Beyond marriage: Questioning gay marriage laws as a measurement of equality

By

Jessica Gina Mulcahy-Miller

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Professor Richard O’Meara

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The following paper acknowledges the unique and various identities that make up the LGBTQ umbrella term and community. The subsequent language used in this paper is purposeful in its respect to all identities, including gender identities and expressions that are so often left out of both LGBTQ rights and academic discourses. Further, this paper is dedicated to the millions of queer, trans, and gender-nonconforming people whose existence within and contributions to academia are consistently erased and ignored. May this paper be utilized not only to add to global affairs discourse, but act as a catalyst for all undergraduate and graduate programs to do better in the future.
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Abstract

Public and political discourse around the rights of LGBTQ people have increased over the past several decades. The focus on rights and equality have primarily focused on achieving marriage equality (typically referred to as ‘gay marriage’). The existence of marriage equality laws within a country is then typically used to judge whether LGBTQ people have achieved equality or not. The focus on marriage equality is not only misleading but also extremely problematic. Marriage equality laws are extremely limited in the actual rights they provide LGBTQ people, and are often exclusionary of many different intersecting identities. Further, the existence of marriage equality laws do not guarantee the elimination of the discrimination and violence that LGBTQ people face both within the United States and globally. This paper looks to critically analyze the gaps within marriage equality frameworks both within the United States and within international institutions, and challenge the problematic notion of the achievement of equality through the existence and representation of marriage equality laws.

Keywords: Equality, Marriage equality, LGBTQ, LGBTQ rights
Forward

The idea for this paper came to me right after starting my graduate program back in 2015. Sitting in my International Law course, my professor discussed how law reflected the views of society, using gay marriage within the United States as an example. The theory was that because gay marriage laws had passed within the United States that meant that LGBTQ people were accepted and no longer outside of the social norms reflected in our society. This statement not only baffled me as a student, but as a queer student who had never experienced what my professor was stating as fact. It was in this moment that I began to understand how limited the field of international law and global affairs were in their innate understanding of identity and the experiences that individuals face due to the different identities that they hold.

Identity does not happen outside of the normative political and social spheres, rather it plays an active and influential role. The misunderstanding of this fact is reflected in the othering that happens towards oppressed identity groups within global affairs, where groups like LGBTQ people are treated as something that exists outside the normative discourse. It would have been easy for me to jump on to that discourse, but I felt the need to go back to the original statement I heard my first semester. The assumption that gay marriage, especially gay marriage within the United States, somehow brings LGBTQ people into a realm of equality is inherently false and extremely problematic. It is my hope that the follow paper successfully broaches that false claim and works towards reshaping the equality assumption that is harmful and damaging to LGBTQ people within global affairs discourse and across the globe.
Beyond marriage: Questioning gay marriage laws as a measurement of equality

Almost two years ago, the United States Supreme Court ruled in a landmark case that same-sex marriage was legal within all 50 states.¹ This landmark case came on the heels of not only national LGBTQ rights movements, but a global push towards marriage equality laws. Prior to the establishment of marriage equality within the US in 2015, marriage equality laws were enacted within 18 different countries between 2001-2013: The Netherlands, Belgium, Canada, Spain, South Africa, Sweden, Norway, Iceland, Portugal, Argentina, Brazil, England/Wales, France, Uruguay, New Zealand, Luxembourg, and Scotland.² Along with the United States, 2015 marked marriage equality rights for LGBTQ people in Greenland, Finland, and Ireland.³ Columbia followed shortly after in 2016, bringing the total number of countries that legally recognize lesbian and couples up to a total of 23 countries.⁴ For many, the global trend to recognize, both socially and legally, lesbian and gay couples is a sign that the LGBTQ community is finally reaching the equality and acceptance they have so desperately been fighting for.

However, this perception of achieved equality is distorted and only offers a very limited understanding of the issues that LGBTQ people face both within the United States and across the globe. There is a serious danger in equating marriage rights with the
overall rights, safety, and respect of those who hold sexual and gender identities that differ from the perceived normative identity, i.e. heterosexual and cisgendered. Recent news coverage has uncovered what is happening in Chechnya, where gay men are being rounded up and imprisoned, tortured, and even killed in what are being called concentration camp like conditions.\(^5\) Reports show the extremely high rate of bullying and harassment in schools that LGBTQ youth face, especially transgender and gender non-conforming youth face that directly impacting their ability to learn and feel safe in school.\(^6\) LGBTQ refugees are reporting that they are being turned away, even though many of their home countries do not offer protections and are more likely to face discrimination, and yet are still more likely to be denied asylum.\(^7\) There are reports and explicit videos showing how ISIS is specifically targeting and executing gay men in regions under their control.\(^8\) State sponsored homophobia is still a very real threat for LGBTQ people, with countries who criminalize homosexuality through imprisonment (73) or even the death penalty (13).\(^9\)


Marriage equality cannot, and should not, be used as a measurement for overall equality for LGBTQ people nationally or globally. While marriage equality laws offer a recognition and some rights that were previously denied to lesbian and gay couples, marriage rights do not address the serious barriers and threats that LGBTQ people are facing across the world. By equating marriage rights to equality, the very real threats to the rights and lives of LGBTQ people across the world are erased. This erasure at both a local and global level has allowed for the continued discrimination, torture, murder, and isolation of lesbian, gay, bisexual, transgender, and queer individuals. This is not to say that marriage equality is inherently bad, but rather that it is only a tiny portion of the movement towards LGBTQ equality. The hyper focus on gay marriage laws within the United States and across the globe has limited the political and social discourse on LGBTQ rights to the marriage question, rather than looking at the bigger picture of what issues and barriers LGBTQ people are facing.

The following paper is a critical analysis on marriage as a right, marriage equality within the LGBTQ rights movement, and ultimately, a critical analysis on using the existence of marriage equality laws as a measurement of equality for LGBTQ people. The paper will first apply a national focus on the development of marriage within the United States, and critically evaluate the groups that get left behind the marriage equality movement and rights agenda. The paper will then apply a global focus in order to truly address the question of utilizing marriage equality laws as a measurement of equality for LGBTQ people. Applying both a national and global focus to this topic is vital for several reasons. First, there needs to be a movement away from US exceptionalism, where the actions of the United States somehow takes precedent over other countries achievements.
regardless of the US’s late coming to the marriage equality movement. Second, the LGBTQ movement within the United States problematically internalizes US exceptionalism and often ignores the needs of LGBTQ people across the globe. Third, this paper addresses the LGBTQ rights movement in general as well as engages the international relations and global affairs academic community as a way to push for globally focused academic disciplines to recognize the needs of the LGBTQ community and the importance of including them in overall global discourse.

The first section of this paper looks to critically engage the history of marriage as both an institution and as a legal right within the United States, and how it ultimately developed into the center focus of the LGBTQ rights movement within the United States and across the globe. Before we can begin to critically analyze the gaps and problems with presenting marriage equality as a measurement of equality, we must first explore marriage itself. Contrary to popular and conservative beliefs, marriage is not an innate institution but rather something that has developed overtime based on the historical and social needs of individuals. How marriage developed overtime and ultimately became a political and social institution governed and controlled by the state will be covered. Utilizing the institutional framework of marriage, we will then explore how marriage rights became the center of focus for many LGBTQ activists and organizations. A deep analysis of the motivations and governmental relationships that major LGBTQ rights organizations such as the Human Rights Campaign or the Task Force is much needed for the understanding of the standing of LGBTQ people within United States, however that is beyond the scope of this paper. Rather, this section will focus on what marriage is and the rights associated with marriage within the United States represented to activists and why
that would have taken precedent over other issues facing the LGBTQ community within the country.

The second section of this paper will build off the institutional marriage framework built in the first section, and will expand upon the gaps within LGBTQ rights that were left exposed due to the push for marriage equality. Specifically, this section will focus on the various identity groups that were left out of the marriage debates and how they are consistently left behind within the LGBTQ rights movement. Second, this section will explore the overall accessibility tangible and non-tangible rights offered through marriage rights to LGBTQ people within the United States. It will also explore the forms of violence that LGBTQ people face within the United States, and how the marriage equality fight vastly ignored these issues. Finally, this section will explore how the identity erasure, lack of accessibility, and ignoring of the violence LGBTQ people face has been eclipsed by marriage rights and created a normative framework that allows for this to happen.

The third and final portion of this paper will apply a global focus to the issues presented in the first two sections, and critically analyze the question of equality for the global LGBTQ community. We will explore where and how sexuality and gender identity/expression are a part of human rights documents within the United Nations. Second, the current issues that LGBTQ people are facing globally will be discussed and how the continued presence of these issues across the globe proves that equality for LGBTQ people has not been reached. And finally, the third section will explore the role that both international and state actors can play within the context of LGBTQ rights and
allowing for the issues that the community are facing globally to be represented within the international sphere.

In conclusion, this paper will highlight how the focus on marriage equality by LGBTQ activists and organizations, both globally and locally, have eclipsed the serious issues LGBTQ people are facing across the world. By utilizing the critical analysis provided in the three sections, this paper looks to prove that marriage equality cannot not, and should not, be used as a measurement of equality. It is important to reemphasize that this paper does not argue the existence or the benefits that many lesbian and gay couples received from the passing of marriage equality laws within the United States. Rather, this paper and the following sections look to highlight that the push for marriage equality overtook the LGBTQ rights movement and ultimately left large numbers of people, identities, and identity based rights violations behind. Marriage equality is an important step in the goal of overall equality, but it is not an all-encompassing step nor is the most important that the majority of LGBTQ individuals are facing both within the United States and within a global context.
I. Why Marriage?

On October 11th, 2009 hundreds of thousands of LGBTQ people and allies headed toward Washington D.C. for what was being called the Equality March. The Equality March was a call for action for LGBTQ rights leaders and activists in response to the passing of Proposition 8 in California. The proposition stated that marriage within the state of California was only legal between one man and one woman, and sparked outrage across the country for its blatant violation of rights towards LGBTQ people. The crowd marched throughout the capital, heading towards the White House in a show of outrage over the treatment of lesbian and gay couples, as well as LGBTQ people being able to openly serve in the military, and overall equal treatment under the law within the United States. It would take over a year for the federal court of appeals to hear the case on the passing of Proposition 8 and to overturn it, citing it as a direct violation of the basic rights of LGBTQ people.

The momentum created during that march carried activists for years as they pushed hard for the overturning of bans against gay marriage not only in California, but across the United States. The 2012 decision by the federal court of appeals not only affirmed lesbian and gay couples in California, but fueled the fire for many LGBTQ activists to continue the fight to the United States Supreme Court to gain recognition for lesbian and gay couples across the country. Momentum behind the overturning of

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DOMA, the Defense of Marriage Act, was in full swing, fueled by the victories in states like California. First signed into law in 1996 under President Bill Clinton, designated that states were not required to legally recognize of gay and lesbian couples and defined marriage as between one man and one woman.\(^{12}\) Meaning that if same-sex couples received the right to marry within a state they still would not have the same legal status as opposite-sex couples under federal law.\(^{13}\) The fight for marriage equality across the country was centered in overturning this law and proving that it was unconstitutional, so that gay and lesbian couples could gain the same federal recognition and rights that married heterosexual couples received under federal law.\(^{14}\)

The Defense Against Marriage Act (DOMA) was overturned by the Supreme Court in 2013, where the Court ruled that the act was unconstitutional in its claim that marriage is only defined as a union between one man and one woman.\(^{15}\) The Court refused to rule on marriage equality as a legal right in general, only citing that already legally same-sex married couples had the same legal right to access federal rights afforded to married couples as heterosexual married couples did.\(^{16}\) It was not until early 2015 that the United States Supreme Court ruled that same-sex marriage was not only

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This ruling was a landmark case within the United States, where the fight for marriage equality for LGBTQ people had begun years prior and was set to be the pinnacle rights debate for this generation.

Contemporary discourse often cites the evolution of marriage equality and the equal treatment of LGBTQ people within a similar timeframe as stated above. The LGBTQ rights movement and the path to equality, however, is much more complex and nuanced than popular and media discourse discusses. Within the context of marriage and marriage equality for LGBTQ people, the LGBTQ rights movement focused on marriage for its avenue to official and legal recognition of the existence of lesbian and gay couples. Through achieving marriage rights for lesbian and gay couples, LGBTQ people would receive the dignity, freedom, and equality that all other citizens of the United States received through their marriage rights. This assumption has proved to be problematic, because it limits our understanding of equality to only the ability to marry whomever you would like, rather than addressing the wide range of issues that impact the lives of LGBTQ people every day.

The following section will explore how marriage developed overtime and how marriage developed as a legal and political right within the United States. What is marriage and how did it become the center argument for equality within the LGBTQ rights movement? To understand how marriage became centered within the LGBTQ rights movement, we first need to backtrack and take a look at marriage itself. Understanding the importance of the marriage institution and the rights associated with it.

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within the United States will help us to better understand how it became the center of the LGBTQ rights movement in the country.

**The historical evolution of marriage**

Within the United States, especially in response to and against the efforts of activists for same-sex marriage rights, people cite the traditional nature of marriage as a stabilizing force within society. The evolution of marriage overtime is a long and drawn out history that involves both secular and religious views, rights, and benefits. In the most simplistic sense and current framework, marriage can be defined as a union between two people, but this was not always the case. Marriage has developed over time within many different societies and cultures, and has never encompassed the ‘traditional’ narrative that conservative, anti-LGBTQ people are so found of stating. Across the world and time, marriage has included multiple wives or husbands, marrying relatives, never producing children, or even only lasting for a single day. The fairytale that marriage has remained unchanged overtime and has always embodied the conservative and religious tenants that exist today is based in a general misunderstanding of what marriage is and how it came to be in society and as a legal right.

Long before the United States existed as it does today, marriage was taking shape in many different forms across many different cultures and societies. At its very basis, marriage developed not as a legal or even religious institution, but rather as a tool for interdependency that included social roles, pooling resources, protection, child rearing,

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and overall companionship.\textsuperscript{21} Love as the primary goal in marriage, as it (usually) is today, is actually a relatively new concept. Marriage rather developed as a resource tool for both individuals and groups to connect through shared relationships and kinships.\textsuperscript{22} Marriage was essentially a mutual exchange that benefited the single family unit, as well as the community at large.

Social and cultural structures began shape marriage as we know it today due to the advancement of human beings. As hunting, food production, and living conditions began to advance and take on different forms, the roles of individuals also began to change. The roles that individuals held within a marriage, such as the mother or the hunter, were initially dependent on each other and on the limitations of the individual (i.e. nursing mothers couldn’t hunt).\textsuperscript{23} More so, as social norms and regulations began to take different forms, marriage also began to adapt to address the new demands. As people began to settle in one place and the dependency on a partner and family unit was less about survival, and more about social and political power and status, marriage changed to meet these needs.\textsuperscript{24}

While the historical evolution of marriage encompasses many different stories, including the role of religion, the creation and implementation of gender roles, and valuing/devaluing of love, the key component to the evolution of marriage is that marriage itself was (and is) constantly evolving. Based on the various needs and expectations of culture and society, marriage developed as an institution that “…houses

\textsuperscript{21} Coontz, S.
\textsuperscript{22} Coontz, S.
\textsuperscript{23} Coontz, S.
\textsuperscript{24} Coontz, S. 43-49.
and supports several distinct aspects of human life: sexual relations, friendship and companionship, love, conversation, procreation and child rearing, and mutual responsibility.”

Further, the legitimacy of marriage was always based on how it met the needs of the community and the individuals who entered into the marriage. As we begin to explore how marriage developed as both a right and a social institution, it is important to acknowledge that marriage at its basis was developed as a tool to address the needs of the time. Whether that was socially, economically, culturally, religiously or even politically, marriage was able to adapt into an institution that reflected the needs of the society and culture in which it was being utilized in.

**Marriage as a right**

The adaptability of marriage as an institution has allowed marriage to take form both within a legal and political context. Politically, marriage adapted to represent an acknowledgment and recognition of the relationship from the both the state and federal government. Where religious institutions have been limited in their disbursement of marriage acknowledgement, the government, up until the marriage equality movement, has deemed all legal marriages as legitimate relationships. This political context is significant because it deems the marriage and the relationship as legitimate, which carries over into both the social and legal spheres of society. This social legitimacy and status that comes with marriage is a form of non-tangible rights of acknowledgement and recognition that are only accessible through legal marriage within the United States.

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Within the United States, marriage has developed to encompass civil rights, emotional rights, and religious rights through the support of the government and the formation of legally tangible rights that are unique only to those who are married.\textsuperscript{27} Government support and acknowledgement of marriage based relationships has led to the creation of tax breaks, parental rights, insurance claims, health care, and legal rights that are unique only to those who are legally married.\textsuperscript{28} A legally married couple within the United States receive both state and federal benefits that offer a form of legal protection of both parties in the marriage. These protections can vary depending on the state of residence, but federal protections include: tax, estate planning, government (social security, medical, disability), employment, medical, death, family, housing, consumer, and legal benefits.\textsuperscript{29}

Both non-tangible and tangible rights are that are given to married couples are a reflection of the adaptability and fluidity of marriage within the United States. Marriage thus meets the needs of a society by creating a separate social status of citizens, those who are married. This status allows for legal protections and recognitions that other members of society do not have access to, and thus acts as an attraction toward marriage and achieving recognition within society. This shows that marriage is more than just a list of legal rights awarded to couples, but is also in its essence a social construct that pushes citizens to aim for marriage as a social normative achievement.


\textsuperscript{28} Nussbaum, M. C. 669.

Marriage as a social institution

While the debates surrounding gay marriage laws both at a state and national level have focused on marriage as a right, it is important to flip that framework and evaluate marriage as more of a social institution than a right. The representation and acknowledgement of relationships through both tangible and non-tangible rights awarded to married couples is a reflection of marriage as a social institution as well as a rights framework. Marriage historically was created as a path to meeting the social and cultural needs of both individuals and the community, and thus became a social institution. The social institution of marriage is deeply “…embedded in the culture and intertwines both public and private lives.” The construction of both tangible and non-tangible rights are a way of centering marriage legally, and reinforces marriage as a social institution.

The outcry against marriage rights for gay and lesbian couples was based in the fear of the breakdown of marriage as a social institution. Marriage, institutionally, was focused on the centering of the legal relationship between one man and one woman. Gay marriage rights were then seen as a threat to marriage, where “…any change to this meaning of marriage [was] an assault not only to marriage but also on social order, stability, and civilization itself.” Marriage offers a socially prescribed script that defines the individual roles of those within the marriage and these roles are reflected throughout

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society. These roles are deeply imbedded in patriarchal, gender, and even religious norms that create a strict script within American society that individuals within a marriage must adhere to. Opening marriage up to same-sex couples represented not just a religious threat, but an overall threat to the institution of marriage and the socially constructed norms that opposite-sex couples depended on and lived out.

**Selecting marriage**

Understanding marriage within a historical context, as well as how it represents both a legal right and a social institution is helpful in understanding how marriage became the shining issue for the LGBTQ rights movement. LGBTQ movement as it is today is vastly different from the 1950’s and 60’s where primarily the movement was focused on seeking safety and the ability for lesbian and gay individuals to live out their private lives in peace. The focus during that time for progressive movements was less on specific rights, and more on the freedom of expression and liberty to live life as one saw fit rather than based on the social and legal restrictions on the self and body at that time. It was not until the early 1970’s that LGBTQ rights activist turned their sights onto access, or the lack of, to marriage and marriage rights. Many within the LGBTQ movement did not want to approach the marriage question, rather they wanted to focus on the distinct uniqueness that came with the gay identity and not limit it to heterosexual

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36 NeJaime, D. 94-104.
norms such as marriage.\textsuperscript{37} This sentiment remains still today among many activists, and caused for a general push back against the focus on marriage during the past several decades.\textsuperscript{38}

The centering of marriage within the larger LGBTQ activist debates ignored the reservations of some and moved to create a movement that fought for the acknowledgement and recognition of gay and lesbian couples. Along with the need for social recognition and legitimization, there was an additional legal need that presented itself during the AIDS epidemic and as gay and lesbian families started to emerge more and more.\textsuperscript{39} The rights that were afforded to legally married couples at the time, and to this day, allow for easier access during a medical crisis, healthcare costs, adoption, and family legal rights. The denial of these rights and the push back from more conservative groups fueled the fire for many activists and large LGBTQ activist organizations (see Lambda Legal, GLAD, Human Rights Campaign).\textsuperscript{40}

The selection of marriage and the promotion of marriage as a right for all was inherently about equality, but equality within a social sense. Marriage not only represented economic and legal rights, but it overall represented the denial of lesbian and gay relationships and the lack of legitimization of those relationships through the public

\textsuperscript{37} NeJaime, D.


\textsuperscript{40} D'Emilio, J. (2014). The marriage fight is setting us back. In R. Conrad (Ed.), Against equality: Queer revolution not mere inclusion (pp. 51-56). Edinburgh, United Kingdom: AK Press.
and political sphere. Activists and organizations then took on the marriage debate because they saw marriage as

“…some kind of dignity or public approval on the parties and their union that the exclusion of gays and lesbians from marriage is seen…as stigmatizing and degrading, raising issues of equal civic standing and equal protection of the laws.”\(^{41}\)

The need for marriage laws then was not just about legal rights, but the attainment of recognition both from the state and federal government that gay and lesbian individuals were legitimate and true members of the American society.

Where the marriage equality movement, and the activists who led it, failed was through their assumption that obtaining marriage equality would automatically infer equality for all LGBTQ people. This assumption is one that many activists and organizations still hold and state to this day.\(^{42}\) Marriage equality, however, was always limited in its scope to deliver equality only through marriage rights and only to lesbian and gay couples. Marriage equality leaves several gaps within its representation framework, and the push for marriage equality as the representation of overall equality has left many identities to be erased. This erasure has proven to be extremely problematic, allowing for violence and lack of representation to take hold within the LGBTQ movement, as well as both national and international social and political spheres.


II. Who gets left behind?

Marriage equality is a state sponsored form of recognition, a recognition of the relationships that are formed by lesbian and gay individuals across the country. This recognition, however, does not go hand in hand with the overall equality of lesbian, gay, bisexual, transgender, and queer identified individuals within the United States, or across the globe. Gay marriage laws are limited scope of equality for many different groups and intersecting identities. While marriage laws are often cited as the “…dawn of equal citizenship for gay people”, the reality is if the achievement of marriage equals full equality for LGBTQ people then marriage equality has failed in that regard. Lesbian, gay, bisexual, transgender, and queer individuals still experience multiple forms of discrimination, oppression, and violence at the hands of both the state and society. The existence of marriage equality laws have not changed this, and rates of all forms of violence remain steady and are even climbing for LGBTQ people of color and transgender individuals.\textsuperscript{43}

The assumption of equality based on the acknowledgement of only two specific identities, lesbian and gay, is based on the overarching LGBTQ acronym that is used to describe a community that is made up of many unique and various identities. While an overarching and umbrella acronym is helpful in quickly identifying the group that is being discussed, it creates a serious disadvantage and misperception that all the identities under this umbrella term are connected. Rather, the term is supposed to be a representation of various and uniquely different sexual orientations and gender identities.

that encompass the LGBTQ community. These various identities have needs that often differ from each other and are not limited to the right to marry. Not only do marriage equality laws presume that equality has been reached, but further allow for the assumption that they only pressing matter to all the groups is achieving marriage. This is often reflected in the statements made by major LGBTQ marriage equality groups such as ‘love is wins’, where the experiences of LGBTQ people are limited to their relationships. While the acknowledgement of the legitimacy of LGBTQ relationships is important, it is not all encompassing of the many different issues that these groups are facing on a daily basis.

The following section of this paper discusses the different forms of identity erasure that happen within marriage equality laws and the presumption that these laws directly correlate with overall equality. Specifically, we will look at how the language used within the law, and the language that was used throughout the fight for marriage equality engages directly in identity exclusion and erasure. Further, this section discusses how identity erasure is a form of violence both at a representational level, as well as an overt physical and psychological level. These forms of violence exist even with the existence of marriage equality laws, and LGBTQ people experience them daily. These forms of violence, however, disproportionately impacts people of color, bisexual, transgender, and gender non-conforming individuals. Erasure and physical violence against these groups is eclipsed by the overarching and presumptive language used within the law and serious repercussions for the communities impacted.
Erasing sexuality

The first form of identity erasure that marriage equality engages in is with the various sexual identities outside of gay and lesbian which is reflected in the ‘same-sex’ marriage terminology used in marriage equality laws. Sexuality exists on a spectrum of identities that are neither stagnant nor limited to just gay or lesbian, marriage equality, however, pertains specifically to lesbian and gay relationships. While at first glance this may seem like a trivial issue, the erasure of identities outside of lesbian and gay is extremely problematic and damaging. For bisexual and queer identified people, their identities are swept up in the overarching language of ‘the LGBTQ community’ while simultaneously they are omitted from having any representation or access to the rights awarded through marriage equality.44

Representation is a vitally important aspect to the success, happiness, and inclusion of any person who holds any identity within society. For bisexual and queer identified people, the lack of representation within marriage equality frameworks stems from the assumption that they can fall into either the straight or gay category for marriage and thus do not need their identities represented. This is extremely problematic for several reasons, first and foremost because it invalidates bisexual and queer identities as their own separate sexualities and lived experiences. Second, it operates on the assumption that when bisexual or queer people engage in ‘same-sex’ or ‘opposite-sex’ relationships, that they automatically lose their bisexual or queer identity and take on the identity of straight or gay/lesbian. Finally, it denies bisexual and queer identified people

44 The author recognizes that the sexuality spectrum is much more expansive than the different identities discussed here. For the sake of brevity, two specific examples of identities are given in this section.
the dignity and recognition that is offered to those who can legally marry under marriage laws. Instead, they become trapped in the ‘second class’ citizenship status that the LGBTQ activists were fighting against through the fight for marriage equality in the first place.\textsuperscript{45}

This loss of representation and identity recognition within marriage equality frameworks also leads to a lack of accessibility to all of the non-tangible and tangible rights that lesbian and gay people receive from marriage equality. Specifically, this impacts bisexual and queer individuals where they do not have full and equal access to legal rights and protections afforded to gay and lesbian couples. Adoption is a prime example of this, where the lack of legal recognition of bisexual (and queer) identities allow for dangerous stereotypes to influence legal decisions surrounding adoption and parenting cases.\textsuperscript{46} These stereotypes paint bisexual and queer identified people as promiscuous and instable, leading them to be labeled as unsuitable as both partners and as potential parents.\textsuperscript{47} Further, these stereotypes reflect the assumption that bisexual and queer people can choose a partner and then change their identity to fit the relationship, i.e. same-sex partner = gay/lesbian identity.

The assumptions that gay marriage laws, legal representatives, and activists operate on for bisexual and queer identified people are also extremely problematic because they allow for identity erasure that not only impacts them in their access to rights


\textsuperscript{46}Marcus, Nancy C., L.L.M., S.J.D, 291-344.

but in the different issues that impact them outside of marriage. Marriage equality language used by activists during and after the achievement of marriage rights centered around a unified community who were all fighting for the same thing, marriage. This language eclipsed the many different issues and forms of violence discrimination that LGBTQ people face, and especially the issues and violence that disproportionately impact bisexual and queer identified people. This includes high rates of hate crimes, poverty levels, intimate partner violence, and employment discrimination. This violence and discrimination happens both at the hands of heterosexual and the gay and lesbian community, and is often based on the negative stereotypes surrounding bisexual and queer identities.

**Erasing gender**

The second form of identity erasure that marriage equality engages in is the erasure of gender identities outside of cisgendered men and women. Cisgendered meaning someone who identifies with the gender they were assigned at birth. The presumption of ‘same-sex’ marriage is that cisgendered men or women who are in relationships with someone who identifies as the same gender as they are means that they are then gay or lesbian. This assumption operates on a false narrative of gender, sex, and sexuality that ultimately erases transgender and gender non-conforming people from marriage rhetoric. The erasure of trans and gender non-conforming people from marriage rhetoric combined the assumption that marriage equals overall equality then assumes that transgender and gender non-conforming people have also reached equality. Not only are

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the relationships of trans and gender non-conforming people erased, but their experiences and needs outside of marriage are also erased.

While some transgender and gender non-conforming people do identify as gay, lesbian, bisexual, queer, or another sexual orientation identity, many do not and identify as heterosexual. Someone’s sexual orientation is not dependent on their gender identity or their gender expression, and thus marriage equality laws are not all inclusive or represent the full LGBTQ spectrum. Even the language used to describe marriage equality, i.e. same-sex marriage, eludes to this and adds to the erasure of the transgender and gender non-conforming community under the guise of equality. Marriage equality benefits from and depends on a strict respect to the gender binary system, where individuals must fall on either the male or female side in order to identify as gay or lesbian. Couples who fall and identify outside of this spectrum are not represented within the marriage equality framework, and thus become erased.

This erasure is not only problematic on a representational front, but also signifies a dire problem where the issues that directly and uniquely impact the transgender and gender non-conforming community are eclipsed under the unifying language used to describe marriage equality and the assumption that marriage rights equal overall equality. Transgender and gender non-conforming people are consistently left out of LGBTQ discussions, activism, and rights focused laws. The Human Rights Campaign, a national LGBTQ activist organization, has notoriously and historically excluded transgender and gender non-conforming people from their campaigns for non-discrimination and marriage equality laws. The marriage equality law itself omits transgender and gender non-

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conforming identities all together. Further, transgender and gender non-conforming people are currently facing discriminatory bathroom laws that impact both public and school spaces.

Transgender and gender non-conforming people are also at a higher risk for violence, psychological distress, and discrimination based on their gender identity alone. In a recent survey by the National Center for Transgender Equality reported that 77% of transgender youth (K-12 grades) experienced some form of mistreatment in school, which included: verbal harassment (54%), physical attacks (24%), and sexual assault (13%). The report also showed that 33% of transgender identified people had negative experiences while attempting to get medical care and 25% had issues receiving insurance coverage due to their gender identity. Of those surveyed, nearly half (40%) had attempted suicide in their lifetime and 7% had attempted suicide in the past year. Rates of violence were also extremely high, including intimate partner violence, verbal, physical, and sexual assault. The report included high rates of employment, housing, bathroom, and overall discrimination due to gender identity.

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50 Obergefell v. Hodges, Director, Ohio Department of Health, No. 14-556 (June 26, 2015).


53 James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M.

54 James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M.

55 James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M.
The various identities and experiences of transgender and gender non-conforming people are erased and eclipsed by the marriage equality rhetoric and framework. Just as with the case of sexuality erasure, gender erasure operates under the guise of inclusive language such as ‘same-sex’ marriage. The overall erasure of identity is extremely harmful to the individuals that possess those identities on a representational, recognition, and violence level. For bisexual, queer, transgender, and gender non-conforming people, marriage equality rhetoric and laws create a barrier to representation and equality, a barrier that engages in the violence that these groups experience within the United States on a daily basis.

Identity Violence

It may seem like the erasure of both sexuality and gender identities is a small problem that should not matter in the large scheme of things. Erasure, however, is extremely problematic not only in its lack of acknowledgement of the existence of the people behind those identities, but in its engagement of violence. First, identity erasure is a form of violence itself that drastically impacts the lives of the people who hold those identities. Second, identity erasure as a form of violence begets the physical violence that LGBTQ people face within social, legal, and institutional spheres every single day. Both forms of violence create a cyclical cycle that allows for bisexual, queer, transgender, gender non-conforming, and other identities (BQTGNC) outside of the ‘same-sex’ narrative to become eclipsed by the equality assumption that has been associated with gay and lesbian marriage rights.

The erasure of any identity is a form of violence because it removes the experiences and lives of the individuals from social and political spheres. This allows for
those people to become lost and misrepresented within systems that are already set up to fail them. Where gays and lesbians are now represented within the ‘same-sex’ marriage framework, bisexual, queer, transgender, and gender-nonconforming people are left behind and lack any true form of representation. This representation is extremely important for the health and wellbeing of these individuals, where they are being denied the legitimacy, affirmation, acknowledgement, and acceptance that gay and lesbians gained through marriage equality. Further, the ‘second-class’ status that the fight for marriage equality rallied against has not gone away, it has only shifted away from lesbian and gay couples through gay marriage rights. This form of violence is especially harmful then because the BQTGNC group is assumed to have access to the equality that lesbian and gay couples have achieved.

The violent erasure of individual identities also perpetuates the physical violence that these identities experience within the United States on a daily basis. This happens in two specific ways, first erasure allows for BQTGNC identities to be erased and thus not represented within the social and political spheres. The violence that occurs towards these groups, such as the high rate of murder against trans women of color, largely falls unnoticed within the normative spheres. Second, erasure of both sexual and gender identities within marriage equality laws through the assumption that equality has been reached by the ‘LGBTQ’ community. Thus, the experiences of violence and discrimination that these groups face can be deemed situational, rather than an integrated


57 Marcus, Nancy C., L.L.M., S.J.D.

form of violence that they face due to socially accepted homophobia, biphobia, and transphobia.

Identity erasure for both sexual and gender identities is extremely damaging at both a representational and physical violence level that drastically impacts the lives of bisexual, queer, transgender, and gender non-conforming people. Marriage equality operates within these erasure structures that support both representational and physical violence. This is where the assumption of equality through marriage rights for gays and lesbians is so damaging, and where a reevaluation of what equality is and means for all LGBTQ people is desperately needed both within the United States and globally.

**The assumption of equality**

The assumption of equality that is applied to LGBTQ people through gay marriage laws, when it only truly benefits lesbian and gay married couples is extremely damaging on several levels. Violence against LGBTQ people takes many forms and exists within many different social, institutional, and legal frameworks that drastically impact the lives of LGBTQ people every single day. The erasure of identity that happens within the marriage equality framework performs a form of violence in which sexual and gender identities outside of the cisgendered lesbian and gay framework of gay marriage are erased and become invisible within the equality discourse. The representation of the identities within the umbrella term LGBTQ is symbolic only on the surface, and does not allow for true representation to happen within the marriage framework.

There must be a critical discussion over the LGBTQ rights movement and actors in addition to the critical analysis of what marriage equality represents and who it erases both nationally and globally. Through the erasure of different identity groups and the
perceived unification of LGBTQ identities towards the fight for marriage equality,
LGBTQ rights activists allowed for more harm than good to come from the marriage
equality debates. Marriage equality only offers equality in the form of recognition, legal
rights, and validation within the narrow context of marriage for lesbian and gay couples.
The critical analysis of American marriage and marriage equality laws is especially
important not only for the representation of LGBTQ people within the United States, but
it offers a framework for evaluating LGBTQ people and rights at a global level. The
experiences of LGBTQ people across the world reflect the identity erasure and violence
frameworks that are taking place within the United States. Additionally, by applying a
critical analysis at a global level to the lives of LGBTQ people and the issues affecting
them, there can be greater pressure on the countries that have adopted marriage equality
laws and have thus assumed overall equality for LGBTQ people, even when there is
none.
III. Global Equality?

Historically LGBTQ people have been excluded from global human rights rhetoric and documents, where the broad reach of international human rights did not reach the LGBTQ communities across the globe.\textsuperscript{59} For many countries and international entities, they still operate within the normative and limited sexual and gender binaries that reinforce the otherness of LGBTQ people.\textsuperscript{60} It is not until more recently that international bodies have begun to seek inclusion and representation for LGBTQ people within international agreements and monitoring mechanisms. The United Nations has reported that it is not only recognizing all same-sex marriages for its employees, but they are also working towards adopting LGBTQ inclusive frameworks within its many different entities.\textsuperscript{61} Further, support for LGBTQ people has increased across the globe as more and more countries are adopting marriage equality laws for their citizens. This show of support is significant in that these countries are visibly and openly taking a positive step towards inclusion for their LGBTQ citizens.

Discussing LGBTQ rights within a global context can be difficult, because some of the problems and representations (or lack thereof) that issues such as marriage equality represent within a national context take a different form within an international context. This is because there is no united global population, but rather citizens are represented by


the heads of their countries within the international realm. To date, even with the rise in non-state actors, states are still the number one actors and proponents for human rights within the international community.\textsuperscript{62} The actions that states then take within their own countries can be utilized within an international framework to push for and support the inclusion of LGBTQ people within international treaties and documents. This inclusion and acknowledgement is vitally important to the health and safety of LGBTQ people across the globe. While there are many countries who are moving towards recognition through anti-discrimination laws and marriage equality laws, LGBTQ people across the globe still face continuous forms of discrimination, violence, and murder directly at the hands of the state.

This is where the problematic frameworks that we saw in the marriage equality laws and debate, identity erasure and the assumption of equality, are reflected at an international level. While the mere existence of marriage equality laws offers a more positive form of representation at the international level than it does at the national level, there is still danger in the assumption of equality that comes along with the existence of these laws. Identity erasure exists inherently in these laws and, unlike national marriage equality, the global representation of marriage equality counteracts this through offering representation. However, there is a danger in the assumed equality that will follow the statements of support and the urging of the United Nations to member states to be more inclusive. The statements fall short of representing the high rates of discrimination,

murder, crimes against humanity, and criminalization that still exist across the globe today for many LGBTQ people.

The following and final section of this paper offers a brief overview of the state of LGBTQ people within a global context. This section will explore the representation that LGBTQ people do have within the various international entities within the United Nations system. Second, this section will critically analyze the areas that LGBTQ people are facing global disparity. Specifically focusing on the human rights violations, genocide, discrimination, and criminalization that LGBTQ people are facing currently. Finally, this section will conclude by discussing the role that international and state bodies can play in continuing to bring attention to the issues LGBTQ people are facing globally without falling into the assumption of equality paradigm.

**Global Representation**

The United Nations has begun to offer more representation of sexual and gender identities within its many different entities. In 2016, the United Nations Human Rights Council adopted a resolution that directly called out all forms of discrimination and violence that LGBTQ people face directly at the hands of the state. The resolution was built from previous resolutions, also under the Human Rights Council, that LGBTQ people are included under the International Bill of Human Rights. The most recent resolution, while still not specifically laying out the rights of LGBTQ people, offered a reaffirmation that sexual and gender identities are protected under the Bill of Rights.

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Other entities within the United Nations are also taking on representation of LGBTQ people and the issues that they face globally. Following the resolution of the Bill of Rights, the Human Rights Council added a special position that specifically focuses on and investigates the discrimination and violence faced by LGBTQ people. Additionally, the Office of the High Commissioner has also taken on acknowledging the violence and discrimination that happens to LGBTQ people, specifically citing the social, institutional, and governmental forms of discrimination and isolation that they face in many different countries.

Prior to stepping down as the Secretary General, Ban Ki-Moon, addressed the isolation and identity erasure that LGBTQ experience that has led to the denial of equality and freedom at both a national and global level.

The increased forms of acknowledgement, representation, and recognition that LGBTQ people are receiving within the United Nations framework is important to highlight for several reasons. First, the acknowledgement within the UN system carries a much more positive framework than it does at the national level. As stated previously, acknowledgment through UN entities shows a solidarity among many states that at the bare minimum, there needs to be an end to the erasure of the issues LGBTQ people face that has happened for so long within international regimes and documents. Second, this

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acknowledgement performs a form of identity acknowledgement that is not reflected within the national context. Where marriage equality within the United States engages in a form of identity erasure and assumption of equality, this is not reflected at the international level. Rather, the acknowledgment of LGBTQ identities is a direct rebuttal to the many countries that still engage in identity erasure and violence at a federal and local level.\footnote{Carroll, A. (2016, October). *State sponsored homophobia*. Retrieved from International Lesbian, Gay, Bisexual, Trans and Intersex Association website: http://ilga.org/what-we-do/state-sponsored-homophobia-report/}

Acknowledgement and recognition can only go so far when discussing oppressed groups of people, especially groups that are directly facing forms of discrimination and violence at both a national and global level. Where representation at the international level fails is not in its assumption of equality overall, but rather its assumption that recognition creates equal coverage under international regimes and entities. This is not to assume that all other oppressed groups of people receive equal coverage that is then reflected within their home states. As it is well documented, many groups still face discrimination, human rights violations, denial of asylum, genocide, and many different forms of discrimination at the hands of the state. Just as with other groups, such as women, indigenous groups, and people of different ethnicities, LGBTQ people require more than representation at the global level, they require state and international action.

**LGBTQ Global Disparity**

LGBTQ people face many different forms of disparity across the globe at the hands of individual actors and the state. While these forms of discrimination and violence are not new to the LGBTQ communities across the globe, global monitoring of these
violations are relatively new. Along with newer monitoring bodies and easier access to media across the world, the issues LGBTQ people are facing have become clearer to both international and national watch bodies. Legal discrimination is still a reality for many LGBTQ people, where 72 states cite same-sex sexual acts as illegal and 13 of those states apply the death penalty to those acts.69 17 states across the globe also promote ‘morality’ propaganda that directly target LGBTQ people and their freedom of expression toward their sexual and gender identities.70

LGBTQ people are also facing severe human rights violations in many different countries today. Reports of genocide occurring against gay men in Chechnya have recently been brought to the media’s attention. Gay men are being rounded up and held against their will in concentration style camps and reports include experiences of torture and extrajudicial murders.71 Chechnya and the Kremlin have long been reported that they deny the existence of LGBTQ people within Russia, and thus are denying the claims of brutal treatment and killings of gay men within the region.72 Further reports of genocide

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72 Knight, K.
against LGBTQ people, specifically gay men, at the hands of ISIS fighters have also come forward.\footnote{OutRight Action International. (2016, April 2). \textit{Timeline of publicized executions for "indecent behavior" by IS militias} [Fact sheet]. Retrieved May 1, 2017, from https://www.outrightinternational.org/dontturnaway/timeline}

LGBT asylum seekers have also reported all forms of discrimination and violence within several different countries. Many LGBTQ asylum seekers are fleeing from their homeland in direct response to the violence and discrimination that they are facing there. When these asylum seekers then reach refugee centers and camps, they then face further discrimination and violence. Reports of violence and discrimination by fellow refugees, and denial access to the mainland by refugee centers, are coming out of a Spanish North African enclave.\footnote{Human Rights Watch. (2017, April 28). Spain: LGBT asylum seekers abused in North African enclave. Retrieved May 1, 2017, from Human Rights Watch website: https://www.hrw.org/news/2017/04/28/spain-lgbt-asylum-seekers-abused-north-african-enclave} Similar reports are coming out of the United Kingdom, where LGBTQ asylum seekers from Afghanistan are being denied access to the UK under the presumption that they can live safely within their home country, despite the reported discrimination and violence that LGBTQ Afghanis face in their home country.\footnote{Gossman, P. (2017, February 26). \textit{Afghan LGBT asylum seekers in the UK among most vulnerable} [Press release]. Retrieved from https://www.hrw.org/news/2017/02/26/afghan-lgbt-asylum-seekers-uk-among-most-vulnerable}

What these reports show are the serious forms of discrimination and violence that LGBTQ people face both through global crisis’s such as immigration and asylum seeking, as well as through global human rights violations such as genocide. And the violence is not limited to global issues, it comes directly from the hands of the state where the very existence of LGBTQ people within a country can mean imprisonment and even death. International organizations like the United Nations have made great strides at
beginning to highlight the existence of LGBTQ people across the globe and the different issues that are impacting them. Further work is needed at the international level, however, where the forms of internationally recognized violence and discrimination frameworks include LGBTQ people within their scope.

The Role of International & State Actors

Just as local actors, activists, and LGBTQ organizations within the United States have (and had) an obligation to truly represent the full spectrum of sexual and gender identities within seeking marriage equality laws, so do international and state actors. The success of marriage equality laws within the 23 countries across the globe allow for representation of LGBTQ people at a global level that is not replicated at the national level. These state actors, however, have an obligation is to carry out this representation past the symbolic nature of the General Assembly and push for the inclusion and representation within all international monitoring bodies and international human rights treaties. This push for overall inclusion is vital because while identity erasure is not replicated through marriage equality laws at the international level, identity erasure is allowed to continue to exist with the limited action by member states. Supporting the inclusion of LGBTQ people at an international level must come in more forms other than the example of marriage equality at a national level.

By challenging international organizations, entities, and institutions to include LGBTQ people not only on a representational level, but actual inclusion within the international treaty language and monitoring bodies. Global attitudes toward LGBTQ people are difficult to change with mere representation, especially when many of these attitudes are based in religious and cultural traditions that are institutionalized at a
national level. By pushing for the inclusion in treaties such as the Genocide Convention, CEDAW, and UN Declaration on Human Rights actors have the ability to begin to slowly change the minds of more conservative states. Through acting as advocates for the LGBTQ community, not just representatives, actors can create an example of LGBTQ inclusion within the United Nations. Through this example setting member states and international actors have the opportunity to represent their LGBTQ citizens on a deeper level within the United Nations and create sustainable change within the international frameworks it represents.

International and state actors have an obligation to continue to push for full inclusion and representation at the international level and within organizations like the United Nations. There is a serious danger in equating the existence of marriage rights with the overall equality within an international framework for LGBTQ people. By equating marriage rights to equality, the very real threats to the rights and lives of LGBTQ people across the world are erased. This erasure at both a local and global level has allowed for the continued discrimination, torture, murder, and isolation of lesbian, gay, bisexual, transgender, and queer individuals.
Conclusion

The purpose of this paper was to explore and critically analyze marriage equality and the assumption of equality that often follows the creation of gay marriage laws. Using the United States as the primary example, we explored how marriage developed both as a right and as a social institution that afforded legally married couples both tangible and non-tangible rights. These rights however were limited in scope and were only offered to gay and lesbian couples. Identity erasure has played a large role, both within the United States and globally, and has influenced the violence and discrimination that LGBTQ people face. False representation of all sexual and gender identities is a direct result of the marriage equality laws, debates, and framework within the United States. Globally, this trend is replicated not through the existence of marriage equality laws within a state, but rather through the assumption that a state providing marriage equality is enough representation on an international level to equate full inclusion within international treaties and documents.

The assumption of equality, either through marriage equality laws (national) or by using marriage equality laws to represent inclusion (global), is extremely problematic and reinforces the otherness and violence that LGBTQ people face both globally and within the United States. LGBTQ people are facing many forms of violence and discrimination, that directly impact their safety and wellbeing. Whether this is within a national context, such as high rates of crime against transgender individuals, or globally, where LGBTQ people are disproportionately facing human rights violations such as genocide and denial of asylum. While marriage equality laws offer a recognition and some rights that were previously denied to lesbian and gay couples, marriage rights do not address the serious
barriers and threats that LGBTQ people are facing across the world. By equating marriage rights to equality, the very real threats to the rights and lives of LGBTQ people across the world are erased. This erasure at both a local and global level has allowed for the continued discrimination, torture, murder, and isolation of lesbian, gay, bisexual, transgender, and queer individuals. Marriage equality cannot, and should not, be used as a measurement for overall equality for LGBTQ people nationally or globally.
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