

INTRODUCTION

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PREFACE

In 2015, the U.S. Supreme Court in *Obergefell v. Hodges* held that the right to marry is fundamental and cannot be denied to same-sex couples. Justice Anthony M. Kennedy, writing for a 5-4 majority, held that marriage—a “keystone of our social order” and “essential to our most profound hopes and aspirations”—is a fundamental right protected by the Due Process Clause of the Fourteenth Amendment. However, while *Obergefell*’s immediate consequences for marriage access are obvious, the broader significance of the Court’s holding remains unclear.

On November 13 of that year, the *N.Y.U. Journal of Legislation and Public Policy* and The Arthur Garfield Hays Civil Liberties Program hosted a symposium at the New York University School of Law to analyze the implications of the Court’s historic decision for the lesbian, gay, bisexual, transgender, queer, intersex and asexual (“LGBTQIA”) community. The symposium, titled “‘It Is So Ordered’: Social Change and the Campaign for Marriage Equality,” specifically focused on the numerous issues beyond marriage access that continue to pose challenges in the community’s struggle for equal rights. In the wake of the Court’s decision regarding marriage access, questions about LGBTQIA rights in other areas have begun to shift to the forefront, including issues such as incarceration, education, and employment, as well as so-called “second generation” family topics such as divorce, child custody, and enforcement of judgments.

Through a series of speakers, two related panel conversations, and audience participation, the symposium examined these challenges and located the strategies employed in the campaign for marriage equality in the broader context of other movements that have attempted to use the law to change social and economic conditions in the United States.

The symposium also honored the memory of the late Thomas Stoddard, a champion of LGBTQIA rights and strong advocate for marriage equality in particular. Tom is a necessary part of any discus-

sion of the history of the marriage equality movement and its successes. After graduating from New York University School of Law, where he was a fellow in the Arthur Garfield Hays Civil Liberties Program, Tom worked at the law firm of Norwick, Raggio, Jaffe & Kayser, and then went on to join the New York Civil Liberties Union. From 1986 to 1992, Tom served as the executive director of Lambda Legal Defense and Education Fund, where he defended the civil rights of lesbians and gay men and became one of the earliest proponents of marriage equality for lesbian and gay couples. Under his leadership, Lambda Legal's staff grew from six to twenty and began its national expansion by establishing regional offices to serve lesbians, gay men, and people with HIV/AIDS around the country. Tom's connection to the law school remained strong after he received his degree. Beginning in 1981, he returned as an adjunct professor and went on to teach "Sexual Orientation and the Law," one of the first courses in the country devoted to legal issues confronting lesbians and gay men. He also helped found NYU's Madison Society, a precursor to this journal.

2015 marked the twentieth anniversary of the establishment of the Hays Program's *Tom Stoddard Fellowship in the Rights of Lesbians and Gay Men*, as well as the anniversary of the founding of the Madison Society. The symposium, and *Obergefell* itself, served as a timely celebration of Professor Stoddard and his profound influence on the LGBTQIA rights movement.

The staff of the Journal is excited to introduce Volume 19, Issue 3, which memorializes the conversations that began in November of 2015 and continues them through the academic articles and essays published in these pages. The panel discussions and remarks herein were transcribed from recordings of the event and—where appropriate—have been lightly edited. We would like to thank the Hays Program for its partnership and Paul, Weiss, Rifkind, Wharton & Garrison for its generous support and for the contributions of a number of its attorneys to the day's events.

Without further ado, we present "‘It Is So Ordered’: Social Change and the Campaign for Marriage Equality."

R. T. Winston Berkman
Editor-in-Chief

INTRODUCTION

Amanda Sterling*

Good afternoon. My name is Amanda Sterling, and I'm the Editor-in-Chief of the *N.Y.U. Journal of Legislation and Public Policy*. It is an honor and a distinct privilege for me to be here this afternoon—and it's also somewhat surprising. Less than half my lifetime ago, when the U.S. Supreme Court handed down *Lawrence v. Texas*,¹ I was a high school student in Houston. I remember discussing the news of the case with my friends at the time, and I realized that the lives of many people around me could or would change as a function of the Supreme Court's decision.

At the time of *Lawrence*, not a single state would license same-sex marriages.² The movement for LGBTQIA equality has advanced enormously since that time, and the Supreme Court has now recognized a constitutional right to marriage equality.³ But even since the Court's historic decision in *Obergefell* last June, the signals have already begun to emerge: This race is not yet run. Only this month, voters in the city I call home went to the polls and voted overwhelmingly to repeal a city ordinance⁴—HERO—that would have expressly included gender identity and sexual orientation among the prohibited bases for discrimination.⁵ HERO also prohibited discrimination on

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1. *Lawrence v. Texas*, 539 U.S. 558 (2003).

2. See, e.g., Pam Belluck, *Massachusetts Arrives at Moment for Same-Sex Marriage*, N.Y. TIMES (May 17, 2004), <http://www.nytimes.com/2004/05/17/us/massachusetts-arrives-at-moment-for-same-sex-marriage.html> (observing that Massachusetts became the first state in America to issue marriage licenses to same-sex couples in 2004); cf. David Masci & Jesse Merriam, *The Constitutional Dimensions of the Same-Sex Marriage Debate*, PEW RES. CTR. (July 9, 2009), <http://www.pewforum.org/2009/07/09/the-constitutional-dimensions-of-the-same-sex-marriage-debate/> (tracing the history of the legal controversy surrounding same-sex marriage).

3. See *Obergefell v. Hodges*, 135 S. Ct. 2584, 2604 (2015) (“[T]he right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty.”).

4. See, e.g., Katherine Driessen, *Houston Equal Rights Ordinance Fails by Wide Margin*, HOUS. CHRON. (Nov. 4, 2015, 8:45 AM), <http://www.chron.com/politics/election/local/article/HERO-results-6608562.php> (reporting the results of the vote); Manny Fernandez & Mitch Smith, *Houston Voters Reject Broad Anti-Discrimination Ordinance*, N.Y. TIMES (Nov. 3, 2015), <http://www.nytimes.com/2015/11/04/us/houston-voters-repeal-anti-bias-measure.html> (discussing the history of the ordinance and the significance of its defeat).

5. Hous., Tex., Ordinance 2014-530 (May 14, 2014).

other grounds, based on other aspects, such as race, national identity, and religion;⁶ but its defeat was widely perceived, both within Houston and without, as a defeat for the LGBTQIA community.⁷

HERO's defeat is just one present-day example that starkly illustrates the great gains that have yet to be made in the struggle for true LGBTQIA equality. We're here today to examine this state of affairs and discuss what comes next in this particular quest for legal and social change.

Before we begin our program, I'd like to take a moment to thank everyone who helped make this event possible. First, our distinguished lineup of speakers and panelists, who have generously agreed to participate in our discussion here today. I'd also like to thank the Hays Program, in particular Professors Helen Hershkoff, Norman Dorsen, Sylvia Law, and Adam Cox, all of whom were indispensable in the planning and execution of this symposium. We also owe an enormous debt of gratitude to New York University School of Law—particularly the Student Intellectual Life Committee, Dean Morrison's office, Tracee Nwafor and the Office of Student Affairs—and to Paul, Weiss, Rifkind, Wharton & Garrison, whose generous financial contribution helped make this event what it is today. Last but not least, I want to thank the staff of *Legislation*, and especially Michelle Chun, Trishna Velamoor, and the staff editors on our Symposium Committee. These editors put hard work into this event, and the symposium would never have been possible without them.

With all this being said, let's get the program started. As you know, today's symposium is designed in part to honor the late Professor Tom Stoddard, whose path-breaking work on behalf of the gay rights movement helped make the present landscape possible.⁸ We're joined today by his spouse, Walter Rieman, himself an alumnus of NYU and a partner at Paul, Weiss. I'll let Walter take it away.⁹

6. *See id.*

7. *See, e.g.*, Jay Michaelson, *Houston's Anti-Gay Rollback Is First of 227 Battles Across the Country*, DAILY BEAST (Nov. 4, 2015, 6:45 PM); Mimi Swartz, *What Houston's Reaction to the Equal Rights Ordinance Says About My City*, TEX. MONTHLY (Oct. 22, 2015); Mark Joseph Stern, *Why Houston's Equal Rights Ordinance Failed*, SLATE: OUTWARD (Nov. 4, 2015, 12:34 PM).

8. *Cf.* Norman Dorsen, *Tom Stoddard: Civil Libertarian*, 72 N.Y.U. L. REV. 1023 (1997).

9. Walter Rieman's remarks have been replaced with an essay he wrote for this issue, titled *Tom Stoddard, Marriage Equality, and the Stoddard Fellowships: a Husband's Remembrance*, *infra* page 555.