
JUST LIKE EVERYONE ELSE

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Katherine Franke’s vivid and illuminating description of the backlash against African-Americans that accompanied the freedom to marry illustrates how marriage rights come with significant costs. For gays and lesbians, the benefits of marriage equality seem to have been well worth the sacrifices but for African-Americans the advantages are much less obvious. Franke asserts that “part of the success of today’s marriage equality movement lies in the capacity of homosexuals to cleave the sex out of homosexuality—a tactic unavailable to people of color, who are unable to separate themselves from the racial mark that underwrites their second- class social, legal, and political status.”¹ After reading this statement, I felt a sense of utter hopelessness because it is undoubtedly true. Racial minorities continue to endure second-class status even as other groups are well on the road to acceptance as full citizens. So while we should all celebrate the success of the marriage equality movement as a victory for civil rights, I cannot help but wonder whether racial minorities will ever cease to be seen as Other, and thus, inferior.

To be fair, gays and lesbians paid what some of us would consider a high price for acceptance by the majority. As Franke demonstrates, the marriage equality movement had to pretend that sex is irrelevant to homosexuality and emphasize similarities with heterosexuals in order to appeal to the majority. One should not minimize these costs but marriage recognition has done more than just extend the tangible and economic benefits of marriage to gay and lesbian couples. As Franke explains, marriage equality has also been “a site of reinvention and redemption” and a “vehicle for humanization and destigmatization” for homosexuals who are increasingly seen as “just like everyone else.”² African-American slaves understood that the right of family recognition, including the right to marry, was a prerequisite to citizenship.³ But while African-Americans secured the right to marry 150 years ago, marriage has yet to bring them dignity and equality and instead, as Franke asserts, has “served as a test that African-Americans were doomed to fail.”⁴ Drawing on the rich

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¹ KATHERINE FRANKE, *WEDLOCKED: THE PERILS OF MARRIAGE EQUALITY* 6 (2015) (emphasis added).

² *Id.* at 19.

³ Brief of Amicus Curiae Experiential Learning Lab at New York University School of Law in Support of Petitioners, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (Nos. 14-556, 14-562, 14-571 & 14-574).

⁴ FRANKE, *supra* note 1, at 19.

histories of diverse and fluid families that she uncovered in both the gay and African-American communities, Franke explores why marriage rights brought gays and lesbians dignity but “reinforced rather than erased a notion of racial difference” for African-Americans, a difference that has been used to “justif[y] the many forms of inequality” that African-Americans experience.⁵

The obvious answer is race. Franke deftly shows that while gays and lesbians were able to take sex out of the definition of homosexuality and redefine gay identity around familial devotion, African-Americans have not been able to redefine what it means to be Black. The stereotypes that have been attributed to Black men and women since slavery are still part of our cultural understanding. In contrast, the stereotypes of homosexuals are rapidly fading into the past. By featuring same-sex couples in monogamous, long-term, financially stable relationships, and in particular those who are raising children—oftentimes children that society had relegated to a broken foster care system⁶—marriage equality advocates reassured the majority that homosexuals shared their values and lifestyle. This allowed society to forget that homosexuals have sex. As Franke quips, same-sex marriage is “where homo-sex goes to die.”⁷

Why haven’t African-Americans been able to, in Franke’s words, “rebrand blackness in such a way that sanitized racist stereotypes?”⁸ Why are African-Americans (and other racial minorities) perceived as Other? Although Franke is undoubtedly right that the perception of the marriage equality movement as a White movement benefitted gays and lesbians’ quest for civil rights,⁹ in my view, racial segregation might be as important as race itself. Gays and lesbians are integrated into dominant society but African-Americans are quite segregated from the majority. Same-sex couples live in the same neighborhoods as heterosexuals, and many, if not most people, have a gay family member (even if they don’t know it yet), friend, or colleague. In contrast, in our racially segregated nation, most Whites do not have any close non-White friends.¹⁰ The residential and social distance between racial groups leads Whites to assume that minorities are not like them. They can point to the high rate of nonmarital births to African-American women, policymakers’ portrayal of low-income Black fathers as absent, and the depiction of low-income African-American mothers as “welfare queens” as “evidence” that African-Americans have different values, priorities, and morals.

Just as important, the gay and lesbian families that have been featured in the marriage equality movement look very much like traditional all-American families. They are monogamous, financially stable, two-parent families. And

⁵ *Id.* at 62.

⁶ *Id.* at 186.

⁷ *Id.* at 228.

⁸ *Id.* at 61.

⁹ *Id.* at 204.

¹⁰ Christopher Ingraham, *Three Quarters of Whites Don’t Have Any Non-White Friends*, WASH. POST, Aug. 25, 2014.

they are perceived as White—a perception that (although inaccurate) the marriage equality movement has done little to rebut. In contrast, African-American families are disproportionately poor, nonmarital, dependent on government assistance for their support, and as Franke notes, they are portrayed as “fragile and socially undesirable”¹¹—the polar opposite of traditional (and desirable) families. Indeed, as Franke asserts, by emphasizing “the inherent dignity and decency” of same-sex families “thereby distinguishing them from other undeserving dysfunctional or immoral sexual or kin formations,”¹² the marriage equality movement unwittingly (or maybe intentionally) distanced itself from African-American families. Furthermore, as Franke’s work reveals, marriage equality advocates protected their children at the expense of others. Children of unmarried parents continue to be stigmatized today,¹³ but rather than attempt to eliminate the stigma of illegitimacy for all children, marriage equality advocates used it as an argument for why same-sex couples should be allowed to marry.¹⁴ By advocating primarily for the children of same-sex couples, marriage equality advocates showed little concern for the most vulnerable children—those of poor, unmarried, African-American mothers.

The freedom to marry clearly failed to provide African-Americans with dignity and equality, but I wonder whether interracial marriage has done that work for at least some minorities. Franke concludes that, despite numerous studies finding that nonmarital children are more likely to be poor, underachieve educationally, abuse drugs, and engage in delinquent or criminal behavior, marriage is unlikely to lead to better outcomes for African American mothers and their children.¹⁵ I agree with Franke that given African American men’s poor prospects in the job market, “heterosexual marriage to a black male is not a great economic strategy for black women.”¹⁶ However, the pool of marriageable men is not limited to Black men. Some African-American women marry White men, and those women and their children experience better economic outcomes than those who marry African-American men or do not marry at all.¹⁷ In addition, interracial marriage may lead to integration. Interracial couples gain family members of a different race and are more likely than same-race families to reside in diverse neighborhoods and have friends of different backgrounds.¹⁸

¹¹ FRANKE, *supra* note 1, at 88.

¹² *Id.* at 13.

¹³ See generally Solangel Maldonado, *Illegitimate Harm: Law, Stigma, and Discrimination Against Nonmarital Children*, 63 FLA. L. REV. 345 (2011).

¹⁴ FRANKE, *supra* note 1, at 112-13.

¹⁵ *Id.* at 88.

¹⁶ *Id.*

¹⁷ Wendy Wang, *The Rise of Intermarriage* 19, PEW RESEARCH CENTER, Feb. 16, 2012, available at <http://www.pewsocialtrends.org/2012/02/16/the-rise-of-intermarriage/>.

¹⁸ Richard Wright, Mark Ellis & Steven Holloway, *Where Black-White Couples Live*, 32 URB. GEOGRAPHY 1 (2011).

Intermarriage may also help shatter stereotypes as it may be more difficult to treat members of a group as Other when they are your family and friends.

Yet, despite these benefits, it is quite risky to look to interracial marriage as a tool for equality. First, marriages between African Americans and Whites are still rare, comprising only 11% of all new intermarriages.¹⁹ More importantly, Franke's work alerts us to the perils of seeking equality through marriage. It might benefit those who conform to society's notion of the optimal family form, but it may well do harm to those who cannot (or will not) fit their lives into that mold.

¹⁹ Jeffrey Passel, Wendy Wang & Paul Taylor, *Marrying Out: One-in-Seven New Marriages is Interracial or Interethnic* 1, PEW RESEARCH CENTER, June 4, 2010, available at <http://www.pewsocialtrends.org/2010/06/04/marrying-out/>.