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## Selling Queer Rights: The Commodification of Queer Rights Activism

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## Selling Queer Rights: The Commodification of Queer Rights Activism

### Abstract

With the recent Supreme Court decision to legalize same-sex marriage throughout the country, many have spoken in support of the decision, calling it a massive expansion of civil rights. While affording marriage rights to same-sex couples, these rights and expansions should be understood in the greater context of historical queer rights struggle and the economic factors that have motivated these civil rights expansions. This article will examine how the expansion of gay marriage rights was motivated not by concerns with civil rights, but out of economic concerns. This process has, in effect, commodified queer rights, weakening queer rights politics to be more palatable to mainstream American society.

### Keywords

same-sex marriage, Marxism, queer rights

Selling Queer Rights: The Commodification of Queer  
Rights Activism  
*Laurence Pedroni*

**Abstract**

With the recent Supreme Court decision to legalize same-sex marriage throughout the country, many have spoken in support of the decision, calling it a massive expansion of civil rights. While affording marriage rights to same-sex couples, these rights and expansions should be understood in the greater context of historical queer rights struggle and the economic factors that have motivated these civil rights expansions. This article will examine how the expansion of gay marriage rights was motivated not by concerns with civil rights, but out of economic concerns. This process has, in effect, commodified queer rights, weakening queer rights politics to be more palatable to mainstream American society.

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### Introduction

The last 100 years have offered a multitude of changes in the realm of civil and human rights in the United States and abroad. Many of these rights were gained through the struggle of minorities. Armaline, Glasberg, and Pukuyastha (2014) argue that human rights have always been expanded through the struggles and protests from the populations who are oppressed and are seeking an expansion of their rights. Events characteristic of the 1960s—Stonewall, the Watts Riots, and other movements of the civil rights era, and even recent events such as Baltimore, Ferguson, and the Occupy movement—exemplify this bottom up protest. Recently, there has been a disturbing trend where there is a reversal of human rights. Armaline, Glasberg, and Pukuyastha (2014) note that

there are certainly hopeful exceptions to be found in, for example, the progress of LGBTQ rights to marriage and military service in the US, the constitutional and human rights of women, the poor, and people of color are in many ways, under threat as a result of US policies that...tend to reflect the narrow interests of the corporate owning class (p. 121).

Currently, it is easy to find cases in which the rights of people of color (POC) and women's rights are being eroded. Whether it is the police murders of Eric Garner, Trayvon Martin, Michael Brown, the most recent killing of Walter Scott, or the eroding of women's rights with the closing of all but one Planned Parenthood clinics in the entire state of Texas or the sentencing of Purvi Patel to 20 years in prison for her miscarriage or "feticide." Even in the realm of queer rights, we see the eroding of non-marriage rights with the recent rash of

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“religious freedom” bills across the country—the most recent being in Indiana and Arkansas.

The question becomes, why do we see a furthering of queer rights, especially marriage, in the face of the erosion of other human rights? The above quote contains a good starting place to look for this answer since human rights have come “to reflect the narrow interests of the corporate owning class” (Armaline, Glasberg, and Pukuyastha, 2014, p. 121). The answer for why we are furthering same-sex marriage rights is because it serves the interest of capitalism to do so. This paper will examine how capitalism is tied to the modern gay identity and how it furthers capitalism to support sections of the queer community in their seeking of same-sex marriage rights.

### **The Modern Creation of the Gay Identity**

Homosexual behavior has been recorded in various societies for millennia, from ancient Greece to the early Bronze Age in China (Hinsch, 1992; Nussbaum, 2002). While the history of sexual behavior is thousands of years old, the creation of the queer identity is a modern social creation (Foucault, 1990). D’Emilio (1997) connected the creation of the nuclear family under capitalism and the resulting link to the creation of a gay identity. Colonists in 17th century New England sustained themselves through independent, self-sufficient, patriarchal family units where everyone worked together to consume the goods they produced. In the 19th century, this system of self-sustaining family units was in decline and the rise of merchant capitalists who invested money gained through trade of the production of goods and wage labor became common. Both men and women were drawn out of their largely self-sufficient households and into the capitalist wage economy. Because of

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this, families were no longer the independent means of production and by the mid-1800s, capitalism had destroyed the economic self-sufficiency that many families enjoyed. By the 1920s, for middle class white people, the meaning of the family took on a new meaning. Instead of a primarily goods producing institution, marriage now provided emotional satisfaction and happiness (Fass, 1977; Zaratsky, 1976). The “personal life” was now created as families saw a divide between their work life and their families. From here, D’Emilio (1997) argued that with the spread of wage labor and the socialization of labor, people were released from the sexual imperative of procreation. Heterosexuality became the ideological means to establish intimacy, promote happiness, and pleasure. By divesting the household of its economic independence, capitalism created a space for people to create a personal identity, and later a political identity, around their desire for members of the same sex. This creation of identity was heavily aided by medical discourse and their theories on the condition of homosexuality (D’Emilio, 1997; Foucault, 1990). While capitalism was creating a homogenized society through the creation of waged labor, it was also creating a space for a gay identity.

In contrast to Foucault’s medicalized view of the creation of the gay identity, Chauncey (1994) credits this creation to the hands of the state. Homosexuality was excluded from the public sphere through the use of police raids, moral panics, and the regulation of entertainment venues. By the end of the 1960s, homosexual sex was illegal in every state except for Illinois (Carter, 2004). Because of this forceful exclusion, working class gay people created a culture revolving around pubs, cafes, and saloons. Middle class gay men instead moved towards private settings or “a middle class gay residential

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enclave [that] developed on the Upper East Side in the 1930s, 1940s, and 1950s” (Chauncey, 1995, p. 159). These middle class men also separated gender from sexuality while working class gay men understood same-sex desire as a reflection of a gender inverted status - the fairy- and introduced the idea of homosexuality as a sexual identity.

### **Stonewall**

Because of this forceful exclusion at the hands of the police and society, working class, as well as gays, lesbians, drag queens, and trans people, particularly people of color, were relegated to the edges of society—mainly bars and inns. The most famous being the Stonewall Inn in New York City where, in 1969, tired of police raids and violence, the patrons rioted and created a turning point in the gay rights movement (Carter, 2004). Stonewall served as a break from the politics of assimilation and from class politics that dominated earlier gay politics (Seidman, 2011).

In 2013, 44 years after the riots at Stonewall, New York City ignited controversy when city officials attempted to recognize the Stonewall Riots and the people who rioted. One critic, Miss Major, a trans woman of color, who was in Stonewall when the riots erupted, said that the efforts to recognize the riots were white-washing the history of the movement (Brydum, 2013). Stonewall was known for having an even racial mix of white, African American, and Latino patrons (Duberman, 1994). While there has been some disagreement about how large a role trans people played in the Stonewall Riots, it is undeniable that they played a part (Carpenter, 2002; Williams, 2013). Two of the most prominent members of the Stonewall Riots were Sylvia Rivera, drag queen and trans

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activist, and Marsha “Pay it no Mind” Johnson, a black transwoman and activist.<sup>1</sup> Rivera went on to co-found the Gay Activists Alliance, Gay Liberation Front, and the Street Transvestite Action Revolutionaries with Johnson. Johnson has also been credited with being one of the people to start the Stonewall Riots, if not to be the main cause of them. One account stated that after police entered the bar, Johnson threw her shot glass at a mirror and proclaimed “I got my civil rights” and it was this act that started the violence. Other accounts have Johnson at the forefront of the violence, throwing rocks, and yelling at police (Carter, 2004).

### **Recent Queer Rights Activism Same-Sex Marriage**

Same-sex marriage has been a hot bed topic throughout the United States for over a decade and can trace its roots back as far as 1971 when the Supreme Court dismissed the case *Baker v. Nelson* (1971), which challenged the denial of marriage to same-sex couples. The first case to challenge a state’s ban on same sex marriages is *Baehrer v. Lewin* (1993). The Supreme Court of Hawaii decided that the ban on same-sex marriages violated both state laws and equal protection laws (*Baehrer v. Lewin*, 1993; Rom, 2007). This decision was quickly met with a change to the Hawaiian state constitution. Marriage is viewed as a contract that is under the purview of the state and must therefore be legally defined by the state. *Baehrer v. Lewin* (1993) served as a catalyst for Bill Clinton to sign the Defense of

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<sup>1</sup> Johnson used “Pay it no mind” as a rhetorical answer whenever someone would ask about her gender and by including it in her name, she sought to deter the public from asking about her gender at all.

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Marriage Act (DOMA) which was followed by a handful of states enacting similar laws by their individual legislators. DOMA defined marriage as the “legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife” (Defense of Marriage Act, 1996; p 1). Because of this definition, DOMA denied a variety of rights to same-sex couples, including hospital visitations and tax rights among others. Between 2004 and 2008, voters in 26 states passed amendments that would redefine marriage as between “one man and one woman.”. Such laws can be overturned on constitutional grounds, but once a constitution has been amended, it becomes much harder to overturn. This also puts the discrimination at a much higher level by normalizing it. By normalizing this discrimination, it becomes institutionalized and systemic, making it much harder to change (Fingerhut, Riggle, & Rostosky, 2011).

The financial cost of legalizing same-sex marriages is staggering. Campaigns raised a total of \$11 million to fight an initiative banning same-sex marriage in both Arizona and Florida (Ewers, 2008). The Human Rights Campaign (HRC) has donated over \$14 million to various Political Action Committees (PACs) and over \$25 million in lobbying since 1998 (OpenSecrets, 2013), but the most staggering numbers come out of California during the initial Prop 8 decision in 2008. Opponents and proponents raised over \$60 million in donations, setting national records for social policy and trumping every race that year, barring the presidential election (Ewers, 2008).

While the costs are staggering, economists have argued that same-sex marriage provides economic benefits for states that legalize them (Lee Badgett, 2013). Kastanis, Strieker, and Web

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(2011) saw that in the first three years of allowing same-sex couples to wed, California generated over 2,000 jobs and saw \$31.4 million in tax revenue from marriage spending. The authors also reported two billion dollars were generated in states that allow same-sex marriage, far exceeding the half a billion dollars made through traditional marriage in other states. This financial argument was continued in an amicus brief filed with the Supreme Court on their decision on whether to take the Prop 8 case or not. One hundred businesses—including Apple, Groupon, Facebook, and Google—signed onto this brief, arguing that Proposition 8 would hurt their businesses. In their brief, these businesses had three central arguments: Prop 8 was an affront to their commitment to fair treatment; Prop 8 impeded productive business; and, invalidating DOMA would not address the harms of Prop 8. The businesses' second argument is that "recognizing the rights of same-sex couples to marry is more than just a constitutional issue. It is a business imperative" (*Hollingsworth v. Perry*, 2013, p. 16). What these businesses are arguing is that the marriage rights of queer people effect their bottom line and that is a large part of why they are concerned.

### Criticism

Along with the abstract equality that comes with same-sex marriage, proponents argue that affording marriage rights to queer people will allow them access to the more than 1,000 rights associated with marriage. Conrad (2012) asked the question that is lost in the media spectacle that is the same-sex marriage debate—what if queer movements focused on getting these rights for everyone, not just citizen-couples? Why is it that married couples get tax breaks, easier access to health care, or citizenship through their partners? Why does the government put

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so much emphasis on a person's marital status? (Conrad, 2012). Contrary to the logic pushed by many opponents, same-sex marriage will actually be enforcing the strict heteronormative standards that marriage has stood on for decades, standards that the Christian right stands on. Protestors and supporters often carry signs that are near identical—white couples smiling and standing in suburbia, surrounded by the white picket fence—the American Dream. This push on marriage equality has reinforced the notion of the nuclear family as an ideal and a site of financial security, safety, and morality. Same-sex marriage will reinforce the status quo (Hunt, 2004). With divorce rates reaching 50%, high rates of domestic violence, and over 90% of children who are sexually abused are being sexually abused by their own relatives, marriage is not nearly the safe and perfect haven it is portrayed to be (Committee on the Judiciary, 1992; Snyder, 2000; US Census Bureau, 2012). Rechy (1977) placed the desire for the American Dream in simple terms: “The heterosexual norm-marriage, children, home, property —is ingrained into homosexuals as the only possible means of happiness. Homosexuals are taught —by heterosexuals —to expect and even yearn for what, given societal attitudes, is impossible under a different lifestyle” (p. 242).

### **Religious Freedom Bills**

The Religious Freedom Restoration Act (1993) was ratified by President Clinton in an effort to strengthen the standards used by the government when determining whether someone's religious freedoms were violated or not (McClam, 2015). This was in response to the Supreme Court case *Employment Decision v. Smith* (1990), where the constitutional protections for religious freedom were severely weakened

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(Luchenitser, 2015). Various states have ratified their own versions of this law, but the current trend of anti-gay undertones that lurk in recent ratification may be able to owe their creation to a recent Supreme Court decision. In *Burwell v. Hobby Lobby* (2014), the Supreme Court concluded that, because corporations have legal personhood, they are protected under the Religious Freedom Restoration Act. This makes it more difficult to argue with a religious objector's claim that governmental conduct places a burden on these businesses, and harder to prove that the government is trying to make these burdens as least restrictive as possible. Luchenister (2015) argued that this decision may be particularly harmful for queer rights and that it is possible for federal contractors to rely on the *Hobby Lobby* decision and new iterations of the Religious Freedom Restoration Act to seek exemptions from prohibitions against queer discrimination.

Over the last 30 years, 19 states have since ratified the Religious Freedom Restoration Act, but these bills have recently gained the attention of queer activists for the anti-gay stance in some of the bills, most notably in Arizona, Indiana, and most recently Louisiana. Conservatives continue to enact these laws despite the fact that more Americans support the rights of gay people in religious freedom disputes (Holland, 2015). These laws have gained attention from not only activists, but also from the business world, where both small business and the corporate world have taken sides in this debate. Small businesses such as the Masterpiece Cake Shop in Colorado or Memories Pizza in Indiana have been pushed into the limelight because of their religious objection to providing services to a same-sex wedding (ACLU, 2015; Time, 2015). After supporting the law in a news interview, Memories Pizza closed for eight days amid controversy. In response, a

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crowdfunding campaign was started in support of the small business and nearly one million dollars was raised in less than two days in support of the business owner's religious freedom. One supporter of the pizzeria stated that their donation had nothing to do with gay marriage, but religious freedom (Time, 2015). On the opposite side of this debate, large corporations have made many public statements arguing that these laws will be bad for business and some took major steps in protest. Apple CEO Tim Cook (2015) compared these religious freedom laws to the days of Jim Crow South and "Whites Only" door signs. Cook also stated that the "business community recognized a long time ago that discrimination, in all its forms, is bad for business" (Cook, 2015, para. 5). Others have called for boycotts to states such as Indiana, with famed basketball player Charles Barkley calling for the Final Four basketball championship to be housed in a different state—a move that would cost businesses and the state to lose valuable revenue (Democracy Now!, 2015a). Other states and cities have imposed a ban on any city-funded travel to Indiana (Democracy Now!, 2015a). Republican CEO of Angie's List also spoke out in opposition of the law, canceling a \$40 million expansion to the company headquarters in Indianapolis (Terkel, 2015). Other companies that have spoken out in response to religious freedom laws include Yelp, Walmart, and IBM. These companies have stated that these laws would negatively impact the economic health of the states that enact these laws (McCarty, 2015; Riley, 2015). Indiana and Arkansas have since introduced changes to their laws and added protections to include queer people—changes that some criticize as not being strong enough (Democracy Now!, 2015b). Louisiana Governor Bobby Jindal (2015) responded to critics of his own states proposed religious freedom law by saying that

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while corporations are allowed to voice their opinions, he will not be deterred by their bullying.

### **Commodification of Queerness**

Armaline, Glasberg, and Pukuyastha (2015) argued that all human rights have been realization of a struggle from the lower classes against oppression. By comparing Stonewall and recent queer rights struggles, we can examine this theory. The Stonewall Riots fit into this paradigm. Tired of constant police raids and state oppression, the patrons of Stonewall fought back in riots that were characteristic of that time period and even now in cities like Baltimore and Ferguson. In contrast, the fight for same-sex marriage has relied on civil litigation and peaceful protests. The same can be said of the fight to repeal religious freedom laws or to have them include protections for queer people. This is not to say that the fight for same-sex marriage and exemption from religious freedom bills do not contain aspects of a bottom up struggle, but there are fundamental differences between Stonewall and modern activism. The first difference is the reliance on civil litigation all the way up to the Supreme Court, a long and costly process that is more affordable to the wealthy. While the presence of organizations like the ACLU, Southern Poverty Law Center, and the option of class action lawsuits help to ameliorate this inequity, they do not guarantee equal representation in the court system. The second difference is the ultimate goal — freedom from oppression versus heteronormatization of the queer community. Finally, the role of corporations is much larger in recent queer struggles and, arguably, they play a larger role in queer struggles than similar minority struggles. One reason for the corporate interest in queer struggles could simply be the time period. Corporations play a

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larger role in society today than ever before and enjoy many rights as a result. With this larger role, corporations could feel a larger social responsibility. Another, more likely reason, is perceived loss in capital. Big businesses hinted at this in their amicus brief to the Supreme Court and in their open letters in condemnation of religious freedom bills. In these documents, corporations listed economic reasons as part of their motivation. Under capitalism, the ultimate goal of the corporation is to gain capital. To do this, corporations make a profit through exploitation of the laborer partly through the use of the relative surplus population — made up of the unemployed and the underemployed, which includes prisoners, disabled, and the elderly (Platt & Takagi, 1977). By keeping a group of people close to the poverty line and desperate for work, capitalism ensures that it will always have a reserve army ready for exploitation. The relative surplus population tends to be made up of minorities, migrant laborers, and women (Braverman, 1974). Queer people serve a unique position in relation to those who make up the reserve surplus population in that they are a part of every one of these populations. Sexuality varies across class lines, gender, race, or any other status. Because of this variability, it does not serve capitalism to oppress a group of people based on sexuality. The relative surplus population would grow too large, the number of people who cannot afford to spend money would be too large, and capitalism would fail. Instead, it makes more sense for capitalism to continue to oppress the working class, people of color, and women rather than to oppress queer people. What capitalism should do, and is trying to do, is to support the sections of the queer population who already have social capital—white, gay, cis men and women—over those who are already oppressed in society. Ultimately, under capitalism,

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challenging marriage equality and repealing religious freedom laws is not challenging the status quo, it is maintaining it.

### **Conclusion**

The past decades have seen a depoliticization of the queer movement, with the notable exception of marriage rights, and the demobilization of the radical movement of gay liberation set forth after the Stonewall Riots (Crichlow, 2001; Sears, 2005). Those most benefited by the deradicalization of the movement tend to be white men in committed relationships with steady incomes. Meanwhile, queer people of color, the working class, people with disabilities, street youth, and transgender people are often left out in the cold so they do not tarnish middle class neighborhoods. Queer people of color especially face a double invisibility, in that they must face racism in greater society and within the gay community as a whole. This de-radicalization also marks a reverse in political ideology. The Stonewall Riots were about identity and the ability to be recognized in a larger society as who they really are. The same-sex marriage fight is one that is based in heteronormatization and conformity. Instead of fighting to be recognized as who they are, modern gay people are fighting to fit into society. For the entire queer population to fit in, it requires more than just the granting of civil rights; it requires the complete of destruction of inequities between the haves and have-nots (Hennessy, 1994). This focus on the individual allows for the negation of larger systemic issues (Kirsch, 2006).

Through the work of many grassroots activists and the people who are detrimentally affected by these policies, the progression of marriage rights, the rights that accompany it, and the repeal of religious freedom laws are happening. The point of this work is not to argue against either of these institutions, but

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to examine the role of capitalism in the modern queer identity and activism. Just as how capitalism did not taint the creation of the modern gay identity, it is not tainting the gains of activists and the rights gained recently. Instead, it is important to question and examine the role capitalism is playing in these events and take their support with a grain of salt.

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