

## Revisiting Demise Through Success: The Lesbian and Gay Movement After *Obergefell*

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Eric van der Vort  
*Maxwell School, Syracuse University*

Can the lesbian and gay movement sustain itself after achieving marriage equality? This question has been central to the movement since the Supreme Court recognized nationwide equal marriage in June 2015's decision *Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (2015) (hereafter *Obergefell*). Leaders of the movement have been concerned about their future and divided over the ways they should proceed, with one journalist describing these discussions as showing "a fractured picture emerges that suggests little agreement about what should – or even can – come next" (Elliot 2015a). Leaders have also been concerned about the emergence of political backlash, a prediction borne out as state legislatures and the federal government debate anti-equality measures governing religious liberty or transgender rights (Elliot 2015b). Opponents of lesbian and gay inclusion are working to forestall further rights expansion and the movement has faced difficulty meeting this emerging backlash (Holden 2015). An effort to defend a non-discrimination ordinance in Houston failed in October 2015. One of the most prominent organizations, the Human Rights Campaign (HRC), unsuccessfully invested heavily in a Houston ballot initiative to defend an equal protection ordinance (Holden 2015). This failure has been read by some as indicating a lack of genuine vision or direction in the movement going forward. Loss of vision is one possible sign of movement decline.

Have other signs of movement decline in the movement post-marriage emerged? While foundations continue to support the movement monetarily, concerns exist that funding from members and other sources may decline. This is particularly true for state-level organizations that are most vulnerable to funding declines (Eleveld 2015). New York's oldest and largest pro-equality group, Empire State Pride Agenda (ESPA), is emblematic of this problem. After experiencing

shortfalls due to the 2008 recession, ESPA's budgets recovered by 2010. They reported \$2.1m in total contributions and grants in 2010, a \$200,000 increase from 2009. This increase was largely due to efforts to pass marriage equality in the New York legislature. In 2011, after equal marriage was enacted in New York, ESPA's again declined. Contributions never again reached 2010 levels.<sup>1</sup> At the end of 2015, ESPA announced that it would cease operations, leaving only its political action committee (PAC) intact. While the leadership of the organization said its mission had been fulfilled, reports suggest that the organization had experienced declining funding in its main organization and in its PAC (Schindler 2015). These reports also suggest that the organization's resources were limited and its liabilities increasing, leading to an untenable situation. The closure of an established group like ESPA seems not to bode well for the movement. But does this closure indicate a broader period of movement decline?

I argue that it does not. While the movement will undoubtedly be forced to adapt and channel its extant resources into new ventures and organizational structures, the post-marriage moment (to the extent that such a moment even exists) is one of potential growth and maintenance for the movement. Looking at historically similar moments of large legal victories, I argue that the movement can identify critical strategies that will let it carry forward and continue its work. This is not the first moment in which the movement has found itself facing a large legal victory and a larger raft of unfulfilled goals. In the wake of the Supreme Court's decision *Lawrence v. Texas*, 539 U.S. 558 (2003) (hereafter *Lawrence*), the movement found itself confronted with a significantly altered legal landscape and a new set of political opportunities. The movement successfully took advantage of those altered conditions to press its agenda forward and, in the face of large political impediments, managed to achieve a number of its important goals. By re-emphasizing the importance of the post-*Lawrence* moment and asking what lessons it might teach the post-marriage movement, I argue that

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<sup>1</sup> \$1.6m in 2011, \$1.8m in 2012, \$1.9m in 2013, and \$1.4m in 2014. All funding information drawn from ESPA's IRS forms 990, accessible through Charity Navigator.

the movement can find critical inspiration and overcome the new difficulties it faces as its putative *raison d'être* – marriage, the primary fundraising and organizing tool for movement organizations in the past 15 years – has been fulfilled.

This paper examines the question of movement decline, maintenance, and coalescence in the wake of marriage equality through the lens of demise-through-success. In particular, it looks at a prominent moment of victory in the movement's legal history to see whether the movement is likely to decline and what lessons it may draw from prior experiences. There is a strand of literature that examines defeats in the lesbian and gay movement. Ellen Andersen argues that lesbian and gay legal organizations have been able to use "a litigation defeat to mobilize support" (Andersen 2009, p. 46) and that they have been able to exploit cultural and legal opportunities to "take a political defeat and translate it into a legal victory" (Andersen 2009, p. 212). Likewise, Douglas NeJaime notes that loss can have a "productive function" for movements. He sees legal losses as providing movement actors with multiple opportunities similar to those Andersen describe: to build identity, to further organize, and to use the loss as a tool in appealing to the public and political actors (NeJaime, 2010). These victory-in-defeat analyses make sense of defeats in the movement's past, but tell us relatively little about the counterfactual. One development in particular give us the chance to perform such an analysis in the wake of a major victory that might inform our understanding of the current moment: the case *Lawrence*, which struck down the nation's remaining sodomy restrictions. *Lawrence* may produce useful insights into the movement's trajectory post-*Obergefell*, with marriage equality now the law of the land.

In the following section, I discuss the circumstances under which we might find evidence of social movement decline. Next, I examine two Supreme Court cases that laid the groundwork for *Lawrence* and altered movement trajectories: *Bowers v. Hardwick*, 478 U.S. 186 (1986) (hereafter *Bowers*) and *Romer v. Evans*, 517 U.S. 620 (1996) (hereafter *Romer*). I then discuss *Lawrence* as a moment of

movement coalescence that was critical for future movement successes and which can offer useful insights for the movement's future. I conclude with a discussion of the possibilities for the movement in the wake of *Obergefell* and the 2016 elections, arguing for a developmental approach that treats movements as made up of different strands that may come out of abeyance and into relevance again.

### **After Success: Demise or Revitalization?**

Success and failure are critical concepts in social movement research, particularly where questions of movement trajectory are concerned. Zald and Ash discuss the importance of social movement success and failure when they ask "what happens when the goals of a [movement organization] are actually reached." They see success and failure in achieving goals as one of the most important determinants in the trajectory, growth, and decline of movement organizations. They argue that "two major outcomes are possible: New goals can be established maintaining the organization or the MO can go out of existence" (Zald and Ash 1966, p. 333). Their focus is largely on specific movement organizations rather than movements as a whole, and their vision of success or failure is relatively specific, such as "when a law is enacted, a disease is eradicated, or social conditions change" (Zald & Ash 1975, p. 333). These are relatively neat instances of movement success or failure, while outcomes in the real world not always so tidy. Later scholarship has recognized this complexity. Disney and Gelb (2000) draw on this scholarship to expand success beyond specific changes in policy: they conceive of success as consisting of achieving political goals, mobilizing new activists, changing cultural norms or ideals, and organization maintenance or survival. They advocate for an approach that examines movement survival and success in a historical lens rather than a narrow focus on specific campaigns or instances. Other studies of the women's movement arrive at

similar conclusion, looking to broaden conceptions of movement maintenance or survival to argue that the movement is far from decline. Staggenborg and Taylor (2005) authoritatively argue that growth in the international women's movement, the widespread adoption of feminism as a political principle, cultural change, and the expanded tactical repertoires and capacity of the women's movement prove that its putative decline never really occurred. Rather, they argue that the women's movement has advanced in waves, building on previous successes and failures to expand and maintain its capacities. I adopt these approaches from women's movement scholarship in considering the question of the LGBT movement's future in the wake of success and failure

Success/victory and failure/defeat present numerous opportunities to movements. LGBT The previously mentioned "victory-in-defeat" approach argues that seemingly significant setbacks may in fact be moments of renewal for social movements. Another vein of research argues that movements may become so successful that they organize themselves out of existence. Building on the insights of Zald and Ash, Fred Miller calls this 'demise through success,' a concept that is one form of movement decline. Movement decline is most likely to occur under one of five conditions: repression (state efforts to suppress movement activity), co-optation (integration of a movement's capacities and values into the state), success (achievement of movement goals), failure (a movement breaks apart due to factionalism or being surpassed by another movement/organization), or establishment with the mainstream (the movement's goals or values are adapted by the broader culture, eliminating the need for a movement) (Miller 1999, Macionis 2001).

In asking whether the movement is in decline, and whether organizations can sustain themselves post-marriage, I reject several of these possible explanations. The movement is not facing official repression, though political backlash may represent a form of repression, nor has it been co-opted by state institutions or actors. Similarly, the movement has not failed: the rapid expansion of lesbian and gay rights shows that the movement has achieved at least some its goals.

Though it can be argued that the movement has become more prominent and has entered the mainstream, it is questionable whether its goals or values have been broadly and fully adopted, meaning that entering the mainstream is an unlikely explanation for movement decline. That leaves the question of success and its subsequent effects on the movement. Even in the face of successes, movements can sometimes fail. Finally, success and failure are not always separable and may co-occur.

Narratives about the movement after marriage paint it as facing numerous challenges along these lines, making Miller's concept potentially useful in analyzing its present and future. Resources have dwindled. Ideological and tactical differences among movement actors have been exacerbated, leading to conflict among movement organizations as theory expects (Zald & McCarthy, 1977). A political backlash has emerged that will at least temporarily work to scale back past victories and prevent future ones, but this backlash is unlikely to be sustained or truly effective (Keck 2009; Klarman 2012). Recent events, including a countermobilization against North Carolina's discriminatory HB2 and public outrage at the mass murder at *Pulse* in Orlando, show that the American polity *has* grown more accepting of lesbian and gay citizens, but the limits of that acceptance may be underestimated using conventional measures like public opinion (Coffman, Coffman & Ericson, 2013). Yet the movement *is* celebrating notable moments of success: the invalidation of sodomy laws, the opening of military service, and the recognition of equal marriage at the national level, along with the enactment of antidiscrimination and hate crimes legislation in many states.

The movement is mature, but its work is incomplete. Gary Mucciaroni argues that there are five challenges facing this 'mature movement' after marriage: (1) pursuing full legal equality, (2) guarding against backlash, (3) electing more openly LGBT officials, (4) working for the diffusion of lesbian and gay inclusion across the globe, and (5) moving away from a civil rights model to a

cultural change model of social advocacy (Mucciaroni, 2016). For Mucciaroni, these are not merely substantive challenges – they are also structural. He also emphasizes the fragmented nature of the movement, which serves diverse constituencies and whose organizations often have competing goals. The challenges facing the movement are not just a matter of elusive policy goals or constrained resources – there are also substantial internal divisions in the movement recent successes exacerbate.

How should we evaluate the success and future viability of a movement that has compelling challenges, diverse goals, and no shortage of internal dissensus? Achieving equal marriage cannot be equated with achieving lesbian and gay equality, making it a poor measure of outright success (Mucciaroni 2016, Haider-Markel & Taylor 2016). The best way to make sense of the movement's success in equal marriage is to adopt a core element of Gamson's (1990) definition of social movement success. Gamson argues that success is the slow process of achieving a movement's goals, . Some movements may have a single particular goal – for example, a local campaign to increase the minimum wage – that observers can point to and evaluate progress or fulfillment. Larger movements usually have many goals. By achieving some of those goals, a movement may be partially successful without fulfilling its whole agenda – and agendas may change in response to emerging circumstances.

Like its sister movements for racial and gender equality, the movement has had many goals, some named above. Some goals have been fulfilled while others remain un- or partially fulfilled. For example, some states have enacted more inclusive legislation than others, with institutional arrangements, political activity, and public opinion providing barriers to progress (Haider-Markel & Meier 1996, Lax & Phillips 2009, Lupia et al 2010). Cultural and social change has also been part of the movement's successes (Bernstein 2000). The multiplicity of organizations and goals, multiple levels of government, and time horizons on which large social movements operate make any *specific*

measure of success difficult to pinpoint. Gamson's definition is a useful alternative to specificity that allows us to evaluate success or failure from a historically oriented developmental perspective (Disney and Gelb 2000). Success is not a single 'one and done' moment for the majority of social movements. Instead, it is a series of advances, setbacks, and struggles that, from a particular movement's perspective, will ideally lead toward achieving its full set of desired outcomes.

Success, then, is a slow process that is likely to unfold over years or decades. Most forward momentum is a slow process that will be small in scope and scale, like the passage of a municipal nondiscrimination ordinance. More dramatic moments such as a Supreme Court decision that significantly advance a movement's goals are rare in a longer time frame but have important consequences. They are high profile, have broad impacts on populations that they benefit, and are often the product of sustained campaigns, such as the fight for equal marriage, and almost always represent the denouement of far longer campaigns. A high profile campaign of legal and political advocacy, combined with changing legal and cultural consciousness, can help to produce results that appear to be success but that may also have unintended consequences on other issues in large social movements. Over the course of two decades, equal marriage became the *cause célèbre* of lesbian and gay inclusion. It affected the political identity and priorities of many lesbian and gay citizens, with many viewing it as the paramount issue (Flores & Sherrill 2016) and others viewing it as a wrong-headed push toward dangerous assimilation (Conrad 2010). This had the potential consequence of making marriage not only a *priority* in lesbian and gay equality but *synonymous* with said equality for many citizens (Flores and Sherrill, in press). As the case of ESPA demonstrates, individuals who contributed time, money, and passion to the fight for marriage equality may be less willing to make those investments once they achieve their primary goal of interest. For a movement whose modern agenda has been so deeply shaped by pursuing equal marriage through law (Leachman 2014), it may have organized itself out of existence by finally achieving that paramount goal. The conditions for

demise through success are ripe, as the combination of a large success, dwindling constituencies, and diminished resources place pressure on movement organizations.

This may oversell the potential for demise. Certainly, the movement as a whole faces a challenge it has never had to confront. In the past, the movement has been forced to organize and revitalize itself in the face of defeats and setbacks. Scholars like Andersen and NeJaime have argued that the movement has sometimes been successful in turning these moments of defeat to their advantage. These victory-in-defeat analyses emphasize the political and legal opportunities that movement actors exploited. The alternative to this analysis is Miller's demise-through-success framework, which we might also call defeat-in-victory. A victory on equal marriage could turn into defeat on other issues if movement organizations ceased operations, ended their campaigns, and ignored the bevy of other issues that remain unfulfilled on the movement's long list of agenda items. The signs do not appear to point to widespread unilateral disarmament (Price and Keck 2015). While state organizations like ESPA shutter, while equal marriage organizations like Freedom to Marry cease operations, and while many other organizations confront diminished resources, neither the vitality of nor the need for the movement have truly declined. With many of its goals still unfulfilled, the movement has not ceased operations; rather, it is in a period of reorganization and restructuring. Adapting to a changing environment is one of the necessities of long-term maintenance of the movement. The most striking challenge facing the movement, from this perspective, are not those that Mucciaroni lays out, but rather in learning to sustain itself in an environment it has never encountered at this scale. Moments of success may lead to movement decline and demise, but they need not always.

I next I turn my attention to the movement's experiences over time, particularly how its responses to defeat and success have been developmentally linked, to see what lessons may be derived for the movement post-marriage. I examine one major victory and its background. Like

most movements for social change, lesbian and gay advocates have experienced their share of setbacks and successes. The particular set of cultural, legal, institutional constraints facing advocates differ significantly from those of other identity groups engaged in similar work, but the structures are largely the same. American political culture and institutions were (and to some extent still are) arranged so that lesbians and gays were excluded from access to basic features of public life. One of the fundamental exclusions that rendered lesbians and gays as ‘other’ in the American polity was sodomy law. By examining the movement’s attempts to remove these restrictions and how they reacted to both defeat and success, we may gain important insights into the future of the movement after its largest success to date.

### ***Bowers* and *Romer*: Finding Victory in Defeat**

*Bowers* and *Romer* are the quintessential examples of finding victory in the wake of defeat for the lesbian and gay movement. In particular, *Bowers* played a significant role in shaping the *trajectory* of the movement, while *Romer* played a significant role in shaping the *constitutional status* of the movement and its constituents. *Bowers* tested the constitutionality of sodomy laws that both criminalized and stigmatized same-sex sexual behavior. In doing so, they presented a powerful barrier to entry into public life as an out person. These laws had the effect of reducing lesbian and gay status to a set of illegal sexual acts (Eskridge 2008a). To claim that status was to declare oneself a criminal. Those who were the targets of sodomy laws – through open confession of their sexual orientation, through police harassment, or through intentional exposure by others – were subject to various forms of social punishment. Many of those convicted of violating sodomy laws suffered far beyond the mere act of criminal punishment: many lost jobs, families, and professional and social status (Leslie 2000; Herek 2007). Faced with the relative safety of remaining closeted or with the

very real risk of having their lives ripped away, many remained silent about their sexual orientation or gender identity (Seidman 2002; Eskridge 2008a). Sodomy laws thus had a strong impact on the ability of lesbians and gays to organize and advocate on their own behalf (D’Emilio 1998; Rimmerman 2001). The stigma and repression attached to being an open lesbian or gay men alone has been enough to dissuade activism in the past.

The social and political impediments created by these laws made them an essential target for lesbian and gay advocates (Eskridge 1997). Early advocates had an advantage because of legal developments separate from any social movement. At mid-century, the American Legal Institute disseminated a Model Penal Code (MPC). The MPC was intended to provide a model for updating and harmonizing state laws. One of the categories of laws that it targeted for elimination were sodomy bans. In 1962, Illinois became the first state to adopt the recommendations of the MPC, making it by default the first state to repeal its sodomy restrictions. Over the course of the 1970’s, 19 other states repealed their sodomy laws. Many of these repeals were inadvertent – in updating their laws, states followed the lead of the MPC and removed sodomy restrictions. Some states took action to preserve sodomy restrictions for same-sex sexual activity – for example, Idaho repealed its sodomy law in 1971, only to reenact it, while Kansas repealed its laws for opposite-sex activities in 1969 but retained it for same-sex ones. These latter developments demonstrate that many states were revising their laws *without* revising a more fundamental commitment to the exclusion and criminalization of their lesbian and gay citizens in line with the American sexuality regime (Valelly 2012). In fact, the reenactment or selective retention of sodomy restrictions was sometimes the first explicit legislative commitment some states made on the question of lesbian and gay inclusion in any formal way.

This continued a reality made more pressing by increasing numbers of out lesbians and gay men, a reality that lesbian and gay legal groups sought to undo in. Advocates turned to litigation

after the pace of sodomy reform in the states slowed in the late 1970s. This litigation eventually became a central facet of the legal groups' agendas for a number of years. For example, they formed roughly 20% of Lambda Legal's docket (Andersen 2009). This represented a considerable investment of resources for legal organizations, but one with diminishing returns. By the 1980s, the trend toward states decriminalizing sodomy statutes (whether through legislation or judicial intervention) had slowed (Boutcher 2011). In 1983, a number of related legal groups came together to form the Ad Hoc Task Force to Challenge Sodomy Laws (hereafter Ad Hoc Task Force) (Cain 2000; Boutcher 2011). This was the latest effort by legal groups to build on a longer campaign of litigation against sodomy restrictions at the state and federal levels (Mezey 2007).

The Ad Hoc Task Force's efforts eventually culminated in the case *Bowers*, the first sodomy challenge to be accepted for argument at the Supreme Court. The more detailed history of *Bowers* is thoroughly documented elsewhere (Eskridge 1999, 2008; Sheyn 2009). It is worth noting that movement advocates was optimistic about a positive outcome as they brought the case (Boutcher 2011). Friendly precedents existed in the lower courts, the case presented a powerful instance of government overreach, most sodomy restrictions were rarely and selectively enforced, and the movement had put a great deal of effort into repeal. When the decision was issued on June 30, 1986, holding 5-4 that "to claim that a right to engage in [homosexual sodomy] is 'deeply rooted in this Nation's history and tradition' or 'implicit in the concept of ordered liberty' is, at best, facetious" and that the Constitution thus countenanced sodomy restrictions was a significant setback.

How did the movement respond to this setback? Advocates described the decision as their community's *Dred Scott*, a decision denying the basic status of 'citizen' to a whole community (Kamen 1986). Yet far from leading to a decline in the movement, *Bowers* contributed to an expansion of the organizational field. It raised the salience of sodomy reform for advocates and their

communities and spurred greater coalition work between advocates and associated social movements, including labor and women's groups (Boutcher 2011). It also sparked more organizing within the lesbian and gay movement. Political groups spearheaded new efforts. For example, the National Gay and Lesbian Task Force (NGLTF) organized a Privacy Project whose specific aim was to work to repeal remaining sodomy laws through research, advocacy, and working with grassroots organizations (Sheyn 2009). It also spurred action specifically within the network of lesbian and gay rights litigators. The Ad Hoc Task Force did not disband or return to the drawing board. This group of attorneys chose to expand its mission and became a more formal organization. In a memo dated July 17, 1986, Abby R. Rubinfeld, Legal Director of Lambda Legal and a key organizer of the Ad Hoc Task Force, wrote: "Because of the Hardwick decision, we have expanded the focus of the group somewhat, and will not only continue our discussions on litigation possibilities, but will also discuss legislative and political responses to the problem. To help with that part of our discussion, I have invited representatives of national gay/lesbian political organizations to supplement our usual group of litigators" (Rubinfeld 1986). This memorandum makes clear that the Ad Hoc Task Force recommitted to their mission in the wake of defeat. The organization they formed – the LGBT Litigators' Roundtable (hereafter Roundtable) – came to serve a central role in planning, coordinating, and developing pro-inclusion legal strategies and arguments.

The impact of *Bowers* on the movement's capacity cannot be separated from the historical context in which it was decided. The case was decided in the heat of the HIV/AIDS crisis and the heart of the emergence of a religiously conservative countermovement into the American political process. HIV/AIDS presented unparalleled challenges and opportunities, leading to new concepts of organizing, identity, and priorities in the movement (Shilts 1987, Gamson 1989, Cohen 1993, Gould 2009, Hull & Ortyl 2013). The evangelical countermovement put advocates on the defensive against an energized opponent (Bull & Gallagher 1996; Wald, Button, and Rienzo 1996; Werum &

Winders 2001; Stone 2012). The movement's response of growth, rather than decline, represents a clear instance of the victory-in-defeat analysis documented earlier. While this was a clear period of setback and defeat – culturally, socially, politically, and legally – the movement's response of investing in broader infrastructure and new advocacy efforts laid the groundwork for later successes. By seizing political and legal opportunities, the movement was ultimately better off. In this context, I consider 1986 a critical juncture for the movement coalescence (Mahoney 2000, Pierson 2000). Movements coalesce when overcoming obstacles. It is a moment of survival for movements, when their "unrest is no longer covert, endemic, and esoteric; it becomes overt, epidemic, and exoteric... [and discontent] is no longer uncoordinated and individual; it tends to become focalized and collective" (Hopper 1950). While the movement had been developing previously, it is in this era that movement organizations begin to genuinely collaborate, to refine specialties, and to begin to coalesce on the politics of assimilation that – for better or worse – would drive them forward for the next three decades (Rimmerman 2002, Ghaziani, Taylor & Stone 2016).

The most important impact of *Bowers* may be the development of the Roundtable. As the successor body to the Ad Hoc Task Force, the Roundtable became an organization that allowed litigators to meet, network, exchange information and ideas, and develop strategies to pursue legal change (Andersen 2009, Carpenter 2014, Cathcart 2016). One movement leader described the Roundtable, in an interview with the author, as “the single most effective institution” in the movement. Though the Roundtable has been critiqued as unrepresentative, too lawyer-centric, and dismissive of concerns such as poverty, race, and transphobia (Arkles, Gehi, and Redfield 2010; Carpenter 2014), it has also served as a critical agent for agenda setting in a sometimes-fragmented movement (Leachman 2013). The establishment of a central coordinating body made legal advocates more effective. Such a coordinating body allows for the management of conflict among

organizations and allows them to more capably deploy resources in appropriate venues, with appropriate strategies, at appropriate times (Pralle 2006).

For a movement that has relied so heavily on legal advocacy (Pinello 2006, Levitsky 2006), sometimes to the detriment of non-legal organizations and issues, the Roundtable has played a critical role in advancing critical causes. Whatever criticisms the Roundtable may thus merit, it is one of the most important remaining legacies of *Bowers* that powerfully illustrates the appeal of the victory-in-defeat thesis. Movement coalescence occurred after *Bowers*, driven by that decision and the broader political contexts of HIV/AIDS and an invigorated religious right. In these conditions, the movement could have chosen to retreat, to disarm, or to become quiescent; it chose none of these and was ultimately more effective because of that choice.

From 1986 onward, the movement matured. It successfully transitioned from mass movement to organized politics, becoming increasingly professional and centralized, much as other movements have (Jenness 1995; Rimmerman 2001; Kane 2003, 2007; see also Skocpol 2004). Successes in the ensuing decades helped to ensure that the movement was able to move policy in a more inclusive direction, particularly on sodomy repeal and antidiscrimination laws (Kane 2010). This increased centralization and professionalization has had an effect on the movement's priorities. Like other movements, "greater formalization and professionalization, and a corresponding reliance on institutional tactics, benefit the movement with greater resources and legitimacy at the same time that they moderate the movement's demands and tactics" (NeJaime 2012). Moderation in demands, tactics, and ideology produced by the transition from mass movement to organized interest has been subject to critiques from the left as a betrayal of the radical potential of gay liberation (Conrad 2010, Stone 2010), but the same trends have helped to produce a sense of linked fate and shared political consciousness among lesbian and gay Americans (Flores & Sherrill, in press).

The shaken but determined movement that existed after *Bowers* gave way to a stronger, more effective force that exercised some political power in a social and cultural context that was growing more accepting (Brewer 2008; Valelly 2012) and whose concerns were increasingly considered by parties and institutions (Karol 2012). But amidst this progress, *Bowers* stood as a formidable legal barrier to full inclusion. Sodomy laws remained intact in many states, tacitly signifying the criminal status of anyone engaging in same-sex sexual activity. And these laws remained a target of the movement. After *Bowers*, 11 sodomy restrictions were repealed or struck down in the states. Of those, only 3 were repealed through legislation (Kane 2007). The movement's shift to litigation as a tool to end sodomy restrictions in the early 1980s had reduced the number of state-level sodomy restrictions even as it had enshrined their constitutionality in precedent (Vaid 1995).

Sodomy restrictions had a significant impact on the lives of lesbians and gay men in the United States through the explicit criminalization of same-sex desire and the implicit stigmatization of anyone who engaged in such. The effects of such laws were diminished over the course of the 20<sup>th</sup> Century as states repealed their sodomy restrictions and as Americans became more accepting of lesbians and gays. Yet political backlash against lesbians and gays formed in the years after *Bowers*. Just as the lesbian and gay movement grew more organized, so did their opposition. With the lesbian and gay movement still recovering and largely in a defensive crouch, their opponents began to work to push through legislation and ballot initiatives that would further restrict or undermine lesbian and gay rights gains across the country. One of the most prominent of these attempted restrictions was Colorado's Amendment 2.<sup>2</sup> Amendment 2 passed in Colorado in 1992 by a vote of 53.4% to 46.6%. The amendment was proposed by a state-level group named Colorado for Family Values, with the backing of national-level organizations such as Focus on the Family, Concerned Women for

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<sup>2</sup> The official name of this amendment was the "Colorado No Protected Status for Sexual Orientation Amendment." The text of the measure approved in the vote stated: "Shall there be an amendment to Article II of the Colorado Constitution to prohibit the state of Colorado and any of its political subdivisions from adopting or enforcing any law or policy which provides that homosexual, lesbian, or bisexual orientation, conduct, or relationships constitutes or entitles a person to claim any minority or protected status, quota, preferences, or discrimination?"

America, and Eagle Forum. Laws that would extend protected status to lesbians and gays at the municipal level in Boulder and Denver were overturned, and the state's constitution would be amended to prohibit the future extension of various rights to lesbians and gays in Colorado more broadly. A group of lesbian and gay Coloradoans filed suit shortly after its passage to enjoin enforcement. They were successful. In 1996, the U.S. Supreme Court struck down Amendment 2, with Justice Kennedy writing that the amendment "is at once too narrow and too broad. It identifies persons by a single trait and then denies them protection across the board. The resulting disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence."<sup>3</sup>

Thus, ten years after the Court held that sodomy laws did not violate any right to be found in the Constitution, it then ruled that enacting Amendment 2 displayed a bare desire to harm lesbians and gays as a class. The law did not pass even the minimal standard of meeting a rational basis for state action. These rulings were co-extant. Andrew Koppelman describes the resulting jurisprudential dilemma for courts: "Laws that discriminate against gays will always be demonstrably rational, because such laws will always further the state's legitimate moral objection to homosexual sodomy. Thus teaches *Bowers v. Hardwick*. Laws that discriminate against gays will always be constitutionally doubtful, however, because they will always arouse suspicion that they rest on a bare desire to harm a politically unpopular group. Thus teaches *Romer v. Evans*. Both of these teachings are coherent, and neither of them is necessarily inconsistent with the other" (Koppelman 1997, p. 90-91). The possibilities open to lesbian and gay advocates after *Romer* were perilous because of these conflicting precedents. *Bowers* offered opponents a constitutional shelter for discrimination while *Romer* seemed to signal that the Constitution would not tolerate hostility. To what extent was this new protection valid, particularly when weighed against prior precedent? The work of the

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<sup>3</sup> *Romer* at 620.

lesbian and gay movement after *Romer* was as much to expand the relatively narrow window of political and legal opportunity that decision opened as it was to undermine or overturn *Bowers*. They would manage to do so less than a decade later.

### **After *Lawrence*: Victory and the Lesbian and Gay Movement**

As long as *Bowers* stood, it presented a significant barrier. How could the state be expected to extend full rights to lesbians and gays when the Supreme Court had held that criminalizing intimacy between them was allowed by the federal constitution? *Romer* extended a constitutional olive branch, but it existed in direct tension (and not contradiction) with *Bowers*. The public was more accepting, but this fundamental barrier remained. Old and new issues alike were on the movement's agenda: a failed effort to secure open military service would eventually be revisited (Frank 2009) and the issue of marriage had taken on new life in the early 1990s (Keck 2009, Klarman 2012). The stakes of revisiting sodomy restrictions at the Supreme Court rose as laws remained intact and the harsh precedent provided opponents of lesbian and gay equality with a legal cudgel to use in denying rights. A new wave of political and legal advocacy grew around the issue of sodomy decriminalization. A sustained campaign targeting state laws proved successful in reducing the number of such restrictions, developing useful precedents and new arguments (Kane 2003; Andersen 2009). In combination with other efforts, it was incumbent on the movement exploit these newly opened windows of opportunity and revisit the issue. While the Court refused to hear a case brought by the ACLU in 1996, the justices would revisit the issue in another case brought by Lambda Legal a few years later.

As before, the history of *Lawrence* has been written about extensively elsewhere (e.g. Carpenter 2013). The general facts are well known: two men who allegedly engaged in consensual

oral sex were prosecuted under Texas' sodomy laws. This is the official narrative of the case, though its veracity has been authoritatively questioned (Carpenter 2013). In any case, the men were fined and their attorneys appealed the case, which eventually made its way before the Supreme Court. In his 2003 opinion, Justice Kennedy rejected the logic and reasoning of *Bowers*. Where *Bowers* had found that the Constitution did not protect private consensual sex between two individuals of the same gender, Kennedy's decision dismissed the focus on the purely sexual aspects of the case. Kennedy focused instead on his understanding that the Constitution protects the dignity of individuals, writing: "It suffices for us to acknowledge that adults may choose to enter upon this relationship in the confines of their homes and their own private lives and still retain their dignity as free persons. When sexuality finds overt expression in intimate conduct with another person, that conduct can be but one element in a personal bond that is more enduring. The liberty protected by the Constitution allows homosexual persons the right to make this choice." The majority opinion also explicitly overturned *Bowers*, reasoning that the central holding of the case had been wrongly decided. In so doing, the nation's remaining sodomy laws were judged unconstitutional and thus unenforceable and a new liberty interest for lesbians and gays entered the American constitutional tradition (Tribe 2004).

Several recent histories of the lesbian and gay movement in the United States elide or underestimate *Lawrence's* role in shaping the end of semi-citizenship for lesbian and gay Americans in the last 13 years (Cohen 2009).<sup>4</sup> Legal scholars tend to treat the decision's significance with greater clarity (Eskridge 2008a, Andersen 2009, Keck 2009, Klarman 2012). By finding that the Constitution affirmed the "dignity" of intimacy between couples, whether opposite or same sex, *Lawrence* did more than overturn a particular conviction or an antiquated and rarely enforced set of laws. Far

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<sup>4</sup> See for example texts for classroom or lay audiences such as Stein (2012) and Faderman (2015). Hirshmann (2012) does a better job of contextualizing the *Lawrence* decision, though any analysis of the contribution of the case to the political and constitutional development of the movement is rather limited. Engel (2016) is an exception to this trend, which explicitly considers the decision in the context of other political and social developments.

more significantly, it extended the constitutional protections the Court had nodded at in *Romer*. As noted above, sodomy restrictions criminalized same-sex sexual behavior and legitimated discrimination against lesbians and gays. *Bowers* was a narrow holding with the broader effect of continuing to deny lesbians and gays equal citizenship; *Lawrence* named this holding as an error and extended *Romer* to promise a fuller, more inclusive form of citizenship. As Linda Hirshman writes, *Lawrence* falls into a tradition of strong rights-expanding decisions: “And with that, the Supreme Court placed... the legs of the liberal state under the gay community. Like the chicken thief saved from sterilization in *Skinner* and the married couple who wanted to decide how many children to have in *Griswold*, like the impoverished, desperate single pregnant women in *Roe v. Wade*, gays and lesbians got a piece of their lives the state could not address. They would be citizens.” (Hirshmann 2012, p. 269). In combination with *Romer*, lesbian and gay Americans were rendered more fully as *citizens*. With this legal recognition of the constitutional worth, if not equality, came a renewed and expanded opportunity structure.

The movement would capitalize on this decision in several ways. *Lawrence* opened new *legal* opportunities. The central holding of *Lawrence* could be leveraged to extend into other areas of policy (Koppelman 2004). The dyad of rights-protecting decisions nodded toward a new set of arguments legal advocates could deploy. Equal protection and due process arguments that had once been rejected by courts in deciding cases held more weight under the dignity-based liberty interest identified by Kennedy (Knowles 2009) and would be deployed by legal advocates in shaping the politics and policies of marriage, military service, and other issues (Eskridge 2008a, Keck 2009). *Lawrence* also opened new *political* opportunities. The official and unofficial stigma communicated by (1) the existence of sodomy restrictions in at least some states and (2) the constitutionally permissible exclusion of lesbians and gays presented a barrier to the movement and its constituents. The putative criminality of lesbians and gay men was used to justify many of the American sexuality

regime's exclusions, particularly in family law (Mezey 2009; Murray 2009; Rivers 2013). Stephen Engel argues that *Lawrence* reimagined the relationship between gay and lesbian citizens and the state in a way that "posit[ed] conduct as constitutive of status and... intimate conduct as constitutive of human dignity" but that left the lives of gays and lesbians "beyond the boundaries of federal recognition... free from explicit sanction so long as they did not publicly express their sexual identities" (Engel 2016, p. 203). Yet the very invalidation of these laws – and its tacit extension of at least some constitutional validity to lesbian and gay rights claims – opened new avenues for pro-equality political change. If Engel's interpretation of *Lawrence* were correct, the next step for the movement would necessarily be to expand state recognition of positive liberties for their constituents. This is precisely what the movement set out to do, and in so doing, would fundamentally alter the American sexuality regime, giving *Lawrence* a broader impact than Engel's interpretation allows. *Lawrence* was a necessary intermediary between the constitutional equality foreshadowed by *Romer* and the broad, inclusive citizenship lesbian and gay Americans more ably envision today.

After *Lawrence*, the post-*Bowers* infrastructure of organizations and coalitions productively worked on this broader agenda. One movement advocate, when interviewed, described *Lawrence* as "the Supreme Court handing [gays and lesbians] the keys to the car."<sup>5</sup> If post-*Bowers* proved to be a moment of movement *coalescence*, the time after *Lawrence* was a period of movement *galvanization*. Advocacy expanded on many fronts. Advocates began to once again pursue open military service, with a new wave of litigation drawing on *Lawrence* and changed legal opportunity structures to attack the decade-old Don't Ask, Don't Tell (DADT) policy. This litigation would help open new political opportunities by making DADT repeal more desirable for the political branches (van der Vort 2016). Efforts to secure or expand parenting equality also changed after *Lawrence*. While family law is

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<sup>5</sup> Interview on file with author.

a highly diffuse area of law more often handled by individual judges in individual cases, *Lawrence* directly impacted adoption and custody cases. Before *Lawrence*, the criminalization of same-sex sexual activity and the alleged threat (physical, moral, or both) posed to children by living in homes with gay or lesbian parents and their partners had been used by judges at deny adoption or custody petitions (Mezey 2009, Rivers 2013). After *Lawrence*, these judicial arguments held less weight and were used less frequently. Advocates and attorneys engaged in a sustained campaign of education to disseminate knowledge of the decision and its implications for parenting equality (Mezey 2009, Rivers 2013, Baumle and Compton 2015).

The most notable impact of *Lawrence*, however, may be seen in its contribution to the issue of marriage. While marriage had been in the public eye and on the movement's agenda since the 1990s, the issue gained new life in the early 2000s in the wake of *Lawrence*. A New England-based litigation group named GLAD had a case (*Goodridge v. Department of Public Health*) before the Massachusetts Supreme Judicial Court only months after *Lawrence* was decided, asking that court to determine whether same-sex couples had a right to marry. This became the first state appellate ruling to recognize a constitutional right for lesbians and gays to marry – performing the alchemy Engel argues *Lawrence* missed and requiring legal recognition of same-sex relationships. Citing *Lawrence*, the Supreme Judicial Court held that same-sex couples were entitled to marriage licenses under the Massachusetts Constitution and set off a political firestorm as a result (Keck 2009, Klarman 2005, 2012). Over the next few years, constitutional amendments and state statutes restricting marriage to opposite-sex couples passed in a number of states (Stone 2012) and cemented them as a renewed electoral issue for Republicans for years (Bull and Gallagher 1996, Campbell and Monson 2008, Abramowitz 2008).<sup>6</sup>

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<sup>6</sup> The issue of same-sex marriage may have become a staple for Republicans in the 2004 election, but there is some dispute as to whether referendums intended to turn out Republican voters had any discernible effect on GOP vote shares in that year's election.

After 2004, the movement would begin to work in earnest for full marriage equality. The Roundtable and its groups channeled their efforts toward it while political groups like the HRC and The Task Force reoriented toward (1) opposing efforts to restrict and (2) supporting efforts to expand marriage. State-level groups were reinvigorated or formed in order to fulfill these same goals.<sup>7</sup> Critically, Evan Wolfson started a new organization in 2003 that subsequently expanded. This organization, the Freedom to Marry Coalition, was an umbrella group that worked to implement a plan that envisioned it as a bridge between organizations, to deploy litigation and legislating, and to nudge organizations or form new ones as necessary (Solomon 2014, Wolfson 2015). The political backlash of the early 2000s against *Goodridge* and subsequent decisions in Iowa and California eventually gave way to a consensus that converged on accepting marriage equality. When the Supreme Court struck down the Defense of Marriage Act, federal judges across the United States began to invalidate state-level restrictions on same-sex marriage and, within two years, the Supreme Court would extend the same protections nationwide by striking down the Defense of Marriage Act and eventually recognizing equal marriage.

*Lawrence* opened doors for the movement that had previously been closed. *Bowers* was an unexpected defeat. It occurred in the middle of a politically conservative moment, dominated by conservative government and a newly organized religious right. The Court refused to decriminalize the sexual and emotional intimacy that was coming to be inextricably linked with the identity of lesbian and gay Americans. By overturning *Bowers* and giving their sanction to, at minimum, allowing lesbians and gays to live free of “explicit sanction,” the Court opened new avenues for lesbian and

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<sup>7</sup> Many state organizations had existed in some form but were re-energized or re-organized as vehicles for advancing marriage equality. Others were formed explicitly to oppose marriage restrictions or to advocate for marriage equality measures. These organizations operate loosely under a group known as the Equality Federation. Members of the Federation and their dates of incorporation include: Empire State Pride Agenda (NY - 1990), Equal Rights Washington (2004 - WA), Equality Alabama (2002 - AL), Equality Arizona (1992 - AZ), Equality California (1998 - CA), Equality Hawaii (2007 - HI), Equality Illinois (1991 - IL), Equality Maryland (1990 - MD), Equality Michigan (1991 - MI), Equality North Carolina (1979 - NC), Equality Ohio (2005 - OH), Equality Pennsylvania (1996 - PA), Equality Texas (1989 - TX), Equality Utah (2001 - UT), Equality Maine (1984 - ME), The Fairness Campaign (1991 - KY), Forum for Equality (1989 - LA), Freedom Oklahoma (2015 - OK - roots as far back as 1995), Garden State Equality (2004 - NJ), Georgia Equality (1995 - GA), MassEquality (2001 - MA), OneIowa (2006), OutFront Minnesota (1987 - MN), Tennessee Equality Project (2004 - TN).

gay advocates. In conjunction with *Romer*, the movement could now legitimately argue that the American sexuality regime's commitment to excluding lesbians and gays stood on shaky constitutional *and* political ground and, in time, come to force a rethinking of the state's fundamental commitments to regulating same-sex sexual intimacy and relationships (Canaday 2010, Valelly 2012, Engel 2015). While lesbians and gays had secured victories in the past, *Lawrence* presented novel hope: the possibility of broad federal protections. It provided lesbians and gays with a constitutional status they had previously lacked (however narrow that status may actually have been) and provided the movement with an important galvanizing tool that would ultimately allow it to move forward on a variety of goals: marriage, military service, parenting equality, perhaps even hate crimes legislation.

*Lawrence* gave the movement new energy. Lesbian and gay advocates were able to deploy the movement machinery and infrastructure developed in the wake of *Bowers* to advance their broader agenda. Even in the face of political backlash, the movement ultimately gained momentum from the invalidation of sodomy restrictions. By extending the promise of *Romer*, the Court gave constitutional imprimatur to the movement. Advocates were able to look to their broad agenda and identify unsettled legal and political questions that needed to be addressed. Victory in *Lawrence* could have led to movement decline, but many of the movement's most significant goals remained unfulfilled. This incomplete agenda spurred the movement forward rather than backward. *Lawrence* struck double blows against the American sexuality regime by ending its subordination of official and informal discrimination against lesbians and gays *and* by solidifying the precedent of *Romer*. Kennedy's alchemy in the decision did not end lesbian and gay semi-citizenship, but it did provide the recipe for such a transmutation.

Writing in *Slate* in 2008, William Eskridge argued that *Lawrence* did not end subordination, citing the example of the 11th Circuit upholding a Florida law preventing gay adoption. But he also argued that "[t]he legacy of *Lawrence v. Texas* thus is still up for grabs. And it's in the hands of not

only state judges and legislators but also the country's next generation. If they accept their lesbian and gay neighbors as full and equal citizens... *Lawrence* will be for gays what *Brown* was for blacks: a judicial contribution to a revolution in public attitudes as well as to the law” (Eskridge 2008b). Even so, Eskridge missed the ways in which movement advocates would deploy legal and political infrastructures developed in the previous two decades, spurred by the defeat in *Bowers* and other critical moments, to secure the revolution in opinion, law, and policy. *Lawrence*'s legacy is broad and sweeping. By making good on the promise of *Romer*, the decision allowed the movement to advance its agenda and to flip or shatter many of the core commitments of the American sexuality regime.

### **Demise or Coalescence? A Developmental Approach to Movement Lifespan**

Has the lesbian and gay movement organized itself out of existence and entered a period of decline? *Obergefell* is an unparalleled victory for the movement that instantiated a nationwide change in policy that rendered lesbian and gay Americans more equal *citizens*. Yet it is not an *unprecedented* victory, nor it is a clear denouement of lesbian and gay rights. Such a denouement might produce decline, but *Obergefell* and subsequent developments do not represent such a fulfillment. How do we accurately define success? How do we clearly delineate decline? Neither of these metrics is clear, pointing to a clear limitation of Miller. Like other studies of movements, the historical scope of Miller's study is relatively limited. Considered developmentally, we may come to different conclusions about the conditions for decline. Rather than viewing movements as declining or even ending, a broader historical developmental lens may lead us to consider movements as constantly developing and operating intercurrently (Orren and Skowronek 2004).

Orren and Skowronek use the concept of intercurrency to describe the ways in which scholars of American politics can observe "the simultaneous operation of different sets of rules, to a

politics structured by irresolution in the basic principles and governmental control, and it describes the disorder inherent in a multiplicity of ordering rules” (118). Intercurrence tends to refer to institutional arrangements, but applying this concept to regular patterns of organization and interaction may yield useful insights for alternative institutions such as political. In the case of the lesbian and gay movement, I have examined the development of prior legal precedents and the connections between them to show how the movement has evolved over time in the wake of defeat (Bowers), limited victory (Romer), and constitutional revolution (Lawrence). Learning from these historical precedents would lead to a different forecast for the movement going forward. They may also allow scholars to think differently about movement decline, casting it not as a foregone conclusion or a natural step in a movement’s trajectory but rather as a possible outcome that can be anticipated and accounted for by movement activists (Disney and Gelb 2000).

For the lesbian and gay movement, I argue that rather than viewing it as a movement entering a period of decline, we should view the post-*Obergefell* movement, working in a political world dominated by a trenchant populism, as one that will call out of abeyance certain elements of its past that have been less relevant during the Obama years. The lesbian and gay community has been able to effectively engage in conventional politics for the last fifteen to twenty years through partnership with the Democratic Party – but under Republican administration, a return to the mass, grassroots, protest politics of earlier eras may allow the movement to defend its gains and even secure incremental advances. The key to such defense and advance rests in taking advantage of previous movement infrastructures much as the movement did after *Lawrence*. Today’s movement is the product of different movements (or strands of a movement) called into being at different times to meet different demands. While clear demarcation of these different strands may be difficult, one framework might break the strands up roughly by decade: One such framework would give us the homophile movement of the 1950s, the queer liberation movement of the 1960s, the mass

movement of the 1970s, the grassroots protest movement of the 1980s, the modern professional organizations that coalesced in the 1990s, and the relatively stable set of movement organizations that has existed since the 2000s. While the movement has little experience working in a world where unparalleled victory sets new horizons (or boundaries, as the primary demand of many of its constituents is fulfilled), it has vast experience working in a hostile political environment. Working from a position of power and success is uncharted waters for the movement, but the opportunity structures and tactical repertoires of opposition and backlash are deeply familiar.

Considering the lifespan of movements developmentally encourages us to see strands as moving in and out of relevance in response to external events rather than decaying or fragmenting. This means that the apparent demise of some portion of a movement may be no demise at all but rather, at least for some movements, a change in the structure of what portions of its organizational field may be relevant given external circumstances. Of course, particular *portions* of a movement may end. Specific movements with specific goals may even come to an end. But for broad movements whose horizons span decades, states, and many issues, decline is an easy but probably inaccurate diagnosis. In particular, identity-based movements are unlikely to decline entirely because identity itself is unlikely to decline. In the lesbian and gay movement, I argue that *Bowers* did not produce a movement in retreat. Indeed, far from abandoning the field to its opponents or turning its attention away from politics, a newly determined movement created important infrastructure. This infrastructure continued to develop and undergirded into the modern movement.

In short, *Bowers* helped to spawn a new ‘strand’ of movement and set extent strands on a path toward coalescence by demonstrating the importance of more effective, centralized forms of advocacy for that time period (Vaid 1995). At the same time that a powerful and important strand of protest activity was developing in response to the AIDS crisis, legal and political advocates developed a more efficient set of legal and political organizations. This infrastructure and its work

would prove critical to further movement success two decades later when the Supreme Court reversed its prior holding in *Lawrence*, where the movement made good on the unexpected advantage gained in *Romer*. *Lawrence* opened new legal and political opportunities providing the movement with “the keys to the car.” LGBT advocates would take the direct and indirect opportunities provided by the Court to make significant progress on expanding adoption rights, opening military service, and, eventually, marriage equality. These efforts provoked temporary political backlash, but they were successful. As a result, the American sexuality regime has been fundamentally expanded and lesbian and gay Americans are no longer semi-citizens. But for all this success, the post-*Obergefell* movement is not yet a movement in decline.

Success is too often defined in narrow and particularistic ways (Bernstein 2000). Movement studies often focus on snapshot moments and extrapolate outward from them, presenting challenges for extending those theories beyond that particular moment (Amenta et al 2010). Defining success instead as the slow process of achieving a movement’s goals provides a more useful historical perspective (Gamson 1990). By this measure, the movement appears to be quite successful over time. The history of movements usually involves some arc of emergence, organizing, coalescence, centralization, and decline. Measured against some scale of success, it may appear that the lesbian and gay movement is entering the latter part of its lifespan. The movement has achieved many of its goals in law and policy, it has substantially shifted cultural and social structures around lesbian and gay life, and it has emerged as a mature, politically sophisticated movement. But just as the movement evolves, so does the political world around it. This mature movement, which has thrived as part of a mainstream coalition, is now entering a period where it is part of a political coalition facing important choices about resistance, compromise, and accommodation.

Seeing the movement’s evolution as an intercurrent, developmental progression offers greater flexibility in understanding its trajectory going forward. By (1) defining success in line with

Gamson and (2) by viewing the movement as made up of component strands founded in different moments and serving diverse constituencies, we have a historically grounded position in which the possibility of movement decline seems less likely. This acknowledges the many *victories* of the movement while acknowledging that the legal and political status of the broader community of gender and sexual minorities in the United States remains unsettled (and even threatened) and much work remains. A developmental approach also nods toward another fact: the tools for this work do not have to be reinvented so much as called back into relevance. Different strands each offer their own distinct legacies for the modern movement that advocates can draw on for knowledge of the legacy, tactics, and ideologies that may once again prove useful. Much like cohesive movement identity can emerge from seemingly disparate parts, these distinct strands add up to more than they are or were individually (Levitsky 2007). Rather than being a moment of decline or demise after a significant victory (or victories), it is both possible *and imperative* that the lesbian and gay movement experience another ‘founding’ moment, in which old organizations once again adapt and new modes of organizing become possible.

As resources shift and the political headwinds turn against lesbian and gay inclusion, the movement will undoubtedly experience a period of reorganization and specific organizational decline. The case of ESPA makes this concrete: declining resources in a more favorable political environment led the organization’s leaders to declare its mission largely accomplished and to cease almost all operations. Freedom to Marry also shuttered at the beginning of 2016, with its narrower mission of securing marriage equality completed. Other organizations have adapted in the wake of successes.<sup>8</sup> Most critically, many of the legal and political groups that have formed the core of the modern movement shifted their missions to other issues: defending gains already made, expanding employment protections, and expanding the rights of trans Americans. After the 2016 elections,

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<sup>8</sup> Following the repeal of DADT, SLDN transitioned into a resource network for LGBT military personnel. A new organization, the American Military Partners’ Association, emerged to focus on expanding the full set of spousal and familial benefits to the partners and children of military personnel.

these groups are likely to expect an overtly hostile political environment to emerge. As they move forward, the examples of the past may prove instructive for the movement. The path from *Bowers* to *Lawrence* provides useful lessons movement advocates may draw on going forward in the present environment.

Legal defeats may prove as useful as legal victories (McCann 1994, Andersen 2006), and *Bowers* spurred movement coalescence as that setback pushed the movement to better organize. While the movement did not become quiescent after *Bowers*, much of its formal organizing was done behind the scenes and in the shadow of a more active nascent protest movement that was attracting attention to the AIDS crisis (Gould 2009, France 2016). This protest movement focused attention and produced substantive policy shifts towards AIDS (Shilts 1987, Stockdill 2003), but may also have allowed the legal and political wings of the movement time to reorient and reorganize in a relative silence over more formal questions of civil rights (Gash 2015). The politics of HIV/AIDS also reinforced the period of coalescence of the movement's legal and political wings by sparking political activity among previous apolitical lesbians and gay men, by legitimizing the channeling of foundation dollars to movement organizations, and by helping to nudge assimilationist ideologies and issues to the top of the agenda (Sherrill, Somerville, and Bailey 1992, Rimmerman 2014, Tadlock 2015).<sup>9</sup> The movement that emerged from the *Bowers* moment was better organized to engage in (and lose) some legislative battles and to later exploit new legal opportunities as they developed. This imperfect trajectory mirrors the history of other movements. As I discuss in the conclusion, this history suggests some important lessons for the movement going forward.

## Conclusion: The Lesbian and Gay Movement in Opposition

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<sup>9</sup> Interview with respondent on file with author.

As with racial politics and the women's movement, the march toward lesbian and gay inclusion is an unsteady one, with a deep tendency for power to adapt to resist inclusion (Ferree and Hess 2000, Klinkner and Smith 2002, McAdam and Kloos 2014, McAdam 2015). As power adapts, as social and political climates become less receptive or more hostile, movements may simply move into abeyance and shift their focus (Taylor 1989). The texture of contestation between movement organization and political institutions can change, making protest and cultural education more immediately relevant than electioneering, litigating, or legislating. The period stretching from *Bowers* to *Romer* to *Lawrence* to *Obergefell* teach us that the lesbian and gay movement will experience cycles of activism – with occasional periods of apparent quiescence. As Verta Taylor argues, "the women's movement, like the other movements that blossomed in the 1960s, can also be viewed as a resurgent challenge with roots in an earlier cycle of feminist activism that presumably ended when suffrage was won." But rather than seeing the women's movement as declining, she argues that it (or some parts of it) entered a period of abeyance, or a "holding process by which movements sustained themselves in nonreceptive environments and provide continuity from one stage of mobilization to another" (Taylor 1989, 1).

Yet the lesbian and gay movement does not have the luxury of waiting for a more receptive political environment to resume its work. No social movement does, but the difference between a nonreceptive and a hostile political environment should not be understated. There is a perceived urgency that demands that the movement not move into a moment of abeyance and that it resist any temptation to willingly decline. How can the movement do so? The movement of today has more infrastructure than at any other point in its development, along with active strands of organizing and ideology that are better suited for a hostile climate. This stronger, more interconnected movement should be better able to successfully respond to changes in the political landscape more capably than in the past precisely because of the intercurrent existence of its multiple strands. Far from being

divided or fractured, I argue that such a movement is more effective, better integrated, and better connected, rendering it more effective than either a more centralized or more divided movement (Tarrow 2011). These connections exist because of the formation of informal connective tissues that successfully integrate the different movement ‘strands’: informal coalitions, coordinating bodies, and new organizations that bridge the lesbian and gay organizational field (Tarrow 2011).

These structures will serve the movement well as it seeks to defend its gains, secure new inclusive laws and policies, and to resist decline or abeyance. The movement can do this in several ways. First, to resist abeyance and pull together its many strands in a nonreceptive or hostile political environment, those parts of the movement that have lost prominence need to be reactivated and pulled back into the mainstream. In particular, groups whose focus is on direct action and cultural-educational work should be emphasized. Groups like ACTUP, Queer Nation, and GetEQUAL have maintained and expanded the protest capacities of the movement. Other groups like PFLAG and the Family Equality Council have maintained and expanded the cultural-educational capacities of the movement. Many lesbian and gay legal and political groups have in various ways incorporated these practices, but their incorporation as part of the movement’s broader structures would be one positive development going forward. The likely necessity of confrontation and education makes this incorporation likely.

Second, in order to resist decline, the movement should avoid the example of ESPA. Movement infrastructure that had taken years or decades to build cannot be rebuilt overnight. When groups are dismantled because a civil rights battle ‘ends’ or because an inclusive environment is assumed to be a fixed feature of the political world, a movement is unilaterally disarming. Political and legal victories that are secured remain vulnerable to attack in the fragmented and pluralistic American system. The extant infrastructure of organizations may require adaption, but to abandon it creates opportunities for opponents to chip away at gains. The movement infrastructure that

developed before *Bowers* or after *Lawrence* may have fallen into disrepair or been abandoned if advocates had seen the task at hand as being too overwhelming or the agenda as having been largely fulfilled. Large moments provide important generative capacities but the movement must work to maintain its infrastructure. Deliberately shuttering organizations should only be done with care, as in the case of Freedom to Marry. The organization shuttered because it was a single-issue coalition and, as it entered its final days, it made a strong push to disseminate its tactics and strategies widely for use by other advocates in the United States and abroad. While the organization no longer exists, many of the critical resources it developed will continue to contribute to advocacy efforts.

Finally, the movement must expand beyond its own confines. Not only should movements not disarm in the wake of defeat *or* victory so that they can defend gains already made, but broad movements must also work to secure future ones. With so much work left undone, the movement cannot afford to abandon the field. Indeed, it appears that it is not doing so; rather, it is working in many ways to expand its capacities and its mission. Major lesbian and gay organizations are turning their attention to critical issues that had long been deemphasized in an agenda dominated by marriage: public accommodations, employment, and trans rights. Beyond these promising avenues for advocacy, though, are the attempts to expand the movement in new intersectional directions. Advocates have been working to advance intersectional coalitions with labor and immigrant organizations (Adam, forthcoming). A group of scholars and activists are developing a new collaborative project to advance an agenda to address poverty in the lesbian and gay community. For example, the Vaid Group is helping to organize an LGBT Poverty Agenda Project, led by Urvashi Vaid, a longtime organizer in the lesbian and gay rights movement. Other groups are partnering with government agencies and foundations to increase attention to the issues facing lesbian and gay people living in rural areas, a population often excluded from debates about policies that primarily affect those living in urban or suburban areas (Smith and Mancoske 1998). For example, the

National Center for Lesbian Rights has worked with the USDA in the past on a #RuralPride campaign. These connections may well be the most promising path for a future ‘strand’ of movement advocacy to develop: a brand of intersectional organizations and coalitions that formed in the 2010s. The future of the lesbian and gay organizational field may not lay in a confined and constricted agenda, but rather, like other movements confronting the outer boundaries of possibility, in an intersectional agenda pursuing broader goals of social justice. To pursue this agenda, the lesbian and gay movement must draw on its past, maintain and defend its present, and invest in its future. In doing so, it can avoid the possibility of decline and resist the temptation of abeyance in a time of nonreceptivity and sometimes overt hostility.

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