

Article

“I Do, I Don’t”: The Benefits and Perils of Legalizing Same-Sex Marriage in the United States—One Year Later

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Abstract: In 1970, a gay male couple applied for and was given a marriage license in Minnesota. The license was eventually rescinded by court order. Forty-five years later, the U.S. Supreme Court ruled that Section 3 of the Defense of Marriage Act, limiting the federal definition of marriage to consist of one man and one woman, was unconstitutional. The result was the legalization of same-sex marriage in the United States. The purpose of this article is to discuss the importance of establishing the right for same-sex couples to legally marry. It outlines the benefits and costs to LGBT communities one year after the establishment of same-sex marriage in the U.S. This paper explores the limits of utilizing a rights-based approach when advocating social change. The recommendation is for LGBT individuals, communities and allies to shift tactics to adopt a capabilities approach to organizing and mobilizing people, groups, and organizations around issues of injustice. A capabilities framework addresses the complexities of individual and community needs while providing a foundation for coalition building and lasting positive social change.

Keywords: same-sex marriage; LGBT marriage; social movement; social change; gay marriage

1. Introduction

In 1970, Jack Baker and Michael McConnell applied for a marriage license in Minneapolis, MN. After being turned down by the county, they began their fight for their right to marry [1–3]. In 1971, the Minnesota Supreme Court ruled that it was constitutional to limit marriage to opposite sex couples. This decision was upheld via the U.S. Supreme Court’s dismissal of Baker and McConnell’s appeal in 1974 [4]. In 1996, the Defense of Marriage Act (DOMA) was established by Congress in response to the growing increase in the legal recognition of same-sex partnerships throughout the nation [5]. DOMA limited federal marriage recognition to married opposite-sex couples [5]. States could determine their own marriage laws but same-sex marriages were not federally recognized. In 2013, *United States v Windsor* was heard by the Supreme Court on the grounds that DOMA was discriminatory. The Court ruled that Section 3 of DOMA, which defined marriage as a relationship between opposite sex couples, was “unconstitutional as a deprivation of the equal liberty of persons that is protected by the Fifth Amendment” ([6], p. 1). In their decision, the Court described same-sex couples who were married by a state yet not federally recognized, as having a “second-tier marriage” when compared to opposite-sex marriages ([6], p. 23).

The complexities of DOMA is an example of what Nancy Fraser calls “injustice of recognition” as same-sex married couples’ lack of federal recognition “prevents them from *participating* as a *peer*

in social life" ([7], p. 176). "Misrecognition is a social relation, not a psychological one," and is a "consequence of *institutionalized* patterns of interpretation and evaluation that constitute one as comparatively unworthy of respect or esteem" ([7], pp. 176–77). The decision in *Windsor* creates federal recognition of same-sex marriages and allows for states that sanction same sex-marriages to continue. It did not result in requiring all states to recognize and provide marriage licenses for same-sex marriages, which subtly reinforces prejudices and stigma, justifying discrimination toward LGBTQ¹ people. *Windsor* paved the way for *Obergefell et al. v. Hodges*, which challenged the constitutionality of limiting marriage to opposite-sex couples. The Court agreed and found that LGB rights were violated under the Fourteenth Amendment [8].

At a time when groups were fighting for equal rights for LGBTQ people in areas of employment, immigration status, and safety, it is curious that national LGBTQ organizations shifted focus onto legalizing same-sex marriage. At question is not the validity of the desire for couples to marry and gain the same rights and protections as opposite-sex couples. Yet there are unanswered questions: Why the shift in strategy? What is the potential impact on all LGBTQ people? Will this result in an increase in acceptance or an expectation of adopting the mainstream model of a nuclear family? What happens if a community is unwelcoming to same-sex couples? This essay explores some of the advantages and disadvantages of legalizing same-sex marriage and concludes with a recommendation to adopt a capabilities framework as part of an organizing strategy. This approach moves beyond recognizing basic rights to developing an ethos that also strives to achieve social justice and a dignified life for all.

2. Discussion

2.1. Benefits of Marriage

Forty-five years post-*Baker*, after multiple legal challenges and changes throughout the country the U.S. Supreme Court overruled *Baker* in *Obergefell et al. v. Hodges*, thus legalizing same sex marriage across the United States, except for Native American Tribes as they are sovereign nations ([2,8–10]). When the Supreme Court decision was announced on 27 June 2015, President Obama called it a "victory" proclaiming "when all Americans are treated as equals we are all free" [11]. Images of rainbows and same-sex marriage ceremonies dominated mainstream media. President Obama and Vice-President Biden were photographed running thorough the White House carrying a rainbow flag, and that night, the White House was illuminated in rainbow colors. The decisions in both *Windsor* and *Obergefell* were a significant step forward in advancing civil rights for LGBTQ identified individuals in the United States. While same-sex couples have maintained long-term committed relationships for centuries, legal recognition of these relationships is a fairly new phenomenon [12–16]. At the time of the *Obergefell* decision, twenty countries (10% of all nations) and 36 (72%) U.S. states had legalized same-sex marriage.

As it is difficult to determine how many people identify as LGBTQ, it is also challenging to ascertain how many wish to or are already married to a same-sex partner. The best data existing on marriage rates are the number of marriage licenses and divorce decrees in the country. In fact, while legally recognized same-sex marriages have been happening since 2004, it was not until 2013 that the U.S. Census said it would begin to count same-sex marriages in 2014 [17]. The national marriage rate for heterosexuals in the U.S. has decreased from 8.2 in 2000 to 6.9 (per 1000) in 2014 [18]. There is some evidence that these marriages are lasting longer than in the early 2000s as the divorce rate has also decreased from 4.0 in 2000 to 3.2 (per 1000) in 2014 [18]. In 2015, four months after *Obergefell* was decided, approximately 45% of same-sex couples were legally married, however much of this data is based on self-reporting [19]. The percentage of the U.S. population that identify as LGBTQ range from

¹ LGBTQ represents individuals who identify as lesbian, gay, bisexual, transgender or queer. Different variations of these abbreviations appear throughout the paper and vary by context. Often, LGB will be used when only discussing same-sex partnerships or marriages.

4% to 10% of the population; it is known that the 96,000 same-sex couples who married in these same few months represent 11% of all new marriages in that time period [3,15,19,20].

Marriage is an important rite of passage in many societies and cultural traditions [8,12,21]. Combined with family, it provides the early foundation for shaping morals and socializing children. In the United States, before the 20th century, many opposite-sex couples married for social and economic class status. Some family members arranged marriages, indentured servants were sometimes forced into marriage, others married due to pregnancy, and some for love [12]. In the 1920s, cultural beliefs about marriage began to shift to focusing on love and companionship as the central reason for marriage [12]. As women's independence evolved, art, media, and advertisements popularized images and stories of the 'perfect' wedding and the 'ideal' marriage, which was largely based on Judeo-Christian beliefs and Euro-American culture [12,21,22].

The merger and growth of industrialization and capitalism after World War II strengthened the foundation of today's wedding industry and further solidified societal expectations of marriage and family structure in the country [12,22]. One place this is evident is in U.S. mainstream television shows ranging from *Father Knows Best* (1954) to current hits such as *The Bachelor* (20 seasons since 2002) and *The Bachelorette* (12 seasons since 2003). Thousands of television shows, movies, and social media sites depict marriages and engagements as desirable. These images dominate U.S. popular culture [12,22]. The marriage industry is estimated to generate between \$40 and \$70 billion annually [23]. In 2015, there were an estimated 2.5 million weddings in the U.S. at an average cost of \$32,641 [24]. Early reports of same-sex marriages have mixed estimates regarding wedding cost. One study found that, on average, same-sex couples having a wedding out-of-state spent one-tenth of what residents paid for a wedding [25]. A 2014 report estimated same-sex marriage would generate \$2.6 billion in revenue in the first three years of marriage with an additional \$184.7 million in state and local tax revenues [26].

The foundation for legal marriage is an agreement that is primarily regulated by property law [27]. The original basis of a marriage contract solidified a husband's control over his wife and children with the expectation that he provide adequately for the family. The wife operated the household, raised the children, and was subservient to her husband [12,21,22,27]. While the country has progressed since this time, many believe in traditional marriage roles and the original laws and customs that form the foundation of marriage and family law [8,27–32]. In addition to media and law reinforcing traditional marriage arrangements, policies and practices in areas of commerce, employment, housing, education, medicine, and healthcare continue to reinforce opposite-sex marriage as the ideal [21,22,29].

For LGB couples seeking to marry, some believe that recognition on a federal level may reduce stigma and increase acceptance. In Justice Kennedy's decision in *Obergefell*, he affirmed the impact of stigma on LGB couples. Kennedy wrote that "without the recognition, stability and predictability marriage offers, children suffer the stigma of knowing their families are somehow lesser" ([8], p. 2). Whereas Chief Justice Roberts' dissent sought to maintain the status quo and challenge the role of the Court in defining marriage despite previous Court rulings related to marriage and intimate relations [33–36]. Exhibiting a classic 'if it ain't broke, don't fix it' approach, Roberts writes, "[t]he majority expressly disclaims judicial 'caution' and omits even a pretense of humility, openly relying on its desire to remake society according to its own "new insight" into the "nature of injustice" ([8], p. 3). By arguing that marriage is *always only* for opposite-sex couples, Roberts is supporting a conservative argument that continues to be used as a means to discriminate against same-sex couples and by extension the LGBTQ communities across the country. Some advocate a wider definition of family and marriage. Paula Ettlbrook argues that "a better approach for our community would be to expand the definition of family, rather than confine ourselves to marriage . . . [it] would open up much broader possibilities for recognition of all" same-sex family relationships ([30,31]; [37], p. 31).

In one feature by the *New York Times*, couples married after the *Obergefell* decision expressed how important it was to have marriage legalized on a federal level [38]. Similar to others' experiences across the nation, some reflected on discrimination and hostility they had faced in their lives as well as family hesitation around having a public ceremony. One person said,

“My husband’s parents were a bit hesitant and frightened by the idea of a big public wedding. They wanted us to keep the whole thing more private, discreet. It was very helpful to have the actual president of the United States on television saying this was a good thing. The tidal wave of news and social media posts about gay marriage gave us some legitimacy at the exact right moment.” ([38], p. 1)

Kennedy’s decision touched on the importance of recognizing stigma, discrimination and violence LGBTQ people endure in U.S. society and how marriage can help mediate these things. In his decision, he quoted a passage from the Massachusetts case that led to the legalization of same-sex marriage in that state (*Goodridge v Dept of Public Health 2003*). Marriage holds an essential role in this nation as “it fulfills yearnings for security, safe haven, and connection that express our common humanity; civil marriage is an esteemed institution, and the decision whether and who to marry is among life’s momentous acts of self-definition” ([8], p. 13; [9,12–14]). Dean Spade notes that when same-sex couples live together in monogamous relationships or get married, they can “move from being highly stigmatized to being considered acceptable” ([39], p. 29).

2.2. Perils of Legalizing Marriage

Many marriages are not as idyllic as portrayed in the promotion of legalizing same-sex marriage. Often, they can be quite stressful, due to societal expectations of married couples. In addition to possible challenges related to intimate relationships, the inclusion of children, employment and financial stress can contribute to an increase in personal struggles. [40–42]. Relationships can also be violent. For example, on average, over 20,000 phone calls are placed to domestic violence hotlines in the United States. More than 10 million people are abused by an intimate partner each year [43]. It is “estimated [that] 1 in 15 children are exposed to domestic violence each year and 90% witness” the violence ([43], p. 5). Same-sex partnerships have the same stressors as opposite-sex couples and often anxieties are intensified due to LGBTQ discrimination. Some studies have found that “minority stress” and prejudice that LGBTQ individuals face have a deleterious effect on their health and relationships [41,42,44–51]. The marketing campaign in favor of same-sex marriage rights depicted couples as happy, secure, loving, and carefree. In reality, many LGB married couples are adapting and doing their best to merge into mainstream married life designed for and by heterosexuals and reinforced by social institutions that are often the source of LGBTQ oppression [30,37,48]. Angela Davis reminds us that assimilation is not always possible nor does it solve many issues that LGBTQ people face. She notes, “the structures of heteronormativity, and the various violences these structures and discourses entail, do not necessarily disappear when the sexuality of the participants is changed” ([29], p. 161). This is further complicated if one is a member of other oppressed populations as U.S. institutions and culture are designed to push people into a specific way of being that is “enforced through internal and external policing and discipline” ([30], p. 104). Popular rhetoric may claim support of difference yet this masks the reality that there is little tolerance for those who do not conform to expected norms [15,30,31,39].

The decision to emphasize marriage as *the* main focus of efforts taken to improve the lives of LGBTQ individuals and communities is a bit murky. The organization ‘Freedom to Marry, Freedom to Love’ is a sales pitch as much as a goal to attain access to legal marriage. LGBTQ people as well as heterosexuals have successfully had romantic love relationships and partnerships for centuries, whether or not it was legal. The ‘Freedom to Marry, Freedom to Love’ organization founded by Evan Wolfson was one of the key groups working to advance the right for same-sex couples to marry [10,49]. By using a state-by-state approach to advance rights combined with lawsuits advancing their way through the courts; plus working in partnership with national organizations along with wealthy donors, they were successful at making same-sex marriage legal in the United States [11,21,49–51].

At question though, is why did marriage become the central focus of change for LGBTQ communities? Was there a definitive crisis involving marriage that Wolfson and the national organizations such as the Human Rights Campaign were responding to? Determining a specific focus

for advancing LGBTQ equality is challenging as sexual orientation cuts across all races, ethnicities, genders, classes, ages, and other clearly defined populations. The common thread uniting LGBTQ people is sexual orientation. The ways in which a person's romantic, intimate, sexual experiences, and relationships impact her or his life is deeply personal and often difficult to mobilize around. Many LGBTQ individuals are focused on the necessities of daily living, therefore marriage is often not a top priority [13–15,30,31,37,39,50,51].

As previously noted, legal marriage brings with it recognition and rights from various private and state apparatuses including health care benefits, social security benefits, tax benefits along with positive social status. "It is an economic institution. It is about property. It is not about human relations, or intimate relations" ([21]; [29], p. 161; [52]). It is also recognition of a specific intimate type of relationship that two people have with one another [30,51,53]. For many in the LGBTQ community, marriage represents transcending Fraser's "injustice of recognition" and for a select few this is possible. Numerous LGB individuals in leadership positions, working for the campaign as well as providing significant financial backing, had surpassed daily struggles and injustices that other LGBTQ individuals face due to racism, sexism, nationalism, ableism, classism, transphobia, and discrimination due to incarceration, religious affiliation and geographic location [7,30,37,39,53–56]. Therefore, access to legal marriage was the last barrier that needed to be dismantled.

The push for marriage is viewed by some as a classist goal [21,37,48,53,55,57]. For example, in the U.S., college graduates have a higher rate of marriage and better options for high earnings. A 2010 study by the Pew Institute found that 64% of college graduates married compared to 48% of high school graduates [58]. One of the main reasons people do not marry is financial; this is particularly true for women [53]. Although the gender pay gap between women and men has narrowed, recent data show that women as a whole are paid 20% less than men who are in the same position [59]. Same-sex female couples compared to same-sex male couples are likely to earn significantly less income, especially if they do not have a college degree. There are more single women raising children compared to single men. Women tend to earn less and have difficulties advancing in their careers due to the complex balance of job and children [53,57–59]. Similar to heterosexual couples, lower-income same-sex female couples with children who marry would likely benefit with an increase in income. However, for many lower-income couples, it may be just enough of an improvement to put government benefits for children into jeopardy [59]. This may not be the same situation for same-sex male couples with children.

Same-sex couples may also face challenges within their communities and families due to lack of acceptance and understanding [14,29,30,37,50,53,60–64]. Several choose to remain silent and hidden within and outside of their communities due to prevailing adverse cultural and family beliefs, religious traditions, racism and homophobia [8,14,48,50,61–64]. LGBTQ people face

"the sting of social disapproval and the persistence of discrimination in nearly every facet of everyday existence." For "most of the 20th century and continuing even today, many gay people have lived their lives 'in the closet' so as not to risk losing a job, a home, or the love and support of family and friends." ([61–64]; [65], p. 3)

In places where non-discrimination policies for LGBT do not exist, married same-sex couples are at risk of being fired, denied housing, and other public accommodations without recourse if they revealed their sexual orientation. For many white LGB people, particularly those who are well-educated and have resources, the "Freedom to Marry" campaign provided an opportunity to work for social change that they would directly benefit from as this was likely *the only* place where they faced discrimination [7,30,31,36,48,50,66]. Unfortunately for those struggling financially or working in a state without LGBTQ protection, marriage usually offers little increased benefit. Coincidentally, the Employment Non-Discrimination Act (ENDA) was facing a crucial vote when the push for marriage intensified. All LGBT national organizations mobilized around marriage instead of ENDA. Therefore, when ENDA failed to pass a vote in the House, it was finished. This bill could have been of great benefit to the vast majority of LGBTQ individuals as well as heterosexual people.

For non-whites, the complexities of living in the U.S. present many challenges beyond a single focus on race, gender, class, or sexual orientation. It is essential that an analysis of inequality utilize an intersectional framework of analysis when examining social issues and strategizing for change [28,51,66]. While one issue may be more salient at a particular moment, this does not mean that the impact of other systems of oppression cease to matter. “Our understanding of structural aspects is fundamentally connected to and mediated by conceptual constructs—the way we talk and think about any social group will influence the place we assign it within the social realm, and the way we treat people who fit in it.” ([67], p. 101). Images of same-sex couples and marriages during the campaign as well as after *Obergefell* are dominated by pictures of white couples [47,49,68]. This is what most people in the U.S. saw when viewing mainstream media and discussing same-sex marriage [51,53,54,59]. Wealthy whites were the primary spokespeople, leadership, and financiers of the push for same-sex marriage. This structure has been criticized since the LGBTQ movement began. Unless mainstream primarily white, national organizations, which are seen as the leadership of whatever LGBTQ ‘movement’ there is, truly take a more inclusive approach, change will continue to be driven by whites. Writing about the post-Stonewall era, Essex Hemphill states,

“It has not fully dawned on white gay men that racist conditioning has rendered many of them no different from their heterosexual brothers in the eyes of black gays and lesbians. Coming out of the closet to confront sexual oppression has not necessarily given white males the motivation or insight to transcend their racist conditioning.” ([60], p. 95)

Certainly, this “conditioning” or socialization that all people are subjected to in some way when living in the U.S., has an impact on decisions to marry.

The issue regarding the structure and history of marriage in the U.S. has a different level of concern for people of color. Many are critical of the history and structure of the institution of marriage and power dynamics within marriage. Research show that there is a hesitancy to marry due to mainstream expectations of marriage as well as how marriage, inequality, and slavery are intertwined [48]. While often ‘invisible’ in mainstream America, communities of color are often subjected to inappropriate or ineffective programs, such as President Bush’s “Healthy Marriage Initiative”. This policy was aimed at poor communities of color in an effort to encourage marriage and perhaps save the government resources due to loss of benefits because of marriage status ([48], p. 76; [50]). For LGBTQ individuals and couples of color, many find they do not belong in their communities because of their sexual orientation. Yet, they are also invisible within the LGBTQ community because of their race/ethnicity [14,48,50,56,60,69]. From this vantage point, marriage may be a marker of assimilation, a means of survival, and/or a revolutionary act for LGBTQ couples of color.

The decisions in *Windsor* and *Obergefell* were not greeted with great joy by many conservatives across the country. Religious leaders and politicians, particularly Republican candidates running for the 2016 Presidential nomination, quickly objected to the *Obergefell* ruling. Senator Lindsay Graham and Governor John Kasich noted that they would abide by the ruling even though they were disappointed and did not agree with it [70,71]. Other candidates such as Governors Scott Walker and Bobbie Jindahl turned the decision into an example of legalized religious prosecution of those opposed to the ruling due to religious beliefs [70,71]. They called for a constitutional amendment to keep marriage for opposite sex couples only [70,71]. While the amendment is unlikely, there is cause for concern as President Trump is against same-sex marriage. Of greater concern is Vice-President Mike Pence of Indiana who actively opposes anti-LGBTQ rights and favors discrimination of LGBTQ individuals [70].²

² Protection for LGBTQ identity varies by state. Hate crime laws recognizing crime directed specifically at someone due to their perceived sexual orientation or identity as transgender were primarily established in the 1990s. Laws focusing on

After the *Obergefell* decision, an Alabama Judge ruled that it was illegal to marry same-sex couples and would not allow licenses to be issued [72]. This has changed, yet there are a few counties in Alabama, Texas and Kentucky that will not issue licenses [72–75]. Before and after the *Obergefell* decision, numerous stories emerged around the U.S. of people refusing to provide goods or services for LGBT weddings. This spurred new types of legislation, such as ‘Pastor Protection’ Acts which allow religious leaders to refuse to marry same-sex couples if they disagree with the wedding on religious grounds.³ Other states have adopted laws that allow people to refuse services to LGBT individuals [73–80]. The extent of this conflict is significant and illustrates that “same-sex marriage has stirred so much resistance” that it has revealed “how widespread America’s attachment is to a narrow vision of marriage.” It also shows how “widespread the reluctance is to accept gay people within the social mainstream” ([2], p. 295). While much of the nation and the LGBTQ community celebrate the legalization of marriage, the level of the nature of negative responses also illustrates the precarious nature of a rights-focused approach to creating lasting social change.

Coupled with the anti-LGBT marriage rhetoric are efforts to eliminate access to public spaces across the U.S. [81]. Many of these initiatives extend their focus to individuals who identify as transgender. Stories pepper social media about children being sent home from school for not dressing to match their biological gender or by openly identifying as transgender [82,83]. For example, in *G.G. v. Gloucester County School Board*, Gavin Grimm, who is a transgender female to male student, sued the school board for denial of access to use the boys’ bathroom at his school [82]. The school system created a policy that people must utilize the bathroom that matches their biological sex due to complaints of Grimm using the boys’ bathroom [82]. In August 2016, the U.S. Supreme Court issued a temporary order, blocking Grimm’s use of the bathroom and in October 2016, it agreed to hear the case [82,83].

In May, 2016, the US Justice Department and Department of Education issued a directive that all public schools must allow transgender students to use the bathroom of their choice [84]. Ten states filed a lawsuit against the government arguing that Title IX protections do not apply and that the government was overreaching [85].⁴ North Carolina made headlines in April 2016 for adopting a law that made it illegal for people to use public bathrooms and locker rooms that did not match their biological sex [73,76,77,86]. In the midst of protests and contentious debates, stories emerged of men monitoring women’s bathrooms looking for people violating the law [85–88]. While unnerving and despite the backlash against North Carolina via boycotts [81], the law still stands. At the heart of the law is the increased difficulty for individuals filing discrimination lawsuits in the state and the elimination of the minimum wage law, which was largely ignored in the press. In essence, transgender individuals are the scapegoats being used to advance laws that otherwise would not have been adopted [29,73,74,81,86].

Often incendiary language coupled with anti-LGBTQ backlash can lead to violence. The National Anti-Violence Project (AVP) 2015 report on violence impacting LGBTQ people highlights the complexities of LGBTQ individuals’ lives, which were largely erased during the marriage campaign [89]. It also calls attention to the brutality many face in immigrant detention centers and the positive impact of the Black Lives Matter Movement [88]. The annual report is based on 13 AVP sites around the country. For 2015, they documented 1253 survivors of violence; 62% of homicides were people of color and 67% of these homicides were transgender and gender non-conforming

increasing access and eliminating discrimination for LGBTQ individuals became more widespread in the 2000s. Currently, four states have hate crime statutes for both sexual orientation and gender identity. An additional 14 states have hate crime laws for sexual orientation. Laws protecting individuals from discrimination also vary. Twelve states offer protection for gender identity and 22 recognize sexual orientation. Of these states, 18 states offer both and four recognize sexual orientation. Eighteen states also provide protection from discrimination for sexual orientation and gender identity in the areas of housing and employment. Seventeen of these states also offer protection for accessing public accommodations.

³ The states are Alabama, Arkansas, Georgia, Kentucky, Louisiana, Tennessee, and Texas. The law is immaterial as they already can refuse to conduct any marriage that they do not want to conduct.

⁴ The states are Texas, Wisconsin, Arizona, Alabama, West Virginia, Tennessee, Maine, Oklahoma, Louisiana and Georgia.

people ([89], p. 9). The Federal Bureau of Investigation reports that LGBTQ identified people have experienced the highest reported rate of hate crimes in the U.S. since 2014 [90,91]. Stories of couples being beaten and harassed after the *Windsor* and *Obergefell* et al. decision have appeared throughout social media including one where two women were arrested in Honolulu for holding hands [92]. In the wake of the legal push for marriage, it is easy to forget that people experience discrimination and violence for doing simple things that opposite-sex couples can do openly, including holding hands or showing affection in public [92]. One extreme example of this is the violence that happened at the Pulse Nightclub in Orlando, FL. On 12 June 2016, 49 people were killed and an additional 53 were injured when one assailant entered the club and started shooting [93]. This massacre is certainly an incident that caused the nation to pause and reflect on anti-LGBTQ violence, yet little has changed in the wake of the event.

3. Conclusions

Strategizing for Social Change: An Additional Approach

Rights-based strategies are long proven mechanisms for creating social change in the U.S. However, they are limited as they often simply grant access to something rather than creating a cultural shift [29,30,39,55,56,93]. Many note that despite the Civil Rights Act of 1964, violence and discrimination continue in communities of color. Rates of incarceration for African and Latino/a Americans remain at proportionally higher rates than whites. The Black Lives Matter Movement's efforts have shown that, people of color are dying at the hands of the police at significantly higher rates than whites [29,30,89,94,95]. Additional legal actions need to occur to ensure that rights are being honored. Continued efforts on many levels must take effect in order to create a lasting cultural shift. This is evident in the rapid anti-LGBTQ backlash that has happened since the *Obergefell* et al. decision.

It is important to celebrate the significance of the right for same-sex couples to marry. It also remains necessary to continue to organize across a multiplicity of factors affecting LGBTQ individuals' lives including the impact of racism, classism, sexism, nationalism, ageism, issues related to varying abilities, religious intolerance and xenophobia. As this article is being written, there is a tremendous, often violent, backlash against LGBTQ individuals. Community gathering places are disappearing partially due to the impact of assimilation, and many politicians are using anti-LGBTQ rhetoric and proposed legislation as a foundation for their personal success. For LGBTQ individuals, the cost of marriage and increasing 'acceptability' encourage people to 'pass' or 'cover,' and to hide their LGBTQ selves, thus eroding away LGBTQ communities and culture. "There is no collective lesbian and gay past, there is only the straight-defined assimilationist future" ([96], p. 81). Any protection from discrimination or mistreatment due to social status is based on state-by-state laws and in some cases, city or town ordinances. Limited protection exists at the federal level. The new Republican administration and legislature are promoting an anti-LGBT agenda that includes supporting conversation therapy for LGBT youth, a repeal of same-sex marriage rights and various protections from discrimination or violence.

Rights-based change is essential to achieve needed legal protections, yet they often fall short of addressing other needs. After *Obergefell*, in an interview with Evan Wolfson, he was asked what his next steps were going to be. Wolfson noted that "we've now achieved our goal. So we will, in a matter of months, shut down" [49]. He discussed the need to continue to "harness the power of the marriage win" and to keep working on LGBTQ issues, but failed to recognize the loss of the network that was created via the "Freedom to Marry" organization. Without a means to keep those involved together, the coalition died. Cornel West reminds us to take heed as "the fundamental forms of social misery in American society can be neither adequately addressed nor substantially transformed within the context of existing legal apparatuses" ([52], p. 269). Why did 'Freedom to Marry' not restructure and become a coalition that works on numerous issues facing LGBTQ individuals? Certainly, Wolfson is clear that marriage was *the* major barrier to cross. This reflects the limits of the marriage campaign,

of a rights-based approach and a leadership focused on a goal that is most beneficial to them rather than what LGBTQ people need. Marriage only recognizes certain types of families and a specific kind of relationship. The campaign has “only been fighting for families that look exactly like the ideal of a straight family.” It ignores the “structural dimension of how these decisions give people access to certain cultural institutions,” which is limiting and often the source of discrimination ([9,39,48]; [50], p. 1; [64,67,69]). There is nothing that must change in these social systems except to grant access to a few more people. Urvashi Vaid notes that improved access does not transform into equality, “civil rights do not change the social order in dramatic ways; they change only the privileges of the group asserting those rights” ([67], p. 183).

I suggest that the addition of a new framework for organizing, and a shift in the mindset and approach to creating change is essential. Economist Amartya Sen has argued that people’s capabilities must be taken into account when addressing human rights issues [97]. The basic premise is that the ‘one size fits all’ approach fails to adjust for differences in people’s lives. By paying attention to what “people are able to do and be”, it can bring us closer to “understanding the barriers societies have erected against full justice” ([97], p. 33). Martha Nussbaum states, “the language of capabilities gives important precision and supplementation to the language of rights” ([97], p. 37). Under the context of human rights, which places emphasis on “people’s choice and autonomy”, capabilities focus on choice, therefore people can decide what is important to them rather than having the decision made for them ([97], p. 40). For example, if a capabilities approach were applied to the push for same-sex marriage, perhaps a parallel campaign working on getting ENDA approved would have occurred at the same time due to LGBTQ people’s needs. Or if organizers learned that a community needed improved afternoon childcare, part of the campaign could include this issue as well. In doing so, a rights campaign is more inclusive. By working for community issues as well as their own, it is also more representative. Communities strengthen while rights are advanced and are ideally better able to respond to future needs.

Nussbaum argues that social justice can be achieved if the capabilities approach is expanded to include “ten central human capabilities as central requirements of a life with dignity” ([97], p. 40). The addition of these specific capabilities reflects a necessary shift in mindset; they include “being able to live to the end of human life of normal length,” . . . “being able to move freely from place to place; to be secure against violent assault” . . . and “to love those who love and care for us” ([97], p. 41).⁵ If these tenets were embraced already, perhaps transgender people would have the right to use the public facilities of their choice in North Carolina. It would have been more difficult to access weapons used in the Pulse shooting, and same-sex couples would not feel social pressure to marry or conform to specific narrow definitions of family. Currently, most of these freedoms are not guaranteed and are often violated in numerous areas of people’s lives. For LGBTQ individuals, there is added stress and uncertainty tied to living life in the open or quietly. The complexities of living in a society designed for others is definitely experienced by people of color, the young and elderly, individuals with disabilities, non-Christians, immigrants, and many others who do not quite meet the cultural expectations of fitting into mainstream U.S. society. At issue are the types of strategies used for creating social change and who or what entity determines the place to focus efforts at addressing social injustice. Angela Davis states that “people have massively and collectively organized for change, and the world we live in today, however many problems remain, is the result of those movements” ([29], p. 154). Now that the celebration of achieving rights for same-sex marriage has happened, it is time to get back to work, to not just organize but to also mobilize; to support social justice efforts across the U.S. and beyond due to the new crises in the nation, including the election of Donald Trump and the goal of Republicans to eliminate much rights-based legislation [94,97]. Coalition building is the key to successful social

⁵ The “Central Human Capabilities” are: 1. Life, 2. Bodily Health, 3. Bodily Integrity, 4. Senses, Imagination and Thought, 5. Emotions, 6. Practical Reason, 7. Affiliation, 8. Other Species, 9. Play, 10. Control over One’s Environment ([97], pp. 41–42).

change; one cannot work solely on issues that benefit a select few and expect deep meaningful change to occur. Denis Goldberg reminds us to work from a personal place of “respect for others’ dignity” and to not tire in our efforts at achieving social justice. As Nelson Mandela stated, “to be free, it is not enough to throw off one’s chains. One must live one’s life so that one respects and advances the freedom of others.” ([98], p. 165). At this moment, it is imperative that we eliminate the silo approach to organizing, that we unite as communities, build coalitions, and work to improve all lives.

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