DEMOCRACY AND SOCIETY 27.06.2024 | Omar G. Encarnación

America got gay marriage, but it came at a cost

The modest gay marriage campaign of the past decades created an opening for today's anti-LGBT+ backlash

It's a strange time for gay rights in America. As the country nears the 10th anniversary of the legalisation of gay marriage nationwide, support for same-sex unions has risen to 70 per cent of the American public. But at the same time, LGBT+ people are being targeted in ways not seen since the days of Save Our Children, Anita Bryant's infamous 1977 campaign against gay rights that depicted gay men as human garbage and paedophiles.

In recent years, Republican-controlled state legislatures have banned drag shows, gender-affirming care for minors and adults and the teaching of sexual orientation from kindergarten through the third grade, including the passage of Florida's 'Don't Say Gay' law. Panic about 'grooming', a homophobic slur that exploits people's worst fears about gay people and children, is having a moment.

Even Obergefell v. Hodges, the 2015 Supreme Court ruling that legalised gay marriage nationally, is under attack. In 2020, Justices Samuel Alito and Clarence Thomas cast doubt on the legality of the ruling, which could yet go the same way as Roe v. Wade. The Respect for Marriage Act, passed by Congress in 2022, did not codify the ruling into law and would provide scant protection.

A missed opportunity

Clearly, marriage equality was not enough to bring full equality to LGBT+ Americans. It would be wishful to think it could, perhaps. But the gay marriage campaign was a major missed opportunity to expand LGBT+ equality. When compared with its foreign counterparts, the American campaign was notable for one thing: the extraordinary modesty of its framing.

The approach was good enough to make gay marriage the law of the land.

Yet, by failing to make a more ambitious case for equality across the board, as other countries did, the campaign limited the transformative power of gay marriage and created an opening for today's backlash.

Inspired by the civil rights movement's struggle for equality under the law, the campaign – which ran for roughly two decades until the ruling in 2015 – was framed around rights and benefits. It spotlighted the rights denied to same-sex couples, including tax deductions, inheritance provisions and hospital visitation privileges.

Extending marriage rights to same-sex couples was a major step for American society. But it did not require Americans to question their fundamental assumptions about LGBT+ people.

But the message backfired, coming across as sterile, materialistic and unpersuasive. It also invited the criticism that gay people were comparing their struggle for marriage to the fight against racial discrimination by African Americans. A different message, cantered on love and commitment, was introduced late in the campaign to show that same-sex couples wanted marriage for the same reasons heterosexuals do.

Neither messaging, however, made the case for LGBT+ equality beyond pleading for opening the institution of marriage to same-sex couples. For the most part, gay marriage activists did not defend the morality of homosexual unions. Nor did they refute the claim by the Christian right that gay marriage was a threat to the family and religious freedom.

To be sure, extending marriage rights to same-sex couples was a major step for American society. But it did not require Americans to question their fundamental assumptions about LGBT+ people. And despite its modesty, the campaign didn't stop backlash or the sense among conservative activists and lawmakers that attacking LGBT+ people is a low-risk proposition.

Morality > Legality

There were different ways to frame the struggle for gay marriage, as other countries showed. In Spain, for example, gay marriage activists waged a crusade for full citizenship, emphasising not only rights and benefits but also dignity and respect. They also posited gay marriage as moral redemption for historical injustices against gay and lesbian people dating back to the burning of 'sodomites' at the stake during the Spanish Inquisition.

This ambitious framing paved the way for a gay marriage law in 2005 that

made Spain, as *The New York Times* reported, 'the first nation to eliminate all legal distinctions between same-sex and heterosexual unions'. It also prompted a frank debate about the state of sexual minorities in Spanish society and converted Spain, historically a social backwater, into the country most accepting of homosexuality. Its resonance with ordinary Spaniards also worked to blunt the backlash from one of the most powerful Catholic establishments in Christendom.

In Spain and Brazil, gay activists exploited histories of LGBT+ oppression and violence to fashion compelling moral messages.

Echoes of Spain's pioneering gay marriage campaign can be found in countries as diverse as Argentina, Canada, Brazil, South Africa and Ireland. In all of them, gay marriage was framed as a moral issue rather than a legal matter. Brazil is notable because, as in the United States, gay marriage was legalised by the courts and in the face of stiff opposition by evangelical leaders. Brazilian gay activists argued that same-sex unions qualified as stable unions, a category of relationships that the Brazilian Constitution deems equivalent to marriage in recognition of a tradition of unmarried cohabitation in Brazilian history.

But the Brazilian campaign also contended that extending marriage rights to same-sex couples was in keeping with the human rights aspirations that Brazil set for itself after its transition to democracy in 1985. Since gay marriage was legalised there in 2013, the human rights framing has proved persuasive with Brazil's Federal Supreme Court, leading to historic rulings on transgender rights and the criminalisation of homophobia.

Of course, we cannot expect what happened abroad to be reproduced at home. In Spain and Brazil, gay activists exploited histories of LGBT+ oppression and violence to fashion compelling moral messages. The Spanish campaign unfolded in the midst of a national reckoning with the atrocities of the Spanish Civil War and the Franco dictatorship, which included sending gay and lesbian people to 're-education' camps. The Brazilian campaign played out against the backdrop of an epidemic of LGBT+ killings known as a homocaust that gay activists say has claimed some 300 LGBT+ lives every year since the mid-1980s.

Modesty has its virtues, of course. But when it comes to struggles for fairness

But just because the conditions surrounding the struggle for gay marriage were different abroad does not mean that there's nothing for American gay activists to learn. After all, the

and equality, it pays to go big and aim high.

culture war over gay marriage in countries like Spain, Brazil and Ireland was won with smaller and less seasoned gay rights movements than in the United States and against formidable opponents like the Catholic Church and the evangelical movement.

American gay activists would be wise to recalibrate their activism, shifting from a rights-based approach, with its emphasis on litigation, to one more oriented toward citizenship and dignity. They may also want to embrace a more ambitious and idealistic mindset, aiming squarely at public persuasion. Modesty has its virtues, of course. But when it comes to struggles for fairness and equality, it pays to go big and aim high.

This article originally appeared in The New York Times



Omar G. Encarnación
Annandale-on-Hudson

Omar G. Encarnación is a professor of politics at Bard College. He is the author of the forthcoming *Framing Equality: The Politics of Gay Marriage Wars*, among other books.