

INTIMATE INTEGRATION: LESSONS FROM THE LGBT CIVIL RIGHTS MOVEMENT

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I. INTRODUCTION

Professor Dorothy Roberts, from the University of Pennsylvania Law School, is an acclaimed scholar on race, gender, and the law. Some of her most notable work focuses on the experiences of interracial couples just after *Loving v. Virginia* was decided.¹ She concludes that breaking down barriers to marriage did little to achieve full integration of African-Americans into the dominant white culture.² Similarly, *Obergefell v. Hodges*, which granted marriage equality for LGBT people, has not led to swift action in the federal, and most state legislatures, to formally prohibit discrimination based on sexual orientation and gender identity.³ In fact, federal non-discrimination laws for LGBT people remain elusive.⁴ After the *Loving* and *Obergefell* decisions, there was optimism the rulings would propel the movements closer to full equality.⁵ Americans' reverence for the institution of marriage led many to believe that marriage rights signify acceptance in society.⁶

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¹ 388 U.S. 1, 11–12 (1967).

² See generally Dorothy Roberts, *Crossing Two Color Lines: Interracial Marriage and Residential Segregation in Chicago*, 45 CAP. U. L. REV. 1 (2017).

³ 135 S. Ct. 2584, 2608 (2015).

⁴ *Beyond Marriage Equality: A Blueprint for Federal Non-Discrimination Protections*, HUM. RTS. CAMPAIGN, <http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/documents/HRC-BeyondMarriageEquality-ExecutiveSummary.pdf> [https://perma.cc/N97T-2VVP] (Human Rights Campaign report laying out a plan of action for increasing federal non-discrimination protection).

⁵ Tim Holbrook, *Marriage Equality? Not so Fast*, CNN (Mar. 26, 2016, 2:02 PM), <http://www.cnn.com/2015/06/26/opinions/holbrook-marriage-equality> [https://perma.cc/T5G2-LXTB] (author discusses immediate effects of same sex marriage, areas in which inequality will remain, and areas in which outcomes are unknown post-*Obergefell*). See also Peter Wallenstein, *The Straight Interracial Couple Who Paved the Way for Gay Marriage*, DAILY BEAST (June 29, 2015, 11:36 AM), <http://www.thedailybeast.com/articles/2015/06/29/how-loving-v-virginia-paved-the-way-for-nationwide-gay-marriage.html> [https://perma.cc/W9UQ-QZDC] (article on historical parallels).

⁶ James Esseks, *The End Game Is Here for Marriage Equality*, AM. CIV. LIBERTIES UNION (Jan. 16, 2015, 4:30 PM), <https://www.aclu.org/blog/speakeasy/end-game-here-marriage-equality> [https://perma.cc/L6QP-3EW9] (author argues that same sex marriage is a monumental step toward equality because of the reverence our culture has for the institution of marriage).

However, as we have seen, the significance of both marriage decisions—while indisputably groundbreaking—did not resolve the larger injustices in our society.⁷

My comments will focus on some of the parallels and distinctions between the African-American civil rights movement and the LGBT civil rights movement, primarily in relation to segregation and integration.⁸

*Loving*⁹ and *Obergefell*¹⁰ provide convenient reference points to examine the two civil rights movements at critical points in their history. Both decisions broadened marriage rights for the oppressed groups and were highly controversial.¹¹ The legal arguments in both cases centered on federal Equal Protection and Due Process rights, and the Courts' reasoning in both decisions was strikingly similar.¹² However, there are few other parallels worth noting. One striking distinction was the level of public support for the respective marriage rights.¹³ National surveys of attitudes regarding marriage rights after both decisions found there was much more support for LGBT marriage equality than for interracial marriage.¹⁴ In 1968, just after *Loving*, only 20% of Americans supported interracial marriage.¹⁵ Likewise, after *Obergefell* was decided in 2015, over 60% of Americans supported marriage equality for LGBT people.¹⁶ Indeed, there are many factors that contribute to this gap in support, including the fact social justice issues are

⁷ See Wallenstein, *supra* note 5.

⁸ See *infra* Part III.

⁹ *Loving v. Virginia*, 388 U.S. 1 (1967).

¹⁰ *Obergefell v. Hodges*, 135 S. Ct. 2584, 2591 (2015).

¹¹ In *Loving*, the Court held that the Fourteenth Amendment gave the freedom of choice to marry. 388 U.S. at 12. Moreover, the Court held that such a right could not be restricted by racial discrimination. *Id.* In *Obergefell*, the Court held that the Fourteenth Amendment “requires states to recognize same-sex marriages held out of state.” 135 S. Ct. at 2591.

¹² Compare *Loving*, 388 U.S. at 8 (rejecting the belief that the equal application of a statute containing racial classifications is enough to remove it from the Fourteenth Amendment proscription of all racial discriminations), with *Obergefell*, 135 S. Ct. at 2589 (holding that the “fundamental liberties protected by the Fourteenth Amendment’s Due Process Clause extend to certain personal choices central to individual dignity and autonomy, including intimate choices defining personal identity and beliefs.”).

¹³ Joseph Carroll, *Most Americans Approve of Interracial Marriages*, GALLUP (Aug. 16, 2007), <http://www.gallup.com/poll/28417/most-americans-approve-interracial-marriages.aspx> [https://perma.cc/YDN5-BNA2]. See also Justin McCarthy, *Record High 60% of Americans Support Same-Sex Marriage*, GALLUP (May 19, 2015), <http://www.gallup.com/poll/183272/record-high-americans-support-sex-marriage.aspx> [https://perma.cc/7BBD-GYNV].

¹⁴ Compare Carroll, *supra* note 13 (poll showing 20% approval and 73% disapproval of marriage between blacks and whites), with McCarthy, *supra* note 13 (poll showing over 60% support of same-sex marriage).

¹⁵ Carroll, *supra* note 13.

¹⁶ McCarthy, *supra* note 13.

much more transparent and ingrained into our national psyche today than they were in the late 1960s.¹⁷ Another important factor, which I will expand on below, may be the different integration experiences of African-Americans and LGBT Americans.¹⁸

Professor Roberts' work inspired me to look more closely at the concept of segregation and whether it can be applied to the struggle for LGBT civil rights.¹⁹ I was interested in determining whether segregation, in its broadest sense, influenced the LGBT civil rights movement.

To be clear, comparing these movements in any way is a messy endeavor. The experiences of African-Americans and LGBT Americans are not congruent; the political environments during these two periods—the late 1960s and today—are vastly different.²⁰ African-Americans were shut out of one dimension of marriage,²¹ whereas LGBT people were denied marriage all together.²² The injustice suffered by African-Americans before, during, and after the turbulent 1960s was marked by extreme violence and intimidation.²³ Many factors contributed to the oppression of both of these minority groups.²⁴ The causes of oppression and discrimination are certainly varied and complex, and this article is in no way a full analysis of the issues. It is simply a limited-scope comparison of the two movements, and possibly inspiration for a more in-depth study.

¹⁷ See *Social Media Makes Teens Aware of Others' Needs, Study Says*, HUFFINGTON POST (Feb. 16, 2012, 7:41 PM), http://www.huffingtonpost.com/2012/02/16/social-media-makes-teens-aware-others-study_n_1283103.html [https://perma.cc/QD26-ADQP]; Laura McCardle, *Today Young People Are More Socially Aware Despite Harmful Stereotypes, Says Demos*, CHILD. & YOUNG PEOPLE NOW (Feb. 19, 2014), <http://www.cypnow.co.uk/cyp/news/1142244/todays-young-people-more-socially-aware-despite-harmful-stereotypes-says-demos> [https://perma.cc/48LA-8FJX].

¹⁸ See *infra* Part III.

¹⁹ Roberts, *supra* note 2. See also *infra* Part III.

²⁰ Christopher Ingraham, *How the Unrest of the 1960s Compares to Today, According to the People Who Lived Through It*, WASH. POST (July 12, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/07/12/reddit-remembers-the-1960s-we-probably-dont-have-to-kill-all-of-them-just-the-agitators> [https://perma.cc/9QW9-KT8S].

²¹ See, e.g., Seth Jared, *50 Years After Civil Rights Movement, Interracial Dating Finally Acceptable*, BLOGCRITICS (Nov. 29, 2011), <http://blogcritics.org/50-years-after-civil-rights-movement> [https://perma.cc/4BX6-QTCA].

²² See *Obergefell v. Hodges*, 135 S. Ct. 2584, 2594 (2015) (describing the history of marriage as between a man and woman as a view that “long has been held—and continues to be held—in good faith by reasonable and sincere people here and throughout the world.”).

²³ See Gabriel J. Chin & Randy Wagner, *The Tyranny of the Minority: Jim Crow and the Counter-Majoritarian Difficulty*, 43 HARV. C.R.-C.L. L. REV. 65, 65 (2008).

²⁴ See Russell K. Robinson, *Marriage Equality and Postracialism*, 61 UCLA L. REV. 1010, 1012 (2014).

Both movements have been successful to different extents in forcing legal and attitudinal change in this country.²⁵ However, there are some key differences that are worthy of further exploration. For example, why is the country still grappling with race issues so long after the racial equality was formally legislated in the 1960s?²⁶ Why have Congress and most state legislatures refused to enact civil rights protection for LGBT people?²⁷ Why have attitudes regarding LGBT people been quickly trending positive, despite the lack of civil rights legislation?²⁸ What can we learn from the answers to these questions? The quality and scope of the integration experience is an important factor in all of these questions.²⁹ LGBT integration is occurring in every strata of American society while African-American integration has been more limited.³⁰

Before the concept of intimate integration is discussed in more detail, this article will address the formal non-discrimination protection and societal attitudes regarding the two groups.³¹ As a result, this article will conclude intimate integration is essential for achieving equality and justice.³²

II. THE LIMITED IMPACT OF LEGISLATION

In the case of the civil rights movement for racial justice, the 1960s ushered in enormously significant legislation to prohibit discrimination in several aspects of public life.³³ When *Loving* was decided, it was unlawful to discriminate against African-Americans in most contexts.³⁴ Most notably, the Civil Rights Act of 1964³⁵ and the Voting Rights Act of 1965³⁶

²⁵ *Id.* at 1013; Mary Ziegler, *Roe's Race: The Supreme Court, Population Control, and Reproductive Justice*, 25 YALE J.L. & FEMINISM 1, 25 (2013).

²⁶ Ziegler, *supra* note 25.

²⁷ See Gwendolyn M. Leachman, *From Protest to Perry: How Litigation Shaped the LGBT Movement's Agenda*, 47 U.C. DAVIS L. REV. 1667, 1671 (2013).

²⁸ David Alan Perkiss, Comment, *A New Strategy for Neutralizing the Gay Panic Defense at Trial: Lessons From the Lawrence King Case*, 60 UCLA L. REV. 778, 814 (2013).

²⁹ Holning Lau, *Formalism: From Racial Integration to Same-Sex Marriage*, 59 HASTINGS L.J. 843, 856 (2008).

³⁰ *A Survey of LGBT Americans*, PEW RES. CTR. (June 13, 2013), <http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans> [https://perma.cc/G5BU-SV87]. See, e.g., Chris Hoenig, *What Does Segregation Look Like Today?*, DIVERSITYINC (Sept. 3, 2013), <http://www.diversityinc.com/news/what-does-segregation-look-like-today> [https://perma.cc/B9QV-L33P].

³¹ See *infra* Part II.

³² See *infra* Part IV.

³³ See, e.g., Civil Rights Act of 1964, 42 U.S.C. § 2000a(a) (2012).

³⁴ See *Loving v. Virginia*, 388 U.S. 1, 10 (1967).

³⁵ 42 U.S.C. §§ 2000a–2000h (2012).

³⁶ 42 U.S.C. §§ 1973–1973q (2012).

prohibited discrimination in nearly every aspect of American life.³⁷ The year following the *Loving* decision, Congress enacted the Fair Housing Act of 1968.³⁸ About a half-century later, however, the African-American community is still oppressed and marginalized.³⁹ Nearly fifty years after Robert E.T. Roberts' enlightening interviews with interracial couples in the Chicago area, our society is still largely segregated by race.⁴⁰ Racism is still prevalent, bias permeates our institutions, and African-Americans lag behind whites in virtually all economic, health, and social measures.⁴¹ Despite strong laws and the expansive view that the courts have generally applied to these laws, pervasive inequality for African-Americans remains an urgent problem in this country.⁴²

Nevertheless, a different reality exists for LGBT Americans. While LGBT people have achieved significant victories in the courts, most notably with the recent legalization of same-sex marriage, they remain excluded from federal and most statewide civil rights laws.⁴³ No one can say LGBT Americans currently enjoy the right to fully participate in society, and certainly discrimination against LGBT Americans is rampant in employment, housing, public accommodations, and schools.

The only federal law that specifically includes LGBT people is the Hate Crimes Prevention Act.⁴⁴ Thus, the political process has failed to achieve

³⁷ 42 U.S.C. §§ 2000a–2000h (2012); 42 U.S.C. §§ 1973–1973q (2012).

³⁸ 42 U.S.C. §§ 3601–3619 (2012).

³⁹ See, e.g., Econ. Policy Inst., *African-Americans*, ST. WORKING AM., <http://stateofworkingamerica.org/fact-sheets/african-americans> [<https://perma.cc/DH9X-7SHN>].

⁴⁰ Hoenig, *supra* note 30 (maps major American cities and graphically illustrates the concentration of various ethnic groups into de facto segregated neighborhoods). Dr. Robert E.T. Roberts was a Chicago native that blazed the trail for interracial marriage, by example, and by his anthropological work, during his time as a professor at Roosevelt University. *Robert E.T. Roberts*, 86, CHI. TRIB. (Jan. 23, 2002), http://articles.chicagotribune.com/2002-01-23/news/0201230382_1_interracial-anthropology-mr-roberts [<https://perma.cc/9U7S-Z9QQ>].

⁴¹ Econ. Policy Inst., *supra* note 39 (statistics from the Economic Policy Institute showing African-Americans lagging in wages, wealth, poverty rates, and upward mobility).

⁴² Kristen Lewis & Sarah Burd-Sharps, *A Century Apart: New Measures of Well-Being for U.S. Racial and Ethnic Groups*, MEASURE AM. SOC. SCI. RES. COUNCIL (Apr. 28, 2010), <http://www.measureofamerica.org/acenturyapart> [<https://perma.cc/6LHR-NRKR>] (showing African-Americans at or near the bottom of many measures of well-being, such as educational attainment and life expectancy, compared to other groups within the United States).

⁴³ Lisa Bornstein & Megan Bench, *Married on Sunday, Fired on Monday: Approaches to Federal LGBT Civil Rights Protections*, 22 WM. & MARY J. WOMEN & L. 31, 32 (2015).

⁴⁴ 18 U.S.C. § 249 (2012).

formal equality for the community, as the nation's courts have been responsible for most of the LGBT community's civil rights victories.⁴⁵

The *Obergefell* decision has been greeted by the LGBT community and its allies with much excitement and anticipation.⁴⁶ The landmark decision will certainly go down in history as one of the most important civil rights cases in the twenty-first century.⁴⁷ Its impact has been far-reaching and prompted changes in laws and policies that implicate marriage or spousal benefits nationwide.⁴⁸ The psychological boost for the LGBT community cannot be overstated.⁴⁹ Since the early part of this century, enormous resources were devoted to the marriage cause by gay rights organizations.⁵⁰ As the LGBT community eagerly awaited the Supreme Court ruling, leading gay rights organizations began contemplating life after marriage.⁵¹ Not surprisingly, these organizations were confronted with the sobering realization while same-sex couples could now marry, they could still be lawfully discriminated against in most states.⁵² At the time of the *Obergefell* decision, twenty-eight states failed to have legislation and policy that

⁴⁵ Katie Eyer, Brown, *Not Loving: Obergefell and the Unfinished Business of Formal Equality*, 125 YALE L.J.F. 1, 6 (2015).

⁴⁶ See, e.g., April Siese, *The Reaction to Gay Marriage Ruling Is Overwhelmingly Positive & the Whole Country Is Celebrating*, BUSTLE (June 26, 2015), <http://www.bustle.com/articles/88553-the-reaction-to-gay-marriage-ruling-is-overwhelmingly-positive-the-whole-country-is-celebrating> [https://perma.cc/J4VA-S92U].

⁴⁷ Erwin Chemerinsky, *Symposium: A Landmark Victory for Civil Rights*, SCOTUSBLOG (Jun. 27, 2015, 8:56 AM), <http://www.scotusblog.com/2015/06/symposium-a-landmark-victory-for-civil-rights> [https://perma.cc/HAF8-FA5L].

⁴⁸ Michael Sangirardi, *What Same-Sex Couples Must Know About Their Finances*, CNBC (July 1, 2015, 8:56 AM), <http://www.cnbc.com/2015/07/01/what-same-sex-couples-must-know-about-their-finances.html> [https://perma.cc/7D6P-W3S5] (describing implications for same sex couples regarding taxes, health insurance, social security, and estate planning after *Obergefell*).

⁴⁹ See, e.g., Siese, *supra* note 46.

⁵⁰ Nancy Watzman, *Gay Rights Supporters Spending Big Politically*, SUNLIGHT FOUND. (June 26, 2013, 3:12 PM), <https://sunlightfoundation.com/blog/2013/06/26/gay-rights-donors-spending> [https://perma.cc/TL2P-ZT7N].

⁵¹ Michael Klarman, *Commentary: The Supreme Court and Marriage for Same-Sex Couples—Part I*, SCOTUSBLOG (Apr. 15, 2015, 10:41 AM), <http://www.scotusblog.com/2015/04/commentary-the-supreme-court-and-marriage-for-same-sex-couples-part-i> [https://perma.cc/WW28-X3KG].

⁵² *State Nondiscrimination Laws in the U.S.*, NAT'L LGBTQ TASK FORCE (May 21, 2014), http://www.thetaskforce.org/static_html/downloads/reports/issue_maps/non_discrimination_5_14_new.pdf [https://perma.cc/5VJT-LJUC] (showing that only eighteen states plus the District of Columbia banned discrimination based on sexual orientation and gender identity/expression, and only three states banned discrimination based on sexual orientation).

provided civil rights protection for LGBT people.⁵³ Additionally, in the year following the decision, seventeen states moved to curtail the rights of their LGBT citizens, including those who were legally married, through Religious Freedom Restoration Acts or similar laws.⁵⁴ Backlash to *Obergefell* did not take long to materialize.⁵⁵ However, in most of these cases, the legislative efforts fizzled only after intense opposition from civil rights advocates, corporations, and the entertainment and sports industries.⁵⁶ Each political showdown was evidence of a disconnect between the political establishment and the prevailing attitudes of the general population.⁵⁷ Among conservatives, particularly in the political class, it is still considered safe to oppose LGBT equality and justice.⁵⁸ However, the nation's attitudes toward LGBT rights are quickly changing in favor of equality and inclusion, and those changing attitudes are increasingly at odds with the political positions of a substantial number of our leaders.⁵⁹ Commentators are struck by the

⁵³ *Maps of State Laws & Policies*, HUM. RTS. CAMPAIGN, http://www.hrc.org/state_maps [<https://perma.cc/U9DN-HL7D>] (showing that most states do not have comprehensive non-discrimination policies regarding issues such as housing, employment, and anti-bullying, among others).

⁵⁴ Jonathan Cohn, *Why Indiana's Religious Freedom Law Is Such a Big Deal*, HUFFINGTON POST (Apr. 1, 2015, 10:26 AM), http://www.huffingtonpost.com/2015/04/01/indiana-religious-freedom_n_6984156.html [<https://perma.cc/PB96-A5KN>] (author describes how RFRA-type laws, like enacted in Indiana, would make it easier for business owners to discriminate against members of the LGBT community by objecting to non-discrimination policies on religious grounds).

⁵⁵ Richard Wolf, *Gay Marriage Victory at Supreme Court Triggering Backlash*, USA TODAY (May 29, 2016, 4:32 PM), <http://www.usatoday.com/story/news/politics/2016/05/29/gay-lesbian-transgender-religious-exemption-supreme-court-north-carolina/84908172> [<https://perma.cc/VS8J-9KWH>].

⁵⁶ See, e.g., Edwin Rios, *Anti-LGBT Bathroom Law Just Cost North Carolina the All-Star Game*, MOTHER JONES (Jul. 21, 2016, 6:46 PM), <http://www.motherjones.com/media/2016/07/nba-all-star-game-north-carolina-hb2-lgbt-transgender-bathroom-law> [<https://perma.cc/2ZQ7-Q3YP>] (NBA removed the league's all-star game from Charlotte after the governor signed a bill restricting transgender use of restrooms); Tom Davies, *Indiana Officials Look to Stem Religious Objections Fallout*, BIG STORY AP (Mar. 28, 2015, 3:36 AM), <http://bigstory.ap.org/article/5c0770a9256e4dca98c4c569f62f44db/indiana-officials-look-stem-religious-objections-fallout> [<https://perma.cc/BMX6-V73V>] (news article describing the efforts Indiana officials took to stem the loss of businesses and conventions to other states due to the state's RFRA legislation); Ralph Ellis & Emanuella Grinberg, *Georgia Gov. Nathan Deal to Veto 'Religious Liberty' Bill*, CNN (Mar. 28, 2016, 5:46 PM), <http://www.cnn.com/2016/03/28/us/georgia-north-carolina-lgbt-bills> [<https://perma.cc/V84T-BPDU>] (RFRA-type bill prompted Atlanta based businesses like Coca-Cola and Home Depot to speak out against it, and NFL to threaten the loss of the state hosting the Super Bowl).

⁵⁷ See, e.g., Cohn, *supra* note 54.

⁵⁸ McCarthy, *supra* note 13.

⁵⁹ *Id.*

accelerating shifts in public attitudes toward LGBT people.⁶⁰ Polls indicate that LGBT people are gaining widespread acceptance that just a couple of decades ago seemed impossible.⁶¹ Compared to other civil rights movements, it appears that the LGBT movement has been more successful at changing hearts and minds at a faster pace.⁶²

While the African-American community has certainly seen more legislative success than the LGBT community, a perception currently exists that the progress of racial justice is stalled.⁶³ The perception is only strengthened by the spate of high profile police shootings and other racially charged incidents in recent years.⁶⁴ Conversely, LGBT Americans lack legal protection, but are perceived as gaining acceptance and equality at a rapid pace.⁶⁵ A look at surveys over time reveals the public's attitude toward LGBT people has moved in a positive direction rather quickly.⁶⁶ At the same time, Americans are growing increasingly anxious about the state of race relations.⁶⁷

⁶⁰ *A Survey of LGBT Americans*, *supra* note 30 (92% of LGBT respondents answered that society had become more accepting of them in the past decade, and 92% said they expect acceptance to continue to increase through the next decade).

⁶¹ McCarthy, *supra* note 13 (as recently as 1996, only 27% thought same sex marriages should be valid, but now, twenty years later, that opinion is held by 60%).

⁶² Compare Carroll, *supra* note 13 (Polling shows 4% approval of interracial marriage in 1958, 48% in 1991, and 73% in 2003. Overall, majority approval of interracial marriage, for example, took forty-five years to achieve.), with McCarthy, *supra* note 13 (Polling shows 26% approval in 1996, 42% in 2006, and 54% in 2013. Overall, majority approval of same-sex marriage took a mere seventeen years.).

⁶³ Jim Norman, *U.S. Worries About Race Relations Reach a New High*, GALLUP (Apr. 11, 2016), http://www.gallup.com/poll/190574/worries-race-relations-reach-new-high.aspx?g_source=race%20relations&g_medium=search&g_campaign=tiles [https://perma.cc/2CCZ-ZT2A] (35% of Americans are worried "a great deal" about race relations, higher than at any point since 2001, and over double the 17% recorded only two years ago).

⁶⁴ *Id.*

⁶⁵ *New Surveys on Experiences of Lesbians, Gays, and Bisexuals and the Public's Views Related to Sexual Orientation*, KAISER FOUND. (Oct. 31, 2001) [hereinafter *New Surveys*], <http://kff.org/hiv/aids/poll-finding/new-surveys-on-experiences-of-lesbians-gays> [https://perma.cc/4DSB-HH9E] (Kaiser Foundation study from 2001 showing increased acceptance of LGBT lifestyle); Darren K. Carlson, *Acceptance of Homosexuality: A Youth Movement*, GALLUP (Feb. 19, 2002), <http://www.gallup.com/poll/5341/acceptance-homosexuality-youth-movement.aspx> [https://perma.cc/7XEG-XMGP] (Gallup report from 2002 showing increased levels of acceptance with younger generations); *Gay and Lesbian Rights*, GALLUP, <http://www.gallup.com/poll/1651/gay-lesbian-rights.aspx> [https://perma.cc/4EP8-AH3V] (Gallup polls through May 2016 showing an increasing acceptance of LGBT people and same sex marriage and that the younger generation is more accepting).

⁶⁶ *Gay and Lesbian Rights*, *supra* note 65.

⁶⁷ See Norman, *supra* note 63.

This comparison is not to suggest LGBT Americans have overcome suffering as a result of others' homophobia. School children are still suffering because of anti-LGBT bullying.⁶⁸ LGBT Americans continue to be victimized by discrimination and violence that too often contributes to mental health issues and self-destructive behaviors.⁶⁹

The road to full equality will certainly be long and bumpy, but no one can deny the country is increasingly accepting and welcoming of the LGBT community.⁷⁰ The key question, then, is why does this distinction between the two movements exist? What are the reasons for the country's willingness to grant formal equality to African-Americans, while denying it to LGBT Americans? And, why has the LGBT rights movement succeeded so well at changing public attitude while progress seems stalled for the African-American community? One plausible reason for this distinction is the different experiences the respective communities have had with segregation and integration.⁷¹

III. THE NEED FOR INTIMATE INTEGRATION

Segregation deprives people of the opportunity to really know each other.⁷² It gives people the opportunity to accept dehumanizing myths about others, and to harbor deep suspicions that foster fear and hatred.⁷³ Unfortunately, segregation—de jure and de facto—has been a large part of the African-American experience.⁷⁴ As stated earlier, we still live in a society largely segregated by race.⁷⁵ That was even truer in the late 1960s when *Loving* was decided.⁷⁶ African-Americans today can legally live anywhere, but as Professor Roberts points out, many factors combine to keep

⁶⁸ See generally Bill Roberts, *The Journey Toward a World Free from Homophobic Bullying: A Review of Homophobic Bullying: Research and Theoretical Perspectives*, 12 J. LGBT YOUTH 90 (2015).

⁶⁹ See Lee Ji Hyun et al., *Discrimination, Mental Health, and Substance Use Disorders Among Sexual Minority Populations*, 3 LGBT HEALTH 258–65 (2016).

⁷⁰ *Gay and Lesbian Rights*, *supra* note 65.

⁷¹ See *infra* Part III.

⁷² See Jessica Joseph, *Homophobia and Racism: Similar Methodologies of Dehumanization*, HUFFINGTON POST (June 19, 2013, 2:35 PM), http://www.huffingtonpost.com/jessica-joseph/homophobia-and-racism-similar-methodologies-of-dehumanization_b_3459204.html [<https://perma.cc/DNA9-DWZR>] (Describing the ways misperceptions are formed when one bases opinions of others on caricatures and stereotypes, instead of firsthand knowledge that comes from interacting with others personally).

⁷³ *Id.*

⁷⁴ See Steven F. Lawson, *Segregation*, NAT'L HUMAN. CTR., <http://nationalhumanitiescenter.org/tserve/freedom/1865-1917/essays/segregation.htm> [<https://perma.cc/C2MT-JA76>].

⁷⁵ See, e.g., Hoenig, *supra* note 30.

⁷⁶ Lawson, *supra* note 74.

our neighborhoods segregated, such as disparities of income and systemic discrimination by mortgage lenders.⁷⁷

For LGBT Americans, the history of segregation is different. While no laws forced LGBT people to live separate from other Americans, LGBT people throughout history self-segregated.⁷⁸ They were either not free to come out as LGBT or unwilling to do so.⁷⁹ Coming out during most of American history meant certain discrimination, breakdown of relationships, possible physical harm, and even criminal prosecution.⁸⁰ This kind of segregation created an invisible minority that was incredibly isolated and fearful.⁸¹ Today, many LGBT people still self-segregate, but more and more are coming out and speaking out.⁸²

As minorities move closer to full integration in society, the attitudes of the dominant culture inevitably change.⁸³ This is why diversity efforts are so important. Unfortunately, despite an increasing awareness of diversity's importance, it has not changed the hearts and minds of a substantial number of Americans.⁸⁴ One inherent problem with diversity efforts in workplaces, schools, and other institutions is the nature of integration is limited.⁸⁵ Developing relationships with co-workers and peers is valuable and helpful, but those relationships are not intimate enough to necessarily change attitudes.⁸⁶ Since our neighborhoods and communities remain largely segregated by race, most white Americans do not get the opportunity to

⁷⁷ See DOROTHY ROBERTS, *FATAL INVENTION* 135 (2011).

⁷⁸ Danielle Xiaodan Deng, *Residential Segregation of Same-Sex Partnered Households from Heterosexual Partnered Households in U.S. Cities*, TEX. A&M UNIV., <http://paa2012.princeton.edu/papers/122082> [<https://perma.cc/Y9QW-5RKY>].

⁷⁹ Arthur A. Murphy & John P. Ellington, *Homosexuality and the Law: Tolerance and Containment II*, 97 DICK. L. REV. 693, 714 (1993) (discussing that a homosexual should not have to sacrifice self-respect to avoid conflict provoked by someone else).

⁸⁰ *Why Sodomy Laws Matter*, ACLU, <https://www.aclu.org/why-sodomy-laws-matter> [<https://perma.cc/57PX-VQ8W>] (beginning in the 1970s, sodomy laws—previously invoked primarily in cases of sexual assault—started being used to discriminate against homosexuals, in response to the burgeoning gay rights movement of that era).

⁸¹ Frances Bowen & Kate Blackmon, *Spirals of Silence: The Dynamic Effects of Diversity on Organizational Voice*, 40 J. MGMT. STUD. 1393, 1401, <http://onlinelibrary.wiley.com/doi/10.1111/1467-6486.00385/epdf> [<https://perma.cc/YUK5-VPG5>].

⁸² See Deng, *supra* note 78.

⁸³ See YANN ALGAN ET AL., *CULTURAL INTEGRATION OF IMMIGRANTS IN EUROPE* 3 (2012).

⁸⁴ Cf. McCarthy, *supra* note 13 (polling that indicates a (small) majority approves of same-sex marriage); but see *New Surveys*, *supra* note 65; Carlson, *supra* note 65; *Gay and Lesbian Rights*, *supra* note 65.

⁸⁵ Bowen & Blackmon, *supra* note 81, at 1408.

⁸⁶ *Id.* at 1405.

meaningfully engage with African-American neighbors.⁸⁷ This underscores the importance of integration and diversity efforts, especially those that advance intimate integration. According to *Merriam-Webster Dictionary*, intimacy is generally known as “a state of emotional closeness; a quality suggesting closeness and warmth.”⁸⁸ Family and residential integration are intimate forms of integration because they facilitate deep and personal relationships.⁸⁹

LGBT Americans have gone from invisibility to intimate inclusion in much of society.⁹⁰ As people come out, they are not just integrating into their workplaces and schools, but also into their families and close social networks.⁹¹ Family and social integration are the fundamental differences between the integration experiences of LGBT Americans and African-Americans.⁹² While the number of black and white marriages has increased in recent years, it is still a small percentage of marriages overall.⁹³ Interracial adoptions are also more common today.⁹⁴ Nevertheless, most white Americans do not have black family members.⁹⁵ Conversely, most Americans today report they have either a relative or close friend who is LGBT.⁹⁶ LGBT people are present in every racial, ethnic, religious, and socio-economic group.⁹⁷ The Williams Institute, an LGBT think tank

⁸⁷ Reniqua Allen, *Our 21st-Century Segregation: We're Still Divided by Race*, GUARDIAN (Apr. 3, 2013, 8:30 AM), <https://www.theguardian.com/commentisfree/2013/apr/03/21st-century-segregation-divided-race> [<https://perma.cc/H2JQ-4KFP>].

⁸⁸ *Intimacy*, MERRIAM-WEBSTER DICTIONARY, http://www.merriam-webster.com/dictionary/intimacy?utm_campaign=sd&utm_medium=serp&utm_source=jsonld [<https://perma.cc/U9EW-SMAT>].

⁸⁹ Mary R. Jackman & Marie Crane, “*Some of My Best Friends Are Black...* ”: *Interracial Friendship and Whites’ Racial Attitudes*, 50 PUB. OPINION. Q. 459, 461 (1986).

⁹⁰ See *A Survey of LGBT Americans*, *supra* note 30.

⁹¹ *Id.*

⁹² See Adam Thomason, *The People’s District: 5 Reasons Gay Is Not the New Black*, FORTH DIST. (Jan. 29, 2014), <http://forthdistrict.com/5-reasons-gay-is-not-the-new-black> [<https://perma.cc/37TA-9DQC>].

⁹³ Wendy Wang, *The Rise of Intermarriage*, PEW RES. CTR. (Feb. 16, 2012), <http://www.pewsocialtrends.org/2012/02/16/the-rise-of-intermarriage/2> [<https://perma.cc/8YT7-HAZZ>] (In 2010, 15% of all marriages were interracial marriages. In 1980, the number of interracial marriages was a mere 6.7%.).

⁹⁴ See Nicholas J. Krob, *Transracial Adoption: Arguments and Answers*, DRAKE L. REV. STUDENT SHOWCASE 101, 106–07 (2016), https://lawreviewdrake.files.wordpress.com/2016/02/krob_final.pdf [<https://perma.cc/4675-MZ2V>].

⁹⁵ See Wang, *supra* note 93.

⁹⁶ Caity Weaver, *40% of Americans Don’t Know Their Friends Are Gay*, GAWKER (June 6, 2012, 8:11 PM), <http://gawker.com/5916421/40-of-americans-dont-know-their-friends-are-gay> [<https://perma.cc/R6F7-VSX7>] (“60 percent of Americans say they have a family member or close friend who is gay or lesbian.”).

⁹⁷ *A Survey of LGBT Americans*, *supra* note 30.

affiliated with the University of California, Los Angeles (UCLA), reports LGBT people report living in 93–99% of counties in the United States.⁹⁸ Young LGBT people are coming out in record numbers.⁹⁹ This phenomenon has forced families across the country to grapple with sexual orientation and gender identity on an extremely personal level.¹⁰⁰

LGBT Americans are succeeding at intimate integration and, as a result, attitudes toward LGBT citizens are becoming more positive.¹⁰¹ There is a common belief LGBT advocates are winning the culture war.¹⁰² If this is true, it is because Americans have become intimately familiar with their LGBT children, parents, siblings, other relatives, and close friends.¹⁰³

To a degree, the same could be said of the African-American integration experience.¹⁰⁴ However, the main distinction is African-American integration has not been substantially intimate.¹⁰⁵ African-Americans remain disproportionately concentrated in certain areas of the country, and within those areas they are concentrated in specific metropolitan areas and in certain neighborhoods.¹⁰⁶ Certainly, by concrete measures such as political representation and public policy, African-Americans are better off

⁹⁸ Gary J. Gates & Abigail M. Cooke, *United States Census Snapshot: 2010*, WILLIAMS INST. 1, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot-US-v2.pdf> [<https://perma.cc/2F9T-EP4H>] (Based on 2010 US Census reporting that “same-sex couples were identified in 93% of all U.S. counties.”); Carly Schwartz, *Same-Sex Couples: Williams Institute Releases National Data on Gay Couples*, *San Francisco Tops List*, HUFFINGTON POST (Aug. 26, 2011, 1:20 PM), http://www.huffingtonpost.com/2011/08/26/same-sex-couples-williams-institute-national-data_n_938166.html [<https://perma.cc/46ZR-2NDR>] (article reporting “same-sex couples live in 99 percent of American counties.”).

⁹⁹ Curtis M. Wong, *Americans Are Coming Out on Facebook in Record Numbers and It’s Fantastic*, HUFFINGTON POST (Oct. 16, 2015, 12:21 PM), http://www.huffingtonpost.com/entry/americans-coming-out-facebook_us_561fedd0e4b050c6c4a4c615 [<https://perma.cc/D4LK-L2V4>] (reporting some surveys have recorded a spike of approximately 800,000 Americans updating their Facebook profiles as interested in the same sex).

¹⁰⁰ See Nat’l Clearinghouse on Families & Youth, *Supportive Families Make a Difference for Lesbian, Gay, Bisexual and Transgender Youth*, FAMILY & YOUTH SERVS. BUREAU, <http://ncfy.acf.hhs.gov/features/serving-lesbian-gay-bisexual-transgender-and-questioning-youth-open-arms/supportive> [<https://perma.cc/2AGJ-KXAT>].

¹⁰¹ Ed Cara, *Times Are Changing: Attitudes Toward Lesbian, Gay People Are Growing More Positive with Time*, MED. DAILY (July 23, 2015, 10:09 AM), <http://www.medicaldaily.com/times-are-changing-attitudes-toward-lesbian-gay-people-are-growing-more-positive-time-344288> [<https://perma.cc/U2GB-A4JG>].

¹⁰² Phillip Bump, *The Political War over Gay Culture Is over and the Gays Won*, WASH. POST (Mar. 31, 2015), <https://www.washingtonpost.com/news/the-fix/wp/2015/03/31/the-political-war-over-gay-culture-is-over-and-the-gays-won> [<https://perma.cc/ZRM6-P6ZT>].

¹⁰³ See Weaver, *supra* note 96.

¹⁰⁴ See Wang, *supra* note 93.

¹⁰⁵ *Id.*

¹⁰⁶ See Hoenig, *supra* note 30.

today than in the past.¹⁰⁷ But unfortunately, the African-American community remains marginalized and segregated.¹⁰⁸

Before we see meaningful and lasting attitudinal change, we must advance intimate integration such as residential integration. Americans tend to relate to their neighbors on a much more personal level than their co-workers or student colleagues.¹⁰⁹ Certainly, interracial marriages and adoptions are more intimate forms of integration, and it is likely those trends will continue to increase.¹¹⁰ However, other than favoring interracial adoptions, government policy and legislation can do very little to impact those trends.¹¹¹ Residential integration, on the other hand, is an issue that should be prioritized at every level of legislation and policy formation.¹¹² Undoubtedly, the process of meaningful integration of the African-American community will be difficult and complicated. The dominant culture is unlikely to freely ascent to the dismantling of myriad institutions and systems that have been erected over time to maintain segregation.¹¹³ But it is essential for racial justice to be realized.

Social science research supports the idea that attitudes change only when people encounter social pressure to modify their views.¹¹⁴ Cognitive and functional theories of persuasion suggest our personal relationships are the primary motivator of changing attitudes.¹¹⁵ One's negative attitude toward LGBTs or African-Americans will be significantly challenged by one's LGBT or African-American neighbor or close friend. The cognitive dissonance that occurs between a person's established attitude and the

¹⁰⁷ See Ziegler, *supra* note 25.

¹⁰⁸ See Lewis & Burd-Sharps, *supra* note 42.

¹⁰⁹ Philip Q. Yang & Kavitha Koshy, *Trends in Whites' Perceived Black-White Residential Integration, 1972-2008*, J. PUB. & PROF. SOC. (Sept. 18, 2012), <http://digitalcommons.kennesaw.edu/cgi/viewcontent.cgi?article=1049&context=jpps> [<https://perma.cc/AN2P-ZKMF>].

¹¹⁰ See Wang, *supra* note 93; Krob, *supra* note 94.

¹¹¹ Krob, *supra* note 94.

¹¹² See Hoenig, *supra* note 30.

¹¹³ Martha R. Mahoney, *Segregation, Whiteness, and Transformation*, 143 U. PA. L. REV. 1659, 1659 (1995).

¹¹⁴ See, e.g., LEON FESTINGER, A THEORY OF COGNITIVE DISSONANCE 11 (1957) (theorizing that interaction with others who hold different positions are a potential source of dissonance, and concluding that dissonance is a motivation to reduce dissonance).

¹¹⁵ Daniel Katz, *The Functional Approach to the Study of Attitudes*, 24 PUB. OPINION Q. 163, 164 (1960) (theory that attitudes serve a useful purpose to a person, or help him meet his goals, regardless of the logic or lack thereof, for the attitude); FESTINGER, *supra* note 114, at 13 (Cognitive dissonance theory says that people avoid information that challenges their existing beliefs, in order to avoid the psychological discomfort resulting from the inconsistency of the information.).

embodiment of the opposing attitude will motivate the person to change.¹¹⁶ This is precisely the experience of thousands of parents whose children came out as LGBT and who initially harbored homophobic attitudes.¹¹⁷

Professor Roberts' examination of segregation and its impact on society correctly concludes equality cannot be achieved until barriers are broken down.¹¹⁸ We must continue to break down all barriers, and we must work especially hard at breaking down barriers to housing opportunities. Residential segregation remains a shameful and counterproductive institution in this country.¹¹⁹ Until this changes, true racial justice will continue to be elusive.

IV. CONCLUSION

The history of civil rights movements in this country teaches us political power alone is not enough to achieve equality and justice.¹²⁰ Superficial exposure to each other is also insufficient as a remedy for bigotry and resentment.¹²¹ Justice requires sharing our humanity with each other in contexts that demand understanding and introspection.¹²² Intimate forms of integration, such as familial and residential, will counter bias much more effectively than laws.¹²³ Again, this is not to say legislation is not important—just it is not enough. The author believes all oppressed groups in this country will soon have comprehensive legislative protections against discrimination and bias, but equality and justice will remain elusive. Justice will require policies, practices, and mindsets that promote real integration.

¹¹⁶ See FESTINGER, *supra* note 114.

¹¹⁷ Laurie Heatherington & Justin A. Lavner, *Coming to Terms with Coming Out: Review and Recommendations for Family Systems—Focused Research*, 22 J. FAM. PSYCHOL. 329, 329 (discussing the varied responses from parents of homosexual children when they come out as gay).

¹¹⁸ Roberts, *supra* note 2.

¹¹⁹ See Florence Wagman Roisman, *The Fair Housing Act After 40 Years: Continuing the Mission to Eliminate Housing Discrimination and Segregation*, 41 IND. L. REV. 507, 508 (2008).

¹²⁰ See *supra* Part II.

¹²¹ See *supra* Part III.

¹²² Compare *supra* Part II, with *supra* Part III.

¹²³ See *supra* Part III.