

SYMPOSIUM: UPDATING THE LGBT INTRACOMMUNITY DEBATE OVER SAME-SEX MARRIAGE

INTRODUCTION

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It is sometimes difficult to remember, but there was a time, not too long ago, when the gay rights movement was not pushing for the recognition of same-sex marriage. Indeed, in the early 1990s, when same-sex couples in Alaska, Hawaii, New York, and Washington, D.C., sought the assistance of the ACLU and the Lambda Legal Defense and Educational Fund (Lambda) in pursuing same-sex marriage through the courts, their pleas were rebuffed.¹ In hindsight, it seems clear that, by the mid-1990s, the gay rights movement reached a paradigmatic “fork in the road” moment. On one side of the fork was the possibility of expanding the institution of marriage by including same-sex couples within its ambit. On the other side was the possibility of reducing the importance of marriage by seeking alternative forms of legal recognition for a wide variety of familial arrangements, including those of LGBT people.

These two conflicting visions were captured twenty years ago in dueling essays written by two of the gay rights movement’s leading figures: Tom Stoddard, who was then Lambda’s executive director, and Paula Ettelbrick, who was then the organization’s legal director.² This juxtaposition of opposing views has become the most famous articulation of the LGBT community’s hopes and fears associated with same-sex marriage.

At the national level, of course, the issue of same-sex marriage has been framed by the pitched political and legal battles between

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1. David L. Chambers, *Couples: Marriage, Civil Union, and Domestic Partnership*, in *CREATING CHANGE: SEXUALITY, PUBLIC POLICY, AND CIVIL RIGHTS* 281, 290 (John D’Emilio et al. eds., 2000).

2. Thomas Stoddard, *Why Gay People Should Seek the Right to Marry*, *OUT/LOOK*, Fall 1989, at 9, reprinted in WILLIAM B. RUBENSTEIN, CARLOS A. BALL & JANE S. SCHACTER, *CASES AND MATERIALS ON SEXUAL ORIENTATION AND THE LAW* 678 (3d ed. 2008); Paula Ettelbrick, *Since When is Marriage a Path to Liberation?*, *OUT/LOOK*, Fall 1989, at 14, reprinted in RUBENSTEIN ET AL., *supra*, at 683.

gay rights supporters and their opponents. It may therefore surprise some to learn that there has also been an ongoing and vigorous debate within the LGBT community about the moral and political advisability of pursuing same-sex marriage. Within civil rights movements, there are frequently strategic disagreements about when to push for an expansion of rights and benefits and when to slow down and concentrate on strengthening and consolidating previous victories. Indeed, there is often a delicate balance at stake: if a movement pushes for change too slowly, it can result in missed opportunities; on the other hand, if it tries to achieve reforms too quickly, it can engender a political backlash.³ Part of the internal debate within the LGBT community over the issue of marriage has been strategic in the sense that it has focused on how, where, and when to pursue marriage. There has also, however, been a more fundamental intracommunity disagreement over *whether* to pursue marriage. This disagreement, rather than being driven by considerations of strategy, venue, and timing, instead raises issues of politics and ideology. The disagreement, in other words, goes to the core of what the gay rights movement's values and priorities should be.

This Symposium, published on the twentieth anniversary of the Stoddard-Ettelbrick debate, is meant to both commemorate and update that highly influential exchange. Obviously, much has happened on the issue of same-sex marriage in the last two decades, and our three distinguished contributors—Professors Mark Strasser, Nancy Polikoff, and Edward Stein—are superbly qualified to discuss, looking back, whether the movement made the right decision, around the middle of the 1990s, to prioritize marriage, and, looking forward, where the movement should go from here on the issue of the legal recognition of same-sex relationships.

As the author of this Introduction, my principal job is to set the table, so to speak, for the fascinating discussion that follows. I do that by providing a brief history of where the issue of same-sex marriage, from the perspective of the LGBT community, stood at the time leading up to the Stoddard-Ettelbrick debate and by summarizing the arguments that the two Lambda lawyers raised in their now famous essays. I then finish by providing a synopsis of the views presented in this Symposium by Professors Strasser, Polikoff, and Stein.

The story of how the LGBT community viewed same-sex

3. On the political backlash engendered by the gay rights movement's pursuit of same-sex marriage through the courts, see Carlos A. Ball, *The Backlash Thesis and Same-Sex Marriage: Learning from Brown v. Board of Education and Its Aftermath*, 14 WM. & MARY BILL RTS. J. 1493 (2006) and Michael J. Klarman, Brown and Lawrence (and Goodridge), 104 MICH. L. REV. 431 (2005).

marriage prior to its becoming a national civil rights issue during the 1990s has two parts. One part is told in an essay written by David Chambers, the distinguished family law scholar from the University of Michigan School of Law, who has long been a supporter of the marriage equality movement.⁴ In his essay, Chambers notes that marriage became a priority for at least some members of the LGBT community starting at around the time of Stonewall. Chambers relates, for example, how ministers of the Metropolitan Community Church, a primarily gay denomination, began organizing same-sex weddings as early as 1968.⁵ He adds that the gay magazine *The Advocate* proclaimed two years later “that America was experiencing a ‘gay marriage boom.’”⁶

It was this early interest in marriage that led some particularly bold and outspoken same-sex couples in the early 1970s to take the unprecedented step of showing up at their local clerk’s offices requesting marriage licenses.⁷ Most clerks, of course, quickly denied those requests;⁸ some litigation ensued, all of it unsuccessful.⁹

Although it would take another fifteen years before additional same-sex marriage lawsuits were filed, that does not mean that the issue of marriage disappeared altogether from the minds of at least some lesbians and gay men between the mid-1970s and the 1990s. Indeed, Chambers notes that Metropolitan Community Church ministers continued to conduct “hundreds of marriages every year.”¹⁰ He also points out that

[i]n 1987, at the second [gay rights] March in Washington, over one thousand lesbian and gay male couples joined in marriage at the National Cathedral with an accompanying rally at which some speakers demanded legal recognition for gay unions. Large

4. See Chambers, *supra* note 1.

5. *Id.* at 283.

6. *Id.* (quoting Suzanne Sherman, *Lesbian and Gay Marriage*, *ADVOCATE*, Aug. 1970, at 7).

7. *Id.* at 283-88.

8. In some instances, sympathetic clerks did issue marriage licenses to same-sex couples. In March, 1975, for example, the county clerk in Boulder, Colorado, issued marriage licenses “to no fewer than six same-sex couples . . . [before] the state attorney general put a stop to the Boulder County experiment in same-sex marriage.” WILLIAM N. ESKRIDGE, JR., *THE CASE FOR SAME-SEX MARRIAGE: FROM SEXUAL LIBERTY TO CIVILIZED COMMITMENT* 55 (1996). In that same year, Washington, D.C. Councilman Arrington Dixon introduced a bill to legalize same-sex marriage, a proposal that was enthusiastically supported by the Gay Activists Alliance and longtime gay activist Frank Kameny. *Id.* The bill, however, created a furor and was vigorously opposed by the Catholic Church and several Baptist churches, leading Dixon to withdraw it. *Id.*

9. *Jones v. Hallahan*, 501 S.W.2d 588 (Ky. 1973); *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971); *Singer v. Hara*, 522 P.2d 1187 (Wash. Ct. App. 1974).

10. Chambers, *supra* note 1, at 288.

numbers of gay people, unaware of the earlier cases or undeterred by them, were becoming insistent about state recognition of their relationships.¹¹

Chambers then makes it clear that a significant segment of the LGBT community believed that the pursuit of marriage was important and worthwhile years before the Hawaii same-sex marriage litigation catapulted the issue into the national consciousness in the mid-1990s.¹² Nancy Polikoff, in her recent book *Beyond (Straight and Gay) Marriage*, however, tells a different part of the story.¹³ She notes that many gay and lesbian rights advocates in the 1970s forged coalitions with others to “challenge[] the primacy of marriage.”¹⁴ As Polikoff tells it, the gay rights movement was then part of a broader political coalition that sought to reduce the social, legal, and economic importance of marriage. Partners in that coalition with lesbians and gay men included single mothers; “unmarried heterosexuals, both those consciously rejecting the baggage associated with marriage and those who simply did not marry; and nonnuclear units, such as communal living groups and extended families.”¹⁵

This broad social movement sought, among other goals, to destigmatize sex outside of marriage, to end the differential treatment of “illegitimate” children under the law, and to make it easier to end failed marriages through no-fault divorce regimes. Polikoff argues that as a result of these efforts, by the end of the 1970s, “[m]arriage was in the process of losing its ironclad grip on the organization of family life, and lesbians and gay men benefited overwhelmingly from the prospect of a more pluralistic vision of relationships.”¹⁶

Polikoff also recounts the growing push for the recognition of domestic partnerships as an alternative to marriage. And, indeed, during the early 1980s some progressive employers (like the *Village Voice* and Ben & Jerry’s), as well as a few liberal municipalities (like Berkeley and West Hollywood), began recognizing such partnerships.¹⁷ For Polikoff, it is important that many of these early domestic partnership arrangements did not make distinctions based on the gender of the parties. They were not, in other words, aimed at

11. *Id.*

12. See *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993).

13. NANCY D. POLIKOFF, *BEYOND (STRAIGHT AND GAY) MARRIAGE: VALUING ALL FAMILIES UNDER THE LAW* (2008).

14. *Id.* at 5.

15. *Id.*

16. *Id.* at 6.

17. *Id.* at 49-50; David Link, *California’s Quiet Revolution*, INDEP. GAY FORUM, Sept. 24, 2008, <http://indegayforum.org/news/printer/31629.html>.

providing recognition solely for those couples (i.e., same-sex ones) who *could not* marry, but instead sought to also provide an alternative to couples (i.e., different-sex ones) who *chose not* to marry.¹⁸ As Polikoff sees it, therefore, the early push by the gay rights movement for domestic partnership recognition was part of a broader effort to deemphasize marriage. (Chambers, on the other hand, complicates the story a little by noting that some of the lesbians and gay men who supported domestic partnerships in the 1980s did so because they viewed them as a stepping stone to what they hoped would be the eventual recognition of same-sex marriage.)¹⁹

The part of the story that Polikoff emphasizes, then, points to the way in which lesbians and gay men during the 1970s and 1980s, working with others, sought to gain legal recognition and protection of same-sex relationships by reducing the importance of marriage. In contrast, the part of the story that Chambers focuses on is the hope of other lesbians and gay men, during that same period, to gain recognition of their relationships as marital.

Although the stories told by Polikoff and Chambers seem inconsistent, in reality they are not because the LGBT community during the 1970s and 1980s was divided, as it is today, on the issue of whether the institution of marriage should be expanded to include same-sex couples or whether its social, legal, and economic significance should instead be minimized. What is different today is that the movement's leaders, including its lawyers, now almost uniformly support the pursuit of marriage equality as a civil rights goal. As late as the early 1990s, however, the opposite was the case. As already noted, when same-sex couples from different parts of the country approached groups like the ACLU and Lambda almost twenty years ago seeking their help in challenging prohibitions against same-sex marriage, their pleas went unheeded.²⁰ It was largely the unexpected same-sex marriage victory before the Hawaii Supreme Court in 1993 that led many movement leaders to reconsider their position.²¹

Indeed, in the late 1980s, Tom Stoddard was one of only a handful of movement leaders who was urging the LGBT community to take the pursuit of same-sex marriage seriously. Stoddard, who graduated from the New York University School of Law in 1977, served as the legislative director of the New York Civil Liberties

18. POLIKOFF, *supra* note 13, at 49.

19. Chambers, *supra* note 1, at 300.

20. See *supra* note 1 and accompanying text.

21. See *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993). As Chambers notes, the Hawaii Supreme Court's opinion in *Baehr* "caught [gay rights lawyers] by surprise, [leading them] to develop an entirely new set of strategies." Chambers, *supra* note 1, at 290.

Union in the early 1980s working on issues such as the death penalty and abortion rights.²² In 1986, when he became executive director of Lambda, the organization was still small and starved for funds, operating out of a single room provided by the ACLU.²³ By the time Stoddard stepped down as executive director in 1992, the group, whose staff had grown from six to twenty-two members, had become the most influential gay rights legal organization in the country.²⁴ Stoddard guided Lambda at a particularly challenging time for LGBT people given that, during his tenure, the Supreme Court upheld the constitutionality of laws that criminalized consensual gay sex²⁵ and discrimination on the basis of AIDS was rampant throughout society.²⁶ But Stoddard made the best of these challenges, using them to help bring the LGBT community together while emphasizing how important it was for its members to provide financial support to gay rights and AIDS organizations. When Stoddard died of AIDS in 1997, the LGBT community lost one of its most determined, fearless, and articulate leaders.

On the day he was appointed to head Lambda, Stoddard made it clear that the legal recognition of gay people's relationships was one of his priorities. "The general public seems to feel that being gay is an individual existence that precludes family life," he said on that day.²⁷ "In fact, it often involves being part of a family in every possible sense: as spouse, as parent, as child. Society needs to foster greater stability in gay relationships."²⁸ By 1989, Stoddard was convinced that the movement should pursue same-sex marriage, a position that he defended in his famous essay published in the (now defunct) lesbian/gay intellectual journal *OUT/LOOK*.²⁹

Stoddard began his essay, titled *Why Gay People Should Seek the Right to Marry*, by confessing that he was not a fan of the institution of marriage given that its "traditional form" had been "oppressive[] especially (although not entirely) to women."³⁰ Despite the institution's troubled history, Stoddard believed that the movement

22. David W. Dunlap, *Thomas Stoddard, 48, Dies; An Advocate of Gay Rights*, N.Y. TIMES, Feb. 14, 1997, at B6.

23. Robert Murphy, *Fear of Disclosure*, POZ, Oct.-Nov. 1995, available at http://www.poz.com/articles/259_1851.shtml.

24. Dunlap, *supra* note 22.

25. *Bowers v. Hardwick*, 478 U.S. 186 (1986) (upholding the constitutionality of sodomy statutes).

26. See, e.g., LARRY KRAMER, *THE NORMAL HEART* (1985).

27. Dunlap, *supra* note 22.

28. *Id.*

29. See Stoddard, *supra* note 2. Stoddard and Ettelbrick's essays appeared under the heading "Gay Marriage: A Must or a Bust?" RUBENSTEIN ET AL., *supra* note 2, at 678.

30. Stoddard, *supra* note 2, at 679.

should “aggressively” seek the recognition of same-sex marriage.³¹ He then offered practical, political, and philosophical reasons for taking that position.

The practical reasons for Stoddard were clear: the government offers married couples a myriad of rights and benefits that it does not make available to those who are not married.³² He acknowledged that it was possible, with the assistance of lawyers, to replicate some of the benefits that accompany the status of marriage—through the drafting, for example, of contracts and wills—but that replication costs money, disadvantaging LGBT people of lesser economic means.³³ Stoddard, undoubtedly aware that some of the marriage critics within the LGBT movement contended that same-sex marriage would primarily benefit the well-to-do,³⁴ argued that only by making marriage available to same-sex couples would it be possible for those “at the bottom of the economic ladder . . . to secure their relationship rights.”³⁵

Although he acknowledged that there was little chance of gaining recognition of same-sex marriages anytime soon, Stoddard stressed that there were important political benefits to be gained by seeking marriage through courts and legislatures.³⁶ For Stoddard, the pursuit of marriage was the most effective way of testing the commitment of straights to the principle of full equality for LGBT people.³⁷ At the same time, attaining the right to marry was the step that would “most likely . . . lead ultimately to a world free from discrimination against lesbians and gay men.”³⁸ As Stoddard saw it, other measures, such as providing domestic partnership benefits and prohibiting discrimination on the basis of marital status, while important, allowed for only partial equality.³⁹ “Gay relationships,” he argued, “will continue to be accorded a subsidiary status until the day that gay couples have *exactly* the same rights as their heterosexual counterparts.”⁴⁰

31. *Id.*

32. *Id.* at 679-81.

33. *Id.* at 681.

34. Ettelbrick made this point in her essay when she noted that “[t]hose closer to the norm or to power in this country are more likely to see marriage as a principle of freedom or equality. Those who are more acceptable to the mainstream because of race, gender, and economic status are more likely to want the right to marry.” Ettelbrick, *supra* note 2, at 686.

35. Stoddard, *supra* note 2, at 681.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 682.

40. *Id.*

Stoddard ended his essay by contending that “even from a philosophical perspective,” the gay rights movement should make the pursuit of marriage a priority.⁴¹ This was the case for two reasons. First, he noted that the issue was not whether LGBT people should marry, but instead whether they should have the opportunity to marry.⁴² As such, he emphasized that the question was one of personal choice—no one, after all, would be forced to marry against their will.⁴³ Second, he argued that granting LGBT people access to the institution of marriage would help to “transform it into something new.”⁴⁴ By degendering marriage, that is, by making it clear that marriage did not in fact require a “husband” and a “wife,” the recognition of same-sex marriage would rid the institution “of [its] sexist trappings.”⁴⁵

In the essay’s last paragraph, Stoddard acknowledged that some of his colleagues in the gay rights movement disagreed with him on the question of marriage, and he welcomed further debate.⁴⁶ It was fitting, therefore, that Stoddard’s essay was immediately followed by one written by his Lambda colleague Paula Ettelbrick titled *Since When is Marriage a Path to Liberation?*⁴⁷

Stoddard had helped to hire Ettelbrick to serve as Lambda’s first staff attorney in 1986, only two years after she graduated from the Wayne State University School of Law.⁴⁸ In 1988, Lambda promoted Ettelbrick to the position of legal director, a job that she held until 1993.⁴⁹ While Stoddard was the primary public face of the organization, Ettelbrick oversaw its day-to-day legal work. Although Ettelbrick worked on the full range of cases on Lambda’s docket, which included employment discrimination cases, immigration lawsuits, and challenges to the military’s ban on gay and lesbian service members, she took a particular interest in issues related to family law and relationship recognition. During her tenure at Lambda, she was widely recognized as a national expert in second parent adoptions, co-parenting issues, and domestic partnership

41. *Id.*

42. *Id.* at 682-83.

43. *Id.*

44. *Id.* at 683.

45. *Id.*

46. *Id.*

47. Ettelbrick, *supra* note 2.

48. See *Alum Delivers 21st Annual I. Goodman Cohen Lecture*, WAYNE LAW. (Wayne St. Univ. Law Sch., Detroit, Mich.), Spring 2006, at 4, available at <http://law.wayne.edu/pdf/wayne-lawyer-2006.pdf>; Guide to the Paula L. Ettelbrick Papers, 1986-1993 (2003), <http://rmc.library.cornell.edu/ead/htmldocs/RMM07644.html>.

49. See Penny Mickelbury, *Long-Time Lesbian Activist Leads Int’l Rights Group*, WASH. BLADE, Oct. 10, 2003, at 17.

law.⁵⁰ Since leaving Lambda, Ettelbrick has continued her tireless efforts as an advocate for LGBT people, first as public policy director for the National Center for Lesbian Rights, then as legislative counsel for the Empire State Pride Agenda (the largest gay rights organization in New York), and until recently as executive director of the International Gay and Lesbian Human Rights Commission (a U.S.-based nonprofit group that works to advance the rights of LGBT people throughout the world).⁵¹

Ettelbrick in her essay raised two principal objections to the pursuit of marriage by lesbians and gay men. First, she warned that marriage, far from setting LGBT people along the path of liberation, would instead render them even more invisible by assimilating them into the mainstream.⁵² As Ettelbrick saw it, the move to marry threatened the distinct identity and values of lesbians and gay men. As she put it,

[b]eing queer is more than setting up house, sleeping with a person of the same gender, and seeking state approval for doing so. It is an identity, a culture with many variations. . . . Being queer means pushing the parameters of sex, sexuality, and family, and in the process transforming the very fabric of society.⁵³

While Stoddard thought that gaining the right to marry was essential to attaining full equality, Ettelbrick argued that such equality for LGBT people was not possible until “we are accepted and supported in this society *despite* our differences from the dominant culture and the choices we make regarding our relationships.”⁵⁴ She added that joining the institution of marriage would eviscerate those aspects of being a lesbian that she valued most: “Marriage, as it exists today, is antithetical to my liberation as a lesbian and as a woman because it mainstreams my life and voice.”⁵⁵

Second, Ettelbrick argued that the pursuit of same-sex marriage would do nothing to change the unjust ways in which society privileges marital relationships and burdens all others.⁵⁶ The recognition of same-sex marriages, for example, would only further oppress LGBT people who choose to structure their relationships in ways that are different from the traditional heterosexual norm.⁵⁷

50. Ettelbrick's papers, covering her Lambda years, are available at the Cornell University Library. See Guide to the Paula L. Ettelbrick Papers, 1986-1993, *supra* note 48.

51. Mickelbury, *supra* note 49.

52. Ettelbrick, *supra* note 2, at 684.

53. *Id.*

54. *Id.*

55. *Id.* at 685.

56. *Id.* at 684.

57. *Id.* at 685-86.

While access to the institution of marriage might provide lesbians and gay men who marry a degree of social respectability, it would only further stigmatize as sexual outlaws those who preferred not to marry.⁵⁸ As such, Ettelbrick contended, even if lesbians and gay men were offered the choice to marry, the choice would not be a true one as long as those who remained unmarried lacked "legal protection and societal respect."⁵⁹

Furthermore, the recognition of same-sex marriage would do nothing to address systemic injustices in the ways in which our society allocates rights and benefits.⁶⁰ Such a recognition, for example, would not help those who have no health insurance because their jobs do not provide it (or those who do not have jobs to begin with).⁶¹ As she put it, "[f]or women, particularly women of color who tend to occupy the low-paying jobs that do not provide healthcare benefits at all, it will not matter one bit if they are able to marry their women partners. The opportunity to marry will neither get them the health benefits nor transform them from outsider to insider."⁶²

Rather than pursuing marriage, Ettelbrick in her essay urged the gay rights movement to demand the recognition of a wide variety of familial arrangements.⁶³ Ettelbrick was particularly heartened by the potentially transformative effects of domestic partnership regimes, especially when participation was not limited to same-sex couples, or even to sexual or romantic relationships.⁶⁴ She emphasized, however, that it was crucial that those who were pushing for domestic partnership recognition not frame the issue "as a stepping stone to marriage."⁶⁵ Instead, Ettelbrick urged her fellow gay rights advocates to "keep our eyes on the goals of providing true alternatives to marriage and of radically reordering society's views of family."⁶⁶

After the publication of their dueling essays, "Stoddard and Ettelbrick took their debate on the road, address[ing] community meetings in several major cities around the country, and receiv[ing]

58. *Id.*

59. *Id.* at 687.

60. *Id.* at 686-87.

61. *Id.* at 686.

62. *Id.*

63. *Id.* at 687.

64. *Id.* at 687-88.

65. *Id.* at 688.

66. *Id.* Ettelbrick later elaborated on her concerns about the gay rights movement's pursuit of same-sex marriage as the primary way of seeking legal recognition of LGBT relationships and families. Paula L. Ettelbrick, *Wedlock Alert: A Comment on Lesbian and Gay Family Recognition*, 5 J.L. & POLY 107, 159-65 (1996).

extensive coverage in the lesbian and gay press. Their debate was played out in a steady stream of commentary during the next few years.⁶⁷ Although some of that commentary was sympathetic to Ettelbrick's position,⁶⁸ events quickly took over. The Hawaii Supreme Court's ruling in 1993 questioning the constitutionality of prohibiting same-sex marriage suggested that such marriages were not a pipe dream but a distinct possibility.⁶⁹ This unexpected victory led many movement leaders who had earlier opposed the pursuit of marriage on strategic—as opposed to, as Ettelbrick did, on ideological—grounds to reconsider their position. When only a few years later, a same-sex marriage lawsuit was filed in Vermont, it received the support of most gay rights activists from across the country.⁷⁰ The growing efforts to litigate the marriage issue, in turn, led social conservatives to push back, pressuring Congress to enact the Defense of Marriage Act in 1996.⁷¹ And the rest, as they say, is history.

Although the gay rights movement has not stopped pushing hard for same-sex marriage, the internal debate within the LGBT community over the advisability of seeking marriage for gay people, as the essays in this Symposium illustrate, continues to this day. Professor Strasser, following Stoddard, offers a spirited and unapologetic defense of the pursuit of same-sex marriage both as a worthy end in itself and as a means to achieve other crucial goals for LGBT people, such as establishing and maintaining parenting relationships.⁷² In doing so, Strasser explains why same-sex couples are likely to make the institution of marriage a more egalitarian and less patriarchal one.⁷³ As Strasser sees it, the move to same-sex marriage benefits not only the individuals involved but also society in general because the legal stability and social support that accompany

67. Arthur S. Leonard, *Going for the Brass Ring: The Case for Same-Sex Marriage*, 82 CORNELL L. REV. 572, 579-80 (1997) (book review).

68. See, e.g., Steven K. Homer, *Against Marriage*, 29 HARV. C.R.-C.L. L. REV. 505 (1994); Nancy D. Polikoff, *We Will Get What We Ask for: Why Legalizing Gay and Lesbian Marriage Will Not "Dismantle the Legal Structure of Gender in Every Marriage"*, 79 VA. L. REV. 1535, 1535-36 (1993).

69. See *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993).

70. The lawsuit eventually led the Vermont Supreme Court to require that same-sex relationships be afforded all of the rights and benefits available to married couples under state law. *Baker v. State*, 744 A.2d 864, 867 (Vt. 1999). For accounts of the legal and political battles over the recognition of same-sex relationships in Vermont, see WILLIAM N. ESKRIDGE, JR., *EQUALITY PRACTICE: CIVIL UNIONS AND THE FUTURE OF GAY RIGHTS* (2002), MICHAEL MELLO, *LEGALIZING GAY MARRIAGE* (2004), and DAVID MOATS, *CIVIL WARS: A BATTLE FOR GAY MARRIAGE* (2004).

71. Pub. L. No. 104-199, 110 Stat. 2419 (1996) (codified at 1 U.S.C. § 7 and 28 U.S.C. § 1738C (2006)).

72. Mark Strasser, *A Little Older, a Little Wiser, and Still Committed*, 61 RUTGERS L. REV. 507 (2009).

73. *Id.* at 514-19.

marriage make it more likely that more LGBT people will invest emotionally and financially in their familial arrangements.⁷⁴

Professor Polikoff, following Etterbrick, provides a trenchant critique of the marriage equality movement, a movement that she believes has, ironically enough, worked alongside its socially conservative opponents to further entrench and privilege the institution of marriage.⁷⁵ For Polikoff, the crucial social issue of our time is not the state's failure to recognize same-sex marriage, but is instead the injustice and inequality that emanate from the preferential treatment afforded by the nation's laws and policies to married couples at the expense of everyone else.⁷⁶ In her essay, Polikoff explains how, for most of the last twenty years, the gay rights movement has repeatedly chosen to pursue the narrower goal of same-sex marriage rather than the broader objective of promoting pluralism and diversity in the types of relationships and familial arrangements that merit legal recognition and social support.⁷⁷

Finally, Professor Stein questions the seeming irreconcilability of the Stoddard and Ettelbrick positions by noting that both the former's pro-same-sex marriage approach and the latter's pluralist approach have produced significant gains for LGBT people.⁷⁸ In surveying the current same-sex relationship recognition landscape, Stein finds considerable progress not only in the realm of same-sex marriage, but also in that of alternative forms of recognition, including domestic partnerships, civil unions, and reciprocal beneficiaries.⁷⁹ In the end, Stein concludes, the choice between Stoddard and Ettelbrick's positions is a false one because LGBT people have more to gain by embracing both than by choosing one.⁸⁰

What is clear from the three essays included in this Symposium is that we are living through a remarkable era of actual or potential tectonic changes in the legal recognition of familial arrangements, much of it driven by the fact that society is grappling with the existence of LGBT people and their relationships. This means that the strategic and ideological choices made by the LGBT community and the gay rights movement on matters related to relationship recognition are likely to continue to have a major impact not only in

74. *Id.* at 517-21.

75. Nancy D. Polikoff, *Equality and Justice for Lesbian and Gay Families and Relationships: Marriage Is Still Not the Path*, 61 RUTGERS L. REV. 529 (2009).

76. *Id.*

77. *Id.*

78. Edward Stein, *Marriage or Liberation?: Reflections on Two Strategies in the Struggle for Lesbian and Gay Rights and Relationship Recognition*, 61 RUTGERS L. REV. 567 (2009).

79. *Id.*

80. *Id.* at 591-93.

determining the rights of LGBT people, but also in helping to set the nation's social and moral priorities.
