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When Is It Time to Claim Victory in the Gay Rights Struggle?

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The last major obstacle to civil equality for gay men, lesbians, bisexuals, and transgender people was toppled this week — by another Republican-appointed justice, Neil Gorsuch. (It will surely be one of the ironies of this period that gay equality in America has been judicially delivered by white cis straight men nominated by, respectively, Ronald Reagan and Donald J. Trump). Gorsuch's reasoning was far more constrained than Anthony Kennedy's in *Obergefell* — which guaranteed gays and lesbians the right to civil marriage — and was, in many ways, a punt. He used the “sex” discrimination aspect of the Civil Rights Act of 1964 to retroactively grandfather in gay men, lesbians, and trans people.

It turns out that the Congress had us in mind all the way back in 1964 — even though homosexuality was still illegal and unmentionable in many states and transgender identity too scandalous even to be conceived by most people. I don't buy Gorsuch's stated logic for an instant, of course. Rather, the ruling is a way to give gay and transgender people practical protection from discrimination in all states, without creating a new, explicit standard. And it doesn't even pass Gorsuch's own standard for textualism. That standard, which he applied in the 2018 hearing *Wisconsin Central Ltd. v U.S.*, is “that words generally should be interpreted as taking their ordinary, contemporary, common meaning ... *at the time Congress enacted the statute.*” Obviously, the Congress in 1964 didn't mean gay or transgender people.

Gorsuch relies on a very simple idea to counter that point: that “sex” in the 1964 Act meant discrimination on the basis of being male or female, and that because gay men are penalized for having relations with men, rather than women, lesbians with women rather than men, and transgender people because they may no longer be the sex they started out as, it's all a form of sex discrimination. It makes sense from that semantic point of view — but it's a stretch on the substance. It dodges the core question of civil rights specifically for gay and transgender people, by subsuming us under the rubric of an existing category, sex. And it does so by mere textual reading of a statute, invoking no grander constitutional principles.

Nonetheless, its impact is immediate and transformative. Every single goal the gay-rights movement set out to achieve in my lifetime has now been won. Gays can marry; we can serve our country openly with pride; we are categorically protected from discrimination in employment and public accommodations in every state. Many once thought it would happen in reverse order,

with employment discrimination barred before civil marriage was extended to gays and lesbians, but history has its surprises. Nonetheless, it's done. Finished. Accomplished.

The Equality Act, the key piece of Democratic legislation designed to update the 1964 Act to include gays and transgender people, is therefore moot. The core goals have been accomplished without Congress needing to pass any new laws. What Gorsuch has achieved is exactly what that bill purports to legislate — except for the Act's attempt to gut religious freedom, by exempting its provisions from the Religious Freedom Restoration Act of 1993. And that, surely, will be the remaining business: a battle between religious freedom and gay and transgender equality.

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With any luck, we'll reach a deal in Washington, D.C., rather like that achieved in Utah, where, in a very Mormon compromise, key measures against discrimination against gays were balanced with strong protections for religious freedom. My own view is that an expansive reading of religious freedom is the right one, and gays should respect that in a pluralist society. It's also my view that if Evangelical Christians and conservative Catholics decide to die on the hill of firing gay people, they will experience a brutal defeat, and tarnish what credibility they still have. The Gospels are not about shunning sinners, or pharisaical puritanism. They are about the imperative to see in everyone the image of God.

But this comprehensive victory obviously presents the major institutions of the gay-rights movement with a dilemma: What do they exist for after this? What conceivable project is now worth the huge amounts of money that sustains these groups? The Human Rights Campaign's statement on the Gorsuch ruling is revealing in this respect. The president, Alphonso David, acknowledges the huge win but insists that "there is still work left to be done. In many aspects of the public square, LGBTQ people still lack non-discrimination protections, which is why it is crucial that Congress pass the Equality Act to address the significant gaps in federal civil rights laws and improve protections for everyone." He doesn't specify any of the "significant gaps." Most likely he means laws on public accommodations (Title II of the Civil Rights Act) and taxpayer-funded social services and other federal programs (Title VI). But these are hardly mountains to climb, requiring an annual budget of \$16 million, and a giant building in downtown D.C.

If current trends are any indication, these groups will simply merge into the broader intersectional left and become as concerned with, say, the rights of immigrants or racial minorities as they are with gay rights. In the political climate on the left at the moment, singling out gays as a separate category is increasingly impermissible. Which is why, for example, at a recent LGBTQ activist conference, there were workshops like "Elephant in the Waiting Room: Self-Love, Health, Queering Fat Acceptance" and "The Politics of Colony and Post-hurricane Politics in PR and USVI." It's why some LGBTQ groups keep adding various "sexualities" and "genders" to the long list and why white gay men are often seen as the oppressors, and not part of the "queer" movement, unless they agree to defer entirely to intersectional politics and acknowledge their white cis privilege.

There will be attempts to maintain the dubious idea that gay men and lesbians are still the object of widespread hate. But our success largely disproves that. There's no evidence that we cannot get into colleges, or cannot succeed in the workplace. Are we more likely to be murdered or attacked? Nope. The alleged epidemics of violence against gay men and trans women of color evaporate on inspection. Of the 20 gay men found by the National Coalition of Anti-Violence Programs to be murdered because of their sexual identity in 2017, only four can be attributed to homophobia, in a close study of the cases by Walter Olson. For years, there has been evidence, for example, that even Matthew Shepard was not murdered because he was gay, but because of a drug deal gone bad.

And when you examine the murders of trans women, a similar story applies.

Two recent academic studies found no evidence that trans people in general are murdered at a higher rate than others, with the important exception of "transfeminine" women of color, aged 15 to 34, who are indeed at a far higher risk of being killed than their cisgender peers. But the bulk of those murders were not a function of hatred of trans people, per se, but of women forced into sex work, or homeless or poor, and thereby at greater risk of violence on the streets. The Human Rights Campaign reports:

Some of these cases involve clear anti-transgender bias. In others, the victim's transgender status may have put them at risk in other ways, such as forcing them into unemployment, poverty, homelessness and/or survival sex work.

One survey, by Chad Felix Greene, found that of the 118 murders of trans people, documented by the Human Rights Campaign between 2015 and 2019, most of which were not solved, only four could be definitively attributed to hatred or hostility to trans people. This is not to say, of course, that poverty, homelessness, drug abuse, and sex work aren't a function of how society, especially minority communities, view transgender women and men. Nor is it to deny that there's solid data that reveals how disproportionately trans people say they experience non-fatal attacks and slurs, and we need better ways to monitor and track this, even though it's very hard to know how to stop it in the first place. It is simply to say that there is cause to question whether there is, in fact, an epidemic of anti-trans murder.

None of this means that we live in a world where homophobia has ceased to exist, where discrimination is unknown, or where visceral fear of and disgust toward trans people does not endure. In fact, prejudice and discrimination against the unknown or different are part of human nature, and partly because of that, young trans people of color are very much at risk. So we can try to keep shifting the culture — and man, has it shifted — in order to lessen the prevalence of irrational prejudice. And we can ensure equality of opportunity and protections against discrimination in employment and public accommodations.

But in free societies, the state does not attempt to reprogram people's minds and hearts. And to be in a small minority in sexual matters — in your teens especially, but also in adulthood — is always going to be tough. Bullying will never go away; nor will calling people names; nor grotesque generalizations about an entire group of people. Nor, for that matter, personal insecurity and self-doubt. But the answer to this is not deepening an embrace of victimhood, but developing the strength to withstand these slurs, to pity the bigoted rather than be intimidated by

them. As Eleanor Roosevelt is believed to have said: “No one can make you feel inferior without your consent.”

One of the remarkable truths of gay history is how so many, under social and legal pressures exponentially greater than today, were able to withhold that consent. They were objectively victims, but subjectively free. It took real imagination, courage, and vision for these heroes and heroines of our past — and that past stretches for centuries before Stonewall — to live lives of authenticity and integrity. Now that the formal and legal obstacles to gay and transgender equality have been entirely removed, let’s follow their example, and forge a future that requires the consent and approval of no one but ourselves.

An Elite Sickness

If you want to find a classic example of why so many American elites are despised, it’s hard to beat John Bolton. Here is a man who was a firsthand witness to clearly impeachable offenses and a president obviously, utterly unable to perform even the most basic functions of his job. He was a witness, among other things, to Trump’s inability to distinguish between the interests of his own reelection and the interests of his country. We now know from the public record that he openly invited the Russian government to interfere in an American election in 2016, secretly did the same with Ukraine in 2019, and now, according to Bolton, that he asked China to buy more agricultural products in order to help him win reelection. We know from firsthand witnesses that he encouraged the Chinese dictatorship to haul the Uighur minority into concentration camps. We know that his feckless naïveté with respect to North Korea was well understood by his own aides at the time.

Bolton also sketches a picture of a president incapable of sustained thought or concentration, and of a staggeringly ignorant man who improvises policy based on his quixotic mood swings. No doubt Bolton has an ax to grind, and is peeved that the U.S. hasn’t launched any new wars under Trump, but the broad picture he paints is remarkably similar to that which emerges from almost every account of this presidency: a carousel of insanity, incompetence, and ignorance.

And if Bolton were a principled person, or even just a responsible citizen, he would have testified to this and more when it might have mattered. The idea that he didn’t testify because the impeachment inquiry had only scratched the surface of Trump’s wrongdoing is preposterous. There’s no reason the House or the Senate could not have explored new avenues of investigation, prompted by Bolton’s testimony. And if Bolton is telling the truth, this president was a real threat to the core principles of constitutional government, which, in my view, is grounds for urgent impeachment and removal from office.

But partisanship and lucre got in the way. Bolton clearly didn’t have the balls to testify against his party’s cult leader, and face the almighty wrath of the base and the Fox News/talk-radio machine. And if he’d spilled the beans to the Democrats, he wouldn’t have had any leverage in his negotiations for a big book deal. When elites put tribalism and their own wealth first, and their public duty last, they erode the foundations of liberal democracy. Trump’s extraordinary levels of corruption and willingness to tear this country apart for short-term political advantage

have done much of the damage. But I see no real difference between his contempt for our system of government and Bolton's.

If you witness impeachable behavior, you bring it to public attention as soon as possible. If you are offered a chance to testify on these matters, you instantly accept. These are, quite simply, the norms of responsible citizenship. And, like his former boss, Bolton has trashed them. He and the rest of the GOP cannot be allowed to distance themselves from the disaster they have exploited, enabled, and abetted. And we should remember this in November.

A Different Kind of Summer

I've been in Provincetown, my usual summer retreat, for a bit more than a week now, and it's, well, weird. The weather has been sublime, unusually for June, and the town, while not dead, is, well, pining for the fjords. Most restaurants are closed; art galleries are shuttered; the usual plethora of shows — drag, plays, music, jazz — have evaporated into thin air. The beaches are empty. Bars are shuttered. Every major tourist theme week — from July 4 to Bear Week and Family Week — has been canceled. Wearing a mask is mandatory for a large chunk of the main thoroughfare, Commercial Street, and almost every tchotchke shop is closed.

I have no idea how the small businesses that barely survive in a small two-month seasonal window will pull through this. Their usual staff are on work-study visas, and come in large numbers from Bulgaria, but this year, of course, the cheap labor cannot get here — and there aren't enough customers anyway. There are some innovative ideas — like online shows, or al fresco dining in the evenings on the street itself — but this summer will be different.

And I'm ashamed to say I'm loving it. Locals and committed seasonals often say that September is the best month here — the skies are clear, the famed Cape light gets extra-intense, and the crowds have gone. This year, September seems to have been yanked forward to June. There are plenty of people, but no real crowds. The elderly day-trippers who would routinely disembark from a cruise liner are absent. Guesthouses are still experiencing long blank spaces in their bookings throughout the summer. The party boys have no parties to go to. And so the streets aren't jammed, you can get takeout food easily, and the quiet is quite lovely.

I'm giving myself away, of course. I'm not the young bar-hound and gym bunny I once was; I'm a solitary writer and reader and dog walker, who enjoys his own company a bit too much. I increasingly find the raucousness of the party scene here to be something I've grown out of — though I'm happy it's still fun for others — and I prefer to hang one-on-one or in small groups. I miss the arrivals and departures of old and new friends, the drag queens barking for their shows on the streets, the ferries tooting their horns in the harbor, and the sound over water of a party in the distance. But I find myself gardening a lot; playing with my triped beagle; and smoking weed on my porch as the sun sets. And this, I guess, is enough.

Yes, I know how blessed and lucky I am — not least to still have a job where I can live here and write anyway. I feel terrible for the shopkeepers and performers and guesthouse owners and bartenders and waiters and massage therapists and personal trainers and everyone else still rendered inessential and unemployed. But some of them, on their unemployment checks and

COVID stimulus money, are pulling through, and enjoying the time and leisure they never usually have at this time of year. Some have even been telling me that this summer could, in the end, be one to remember, a reset for the town of sorts, a reminder that its beauty endures even if the commerce collapses, and that there is more to life than a party.

See you next Friday.