

WITHIN REACH

Reducing LGBT Inequality in the Age of Obama

BY PATRICK J. EGAN

Shortly after the inauguration of Barack Obama, in conversations, over emails, and in blog posts, a question rippled forth among those who care deeply about the rights of lesbian, gay, bisexual, and transgendered (LGBT) Americans: “Have you seen the new White House webpage?” For there, just a few links away from www.whitehouse.gov, can be found explicit promises from the president of the United States to expand the rights of LGBT people. Obama’s stated goals include the expansion of federal employment protections to outlaw workplace discrimination on the basis of sexual orientation and gender identity, civil unions and full federal rights for same-sex couples, a repeal of the policy forbidding gays and lesbians who serve in the armed forces to be open about their sexual orientation, and adoption rights for all people, straight or gay.



Symbolically and substantively, the change was nothing short of remarkable. Obama's predecessor, George W. Bush, had run as a "compassionate conservative" and made a point of welcoming gay and lesbian donors to a public meeting at his ranch during his 2000 campaign for president. But his eight years in office were marked by consistent blocking of any sort of moves toward LGBT equality. The low point came in 2004, when he capitulated to social conservatives and called for an amendment to the U.S. Constitution to ban same-sex marriage. The election of Obama, who in 2007 described gay rights as an issue nothing short of "whether this nation is going to live up to its founding promise of equality by treating all its citizens with dignity and respect," was viewed by many as the dawn of a new era of progress toward full equality for America's LGBT population. And given that gay rights victories rarely occur at any level of government unless Democrats control both the executive and legislative branches, the Obama presidency (in combination with large Democratic majorities in the Senate and House) gave LGBT Americans their best hopes for change in nearly two decades.

How America's LGBTs Experience Inequality

What, exactly, do LGBTs hope that government can do for them? At first blush, the amelioration of LGBT inequality might seem to lie in the realm of culture rather than in the domain of government. But many of the ways that LGBTs experience inequality have much to do with government activity, including the job and housing markets, crime, schools, and the legal system's treatment of same-sex couples. Using a national probability sample, psychologist Gregory Herek found that one out of every six lesbians and gay men has experienced job or housing discrimination in their adult lifetimes. (Firing someone for being gay is currently legal in 29 out of 50 states.) Violence is a grave problem, particularly for gay men. One in four gay men reports having been hit, beaten, physically attacked, or sexually assaulted at some point in their lives for being gay, and more than one-third say they have been threatened with such violence. Bigotry starts early; in a population survey of the nation's teens conducted by Harris Interactive for the advocacy group GLSEN in 2005, one-third of all teens said students in their schools were often harassed because of their actual or perceived sexual orientation—a harassment rate far greater than that associated with race, ethnicity, religion, or economic class. It's no wonder that 22 percent of LGBT students reported feeling unsafe at their schools, compared to 7 percent of non-LGBT students. Gay couples typically face much higher costs than married straight couples due to differential treatment by tax laws, insurance rules, and other regula-

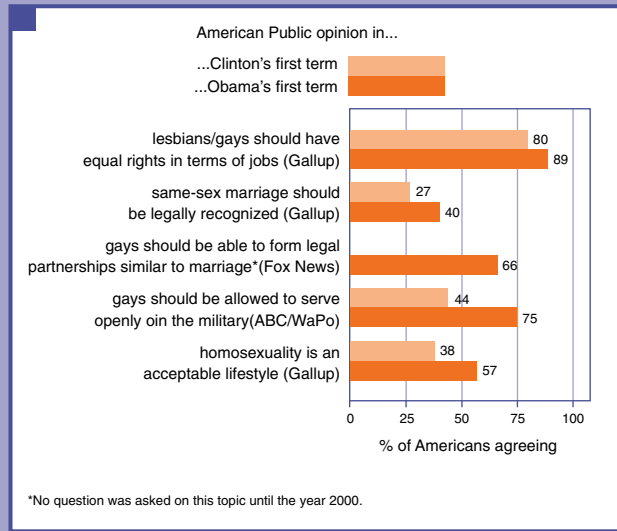
tions. Perhaps no greater indignity is faced by same-sex couples than in a health crisis, when gays and lesbians routinely find themselves with no legal rights to visit their partners in the hospital, make medical decisions, or—in the case of death—even claim their loved one's body for proper burial. A surviving partner has no claim on the deceased's Social Security benefits and typically must pay taxes on any of his or her partner's assets.

A good way to figure out what equality means to LGBT Americans is to ask them. That's what my colleagues Murray Edelman, Kenneth Sherrill, and I did in a first-ever academic survey of the political behaviors and attitudes of lesbians, gays, and bisexuals conducted using a representative national sample in 2007. Our respondents rated three goals as most important for the gay rights movement: protection against workplace discrimination, laws against hate crimes, and benefits for same-sex couples, such as Social Security survivors' benefits, pensions, and family medical leave. Not far behind were parental and adoption rights. Much lower on the scale were the two gay rights issues that have been found most in the headlines of late: legal marriage and ending the military ban. The survey results suggest that most gays and lesbians would be happy with a practical approach that focuses on winning tangible protections and benefits that would address the inequalities described above. But when we divided our sample by age, we found that by far the most urgent priority for the youngest group (those aged 18–25) is achieving the right to civil marriage. The finding is inspiring because it indicates that those who are just coming out expect nothing less than full equality. But it also suggests that the newest generation—those with the most passion for activism and politics—may be impatient with a pragmatic strategy.

From Jubilation to Disillusion

A year after Obama's inauguration, the mood among LGBT advocates is decidedly less elated than it was in January 2009. Part of the problem is symbolic; the lyrical Obama and his skilled political team have proven surprisingly flat-footed regarding LGBT issues on several occasions. There was the invitation of megapastor Rick Warren—who explicitly prohibits gays and lesbians from becoming members of his Saddleback Church and has compared same-sex marriage to incest and bestiality—to give the invocation at Obama's inauguration. There was the legal brief filed last June by the federal government in a constitutional lawsuit over the Defense of Marriage Act (or DOMA), which eerily compared the legal recognition of same-sex relationships to—yes—the legal recognition of incestuous ones. More generally, there is the curious disconnect between the rhetoric of a man whose very being would seem to

FIGURE 1. What a difference 16 years makes: Public opinion on gay issues at the beginning of two Democratic presidencies



symbolize equality and his stated discomfort with legalizing civil marriage for same-sex couples. “I believe that marriage is between a man and a woman,” Obama has replied on several occasions when asked for his opinion on the topic. The veracity of this claim seems doubtful to many; survey data indicate that same-sex marriage is favored by an overwhelming 72 percent of liberal Democrats with a post-graduate education—which, presumably, describes virtually everyone working in the Obama administration. More likely, Obama and his team have decided that voicing full-fledged support for same-sex marriage has too many political downsides.

Obama could be forgiven both the symbolic missteps and the reticence toward a full-throated embrace of gay marriage if he and the Democrats were demonstratively moving forward on a substantial number of the other promises made by the party to the LGBT community. But progress has been slow. For instance, some version of an employment discrimination bill has been introduced in nearly every session of Congress since 1974. The proposal has been the subject of no fewer than six hearings and two floor votes. But the bill’s reintroduction in 2009 (now with 45 Senate and 198 House cosponsors, and incorporating protections for gender identity as well as sexual orientation) was met with even more hearings, and no explicit promise about when—or if—either chamber would vote on the measure. Another example is military service. The government’s “Don’t Ask, Don’t Tell” policy, which requires that gay and lesbian military personnel who are open about their sexual orientation be discharged from service, has resulted in the dismissals of more than 14,000 members of the armed forces since its enactment by a law signed by Clinton in 1993. The policy makes life very difficult for those who do serve, as they can live in constant fear of officially authorized investigations into their private lives. In 2009, a bill that would end the policy was introduced in the

House by Gulf War veteran Rep. Patrick Murphy (D-PA), but no further action has been taken. Meanwhile, dismissals of openly gay and lesbian military personnel have continued since Obama’s taking office.

There have been bright spots. In June 2009, Obama signed an administrative memorandum granting some federal benefits to the partners of gay government employees. (Even here, there was disillusion; the list of benefits did not include health insurance, the extension of which the administration claimed was forbidden by DOMA.) A long-awaited goal was realized in October 2009, when Obama signed a law providing federal support for state and local prosecutions of hate crimes, including those committed on the basis of sexual orientation and gender identity. And this February, the administration finally lent substance to its promise to end the ban on military service with impressive and unequivocal Congressional testimony in favor of ending the ban by Admiral Mike Mullen, Chairman of the Joint Chiefs of Staff. The Pentagon is undertaking a year-long study about how to best implement the change, which would have to be approved by Congress. Defense Secretary Robert Gates has signaled that in the meantime, the current policy will be carried out more fairly—perhaps with a reduction in investigations instigated by third-party disclosures of sexual orientation.

The Ghosts of Backlashes Past

On the whole, the first year of Obama’s presidency did not yield the breakthroughs hoped for by LGBT advocates. Exit polls indicate that LGBs typically give three-quarters of their votes to Democratic candidates. Why have Democrats been slow to enact changes so critical to such a loyal voting block? The experience of the last Democratic president looms large; Bill Clinton’s election in 1993 was similarly greeted with elation by the LGBT movement. But the tortuous logic of “Don’t Ask, Don’t Tell” was the result of a chain of events that ensued after the military’s top brass resisted Clinton’s plan to fulfill his campaign pledge to remove the ban on gays serving in the armed forces. A few years later, a Republican-controlled Congress forced Clinton’s hand in passing DOMA just weeks before Election Day 1996, leaving him to either veto legislation that opinion polls showed was overwhelmingly popular or sign the law. By driving a wedge between Clinton’s base of liberal voters and the more moderate views of the broader public, both of these issues proved unpleasant political experiences for Democratic elected officials. Lesson learned: There is much to be lost, and little gained, from grappling with LGBT issues.

A casual observer of American politics might conclude that LGBT issues are still politically dangerous, given recent events like the passage of California’s Proposition 8, the rejection by Maine voters of that state’s same-sex marriage law, and the New Jersey and New York state legislatures’ failures to pass same-sex marriage. But this would focus undue attention on the gay rights goal—marriage—for which there is currently the least amount of support among Americans. By contrast, a review of survey data indicates that public opinion is largely supportive of a broad range of gay rights goals and that it has become substantially more so since the Clinton era. Figure 1 shows the difference in

opinion on several prominent aspects of the gay rights debate in Clinton's first term compared to that in Obama's first term (to the best extent possible given data availability). In every respect, opinion has moved substantially toward acceptance and equality. Support for employment rights for lesbians and gays, already strong when Clinton took office, is now nearly universal. Public approval of gays serving openly in the military jumped from 44 percent in May 1993 to 75 percent in July 2008. And on the marquee issue of same-sex marriage, opinion has also moved in a supportive direction, although it still falls short of a majority. But what has gone largely unnoticed is that a policy that didn't even exist in 1993—the notion that legal recognitions similar to, but not called, marriage be extended to same-sex couples—is now supported by two-thirds of the public. More generally, Americans are increasingly willing to agree that homosexuality is an “acceptable alternative lifestyle,” even as the hand-wringing implied by this phrase makes it sound ever more passé. Moreover, younger voters just entering the electorate are much more supportive than those whom they replace, indicating that these trends are likely to continue.

It is clear that many of the most important goals of the LGBT movement enjoy a broad level of acceptance among the American public. Why, then, are Obama and the Democrats dragging their feet? The answer to this question has many components that will be familiar to those who study American politics: the strong bias toward the status quo found in American political institutions, the series of obstacles created by the patchwork U.S. federal system, and the lack of leverage a group can have with elected officials when, like LGBTs, it is too strongly aligned with—or “captured” by—one of the two major political parties. But there are some aspects of the politics of gay rights in the United States that are unusual; at all levels of government, public policy has been slow to reflect the steady rise in the public's support for LGBT rights. While in some ways the battle over gay rights resembles other intergroup conflicts, the case of LGBTs is nevertheless atypical because a large share of the group won't disclose their group identity and thus remains hidden from view. And then there is the fact that marriage has in some sense peaked too early as *the* salient gay-rights issue. This is due in part to America's uniquely powerful and decentralized court system, which heard and ruled upon cases regarding same-sex marriage well in advance of any decisive change in public opinion.

The Road Forward

Laid side by side, opinion data from the American public and from gay people themselves point Obama, the Democrats, and advocates for LGBT equality in a clear direction. A range of policies benefiting LGBT Americans can be achieved with the support of a strong majority of the public. Obama, the Democrats, and the handful of pro-gay Republicans still remaining in Congress can move forward on passing the Employment Non-Discrimination Act; they can stop the purge of lesbian and gay

servicemembers from the armed forces; and they can change—up, at least, until the threshold allowed by DOMA—laws and regulations governing how same-sex couples fare under the Social Security system and the nation's tax laws. This can all be accomplished at much less political cost than in the 1990s, thereby banishing the ghosts of backlashes past.

For their part, LGBT leaders can make it clear to their constituents that these policy changes would be substantial victories—and, in fact, inform them that these changes are needed. One disheartening finding from our survey was that while almost every respondent could correctly identify whether same-sex marriage was legal in his or her state, an astounding 41 percent of LGBTs were unaware that no federal law exists prohibiting employment discrimination. At the state level, the LGBT movement can also pick battles more wisely with regard to marriage and civil unions. The first wave of litigation in state courts over marriage notched important victories. But more crucially, it created the entire notion of civil unions, which probably wouldn't exist were it not for the Vermont Supreme Court's decision requiring them in 1999. For now, the LGBT movement should avoid costly and unsuccessful fights over marriage in states where legislation or court decisions can be put to a statewide vote (as in Maine, where a same-sex marriage law was rejected by voters on November 3, 2009). Instead, the movement could focus on winning legal partnerships that entail marriage in substance, if not in name (such as Washington's “everything but marriage” law approved by that state's voters on the same day). As these partnership laws become enacted, the courts can then be used to



give them real teeth. This approach would yield a second-best outcome for sure, but one that creates the tangible benefits and protections for same-sex couples that lesbians and gays tend to think are more important than the label “marriage.” And unlike marriage, this goal is currently politically viable; after all, two-thirds of Americans support the idea. In time—as attitudes continue to change and the notion of extending legal recognition to same-sex couples seems less audacious—legal marriage will become

available to lesbians and gays nationwide.

Barack Obama came to office amid a wave of change in opinions toward supporting LGBT rights. This change has been decades in the making and persists despite high-profile setbacks. While the Obama era has yet to yield the substantial policy victories desired by LGBTs, America's vastly improved political landscape regarding gay rights means that these goals can be more than just promises on a White House website. They are now politically feasible. Many of the real changes for which LGBTs have long waited—and that Obama and the Democrats know in their hearts and minds are a simple matter of fairness and dignity—are firmly within reach.

Patrick J. Egan is assistant professor of politics and public policy at New York University and a former Assistant Deputy Mayor of Policy and Planning for the City of Philadelphia under Edward Rendell.