Whither LGBT Rights in the Post-Marriage Era?

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In light of the U.S. Supreme Court’s 2015 ruling in Obergefell v. Hodges, extending government recognition of same-sex marriages nationwide, a casual observer might have been tempted to conclude that the work of the lesbian, gay, bisexual, and transgender (LGBT) rights movement was all but finished. Marriage equality had long appeared to be the central goal of this increasingly powerful movement, and the Supreme Court victory capped a dramatic shift in public opinion toward support for marriage equality, a shift that occurred relatively quickly and for a complex mix of reasons. But two recent books on LGBT rights and policies make the case that there is a great deal of unfinished business in this domain and, further, that the lessons of recent history within the United States and around the world should temper overly optimistic readings of the significance of the marriage win.

In Fragmented Citizens: The Changing Landscape of Gay and Lesbian Lives, political scientist Stephen Engel applies the framework of American political development to the case of gay and lesbian rights. Engel’s basic argument is that the development of the American state and the social construction of sexuality are interlocking processes and, more specifically, that we can identify distinct modalities of recognition of sexuality that correspond to distinct sites of authority at different points in time, revealing a picture of social change that is partial, contradictory, and nonlinear. Recognition is central to Engel’s conception of citizenship and is prior to the enactment of specific rights and responsibilities; he defines a citizen as “a person subject to the state’s sight or recognition, identification, and classification” (p. 7). One of the basic insights of the American political development framework is that the normal condition of the polity is fracture and fragmentation. Thus, the state fails to see some citizens in a unified, coherent way. “In short,” Engel writes, “the fragmented state creates a fragmented citizen” (p. 20). Taken together, these notions of citizenship as recognition and polity fragmentation form the basis for an account of how inequalities persist for gay and lesbian citizens despite signs of progress and formal mandates of equality in some areas.

Engel describes five distinct modalities of recognition of sexual minorities since the late nineteenth century in the U.S. context: 1) threat to national community; 2) people defined by their sexual acts, which endanger national security and morality; 3) people subject to unjust discrimination; 4) a decriminalized and privatized group without state recognition; and, 5) people dignified through equal recognition of their relationships. These modalities of recognition span both public and private authorities and do not unfold in a strictly chronological order; the book details many examples of inconsistency across government branches or the public versus private sector in terms of which modality dominated in a given time period. Still, there is a rough chronological narrative that structures the book, identifying broad shifts over historical time.

In the late nineteenth and early twentieth centuries, sexual and gender nonconformity was framed as a threat to national community; in the mid-twentieth century, this modality was gradually replaced by moral panic...
over homosexuality and the framing of gays and lesbians as security risks. A tension emerges—within both gay/lesbian movements and the state—between treating homosexuality as conduct or status. This tension plays out in battles over goals and strategies among gay rights organizations and in the fragmented responses of the polity.

The period of the mid-twentieth century to the 1990s illustrates the competition among different modalities of recognition, with an uneven but discernible shift toward seeing gays and lesbians as victims of unjust discrimination (i.e., as inhabiting a status, and not merely defined by their conduct). But Engel perceptively notes that this modality was never universalized. Although many private sector authorities and state and local government entities enacted protections against discrimination, backlash often ensued, anti-discrimination protection stalled in Congress, and the U.S. Supreme Court chose not to apply heightened scrutiny to this form of discrimination. “If there is a durable shift in the way gays and lesbians are recognized,” Engel observes, “the shift is limited to certain states, certain industries, and certain companies. Those limitations reinforce fragmented citizenship; they hardly overcome it” (p. 159).

The fourth modality, of gays and lesbians as a decriminalized and privatized group without state recognition, is most evident in the actions of all three branches of the federal government in the period of 1993 to 2003. Engel examines the implementation of the Don’t Ask, Don’t Tell policy for gays in the military, the passage of the Defense of Marriage Act (DOMA), and a series of Supreme Court rulings in this timeframe to illustrate the rise of this modality of recognition. This modality did not produce consistent outcomes in terms of gay rights, but Engel persuasively argues that seeming defeats (DOMA) and victories (the Lawrence v. Texas decision repealing sodomy laws nationwide) were linked by the common thread of a “modality of privatization, of permitting the lesbian, gay, or bisexual person to exist free from criminal sanction so long as he or she remained beyond public view” (p. 235).

But Justice Antonin Scalia’s dissent in the Lawrence decision, and the heavy media attention it received, signaled a new modality on the horizon. Scalia decried the way the Lawrence decision opened the door for legal recognition of same-sex marriages. Much of the media coverage of the ruling zeroed in on this prediction, and the American public took note, with support for gay rights experiencing a temporary dip in polls after Lawrence. Indeed, a new way of seeing gay and lesbian citizens was already imaginable.

In his final chapters, Engel charts the emergence of the fifth and final modality of recognition, in which gays and lesbians attain dignity through equal recognition of their relationships. Although some state and lower federal courts have applied heightened scrutiny to government classifications based on sexual orientation (such as the exclusion of same-sex couples from legal marriage), the U.S. Supreme Court has consistently declined to rule in this way. Engel positions this refusal to treat gays and lesbians as a suspect class for purposes of equal protection analysis as part of a broader retreat from grounding equality rulings in the context of the historical mistreatment of specific groups, a retreat he terms a jurisprudence of blindness.

Although the marriage victory in Obergefell may have looked like a clear home run for gay rights, Engel fears the Court’s jurisprudence of blindness, and the newest modality of recognition, may have troubling implications for future gay rights battles. The reliance on dignity in place of traditional equal protection doctrine may curb the effectiveness of some gay rights claims and arguments, especially when opposing parties can put forward competing dignity claims (as may occur in cases in which business owners claim a right to refuse service to gays and lesbians on religious grounds). And it remains legal to fire someone or deny them housing for being gay or lesbian in more than half of U.S. states; in these places, one may have the right to marry, but not the right to keep one’s job or home when one’s choice of marriage partner becomes known.

Fragmented Citizens is a major contribution to the interdisciplinary literature on LGBT rights. The book is meticulously researched and brimming with fascinating historical details. The writing style is dense (and
probably not suitable for most undergraduate readers), and the overarching narrative thread of fragmented polity producing fragmented citizens is sometimes hard to follow, especially in the latter half of the book. A chapter on two major gay rights organizations (the Task Force and the Human Rights Campaign) reads well as a stand-alone piece but is not well integrated with the rest of the book. These are minor issues in light of the book’s considerable achievements.

In delineating the five modalities of recognition of sexuality, Engel illustrates the value of a long historical view, capturing earlier modalities that have been eclipsed by the more familiar concepts of the present and the recent past. He demonstrates the way conflicting modalities, emerging from a fractured polity, produced inconsistent outcomes for gay and lesbian citizens. He wisely includes private authorities such as employers in his analysis of citizenship recognition, both because the private sector is a significant site of some forms of recognition and because private-sector trends may shape the contours of public policy development. And he acknowledges the intersectionality of forms of identity and marginalization, especially in his lucid discussion of recent trends in equal protection jurisprudence.

At the end of the book, Engel clarifies that there is no reason to contend that fragmented citizenship is limited to LGBT people; rather, modalities of recognizing gays and lesbians were intended as a case to illustrate the utility of applying the developmental perspective. The book could have said more, though, about the scope of the phenomenon of fragmented citizenship; when Engel notes that “citizenship itself is perhaps better conceptualized as often and even primarily unstable” (p. 326), the reader is left to assume that such instability afflicts the fortunes of some groups of citizens more than others.

In Carlos Ball’s edited volume, After Marriage Equality: The Future of LGBT Rights, authors from a range of disciplinary and interdisciplinary perspectives also wrestle with the question of the social and legal status of queer citizens in the wake of marriage equality. The included chapters were completed after the Obergefell ruling but before the election of Donald Trump, and most authors probably did not anticipate just how uncertain and potentially hostile the U.S. climate would be for LGBT rights in the very near future. Still, most contributors adopt a tone of caution and realism in assessing the state of play for LGBT rights and movements after marriage. The book is organized into three sections, with Part I taking stock of the American LGBT movement after marriage equality, Part II featuring chapters that focus on specific LGBT issues, and Part III expanding the scope to consider the lessons from other post-marriage equality nations, including Canada, the Netherlands, and France.

The chapters in Ball’s volume each stand on their own, but there are also several cross-cutting themes that link individual papers to one another and reward a reading of the volume in its entirety. Several chapters reflect on marriage equality as a turning point for the U.S. LGBT movement, with some authors calling for a major refocusing of the movement’s goals and strategies and others predicting that realistically the movement will make only modest adjustments to its modus operandi.

In his own substantive chapter, law professor Carlos Ball argues that the movement should move beyond a politics based on fixed identity categories and toward “encouraging the state to adopt laws and policies that recognize and protect gender fluidity and multiplicities” (p. 157). In a chapter on the needs of LGBT elders, law and policy professor Nancy Knauer calls for the movement to abandon its strategy of equality through sameness, which served it fairly well in the marriage battles but is a problematic fit for addressing elder issues, since older LGBT people are in fact quite different from their non-LGBT peers in many important respects.

Law professor Russell K. Robinson asserts that the campaign for marriage pursued a “strategy of respectability” (p. 222) that required advocates and scholars to turn a blind eye to striking gender differences in the sexual and relationship patterns of queer men and women, with the attendant risk that a post-marriage backlash will target queers who are least interested in conforming to the marriage model, particularly queer men. Scholars and advocates should therefore move toward greater openness about
the range of sexual and relationship patterns found in queer communities, a point that is echoed in the chapter by gender studies scholar Joseph J. Fischel, calling for the LGBT movement to lead on endorsing statutory recognition of multi-partner intimacies. The chapters of Part I, however, stand in contrast to these visionary calls for a radical shift in the direction of the LGBT movement, insofar as the Part I authors predict much more modest realignment of movement priorities and tactics. Political scientist Gary Mucciaroni identifies several factors that constrain significant change in movement direction, including the movement’s diversity and fragmentation, its emphasis on professional advocacy over grassroots efforts, and its longstanding focus on identity-based civil rights strategies.

Law professor Clifford Rosky shares Mucciaroni’s skepticism about the movement’s readiness to move beyond a rights-based strategy focused on legal equality to one focused on what advocates call lived equality, which emphasizes equality of outcomes and community well-being and necessitates greater attention to the intersection of LGBT identities with race, ethnicity, class, and age (and a concomitant commitment to broader coalition-building). Rosky is sympathetic to the concept of a shift toward lived equality but calls our attention to the reality that LGBT citizens have yet to attain simple legal equality in most U.S. states, where basic antidiscrimination protections do not exist. Political scientists Donald Haider-Markel and Jami Taylor provide a laundry list of likely near-term reform efforts, none of which would represent a radical departure for the LGBT movement.

Haider-Markel and Taylor’s chapter is one of several that highlights another cross-cutting theme of the volume: the risk of political demobilization for the U.S. LGBT movement. Political scientist David Rayside’s chapter on Canada argues that the Canadian movement did experience some degree of demobilization after the achievement of marriage equality in that country, although the parallels with the U.S. case are imperfect. In Rayside’s assessment, modest declines in activism in the Canadian context are more a reflection of complacency than a price being paid for a strategy of normalization that characterized the marriage effort.

If the United States follows the Canadian pattern, we may see slower organizational growth, especially for groups pursuing a broad equality mandate rather than working on specific issues. Haider-Markel and Taylor observe that the U.S. movement’s heavy reliance on litigation strategies over grassroots efforts may accelerate trends toward demobilization. Rosky’s chapter predicts a shift toward local rather than national lobbying and more investment in red states and swing states over blue states but also acknowledges the conundrum facing today’s movement: further state-level gains will require greater outreach to Republicans, a strategy that carries the risk of alienating the movement’s base and key donors.

Beyond the risk of demobilization, several chapters address other threats to full implementation of LGBT rights, including marriage. The most notable of these threats takes the form of religious liberty claims that pit enforcement of LGBT rights against the claim of free exercise of religion by individuals or organizations opposed to gay rights or same-sex marriage on religious grounds. Although the Supreme Court’s controversial ruling in the Burwell v. Hobby Lobby case did not itself involve gay rights, its finding that private firms could refuse to comply with requirements of the Affordable Care Act that they viewed as violating their religious beliefs set a potentially troubling precedent with relevance for LGBT rights protections. Several contributors to the Ball volume predict that the LGBT rights movement will need to devote resources to combatting laws and rulings that compromise LGBT rights in the name of accommodating the religious rights of believers with antigay views. (These predictions resonate with Engel’s observations in Fragmented Citizens regarding the risks associated with legal victories like Obergefell that are based on dignity claims rather than more traditional equal protection grounds.) Based on recent history in both the United States and Canada, we can expect continuing conflicts between LGBT rights claims and religious liberty claims across numerous issues, including hate crimes and speech regulation, the ability to discriminate in employment practices based on religious views, conscientious objection to service provision by marriage providers, and legal protections for transgender individuals.

Contemporary Sociology 47, 3
clerks and others, and the rights of faith-based schools to be exempt from diversity protections.

Another significant theme across chapters is the need for the LGBT movement to devote greater attention and resources to the concerns of constituents who benefitted little or not at all from the marriage victory. These include the transgender community, many LGBT elders, people in polyamorous relationships, racial minorities, and queer people who choose not to conform their intimate and family ties to the marriage model. Law professor Nancy Polikoff’s chapter details the ways the marriage win fails to address all of the issues related to children being raised by same-sex parents; moving forward, Polikoff urges that advocacy work focus on the well-being of such children regardless of family form, especially by addressing issues of racial and economic injustice that broadly impact many kids being raised by lower-income and non-white parents, and by securing pathways to legal parentage that are not dependent on the marital status of the parents.

A chapter from law professor Katherine Franke delves into the parallels and divergences between attainment of same-sex marriage and African Americans’ access to legal marriage in the wake of slavery. On one hand, Franke cautions based on the African American case: “Same-sex couples would be well counseled to prepare for the ways in which a marriage license inaugurates new forms of state discipline and regulation that can easily be deployed in the service of a durable and crushing homophobic itinerary” (p. 243). On the other hand, she acknowledges key differences in the two cases, noting that gays and lesbians were more successful in using marriage as part of a rebranding project, changing the meaning of what it means to be homosexual in the direction of dignity and self-definition in a way that was not historically available to African Americans, who were unable to escape the badge of racial inferiority. Alas, Franke concludes that the contemporary LGBT movement pulled off its marriage win by leveraging “a kind of racial privilege that has underwritten the plausibility of this positive transformation in the meaning of gay identity” (p. 251); rightly or wrongly, the gay community and the marriage movement were associated with whiteness, which eased the process of identification with lesbian and gay subjects among many non-LGBT people.

Sociologist Jan Willem Duyvendak’s chapter on the Dutch experience extends Franke’s focus on the connection between race/ethnicity and same-sex marriage beyond the U.S. context. In our current political moment, the Dutch case might be viewed as a cautionary tale about the risks of a politics of respectability that can be co-opted by a homonationalism pitting the interests of sexual minorities against racialized immigrant Others. In the Netherlands, gay emancipation has become a cornerstone of Dutch identity, but contemporary Dutch populism combines a framing of Dutch culture as morally progressive with a virulent anti-immigrant stance; progressives opposed to this populist discourse find themselves in a bind as they seek to support LGBT rights without seeming anti-Muslim and also to stand in solidarity with Muslims without seeming to trivialize homophobia. In Duyvendak’s view, Dutch society has a ways to go toward full acceptance of LGBT people, as evidenced by ongoing antigay violence. Tolerance is valued in the abstract, but “far less acceptance is shown when homosexuality comes closer to one’s personal life . . . the work necessary to break through heteronormativity remains, while many straight citizens see no need for change” (p. 299).

The book’s final chapter, by French studies professor Bruno Perreau, examines the contrasting case of France, where same-sex marriage and LGBT rights have been framed as threats to the French family and thus to the French nation itself. Opposition to the French same-sex marriage law was driven by a range of conservative Catholic, nationalist, and far right groups, with a unifying focus on the protection of children. Although these groups ultimately did not succeed in blocking the law, they have remained active in their campaign against “gender theory,” depicted as a damaging external (American) force that denaturalizes sex and gender categories. Some of these groups have borrowed tactics and rhetoric from the feminist and LGBT movements (e.g., the use of “pride” as a rallying concept) and have sought to
position themselves as “majority victims of a system supposedly designed to suit minorities” (p. 309), evoking a trope of the majority as oppressed minority that may sound familiar to observers of certain strains of contemporary right-wing U.S. politics.

Both Engel’s *Fragmented Citizens* and Ball’s *After Marriage Equality* represent significant contributions to the literature on LGBT rights and movements, and both are timely in their invitations to reflect on the meaning and implications of the same-sex marriage milestone in nuanced, critical ways. Some individual chapters in Ball’s book might be appropriate for assignment in undergraduate courses, but both of these works are complex, challenging, and theoretically sophisticated and therefore most suitable for more advanced academic readers across a range of disciplines, including sociology, political science, public policy, law, and related fields. Serious readers seeking to contextualize the marriage moment in both space and time will find ample nourishment in these rewarding texts.

A Sociology of the Global Economy

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In a short 15 years, international financial markets staggered from the sovereign debt crises of the early to mid-1990s (Russia, Mexico), to a regional financial crisis (Asian Financial Crisis), to a global crisis (the Great Recession brought on by the 2008 financial collapses in the United States). All this has occurred at a time when the world seemed to become more economically interdependent.

Not surprisingly, globalization of finance and trade now stands in the cross-hairs of political turmoil, public debate, scholarly reappraisal, and technocratic reexamination. Economic globalization confronts counter-currents of resistance and subversion, of regionalization and resentment, as the limits of this second great wave of global finance come seriously into question.

Mauro Guillén’s masterful book, *The Architecture of Collapse: The Global System in the 21st Century*, essentially asks how sociology can confront and illuminate intellectual and pragmatic understandings of national, regional, and global financial crises. How can we explain the strange paradox of more interdependence, yet more fragility in the global economic order? Not least, what can sociological understandings contribute to what should be done?

This compact volume, admirably expansive in its ambitions, theoretically parsimonious and crisp in its analysis, answers by elucidating an “intrinsic propensity to instability, disruption, and crisis” in the international financial system (p. 1). Guillén characterizes this state of affairs as an architecture of collapse. To the fragilities of financial architecture he brings a conceptual architecture grounded in organization and network theory.

The global economic system, argues the book, comprises nodes (states), networks (relations among states), and a system (the totality of nodes and networks). Each of these is more or less tightly coupled. Each is more or less complex. By ringing the variations on this elegant interplay of foundational concepts, all well attested in sociological literatures, he offers a bold and generative account of what is wrong in the global economic order and how it might be remedied.

Guillén builds his case initially on evidence that the global system has become more complex, using five conditions of network complexity. The number of sovereign

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