

## Symposium: New Directions in Law and Sexuality Scholarship

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The US Supreme Court's June 26, 2015, decision in *Obergefell v. Hodges* striking down state bans on same-sex marriage was a transformative moment for the lesbian, gay, bisexual, and transgender (LGBT) movement. It was the most significant victory for a movement that has struggled since the mid-twentieth century on behalf of those society and law has marginalized because of their sexual orientation and gender identity (Richman 2013; Dorf and Tarrow 2014). Now, in the wake of *Obergefell*, sociolegal scholars have an opportunity to reassess how the LGBT movement arrived at this point, and what challenges lie ahead.

Many of the first rounds of law and society scholarship on the LGBT movement focused on the ways this movement built off of and compared to previous social movements, such as the civil rights movement and the women's movement. Although these connections and comparisons remain important, the LGBT movement in recent years has in many ways charted its own path. The campaign to depathologize homosexuality and increase the public visibility of sexual and gender minorities has tapped into US culture and media in novel ways. The legal effort to decriminalize sodomy, legalize gay marriage, and protect LGBT people from discrimination in employment and public life has also created new paradigms for future legal reform efforts. The LGBT movement has largely displaced the civil rights and women's movements as the exemplar for how modern social movements should organize themselves to effect social and legal change.

This symposium provides an opportunity to reflect on how sociolegal scholars explain the evolution and effects of the LGBT movement. It is motivated by a series of questions, each suggesting potential starting points for new approaches to the study of law and sexuality. What can other social movements learn from the LGBT movement in terms of identity formation, organizing, and rights claiming? How does the LGBT movement maintain direction and momentum in the aftermath of monumental legal breakthroughs, such as the *Obergefell* decision? How has resistance to LGBT rights evolved in response to the movement's achievements? The contributors to this symposium consider the consequences of recent legal developments for the sociolegal study of sex, sexuality, and gender identity. They offer new insights not only for our understanding of the law of sexuality, but also for a variety of venerable law and society topics, including legal consciousness, the relationship between law and social change, citizenship, and transnationalism.

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Kathleen Hull opens the symposium by making the case for the study of legal consciousness of LGBT persons. Her article challenges scholars who argue that legal consciousness research has lost its critical theoretical value because of its undue emphasis on how people think and “do” law rather than the taken-for-granted processes that result from law (Silbey 2005; Lovell 2012). Hull not only shows how LGBT people in everyday settings adopt or resist legal categories of sex and sexuality, but also does so in different domains of everyday life, such as parenting, marriage, and partnership. These underexplored legal subjectivities, she concludes, continue to advance both empirical knowledge and theorization of legal consciousness.

Several of the articles in the symposium examine locations where advances for LGBT persons are delayed or outright rejected. Hoppe’s investigation of sex registries in the United States reveals that while activists secured victories for gay and lesbians, including the repeal of sodomy laws and same-sex marriage, the carceral state has constructed a new separate arm dedicated to controlling sex. Based on population-level data, he finds not only the same overrepresentation of racial minorities found in the incarcerated population, but also that federal and state policies have increased the scope and severity of these registries, which, Hoppe argues, becomes a new and harsher form of regulating sex. Two other articles turn to prisons as an institution that struggles to retain its internal organizational logic within a broader context of legal and social progress for LGBT persons. Jay Borchert focuses on how prison officials respond to same-sex sexual relations among prisoners. He finds that notwithstanding general social progress for LGBT persons, prison officials refuse to consider reforms to prison sex policies because of entrenched assumptions about sex, sexuality, and violence among prisoners. Jennifer Sumner and Lori Sexton study the challenges of transgender prisoners within a prison system premised on sex segregation. Using interviews and focus groups with prisoners and prison staff, they find that transgender prisoners occupy a unique space within prison culture where they want to be treated like their cisgender counterparts, but the institutional goals of safety ostensibly leave prison staff little choice but to treat them differently and as a presumed vulnerable population. These two articles reveal the challenges of changing the legal regulation of sex and gender identity in the context of an institution in which security concerns predominate.

Finally, Lynette Chua’s article on lesbian rights activists in Myanmar illustrates the emergence of a newer field of study oriented toward sexuality rights in international and comparative perspectives. Chua examines how these activists face the challenge of both heteronormativity that marginalizes them as lesbians and entrenched gender norms that marginalizes them as women. Her article shows the difficulty to use human rights discourse to navigate these oppressive norms and mobilize constituents. Social movement actors appreciate that framing their grievances using human rights discourse, while powerful, may create new challenges for organizing at the local level.

Taken as a whole, the contributors to this symposium suggest new directions for future sociolegal scholarship on sex and sexuality. They shed new light on familiar topics for sociolegal scholars, perhaps even revitalizing approaches that were thought to have run their course. They explain those pockets of society, such as prisons, that have resisted broader sociolegal changes. And they examine struggles

against oppressive legal regulations of sex and sexuality from a global perspective. In light of the tremendous social and legal change for LGBT persons, the moment is ripe to assess where the field of law and sexuality has been and to envision where it could go.

## REFERENCES

- Dorf, Michael C., and Sidney Tarrow. 2014. Strange Bedfellows: How an Anticipatory Counter-movement Brought Same-Sex Marriage into the Public Arena. *Law & Social Inquiry* 39 (2): 449–73.
- Lovell, George I. 2012. The Myth of the Myth of Rights. *Studies in Law, Politics, and Society* 59: 1–30.
- Richman, Kimberly D. 2013. *License to Wed: What Legal Marriage Means to Same-Sex Couples*. New York: New York University Press.
- Silbey, Susan S. 2005. After Legal Consciousness. *Annual Review of Law and Social Science* 1:328–68.

## CASES CITED

- Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (2015).