

2012

Integrating Equal Marriage

Robin A. Lenhardt

Fordham University School of Law

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

Recommended Citation

Robin A. Lenhardt, *Integrating Equal Marriage*, 81 Fordham L. Rev. 761 (2013).

Available at: <https://ir.lawnet.fordham.edu/flr/vol81/iss2/11>

This Symposium is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

INTEGRATING EQUAL MARRIAGE

R.A. Lenhardt*

INTRODUCTION

This Symposium on the Defense of Marriage Act¹ (DOMA)—though prompted by President Obama’s February 2011 announcement that the federal government would no longer defend that statute²—raises important questions about the terms on which the fight for equal marriage rights for LGBT couples should be waged. In essence, equal marriage advocates—even as the fight for relationship recognition continues in states across the country—face a choice about how best to frame the claim for equal marriage rights.

To date, the primary strategy has been to emphasize the extent to which gay and lesbian couples are no different than straight couples in their desire for a loving relationship and appreciation of the norms and values reflected in traditional marriage.³ This approach, importantly, has sometimes meant emphasizing the extent to which LGBT couples, because of their asserted willingness to embrace traditional marriage norms, might even be better for marriage than some of the straight people now legally entitled to enter into it. On the one hand, advocates can choose to stick with the status quo and continue to deploy this strategy. On the other hand, though, they can explore a new strategy, one that, rather than emphasizing sameness, celebrates difference and the full spectrum of familial arrangements and choices for structuring intimate relationships evident in our society.

The former approach, which I call the “gays and lesbians are good stewards of marriage” argument, carries rhetorical punch and has the benefit of having been successful, as the slow, but progressive expansion of marriage rights in jurisdictions across the country attests. At the same time,

* Professor of Law, Fordham University School of Law. I am grateful to Michelle Adams, Rick Banks, Jennifer Gordon, Clare Huntington, Joe Landau, and Melissa Murray for conversations and comments relevant to this Essay. Many thanks also to Fordham Law School and Will Fullwood for helpful research support.

1. 1 U.S.C. § 7 (2006); 28 U.S.C. § 1738C (2006).

2. Charlie Savage & Sheryl Gay Stolberg, *In Shift, U.S. Says Marriage Act Blocks Gay Rights*, N.Y. TIMES, Feb. 24, 2011, at A1; see also Jackie Calmes & Peter Baker, *Obama Endorses Same-Sex Marriage, Taking Stand on Charged Social Issue*, N.Y. TIMES, May 10, 2012, at A1. Two federal courts of appeals have held DOMA unconstitutional. See *Massachusetts v. U.S. Dep’t of Health & Human Servs.*, 682 F.3d 1 (1st Cir. 2012); *In re Levenson*, 587 F.3d 925 (9th Cir. 2009).

3. See Amy L. Brandzel, *Queering Citizenship?: Same-Sex Marriage and the State*, 11 GLQ 171, 190 (2005) (describing strategy).

I contend that it raises some serious concerns. To the extent that it suggests that some people might be “good” for marriage, while others could be “bad” for it, the “good stewards” argument risks being particularly divisive. It places LGBT advocates in the position of denigrating the intimate choices of those who do not comport with traditional marriage norms. And, in this connection, it also risks singling out groups like African Americans, who have high rates of nonconformance with such norms, for particular opprobrium.⁴

In the pages that follow, I thus contend that advocates for LGBT rights should abandon the “good stewards” argument and replace it with one that emphasizes the need to recognize an expanded range of intimate arrangements, not just those that comport with traditional norms. While the struggle for marriage rights could ultimately be won by using the “good stewards” approach, it is not at all clear that as a moral, or even a strategic matter, it should be. The terms on which equal rights for LGBT individuals get secured matter. They matter for the LGBT community, but, as I suggest in the pages that follow, also for others.

Part I of this Essay explores the contours of the “good stewards” argument just described by, inter alia, considering the strengths and weaknesses of a recent *New York Times* article written by columnist Frank Bruni, which essentially asserts that LGBT couples would be a net benefit to the institution of marriage, bolstering it in ways that the intimate choices of some straight individuals have not.⁵ Part II highlights the risks inherent in arguments that seek to separate the “good” from the “bad” when it comes to marriage. While noting the problems of heteronormativity and critiques of “normal” sex or intimacy laid out by queer theorists and others, this section primarily addresses the little discussed race effects of the “good stewards” argument. In particular, it engages with the ways in which it might work further to stigmatize black families and intimate arrangements as outside the main of American society. The low rates of marriage mentioned earlier and comparatively high incidence of cohabitation and nonmarital births in the black community have long made African Americans a popular target for conservatives.⁶ The section contends that the adverse race effects of the “good stewards” argument should not be tolerated and, even more, might be holding the movement for equal marriage back, to the extent that it serves to alienate Blacks and others who could be important coalition partners for LGBT community members seeking not only marriage, but recognition and protection for their families.

4. See RALPH RICHARD BANKS, IS MARRIAGE FOR WHITE PEOPLE? 8 (2011) (discussing, inter alia, marriage rates among African Americans) (citing PEW RESEARCH CTR., THE DECLINE OF MARRIAGE AND RISE OF NEW FAMILIES (Nov. 18, 2010), available at <http://www.pewsocialtrends.org/files/2010/11/pew-social-trends-2010-families.pdf>).

5. Frank Bruni, Op-Ed., *Value Our Families*, N.Y. TIMES, Feb. 21, 2012, at A25.

6. See Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform's Marriage Cure as the Revival of Post-Bellum Control*, 93 CALIF. L. REV. 1647, 1677 (2005).

Finally, Part III concludes the Essay by exploring the benefits of an alternative approach emphasizing difference and the need to recognize and affirm a range of intimate arrangements, not just those grounded in legal marriage. In addition to highlighting increasingly important questions about marriage and how it has been structured in our society, the section discusses the ways in which the alternative approach proffered might serve to alleviate tensions evident in the relationship that the LGBT community has with African Americans and possibly also heal divisions within LGBT America. In addition, it briefly emphasizes the enhanced capacity for coalition building in and outside of the marriage context that a strategy urging the recognition of multiple intimate arrangements brings. In sum, this Essay underscores that, the “good stewards” argument notwithstanding, it can sometimes be good to be “bad.”

I. FRIENDS WITH BENEFITS?

On February 21, 2012, New York Times columnist Frank Bruni looked to influence what were then live legislative debates in Maryland and New Jersey about the extension of marriage rights to same-sex couples in those states with an editorial critical of conservative opponents of marriage equality entitled *Value Our Families*.⁷ In it, he justly affirmed the inherent value and worth of gay and lesbian families.⁸ In doing so, Bruni presumably endeavored to show that, in how much they love and care for their partners and children, they are no different than straight families.

In this and other respects, Bruni’s editorial provides a useful example of what I call the “good stewards” argument. The editorial’s overwhelming message, while admittedly not phrased in exactly these terms, was that gays and lesbians are “good” for marriage, while some others might be less so. Noting that “holy matrimony” is not all that “holy” today,⁹ Bruni mentioned only conservative Newt Gingrich—whose three divorces and four marriages, frankly, make him an easy target—by name. But he nevertheless wrote critically about “straight people,” like the “American women under 30” having babies outside of marriage, who “haven’t bothered” to marry—even though there were presumably no legal obstacles to their doing so—and those who had bothered but “don’t make such an impressive go of it,”¹⁰ to the extent that their marriages end in divorce.¹¹

The basic calculus of the “good stewards” argument showcased in Bruni’s editorial makes sense. At a time when marriage rates are declining and many worry about the staying power of this ancient institution, the thinking goes, why not permit individuals who are prepared to take on the roles and responsibilities that it imposes to do so? In the end, extending

7. Bruni, *supra* note 5.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* (citing statistics indicating that “between 40 and 50 percent of first marriages won’t last”).

marriage rights to same-sex couples would only increase, not decrease, the number of married couples in this country. In some ways, this seems like a no brainer. But that would only be true in fact if one focuses exclusively on an agenda that has increasing the number of legal marriages as its primary goal. For those of us concerned with much more than mere marriage promotion, the soundness of the “good stewards” argument is seriously in doubt.

Fundamentally, the “good stewards” argument is a conscious ploy to align the objectives of the equal marriage movement with those of conservatives. While this might be considered a good political play, it is a somewhat shortsighted one. By any measure, those who adhere to traditional marriage’s strictures are a dying breed. Americans are more unmarried today than they have ever been. They marry later, if at all,¹² and divorce more often than they did a generation ago.¹³ According to the Pew Research Center, in 1960, 72 percent of all Americans over the age of eighteen were married. Today, only about 51 percent are.¹⁴ For many, “[o]ther adult living arrangements—including cohabitation, single-person households and single parenthood—have” become much more important.¹⁵

In light of this reality, a strategy focused primarily on persuading marriage conservatives strikes me as more than a little odd. One has to believe that this sub-population will ultimately go the way of marriage itself—not away completely, but significantly diminished in status. It is true, as previously noted, that slightly more than half of American adults are married.¹⁶ So, there are more people who have opted to use traditional marriage in arranging their intimate lives than not at this moment. But even if these statistics hold and go down no further—which seems unlikely—one cannot assume that everyone in this group falls into the class of marriage conservatives opposed to same-sex marriage to which some advocates direct their comments. Indeed, it seems quite likely that most of them do not. Polls show that, even as public attitudes about the place of marriage in our society have become mixed,¹⁷ support for equal marriage rights for

12. D’VERA COHEN ET AL., PEW RESEARCH CTR., BARELY HALF OF U.S. ADULTS ARE MARRIED—A RECORD LOW 7 (2011), *available at* <http://www.pewsocialtrends.org/files/2011/12/Marriage-Decline.pdf>. The rate of people never marrying in their lifetime has risen to 28 percent. *Id.* at 1.

13. Current divorce rates are almost twice as high for Americans today as they were in 1960. INST. FOR AM. VALUES & THE NAT’L MARRIAGE PROJECT, THE STATE OF OUR UNIONS: WHEN MARRIAGE DISAPPEARS 71 (W. Bradford Wilcox et al. eds., 2010), *available at* <http://stateofourunions.org/2010/SOOU2010.pdf>. Significantly, those rates are not as high as they were in the 1980s, when they hit their zenith. *Id.*

14. PEW RESEARCH CTR., *supra* note 12, at 1. Studies indicate that people are waiting to marry longer than in previous decades. In 1960, 59 percent of adults between the ages of eighteen and twenty-nine were married, while only 20 percent of people in that age group are today. *Id.*

15. *Id.* at 1.

16. *Id.*

17. *Id.* at 2 (indicating, *inter alia*, that, in 2012, four in ten Americans said that “marriage is becoming obsolete”).

LGBT couples has increased. A majority of Americans now favor extending marriage rights to gay and lesbian couples.¹⁸

Ultimately, one has to worry about the likely benefits of a strategy tied so closely to traditional marriage. Some marriage conservatives might ultimately be swayed to change their position on equal marriage rights for same-sex couples. It seems unlikely that many will, however. In other words, what one gets from this particular tack cannot readily be discerned. The benefits appear rather low, while the risks, as I see them, could be very high.

II. THE “GOOD STEWARDS” ARGUMENT AND THE PROBLEM OF RACIAL STIGMA

Implicit in the “good stewards” notion that gay and lesbian couples are affirmatively “good” for marriage is, as noted earlier, the idea that some others—gay or straight—are decidedly “bad” for it. Queer theorists long ago internalized and discussed aspects of this troubling reality. For years they have questioned the broad themes and objectives of the movement for marriage equality,¹⁹ critiquing its focus on marriage as unduly heteronormative²⁰ and, among other things, potentially damaging to the security of “affective associations”²¹ like civil unions and domestic partnerships, but also other models for loving relationships that “have offered [LGBT couples] . . . an opportunity to order [their] lives in ways that have given us greater freedom than can be found in the one-size-fits-all rules of marriage.”²² More specifically, they have argued that the claim that LGBT couples are just like opposite-sex couples necessarily denigrates alternative intimate choices and reduces the space for “deviant” sexual practices and intimacies.²³ As author Amy Brandzel observed in a 2005 essay, “Same-sex-marriage claims are not made in a vacuum, and assertions of proper relationships and proper citizenship practices draw attention to those people who are considered improper.”²⁴

18. See Frank Newport, *For First Time, Majority of Americans Favor Legal Gay Marriage*, GALLUP (May 20, 2011), www.gallup.com/poll/147662/First-Time-Majority-Americans-Favor-Legal-Gay-Marriage.aspx.

19. See, e.g., NANCY D. POLIKOFF, *BEYOND (STRAIGHT AND GAY) MARRIAGE: VALUING ALL FAMILIES UNDER THE LAW* (2008); Brandzel, *supra* note 3; Katherine M. Franke, *Longing for Loving*, 76 *FORDHAM L. REV.* 2685, 2689 (2008) [hereinafter Franke, *Longing for Loving*]; Michael Warner, *Beyond Gay Marriage*, in *LEFT LEGALISM/LEFT CRITIQUE* (Wendy Brown & Janet Halley eds., 2002); see also Katherine M. Franke, *The Domesticated Liberty of Lawrence v. Texas*, 104 *COLUM. L. REV.* 1399 (2004).

20. See Brandzel, *supra* note 3, at 196.

21. See Franke, *Longing for Loving*, *supra* note 19, at 2689.

22. Katherine M. Franke, *Same-Sex Marriage is a Mixed Blessing*, *N.Y. TIMES*, June 24, 2011, at A25.

23. Brandzel, *supra* note 3, at 196.

24. *Id.*; see also Melissa Murray, *What's So New About the New Illegitimacy?*, 20 *AM. U. J. GENDER SOC. POL'Y & L.* 387, 413–17, 424–28 (2012) (discussing the race-based implications of illegitimacy-based claims for marriage equality).

In contrast, the race implications of the “good stewards” position have, comparatively speaking, been little explored.²⁵ Notably, nothing on the face of current arguments deployed by advocates or even Bruni’s editorial makes any explicit reference to race; indeed, Bruni wisely steers clear of making any mention of race. But, if we are purely using statistics to determine whom to place on the “naughty” or “nice” list, African Americans, as a group, would fall squarely in the column of those whom the “good steward” argument would cast as “bad” for marriage.

While many Blacks, of course, enjoy long-lasting marriages, African Americans, as a group, are not likely to add substantially to marriage rates any time soon. Indeed, along each of the vectors that Bruni’s editorial addresses, African America scores low on compliance with traditional marriage norms. For example, the incidence of divorce that Bruni generally lamented in his editorial rates particularly high for African Americans. Research suggests that roughly 50 percent of black marriages will end within the first ten years of marriage, as compared to only one third of white marriages.²⁶ Likewise, rates of nonmarriage and nonmarital births, while elevated for Americans as a whole, are generally higher for Blacks than for other groups.²⁷ Just to illustrate, approximately 43 percent of Blacks have never married, whereas the same can be said for only about 25 percent of non-Hispanic Whites.²⁸ Blacks are more likely than Whites to cohabit with intimate partners,²⁹ and “both to conceive and to give birth while in a cohabiting union.”³⁰

For years now, statistics less dramatic than these have made African Americans a favorite target of marriage conservatives or at least those who see marriage as a way of curing all societal ills. The Moynihan Report of

25. *But see* Murray, *supra* note 24, at 413–17, 424–28 (discussing conceptions of illegitimacy, race, and stigma in the marriage equality context). For general critiques of race-related aspects of gay rights discourse, see, for example, Darren Lenard Hutchinson, “Gay Rights” for “Gay Whites”?: *Race, Sexual Identity, and Equal Protection Discourse*, 85 CORNELL L. REV. 1358 (2000); Darren Lenard Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory, and Anti-Racist Politics*, 47 BUFF. L. REV. 1 (1999).

26. *See* BANKS, *supra* note 4, at 8 (citing PEW RESEARCH CTR., THE DECLINE OF MARRIAGE AND RISE OF NEW FAMILIES (2010), available at <http://www.pewsocialtrends.org/files/2010/11/pew-social-trends-2010-families.pdf>); *see also* Julie A. Phillips & Megan M. Sweeney, *Premarital Cohabitation and Marital Disruption among White, Black, and Mexican American Women*, 67 J. MARRIAGE & FAM. 296, 296 (2005).

27. Phillips & Sweeney, *supra* note 26, at 298–99.

28. U.S. CENSUS BUREAU, THE BLACK POPULATION IN THE UNITED STATES: MARCH 2002, at 3 (April 2003), available at <http://www.census.gov/prod/2003pubs/p20-541.pdf>; *see also* D’VERA COHEN ET AL., *supra* note 12, at 9.

29. CYNTHIA G. BOWMAN, UNMARRIED COUPLES, LAW, AND PUBLIC POLICY 112 (2010). Significantly, however, Hispanics have experienced the greatest increase in cohabitating relationships. *See* PEW RESEARCH CTR., THE DECLINE OF MARRIAGE AND RISE OF NEW FAMILIES 67 (2010), available at <http://www.pewsocialtrends.org/files/2010/11/pew-social-trends-2010-families.pdf>.

30. Phillips & Sweeney, *supra* note 26, at 298.

1965³¹—which seized on the “matriarchal pattern” and “reversed roles of husband and wife” in black families in discussing the perceived “tangle of pathology” within the African American community³²—and more recent efforts to promote marriage through welfare reform programs, including the Bush administration’s 2002 plan to devote “nearly \$300 million per year to promote healthy marriages and reduce out-of-wedlock births,” provide notable examples of this.³³ But there are others. Indeed, the intimate choices of Blacks have been at the top of the social reform agenda from almost the moment they won emancipation and, with it, the right to marry.³⁴

Against this backdrop, the race-related problems imbedded in the “good steward” argument become very apparent. For reasons alluded to earlier, good reason exists to be generally skeptical of an approach that seeks to expand the range of intimate choices available to one group while critiquing those of others. But the need for caution becomes doubly clear when one realizes that a particular group stands to be stigmatized or targeted.³⁵ The notion that African Americans are “bad” for marriage stands only add to the view, however subconsciously held, that Blacks are “bad” in general.³⁶ Further, not unlike illegitimacy-based arguments made in support of equal marriage rights recently critiqued by legal scholar Melissa Murray, it will most certainly add to the perception that African American intimate relationships that fall outside traditional forms are a priori deviant or deficient in some way.³⁷

Finally, there is the risk of alienating potential black supporters of the equal marriage movement that the “good steward” argument carries. Tensions among the LGBT and African American communities have long run high and have only been exacerbated by recent events, including the opposition of some black ministers to LGBT marriage rights³⁸ and the

31. OFFICE OF POL’Y PLANNING & RESEARCH, U.S. DEP’T OF LABOR, THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION (1965), available at <http://www.dol.gov/oasam/programs/history/webid-meynihn.htm>.

32. *Id.*

33. Onwuachi-Willig, *supra* note 6, at 1677.

34. For sources addressing this topic, see, for example, LAURA F. EDWARDS, GENDERED STRIFE AND CONFUSION: THE POLITICAL CULTURE OF RECONSTRUCTION (1997); MARY FARMER-KAISER, FREEDWOMEN AND THE FREEDMEN’S BUREAU: RACE, GENDER & PUBLIC POLICY IN THE AGE OF EMANCIPATION (2010); NORALEE FRANKEL, FREEDOM’S WOMEN: BLACK WOMEN AND FAMILIES IN CIVIL WAR ERA MISSISSIPPI (1999); AMY DRU STANLEY, FROM BONDAGE TO CONTRACT: WAGE LABOR, MARRIAGE, AND THE MARKET IN THE AGE OF SLAVE EMANCIPATION (1998); Katherine M. Franke, *Becoming a Citizen: Reconstruction Era Regulation of African American Marriages*, 11 YALE J.L. & HUMAN. 251 (1999).

35. See Murray, *supra* note 24, at 413–16, 424–28 (expressing concern about illegitimacy-based arguments advanced in support of equal marriage rights).

36. For a discussion of racial stigma, see R.A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 79 N.Y.U. L. REV. 803 (2004) (discussing the problem of racial stigma and unconsciously held attitudes about race); see also Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987) (exploring the problem of unconscious racism).

37. See Murray, *supra* note 24, at 424–28.

38. See Sabrina Tavernise, *Gay Marriage Bill Posing a Tough Sell to Blacks in Maryland*, N.Y. TIMES, Feb. 16, 2012, at A18.

critiques that some LGBT advocates leveled against African America in the wake of Proposition 8's passage by California voters in 2008.³⁹ An argument that looks to problematize intimate choices that do not fully comport with traditional marriage norms will likely only serve to stoke the fires of discontent between these groups and possibly also others. Admittedly, polls do indicate that a large percentage of African Americans remain opposed to same-sex marriage.⁴⁰ But the potential for alienating those African Americans and members of other groups who might lend support to the movement is nevertheless lamentable, not to mention unwise. As I suggest in Part III, the potential benefits of adopting an approach that seeks both to integrate new arguments into the campaign for equal marriage rights and to expand the base of supporters for such rights by building and strengthening coalitions with individuals and groups, like African Americans, whose intimate interests, while not identical to those of LGBT America, are closely aligned could be substantial.

III. INTEGRATION FOR MARRIAGE AND BEYOND

At the outset of this Essay, I called for a strategy in advocating for LGBT equal marriage rights that seeks to integrate, rather than disparage, the experiences of those whose intimate lives do not comport with traditional norms—everyone from the “American women under 30” having babies outside of marriage⁴¹ to those who have bothered to marry, but “don’t make such an impressive go of it.”⁴² Just on the numbers alone, an approach that values a range of intimate arrangements (e.g., legal marriages, as well as cohabiting relationships or perhaps families headed by a single parent) seems destined to provide a stronger foundation than one trained on persuading marriage conservatives tethered to intimate norms from a generation ago to see same-sex marriages as “traditional.” Even more important, it would ensure that the terms on which the battle for equal treatment and regard of LGBT relationships is ultimately won do not promote the kind of bias and exclusion that gays and lesbians have faced.

In an upcoming article, I explore the place of marriage in the African American community. In doing so, I make the argument that African America should take the opportunity presented by LGBT claims to equal marriage to reconsider their own, often troubled, history and connection with that institution.⁴³ In particular, I suggest that the choice whether to embrace traditional marriage or other intimate configurations should turn on how well any option speaks to the realities of black family and intimate life,

39. R.A. Lenhardt, *Race and the Place of Marriage* 10 (Sept. 1, 2012) (unpublished manuscript) (on file with author) (discussing the backlash against Blacks in the wake of the 2008 presidential election).

40. Joseph Williams, *Gay Marriage: Black Voters Remain Divided*, POLITICO (May 10, 2012, 8:49 PM), <http://www.politico.com/news/stories/0512/76133.html>.

41. Bruni, *supra* note 5.

42. *Id.*

43. Lenhardt, *supra* note 39, at 4–5 (discussing black opposition to equal marriage).

and furthers the values of intimate expression and choice.⁴⁴ The article engages with doctrinal understandings of intimate expression and equality that are relevant to the instant discussion.⁴⁵ For now, though, it suffices to say that an approach that values difference and a range of intimate arrangements that include, but are not limited to, marriage could have real benefits for LGBT advocates.

First, such a strategy could help advocates to sharpen claims for equal marriage and to focus attention on the institution of marriage itself. Marriage's importance to the LGBT community and others turns on the extent to which the state utilizes it as a mechanism for channeling certain benefits.⁴⁶ But, as others have noted, this structure is not one that we necessarily need to retain.⁴⁷ Other options for conferring societal benefits and for recognizing the importance of a whole range of affective connections exist.⁴⁸ An argument that emphasizes the importance of intimate choice makes this point in ways that can help secure marriage rights for LGBT couples who want them, without denigrating the decision of other LGBT or straight couples to structure their intimate lives differently.

More concretely, the strategy I advocate could have the benefit of generating more support for the struggle for equal marriage. To the extent that it responds to some of the problems of heteronormativity and potential bias, and the devaluing of intimate choices that do not accord with traditional models that many have identified, it might encourage queer theorists and others critical of current efforts to be more supportive. For similar reasons, I am hopeful that greater emphasis on intimate expression and choice might serve to ease tensions between the LGBT community and other groups. Here, I remain particularly (though not exclusively) interested in the potential impact of such a focus on the relationships with straight African Americans, but potentially also those who are gay and lesbian, to the extent that arguments made by some LGBT advocates have been deemed problematic.⁴⁹ Emphasizing intimate expression as a way of thinking about modern romantic and familial relationships means that the

44. *Id.* at 32–36.

45. *Id.* at 21–31.

46. *See, e.g.*, Laura A. Rosenbury, *Friends with Benefits?*, 106 MICH. L. REV. 189, 231 (2007) (discussing, *inter alia*, government benefits attached to marriage).

47. *Id.* at 230.

48. *See, e.g., id.* (discussing possibilities for recognizing friendship as an alternative model); *see also* Melissa Murray, *The Networked Family: Reframing the Legal Understanding of Caregiving and Caregivers*, 94 VA. L. REV. 385 (2008) (discussing extended family networks); Franke, *supra* note 22 (discussing civil unions and domestic partnerships).

49. Comments about black voters made by some advocates in the wake of Proposition 8's passage in California fall into this category. *See, e.g.*, Dan Savage, *Black Homophobia*, THESTRANGER: SLOG (Nov. 5, 2008, 9:55 AM), http://slog.thestranger.com/2008/11/black_homophobia (expressing frustration with black support for Prop. 8 and exclaiming that he was “done pretending that the handful of racist gay white men out there . . . are a bigger problem for African Americans, gay and straight, than the huge numbers of homophobic African Americans are for gay Americans, whatever their color”).

disparagement of choices outside the main and those who make them no longer stands as the imperative for having one's own non-normative relationship recognized. It mandates equal respect for relationships that, while perhaps not traditional, have become more and more the norm and, most importantly, seems to address the needs of an expanding portion of the population.

Finally, to the extent that an approach valuing intimate difference helps to foreground the nexus between the experiences of LGBT community members and those of others presumed "bad" for marriage, it offers a strong foundation for coalitions around prohibitions on marriage, as well as laws limiting other opportunities for family formation.⁵⁰ As others have noted, laws prohibiting adoption by gays and lesbians or unmarried individuals can operate in similar ways on gays and lesbians and straight individuals who might decide to parent outside of marriage.⁵¹ And as I point out in the Essay on black marriage described above, such laws have a disparate impact on African Americans, as well as other communities in which parenting outside of marriage is becoming, if not the norm, more of an option.⁵²

CONCLUSION: "VALUE [ALL] OUR FAMILIES"

In *Value Our Families*, Frank Bruni made an urgent plea that gay and lesbian families be recognized and valued along with those of others who might want to, or currently do, enjoy the right to marry. My goal in this Essay was to suggest that, while the importance of the overall agenda to expand access to legal marriage to gays and lesbians that the "good stewards" argument concerns cannot be gainsaid, we would do better to look more expansively and to reconsider the value that we place on a range of intimate arrangements. More specifically, I have argued that, as a society, we should endeavor to value all our families. By appreciating that even those intimate arrangements that do not align easily with traditional marriage can have value—for those who participate in them, but also for society more broadly—we set ourselves on a path that can vindicate the rights and entitlements of not just LGBT families, but all our families.

50. See, e.g., Maya Rupert, *Is Marriage Equality for White People?*, HUFFINGTON POST (Oct. 11, 2011, 5:27 PM), http://www.huffingtonpost.com/maya-rupert/marriage-equality-black-voters_b_1004391.html (discussing the impact of a North Carolina constitutional amendment banning same-sex marriage on gays and lesbians, and Blacks).

51. See Courtney G. Joslin, *Interstate Recognition of Parentage in a Time of Disharmony: Same-Sex Parent Families and Beyond*, 70 OHIO ST. L.J. 563 (2009).

52. Lenhardt, *supra* note 39, at 36–39.