the home they live in. This is also likely to be true of Native American same-sex couples. In fact, people of color, low-income people, and immigrants within the LGBT community, particularly those raising children, have the most to gain from the ability to access the institution of civil marriage. As such, the fight for marriage equality is not just a matter of basic human rights; it also represents, in the United States at least, a matter of racial, economic, and social justice.

It is also entirely feasible that many more LGBT families would benefit if public policies concerning the family were divorced from marriage. If the state offered support to all caring relationships rather than to married families alone, lesbians and gay men would benefit—as would single-parent households and other families structured in ways that diverge from heteronormativity. Under such circumstances, for instance, lesbian and gay couples—whose marital status currently prevents them from jointly adopting children in most states—could conceivably embark on joint adoption regardless of their marital status and know that they would receive state recognition and support for doing so. Lesbian and gay households where more than two adults hold parenting roles could also find state support for their families.

Yet in the current political context, in which Massachusetts same-sex couples have already won marriage rights and in which same-sex couples in other states are suing for the right to marry, it is hard to imagine the LGBT movement forsaking the policy goal of marriage—especially when the right wing uses the issue of marriage to incite homophobia for political purposes. For the sake of those within the LGBT community who aspire toward marriage equality, same-sex marriage must remain on the movement’s political agenda. For the sake of our whole community, we must counter the rhetoric of the Right and demonstrate the inherent dignity and worth of LGBT families.

At the same time, pursuing same-sex marriage as a policy goal does not preclude the movement from working toward a more far-reaching vision, one that entails transforming society’s oppressive structures to bring about a more equitable distribution of power, rights, and benefits. For a progressively focused LGBT politics, a focus on same-sex marriage cannot be the whole story or even the end of the story. Access to the institution of civil marriage will not end anti-gay bias, which is deeply rooted in American
culture as well as in cultures across the globe. It will not end anti-LGBT discrimination or hate violence. As many of the arguments in this book have made clear, while same-sex marriage rights will create a measure of formal equality for many LGBT people, structural inequalities will nevertheless continue to disempower many of the LGBT community’s most marginalized members and detrimentally affect their lives. “We’ve done nothing to talk about my right to walk down the street,” says a black gay man, adding, “Gay marriage does none of that.”

We need to make it safe for every LGBT person to walk down the street. Protecting our families entails more than marriage rights. It involves grappling with hard issues ranging from domestic violence prevention to welfare reform and a renewed commitment to eradicating racial disparities in poverty and wealth. It means actively forging coalitions with members of other nonnormative, marginalized communities to challenge the oppressive structures that affect us all. The voices of the LGBT community speak to a wide range of priorities and reiterate the imperative to fight on all fronts for social and economic justice. Even when we have won the right to marry, this important and utterly necessary work will barely have begun.