

Punishing Queer Sexuality in the Age of LGBT Rights

by

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A dissertation submitted in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy
(History and Women's Studies)
in The University of Michigan
2017

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To my parents

Acknowledgments

Support from several institutions and fellowships made it possible for me to complete this project. At the University of Michigan, the Department of History, the Department of Women's Studies, the Rackham Graduate School, and the Eisenberg Institute for Historical Studies funded the research and writing of my dissertation and provided me with the ideal intellectual culture in which to do that work. Elizabeth Wingrove got me thinking about gender as a category of analysis in the Community of Scholars seminar that she directed at the Institute for Research on Women and Gender. Fellowships from Cornell University's Human Sexuality Collection, Princeton University's Seeley G. Mudd Manuscript Library, the William Nelson Cromwell Foundation, and the U-M Department of History funded archival research for the project. While I was in the revision stage, Mitra Shirafi and the Hurst Summer Institute in Legal History exploded my thinking about the law and politics in ways that I'm just beginning to process.

When I was in high school, my favorite English teacher Deanna Johnson introduced me to the art of analyzing pop culture, and I've been hooked ever since.

As an undergraduate at the University of Michigan, I chose to study German more or less at random, but it opened up new worlds of intellectual curiosity for me that I never could have anticipated at the time. Karein Goertz, my German professor in the Residential College learning community at U-M, gave me the exhilarating experience of learning a complex new skill relatively quickly in our intensive German classes. My

partner in crime Annie O'Connor provided excellent company in those classes as well as during the year we spent studying abroad in Freiburg; I still haven't forgiven her for beating me for best honors thesis in the German Department the year after. In Freiburg, the Introduction to Gender Studies course I took with Claudia Münzing made my eyes light up more than any other subject had ever done before. Her passion and commitment to the feminist principle that "the personal is political" continue to inspire me.

After college, when I moved to Philadelphia to pursue a Ph.D. in German Literature at Penn, I made some of my most treasured and lasting friendships that have continued to sustain me. I met Rafael Walker, another Ph.D. student in English, soon after I moved to Philadelphia. I was immediately attracted to his fun-loving personality and silly sense of humor, and for a time we were virtually inseparable. Rafael is really good at writing, and alongside all the laughs, one of the biggest gifts I have gotten from him is learning how to become a better writer, too. Caroline Henze-Gongola's wit and dry sense of humor helped me to weather the stress of our first year of grad school. So did Kristen Faeth with her prodigious knowledge of indie-electronica music and constant readiness to go out dancing.

Kathy Brown and Heather Love supported me emotionally and intellectually while I was in the process of trying to defect from my German program in favor of History. And it turned out that, at the same time as I discovered I would be moving back to Ann Arbor for my Ph.D. 2.0, Roger Grant, a musicology graduate student I had been acquainted with at Penn, was also moving to Michigan for a postdoc. In addition to providing me with boundless friendship and love, Roger helped me learn how to manage the workload in grad school, and to give myself deadlines. We also spent several

unforgettable summers in Berlin together, where I met Tilman Buchholz, who has been my one lifeline to speaking German consistently since then.

I grew up in Michigan my whole life, and I had been looking forward to realizing my destiny of moving in a big city and bathing in a sea of thousands upon thousands of other queer people, forever. This dream was postponed, but that was okay, because my social and intellectual life in Ann Arbor after I moved back was an embarrassment of riches. I got to spend seven happy years living with my brother, Andrew DeOrio (happy in spite of the fact that we still can't agree whether there is a space in our last name), and his girlfriend-turned-fiancé-turned-wife Halley Crissman. The two of them taught me many important skills, including fiscal responsibility and raising urban chickens. Drew not only tolerated but actively helped me to throw monthly "homo potlucks" at our house. Long before they did any of that, my dad, Tony De Orio, equipped me with a non-judgmental attitude and a healthy suspicion of moralism. My mom, Janet DeOrio, helped me become the person I wanted to be by allowing me play with baby dolls when I was little and encouraging me to find my own way in college without coercing me into studying any preordained subject. It has been so great to get the opportunity to hang out with my little sister, Allison De Orio, and help her find a career that *she* wanted, too.

And then there were all of the smart and interesting graduate students who I got to call my friends and who helped me to grow and change in countless ways. I learned more than I ever thought I would about Russia and Central Europe from my crunchiest friend, Eli Feiman, who also cooked me countless vegetarian meals and taught me how to screen print. Jeremy Johnson shared his rich YouTube life with me, introducing me to the joys of women's gymnastics, Bulgarian sitcoms, and *Border Security: Australia's Front Line*.

Jeremy's husband, Levani Papashvili, grew up in Georgia (in Eurasia), and he didn't speak much English yet when he first moved here, but we nonetheless connected quickly over our mutual love for early 2000s R&B. As a gay computer scientist who is also into daddies, Matt "Booty Matt" Burgess was the perfect fit to be roommates with me and my computer-scientist brother. The countless hours that Katie Rosenblatt spent negotiating our graduate student union contract and engaging in sundry other activist activities alongside her scholarship inspired me to want to become a scholar-activist like her. I am also grateful to Nora Krinitsky, who spent a great deal of time and energy working to improve the social and material conditions of graduate students in the History department.

Ann Arbor was an amazing place to do queer scholarship. I met Cookie Woolner when I was a senior in college, when she was my Graduate Student Instructor for Gayle Rubin's Introduction to LGBTQ Studies class. Cookie later became my colleague when I joined her same PhD program. My first year, after getting an 'A-' in a class threw me into a crisis of confidence, Cookie convinced me to not drop out by buying me a book and telling me she believed in me. Valerie Traub believed in my project back when I was afraid few people would. Scott Spector guided me through the writing of my honors thesis my senior year of college and helped shepherd me into Michigan's History and Women's Studies program (which I almost didn't apply to until he told me I had to).

Trevor Hoppe and I were both members of the "David Halperin reverse diaspora" cohort of graduate students at Michigan. The 2012 Sex and Justice conference that Trevor and David organized played a key role helping me consolidate the focus of this project.

David Halperin wasn't even my advisor, but it was amazing how much time and energy he spent on helping me launch this project. He carefully examined my prose line-by-line, helping me to understand where I was making mistakes and logical errors and how to improve them. He is also a great and supportive friend. I want to be a mentor to somebody someday just as he has been to me.

I learned a lot about religion from Ben Hollenbach when we weren't singing Ariana Grande songs at the top of our lungs or thinking through something that his advisor Gayle Rubin told one of us. It has been a distinct pleasure to get to work with Gayle over the last eight years. My senior year of college, in 2008, I took another course with Gayle called "Sex Panics in the US and UK since 1890" in which she expertly guided me in a term paper I wrote about youth liberation, the man-boy love movement of the 1970s and '80s, and the age of consent. Gayle helped me get so excited about the topic that I ended up expanding it into a whole dissertation.

Matt Lassiter, my advisor, was the person most responsible for helping me transition into becoming a historian of the modern U.S. The evenings that Matt and I spent at Old Town Tavern over the years were an education in how to think about American politics. As an advisor, he had a great sense of how far to push me without making me feel overwhelmed. Bill Novak gave me the ideal introduction to the field of American legal history. Valerie Kivelson and Martin Pernick taught me how to teach.

But I would have gone maybe a little nuts if my only friends were other graduate students. My ex-boyfriend Cody Andrews and his dog, Talia—who was a brat but adored me so I didn't care—gave me love and support while I was writing my first article. I wrote most of my first dissertation chapter sitting at the bar in a café where Keelan

Ferraiuolo and Tavi Veraldi were the baristas. Their sense of humor helped me weather the writing of that chapter and much else besides.

I don't know if it is *because* they live in New York City, but there are a few people who happen to live in New York City who have influenced this project in important ways. Mark Schulte gave me an entrée into New York City's gay culture. Mike Epstein was a great companion and an even better copyeditor. Bill Dobbs taught me how to be a careful observer of contemporary sexual politics, though my prowess in this area will never be as great as his. It was through Bill that I became familiar with the case of Ken Gourlay, who has been incarcerated in Michigan for about a decade. Becoming friends with him, and his parents John and Kathie Gourlay, has helped put a human face on the criminal justice system for me. My new friend Henry Ablove has quickly become my trusted advisor on all things gay liberation.

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List of Abbreviations

ACLU	American Civil Liberties Union
ACT UP	AIDS Coalition to Unleash Power
ADA	Americans with Disabilities Act of 1990
AFT	American Federation of Teachers
ALEC	American Legislative Exchange Council
ALI	American Law Institute Alternate Childhood)
AMA	American Medical Association
APA	American Psychiatric Association
BAG SchwuP	Bundesarbeitsgemeinschaft Schwule, Päderasten und Transsexuelle (Working Group on Gays, Pederasts, and Transsexuals)
BBC	Boston/Boise Committee
CALM	Custody Action for Lesbian Mothers
CARE	Ryan White Comprehensive AIDS Resources Emergency Act
CAN	Community AIDS Network
CCLSF	Committee for Civil Liberties and Sexual Freedom
CCOE	Citizens Committee to Outlaw Entrapment
CCPP	California Commission on Personal Privacy
CDC	Centers for Disease Control
CLGR	Coalition for Lesbian and Gay Rights
CLUM	Civil Liberties Union of Massachusetts
COC	Cultuur en Ontspanningscentrum Committee against Gay Repression
COG	Conversion Our Goal
CSOT	Interagency Council on Sex Offender Treatment
CUARH	Comite d'Urgence Anti-Repression Homosexuelle (Ad Hoc Committee against Gay Repression)
DDAA	Dallas Doctors Against AIDS
DGPC	Dallas Gay Political Caucus
DSM	Diagnostic and Statistical Manual
FACT	Feminist Anti-Censorship Task Force
FBI	Federal Bureau of Investigation
GAANJ	Gay Activist Alliance of New Jersey
GCN	<i>Gay Community News</i>
GLCSC	Gay and Lesbian Community Services Center
GLPATF	Gay and Lesbian Police Advisory Task Force
GMHC	Gay Men's Health Crisis

GRC	Gay Rights Chapter of the American Civil Liberties Union
GRED	Groupe de Recherche pour une Enfance Differente (Research Group for an Alternate Childhood)
HELP	Homophile Effort for Legal Protection
HGPC	Houston Gay Political Caucus
HRC	Human Rights Campaign (formerly Human Rights Campaign Foundation, Right to Privacy Foundation)
ILGA	International Lesbian and Gay Association (formerly International Gay Association)
IPLGY	Institute for the Protection of Lesbian and Gay Youth, Inc.
LAPD	Los Angeles Police Department
LEAA	Law Enforcement Assistance Administration
LFL	Lesbian Feminist Liberation
LGCCP	Lesbian and Gay Community Center of Philadelphia
LIFE	Lobby for Individual Freedom and Equality
MALDEF	Mexican American Legal Defense & Education Fund
MCCY	Massachusetts Committee for Children and Youth
MPC	Model Penal Code
NACHO	North American Conference of Homophile Organizations
NAMBLA	North American Man/Boy Love Association
NBC	National Broadcasting Company
NCCL	National Council for Civil Liberties
NCSC	National Committee for Sexual Civil Liberties
NDAA	National District Attorneys Association
NEA	National Education Association
NGTF	National Gay Task Force
NIH	National Institutes of Health
NOW	National Organization for Women
P-FLAG	Parents and Friends of Lesbians and Gays
PACT	Protect All Children Today
PANIC	Prevent AIDS Now Initiative Committee
PHC	New York State's Public Health Council
PIE	Pedophile Information Exchange
RICO	Racketeer Influenced and Corrupt Organizations Act
RPF	Right to Privacy Foundation (later Human Rights Campaign)
SAGE	Senior Action in a Gay Environment
SECU	Sexually Exploited Child Unit (of the Los Angeles Police Department)
SFDPH	San Francisco Department of Public Health
SFL	Sexual Freedom League
SIECUS	Sexuality Information and Education Council of the United States
SLAM	Society's League Against Molestation
SM	Sadomasochism
THRIF	Texas Human Rights Foundation
WAWAW	Women Against Violence Against Women

Abstract

This project examines a central paradox of recent queer history. Between the late 1960s and the present, a progressive coalition consisting of LGBT activists, mainstream liberals, feminists, and others challenged the stigmatization of LGBT people as sex offenders and secured new sexual rights for LGBT people. The pro-queer progressive coalition won new restrictions on the policing of gay bars and achieved the nationwide legalization of “sodomy” between consenting adults in private, along with the fall of “Don’t Ask, Don’t Tell” and the rise of gay marriage.

During this same period, a bipartisan coalition of victims’ rights advocates launched a new phase of the war on sex offenders that had begun in the 1930s. Alongside its official purpose of punishing sexual harm, the new war on sex offenders has also had the effect of criminalizing a range of other non-harmful but stigmatized and marginalized modes of sexual conduct and gender expression that gay and sexual liberation activists had once sought to legalize in the 1960s and ’70s. Together, the project’s three case studies in California, Texas, and Massachusetts form a national study of the simultaneous legalization of some forms of queer gender and sexuality but re-criminalization of others along with their relation to the changing politics of race and gender.

My project bridges the history of sexuality and the history of the American state, rewriting the narratives of both subfields by placing *sexual conduct and gender expression* at the center of its analysis. When viewed from this perspective, the trajectory

of LGBT rights appears not as a path of linear progress but as a redistribution of legal stigma. At the same time, the criminalization of sexual conduct was surprisingly central to the expansion of the American state in both its carceral and regulatory dimensions.

Introduction

On February 10, 1948, in San Bernardino, California, a man named Perfecto Martinez was charged with and convicted of the crime of “being an idle, lewd and dissolute person” for appearing in public dressed in female clothing. The court sentenced Martinez to six months in the county jail, but, a few weeks into his term, another court determined him to be a “sexual psychopath” who manifested “a sexual [*sic*] perverted mental aberration.” The court ordered for him to be transferred to a state hospital for treatment, where he was to remain indefinitely until he “recovered.” In 1953, Martinez petitioned for his release, but the judge who reviewed his case determined he was still “a menace to the health and safety of others” in light of “certain homosexual acts” the patient had allegedly committed while he was in the hospital. Martinez remained confined in state medical facilities until at least 1955.¹

The plight of Perfecto Martinez illustrates how, at midcentury, sex offender laws targeted for criminalization homosexuals, gender non-conformists, and other queer people whose conduct deviated from legally accepted norms of propriety, decency, and domesticity. The fact that Martinez was a racial minority surely made him even more of a police target. By deeming him to be a threat to the public health by virtue of his supposed mental illness, Martinez’s encounter with the carceral state might have ruined his

¹ In re Martinez, 130 Cal.App.2d 239 (1955).

livelihood and in any case certainly curtailed his access to the rights and benefits of full citizenship.

“Punishing Queer Sexuality in the Age of LGBT Rights” focuses on a central paradox in recent queer history. On the one hand, between the 1960s and the present, lesbian, gay, bisexual, and transgender (LGBT) activists secured new sexual rights for queer people in a variety of areas, from the legalization of gay sex between consenting adults in private to the repeal of sexual psychopath laws like the one that punished Perfecto Martinez and, ultimately, access to the institution of marriage.² On the other hand, during the same period—and partly in response to the expansion of LGBT rights—grassroots activists and state officials revived and remade an ambitious campaign against sex crimes—a war on sex offenders—that had begun in the 1930s and had produced the sexual psychopath laws under which Martinez was confined. Alongside its official purpose of controlling sexual harm, this war also criminalized a range of non-coercive but socially marginalized—that is to say, queer—modes of sexual conduct and gender expression, effecting a redistribution of legal constraints on queer people.

As George Chauncey has shown, in the early twentieth century there was a flourishing queer subculture in New York City that was relatively unhindered by punitive policing. In the working-class “gay male world” of the early twentieth century, people did not widely identify as “gay” or “straight” but rather thought of themselves as queer, or not, depending on whether they played the top (masculine) or bottom (feminine) role. The lack of a specific, fixed gay identity facilitated a social fluidity that allowed many people to participate occasionally in the cultural life and sexual exchanges of the gay

² Of course, the official political identity of the mainstream LGBT movement was not static during this period, evolving from the “gay” movement in the 1970s to the “lesbian and gay” movement in the 1980s to the “LGBT” movement in the 1990s.

male world without necessarily being stigmatized by the state (or their friends, families, or employers) as homosexuals.³ This subculture was able to flourish because the state did not yet criminalize gay men and gender non-conforming individuals on the same scale as it would later.

Lawmakers and private citizens became increasingly concerned with punishing sexual “deviance” in the context of the economic dislocations of the Great Depression. By 1950 fifteen states and the District of Columbia had passed “sexual psychopath” laws allowing for the indefinite confinement of anyone, as the statutes of several states put it, whose “utter lack of power to control his sexual impulses” made him “likely to attack . . . the objects of his uncontrolled and uncontrollable desires.”⁴ As Chauncey has argued, one of the consequences of the new crackdown on sex offenders was that, “to use the modern idiom, the state built a closet in the 1930s and forced gay people to hide in it.”⁵ Especially after World War II, campaigns against sex crime increasingly targeted homosexuality in particular, along with the forms of gender non-conformity with which homosexuality was widely associated.⁶

Starting in the 1950s, progressive critics, including gay activists, liberals, and psychiatrists launched a new law reform effort attacking the war on sex offenders. Gay

³ George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890–1940* (New York: Basic Books, 1994).

⁴ The California, Massachusetts, Nebraska, and Vermont laws all used this language. Quoted in Estelle B. Freedman, “‘Uncontrolled Desires’: The Response to the Sexual Psychopath, 1920–1960,” *Journal of American History* 74, no. 1 (1987): 83–106, 84, from American Bar Foundation, *The Mentally Disabled and the Law*, eds. Samuel J. Brakel and Ronald S. Rock (Chicago: University of Chicago Press, 1971), 362–65.

⁵ Chauncey, *Gay New York*, 9.

⁶ The crackdowns on the sexual psychopath and the homosexual in the 1940s and '50s took place in the context of crackdowns on other categories of “deviance” at the same time, including ones on “juvenile delinquents” and drug traffickers. James Gilbert, *A Cycle of Outrage: America’s Reaction to the Juvenile Delinquent in the 1950s* (New York: Oxford University Press, 1988). Miroslava Chavez-Garcia, *States of Delinquency: Race and Science in the Making of California’s Juvenile Justice System* (Berkeley: University of California Press, 2012). Kathleen J. Frydl, *The Drug Wars in America, 1940–1973* (New York: Cambridge University Press, 2013).

activists and their progressive allies challenged the state's treatment of homosexuality as a dangerous sex offense by arguing that much homosexual behavior was a "victimless crime" that did not harm or should not offend anyone else. Most states repealed their sexual psychopath laws, or the laws fell into disuse, in the 1970s, in response to the criticisms of psychiatrists and legal scholars that the laws were being used to punish the harmless conduct of homosexuals while neglecting more serious sex crimes.⁷ Through these battles, along with other efforts to legalize homosexuality and promote gay rights, pro-gay progressives threw the branch of the carceral state concerned with controlling sex crimes into a crisis of legitimacy.⁸

Thanks in large part to the popularity of the victimless crimes argument, which progressives also deployed to contest the criminalization of recreational drugs, the gay rights movement defeated the most explicitly homophobic aspects of the carceral state, making the criminal justice system officially gay-neutral, in the sense that it no longer "saw" or discriminated explicitly against homosexuality. Homosexual sex between consenting adults was legalized in California in 1975. Elsewhere, by the early 1980s, activists won tough new restrictions on the police surveillance of gay bars. From the 1950s to the early 2000s, gay activists attacked sodomy laws at the state level—some of which discriminatorily punished homo- but not heterosexual conduct. In 2003, they persuaded the US Supreme Court to declare that all sodomy laws were unconstitutional as they applied to anal, oral, and manual sex, provided it was consensual, involved only legal adults, took place in private, and was non-commercial. These reforms carved out a new legal category of "good" queer behavior that, instead of tying queer life to the

⁷ Group for the Advancement of Psychiatry, *Psychiatry and Sex Psychopath Legislation, the '30s to the '80s* (New York: Group for the Advancement of Psychiatry, 1977).

⁸ I owe the idea of a crisis of legitimacy to Anne Gray Fischer.

criminal justice system, freed individuals from it so long as they regulated their own behavior according to a particular set of normalizing mandates.

But this was only the first part of the transformation that “Punishing Queer Sexuality” examines. In the late 1970s, a bipartisan coalition of victims’ rights advocates re-launched the war on sex offenders, this time aiming especially to combat rape and child sexual abuse.⁹ In the 1980s, liberals, conservatives, and public health experts formed another alliance to pass criminal laws intended to curtail the spread of HIV/AIDS—in the process retooling public health institutions into law enforcement agencies for the policing of HIV-positive individuals. Victims’ rights advocates shifted the political landscape to the right, away from the goal of sexual freedom and toward increased punishment, by emphasizing in their rhetoric violent sex crimes involving individual victims and connecting vivid images of sexual violence to calls for a law-and-order response.

There was a variant of the victims’ rights movement led by the Christian Right that wanted to re-stigmatize homosexuality by emphasizing its supposed association with child molestation. The Christian Right did not succeed in restoring the myth of the gay child molester to the prominent status it had occupied in 1950s. However, by threatening to do so, the Christian Right made it harder for gay activists to extend their fight for sexual freedom, and their nascent critique of sex offender laws, into the 1980s.¹⁰

⁹ On the rise of the victims’ rights movement, see Jonathan Simon, “We the Victims: Fearing Crime and Making Law,” in *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2007), 75–110.

¹⁰ For one of the most prominent attacks on gay rights by a Christian Right activist, see Anita Bryant, *The Anita Bryant Story: The Survival of Our Nation’s Families and the Threat of Militant Homosexuality* (Old Tappan, NJ: Revell, 1977). Though the Christian Right rose to prominence within mainstream U.S. political culture in the late 1980s, the social movement had roots reaching back to the 1940s and ’50s. Darren Dochuk, *From Bible Belt to Sunbelt: Plain-Folk Religion, Grassroots Politics, and the Rise of Evangelical Conservatism* (New York: W. W. Norton & Company, 2012).

By the 1990s, the war on sex offenders had expanded the branch of the carceral state concerned with punishing sex crimes to a size that was unprecedented in U.S. history. Today, between ten and twenty percent of state prisoners are incarcerated for sex offenses—in some states the rate is as high as thirty percent—and as of December 7, 2015, the total number of people on the sex offender registry nationally was 843,280.¹¹ 20 states and the federal government now have “civil commitment” laws designed to contain what Washington State’s statute calls “Sexually Violent Predators”; as of 2010, such laws had facilitated the confinement of about 5,200 people.¹² Unlike at midcentury, the new war on sex offenders did not explicitly target homosexuality. Like the old one, however, it still insidiously criminalized people who engaged in a range of non-normative modes of sexual behavior and gender expression.

The war on sex offenders constructed the “sex offender” as predominantly male, and that is the reason why a disproportionately large number of the historical actors in this project were men or gender non-conforming people whom the state perceived to be male “deviants.” As the historian Estelle Freedman has argued, the rise of “sexual psychopath” and other sex offender laws at midcentury reflected a shift in concern away from regulating the sexual conduct of women in order to protect female chastity, such as in the movement to combat “white slavery,” toward a regulatory focus on deviant,

¹¹ “Sex Offenders: Will Tough New Laws Do More Harm Than Good?,” *CQ Researcher* 16.31 (2006): 721–44 in Tracy Velázquez, “The Pursuit of Safety: Sex Offender Policy in the United States,” VERA Institute of Justice, accessed June 23, 2017, https://storage.googleapis.com/vera-web-assets/downloads/Publications/the-pursuit-of-safety-sex-offender-policy-in-the-united-states/legacy_downloads/Sex_offender_policy_with_appendices_final.pdf. Quoted in Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton, NJ: Princeton University Press, 2015), 199. For statistics on registered sex offenders in the United States, see the website of the National Center for Missing and Exploited Children, http://www.missingkids.com/en_US/documents/Sex_Offenders_Map2015.pdf (accessed 8 February 2016).

¹² Matt Clarke, “Civilly Committing Sex Offenders Strains Some States’ Budgets,” *Prison Legal News*, January 2011. Quoted in Gottschalk, *Caught*, 201. 1990 Wash. Laws ch. 3, § § 1001-1013.

“uncontrolled” male sexuality.¹³ That helps explain why so many more gay men than lesbians have been affected by sex offender laws since the 1950s, while arrests for “sodomy” and police raids of gay bars focused mainly on men and male-bodied gender non-conforming individuals, even if lesbian bars were not spared. It also helps explain why five of the six case studies in Margot Canaday’s *The Straight State* are about federal interest in regulating homosexual men, while only one of them is about lesbians.¹⁴

“Punishing Queer Sexuality in the Age of LGBT Rights” is organized into two parts. The first part explores challenges to the first war on sex offenders from the 1950s to the 1970s. The second part examines the rise of the new war on sex offenders starting in the late 1970s.

In turn, the two parts are organized thematically into three local case studies that focus on the changing state management of three broad categories of queer conduct. The case studies are anchored at the municipal and state levels—where the battles over sex crime law primarily played out—but include relevant national and transnational contexts. The first case study, set in California, examines political contests over the regulation of promiscuous sexuality, including gay male public sexual culture and sex work, from the rise of the homophile movement in the 1950s to the rise of the AIDS epidemic. The second case study, set in Texas, analyzes historical battles over “sodomy” laws, and the eventual carving out of a category of “good” sodomy—anal and oral sex, gay or straight, between consenting adults in private—that the state stopped stigmatizing as queer and prosecuting as criminal. The third case study, set in Massachusetts, investigates the struggles over the regulation of the sexuality of children and teenagers that emerged out

¹³ Freedman, “Uncontrolled Desires.”

¹⁴ Canaday, *The Straight State*.

of the gay and youth liberation movements.

I. The Long War on Sex Offenders

“Punishing Queer Sexuality in the Age of LGBT Rights” introduces a new historical concept: the long war on sex offenders. This provides a way of conceptualizing the periodization of the branch of the carceral state concerned with controlling sex crimes. The existing work by historians and legal scholars on sex offender laws has tended to treat the first and second waves of the war on sex offenders as separate, divided by a period of dormancy. Indeed, the historian Phillip Jenkins, in his book *Moral Panic: Changing Concepts of the Child Molester in Modern America*, argues that there was a “liberal era” between 1958 and 1976 dividing the two waves of sex offender legislation in the twentieth century.¹⁵ I am re-conceptualizing this period not as one characterized simply by dormancy or liberality of sex offender laws but rather by a crisis of legitimacy in which multiple models competed to replace what came before. Jenkins posits that sex offender laws have changed “cyclically over time.”¹⁶ By contrast, my study emphasizes the continuity that has largely characterized the expansion of this part of the carceral state since the 1930s, highlighting how the new victims’ rights movement skillfully adapted and resurrected the old war on sex offenders for a new era.

Connecting the two waves is useful analytically because it allows us to see the *persistence of queer oppression* that historians are only beginning to recognize as such. About a quarter century ago, in his classic essay “The Postwar Sex Crime Panic,” George Chauncey exposed how the popular and political discourse about sex offenders associated

¹⁵ Philip Jenkins, “The Liberal Era, 1958–1976,” in *Moral Panic: Changing Concepts of the Child Molester in Modern America* (New Haven, CT: Yale University Press, 2004), 94–117.

¹⁶ Jenkins, *Moral Panic*, 2.

homosexuality with sexual violence and child molestation, in the process criminalizing many gay men who had done nothing of the sort.¹⁷ My notion of the long war on sex offenders extends Chauncey's insight into the period that came after. The political contests I examine shifted the line established during the first war on sex offenders distinguishing "normal" sexual citizens from "deviant" sex criminals. That line now divides "good" homosexuals and other figures of "sexual diversity" from "bad" homosexuals and "sexual predators." In this respect, I am revising Joseph Fischel's argument that the "sex offender" is the new stigmatized sexual "other" du jour, taking the place of the "homosexual," who has become "transcendent."¹⁸ Not exactly. "Punishing Queer Sexuality" shows how a lot of the sexual conduct that pro-sex activists once sought to legalize has remained on the "deviant" side of the line; there are still a lot of "bad" homosexuals, and many other queer criminals, who are not so transcendent.

My work emphasizes the need for historians of the carceral state to bring in sexual conduct as a category of analysis, because the criminalization of sexual conduct has been a key but underexplored area of expansion of the criminal justice system. Recent scholarship by an interdisciplinary assortment of scholars has focused on the dramatic rise of the carceral state in the U.S. since the 1960s and its notorious consequences, particularly the racialization of crime and the unprecedented growth in the population of current and former convicted criminals. This area of inquiry has cast a revealing light on how the War on Drugs and other phenomena produced the rise of mass criminalization as

¹⁷ George Chauncey, "The Postwar Sex Crime Panic," in *True Stories from the American Past*, ed. William Graebner (New York: McGraw-Hill, 1993), 160–78.

¹⁸ Joseph J. Fischel, "Transcendent Homosexuals and Dangerous Sex Offenders: Sexual Harm and Freedom in the Judicial Imaginary," *Duke Journal of Gender Law & Policy* 17, no. 277 (2010): 277–311, 302.

well as the incarceration of African Americans and other racial minorities.¹⁹ Although the war on sex offenders also played a key role in the rise of mass incarceration, as well as in the extension of the criminal justice system beyond prison walls, scholars who are concerned with the issue of the carceral state are just beginning to attend to it.²⁰

And yet this history is still with us. Despite conflicting signs as to whether the War on Drugs is tapering off, the war on sex offenders continues to accelerate.²¹ The victims' rights movement's strategy of shifting the focus of sex offender laws away from homosexuality and toward rape and child sexual abuse has renewed the legitimacy of sex offender registration and civil commitment laws, revitalizing and expanding them after a moment in the 1970s when liberals, civil libertarians, and gay activists tried to abolish them entirely. The federal government now requires all states to maintain sex offender registries and to make that information accessible to the public via the internet.²² Meanwhile, the proportion of sex offenders in the federal system subject to mandatory minimum sentences has skyrocketed (from five percent in 2001 to fifty-one percent in

¹⁹ The literature on the expansion of the carceral state is vast. For three salient examples, see: Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (New York: Cambridge University Press, 2006); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2012); and Kelly Lytle Hernández, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771–1965* (Chapel Hill: University of North Carolina Press, 2017).

²⁰ See Timothy Stewart-Winter, "Queer Law and Order: Sex, Criminality, and Policing in the Late Twentieth-Century United States," *Journal of American History* 102, no. 1 (2015): 61–72. Marie Gottschalk is a political scientist, but her book *Caught* includes a historical examination of sex offender laws. *Caught*, 196–214.

²¹ Corey Rayburn Yung, "The Emerging Criminal War on Sex Offenders," *Harvard Civil Rights-Civil Liberties Law Review* 45, no. 1 (2010): 435–81. David M. Halperin and Trevor Hoppe, eds., *The War on Sex* (Durham, NC: Duke University Press Books, 2017).

²² Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub.L. 103–322, Title XVII, Subtitle A, § 170101, Sept. 13, 1994, 108 Stat. 2038. Megan's Law, Pub.L. 104–145, May 17, 1996, 110 Stat. 1345.

2010),²³ and sex offender registration rates in general have spiked, even as trends in corrections for other types of crimes have plateaued.²⁴

“Punishing Queer Sexuality” sheds new light on the formation of the carceral state by emphasizing how new punitive practices and regulatory categories originated in urban areas at the local and state levels and “trickled up” to the federal level. In part 1 of the dissertation, the local and state levels are the primary sites on which political and legal battles over gender expression and sexual conduct played out. As Arthur C. Warner, co-founder of the National Committee for Sexual Civil Liberties, which later became the American Association for Personal Privacy, reflected in 1985, “It was obvious at the time of the Association’s formation [in 1970] . . . that almost all of the criminal sanctions adversely affecting gay people were state enactments” and that “there was little likelihood of redress from the federal judiciary.”²⁵ For example, the city of Los Angeles created the first registry of criminals in the nation in 1933, in an effort to wipe out organized crime. In 1947, the California state legislature enacted the first registry in the nation that was specific to “sex offenders,” in response to demands made by law enforcement officials. In turn, urban gay activists in Los Angeles and San Francisco challenged the registry’s discriminatory targeting of gay men starting in the 1950s. In 1961, Illinois became the first state to legalize “sodomy” performed by consenting adults in private, while Dallas became the first city to do so in 1970.

²³ United States Sentencing Commission, *2011 Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*, 300, <http://www.ussc.gov/news/congressional-testimony-and-reports/mandatory-minimum-penalties/report-congress-mandatory-minimum-penalties-federal-criminal-justice-system> (accessed 1 August 2016).

²⁴ Trevor Hoppe, “Punishing Sex: Sex Offenders and the Missing Punitive Turn in Sexuality Studies,” *Law & Social Inquiry* 41, no. 3 (2016): 573–94.

²⁵ Arthur C. Warner, “History of the American Association for Personal Privacy,” *Unmarried America*, accessed September 20, 2013, <http://www.unmarriedamerica.org/Archives/1985-National-Committee-History-Purpose/1985-History-of-AAPP-Formerly-National-Committee.pdf>.

In part 2 of the dissertation, between the late 1970s and the early 2000s, political and legal activity related to the regulation and punishment of sex offenders migrates increasingly toward the federal level. In 1990, the federal government followed the lead of the states that had enacted HIV-specific criminal laws in the 1980s and mandated that all states find a way to criminalize the sexual conduct of HIV-positive individuals in the Ryan White Comprehensive AIDS Resources Emergency Act.²⁶ Whereas only a handful of states had them in the 1970s, in 1994 the federal government started requiring all states to maintain a sex offender registry through the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.²⁷ In 2003, the U.S. Supreme Court ruled in *Lawrence v. Texas* that all of the state sodomy laws that remained on the books were unenforceable with respect to the conduct of consenting adults in private, making national a policy that most states had already implemented in the decades prior.²⁸ The new national sexual order that social movements and state actors forged was an ambivalent outcome, expanding access to citizenship for some sexual minorities while allowing others to remain criminalized or in some cases even criminalizing them more than they had been before.

Methodologically, my project bridges urban histories of the gay movement at the local level with Margot Canaday's work on homosexuality and the federal government in order to posit the local and state levels as the primary engine driving the creation of ultimately became federal policy.²⁹ Canaday's book *The Straight State: Sexuality and*

²⁶ Ryan White Comprehensive AIDS Resources Emergency Act, 42 U.S.C. § 201 (1990).

²⁷ Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub.L. 103-322, Title XVII, Subtitle A, § 170101, 1994, 108 Stat. 2038.

²⁸ *Lawrence v. Texas*, 539 U.S. 558 (2003).

²⁹ The literature on urban histories of the gay movement is vast. For three key examples, see Nan Alamilla Boyd, *Wide-Open Town: A History of Queer San Francisco to 1965* (Berkeley: University of California Press, 2003). Marc Stein, *City of Sisterly and Brotherly Loves: Lesbian and Gay Philadelphia, 1945-1972*

Citizenship in Twentieth-Century America focuses on the role that federal agencies—governing welfare, the military, and immigration—played in consolidating “the homosexual” as an object of regulation and exclusion. Whereas for Canada it was federal agencies that were primarily responsible for the formation of the legal category of “the homosexual” over the course of the twentieth century, in my project the war on sex offenders created a new overall system for the regulation and punishment of both “good” and “bad” sexuality first at the local and state levels that got picked up after the fact by the federal government.

Indeed, the political contests that my project examines also produced an expansion of the branch of the regulatory state governing sex on the “normal” side of the line. The relationship between sex and state-building is an area that has been underexplored by political historians who have examined many other dimensions of the expansion of the American state.³⁰ And yet since the 1950s the state has developed ever more precise ways of defining and regulating normal sex.

One of the main strategies that the American state developed in the late twentieth century for defining and regulating normal sex was the legal category of the “consenting adult in private.” The legal history of this notion is international in character and extends back at least to the early twentieth century. Before that, in the Netherlands during the Napoleonic era, same-sex sexual conduct was legal. In 1911, Dutch legislators newly criminalized homosexuality—including lesbian conduct—by raising the age of consent

(Philadelphia: Temple University Press, 2004). Timothy Stewart-Winter, *Queer Clout: Chicago and the Rise of Gay Politics* (Philadelphia: University of Pennsylvania Press, 2016).

³⁰ The literature on the expansion of the American state is vast. For three salient examples, see William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1996); James T. Sparrow, *Warfare State: World War II Americans and the Age of Big Government* (New York: Oxford University Press, 2011); and McGirr, *The War on Alcohol*.

for gay sex to 21, compared with 16 for straight sex. Several Scandinavian countries enacted similar measures in the decades that followed.³¹ Along with laws against sex in public, the new higher age of consent allowed citizens to engage in homosexual activity while at the same time trying to contain it within a carefully circumscribed set of legal and spatial boundaries.

After World War II, during the uptick of discriminatory policing of homosexuality, liberal law reformers and gay activists began promoting the idea that sodomy between consenting adults in private should be legalized in the United States as well. Illinois became the first state to implement such a reform in 1961. The idea that there existed a constitutionally guaranteed right to sexual privacy gained further credence through the 1965 US Supreme Court decision *Griswold v. Connecticut*, which made it legal for married heterosexual couples to use birth control. As Lauren Berlant has argued, Justice William O. Douglas's opinion in the case "designated for the first time the heterosexual act of intercourse in marital bedrooms as protected by a zone of privacy into which courts must not peer and with which they must not interfere."³²

It is ironic that gay activists embraced the consenting adults in private principle as an emblem of freedom in light of its history as a punitive device in the Netherlands. But the decision to embrace it starts to seem more reasonable when placed in its historical context. U.S. political culture after World War II was intensely conservative and homophobic. Mainstream law reformers were starting en masse to promote the idea of the right to privacy. So gay activists who wanted to effect change in the sphere of law had

³¹ Kati Mustola and Jens Rydström, *Criminally Queer: Homosexuality and Criminal Law in Scandinavia, 1842–1999*, eds. Jens Rydström and Kati Mustola (Amsterdam: Aksant, 2007), 41–60, 49.

³² Lauren Berlant, "Live Sex Acts (Parental Advisory: Explicit Material)," *Feminist Studies* 21, no. 2 (1995): 379–404, 381–82.

little other choice but to follow along.

By the end of the 1970s, LGBT activists and their liberal allies had made great strides using this argument to challenge sodomy laws at the state level. But they did not manage to win privacy protections for consensual adult gay conduct nationwide until the 2003 US Supreme Court decision *Lawrence v. Texas*. The *Lawrence* decision expanded the zone of privacy to include consensual adult gay conduct. However, it also made the state's presence in citizens' lives more capillary than ever, in the sense that it prescribed to citizens increasingly specific boundaries within which they must police their own behavior. As activist-scholar Nan Hunter has argued, *Lawrence v. Texas* "both decriminalized consensual homosexual relations between adults, and, simultaneously, authorized a new regime of heightened regulation of homosexuality."³³ It did this by setting a legal precedent that triggered a new wave of litigation related to various dimensions of the legal status of homosexuality, subjecting the issue of homosexuality in general to more legal scrutiny than ever. Through the zone of privacy in general and the figure of the "consenting adult in private" in particular, the regulatory state started making ever more precise distinctions between good and bad sex, good and bad gender expression, and built an ever more sophisticated and complex system of sexual categories with which to interpellate its subjects.

Bringing in sex as a category of analysis sheds new and unexpected light on the racial dynamics that produced the expansion of the carceral state. The new war on sex offenders intersected with the politics of race in a specific way characterized by the simultaneous targeting of white people—mostly men and gender non-conformists whom

³³ Nan D. Hunter, "Sexual Orientation and the Paradox of Heightened Scrutiny," *Michigan Law Review* 102, no. 7 (2004): 1528–54, 1528. Quoted in Jasbir K. Puar, *Homonationalism in Queer Times* (Durham, NC: Duke University Press, 2007), 114.

the state perceived to be male deviants—alongside the disproportionate criminalization of communities of color. On the one hand, like the war on drugs and the war on immigrants, the war on sex offenders has affected people of color in poor, urban areas in a discriminatory way—what Heather Thompson calls the “criminalization of urban space.”³⁴ In the mid-1990s, the passage of “three strikes and you’re out” bills at the state level—along with the federal Violent Crime Control and Law Enforcement Act of 1994—severely exacerbated the consequences of racialized punitive policing.³⁵ The interaction of the war on sex offenders with racist police practices has produced the contemporary cause for arrest known as “walking while trans,” in which the police target mostly poor, trans women of color for arrest on charges of solicitation.³⁶ The sociologist Trevor Hoppe found that nearly 1% of all African-American men today are registered sex offenders.³⁷ In California, Black and Latinx people make up two-thirds of the population criminalized for HIV-related offenses (even though they constituted only half of the state’s population).³⁸

³⁴ Heather Ann Thompson, “Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History,” *The Journal of American History* 97, no. 3 (2010): 703–34, 706. For three other salient pieces of scholarship on the racialization of policing, see Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge, MA: Harvard University Press, 2011); Risa Goluboff, “‘For Integration? You’re a Vagrant,’” in *Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s* (New York: Oxford University Press, 2016), 112–146; and Elizabeth Hinton, “The War on Black Crime,” in *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge, MA: Harvard University Press, 2017), 134–179.

³⁵ Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007), 108. *Violent Crime Control and Law Enforcement Act*, U.S. Code 42 (1994), §§ 13701 et seq.

³⁶ Ginia Bellafante, “Poor, Transgender and Dressed for Arrest,” *The New York Times*, September 30, 2016, <http://www.nytimes.com/2016/10/02/nyregion/poor-transgender-and-dressed-for-arrest.html>.

³⁷ Trevor Hoppe, “Punishing Sex: Sex Offenders and the Missing Punitive Turn in Sexuality Studies,” *Law & Social Inquiry* 41, no. 3 (2016): 573–94, 584.

³⁸ Amira Hasenbush, Ayako Miyashita, and Bianca D.M. Wilson, “HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS” (Los Angeles: The Williams Institute, December 2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-California-Updated-June-2016.pdf>.

However, the war on sex offenders was not simply a war on “deviant” men of color; rather, it also contributed far more to the criminalization of white men—what Roger Lancaster calls “internal deviants”—than did the war on drugs or the war on immigrants.³⁹ The internal deviant du jour in the 1950s was the figure of the white male homosexual who “recruited” children. Since the late 1970s, it has been the “white pedophile,” which is an adaptation of the white male homosexual that now includes its heterosexual counterpart as well.⁴⁰ White men make up a full two thirds of individuals on U.S. sex offender registries today, while white men constitute only 31 percent of the general population.⁴¹ The war on sex offenders’ tendency to target groups across racial lines illustrates how, as David Halperin has argued, sexual politics “can override the divisions among different social groups that define themselves by reference to specific identity markers.”⁴² (Though in a range of specific cases such as the criminalization of HIV, the war on sex offenders has disproportionately affected people who are already marginalized along the lines of race and/or class.) Viewing the carceral state at the intersection of race, sexuality, and gender reveals a more diverse set of racialized villains whose punishment has been driving the expansion of the criminal justice system.

³⁹ Roger N. Lancaster, *Sex Panic and the Punitive State* (Berkeley: University of California Press, 2011), 93.

⁴⁰ Lancaster, *Sex Panic and the Punitive State*, 5. Concern about the white pedophile was part of a broader sense of crisis within white suburbia in the 1980s; state officials, parents’ groups, and the media also produced an explosion of concern on the part of parents and state officials about drug use among white, middle-class teens that played a key role fueling the War on Drugs. Matthew D. Lassiter, “Impossible Criminals: The Suburban Imperatives of America’s War on Drugs,” *Journal of American History* 102, no. 1 (2015): 126–40.

⁴¹ Hoppe, “Punishing Sex,” 582. Gottschalk, *Caught*, 196. Nia-Malika Henderson, “White men are 31 percent of the American population. They hold 65 percent of all elected offices,” *Washington Post*, October 8, 2014.

⁴² David M. Halperin, “Introduction: The War on Sex,” in *The War on Sex*, 13.

II. *Queering the State*

This section lays out the different categories of queer criminality that the project traces and outlines how the definition and regulation of those categories changed over time in the course of the second half of the twentieth century. The project entails both scholarly and activist dimensions, taking its cue from a 1994 article “Queering the State” by Lisa Duggan. In that article, Duggan wrote, “It is time for queer intellectuals to concentrate on the creative production of strategies at the boundary of queer and nation—strategies specifically for queering the state.”⁴³ It was important, she argued, for scholars who were helping to build the nascent field of queer studies to engage not just in scholarly but also activist work in order to counteract recent attacks on lesbian and gay rights from the Right. “We might become the new disestablishmentarians, the state religion we wish to disestablish being the religion of heteronormativity.”⁴⁴

“Punishing Queer Sexuality in the Age of LGBT Rights” takes Duggan up on her call for scholars to queer the state in ways that are simultaneously theoretical and activist. On a theoretical level, the section queers the state by exposing how the American state has been responsible for stigmatizing and marginalizing a broad range of *modes of sexual conduct and gender expression*. It queers the state in an activist sense by reconstructing and often promoting the perspectives of the gay and sexual liberation activists who made the moral-political argument that those modes of conduct had been marginalized *unfairly* and that they should be legalized.

I am defining “queer” in a historical way as the set of non-harmful modes of non-normative sexual and gender expression that sexual liberation and gay activists tried to

⁴³ Lisa Duggan, “Queering the State,” *Social Text*, no. 39 (1994): 1–14, 3.

⁴⁴ Duggan, “Queering the State,” 9.

legalize but got left behind and re-criminalized by the new war on sex offenders. The history of sexual liberationist thought and activism is not a coherent body of doctrine and was populated by a motley crew of disparate actors, including sexologists, feminists, sex-education advocates, gay activists, sex worker activists, and the reproductive-rights movement.⁴⁵ But characterized in broad strokes, activists and scholars associated with the tradition of sexual liberation worked to de-stigmatize sexuality in general and specific non-normative forms of sexual conduct and gender expression in particular. For example, the rise of the medical subfield of sexology in the 19th century facilitated the creation of what Gayle Rubin calls a “concept of benign sexual variation” by treating sexuality and sexual conduct as natural phenomena that should be studied empirically before assigning value judgments to them.⁴⁶ This methodological innovation on the part of the sexologists challenged the dominant mores of the time condemning homosexuality (“sexual inversion”) and other modes of non-normative sexual conduct, such as masturbation.⁴⁷

In the midcentury United States, sexologists and gay activists inherited and extended the project of sexual liberation of the 19th and early 20th centuries. In his twin studies about sexual behavior in the human male and female from 1948 and 1953, the sexologist Alfred C. Kinsey used interview and statistical methods to produce an empirical study of the sexual conduct of the (white) American population as it actually existed. Among other things, Kinsey revealed how utterly common same-sex sexual activity was, thereby contributing to the nascent effort to legalize some kinds of

⁴⁵ Rubin, “Thinking Sex,” 173. On the role of “sexual freedom” in first-wave feminism, see Christine Stansell, “Sexual Modernism,” in *American Moderns: Bohemian New York and the Creation of a New Century* (New York: Metropolitan Books, 2000), 225–272.

⁴⁶ Rubin, “Thinking Sex,” 148.

⁴⁷ Havelock Ellis and John Addington Symonds, *Sexual Inversion: A Critical Edition*, ed. Ivan Crozier (New York: Palgrave Macmillan, 2008).

homosexual conduct.⁴⁸ But in the pages of *Sexual Behavior and the Human Male* and *Sexual Behavior in the Human Female* were many even more radical arguments in support of the de-stigmatization of a much broader range of modes of sexual conduct.

At the same time, the homophile movement, as early U.S. gay activists called it, promoted a liberationist way of thinking about sexuality. As Marc Stein has argued, contrary to the way the homophile movement has been commonly represented in the historiography, “sex radicalism, defined broadly to include various challenges to sexual respectability, was an important component of homophile activism.”⁴⁹ When Harry Hay and other activists in Los Angeles and San Francisco founded the Mattachine Society, one of the first homophile organizations in the nation, and began agitating on the behalf of homosexuals starting in the early 1950s, one of their main concerns was to challenge the police targeting of gay male public sexual culture. As the historian Martin Meeker has argued, in the 1950s and ’60s in Los Angeles and San Francisco, the Mattachine Society, one of the earliest homophile organizations in the country, “work[ed] closely with . . . not only homosexuals but also a range of other individuals, including transsexuals, cross-dressers (gay or straight), certain runaway youth, bisexuals, pedophiles, and sadomasochists” in its social service programs.⁵⁰ The Philadelphia-based homophile magazine *Drum*, published between 1964 and 1969, asserted that it stood against “the

⁴⁸ Alfred C. Kinsey, Wardell B. Pomeroy, and Clyde E. Martin, *Sexual Behavior in the Human Male* (Philadelphia: W.B. Saunders Company, 1948). Alfred C. Kinsey, Wardell B. Pomeroy, Clyde E. Martin, and Paul H. Gebhard, *Sexual Behavior in the Human Female* (Philadelphia: Saunders, 1953). Marie-Amelie George, “The Harmless Psychopath: Legal Debates Promoting the Decriminalization of Sodomy in the United States,” *Journal of the History of Sexuality* 24, no. 2 (2015): 225–61.

⁴⁹ Marc Stein, “Canonizing Homophile Sexual Respectability: Archives, History, and Memory,” *Radical History Review*, no. 120 (2014): 53–73, 55. John D’Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940–1970* (Chicago: University of Chicago Press, 1983).

⁵⁰ Martin Meeker, “Behind the Mask of Respectability: Reconsidering the Mattachine Society and Male Homophile Practice, 1950s and 1960s,” *Journal of the History of Sexuality* 10, no. 1 (2001): 78–116, 91.

common belief that sexual drives may be dismissed like a stray dog—with a shout or a kick” and for “a realistic approach to sexuality in general and homosexuality in particular.”⁵¹

Intellectual, social, and political activity surrounding the issue of sexual liberation reached its zenith in the 1960s and ’70s. Founded in 1963 in New York City, the stated purpose of the Sexual Freedom League (SFL) was to create “an environment in which every individual feels free to express sexuality” on the basis of an ethic of “mutual desire and mutual consent.”⁵² The SFL included participants who called for “sexual freedom for children” in particular.⁵³ In turn, the SFL expressed solidarity with “the gay liberation movement” which the organization believed was “making a great contribution to the concept of sexual freedom.” The gay liberation movement was a militant and leftist style of gay activism that emerged in the late 1960s that, as the historian Emily K. Hobson has characterized it, “leftists saw heterosexism as interconnected with war, racism, and capitalism, each system using the other as a mechanism and support. They argued that full sexual freedom depended on anti-imperialist and anti-militarist change.”⁵⁴ Gay liberation activists with Berkeley’s Gay Sunshine Collective argued that “an active sex life is both necessary for physical and mental health and an inalienable right of all people, regardless of sex, age, or sexual orientation.”⁵⁵

⁵¹ Advertisement for Drum magazine in the East Coast Homophile Organizations conference program, Washington, DC, October 1964, 14. Quoted in Daniel Marshall et al. (eds.), “Queering Archives: Historical Unravelings.” Special issue, *Radical History Review* 1987, no. 120, 52.

⁵² National Newsletter of the Sexual Freedom League, July 1971, box 73, folder 5, Frank Kameny Papers, Manuscript Division, Library of Congress, Washington, D.C.

⁵³ Valida Davila, Sex before Eight, box 73, folder 6, Frank Kameny Papers, Manuscript Division, Library of Congress, Washington, D.C.

⁵⁴ Emily K. Hobson, *Lavender and Red: Liberation and Solidarity in the Gay and Lesbian Left* (Oakland: University of California Press, 2016), 2.

⁵⁵ “Gays Zap Sir,” *Gay Sunshine*, February/March 1972.

The emergence of the new war on sex offenders in the late 1970s targeted many of the most marginalized modes of sexual conduct and gender expression that gay and sexual liberationist activists had once sought to legalize. Certain modes of conduct received a disproportionate amount of political and legal attention, and it is around these core issues that I have focused the three case studies. Victims' rights advocates focused especially on sex involving children or teenagers. In turn, the new focus on child protection in U.S. political culture—along with the outbreak of the AIDS epidemic—furnished conservatives with a fresh round of ammunition with which to attack queer public sexual subcultures. That is why sex involving minors and public & promiscuous sex are the subjects of two of the case studies. In response to the rise of the new war on sex offenders, lesbian and gay rights activists distanced themselves increasingly from the defense of sexual freedom that gay and sexual liberation activists had championed, narrowing their challenge to “sodomy” between consenting adults in private—the subject of the third case study. Through the political contests over these issues, social activists and government officials reconstructed the legal category of the “sex offender,” removing a mode of “good” private sexual conduct from its ambit while ramping up punishments for the modes of conduct that remained criminal.

Bringing a queer mode of analysis to bear on the American state challenges the widespread assumption that LGBT rights have progressed since the 1960s. When viewed from the perspective of sexual rights, the trajectory of LGBT rights since the 1960s appears not as an uninterrupted, linear process of liberation but rather as a redistribution of legal stigma, as a redrawing of the boundary between “normal” and “queer” gender and sexuality in the law. Many accounts, both popular and academic, have portrayed this

period of LGBT history—and they treat it by means of an increasingly conventional narrative characterized by the assumption of progress.⁵⁶ Indeed, the post-1960s period is supposed to have ushered in a new era of sexual liberalism more broadly, including the rise of abortion and reproductive rights. But as critics such as Michel Foucault, Gayle Rubin, and Michael Warner have also argued, the progress narrative misses what has happened in the same period to the residual category of individuals whose gender and sexuality the state still considers to be criminally queer.⁵⁷ The welfare of many such people has measurably suffered in recent decades; for them, the familiar story about the success of the gay movement looks like a bright pathway narrowly threaded between deep shadows.

In this respect, *Punishing Queer Sexuality in the Age of LGBT Rights* builds on and extends the recent political histories that have shown how on multiple fronts new rights and expanded freedoms have been accompanied by the simultaneous creation of new modes of oppression. Christopher Agee and Naomi Murakawa have both shown

⁵⁶ Examples of this narrative can be found in: William N. Eskridge, *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment* (New York: Free Press, 1996); George Chauncey, *Why Marriage? The History Shaping Today's Debate over Gay Equality* (New York: Basic Books, 2009); Linda Hirshman, *Victory: The Triumphant Gay Revolution* (New York: Harper, 2012); Michael J. Klarman, *From the Closet to the Altar: Courts, Backlash, and the Struggle for Same-Sex Marriage* (New York: Oxford University Press, 2012); and Lillian Faderman, *The Gay Revolution: The Story of the Struggle* (New York: Simon & Schuster, 2015). Margot Canaday's study of the federal regulation of homosexuality in the twentieth century does not clearly support the progress narrative, but it does forecast that gay equality will be fully realized, at least at the federal level, in the not-too-distant future: "I expect that well before my old age, I will live in a nation that allows LGBTs to share equally in the obligations and benefits of national citizenship." Canaday, *The Straight State*, 264.

⁵⁷ Michel Foucault, *The History of Sexuality: An Introduction*, trans. Robert Hurley (New York: Pantheon Books, 1978). Gayle S. Rubin, "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality," in *Deviations: A Gayle Rubin Reader* (Durham, NC: Duke University Press, 2012), 137–181; Warner, *Trouble with Normal*. For other critiques of the progress narrative of LGBT rights, see Lisa Duggan, "Equality, Inc.," in *The Twilight of Equality? Neoliberalism, Cultural Politics, and the Attack on Democracy* (Boston: Beacon Press, 2003), 43–66; Katherine M. Franke, "The Domesticated Liberty of *Lawrence v. Texas*," *Columbia Law Review* 104, no. 5 (2004): 1399–1426; Joseph J. Fischel, "Transcendent Homosexuals and Dangerous Sex Offenders: Sexual Harm and Freedom in the Judicial Imaginary," *Duke Journal of Gender Law & Policy* 17, no. 277 (2010): 277–311; Marc Stein, *Sexual Injustice: Supreme Court Decisions from Griswold to Roe* (Chapel Hill: University of North Carolina Press, 2010); Stewart-Winter, "Queer Law and Order"; and Hoppe and Halperin, eds., *The War on Sex*.

how, at the same time as the rise of the black civil rights movement, liberals also supported the professionalization and expansion of urban policing.⁵⁸ The reforms to vagrancy laws that progressives accomplished during the civil rights era were attended by new stop-and-frisk laws that perpetuated the discriminatory policing of people of color in urban areas.⁵⁹

Queer public sexual subcultures have been particularly hard-hit under the new dispensation. For many LGBT people at midcentury, “privacy could only be had in public,” as George Chauncey memorably put it.⁶⁰ Queer people were excluded from the private family that formed the basis of the social organization of many sectors of the population, especially the middle class. That was one of the reasons why gender non-conforming people, gay men, hustlers, and other queers from across the socioeconomic spectrum made such heavy use of (mostly working-class) public spaces to find sex, intimacy, and relationships. In the process, ordinary queer people created an alternative public sexual culture, or what Michael Warner has called a “counterpublic,” with social norms distinguishing “good” from “bad” sexual conduct and gender expression that were different from those of the dominant culture.⁶¹

Starting in the late 1970s, the child protection movement began to function as a kind of bludgeon that fostered the rolling back of sexual rights in numerous different areas, including queer public sexual subcultures. The outbreak of the HIV/AIDS epidemic in the 1980s dealt the other serious blow. Today, the police still use punitive

⁵⁸ Christopher Lowen Agee, *The Streets of San Francisco: Policing and the Creation of a Cosmopolitan Liberal Politics, 1950–1972* (Chicago: University of Chicago Press, 2014). Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America* (New York: Oxford University Press, 2014).

⁵⁹ Goluboff, *Vagrant Nation*, 11.

⁶⁰ George Chauncey, “‘Privacy Could Only Be Had in Public’: Forging a Gay World in the Streets,” in *Gay New York*, 179–206.

⁶¹ Michael Warner, *Publics and Counterpublics* (New York: Zone Books, 2002).

anti-public sex laws in order to suppress queer gender and sexuality. Alongside this, in the 1990s city governments in urban areas like New York City enacted zoning ordinances with the purpose of “zoning out sex.”⁶²

It is in this sense that even those whose comparatively respectable sexual lives allow them to fit comfortably into the new dispensation have been arguably harmed by it, insofar as they have found their choices limited by a sharply restrictive definition of lawful sexuality. The legalization of a certain kind of “good” gay sex has offered LGBT people protection from criminalization only in the form of a “negative” right to be left alone by the state.⁶³ But as Warner argues, “Autonomy requires more than civil liberty; it requires the circulation and accessibility of sexual knowledge, along with the public elaboration of a social world that can make less alienated relations possible.”⁶⁴ People need not only the negative right not only to be left alone by the state but also the more robust, “positive” right to be actively supported by the state in all of our diverse modes of gender and sexual expression.

In the 1950s, the state conflated the category of the male homosexual with the category of the child molester; in the eyes of the state, all homosexuals were potential child molesters, and vice-versa. The notion of the “pedophile,” as distinct from the “homosexual,” was not prevalent. Police departments cracked down increasingly on men who were involved in sexual activity with teenage boys, some of whom were actually straight hustlers whom the state criminalized as “juvenile delinquents.”⁶⁵ During the second phase of the war on sex offenders, the state persisted in criminalizing men who

⁶² Michael Warner, “Zoning Out Sex,” in *Trouble with Normal*, 149–194.

⁶³ On “negative” versus “positive” liberty, see Isaiah Berlin, “Two Concepts of Liberty,” in *Four Essays on Liberty* (Oxford: Oxford University Press, 1958), 166–217.

⁶⁴ Warner, *The Trouble with Normal*, 171.

⁶⁵ Albert Reiss, “The Social Integration of Peers and Queers,” *Social Problems* 9, no. 2 (1961): 102–120.

had sex with teenage boys by re-categorizing them not as “homosexuals” but as “pedophiles.” In the 1970s, in the context of the rise of the gay liberation movement, entrepreneurial, tough-on-crime law enforcement officials rebranded the figure of the gay child molester. Whereas the state had once viewed all homosexuals as potential child molesters, in the 1970s it started making a distinction between “boy molesters” who had sex with minors and “normal homosexual males” who did not.⁶⁶

Alongside the figure of the boy molester, my project also follows the career of the queer teenager. In the 1950s, the state considered especially teenage boys to be vulnerable to influence and attack by male homosexuals. But it also punished “bad” teenage boys, many of them working class, who willingly engaged in sex with men (sometimes for pay, sometimes not). In the 1970s, progressives tried to lower the age of consent in order to provide teenagers with a pathway to sexual freedoms of various kinds, including the right to consent to sex, and the right to seek an abortion. In the youth liberation movements of New York, Boston, and Ann Arbor, as well as in the gay liberation and women’s movements, many teenagers themselves began agitating for their own rights and sexual freedom. However, teenage sexuality got almost completely re-criminalized by the new war on sex offenders.

The issue of adult-youth sex was one of the most contentious issues dividing the gay movement in the 1970s and ’80s, and it is by no means uncontroversial to say now that sex between adults and teenagers is in some cases a form of queer conduct that has

⁶⁶ I borrowed this language from a treatise published in the 1960s by a Danish law enforcement official. Jens Jersild, *The Normal Homosexual Male versus the Boy Molester* (Copenhagen: NYT Nordisk Forlag Arnold Busck, 1967).

been unfairly stigmatized and criminalized.⁶⁷ Therefore, it seems important to justify including non-coercive kinds of cross-generational sex involving teenagers in my definition of “queer,” and thus within the category of non-normative practices of sex and gender that I describe as “non-harmful” (or at least undeserving of severe punishment). As gay liberation activists argued (as has Joseph Fischel more recently), the notion of “consent” is a coarse metric of sexual harm: it does not take account of the complexities of sexual agency. Moreover, when people below a certain age are considered incapable of freely consenting to sex, conviction for statutory rape requires only that a minor be under that age.⁶⁸

The legal system which uses numerical age as a way of determining consent, and which then identifies on that basis alone whether or not sexual harm occurred in specific instances, is arbitrary and does not attend sufficiently to the nuances of particular situations. In 1979, the lesbian novelist Jane Rule published an editorial in which she argued that the sexual relationship she had when she was a teenager with an adult was a positive, pedagogical experience that helped her to challenge her heteronormative social context and come into her own as a lesbian. “Though a number of males around my age offered to participate,” Rule wrote, “a woman ten years my senior was ‘responsible,’ at my invitation and encouragement. The only fault I find with that part of my sexual education was the limit her guilt and fear put on our pleasure, the heterosexual pressure

⁶⁷ Pat Califia, “The Age of Consent: An Issue and Its Effects on the Gay Movement, Part One,” *The Advocate*, October 16, 1980.

⁶⁸ Joseph J. Fischel, *Sex and Harm in the Age of Consent* (Minneapolis: University of Minnesota Press, 2016).

even she felt required to put on me.”⁶⁹ How many people are there out there who have been criminalized for doing the kind of thing that Jane Rule’s older lover did with her?

In the late twentieth century, the new war on sex offenders made the state become more aware of the “lesbian” as a specific object of regulation and punishment. In general, the long war on sex offenders coded the “sex offender” primarily as male, and lesbians were by and large invisible to the state compared to gay men. Nonetheless, since the 1960s the carceral state has increasingly come to criminalize or regulate lesbians and queer women. Margot Canaday has documented an uptick in concern about lesbians in the military after World War II, while in the 1950s butch lesbians were especially vulnerable to police harassment and arrest because of their gender non-conforming appearance.⁷⁰ When Texas legislators revised the state penal code in the late 1960s and early 1970s, they legalized heterosexual “sodomy” while making “homosexual conduct” its own category of crime. What was more, the legislature’s definition of “homosexual conduct” included lesbian sex for the first time. The 2003 US Supreme Court decision *Lawrence v. Texas* nationalized the state’s awareness of the category of the lesbian by

⁶⁹ Jane Rule, “Teaching Sexuality,” *Body Politic*, June 1979.

⁷⁰ Canaday, “Finding a Home in the Army: Women’s Integration, Homosexual Tendencies, and the Cold War Military, 1947–1959,” in *The Straight State*, 174–213. The criminalization of lesbians by the war on sex offenders of the twentieth century was not entirely new but rather stands in a genealogy with the figure of the “sapphic slasher.” As Lisa Duggan has shown, at the turn of the twentieth century, sexologists, the press, and others created a cultural stereotype about the lesbian as deviant and violent. Lisa Duggan, *Sapphic Slashers: Sex, Violence, and American Modernity* (Durham, NC: Duke University Press, 2001), 2. Lillian Faderman, *Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth-Century America* (New York: Columbia University Press, 1991), 185. Cited in Katherine M. Franke, “The Central Mistake of Sex Discrimination Law: The Disaggregation of Sex from Gender,” *University of Pennsylvania Law Review* 144, no. 1 (1995): 1–100, 63. The disproportionate policing of butch lesbians was more widespread than just in New Orleans. For further examples, see Leslie Feinberg, *Stone Butch Blues* (Los Angeles: Alyson Books, 1993); Patricia A. Cain, “Litigating for Lesbian and Gay Rights: A Legal History,” *Virginia Law Review* 79 (1993): 1551–1642, 1565; and Marcia M. Gallo, *Different Daughters: A History of the Daughters of Bilitis and the Rights of the Lesbian Rights Movement* (New York: Carroll & Graf, 2006), 137–38.

legalizing gay and lesbian sex between consenting adults in private, producing a more intense and robust system of regulation of lesbian sex.

Lesbians are now more vulnerable than they were before to being criminalized as child molesters. In 1974, anti-rape feminists got rape law reforms implemented that made the legal categories of the rapist and the rape victim gender-neutral. This meant that adult women could now be conceptualized legally as perpetrators of sexual violence against children for the first time. Since then, anti-child sexual abuse laws have been used to criminalize non-coercive sex involving lesbian or queer female teenagers (as well as to punish sexual relations between adult women and male teenagers).

Starting after World War II, a new police crackdown on gender non-conformity helped to trigger the beginning of a process that culminated in the creation of a new social and legal distinction between “gay” and “trans,” consolidating a newly specific, doubly subordinate category of trans criminal. In the early twentieth century, “trans” and “gay” were not yet widespread categories of identity, much less categories that were separate from one another. Rather, both George Chauncey and Margot Canaday have documented the primacy of a different way of thinking back then in which same-sex desire and gender non-conformity co-existed in the same world and were widely conflated with one another by state officials, sexologists, and laypeople alike.⁷¹ Beginning in the late 1940s, there was a spike in the policing of gender non-conformity, alongside crackdowns on gay sex in public and/or involving teenagers. By making it

⁷¹ Chauncey, “The Fairy as an Intermediate Sex,” in *Gay New York*, 47–64. Canaday, *The Straight State*, 11.

dangerous to associate with gender non-conforming people, the state fomented a new social division between “normal” homosexuals and gender non-conforming people.⁷²

This was a perfect example of the power of the state to influence and contribute to the construction of social categories in society. By the early 1970s, “transvestites” were forming their own political organizations with their own particular set of demands. When activists and scholars popularized “trans” in the 1990s, in a range of discursive spheres from public health to academia to the law, they helped solidify the historical process by which “gay” and “transgender” became bifurcated.⁷³ This resulted in the reconstruction of the “lesbian and gay” movement's political identity into the “LGBT” movement, in order to recognize the specificity of trans identity. Likewise, the new war on sex offenders has come more and more to target trans people as a specific category of queer criminal that is separate from the homosexual, through, for example, “bathroom bills” that forbid trans people from using the public restroom of their choice by figuring them as sexual predators. At the same time, older forms of oppression of gender non-conformity that began during the first war on sex offenders have persisted, such as the discriminatory policing of gender non-conforming sex workers, particularly poor ones of color.

⁷² I owe this insight to my student Lily Lima. As New York gay activist Dick Leitsch noted, the Stonewall Inn in particular was the site of the famous gay rebellion of 1969 because it catered to the most marginalized members of the gay community, including teenagers, poor people, and gender non-conforming individuals. “This club was more than a dance bar, more than just a gay gathering place. It catered largely to a group of people who are not welcome in, or cannot afford, other places of homosexual social gathering. The ‘drags’ and the ‘queens,’ two groups which would find a chilly reception or a barred door at most of the other gay bars and clubs, formed the ‘regulars’ at the Stonewall.” Quoted in David Carter, *Stonewall: The Riots That Sparked the Gay Revolution* (New York: St. Martin’s Griffin, 2010), 86.

⁷³ David Valentine, *Imagining Transgender: An Ethnography of a Category* (Durham, NC: Duke University Press, 2007).

III. Making the New War on Sex Offenders

The new war on sex offenders was the product not of any one political ideology or particular set of historical actors but rather of a *sexual politics of consensus*. It was a co-construction, the product of the diverse, sometimes overlapping, sometimes competing contributions of many different groups of social activists and state actors. The most important groups were liberals and civil libertarians, gay and lesbian activists, feminists, psychiatrists, politicians affiliated with the black civil rights movement, and conservatives. Many of the scholars before me who have written about the history of LGBT politics have tended to emphasize the role of one or the other group. Some have focused on how the rise of the New Right made sexual politics more conservative in the 1980s.⁷⁴ Others have highlighted how liberals, gay activists, feminists, and other progressives actually promoted conservative political projects, such as gentrification and the war on terror.⁷⁵ In what follows, I offer a different explanation of change over time by synthesizing these accounts, emphasizing how moments of overlap across supposedly distinct groupings of political actors are what have made the new war on sex offenders so powerful and so palatable.

Liberals made an ambivalent contribution to the new war on sex offenders, spearheading progressive law reform for some types of sexual conduct while simultaneously supporting tougher punishments for other kinds of behavior. Starting in

⁷⁴ Didi Herman, *The Antigay Agenda: Orthodox Vision and the Christian Right* (Chicago: University of Chicago Press, 1998). Janice M. Irvine, *Talk About Sex: The Battles over Sex Education in the United States* (Berkeley: University of California Press, 2004). Tina Fetner, *How the Religious Right Shaped Lesbian and Gay Activism* (Minneapolis: University of Minnesota Press, 2008). Rubin, *Deviations*.

⁷⁵ For three salient examples, see Warner, *Trouble with Normal*; Jasbir K. Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Durham, NC: Duke University Press, 2007); and Christina B. Hanhardt, *Safe Space: Gay Neighborhood History and the Politics of Violence* (Durham, NC: Duke University Press, 2013).

the 1950s and accelerating in the 1960s, an emerging cohort of liberal law reformers were part of the vanguard of the movement to legalize sodomy between consenting adults in private, along with other “victimless crimes.” They also played a key role helping gay activists get the police off the backs of certain semi-private civic spaces like gay bars. However, outside of the sphere of sexual activity that was legally consensual, adult, and in private, liberals neglected to formulate a progressive sexual politics that was significantly different from the politics of conservatives. Starting in the late 1970s, Democratic federal lawmakers such as Dan Kildee helped lead the charge to enact harsher punishments for child sexual abuse and child pornography (relying on an expansive definition of “child”). The nationalization of sex offender registration and community notification laws happened in the 1990s under the “liberal” Clinton administration. Like most conservatives, most liberals focused on protecting children from sex but refused to touch the issue of teenagers’ right to freedom of sexual expression and signed off, often unanimously, on laws that punished not only rape and child sexual abuse but also many other categories of “deviant” sexual conduct and gender expression, highlighting the great extent to which liberal sexual politics was affected by erotophobia. And they lacked an original plan for responding to the problem of sexual violence that moved beyond the criminal justice system.⁷⁶

Civil libertarians played a key role reforming how the state regulated sexuality in ways that usually overlapped with liberals, though some civil libertarians espoused a more radical sexual politics. At first, in the 1950s, the American Civil Liberties Union (ACLU) did not champion the legalization of gay sex, but they did contest the

⁷⁶ Eric S. Janus, *Failure to Protect: America’s Sexual Predator Laws and the Rise of the Preventive State* (Ithaca, NY: Cornell University Press, 2006).

discriminatory policing of gay bars and other social venues.⁷⁷ The organization made sexual rights, including the rights of homosexuals, a more explicit priority in the next decade, adopting a policy statement calling in 1967 for “the end of criminal sanctions for atypical sex practices in private between consenting adult partners.” The use of the language “atypical” was purposeful and reflected a commitment on the part of attorney Harriet Pilpel and others to defending a wide range of kinds of private sexual conduct that could not necessarily be delineated in advance (and would not make the ACLU appear to be pro-gay).⁷⁸ However, like liberals, the policy statement simultaneously affirmed that “the state has a legitimate interest in controlling, by criminal sanctions, public solicitation for sexual acts, and particularly, sexual practices where a minor is concerned.”⁷⁹

On the ground, though, the ACLU was often more radical than this official policy statement suggested.⁸⁰ In 1973–76, the national ACLU briefly operated its Sexual Privacy Project until its funding from the Playboy Foundation ran out. The project’s nominal focus on “privacy” belied the broad range of sexual rights it fought for in cases involving public sex, solicitation, laws prohibiting “cross-dressing,” fornication laws, and prostitution, though the organization was much more hesitant to defend cases involving sex that violated the age of consent.⁸¹ In the early 1980s, members of the ACLU’s California-based Gay Rights Project were among the few political actors who argued,

⁷⁷ ACLU Position on Homosexuality, January 7, 1957, American Civil Liberties Union Papers, box 1127, folder 7, Princeton.

⁷⁸ Due Process Committee recommendations on Sexual Behavior, folder 22, box 1127, American Civil Liberties Union Records, Princeton.

⁷⁹ News Release, 31 August 1967, folder 23, box 1127, American Civil Liberties Union Records: Subgroup 2, Princeton.

⁸⁰ Leigh Ann Wheeler, *How Sex Became a Civil Liberty* (New York: Oxford University Press, 2012), 111.

⁸¹ American Civil Liberties Union, *Sexual Privacy Project Legal Docket: Affiliate & National Litigation* (New York: American Civil Liberties Union, 1974).

unsuccessfully, that California's sex offender registry should be dismantled entirely. The registry, they argued, permanently branded, and thereby constructed, a subclass of criminals with a "scarlet letter."⁸² This was a minority position even among civil libertarian activists and attorneys. The ACLU AIDS Project, headed by the attorney Nan Hunter, was on the front lines of challenging the use of criminal sanctions as a strategy for combatting HIV.⁸³

The rise of the new war on sex offenders steered the sexual political of the lesbian and gay movement away from the fight to de-stigmatize queer sexuality in which gay and sexual liberation activists had been invested in the 1970s and toward a politics of gay rights aligned with heteronormative sexual values of domesticity and coupledness. Gay "liberation" and gay "rights" were two distinct but overlapping traditions of activism in the late twentieth century. The gay rights tradition refers to the tradition of gay activism that strategically downplayed homosexuality's association with stigmatized, illegal, "deviant" sex in order to posit homosexuals as a legitimate minority that was worthy of rights.⁸⁴ (The Black civil rights movement also employed this strategy.)⁸⁵

In the late 1960s, a new, more militant and much larger and more powerful gay liberation movement rose to prominence internationally that introduced an even more radical set of demands for sexual rights.⁸⁶ Like the gay rights tradition, the gay

⁸² E.H. Duncan Donovan, "Scarlet Letter Still Brands 'Sex Offenders,'" *Los Angeles Times*, March 11, 1982.

⁸³ Nan D. Hunter, "AIDS Transmission As a Crime: The Law Won't Work," *The Washington Post*, September 12, 1987.

⁸⁴ See Warner, *Trouble with Normal*, 31.

⁸⁵ On the origins of sexual respectability as a Black political strategy, see Michele Mitchell, *Righteous Propagation: African Americans and the Politics of Racial Destiny after Reconstruction* (Chapel Hill: University of North Carolina Press, 2004).

⁸⁶ On the international scope of the gay liberation movement, see Barry D. Adam, *The Rise of a Gay and Lesbian Movement* (Boston: Twayne Publishers, 1987) and Frédéric Martel, *The Pink and the Black: Homosexuals in France Since 1968*, trans. Jane Todd (Stanford, CA: Stanford University Press, 2000).

liberationists contested the legal stigmatization of homosexual identity. Beyond that, as some homophile activists had also done in the 1950s and '60s, they sought further to contest what John D'Emilio has described as “oppressive social categories designed to contain the erotic potential of human beings.”⁸⁷ In practice, this meant that the gay liberationists contested the stigmatization of a range of queer “sexual variants,” including the suppression of public sex, the criminalization and police harassment of sex workers, and the exclusion of young people from the world of lawful sexuality.⁸⁸

The rise of the new war on sex offenders in the late 1970s made U.S. sexual politics more heteronormative, shrinking what the political scientist Doug McAdam has called the “structure of political opportunities” in which gay activists were operating. Many queer theorists have examined how the gay movement became more and more normative after the 1970s, emphasizing the causal role that the gay movement has played in contributing to new modes of social inequality from gentrification to the war on terror.⁸⁹ In 2002 Lisa Duggan coined the term “homonormativity,” an adaptation of “heteronormativity,” to describe the emergence of a new, more normative style of gay politics that did “not contest dominant heteronormative assumptions and institutions” but

⁸⁷ John D'Emilio, “Capitalism and Gay Identity,” in *Making Trouble: Essays on Gay History, Politics, and the University* (New York: Routledge, 1992), 3.

⁸⁸ As John D'Emilio once wrote, “The rights of young people are especially critical. The acceptance of children as dependents, as belonging to parents, is so deeply ingrained that we can scarcely imagine what it would mean to treat them as autonomous human beings, particularly in the realm of sexual expression and choice. Yet until that happens, gay liberation will remain out of our reach.” D'Emilio, “Capitalism and Gay Identity,” 13. On the use of the phrase “sexual variants,” see Meeker, “Behind the Mask of Respectability,” 91.

⁸⁹ For three salient examples of queer theory in this vein, see Puar, *Terrorist Assemblages*, xxvi; Christina B. Hanhardt, *Safe Space: Gay Neighborhood History and the Politics of Violence* (Durham, NC: Duke University Press, 2013), 9; and Katherine Franke, *Wedlocked: The Perils of Marriage Equality* (New York: NYU Press, 2015), 7.

rather “up[held] and sustain[ed] them.”⁹⁰ There is no denying that the mainstream LGBT movement became increasingly normative between the late 1970s and the present. But queer theorists have tended to explain that shift by focusing on what legal scholar Gwendolyn Leachman has called the “insensitive or strategic decisions made by individual movement leaders.”⁹¹ By contrast, “Punishing Queer Sexuality in the Age of LGBT Rights” emphasizes how the war on sex offenders played a much greater role than individual movement leaders in producing the normative turn in the sexual politics of the LGBT movement. By creating a predominately anti-sex political culture, the emergence of the second phase of the war on sex offenders made it dangerous especially for lesbian and gay activists, who were politically vulnerable and under attack by the Right, to defend the more marginalized queer sexual practices and modes of gender expression.

In the 1960s and '70s a coalition of gay and black civil rights activists regularly joined forces to promote progressive reforms to the branch of the carceral state concerned with controlling sex crimes. The fracturing of that coalition is part of the reason why so many people of color are criminalized by sex offender laws now. The black heterosexual California Assemblyman Willie Brown was the author of the bill that ultimately legalized “sodomy” between consenting adults in private in that state in 1975. In Boston, the black heterosexual state representative Mel King helped gay activists challenge unjust police tactics, such as the practice of sending plainclothes police officers to seduce and then arrest unsuspecting men in the restroom of the Boston Public Library.

This kind of collaboration between black and gay activists became less and less

⁹⁰ Lisa Duggan, “The New Homonormativity: The Sexual Politics of Neoliberalism,” in *Materializing Democracy: Toward a Revitalized Cultural Politics*, eds. Russ Castronovo and Dana D. Nelson (Durham, NC: Duke University Press, 2002), 175–94, 179.

⁹¹ Gwendolyn M. Leachman, “Institutionalizing Essentialism: Mechanisms of Intersectional Subordination within the LGBT Movement,” *Wisconsin Law Review* 2016, 655–82, 657.

common in the 1980s, with the major exception of Jesse Jackson's Rainbow Coalition. In part, that was the case because predominantly white mainstream gay activists simply lost interest in reforming the criminal justice system, and moved on to focus on other issues of middle-class gay citizenship, after they won certain key battles in the late 1970s, especially reforms to the policing of gay bars.⁹² They ceased to identify with outcasts and were less inclined to challenge the middle-class establishment. It was also due in part to the politics of respectability among members of the black middle class, challenged by the HIV/AIDS epidemic among urban-dwelling people of color, which threatened to identify black people with drug users and homosexuals.⁹³

Psychiatrists, too, made both progressive and conservative contributions to the new war on sex offenders by promoting the de-pathologizing of some kinds of sexual conduct while continuing to pathologize many others. At midcentury, American psychiatrists asserted their role as experts in the management of sexuality through their role as sex therapists to couples who were unhappy with their sex lives in marriage.⁹⁴ At the same time as they helped to construct the meaning of "normal" sexuality, psychiatrists also helped to bring increasing definition to "deviant" sex through the American Psychiatric Association's Diagnostic and Statistical Manual (DSM), the official guide to diagnosing different psychiatric disorders. In 1973, the American Psychiatric Association (APA), in response to pressure and direct-action protesting from gay activists, removed homosexuality from among the categories of "paraphilia" that the

⁹² On the fate of coalitions of gay and black civil rights activists challenging the criminal justice system, see Stewart-Winter, "Queer Law and Order"; Timothy Ford Retzliff, "City, Suburb, and the Changing Bounds of Lesbian and Gay Life and Politics in Metropolitan Detroit, 1945–1985" (Ph.D., Yale, 2014), 214–220.

⁹³ Cathy J. Cohen, *The Boundaries of Blackness: AIDS and the Breakdown of Black Politics* (Chicago: University of Chicago Press, 1999).

⁹⁴ Alexandra Minna Stern, "Centering Eugenics on the Family," in *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America* (Berkeley: University of California Press, 2005), 150–181.

DSM included.⁹⁵ However, the manual continued to pathologize many other kinds of non-normative sexual practice and gender expression as forms of mental illness. At the same time, from the very beginning of the long war on sex offenders in the 1930s to today, many of the most important psychiatric organizations criticized sexual psychopath and civil commitment laws as ineffective and unscientific, though many individual psychiatrists continue to support them.⁹⁶

The women's movement underwent a law-and-order turn between the 1970s and the 1980s. In the 1970s, anti-rape feminists with organizations such as the National Organization for Women (NOW) rose to prominence. They founded rape crisis centers and overhauled rape statutes, including reforms that made rape within marriage legally recognizable as such for the first time. These feminists also supported other progressive sex law reforms sought by the gay movement, such as the legalization of "sodomy." They fought for the sexual rights of youth: in 1979, anti-rape feminists in New Jersey briefly got the age of consent in the state lowered to 13, in an effort to "reduce the number of teenagers in the courts—to reduce the number of teenagers with arrest records."⁹⁷ The measure was defeated soon after, when a Democratic Assemblyman introduced a bill returning the age of consent to 16. A different, concurrent movement of sex-radical

⁹⁵ Ronald Bayer, *Homosexuality and American Psychiatry: The Politics of Diagnosis* (New York: Basic Books, 1981).

⁹⁶ On the role of psychiatrists in the making of the sexual psychopath laws, see Freedman, "Uncontrolled Desires." In 1977, the Group for the Advancement of Psychiatry published a report arguing that the midcentury "sexual psychopath" laws had failed and suffered from a specious scientific basis, since "a population of sex offenders is taken from a *legal* grouping that has no particular clinical significance in terms of their alleged psychopathology." Group for the Advancement of Psychiatry, *Psychiatry and Sex Psychopath Legislation*, 869. In 1999, the American Psychiatric Association published a report condemning the new wave of "civil" commitment laws. American Psychiatric Association, *Dangerous Sex Offenders: A Task Force Report of the American Psychiatric Association* (Washington, D.C.: American Psychiatric Association, 1999). Robert A. Brooks, "Psychiatrists' Opinions About Involuntary Civil Commitment: Results of a National Survey," *Journal of the American Academy of Psychiatry and the Law* 35, no. 2 (2007): 219–228.

⁹⁷ Warren Blumenfeld, "NJ Tackles Age of Consent," *Gay Community News*, May 26, 1979.

feminism, led by figures such as the public intellectual Kate Millett, articulated a sexual liberationist position, envisioning a revolution of the social organization of gender and sexuality in which both women and children would become free from patriarchal oppression and would have the right to an autonomy of sexual expression.

By the late 1970s, feminists were becoming increasingly polarized in their sexual politics. Activists engaged in intense and often bitter debates over the harmfulness or non-harmfulness of different kinds of non-normative sexual conduct and expression, especially pornography, sadomasochism, and cross-generational sex.⁹⁸ In the 1980s, in response to these debates, a different, more punitive style of “carceral feminism” (as Elizabeth Bernstein has called it) rose to prominence that advocated for harsher punishments for sex crimes, often in collaboration with both the right wing *and* liberals.⁹⁹ The law-and-order turn in the women’s movement was facilitated by the federal government’s now defunct Law Enforcement Assistance Administration (LEAA), which imposed on the rape crisis centers it funded the requirement that they report to law enforcement incidents of sexual violence.¹⁰⁰

Law-and-order conservatives reworked their sexual politics, moving away from a politics characterized by explicit homophobia toward an erotophobic sexual politics fueled especially by the demonization of pedophiles and sexually active HIV-positive people. To be sure, conservatives’ explicit homophobia in the 1950s and ’60s persisted into the 1970s and well beyond, with Texas lawmakers, spurred by law enforcement,

⁹⁸ On the feminist “sex wars,” see: Carole S. Vance, ed., *Pleasure and Danger: Exploring Female Sexuality* (Boston: Routledge and Kegan Paul, 1984); Lisa Duggan and Nan D. Hunter, *Sex Wars: Sexual Dissent and Political Culture* (New York: Routledge, 2014 [1995]); and Gayle S. Rubin, “Blood Under the Bridge: Reflections on ‘Thinking Sex,’” in *Deviations*, 194–223.

⁹⁹ Elizabeth Bernstein, “The Sexual Politics of the ‘New Abolitionism,’” *Differences* 18, no. 3 (2007): 128–51.

¹⁰⁰ LEAA did not, however, provide legal representation for victims of sexual assault. Gottschalk, *Prison and the Gallows*, 135–36.

turning the “sodomy” law into a “homosexual conduct” law. The gospel singer and beauty queen Anita Bryant’s 1977 “Save Our Children” campaign, a part of the newly emergent Christian Right, sought to revive the myth of the homosexual child molester.¹⁰¹ But explicit state-sanctioned homophobia became increasingly unpopular, as evidenced by the failure of the Briggs initiative, the 1978 California ballot proposal inspired by Bryant that tried to ban gay teachers. (Of course, some conservatives like the Senator Jesse Helms continued to spearhead, sometimes successfully, explicitly homophobic federal legislation in the age of AIDS.) Moreover, a growing number of conservatives supported, on the basis of their libertarian principles, the idea that “sodomy” between consenting adults in private should be legalized.

In response to the decreasing popularity of “the homosexual” as a demonic figure, law enforcement officials such as the LAPD detective Lloyd Martin refocused their energies on demonizing the “pedophile.” By focusing less on homosexuality per se and more on other, less sympathetic deviant subjects, who remained outside the boundaries of identity politics, conservatives managed to pursue a law-and-order agenda with respect to sex crimes unhindered by resistance from gay and progressive activists.

IV. Case Studies

The architects of the second phase of the war on sex offenders renewed the legitimacy of that war by targeting different, more politically vulnerable types of deviants. As the three chapters that make up part 1 of the project, titled “The Age of Decency, 1950–1970,” show, gay activists and their progressive allies successfully challenged the targeting of

¹⁰¹ On Save Our Children, see Gillian Frank, ““The Civil Rights of Parents’: Race and Conservative Politics in Anita Bryant’s Campaign against Gay Rights in 1970s Florida,” *Journal of the History of Sexuality* 22, no. 1 (2013): 126–60.

gay men as a threat to “public decency.” In so doing, they threw into question the legitimacy of the ways in which the state had theretofore constructed what counted as sexual harm. In part 2, “The Age of the Victim, 1980–2000,” the victims’ rights movement adopted a new definition of harm that focused primarily on crimes involving individual victims—especially women, children, and the sexual partners of HIV-positive individuals—at a time when the idea that gay people threatened public decency was losing its plausibility.¹⁰²

Chapter 1 examines how gay activists, sex worker rights activists, and straight progressives struggled to expand the sphere of legally permissible promiscuous sexual conduct. In the 1950s and ’60s, public venues like bars, bathhouses, and parks provided rare spaces that facilitated the social and sexual lives of gay men and, in different ways, lesbians. Urban police departments subjected these spaces to intense harassment and repression on the basis of California’s so-called “lewd or dissolute conduct” law, which they enforced almost exclusively against gay conduct. By the end of the 1970s, gay activists and their liberal and civil libertarian allies had succeeded in implementing new restrictions on the policing of certain designated gay community spaces like bars. Public lewdness was one of the offenses requiring registration as a sex offender in California, and so gay activists’ challenge to the lewd conduct law extended to a nascent movement to abolish the registry, which, they argued, unconstitutionally placed a permanent stigma on a class of “sex” criminals. At the same time, sex worker rights activists, both gay and straight, launched a new movement agitating for the legalization of prostitution.

¹⁰² I owe the terminology of the “age of decency” and the “age of the victim” to Michel Foucault, Guy Hocquenghem, and Jean Danet, “Sexual Morality and the Law,” in *Politics, Philosophy, Culture: Interviews and Other Writings, 1977–1984*, ed. Lawrence D. Kritzman, trans. Alan Sheridan (New York: Routledge, 1988), 271–85, 276.

Chapter 2 examines gay activists' effort to legalize "sodomy" in the context of the larger revolution of sexual privacy rights in the 1960s and '70s. In those years, the US Supreme Court established new sexual rights, ranging from birth control to abortion, on the basis of the argument that those behaviors were protected under a constitutionally guaranteed right to privacy. In Texas in 1969, the newly emergent gay liberation movement launched the first-ever challenge in *Buchanan v. Batchelor* to a state sodomy law to go all the way up to the US Supreme Court. In that case, which involved a plaintiff who had been arrested twice, for having sex in a park and in a department store, gay activists pursued an expansive notion of personal privacy that extended beyond the spatial boundaries of the private home. The challenge ultimately failed, and gay activists suffered a further setback in 1974, when Texas lawmakers passed a new law legalizing heterosexual sodomy between consenting adults in private while newly singling out "homosexual conduct"—including lesbian sex for the first time—as a specific category of crime.

Chapter 3 examines the struggle to expand the sexual rights of young people. In the 1930s, '40s, and '50s, lawmakers enacted new "sexual psychopath" and other sex offender laws in an effort to combat sex crimes of all kinds but especially ones involving children. In practice, those laws gave the police the discretion to enforce them in a discriminatory and disproportionate way against gay men, and furthermore the stereotype of the gay child molester underpinned and served to justify the over-criminalization of even homosexual conduct involving only consenting adults. In the 1950s, '60s, and '70s, the newly emergent gay movement challenged the discriminatory stereotype of the gay child molester as manifested in popular culture, law, and many other discursive spheres.

An even more radical group of gay liberation activists, along with radical feminists and youth liberation activists, argued for the liberation of sexual expression, variously, of teenagers, children of any age, and adults who were attracted to children or teenagers. At the same time, anti-rape feminists spearheaded reforms to statutory rape laws in order to make them gender-neutral, extending, for the first time, legal protection against sexual assault to boys as well as girls. Joining these feminist reforms, the year of 1977 witnessed an explosion of public concern about child sexual abuse, along with a conservative movement seeking to crack down on left-wing activists who advocated for the liberalization of the laws regulating sex involving young people.

Chapter 4 follows the new war on child sexual abuse into the 1980s. The rise of the Christian Right and the election of Ronald Reagan in 1980 introduced a new era of conservative dominance in U.S. political culture. However, lawmakers on both sides of the aisle, at both the state and federal levels, were responsible for passing a flurry of legislation aiming to combat child sexual abuse and child pornography that typically defined “child” in an expansive way—as anyone under 18. At the same time, the Federal Bureau of Investigation and other law enforcement agencies cracked down on gay liberation organizations that defended sex between adults and minors, most notably the North American Man/Boy Love Association (NAMBLA), seizing membership lists and arresting or imprisoning many activists. In response, the more mainstream gay rights organizations that had once defended the sexual rights of teenagers stopped doing so, lest they, too, be accused by conservatives of promoting child sexual abuse, and many feminists increasingly supported punitive sex offender policies, fracturing of the progressive coalition that had sought to expand the sexual rights of young people. Now

unhindered by political protest, the child protection movement transformed child sexual abuse into one of the leading issues driving the rise of mass incarceration nationally, in the process over-criminalizing many children and teenagers themselves, often for non-harmful sexual conduct.

Chapter 5 analyzes how gay activists achieved the nationwide invalidation of laws targeting “homosexual conduct” between consenting adults in private, and thereby defeated the most explicitly homophobic aspect of the carceral state. By 1979, gay activists had achieved the legalization of “sodomy” between consenting adults in private in 29 states. However, they still had to contend with the newly emergent Christian Right, which fought to defend Texas’s “homosexual conduct” law and the laws remaining in other states banning “sodomy.” The rise of the Christian Right had a conservativizing effect on the quality of privacy that gay activists pursued, away from an expansive concept of personal privacy—the right of individuals to be free of state harassment and control, even in “public”—toward a more narrow concept of spatial privacy, figured as the right to have sex in the home. In 2003, the US Supreme Court decision *Lawrence v. Texas*, examining the case of a man arrested for having sex in his home, finally overturned Texas’s homosexual conduct law, making it seem like the carceral state no longer “saw” or discriminated against homosexuality.¹⁰³ At the same time, it allowed all those whose sexual practices failed the new test of “good sex” (non-commercial relations between consenting adults in private)—such as “bad” homosexuals, sex workers, and other queer criminals—to remain vulnerable to criminalization.

¹⁰³ As David Eng has argued, the emergence of queer liberalism, which purports not to “see” or discriminate against sexual minorities, is predicated on the racial logic of colorblindness. David L. Eng, *The Feeling of Kinship: Queer Liberalism and the Racialization of Intimacy* (Durham, NC: Duke University Press, 2010).

The subject of chapter 6 is the new crackdown on promiscuous sexuality of many kinds in the age of AIDS. In its 1979 decision *Pryor v. Municipal Court*, the California Supreme Court had placed new restrictions on how the police could enforce the state's "lewd or dissolute conduct" law that made it much more difficult for the police to raid gay bars. In early 1980s, gay activists cemented this achievement by getting "lewd or dissolute conduct" removed from the group of crimes requiring registration as a sex offender in California. However, the policing of gay conduct in places that were more clearly public persisted, at the same time as public sex as a mode of conduct became increasingly discredited; even some gay activists participated in police efforts to "clean up" the streets where men cruised for sex after the bars closed. The criminalization of prostitution also persisted—particularly affecting gay male and trans female sex workers—after gay activists such as Thomas F. Coleman lost key court challenges to California's prostitution law.

Additionally, in the 1980s the outbreak of the HIV/AIDS epidemic prompted a proliferation of laws aimed at controlling gay male promiscuity by criminalizing the sexual conduct of HIV-positive people. In the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act, passed in 1990, the federal government established sweeping new protections and allocated new resources for people with AIDS. At the same time, paradoxically, the Ryan White Act required all states to criminalize sexual conduct involving the threat of HIV exposure, creating a new, hierarchical legal distinction between people with HIV who were not sexually promiscuous and people with HIV who were. These efforts did not prove to be an effective method of preventing the spread of the virus. They did succeed, though, both in California and at the federal

level, at reviving the role that public health institutions had played in earlier epidemics as law enforcement agencies.

Part 1: The Age of Decency, 1950s–1970s

Chapter 1: Reforming the Policing of Queer Public Sexual Culture

In 1968, a former policeman and liberal candidate for Los Angeles district attorney named Michael Hannon published an article in the gay magazine *Tangents* criticizing laws that punished what he called “victimless crimes.” Hannon inveighed in particular against California’s sex offender registry—the first of its kind in the nation—which allowed the police to identify and track the whereabouts of individuals convicted of certain sex crimes. The problem with the sex offender registry, he argued, was that it criminalized a hodgepodge of harmless as well as harmful offenses without any apparent rhyme or reason. While registration might be an appropriate legal response to violent sex crimes, it was a waste of public resources for lesser offenses that did not involve a victim. For example, the registry’s inclusion of “lewd or dissolute conduct”—a law that the police used primarily to crack down on gay cruising—was a particularly frivolous use of police power. “I take no offense,” he explained, “at the idea of the police informing themselves of the whereabouts of rapists in a community, but expenditure of time and money to keep track of persons whose only crime is to offend against quaint Victorian ideas of the proper way to perform a sex act strikes me as absurd.”¹

¹ Michael Hannon, “Victimless Crimes: A Legal Dilemma,” *Tangents* 2, no. 7 (1968): 4–8. The movement to reform laws punishing victimless crimes opposed the criminalization of a range of activities, including the private consumption of illegal drugs, gambling, pornography and obscenity, prostitution, and public drunkenness. See Wendy Serbin Smith, *Victimless Crime: A Selected Bibliography* (Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, 1977).

After World War II, there was a police crackdown on queer subcultures that facilitated the expression of non-normative gender and sexuality. Urban police departments inaugurated the practice of using plainclothes officers to entrap unsuspecting men seeking sexual assignations with one another in public or semi-public venues like parks or cars—rare spaces that, in a society dominated by heterosexual supremacy, facilitated intimacy between men. They also policed intimate conduct—not just sex but also dancing, kissing, and stripping—even in gay commercial venues that were arguably more private, like bars and bathhouses. Hustlers and gender non-conformists were especially vulnerable to police harassment and brutality.

In urban centers of California as in other states, the primary device that the police used to suppress subcultures of queer gender and sexuality were laws against public “lewdness.” California’s “lewd or dissolute conduct” statute, in the form it took after a legislative reform in 1961, criminalized persons who “solicit[ed] anyone to engage in or who engage[d] in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.”² The statute did not require evidence of harm against an individual in order to secure a conviction but rather framed the conduct in question as an offense against public decency. This was an extremely broad and vague legal category of victim that made it possible for the police to target gay men with impunity, even in cases in which there was no offended person present besides the police officer.

The emergence of the gay movement in the 1950s, ’60s, and ’70s, threw the midcentury regime of policing of queer public sexual subcultures into a crisis of legitimacy, with two main models competing to replace what came before. Activists who

² Cal. Penal Code § 647(a).

promoted the *gay rights* model sought to bring an end to the discriminatory policing of gay bars and bathhouses—spaces that were arguably private—and thereby carve out a space where queer public sexual culture could play out relatively free of state interference and harassment. The gay rights model was in alignment with the idea that was becoming increasingly popular among liberal law reformers that the sexual conduct of consenting adults in private should not be a criminal offense.

Other activists fought also to establish a *gay liberation* model that proposed to legalize a more expansive range of modes of public sexual conduct (and, by extension, make possible a richer and more robust queer public sexual subculture). Activists with gay institutions like *Drum* magazine, the Philadelphia-based homophile periodical, alongside Berkeley’s Gay Sunshine Collective, argued that queer public sexual subcultures, even ones that played out in more clearly public places like parks, were a good thing and deserved to be defended.³ In the 1970s, organizations such as the National Committee for Sexual Civil Liberties (NCSCCL), San Francisco’s Call Off Your Old Tired Ethics (COYOTE), and the American Civil Liberties Union’s Sexual Privacy Project helped to re-conceptualize prostitution as a legitimate form of labor (“sex work”) and fought for its legalization.⁴

There was no firm distinction at the time between those who promoted the gay rights model versus those who endorsed the gay liberation one. Rather, many of the gay activists who supported the more conservative gay rights model as a strategy for challenging the punitive state also endorsed the gay liberation model in other moments.

³ On the homophile tradition of sex radicalism in *Drum* magazine, see Marc Stein, “Canonizing Homophile Sexual Respectability.”

⁴ Valerie Jenness, *Making It Work: The Prostitutes’ Rights Movement in Perspective* (New York: Aldine de Gruyter, 1993).

This was a moment of contingency in which it was not yet clear how generous a public sexual culture gay activists would manage to legalize.

The battles over queer public sexual culture had the additional effect of destabilizing the legal practice of sex offender registration. California became the first state to establish a sex offender registry in 1947, in response to the demands of law enforcement officials who argued it was necessary to track the whereabouts of dangerous sex offenders. “Lewd or dissolute conduct”—the law the police used to criminalize the counterpublics of gay sex and gender non-conformity—counted as a registrable sex offense, and prosecutors would often exploit fear of registration as a way of getting a defendant to plead guilty to a lesser offense. This gave rise to challenges by liberal law reformers and gay activists to sex offender registration as a policy. The central goal of most gay activists and their liberal allies was the removal of lewd conduct from among the sex offenses requiring registration. Some among this group, such as Michael Hannon, supported the registry in cases of sex crimes involving victims, thereby furnishing a new justification for the registry in the early days of the age of gay rights. But there was also a nascent movement among a minority of gay activists and civil libertarians to abolish the registry altogether; a law review committee even considered the idea briefly when it was getting ready to rewrite the state penal code in the mid-1970s. And law enforcement agencies had not kept the actual lists of convicted sex offenders up to date, meaning the registry was basically defunct in practice. This was a crucial period of fluidity in the history of the carceral state in which it was not clear what the future direction of sex offender registration would be.

The crackdowns on queer public sexual subcultures helped to consolidate the “transsexual” (later “transgender”) as a social category and mode of identity that was distinct from gay identity. At midcentury, the queer public subcultures of gay cruising and gender non-conformity were heavily overlapping and intermingled. Alongside gay male public sexual culture, starting in the 1950s the police targeted individuals who dared to be gender non-conforming in public with increasing intensity. The legal targeting of gender non-conformity helped to consolidate trans people as its own category of queer minority with its own mutual aid and political organizations and its own set of political demands. At the same time, the crackdown on gender non-conformity it helped make trans people into their own particular subordinate class of queer criminals facing specific modes of transphobic criminalization.

I. Policing California’s Queer Public Sexual Subculture before 1968

The midcentury period gave rise to a wave of campaigns against sex crime in American culture and law at the local, state, and national levels. In the 1930s, citizen groups around the country organized against the perceived threat that dangerous sexual deviants posed to women and children.⁵ On August 14, 1937, a thousand people gathered at a meeting in Ridgewood, New York, to address the “increasing wave of sex crimes against young girls” in the wake of the “criminal attack” and murder of four-year-old Joan Kuleba by Simon Elmore, a worker in the Works Progress Administration, the Depression-era government agency that employed millions of jobless Americans to conduct various

⁵ For a particularly salient account of the midcentury campaigns against deviant sexuality, see Chauncey, “The Exclusion of Homosexuality from the Public Sphere in the 1930s,” in *Gay New York*, 331–54.

public works projects.⁶ The same year, communities in Massachusetts organized “drives to stop crimes of sex degeneracy” following the murder of five-year-old Chester Harris of Cambridge.⁷ Simultaneously, the director of the Federal Bureau of Investigation, J. Edgar Hoover, called for a “War on the Sex Criminal.” Hoover warned that “the sex fiend, most loathsome of all the vast army of crime, has become a sinister threat to the safety of American childhood and womanhood.”⁸ Driven by the media, private citizens, and law enforcement officials, these campaigns established a whole new legal edifice for the policing of “deviant” sexuality.

When the California legislature enacted the first state-level sex offender registry in the country in 1947, legislators included within the registry’s purview categories of sex crime that disproportionately affected gay men. They created the registry in the context of a national wave of concern about deviant sex. Between 1937 and 1967, 26 states passed so-called “sexual psychopath” laws that authorized the indefinite detention of sex offenders, many of them gay men, in state hospitals.⁹ Unlike the ubiquitous sexual psychopath laws, though, only four other states besides California—Arizona, Nevada, Ohio, and Alabama—had enacted a sex offender registry by 1976.¹⁰ The architects of the California registry framed it as a surveillance system that would provide “local police authorities with the knowledge of the whereabouts of habitual sex offenders and sex deviates”—including the perpetrators of gay-related offenses like sodomy, indecent

⁶ Quoted in Tamara Rice Lave, “Only Yesterday: The Rise and Fall of Twentieth Century Sexual Psychopath Laws,” *Louisiana Law Review* 69, no. 3 (2009): 549–592, 551, from “Painter, 57, Admits Killing Girl of 4,” *New York Times*, August 15, 1937.

⁷ “To Counsel Hurley on Sex Crime Laws,” *New York Times*, September 5, 1937.

⁸ Quoted in Estelle B. Freedman, “Uncontrolled Desires,” 94, from the *New York Herald Tribune*, September 26, 1937.

⁹ Lave, “Only Yesterday,” 549.

¹⁰ Robert L. Jacobson, “‘Megan’s Laws’ Reinforcing Old Patterns of Anti-Gay Police Harassment,” *h Law Journal* 87, no. 7 (1999): 2431–2474, 2443.

exposure, and, as it was called before 1961, “being a lewd or dissolute person.” Some law enforcement officials believed the registry was “effective as a deterrent to homosexual activity,” while others argued it was necessary because “homosexuals are prone to commit violent crimes and crimes against children.” For the lawmakers who created it, the sex offender registry was a means through which to suppress the harmful behavior of gay men.¹¹

Of all the gay offenses to which the registry applied, the lewd or dissolute person law was the statute that the police enforced the most frequently. In the earliest case litigated by a gay rights organization in 1952, activists attacked the law for facilitating police entrapment—the practice in which a police officer would dress as a civilian and make sexual overtures to unsuspecting gay men in order to trick them into committing the crime of being a lewd or dissolute person. The defendant in the case was a gay rights activist named Dale Jennings who was entrapped by a plainclothes police officer in Los Angeles. According to Jennings, the officer had followed him home uninvited after the two met in the bathroom of a public park. The officer forced his way into Jennings’s home and “sprawled on the divan making sexual gestures and proposals. . . . At last he grabbed my hand and tried to force it down the front of his trousers. I jumped up and away. Then there was the badge and he was snapping the handcuffs on with the remark, ‘Maybe you’ll talk better with my partner outside.’”¹²

After contacting his associates at the gay rights organization the Mattachine Society, Jennings made the rare and brave decision to defend his innocence in court; most

¹¹ E.A. Riddle, “Compulsory Registration: A Vehicle of Mercy Discarded,” *California Western Law Review* 3, no. 195 (1967): 195–202, 199. On the homophobia of the first war on sex offenders, see Chauncey, “The Postwar Sex Crime Panic.”

¹² Dale Jennings, “To Be Accused, Is To Be Guilty,” *ONE* 1, no. 1 (1953): 10–13, 12.

men in his position would have pled guilty in the hope of getting the opportunity to plea bargain for a lighter sentence and to avoid publicity. The Mattachine Society was the oldest sustained gay rights—or “homophile,” in the parlance of the time—in the United States. Harry Hay hatched the idea to found a gay rights organization called the Bachelors for Wallace at a party he attended in 1948 with other gay men who promised to support presidential candidate Henry Wallace in exchange for the candidate’s support for the decriminalization of “sodomy” between consenting adults in private. While the campaign for Wallace never came to fruition, Hay helped to found the Mattachine Society was founded two years later in 1950.¹³

After Jennings contacted them, members of the Mattachine Society formed the ad hoc Citizens Committee to Outlaw Entrapment (CCOE) to publicize the case and raise money for legal fees under a different guise, emulating the cell-like structure of the Communist Party in order to elude state surveillance of their activities. Mattachine members distributed flyers throughout Los Angeles in order to publicize it, as John D’Emilio has argued, via the “informal communications network of the gay male subculture” in the absence of attention from the mainstream press.¹⁴ “THE ISSUE HERE,” one of the CCOE’s flyers emphasized, “IS NOT WHETHER THE MAN IS A HOMOSEXUAL OR NOT, BUT WHETHER THE POLICE DEPARTMENT IS JUSTIFIED IN USING SUCH METHODS.”¹⁵ At the trial, Jennings’s attorney, too, defended the legitimacy of his client’s homosexual identity and called the practice of police entrapment into question instead; though Jennings was openly homosexual, his

¹³ D’Emilio, *Sexual Politics*, 60.

¹⁴ D’Emilio, *Sexual Politics*, 70.

¹⁵ NOW is the time to fight, [1952], box 1, folder 14, Mattachine Society Project Collection, Coll2008-016, ONE Archives.

conduct had been neither “lewd” nor “dissolute.” The jury voted eleven to one for an acquittal, and a new trial was scheduled. Before the trial took place, though, the city requested the case to be dismissed.¹⁶ The CCOE heralded the outcome as “the first time in California history an admitted homosexual was freed on a vag-lewd [lewd vagrancy] charge” and a “GREAT VICTORY for the homosexual minority.”¹⁷

That great victory was, however, an isolated one. In the main, the California legislature and court system tacitly or explicitly endorsed the police’s discretionary use of the lewd or dissolute person law to repress gay men and their sexual culture throughout the 1950s and 1960s: the police could achieve that end in many cases, after all, without resorting to the questionable practice of entrapment. In order to rectify the fact that the law unconstitutionally criminalized a type of person as opposed to a type of behavior, the legislature reformed it in 1961 by removing the word “person” and replacing it with “conduct.” However, the reform had little practical effect on the enforcement of the law, since the new statute still left it up to the police to define what behaviors fell under “lewd or dissolute conduct.” Indeed, the statute did not even require the presence of an offended person besides a police officer for a lewd conduct conviction to be valid. The courts’ claim that gay men offended the “public,” then, was usually made in bad faith, since the only so-called “victim” involved in most cases was the police officer, who went out of his way to catch gay men who were seeking a sexual assignation and trying to avoid being observed. Even worse, the reformed statute intensified the police repression of gay men

¹⁶ Victory!, [1952], box 1, folder 14, Mattachine Society Project Collection, Coll2008-016, ONE Archives.

¹⁷ An Open Letter to Friends of the Citizens' Committee to Outlaw Entrapment, [c. 1952], box 1, folder 14, Mattachine Society Project Collection, Coll2008-016, ONE Archives. On the Jennings case, see D’Emilio, *Sexual Politics, Sexual Communities*, 70–74. The police practice of using plainclothes officers to entrap gay men was an invention of the postwar period. See “Policing Queers in the 1940s and 1950s: Harassment, Prosecution, and the Legal Defense of Gay Bars,” in Boyd, *Wide-Open Town*, 108–147.

by specifically proscribing solicitation—the mere act of inviting someone to have sex—for the first time.¹⁸

The courts, too, afforded the police complete discretion to use the lewd conduct law to criminalize just about any gay behavior. Judges relied on a very broad understanding of what constituted a “public” place, such as when a Los Angeles Municipal Court convicted a man in 1963 for “kissing another man on his lips for three seconds” in a bar.¹⁹ In 1967, the Los Angeles Superior Court held it was legitimate for the police to use the statute to criminalize the mere act of asking another person in public to go have gay sex in private. “We cannot believe,” the Court argued, “the Legislature intended to subject innocent bystanders, be they men, women or children, to the public blandishments of deviates so long as the offender was smart enough to say that the requested act was to be done in private.”²⁰ A California Court of Appeal affirmed in 1968 that it was “manifest that the legislature believed that the subjection in public to homosexual advances or observation in public of a homosexual proposition would engender outrage in the vast majority of people.”²¹ Along with the legislature and the police, judges sustained the idea that gay men were a deviant social element against which the heterosexual public required protection and whose social world needed to be suppressed and kept invisible.

¹⁸ Pryor v. Municipal Court, 25 Cal.3d 238 (1979). Two events in particular precipitated the 1961 legislative revision of California’s vagrancy law of which the lewd or dissolute person statute was a part. The first was the 1960 California Supreme Court decision *In re Newbern*, which deemed unconstitutional the “common drunk” provision of the statute. The second was Arthur H. Sherry’s influential law review article “Vagrants, Rogues and Vagabonds—Old Concepts in Need of Revision.” Arthur H. Sherry, “Vagrants, Rogues and Vagabonds—Old Concepts in Need of Revision,” *California Law Review* 48, no. 4 (1960): 557–73.

¹⁹ “Male Kisses In Public Ruled ‘Lewd,’” *Los Angeles Herald-Examiner*, August 27, 1963.

²⁰ *People v. Dudley*, 250 Cal.App.2d Supp. 955 (1967).

²¹ *People v. Mesa*, 265 Cal.App.2d 746 (1968).

Otherwise gay-friendly liberal law reformers still supported the state repression of gay cruising during this period. In 1962, the American Law Institute, an organization dedicated to the scholarly study of the law, published its Model Penal Code to provide state legislatures with a prototype to refer to when revising their criminal codes, many of which were about a century old. The Model Penal Code proposed to reform how the state regulated sexuality in order to decriminalize behaviors that did not harm others while retaining criminal sanctions on ones that did. It removed laws punishing sex practiced by consenting adults in private, including gay sex, while prohibiting rape, prostitution, sex involving minors, “open lewdness,” and gay cruising (which it described as loitering “in or near any public place for the purpose of soliciting or being solicited to engage in deviate sexual intercourse”).²² In order to dispute the lewd or dissolute conduct law, gay activists in California would have to find a way to convince liberals that gay men’s public sexual culture was, in fact, victimless.

Alongside gay male sexual conduct, the police concentrated as well on suppressing the public expression of gender non-conformity (though, of course, there existed no firm distinction between the two, and many members of the queer public subculture engaged in both). The targeting of gender non-conformity by police departments was not the only factor driving the rise of transgender as a specific category of social identity. Rather, the field of medicine and the popular press played key roles, too, often in conjunction with one another. On December 1, 1952, the *New York Daily News* published a front-page article bearing the bold-faced headline “EX-GI BECOMES BLONDE BEAUTY” detailing the sex-change operation that Christine Jorgensen, who

²² Louis B. Schwartz, “Morals Offenses and the Model Penal Code,” *Columbia Law Review* 63, no. 4 (1963): 669–686, 681.

had formerly served in the U.S. Army, underwent in Denmark.²³ As historian Joanne Meyerowitz has argued, following this initial debut, Jorgensen “served as a focal point for hundreds of news stories that broached the topic of changing sex and as a publicity agent for the hormones and surgery that enabled bodily transformation.”²⁴

Like gay men’s public sexual subculture, trans people were vulnerable to criminalization in California under the lewd or dissolute person law. In one case from 1956, Dixie MacLane, whom we would now identify as a trans woman, managed to avoid being found guilty of being a lewd or dissolute person after she was arrested for appearing in public dressed in female clothing. As Judge Ben Koenig of the Los Angeles Municipal Court argued, “I am not called upon to determine the sex of this defendant, but rather to find whether the defendant is guilty of the counts in this complaint. I find that this defendant did not masquerade as a member of the opposite sex for lewd purposes.”²⁵

II. The Battle to Reform the Lewd Conduct Law

In the late 1960s, a surge of gay activism produced the first-ever large-scale attempt to reform California’s lewd conduct law. While the Mattachine Society had been the lone resister to the law in the 1950s, a critical mass of gay organizations, including the Homophile Effort for Legal Protection, the National Committee for Sexual Civil Liberties, and the Gay Rights Chapter (GRC) of the American Civil Liberties Union, now existed to exert a stronger influence on public policy about gay cruising. Building on the pioneering efforts of the homophile movement, the new cohort of gay activists and

²³ “Ex-GI Becomes Blonde Beauty,” *Daily News*, December 1, 1952.

²⁴ Joanne J. Meyerowitz, “‘Ex-GI Becomes Blonde Beauty,’” in *How Sex Changed: A History of Transsexuality in the United States* (Cambridge, MA: Harvard University Press, 2002), 51–97, 52.

²⁵ “Office Clerk Cleared of Charge of Masquerading,” *Los Angeles Times*, February 15, 1956. I am indebted to my student Melissa Connop for drawing my attention to this source.

lawyers invented direct-action protest strategies, crafted legal arguments, and formed political alliances with liberal city and state officials to curtail the state repression of gay men.

In Los Angeles, gay activists had to contend with the virulent homophobia of Edward “Ed” Davis, the LAPD police chief who defended the department’s frequent crackdowns on gay cruising by portraying gay men as dangerous psychopaths who preyed on children. The “open and ostentatious merchandising of the concept of homosexuality is a clear and present danger to the youth of our community,” Davis claimed when justifying his refusal to establish a police liaison to the gay community in 1972.²⁶ Later that year, he argued in a lecture before the Beverly Hills Bar Association that there was “no such thing as a victimless crime.” “The homosexual who hangs out in the park, and we get a complaint because kids playing ball are molested by this guy who wants to hang out in the men’s toilet, he certainly has victims.”²⁷ Davis justified making it a police priority to suppress gay male sexual culture by associating gay men with child molestation.

One way in which gay activists countered the stigmatizing rhetoric of law-and-order conservatives like Ed Davis was by arguing that it was unjustifiable to criminalize homosexual activity when it took place in private places like bars and bedrooms. Such was the argument of the Homophile Effort for Legal Protection (HELP). Founded in 1968, HELP was a legal aid society for gay men that maintained a 24-hour answering service for members who needed legal assistance, representation, or money for bail.²⁸ Its

²⁶ “LAPD Chief Compares Gays, Lepers,” *Advocate*, January 5, 1972.

²⁷ “Victimless Crime? No Such Thing, Says Chief Davis,” *Advocate*, February 2, 1972.

²⁸ H.E.L.P. is Here, [1968], box 1, folder 1, Homophile Effort for Legal Protection, Incorporated (HELP, Inc.), Records, Coll2008-052, ONE Archives.

newsletter helped gay men avoid being arrested for cruising by publishing a segment that identified “local trouble spots” that were currently being targeted by the LAPD.

However, HELP did not argue for the complete decriminalization of gay cruising. As a contributor to the newsletter put it, the organization did not believe that gay men “should be permitted to engage in activities which, when committed in public view, are offensive to the average person. What goes on behind closed doors is another matter—be these the doors to a bar which is known to have nude entertainment or the door to your bedroom.”²⁹ HELP disputed the idea that gay men were a menace to the public by drawing attention to the fact that the police were targeting even those portions of their sexual culture that played out in arguably private settings.

The police, gay activists also pointed out, used the lewd conduct law to suppress not just sex acts but any expression of intimacy at all, no matter how minor, along with the public expression of gender non-conformity. On New Year’s Eve in 1966, eight police officers launched a brutal assault on a bar called the Black Cat in Silver Lake and arrested 15 men, 13 of whom they charged with lewd conduct for kissing when the clock struck midnight. It is clear from accounts of the raid that the police were also especially interested in arresting drag queens and gender non-conformists. As gay rights activist Jim Highland wrote, alongside several bartenders, the police rounded up and arrested a dozen people who “for the most part . . . were the transvestites. The police were trying to build a case. . . . To the public mind it suggests degeneracy.”³⁰

A key police raid from 1966 of Compton’s Cafeteria, a locale in San Francisco where gender non-conforming people congregated, inspired the formation of new social

²⁹ HELP, Inc. Newsletter, March 15, 1972, box 4, folder 2, Homophile Effort for Legal Protection, Incorporated (HELP, Inc.), Records, Coll2008-052, ONE Archives.

³⁰ Jim Highland, “RAID!,” *Tangents* 2, no. 4 (1967): 4–7, 5.

service organizations devoted specifically to transgender people, and the formation of transgender identity as a specific social and political category. Compton's was 24-hour cafeteria in the disreputable Tenderloin district that was a favorite of, as Susan Stryker has put it, "drag queens, hustlers, slummers, cruisers, runaway teens, and down-and-out neighborhood regulars."³¹ On a weekend night in August of that year, after the management called the police in order to expel some rowdy customers from the premises, the inhabitants of the cafeteria began to riot, vandalizing a police car and burning down a newspaper stand. "Drag queens beat the police with their heavy purses and kicked them with their high-heeled shoes," Stryker notes.³² In the wake of the riots, transgender activists began working with liaisons at the Central City Anti-Poverty Program Office, as well as the San Francisco Public Health Department's "Center for Special Problems," in order to fight for political rights, especially access to healthcare, for trans people. In 1967, a group of transgender people in the Tenderloin formed Conversion Our Goal (COG), the first known trans peer support group in the United States.³³

The mere possibility of police harassment cast a pall over queer social life in the bars, even when the police were not actually present. In September 1970, the Gay Liberation Front organized a protest they described as a "touch-in" at The Farm, a popular gay bar in West Hollywood, in order to contest the bar's policy prohibiting kissing, holding hands, and other physical contact.³⁴ The Farm's owner defended the policy as a necessary precaution to prevent the police from "bust[ing] the bar for encouraging 'lewd conduct.'" A flyer for the protest queried angrily, "DO YOU

³¹ Susan Stryker, *Transgender History* (Berkeley, CA: Seal Press, 2008), 64.

³² Stryker, *Transgender History*, 65.

³³ Stryker, *Transgender History*, 75.

³⁴ "Touch-In" at the Farm, [1970], box 1, folder 15, Gay Liberation Front (GLF), Los Angeles Records, Coll2012.031, ONE Archives.

BELIEVE THAT TWO MEN OR TWO WOMEN WITH THEIR ARMS AROUND EACH OTHER CONSTITUTES ‘LEWD CONDUCT’?” At the protest, about eighty men and women marched in mock shackles and chains while loudspeakers played music like the Beatles’ “I Want to Hold Your Hand.”³⁵ Later that month, GLF and the Farm arrived at an agreement securing “touch privileges” for bar patrons.³⁶ (The bar endured still more grief the following year, though, when a county official urged the Public Welfare Commission not to renew its dancing and entertainment license because of a recent series of arrests for lewd conduct on or near the premises.)³⁷ In these ways, activists challenged the notion that gay men were dangerous sex predators by highlighting the utterly quotidian nature of the behaviors for which they were being arrested.

When gay men contested a lewd conduct charge in court, they greatly increased the risk that they would actually be put on the sex offender registry. While many prosecutors and judges thought that the “lewd or dissolute” behaviors for which the police arrested gay men were indeed criminal, they did not believe those behaviors were serious enough to warrant registration. Often, prosecutors would add an additional charge after the arrest and offer to waive the charge for lewd conduct as long as the accused pled guilty to the non-registrable offense. On the whole, then, the most punitive aspect of sex offender registration during this period was not the requirement to contact the local police once a month. Rather, prosecutors wielded the threat of registration to coerce defendants into pleading guilty to a lesser criminal charge.

³⁵ Protest at the Farm, 1970, box 1, folder 22, Gay Liberation Front (GLF), Los Angeles Records, Coll2012.031, ONE Archives.

³⁶ “GLF Wins Touch Privileges at Bar,” *Advocate*, October 28–November 10, 1970.

³⁷ “Gay Leaders Defend License of L.A. Bar,” *Advocate*, January 6, 1971.

In this context, men accused of lewd conduct displayed considerable bravery when they refused a plea bargain. In 1970, for example, after plainclothes vice officers arrested Gay Liberation Front activist John Platania in Griffith Park in Los Angeles, Platania chose to represent himself at a jury trial instead of hiring a lawyer to get the charge reduced and avoid public exposure. “With the full support of the GLF,” a journalist for the gay magazine the *Advocate* commented approvingly, “[Platania] is turning his arrest by vice squad officers into a full-scale, public challenge of police entrapment procedures.”³⁸ Likewise, when the Metropolitan Community Church reverend Ronald Thaxton Pannel took his lewd conduct case to court in 1973, he refused to plea bargain for the lesser charge of “disturbing the peace” because he wanted to see through his dispute of the lewd conduct law’s constitutionality. “As long as the 647(a) [lewd conduct issue] has not been resolved,” he told the *Advocate*, “then I don’t have to enter a plea of my 415 [charge for disturbing the peace]. I’m hoping that by the time I’m forced to plead one way or the other, I will have enough money to plead innocent and demand a jury trial.”³⁹ Essential to activists’ challenge to the lewd conduct law was the courage of individual gay men who risked their livelihoods in order to challenge the statute’s constitutional basis.

Scholars, too, contributed to the movement to reform the lewd conduct law by furnishing empirical evidence backing up activists’ claim that the LAPD did, in fact, practice discrimination, that it enforced the statute disproportionately against harmless gay male behaviors. A study from 1966 published in the *UCLA Law Review*, titled “The Consenting Adult Homosexual and the Law,” found that only 10 of the 434 arrests that

³⁸ “LAPD Entrapment Victim Fighting Back,” *Advocate*, December 23, 1970.

³⁹ Rob Cole, “Crack in California Lewd Law,” *Advocate*, January 3, 1973.

LAPD officers had made for lewd conduct violations during the previous year involved private citizens as complaining witnesses. It noted, moreover, that most of the men who had been arrested pursued sexual contact only with other consenting adults and approached them through the use of circumspect body language. “The majority of homosexual solicitations,” the 185-page report noted, “are made only if the other individual appears responsive and are ordinarily accomplished by quiet conversation and the use of gestures and signals having significance only to other homosexuals.”⁴⁰ The sociologist Laud Humphreys reported similar findings in his 1970 ethnography *Tearoom Trade: Impersonal Sex in Public Places*.⁴¹ A report from 1973 written by law students Thomas Coleman and Barry Copilow argued that the LAPD enforced the lewd conduct law against gay men “as a class of persons” in a purposefully discriminatory way.⁴² Together, these studies undermined the stereotype that portrayed gay men as dangerous sex offenders, and they made it possible for lawyers to argue instead that the lewd conduct law was a mode of state-sanctioned homophobia.⁴³

Gay activists formed alliances with liberal public officials who shared their perspective about the need to restrain the police from suppressing gay men’s harmless behavior. When a lawyer named Burt Pines ran for Los Angeles City Attorney in 1973, he pledged to “take a strong, tough look at any prosecutions under 647 [the lewd conduct

⁴⁰ Project, “The Consenting Adult Homosexual and the Law: An Empirical Study of Enforcement and Administration in Los Angeles County,” *UCLA Law Review* 13, no. 3 (1966): 647–832, 686, 796.

⁴¹ Laud Humphreys, *Tearoom Trade: Impersonal Sex in Public Places* (Chicago: Aldine, 1970).

⁴² Thomas F. Coleman and Barry Copilow, “Enforcement of Section 647(a) of the California Penal Code by the Los Angeles Police Department,” *Unmarried America*, accessed June 22, 2017, <http://www.unmarriedamerica.org/Archives/1973-1974-coleman-copilow-Toy-Reports/1973-Coleman-Copilow-Report.pdf>.

⁴³ For an example of lawyers drawing on this scholarship to challenge the constitutionality of the lewd conduct law, see Brief for the Pride Foundation, the American Civil Liberties Union of Northern California, and the American Civil Liberties Union of Southern California as Amicus Curiae, *In re Anders*, 25 Cal.3d 414 (1979).

law] dealing with homosexual activity, and it's certainly going to be an area that I would seek to de-emphasize."⁴⁴ Pines's promise contrasted sharply with the proposal of his rival candidate Roger Arnebergh, who suggested gay bars incorporate as private clubs to help gay men "avoid unintentionally or unknowingly offending" a bystander.⁴⁵ After Pines prevailed in the race for city attorney, he made good on his vow through a new policy that reduced the number of cases his office prosecuted involving arrests for lewd conduct in gay bars. Between June and August of 1974, the *Advocate* conjectured, Pines's policy had singlehandedly prompted a 48% reduction in arrests in Hollywood.⁴⁶ Los Angeles Mayor Tom Bradley, the first (and, so far, the only) African American to hold that office, also took the view that the police should deprioritize relatively minor crimes. In a keynote address to a police association in 1975, Bradley called for police departments to reexamine the enforcement of "the whole range of activities which are generally described as victimless crimes," from "penny ante-poker [sic] to surveillance of gay bars."⁴⁷ These key city officials lent unprecedented mainstream support to gay activists' goal of reforming the lewd conduct law.

The statutory basis of the solicitation portion of the lewd conduct law eroded in 1975 when California legalized anal and oral sex between consenting adults in private. In 1963, the California legislature had formed the Joint Legislative Committee for Revision of the Penal Code to overhaul the state's nearly century-old code.⁴⁸ In a 1971 report detailing its revision proposals, the committee recommended that sodomy be legalized

⁴⁴ Martin St. John, "Pines pledges ear for Gays if he's elected L.A. city attorney," *Advocate*, February 14, 1973.

⁴⁵ Martin St. John, "L.A. City Attorney Would Turn Gay Bars into Private Clubs," *Advocate*, March 14, 1973.

⁴⁶ Joel Tlumak, "Pines eases gay prosecutions," *Advocate*, May 22, 1974. "Hollywood lewd busts off 48%," *Advocate*, October 9, 1974.

⁴⁷ Jim Kepner, "Bradley tells police: Shift Priorities," *Entertainment West*, May 9, 1975.

⁴⁸ "Revised Penal Code on Coast To Be Proposed to Legislature," *New York Times*, September 23, 1971.

between consenting adults in private, though, as a consulting attorney to the Society for Individual Rights noted, it “in no way corrects the present harmful result of [the lewd conduct law].”⁴⁹ Around the same time, Willie Brown, a Black Democratic Assemblyman (and future mayor) from San Francisco, began introducing a separate consenting adults bill in the legislature. A number of professional associations, responding to pressure from the National Committee for Sexual Civil Liberties and other gay rights organizations, passed resolutions in support of the idea, including the American Bar Association in 1973.⁵⁰ When an iteration of the “Brown bill” finally passed in 1975, gay activists had new cause to question the validity of the lewd conduct law’s prohibition of solicitation.⁵¹ As Peter Thomas Judge, the president of the Gay Rights Chapter of the American Civil Liberties Union of Southern California, underscored in a letter to Willie Brown, “Since [the Brown bill] became law the courts and legal enforcement agencies continue to maintain the posture that it is illegal to ask someone to engage in an act that is now legal.”⁵² Though neither the penal code revision nor the Brown bill altered the lewd conduct law directly, the decriminalization of sodomy between consenting adults in private provided gay activists with a fresh round of ammunition with which to attack it.

The case of California offers a window into the dynamics of the liberal coalition that defeated state sodomy laws, revealing how gay activists accomplished their aim by

⁴⁹ Earl G. Stokes to James M. Foster, [1972], box 1, folder 4, Society for Individual Rights (S.I.R.) Records, Coll2011-075, ONE Archives.

⁵⁰ Arthur C. Warner to American Bar Association, June 3, 1972, Thomas F. Coleman and Jay Kohorn Papers, Acc103-3, ONE Archives. “Law students narrowly back consent laws,” *Advocate*, June 7, 1972. “Psychiatrists in California support Gays,” *Advocate*, June 7, 1972. Thomas Coleman, “Nation’s Lawyers Call for Consent Laws,” *Advocate*, August 29, 1973.

⁵¹ George Mendenhall, “Gov. Brown Signs Sex Bill—Referendum Possible,” *Advocate*, June 4, 1975.

⁵² Peter Thomas Judge to Willie Brown, July 18, 1978, box 7, folder 4, American Civil Liberties Union of Southern California Lesbian & Gay Rights Chapter records, Coll2007-013, ONE Archives.

working in collaboration with other minority groups and mainstream liberals. Willie Brown, a prominent Black Assemblyman who was originally from Texas, worked closely with the Sacramento gay rights activist George Raya in order to lobby hesitant legislators to support the consenting adults bill. Brown threw the full weight of his political resources behind the consenting adults bill, mobilizing his base of Democratic clubs and lobbying organizations like the Friends Committee on Legislation. The coalition that the gay activists formed with Willie Brown gave them more political clout than they ever would have been able to achieve on their own.⁵³

During the political battle over the Brown bill, gay liberation activists criticized it for neglecting to defend all kinds of conduct outside of the boundaries of “consenting adults in private.” In 1972, S.I.R. hosted a convention at a hotel in San Francisco to strategize ways to facilitate the bill’s passage. Members of the local activist organization Gay Sunshine Collective, which published a gay liberation periodical in Berkeley, staged a “zap” of the convention in protest of what they considered to be unacceptable drawbacks of the bill. The collective “deni[ed] the state’s right to regulate anyone’s sex life” and criticized the bill’s proposal to decriminalize “most sex acts between ‘consenting adults’” while increasing penalties for “sex acts with (and in some cases, between) minors.” Moreover, the group argued, the Brown bill would do little to ameliorate the persecution of gays, since “[n]obody is ever busted under the provisions of the law the Brown bill will repeal. The police bust gays under a variety of vague and contradictory local statutes against such ‘crimes’ as loitering, prostitution, lewd conduct,

⁵³ Jonathan Bell, *California Crucible: The Forging of Modern American Liberalism* (Philadelphia: University of Pennsylvania Press, 2012), 261–62.

or soliciting.”⁵⁴

After the passage of the Brown bill, several disputes in the Los Angeles City Council signaled that gay activists were gaining ground in the struggle over the lewd conduct law. In 1975, the Democratic Senator George Moscone of San Francisco (another future mayor of the city) sponsored a bill proposing to remove the word “solicit” from the statute. The bill did not pass the California Senate, but, at the same time, conservative city council members in Los Angeles who tried to gather enough votes to pass a resolution opposing the bill were unsuccessful.⁵⁵ The next year, the city council made major cuts to the LAPD vice squad in the wake of a police raid on a gay charitable fundraiser. Citing Penal Code Section 181’s prohibition of involuntary servitude, the police had deployed sixty officers, thousands of dollars, and a helicopter to disrupt a mock “slave auction” at the Mark IV bathhouse, the proceeds of which were to go to the Los Angeles Gay Community Services Center.⁵⁶ Outraged by the raid and faced with an \$18 million deficit, the city council voted to remove 47 vice officers from the department.⁵⁷ The former consensus that gay men were a threat to public decency was coming undone.

In the 1979 case *Pryor v. Municipal Court*, the California Supreme Court codified gay organizations’ view that the lewd conduct law permitted the police to be too repressive of gay social life. In that case, the defendant Don Pryor had been arrested in Los Angeles in 1976 for soliciting an undercover vice officer for oral sex. In its friend-of-the-court brief in support of Pryor, the National Committee for Sexual Civil Liberties

⁵⁴ “Gays Zap SIR,” *Gay Sunshine*, March 1972.

⁵⁵ Judy Willmore, “Victory Claimed in L.A. Council,” *Advocate*, August 27, 1975.

⁵⁶ “The Great Slave-Market Bust: A Story Only Los Angeles Could Produce,” *Advocate*, May 5, 1976.

⁵⁷ “47 Vice Cops Axed in Budget Crunch,” *Advocate*, June 16, 1976.

argued that, since the Brown bill had legalized anal and oral sex between consenting adults in private, the state was now obligated to “afford a reasonable opportunity to all persons to communicate their desire to engage in the now-licit conduct.” Moreover, the statute’s vague wording was a “standing invitation to police corruption” and “capricious enforcement” against gay men. In its majority opinion, the *Pryor* court reviewed over 70 years of statutory interpretations of the law in search of a coherent legal definition of “lewd or dissolute conduct.” “The answer,” the court determined, “of the prior cases—such acts as are lustful, lascivious, unchaste, wanton, or loose in morals and conduct—is no answer at all,” and it constrained the police’s discretionary prerogative by requiring the presence of an offended private citizen for a conviction to be valid.⁵⁸ The one disadvantage of the opinion, as the NCSCL saw it, was that, since *Pryor* had not actually been convicted of lewd conduct, the court deemed him ineligible to challenge the statute’s registration requirement.⁵⁹ Still, the new restrictions *Pryor* placed on the legal definition and police regulation of lewd or dissolute conduct signaled that the law’s conceptualization of gay men as dangerous sex offenders was softening.

III. Challenging the Sex Offender Registry

After the *Pryor* decision, gay rights attorneys had reason to believe that they could also persuade the courts to remove lewd conduct from the category of crimes requiring those convicted under them to be listed on the sex offender registry. In two key cases from the 1970s, judges had signaled that they would be amenable to such a change. In 1973, the California Supreme Court set aside the sentence of a man who had been convicted of

⁵⁸ *Pryor v. Municipal Court*, 25 Cal.3d 238 (1979).

⁵⁹ Arthur C. Warner, “Non-Commercial Sexual Solicitation.”

lewd conduct for urinating outside a Taco Bell in downtown Los Angeles around 1:30 am. The court argued his conviction must be overturned because the judge who sentenced him had not properly advised the defendant that pleading guilty to lewd conduct would mean he would have to register as a sex offender. “Although the stigma of a short jail sentence should eventually fade,” the court reasoned, “the ignominious badge carried by the convicted sex offender can remain for a lifetime.”⁶⁰ In the 1978 case of *People v. Mills*, a California Court of Appeals upheld the validity of sex offender registration in the case of a man who was convicted of fondling and attempting to rape a seven-year-old girl. However, the court went out of its way to make clear it was not ruling on the validity of registration for those guilty of lewd conduct violations. Referring to the aforementioned case, the judges pointed out that they were “not concerned with a private urination at 1:30 in the morning in a semi-private area, but with a compelled sexual molestation of a seven-year-old female. If there be an ignominious badge imposed it would appear deserved.”⁶¹ These cases established a legal precedent supporting the idea that the registry was appropriate for violent sex offenses but not for victimless crimes like lewd conduct.

The state legislature supported that idea, too. A 1979 bill introduced by the Republican state senator H. L. Richardson proposed to establish a mandatory jail term of 90 days for failure to register as a sex offender and make certain categories of offenders ineligible for community release programs—including individuals convicted of lewd conduct.⁶² Responding to complaints from the American Civil Liberties Union and the

⁶⁰ *In re Birch*, 10 Cal.3d 314 (1973).

⁶¹ *People v. Mills*, 81 Cal.App.3d 171 (1978).

⁶² S.B. 13 Press Release, [1979], box 5, folder 5, American Civil Liberties Union of Southern California Lesbian & Gay Rights Chapter records, Coll2007-013, ONE Archives.

National Committee for Sexual Civil Liberties, the legislature amended the bill before passing it to omit lewd conduct from its scope. “This is the first time,” Thomas Coleman of the NCSCL noted, “the Legislature has acknowledged that registration requirements for rapists and child molesters are different issues from registration of lewd conduct defendants.”⁶³ Gay activists and their liberal allies were securing for gay men immunity from the heightened criminal sanctions that a bipartisan majority of lawmakers was otherwise bringing to bear on sex offenders.

Some gay activists, liberals, and civil libertarians believed sex offender registration was bad policy, but they did not propose some superior alternative through which to address crimes involving victims like rape and child molestation. In 1972, the San Francisco Mental Health Advisory Board formed its Subcommittee on Homosexual Activity and the Law in response to complaints from gay activists about police entrapment. In addition to opposing entrapment, the committee’s report recommended the sex offender registry be repealed entirely, since it entailed “a gross *lifetime* condemnation of a person.”⁶⁴ In a report to the California legislature, the Joint Legislative Committee for Revision of the Penal Code argued that it seemed “illogical to register sex offenders but not robbers, burglars, and others who pose a greater statistical threat to the safety and well-being of the population.”⁶⁵ E. H. Duncan Donovan of the Gay Rights Chapter of the American Civil Liberties Union of Southern California described sex offender registration as “a modern version of the Scarlet A for adultery. This dehumanizing

⁶³ Memorandum of Points and Authorities in Support of Objection, Motion and Request re: Registration under P.C. §290, p. 21, *In re Reed*, 33 Cal.3d 914 (1983).

⁶⁴ Press release re: San Francisco Mental Health Advisory Board, [1972], box 1, folder 4, Society for Individual Rights (S.I.R.) Records, Coll2011-075, ONE Archives.

⁶⁵ Exhibits for the Petition for Writ of Habeas Corpus and Application for Stay, Law Offices of Jay M. Kohorn, p. E-64, *In re Reed*, 33 Cal.3d 914 (1983).

practice . . . is not inflicted on ax murderers who have paid their debt to society.”⁶⁶ These activists pointed out that sex offender registration focused illogically on sex as a specific attribute of a crime that, supposedly, made it particularly harmful. The registry created a situation in which the state punished sex crimes in an exceptionally harsh way compared with violent crimes not related to sex. However, critics of sex offender registration did not advance or, perhaps, were unable to imagine some better legal response to sexual violence.

It is noteworthy that some gay activists and feminists generated a critique of child sexual abuse during this period as a problem of the heterosexual family, though that critique did not enter into discussions in the legal arena about whether or not sex offender registration was good policy. In 1977, the ACLU’s GRC and the National Organization for Women jointly published a pamphlet titled “Sexual Child Abuse: A Contemporary Family Problem” that framed child sexual abuse as a form of exploitation endemic to the “family and friends of the family.”⁶⁷ A Parents and Friends of Gays pamphlet called “About Our Children” asserted that “Gay persons RESPECT CHILDREN”; most commonly, it was “fathers, stepfathers, grandfathers, uncles, and mothers’ boy friends” who perpetrated child sexual abuse.⁶⁸ As they challenged the stereotype that gays and lesbians were child molesters, these activists also transcended the facile notion that child sexual abuse was caused by a few sick or evil individuals; rather, it was a social problem

⁶⁶ Draft of Transcript of Public Hearings, November 1981, box 14, Arthur C. Warner Papers, Public Policy Papers, Princeton.

⁶⁷ Sexual Child Abuse, [1977], box 24, folder 11, American Civil Liberties Union of Southern California Lesbian & Gay Rights Chapter records, Coll2007-013, ONE Archives.

⁶⁸ About Our Children, 1978, box 4, folder 1, Adele Starr collection on Parents and Friends of Lesbians and Gays, Coll2009-012, ONE Archives.

that was woven into the fabric of the heteronormative family. As such, the family itself was amenable to a political critique.

The argument gay activists made that succeeded in court called for the de-registration of gay men's harmless behaviors but endorsed sex offender registration for crimes involving victims. Jerry Blair contended in the *San Diego Law Review* in 1976 that the “compulsory registration of obscene misdemeanants severely dilutes the effectiveness that registration might otherwise provide in the prevention of child molestation, forcible rape, and other violent sex crimes.”⁶⁹ In a friend-of-the-court brief in a lewd conduct case from 1979, the ACLU affiliates of Northern and Southern California and the Pride Foundation argued that individuals who committed sex crimes against women or children were especially likely to be repeat offenders. “The great majority of sex offenses,” the brief contended, “with the exception of rape and child molesting, are one-time events.”⁷⁰ In the context of a political culture in which conservatives were vigorously promoting sex offender registration and ambivalent liberals either agreed with them or lacked an alternative policy to put forward, gay activists, too, capitulated to conservatives in order to shift the registry’s focus away from gay men’s behavior.

IV. Conclusion

By the end of the 1970s, gay activists had made significant inroads challenging gay and gender non-conforming people’s relationship the police, and the policing of their public

⁶⁹ Jerry D. Blair, “Sex Offender Registration for Section 647 Disorderly Conduct Convictions Is Cruel and Unusual Punishment,” *San Diego Law Review* 13, no. 2 (1976): 391–409, 402. “The Consenting Adult Homosexual and the Law” made the same argument. See “The Consenting Adult Homosexual and the Law,” 737.

⁷⁰ Amicus Brief for the Pride Foundation, In re Anders, 33.

sexual cultures. They forced law enforcement to de-emphasize the policing of “lewd or dissolute conduct,” and they got tough new restrictions placed on the policing of gay bars. Activists envisioned further reforms to expand rights and protections for those who engaged in the public culture of gay sex and gender non-conformity, such as rights for hustlers and other sex workers, and the removal of public sex from the sex offender registry. Some progressives even conceived of abolishing the sex offender registry in an era when registration had become all but defunct.

At the same time, the idea was becoming increasingly popular among progressives that the proper sphere for sexual activity was between consenting adults in private, which implied that the public culture of gay sex did not represent an important value to defend. We turn now to the issue of how gay activists attempted to negotiate the inclusion of gay sex within this new “zone of privacy.” It was in the context of this fight that it would become clear to gay activists that defending their public sexual culture was a liability in court.

Chapter 2: The Battle to Include “Homosexual Conduct” in the Zone of Privacy

In 1971, the Democratic Representative Joe Golman introduced in the Texas legislature House Bill 320 proposing to reform the state’s sodomy law in order to remove “private consensual acts between a married person and his lawful spouse” from its scope. The bill received support from prominent law enforcement officials; no one opposed it when it was under consideration in a House subcommittee, though the Democratic Representative Tom Moore tried unsuccessfully to amend it to legalize sodomy among unmarried heterosexuals as well. According to its architect, the bill would help the state to distinguish innocuous heterosexual behaviors from what Golman called “homosexual rape”—presumably referring to the stereotype that homosexuals were child predators.¹ Had it passed, House Bill 320 would have created a situation in which Texas’s sodomy law discriminated against homosexuals in particular as a class of people. “This sodomy law change as proposed,” as Dallas resident Terrell R. Eastwood opined in a letter to Lieutenant Governor Ben Barnes, “is the most discriminatory and prejudicial piece of legislation I know of since the state of Texas enacted restrictive civil rights laws against our negro citizens of this state after the civil war.”²

¹ HB 320 Bill Analysis, [1971], records of Lt. Gov. Ben Barnes, Texas Office of the Lieutenant Governor, TSLAC.

² Terrell R. Eastwood to Ben Barnes, 19 April 1971, records of Lt. Gov. Ben Barnes, Texas Office of the Lieutenant Governor, TSLAC; H. Neal Parker to Bob Gammage, [1973], box 97-230/11, folder: “Homosexual Conduct in Penal Code, 1973,” Gammage (Robert) Papers, UT–Austin.

The national police crackdown after World War II on homosexuality and gender non-conformity entailed an increase in the use of sodomy laws, alongside public lewdness laws, to suppress queer subcultures. State laws prohibiting “sodomy” or the “crime against nature” applied to hetero- as well as homosexual conduct, but at midcentury police started enforcing them in a discriminatory way against gay male conduct. The sodomy laws did not require for the conduct in question to involve identifiable physical or psychological harm against an individual. Rather, the mere act of anal and oral sex constituted an offense against an ill-defined, heteronormative notion of public decency. Technically, the sodomy laws criminalized male same-sex sexual activity in any context, even in private. But in practice, the police enforced the laws mostly against conduct that took place in public, involved a minor, and/or entailed coercion.

And yet starting in the 1950s it was becoming increasingly common for liberal law reformers and gay activists to argue that “sodomy” should be legalized specifically when it was non-commercial and was practiced by “consenting adults in private.” On the ground, this was the type of conduct against which the police enforced sodomy laws the least. But gay activists espoused the consenting adults in private argument nonetheless, because it was useful for strategic reasons in the legal arena. In the 1960s and ’70s, legislatures and courts established new rights to sexual privacy in a variety of areas ranging from birth control and contraception to abortion. In spite of the ways in which it contradicted the reality of queer life, the consenting adults in private argument was the most sensible strategy available to gay activists for gaining sexual rights in the context of the legal culture in which they were operating.

The proposal that “sodomy” should be legalized specifically for the non-commercial activity of consenting adults in private inherently excluded a range of modes of queer conduct from its scope, such as sex work, sex involving a young person, and sex in public. But it was not yet settled what it meant to have a right to sexual “privacy,” and gay activists fought to achieve as expansive a definition as possible. In *Griswold v. Connecticut*, the 1965 US Supreme Court decision that made it legal for married couples to use birth control, Justice William O. Douglas argued that right to privacy entailed more than the right to be left alone in one’s home. Privacy encompassed more broadly a set of rights “surrounding the marriage relationship” that transcended the spatial context of the home.³ In court, gay activists sought to extend privacy protections to *individuals* who had sex in places that were technically public but had a reasonable expectation that they would be left alone, such as certain parts of a public park or an enclosed dressing room in a department store. Gay activists promoted a notion of “personal” privacy—what Lisa Duggan has called a “right-to-privacy-in-public”—that was broader than a notion of privacy conceived of in spatial terms.⁴

This case study focuses on Texas, because in the battle over sodomy laws Texas was an especially key battleground due to the particular character of the state’s political culture. Like the better-known gay meccas of New York City, San Francisco, and Los Angeles, Austin, Dallas, and Houston also fostered vibrant traditions of gay activism.⁵

³ *Griswold v. Connecticut*, 381 U.S. 479 (1965).

⁴ Duggan, *Twilight of Equality*, 52.

⁵ For histories of the gay movement in New York and California, see John D’Emilio, *Sexual Politics*; Martin B. Duberman, *Stonewall* (New York: Dutton, 1993); Boyd, *Wide-Open Town*; and Lillian Faderman and Stuart Timmons, *Gay L.A.: A History of Sexual Outlaws, Power Politics, and Lipstick Lesbians* (New York: Basic Books, 2006). Six other states passed laws similar to Texas’s homosexual conduct law in the 1960s and 70s: Kansas in 1969, Montana in 1973, Kentucky in 1974, and Arkansas, Missouri, and Nevada in 1977. Oklahoma followed suit in 1986, as did Tennessee in 1989 and Maryland in 1990. Of these states, Texas likely had the best-developed gay movement. Eskridge, “Hardwick and Historiography,” 633.

What was perhaps unique to Texas, however, was that gay activists had to reckon with an especially intense backlash from conservatives in the battle against the state's sodomy law. Unlike the 29 other states that had legalized anal and oral sex between consenting adults in private by 1979, conservative groups in Texas had succeeded in 1974 in passing a new law legalizing heterosexual sodomy but left what the statute called "homosexual conduct" a crime, prolonging the battle against the sodomy law in that state for decades after many others.

I. The Origins of "Consenting Adults in Private"

After World War II, campaigns against sex crime focused increasingly on homosexuality and the forms of gender non-conformity with which it was associated. Between 1940 and 1970 the number of appellate court decisions about sodomy doubled nationally, and a disproportionate number of them (60 percent) pertained to gay conduct.⁶ As historians such as David K. Johnson have documented, the crackdown on suspected Communists in government during the Red Scare of the 1950s was accompanied by a Lavender Scare, a nationwide string of inquisitions targeting gay public servants and leading to the expulsion in 1950 of nearly six hundred federal employees who were suspected of being gay.⁷

In that context, in the 1950s some progressives argued against the legal treatment of homosexuality as a criminal menace. The American Law Institute (ALI), a prestigious,

⁶ William N. Eskridge Jr., *Dishonorable Passions: Sodomy Laws in America, 1861–2003* (New York: Viking, 2008), 85.

⁷ David K. Johnson, *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* (Chicago: University of Chicago Press, 2006), 2. The literature on the Lavender Scare is vast. For the most recent account, see Douglas M. Charles, *Hoover's War on Gays: Exposing the FBI's "Sex Deviates" Program* (Lawrence: University Press of Kansas, 2015).

Philadelphia-based organization of jurists and lawyers, was in the vanguard of this movement in the United States. In 1951 the ALI commissioned the Model Penal Code (MPC) to help guide states seeking to overhaul their outdated criminal codes. Louis Schwartz, a law professor at the University of Pennsylvania, was put in charge of drafting the section on sex offenses.⁸ His thinking about homosexuality was deeply influenced by Alfred C. Kinsey's 1948 landmark study *Sexual Behavior in the Human Male*, which revealed, among other things, how utterly common homosexual behavior was among American men.⁹ The final draft of the MPC, published in 1962, recommended that the states legalize sodomy between consenting adults in private but advised that "deviate sexual intercourse by force or imposition," "corruption of minors and seduction," "indecent exposure," "open lewdness," and prostitution should remain criminal. The draft also criticized sexual psychopath laws for including consensual sodomy within their ambit and, in doing so, "permit[ting] too ready an inference of public danger from relatively minor episodes of deviate sexuality."¹⁰ In making these arguments, the MPC was participating in a broader progressive movement to decriminalize a range of other so-called victimless crimes as various as expressions of intimacy in gay bars, the private consumption of illegal drugs, gambling, pornography and obscenity, prostitution, and

⁸ Louis B. Schwartz, "Morals Offenses and the Model Penal Code," *Columbia Law Review* 63, no. 4 (1963): 669–86, 674.

⁹ Alfred C. Kinsey, Wardell B. Pomeroy, and Clyde E. Martin, "Homosexual Outlet," in *Sexual Behavior in the Human Male* (Philadelphia: W. B. Saunders Company, 1948), 610–66. An essay by Marie-Amelie George examines the nine states that, between 1943 and 1953, formed commissions to assess the effectiveness of their sexual psychopath laws. The Model Penal Code's liberal attitude about consensual sodomy, she argues, was influenced by those commissions, which, in turn, were influenced by the work of Alfred C. Kinsey. Marie-Amelie George, "The Harmless Psychopath: Legal Debates Promoting the Decriminalization of Sodomy in the United States," *Journal of the History of Sexuality* 24, no. 2 (2015): 225–61, 252, 255.

¹⁰ American Law Institute, *Model Penal Code: Proposed Official Draft. Submitted by the Council to the Members for Discussion at the Thirty-Ninth Annual Meeting on May 23, 24, 25 and 26, 1962* (Philadelphia: American Law Institute, 1962). On homosexuality and the Model Penal Code, see Eskridge, *Dishonorable Passions*, 121–24.

public drunkenness.¹¹ By figuring sodomy, too, as a victimless crime, the MPC challenged the midcentury legal regime in which all anal and oral sex was officially illegal.

The MPC's proposal to legalize sodomy between consenting adults in private reflected a trend that European countries were already codifying in the law. Sweden implemented a similar reform in 1944.¹² In the United Kingdom, a string of public scandals about homosexuality in 1954 prompted the formation of a government committee charged with investigating the effects of laws against sodomy and prostitution. Three years later, in 1957, the Departmental Committee on Homosexual Offenses and Prostitution released what became known as the Wolfenden Report (named after Lord Wolfenden, the committee's chair), which recommended that "homosexual behaviour between consenting adults in private should no longer be a criminal offense" while retaining, as the Model Penal Code had done, penal sanctions aimed at deterring offenses against minors, public decency, and prostitution.¹³ Ten years later, Parliament's passage of the Sexual Offences Act 1967 brought the Wolfenden Report's recommendation to fruition for adults twenty-one years of age or older, while the age of consent for heterosexual behavior remained sixteen.¹⁴ East Germany followed suit in 1968, lowering

¹¹ See my "The Creation of the Modern Sex Offender," in Hoppe and Halperin, *The War on Sex*, 247–267.

¹² Unlike what was eventually achieved in *Lawrence v. Texas*, which legalized all "sodomy" between consenting adults in private, the Swedish statute specified a number of restrictions on homosexual behavior in particular, including gay sex between teachers and their students, between prison wardens and their prisoners, and other relationships involving positions of authority. Jens Rydström, "Sweden 1864–1978: Beasts and Beauties," in *Criminally Queer: Homosexuality and Criminal Law in Scandinavia, 1842–1999*, eds. Jens Rydström and Kati Mustola (Amsterdam: Aksant, 2007), 183–213, 186.

¹³ Home Office and Scottish Home Department, *Report of the Committee on Homosexual Offenses and Prostitution* (London: Her Majesty's Stationery Office, 1957), 25. On the public scandals about male homosexuality leading up to the Wolfenden Report, see Jeffrey Weeks, "Prelude to Reform," *Coming Out*, 156–67; Patrick Higgins, *Heterosexual Dictatorship: Male Homosexuality in Postwar Britain* (London: Fourth Estate, 1996).

¹⁴ Sexual Offences Act, 1967, c. 60 (Eng.). The ages of consent for homo- and heterosexual behaviors were not equalized in Great Britain until 2000. See Sexual Offences (Amendment) Act, 2000, c. 44 (Eng.).

the age of consent for private homosexual conduct to 18. as did West Germany and Canada in 1969. These countries formed the vanguard of a movement that was just beginning to catch on in the United States.

After some hesitation, civil libertarians in the United States joined the trend. At first, in the 1950s, the American Civil Liberties Union (ACLU) did not actively champion gay rights causes. As Merle Miller, a member of the national ACLU Board in the 1950s who later came out as gay, put it in his 1971 coming-out memoir: “When homosexuals and people accused of homosexuality were being fired from all kinds of government posts, the ACLU was notably silent. And the most silent of all was a closet queen who was a member of the board of directors, myself.”¹⁵ Nevertheless, as the historian Leigh Ann Wheeler has argued, although the ACLU did little openly to defend homosexuality during that decade, “as one of the few organizations to offer any support at all, it became a veritable networking hub and information clearinghouse for homosexual victims of discrimination.”¹⁶ In the 1960s the organization made the rights of homosexuals a more explicit priority. It adopted a new policy statement about homosexuality in 1967, taking the position that the “right of privacy should extend to all private sexual conduct and should not be a matter for invoking the penal statutes.” However, like the Model Penal Code and the Wolfenden Report, the ACLU also affirmed the state’s legitimate interest in regulating “public solicitation for sexual acts” and, especially, “sexual practices where a minor is concerned.”¹⁷

¹⁵ Quoted in Vern L. Bullough, “Lesbianism, Homosexuality, and the American Civil Liberties Union,” *Journal of Homosexuality* 13 (1986): 23–33, 24, from Merle Miller, *On Being Different* (New York: Random House, 1971), 11.

¹⁶ Wheeler, *How Sex Became a Civil Liberty*, 111.

¹⁷ News Release, 31 August 1967, box 1127, folder 23, American Civil Liberties Union Records: Subgroup 2, Subject Files Series, Public Policy Papers, Princeton.

Reformers achieved the legalization of sodomy specifically between consenting adults in private in a few pockets of American law in the 1960s. Illinois was the first state to do so in 1961 in the context of a broader overhaul of the state penal code. Though the Council of Catholic Churches raised some objections to the new code's relaxation of criminal abortion laws, the decriminalization of a certain kind of gay sex did not become the object of public debate. Indeed, the historian Edward Alwood conjectures that "many legislators may not have realized that they had repealed the state's sodomy law."¹⁸ In the same decade, the legislatures of Florida, Minnesota, New York, Maryland, and other states considered and rejected similar proposals. In 1969 Connecticut became the next state after Illinois to pass such a measure.¹⁹

Early homophile activists greeted the progressive movement to legalize "sodomy" between consenting adults in private with enthusiasm, though many were reluctant to actively pursue that legal reform goal themselves. In 1957 the editors of the *Ladder*—the magazine of the Daughters of Bilitis, the first lesbian rights organization in the country—commended the ACLU for adopting a policy statement that took a stand against the denial of due process to homosexuals, failing to register the fact that the ACLU had also affirmed the constitutionality of laws criminalizing homosexual conduct.²⁰ Similarly, in 1959 Prescott Townsend—an activist with the Boston chapter of the Mattachine Society, one of the oldest homophile organizations in the country—proposed to request a member

¹⁸ Edward Alwood, *Straight News: Gays, Lesbians, and the News Media* (New York: Columbia University Press, 1996), 53. Quoted in Timothy Stewart-Winter, "Raids, Rights, and Rainbow Coalitions: Sexuality and Race in Chicago Politics, 1950–2000" (Ph.D., University of Chicago, 2009), 71. Technically, after the Illinois legislature repealed the state sodomy law, the state no longer had a law criminalizing anal and oral sex of any kind—not just between consenting adults in private. However, laws remained on the books penalizing public sex, sex involving minors, and rape.

¹⁹ William N. Eskridge Jr., "Hardwick and Historiography," *University of Illinois Law Review* 1999, no. 2, 631–702, 662–63.

²⁰ "The ACLU Takes a Stand on Homosexuality," *Ladder*, March 1957.

of the Massachusetts State Senate to introduce a bill to legalize sodomy between consenting adults in private.²¹ However, the much larger and more established New York Mattachine Society refused to “sponsor or introduce any type of legislation.” “It will be much more to our advantage,” the New York Mattachine secretary-general wrote in a letter to Townsend, “to stay in the background and work with other more general groups.”²² Although concerns about respectability and acceptance—coupled with the virulently homophobic political culture of the 1950s—prevented early homophile activists from spearheading a legal challenge to sodomy laws themselves, the homophile press reported excitedly about straight progressives who did.²³ “The Wolfenden Report: Is It a ‘Magna Carta’ for Homosexuals?” wondered an article in the November 1957 issue of the *Mattachine Review*.²⁴ The consenting adults in private standard, homophile activists hoped, would continue to spread, giving gay men and lesbians a legal way to practice their sexuality.

Though homophile activists had reason to believe that their aspiration could come to fruition, it quickly became clear that they would not get their wish right away. In the late 1950s and early 1960s the US Supreme Court ruled in favor of gay rights in three key cases. In the case *One, Inc. v. Oleson* from 1958, the Court overturned a lower court’s ruling that a homophile magazine was obscene; it did the same thing again in 1962 in a case involving three male physique magazines.²⁵ The next year, five justices rejected a ruling that had upheld the deportation of a gay alien.²⁶ In 1967, however, the Supreme

²¹ Prescott Townsend to Curtis Dewees, November 27, 1959, box 7, folders 2–4, NYPL.

²² Donald S. Lucas to Prescott Townsend, December 15, 1959, box 7, folders 2–4, Mattachine Society, Inc., of New York Records, NYPL.

²³ On the politics of the homophile movement, see D’Emilio, *Sexual Politics*, 75–128.

²⁴ “The Wolfenden Report: Is It a ‘Magna Carta’ for Homosexuals?,” *Mattachine Review*, November 1957.

²⁵ *ONE, Inc. v. Oleson*, 355 US 371 (1958); *MANual Enterprises v. Day*, 370 US 478 (1962).

²⁶ *Rosenberg v. Fleuti*, 374 US 449 (1963).

Court affirmed the deportation of Clive Boutilier, a Canadian, based on Boutilier's disclosure that he had had consensual adult gay sex in private.²⁷ In so doing, the Court effectively excluded homosexual conduct from protection under the right to privacy—a right it had just established two years earlier for married couples in the *Griswold v. Connecticut* case, which dealt with the use of contraceptives. Still, the Supreme Court had yet to address the question of the constitutionality of state sodomy laws themselves—but it would soon do so in a court battle originating in Texas.²⁸

II. Contesting the Meaning of Privacy in Texas

There was a cleft between the emerging legal argument about “consenting adults in private” and the behaviors for which the police tended to arrest gay men in the 1950s and 1960s. In fact, in the entire history of Texas's sodomy law, there was not a single reported court case, much less a conviction, involving only adults who had consensual gay sex in a private place until the arrest that provided the occasion for the 2003 court decision *Lawrence v. Texas*. Of course, this does not necessarily mean that the police *never* enforced the law against the behavior of consenting adults in private, only that those cases have been lost to posterity.²⁹ Many of the recorded court cases from this period involved sex in public, such as the 1957 case *Jones et al. v. State*, in which a Houston police officer arrested two men for having sex in a parked car, or *Sinclair v.*

²⁷ *Boutilier v. INS*, 387 US 118 (1967); Stein, *Sexual Injustice*, 57, 15–16.

²⁸ *Griswold v. Connecticut*, 381 US 479 (1965). The Supreme Court extended the right to use contraceptives to single people in 1972, and it again relied on privacy doctrine when it established the right to have an abortion in 1973. See *Eisenstadt v. Baird*, 405 US 438 (1972); and *Roe v. Wade*, 410 US 113 (1973).

²⁹ Dale Carpenter, “The Unknown Past of *Lawrence v. Texas*,” *Michigan Law Review* 102, no. 7 (2004): 1464–1527, 1474–75.

State from 1958, a case about consensual oral sex in an Amarillo theater.³⁰ Some involved rape, like the 1952 case *Gordzelik v. State*, in which a seventeen-year-old male forced a thirteen-year-old to fellate him at knifepoint.³¹ Still others entailed sex between adults and teenagers, like the 1960 case *Sartin v. State*, in which the Texas Court of Criminal Appeals—the highest court in Texas for criminal cases—upheld the sodomy conviction of an adult man for kissing and fondling the penis of a fourteen-year-old boy.³² Most, if not all, of the consensual gay sex against which the police enforced the sodomy law took place in public or semipublic spaces, involved minors, or sometimes both.³³

With this in mind, it is unsurprising that the first-ever court challenge to the constitutionality of Texas’s sodomy law was a case about public sex. On 26 May 1969 Alvin Leon Buchanan, a “confessed homosexual,” as the court record refers to him, filed a suit against Dallas Chief of Police Charles Batchelor to contest being arrested for sodomy. The police had apprehended Buchanan twice for cruising and having consensual oral sex, once in the men’s restroom of Reverchon Park, a public park in the Oak Lawn area of Dallas, and again in a restroom with enclosed commodes in the basement of a Sears & Roebuck department store. Local trial courts convicted him of both offenses and sentenced him to two concurrent sentences of five years in prison.³⁴

³⁰ Jones et al. v. State, 308 S.W.2d 48 (1957). Sinclair v. State, 311 S.W.2d 824 (1958).

³¹ Gordzelik v. State, 246 S.W.2d 638 (1952).

³² Sartin v. State, 335 S.W.2d 762 (1960).

³³ George Painter, “The History of Our Forefathers: The History of Sodomy Laws in the United States,” GLAPN: Gay & Lesbian Archives of the Pacific Northwest, accessed June 3, 2015, <http://www.glapn.org/sodomylaws/sensibilities/texas.htm>.

³⁴ Buchanan v. Batchelor, 308 F.Supp. 729 (1970); transcript of proceedings (September 8–9, 1969), The State of Texas vs. Alvin Leon Buchanan, C-69-1494-L, case files, records, Dallas Criminal District Court, TSLAC.

Had he been arrested just ten years earlier, Buchanan would almost certainly have remained in prison without a court challenge. But the late 1960s was a period of upheaval with respect to the law of sexuality, particularly in Texas. Just four years after the US Supreme Court declared that the right to sexual privacy guaranteed to married couples the right to use contraceptives, the time was ripe to find out just how far the right to sexual privacy could extend. And so a young gay lawyer in his twenties named Henry J. McCluskey, Jr. took on Buchanan's case in order to challenge the constitutionality of the sodomy law. Parallel to McCluskey's case, his good friend, another attorney named Linda Coffee, was spearheading her own challenge to the state's antiabortion statute in *Roe v. Wade*. Henry Wade, the Dallas County district attorney, who was one of the defendants in *Buchanan*, also represented the state of Texas in *Roe*.³⁵

In a stroke of inventiveness, McCluskey engineered a workaround to reconcile the fact that his client had been arrested for public sex with the fact that an argument based on the notion of sexual privacy was most likely to succeed in court. In order to prevent this contradiction from undermining his case, the attorney introduced a straight married couple as additional plaintiffs in the case alongside Buchanan. The couple, whom the *Dallas News* referred to as "Mr. and Mrs. Michael C. Gibson," had never been arrested for sodomy, but they contended that they "fear[ed] prosecution for sodomy," since Texas's sodomy law included even their (unspecified) behavior within its scope.³⁶ The attorney also added another gay male plaintiff named Travis Lee Strickland, who "claimed that Buchanan did not protect the interests of homosexuals who do not commit

³⁵ *Roe v. Wade*, 314 F.Supp. 1217 (1970). For a more thorough discussion about Linda Coffee's court challenge in *Roe*, see David J. Garrow, *Liberty and Sexuality: The Right to Privacy and the Making of Roe v. Wade* (New York: Macmillan Publishing Company, 1994), 398–404.

³⁶ "Ruling on Sodomy Appealed," *Dallas News*, April 22, 1970.

acts of sodomy in public places but fear future prosecution because of acts committed in private.”³⁷ In 1970 a three-judge federal panel agreed in part with the legal arguments that McCluskey had mounted. Ignoring the fact that the complaint originated with Buchanan, the panel ruled that the sodomy law was unconstitutional because it “operate[d] directly on an intimate relation of Michael Craig Gibson and Jannet [sic] Gibson, husband and wife, and the class they represent.”³⁸ Sodomy in Texas was now legal, not because the judges believed that the state had unfairly criminalized gay sex but because they thought that the law violated the right of married heterosexuals to sexual privacy. Nonetheless, the effect of the ruling was to strike down the law entirely.

The court’s invalidation of the sodomy law meant that oral and anal sex and even bestiality were now technically legal in any context, not just between consenting adults in private. Recognizing this, lawmakers at the local level passed new legislation to fix the problem. Soon after the federal panel’s ruling, the Dallas City Council hastily passed City Ordinance No. 12844, which prohibited sodomy, defined as oral or anal copulation, “in a public place,” as well as soliciting another person in public to have sex in public. The ordinance did not, however, target homosexual sodomy in particular, and it did not prohibit the practice of asking somebody in public to go commit sodomy in a private place. In other words, it is quite possible that Dallas might have been the first local jurisdiction in the country to pass a law that regulated sodomy according to the consenting adults in private principle.³⁹

³⁷ Buchanan v. Batchelor, 308 F.Supp. 729 (1970).

³⁸ Ibid.

³⁹ A journalist for the gay magazine the *Los Angeles Advocate* conjectured that the Dallas city ordinance “may be America’s first city ‘consenting adult’ law” (“Dallas Plugs Hole with Own Sodomy Law,” *Los Angeles Advocate*, April 1970).

Subsequently, other locales passed similar measures. Between 1971 and 1974 six more states legalized consensual sodomy following the Model Penal Code's recommendation; except for Hawaii, all of those states also passed new laws criminalizing loitering in order to solicit others to commit homosexual sodomy. The exclusion of public conduct from protection in these new laws is exactly what homophile activists predicted would happen in the 1960s when discussing sodomy law reform with the ACLU. In his critique of the organization's 1967 policy statement about homosexuality, which recommended the decriminalization of "sodomy" between consenting adults in private, the gay rights activist Frank Kameny warned that "the police in many communities are skipping over laws barring homosexual practices and using anti-solicitation laws."⁴⁰ When the Colorado legislature adopted a new penal code in 1971, for example, it legalized sodomy between consenting adults in private—but simultaneously enacted a new law forbidding loitering in a public place "for the purpose of engaging in or soliciting another person to engage in prostitution or deviate sexual intercourse." Unlike the Dallas ordinance, the Colorado law apparently applied even to instances of solicitation to have gay sex in private. After the new penal code took effect in July 1972, the Denver police continued to arrest gay men, not for sodomy this time but for "lewd acts," "indecent acts," or "behaving in a lewd, wanton, or lascivious manner."⁴¹ At the same time as legislators passed laws that made the state more tolerant of some kinds of homosexual behavior, they also made it more repressive of others.

Despite these moves toward decriminalizing private acts, more conservative forces like Dallas County District Attorney Henry Wade believed that sodomy should not

⁴⁰ Quoted in Stein, *Sexual Injustice*, 163.

⁴¹ Eskridge, *Dishonorable Passions*, 177–79.

be legal in any context. Wade filed an appeal with the US Supreme Court of the three-judge panel's ruling in the *Buchanan* case, arguing that sodomy did not warrant protection under the right to privacy because of the harm it caused to the institution of marriage. "Sodomy in marriage often leads to revulsion and divorce. Many women have taken the witness stand in divorce cases and testified as grounds for divorce that they were forced to submit to unnatural sex acts." In addition to sodomy's deleterious effect on marriage, Wade continued, decriminalizing sodomy would establish legal precedent that could lead to the decriminalization of other, even more harmful conduct like "smok[ing] pot or peyote" or "murder committed in the privacy of a bedroom during a lover's [sic] quarrel."⁴² According to District Attorney Wade, lifting the legal prohibition on sodomy, even just for married heterosexuals, would lead down a slippery slope to the disintegration of law and order more generally.

Buchanan's attorney, Henry McCluskey, had originally complained that while he had received some financial support from Dallas's Circle of Friends, the first homophile organization in Texas, founded in 1966, the Dallas gay community had in general been disappointingly indifferent to the case.⁴³ That changed once it became apparent that the case might go to the Supreme Court. The nationally distributed gay periodical the *Los Angeles Advocate* advertised an appeal for funds to help pay for the legal fees of the cross-appeal with the Supreme Court; "Dallas sodomy case is now the most important one ever," read the fundraiser's headline.⁴⁴ Attorney and professor Walter Barnett of the University of New Mexico law school, who was a pioneering legal scholar in the area of sexual civil liberties, handled the cross-appeal in collaboration with the ACLU. He

⁴² "Wade Appeals Sodomy Ruling to High Court," *Dallas News*, August 6 1970.

⁴³ "Circle of Friends Did Support Buchanan, President Replies," *Advocate*, May 13–26, 1970.

⁴⁴ "Dallas Sodomy Case Is Now the Most Important One Ever," *Advocate*, May 13–26, 1970.

warned readers of the *Advocate*, “If the United States Supreme Court reverses this decision and upholds the constitutionality of this statute of Texas, the cause of law reform all over the United States will have been set back for our lifetime.”⁴⁵

Now that it was apparent that a case from Texas could determine the fate of gay rights in the United States as a whole, the national gay movement got involved. The North American Conference of Homophile Organizations (NACHO), a consortium of local gay rights groups, filed a motion with the US Supreme Court for permission to submit a friend-of-the-court brief in the case. NACHO argued that the state of Texas “may not constitutionally make a crime of sexual conduct that occurs in private between consenting, competent adults, whether or not it is procreative in nature, and that the State of Texas, although it may validly regulate such conduct occurring in public places, may not in doing so discriminate against homosexuals or impair general rights of privacy.”⁴⁶ By framing their legal argument broadly to include the decriminalization of gay conduct, activists transformed *Buchanan* into the most significant challenge to a state sodomy law that the gay movement had ever conducted.

The publicity surrounding the *Buchanan* case provoked a spike in concern in the mainstream press about gay male public sexual culture, as well as an increase in police repression of that culture. At the same time, the responses to the case demonstrated a growing indifference on the part of mainstream society to homosexual sex performed in private between consenting partners. Concerned that decriminalizing sodomy would cause homosexuality to spread in society, an editorial in the *Dallas News* proposed that

⁴⁵ Ibid. Barnett published his book *Sexual Freedom and the Constitution: An Inquiry into the Constitutionality of Repressive Sex Laws* with the University of New Mexico Press in 1973. “Barnett Book Will Be Landmark in March for Sexual Freedom,” *Advocate*, July 4, 1973.

⁴⁶ Motion of North American Conference of Homophile Organizations for Leave to File Brief as Amicus Curiae and Brief Amicus Curiae, *Wade v. Buchanan*, 401 US 989 (1971).

the “next Texas Legislature should write another statute, omitting the ‘privacy’ angle and concentrating on homosexuals who collect in public places and influence others.”⁴⁷ The paper seemed less interested in policing private sexual conduct, even on the part of lesbians and gay men, and more focused on the visibility and erotic life of gay communities in public.

In March 1971 the US Supreme Court held in an 8–1 decision that the federal panel that had voided the sodomy law did not have the authority to do so. Because his lawyers had filed a lawsuit in a federal district court, the Court argued, Buchanan had not exhausted all possible remedies in the state courts by facing trial and then appealing to the state courts of appeal after being convicted. The high court therefore remanded the case to the state level on procedural grounds.⁴⁸ Taking advantage of this delay, District Attorney Wade launched a new crackdown on gay sex in public. The Dallas police’s vice squad assigned seven officers full-time to “sodomy and pornography arrests” and between March and July 1971 filed more than twenty cases with the district attorney’s office for sodomy arrests in particular, most of which were brought against people who had committed acts in public restrooms at White Rock Lake and Lee Park.⁴⁹ During the same period, the state resumed its prosecution of Buchanan, resulting in a conviction that the Texas Court of Criminal Appeals then affirmed in July.⁵⁰

Sodomy was now illegal again in Texas, and the public controversy and police repression that *Buchanan* had inspired transformed the issue of sex in public into a

⁴⁷ “Homosexuals and the Law,” *Dallas News*, January 23, 1970.

⁴⁸ “Sodomy Ruling Sent Back,” *Austin Statesman*, March 30, 1971.

⁴⁹ “Sodomy Prosecutions Have Been Renewed,” *Dallas News*, July 13, 1971; “Dallas DA Goes All Out on Traffic in Public Toilets,” *Advocate*, August 18, 1971.

⁵⁰ *Buchanan v. State*, 471 S.W.2d 401 (1971); Thomas F. Coleman, “Procedure and Strategy in Gay Rights Litigation,” *New York University Review of Law and Social Change* 8 (1978–79): 317–23.

liability for the gay movement's effort to reform sodomy laws. Nevertheless, the case also inspired future activists to consider how private conduct might be instrumentalized as a possible site for the decriminalization of gay sex.

III. The Invention of "Homosexual Conduct"

Though their court challenge had failed, gay activists still had at their disposal the alternative strategy of reforming Texas's sodomy law through the legislature. In Dallas, the Circle of Friends collaborated with left-leaning Christian allies in order to coordinate a letter-writing campaign to the chairman of the bar committee that the legislature had established in 1965 to oversee the revision of the state's penal code.⁵¹ In 1967 the chairman, Dean Page Keeton of the University of Texas Law School, met with representatives of the Circle of Friends during a visit to Dallas. In keeping with the recommendation of the American Law Institute's Model Penal Code, Keeton agreed to include a provision in the penal code revision proposal that "all sexual acts between consenting adults in private be outside the purview of the law."⁵² The Circle of Friends—which organized frequent events with a number of left-leaning Christian groups like Dallas's Munger Place Methodist Church—planned to pay the expenses of "one or more of our minister friends" to travel to Austin to represent them when the bar committee considered the proposal.⁵³ The support of mainstream liberals like Dean Page Keeton

⁵¹ Circle of Friends newsletter, October 1967, box 65, folder 13, Resource Center LGBT Collection, Series 2: Phil Johnson Collection, Sub-Series 1: Personal Collection, AR0756, UNT; Randy Von Beitel, "The Criminalization of Private Homosexual Acts: A Jurisprudential Case Study of a Decision by the Texas Bar Penal Code Revision Committee," *Human Rights* 6, no. 1 (1976): 23–74, 24–30.

⁵² Circle of Friends newsletter, October 1967, box 65, folder 13, Resource Center LGBT Collection, Series 2: Phil Johnson Collection, Sub-Series 1: Personal Collection, AR0756, UNT.

⁵³ *Ibid.* On the role that the Christian Left played in the rise of gay rights, see Heather Rachele White, *Reforming Sodom: Protestants and the Rise of Gay Rights* (Chapel Hill: University of North Carolina

gave activists reason to hope that their goal of decriminalizing gay sex between consenting adults in private might yet be realized.

One of the biggest obstacles standing in the way of that goal was the myth that gays were predisposed to molest children, a slander that gay activists tried to counter by appealing to like-minded liberal law reformers and mental health professionals. Circle of Friends cofounder Phil Johnson complained in the organization's newsletter that conservative Christians helped perpetuate the stereotype. An article in the popular Christian magazine the *Plain Truth*, which circulated to 1.4 million readers in five languages, had claimed in its September 1968 issue that homosexuals were, as Johnson paraphrased it, "waging a determined campaign to seek out, seduce, and 'convert' to this loathsome perfersion [sic] CHILD 'converts.'" "Most homosexuals," he retorted, "prefer to be intimate with those of about their own age—as heterosexuals prefer."⁵⁴

The myth of the gay child molester was also a central concern at a 1970 conference about homosexuality that was sponsored by a group called the Dallas Young Adult Institute and took place at the First Presbyterian Church in the same city. In a lecture entitled "What Is Homosexuality?" the psychiatrist Dr. Jerry Lewis disputed the simplistic claim that adult homosexuals converted children to homosexuality by seducing and molesting them, concluding that there was "much to suggest at the present time that sexual activity between consenting adults in private is not [should not be] a legal matter."⁵⁵ Most lawmakers were unlikely to agree, however. As Dean Page Keeton, who attended the conference, forecast, while the penal code revision committee might be

Press, 2015); and Anthony M. Petro, *After the Wrath of God: AIDS, Sexuality, and American Religion* (New York: Oxford University Press, 2015).

⁵⁴ Circle of Friends newsletter, September 1968, box 65, folder 13, Resource Center LGBT Collection, Series 2: Phil Johnson Collection, Sub-Series 1: Personal Collection, AR0756, UNT.

⁵⁵ Martha Man, "Little Change Seen in Texas Law on Sodomy," *Dallas Times-Herald*, April 19, 1970.

convinced to reduce the penalty for sodomy from a felony to a misdemeanor, it was highly unlikely that they would “eliminate homosexuality [between consenting adults in private] as an offense.”⁵⁶ Law reformers’ proposal to legalize gay sex specifically for consenting *adults* in private was designed to address the concern that homosexuality was harmful to minors. Even so, the myth of the gay child molester incoherently but powerfully detracted from that goal.

The conviction on the part of a critical mass of state officials that homosexuality was dangerous led the committee responsible for drafting a new penal code to reconstruct the sodomy law to prohibit gay sex only. In a survey he conducted through personal interviews with the bar committee members, the legal scholar Randy Von Beitel found that members opposed decriminalizing gay sex between consenting adults in private because they thought such a move would lead to the decriminalization of other, more harmful behaviors, resulting particularly in “more children being preyed upon by homosexually-oriented pedophiliacs” and “more homosexual acts being committed in public places.”⁵⁷ Others worried that removing criminal sanctions on gay sodomy would result in the legislature rejecting the new penal code altogether.⁵⁸ For these reasons, once the *Buchanan* case had been resolved, the bar committee recommended that “deviate sexual intercourse with another individual of the same sex” remain criminal, now as a misdemeanor instead of a felony, while heterosexual sodomy be legalized.⁵⁹ With the reconstructed “homosexual conduct” statute in place, Governor Dolph Briscoe signed the new penal code into law on June 14, 1973.

⁵⁶ Ibid.

⁵⁷ Von Beitel, “Private Homosexual Acts,” 46, 43.

⁵⁸ Ibid., 53.

⁵⁹ Ibid., 32.

As Dean Page Keeton put it, the new homosexual conduct law was “better than nothing.” The argument that gay sex practiced by consenting adults in private was a victimless crime had at least convinced lawmakers to reduce gay sodomy from a felony crime carrying two to fifteen years in prison to a misdemeanor that entailed no jail time and a maximum fine of \$200—not a total decriminalization of gay sex, then, but close. Unfortunately, however, the police could still arrest gay men, perhaps even more easily now, by using the new penal code’s public lewdness law, which prescribed up to a year in jail and/or a maximum fine of \$2,000.⁶⁰ And unlike the sodomy law that preceded it, the homosexual conduct law now singled out gays and lesbians as a specific class of people whose sexual behavior disqualified them from full citizenship, in effect defining them as potential or actual criminals. Such a disqualification compounded the social stigma of homosexuality and homosexual sex. In future court challenges, gay rights attorneys had to come up with new strategies to contest the newly explicit conflation in the law of deviance with homosexuality itself.

IV. Conclusion

Together, the outcomes of the *Buchanan* decision and the creation of the “homosexual conduct” law made it clear to gay activists that gay men’s public sexual culture was giving homosexuality a bad reputation in the battle to legalize gay sex between consenting adults in private. The social stigma attached to promiscuous gay male public sexual culture helped lead to the creation of the homosexual conduct law and the new, explicitly homophobic, mode of legal discrimination against gay men and lesbians that it enacted. However, it was not only the stigma associated with public sex that provided

⁶⁰ “Texas Reform: Better Than Nothing?,” *Advocate*, April 14, 1971.

conservatives with a way of re-stigmatizing homosexuality; the myth of the gay child molester also played a key role. The next chapter turns to a deeper consideration of political and legal battles over the myth of the gay child molester, and over issues of age, sex, and consent more broadly.

Chapter 3: Challenging the Myth of the Gay Child Molester

In 1978, the Boston/Boise Committee—a gay protest group that activists had formed the year before in response to a series of police crackdowns on gay male sexual culture in Boston—commissioned the drafting of an amicus brief in defense of “adolescent consent to sexual activity.”¹ Written by committee member John Ward, a young gay attorney in Boston, the brief argued that laws enforcing the age of consent did more than protect children from unwanted sex; they also punished sex that young people *did* want but were forbidden by law from experiencing. Though the Massachusetts legislature had reformed the legal definition of rape in 1974, one thing had stayed the same: a “mere showing of non-age” was enough evidence to prove rape of a minor in court. Courts, Ward argued, should “recognize mature minors have the right to engage in private consensual activity if they have the requisite understanding to understand the nature and consequences of the acts involved.”²

Alongside its challenges to public lewdness and “sodomy” laws, the other major body of sex crime law that gay liberation activists sought to reform were the laws criminalizing sexual activity involving a legal minor. In the 1950s and ’60s, police departments and other state agencies widely viewed homosexuality as inherently related to, as well as a cause of, child sexual abuse, or “child molestation” in the parlance of the

¹ Boston/Boise Committee to Friends, July 4, 1978, Boston/Boise Committee Collection, History Project.

² Age of Consent amicus brief, box 1, Boston/Boise Committee Collection, History Project. Boston-Boise Research on Age of Consent Laws, box 1, folder: “Boston/Boise Committee Records and Flyers, 1977–1978,” Boston/Boise Committee Collection, Collection, History Project.

time. Indeed, the myth that homosexuals were predisposed to be pedophiles who abused children played a key role fueling the many antigay crackdowns that occurred at the local level all around the country during this period, from Boise, Idaho, to Ann Arbor, Michigan.³ Judges in states all around the country had gay men and trans and gender non-conforming people committed to mental institutions as “sexual psychopaths” by stereotyping them as a threat to children, even though in many cases there was no evidence that the men in question had even ever had contact with a minor.

The consequences of the myth of the gay child molester extended beyond the sphere of the criminal justice system, affecting gays and lesbians in ways that had nothing to do with children. By attributing a psychopathological status to gays and lesbians, it underpinned the idea that homosexuals threatened the public order and fueled many kinds of antigay discrimination. Opponents of homosexuality deployed the myth in order to justify everything from the suppression of gay bars and other queer public institutions to the expulsion of hundreds of employees who were suspected of being lesbian or gay from the federal government.⁴

The emergence of the gay and women’s movements in the 1950s, ’60s, and ’70s destabilized the midcentury official consensus that lesbians and gays threatened children, throwing the branch of the carceral state concerned with punishing sex crimes involving children and teenagers into a crisis of legitimacy. The flurry of social movement activity during this period produced a moment of contingency in which it was not clear what system would replace the one that came before. Activists competed to promote three different paradigms—the gay rights paradigm, the liberation paradigm, and the child

³ Daniel Tsang, “Gay Ann Arbor Purges,” *Midwest Gay Academic Journal* 1, no. 1 (1977): 13–19.

⁴ Johnson, *Lavender Scare*.

protection paradigm—for how to reform the way in which the American state regulated and punished sexual conduct involving young people.

The *gay rights* paradigm has its roots in the homophile movement of the 1950s and refers to the group of gay activists, straight liberals, feminists, religious leaders, and other progressives who aimed to combat the myth of the gay child molester and the myriad ways in which it facilitated discrimination against gays and lesbians as a class of people. Most gays and lesbians, the activists who espoused this position argued, had nothing to do with child molestation and should not be targeted by the state as such. For decades, psychiatrists and legal scholars had criticized that the laws relied on a faulty, overly broad notion of “psychopathology” and were often used to punish harmless homosexual conduct. In part due to the success of this argument, most states repealed their sexual psychopath statutes or allowed them to fall into disuse in the 1970s. At the same time, gay activists challenged stigmatizing representations of gay child molesters on TV, and lesbian mothers and gay fathers challenged the way in which the myth of the gay child molester reinforced legal discrimination in the areas of parenting and custody rights.

Though they were not a coherent group, what the activists associated with what I am calling the *liberation* paradigm all had in common was their desire to claim some form of sexuality involving young people as queer, oppressed, and worthy of being defended. Chief among these activists were teenagers themselves who participated in the nascent youth liberation movement. In New York City, Ann Arbor, and other cities, youth liberation activists—many of whom were in high school—agitated on their own behalf for, as they put it in a manifesto from 1974, “the power to determine our own

destiny” and “sexual self-determination.”⁵

Alongside youth liberation activists, feminists were in the vanguard of the movement to open up new sexual rights for young people. Radical feminists such as the activist-intellectual Kate Millett argued that the nuclear family was a locus of patriarchal oppression that gave men control over women and children, and that the social organization needed to be transformed in order to give women and children self-determination, including sexual self-determination.⁶ Other feminists fought on the behalf of the sexual rights of teenagers in particular. In 1978, anti-rape feminists in New Jersey managed to pass a short-lived reform that lowered the age of sexual consent to 13, in an effort to reduce the number of teenagers being criminalized for non-coercive sexual conduct.

The movement for the sexual rights of young people intersected with a nascent international pedophile rights movement that sought to de-stigmatize adult sexual desire for young people (and vice-versa), as well as sexual contact between young people and adults. Pedophile rights organizations in the Netherlands, France, Germany, the U.K., and elsewhere, with the support of some prominent allies, called for age-of-consent laws to be repealed entirely. Inspired by the gains that the gay rights movement had made fighting the pervasive stigma attached to homosexual behavior, the pedophile rights movement sought to extend the project of de-stigmatization to the sexuality of young people and the adults who loved them. As the queer activist-intellectual Gayle Rubin put it in 1978, “a veritable parade out of Krafft-Ebing has begun to lay claim to legitimacy, rights, and

⁵ “Youth Liberation 15 Point Program,” *FPS: the Youth Liberation news service* 35 (1974): leaflet insert.

⁶ Mark Blasius and Kate Millett, “Sexual Revolution and the Liberation of Children,” in *The Age Taboo*, 80–83. This interview, which was originally untitled, first appeared in “Loving Boys,” *Semiotext(e) Special*, Intervention Series #2, Summer 1980.

recognition.”⁷

Activists on the left who were interested in liberalizing the laws governing sexual activity involving children and/or teenagers faced a formidable new opponent in the form of a rapidly emerging movement devoted to protecting children from sexual abuse—what I call the *child protection* paradigm. In 1974, feminists secured reforms to rape laws at the state and federal levels that, among other things, made statutory rape laws gender-neutral, transforming boys into legally recognizable victims of sexual assault alongside girls for the first time. Entrepreneurial social activists dedicated to the issue of child protection, such as the lawyer and psychiatrist Judianne Densen-Gerber, founder of the New York-based drug treatment program Odyssey House, lobbied the U.S. Congress to address what they argued was a problem of epidemic proportions. The news media helped to promote this impression, too. As the National Broadcasting Company (NBC) claimed in a news segment from May 23, 1977, “It’s been estimated that as many as two million American youngsters are involved in the fast growing, multi-million-dollar child-pornography business.”⁸ Law enforcement officials were another key set of actors driving the rise of the child protection movement, such as the LAPD’s Lloyd Martin, who helped found the department’s Sexually Exploited Child Unit (SECU) in 1976.

In 1977, a homophobic offshoot of the child protection movement erupted in U.S. popular and political culture seeking to revive the myth that homosexuals were dangerous to children. On May 15–18, 1977, the *Chicago Tribune* published a series of four sensational articles about child pornography, one of which claimed that “a nationwide homosexual ring with headquarters in Chicago has been trafficking in young boys,

⁷ Rubin, “Sexual Politics.”

⁸ Quoted in Joel Best, *Threatened Children: Rhetoric and Concern about Child-Victims* (Chicago: University of Chicago Press, 1993), 98.

sending them across the nation to serve clients willing to pay hundreds of dollars for their services.”⁹ The same year, the gospel singer Anita Bryant launched a campaign called “Save Our Children”, which overturned a gay rights ordinance in Dade County, Florida, by portraying gays and lesbians as child predators.

Unlike in the 1950s, the spike in concern about homosexual child molesters of the late 1970s was met with a resistance organized by gay liberation activists in Boston. Along with certain working-class neighborhoods in Baltimore—in which adolescent boys typically enjoyed more personal freedom than many middle-class ones—Revere, a nearby suburb of Boston, was home to a subculture of cross-generational sex between adult men and teenage boys.¹⁰ It was the police crackdown on that subculture starting in late 1977 that precipitated the formation of the Boston/Boise Committee, which, like the international pedophile movement that preceded it, attacked the legal system that excluded all young people from the world of lawful sexuality. More than anything else, the political struggle that broke out in Boston would come to fundamentally shape the trajectory of the movement to liberalize laws governing sexual activity involving young people.

I. Policing Homosexuals as “Boy Molesters”

The myth of the gay child molester reached its zenith in the 1950s, when police departments all around the country conducted a series of isomorphic crackdowns on gay men—often without regard to whether or not they had even had sex with an underage

⁹ “Chicago Is Center of National Child Porno Ring,” *Chicago Tribune*, May 16, 1977. “2 Seized in Child Sex Ring,” *Chicago Tribune*, May 15, 1977. “How Ruses Lure Victims to Child Pornographers,” *Chicago Tribune*, May 17, 1977. “Federal Agents Raid Porno Book Stores,” *Chicago Tribune*, May 18, 1977.

¹⁰ On the Baltimore subculture, see Tom Reeves, “Loving Boys,” in *The Age Taboo: Gay Male Sexuality, Power and Consent*, ed. Daniel Tsang (Boston: Alyson Publications, 1981), 25–37.

boy. One of the most tyrannical of them took place in Boise, Idaho, in 1955. On Halloween of that year, Boise police officers arrested a shoe repairman named Ralph Cooper, a clothing store clerk named Vernon H. “Benny” Cassel, and a freight line worker named Charles Brokaw on charges of “lewd and lascivious conduct with minor children under the age of 16.” According to the county probation officer Emery Bess, as the *Idaho Daily Statesman* quoted him in its coverage of the arrest on November 2, Cooper, Cassel, and Brokaw were just the tip of the iceberg of a “homosexual ring” involving “about 100 boys.” The next day, an inflammatory editorial in the *Statesman* entitled “Crush the Monster” called for the government to wipe out the scourge that was, allegedly, besieging the city of Boise:

It’s bad enough when three Boise men, overhauled and accused as criminal deviates, are reported to have confessed to violations involving 10 teen-age boys; but when the responsible office of the probate court announces that these arrests mark only the start of an investigation that has only “scratched the surface,” the situation is one that causes general alarm and calls for immediate and systematic cauterization.

Time magazine echoed in December, “Recently, Boiseans were shocked to learn that their city had sheltered a widespread homosexual underworld that involved some of Boise’s most prominent men and had preyed on hundreds of teen-age boys for the past decade.”

In his investigation of the case, published in the 1965 book *The Boys of Boise*, the journalist John Gerassi showed that the allegations of a large-scale “homosexual ring,” as the police and the press had claimed, were false. Really, the situation amounted to some adult men who had paid not more than a handful of “juvenile delinquents” for sex. The

state legislature had vowed to provide the boys with “treatment,” but the funding never materialized. By the time the police investigation wound down in 1957, over a dozen men had been convicted of gay sex offenses and were sentenced to terms ranging from probation to life in prison; some of them were accused of having sex only with other adults. The construction of the homosexual scandal in Boise by the media and law enforcement exploited the specific issue of gay sex involving minors in order to discredit gay people as a whole.¹¹

Sometimes the police punished the boys themselves for getting involved in a homosexual liaison, even though the stated goal of the anti-homosexual police campaigns was to protect underage boys from predatory gay men. The 1961 social guidance film *Boys Beware* is instructive in this regard. Commissioned by the school district and police department of the Los Angeles suburb of Inglewood, the short film opens with the story of a boy named Jimmy who, on his walk home from playing baseball with his pals, hitches a ride home from an adult man named Ralph. Over the next few weeks, Ralph befriends Jimmy and treats him to fun activities like getting a Coke at the drive-in and going fishing. Soon, though, Jimmy realizes that “payments were expected in return” when, one day, Ralph brings him to a motel, in order, one assumes, to have sex. It turns out, the narrator explains, that Ralph is “sick” and “a homosexual”—“a person who demands an intimate relationship with members of their own sex.” After Jimmy finally discloses his secret relationship to his parents, they take him to the “juvenile authorities,” and Ralph is arrested while Jimmy is put on probation. The fact that Jimmy receives punishment, too, for his illicit tryst with Ralph suggests that the police were invested in

¹¹ John Gerassi, *The Boys of Boise: Furor, Vice, and Folly in an American City* (New York: Macmillan, 1966), ix, xv, 2–4.

more than just protecting innocent boys from predatory adult gay men. Rather, the police were prepared to punish both men and boys in order to protect society from the scourge of homosexuality, which they believed was an infectious “sickness of the mind” that was transmitted via sexual contact between adult men and impressionable young boys. The police were safeguarding norms for proper masculine sexual conduct under the guise of protecting innocent children from harm.¹²



Figure 1: Screenshot of the social guidance film *Boys Beware*
The homosexual predator Ralph shows pornographic pictures to his boy-prey, Jimmy.

The federal government justified the disqualification of gays and lesbians from employment by associating homosexuality with the sexual practice of preying on youth. Such was the claim of a 1950 U.S. Government Report entitled *The Employment of Homosexuals and other Sex Perverts in Government*. The report was the product of an investigation by the U.S. Senate Appropriations Committee during what the historian David K. Johnson terms the Lavender Scare—a corollary of the Red Scare—in which government agencies sought to purge homosexuals alongside communists from their ranks after World War II.¹³ “One homosexual can pollute a Government office,” the

¹² Sid Davis, “Boys Beware,” accessed September 2, 2015, http://archive.org/details/boys_beware.

¹³ Johnson, *The Lavender Scare*. See also Stacy Braukman, *Communists and Perverts under the Palms: The Johns Committee in Florida, 1956–1965* (Gainesville: University Press of Florida, 2012).

report asserted, because homosexuals “will frequently attempt to entice normal individuals to engage in perverted practices. This is particularly true in the case of the young and impressionable people who might come under the influence of a pervert.”¹⁴ By conflating one form of sex deviance (homosexuality) with another, even more menacing one (predation, recruitment), the myth of the gay child molester provided a way of demonizing lesbians and gays in order to render them ineligible for federal employment.

Psychiatrists helped promote the idea that homosexuality was harmful to minors by arguing that childhood was the period when individuals were mis-socialized into being gay. In the early twentieth century, the Viennese sexologist Sigmund Freud theorized that same-sex attraction was a normal phase that children went through before their “object choice” found “its way to the opposite sex” in mature, heterosexual adulthood.¹⁵ In a spin on Freud’s theory of child sexual development, the American psychoanalyst Irving Bieber claimed in his 1962 book *Homosexuality: A Psychoanalytic Study of Male Homosexuals* that homosexuality was the “outcome of exposure to highly pathologic parent-child relationships and early life situations.” Based on questionnaires filled out by 77 psychiatrists, Bieber concluded that male homosexuality was not inborn but caused by mothers who formed “close-binding” intimate relationships with their sons, alongside fathers who were detached or hostile. Parents, in other words, made their kids gay by rearing them into improper gender roles. Since homosexuality was a trait that people learned as children, it could be unlearned through “reconstructive treatment” that helped

¹⁴ United States Congress Senate Committee on Expenditures in the Executive Departments, *Employment of Homosexuals and Other Sex Perverts in Government* (Washington, D.C.: Government Printing Office, 1950), 4.

¹⁵ Sigmund Freud, *Three Essays on the Theory of Sexuality* (New York: Avon Books, 1962), 133.

gay patients to resolve “irrational fears of heterosexuality.”¹⁶ For psychoanalysts like Bieber, childhood was a precarious time when individuals were uniquely vulnerable to becoming gay.

The wave of new sex offender laws that states around the country enacted at midcentury reflected the assumption that homosexuality and child molestation were related. That assumption disrupted or ruined the lives of 20 gay men whom the police rounded up in Sioux City, Iowa, in 1955 following the kidnapping and murder of an eight-year-old boy named Jimmy Bremmers. The men, who had nothing to do with the murder, were judged to be sexual psychopaths and incarcerated at the state’s mental hospital in Mount Pleasant. A person judged to be a sexual psychopath faced commitment to a state hospital for “treatment” for an indefinite period of time.¹⁷ Because the sex psychopath statutes fell under the purview of civil, as opposed to criminal, law, “patients” did not have the ability to challenge their conviction as they could have if they had been charged with a plain old crime.¹⁸ Some of the men in the Iowa case remained confined for almost 20 years.

In Massachusetts, too, the stereotype of the gay child molester made gay men as a class of people vulnerable to criminalization under the state’s sexual psychopath statute. After it was enacted in 1947, Massachusetts’s sexual psychopath law quickly fell into disuse for most of the 1950s. By 1961, though, the state hospital in the town of Bridgewater housed 45 “sexually dangerous persons,” as a revision to the law had

¹⁶ Irving Bieber et al., *Homosexuality: A Psychoanalytic Study of Male Homosexuals* (New York: Basic Books, 1962), 173, 79–80, 114–15. All quotations are quoted in Ronald Bayer, *Homosexuality and American Psychiatry: The Politics of Diagnosis* (New York: Basic Books, 1981), 15–40.

¹⁷ Neil Miller, *Sex-Crime Panic: A Journey to the Paranoid Heart of the 1950s* (Los Angeles: Alyson Books, 2002).

¹⁸ Charles W. Tenney, Jr., “Sex, Sanity, and Stupidity in Massachusetts,” *Boston University Law Review* 42, no. 1 (1962): 1–31, esp. 9–24.

renamed them in response to criticism from legal scholars that “psychopath” was not a valid legal construct. Of those patients, about a third were found guilty of sex acts with minors, ten of rape, five of “carnal abuse,” and three of sodomy.¹⁹ Some of the patients were doing time for gay sex involving minors, such as Robert Condon, who was deemed to be “sexually dangerous” in 1959 for having sex with a 15-year-old boy.²⁰ It is likely, though, that other patients at the Bridgewater facility had been convicted of gay sex acts only with other adults. As a psychiatrist who worked with sex offenders put it, while some judges might view gay sex between consenting adults in private as “abnormal, but nothing to get all stirred up about,” others would “immediately dispatch such cases to Bridgewater.”²¹ As was the case in Boise, Idaho, and in Sioux Falls, Iowa, in Massachusetts even gay men who had sex only with other adults were vulnerable to criminalization because of the myth that all gay men were actual or potential boy molesters.

The press contributed to the construction of homosexuality as fundamentally related to child molestation through the rhetorical trope of “homosexual rape.” The *Boston Globe* used this phrase over and over again in a series of exposés about “abused delinquents” at the Bridgewater state hospital—the same facility that housed people committed as “sexually dangerous persons”—in the late 1960s.²² A public scandal had erupted over Bridgewater in 1967 in response to a documentary film called *Titicut Follies* that gave the outside world an insider’s view of the institution. In addition to drawing

¹⁹ Ibid.

²⁰ Tom Reeves, “The Hidden Oppression: Gay Men in Prison for Having Sex With Minors,” *Gay Community News*, December 13, 1980.

²¹ Jean Dietz, “Sex Offender a Local Problem,” *Boston Globe*, June 14, 1966.

²² “Abused Delinquents,” *Boston Globe*, December 20, 1968. Jean Dietz, “Panelists Call Youth Service Board ‘Outrage to Human Dignity,’” *Boston Globe*, December 19, 1968.

attention to the miserable conditions at Bridgewater, the film included interviews with patient-inmates housed in the Sexually Dangerous Persons unit; one of them described the sexual assaults he had committed against young children, including his own daughter. The conditions of Bridgewater's Juvenile Guidance wing, the exposés echoed, were "nothing short of stomach-turning": month-long placements in solitary confinement and "gang homosexual assaults on young boys."²³ "Gang homosexual rapes are the lot of every slightly built young man who enters these institutions," asserted another article, while a third said that Bridgewater was populated by men who "repeatedly indoctrinate boys in homosexual practices."²⁴ Through rhetoric that associated homosexuality with dangerous psychopaths and child molesters, or both, press accounts implied that there existed a fundamental link between homosexuality and harm—that homosexuality itself caused harm.

The stereotype of the gay child molester underpinned campaigns to suppress one of the Boston gay community's key social institutions: gay bars. Between 1938 and 1966, anyone seeking an entree into Boston's gay community could pick up a copy of a local tabloid called the *Mid-Town Journal*. Edited by the former acrobatic dancer and burlesque performer Frederick Shibley, the newspaper gave readers the latest dish about prostitution, homosexuality, murder, and many other goings-on in Boston's South End.²⁵ In July 1965, the journal reported that the Boston city councilor Frederick C. Langone had proposed to crack down on the "queer hangouts" in the city's Cove area. "We must

²³ David B. Wilson, "Some 'Titicut' Patients Filmed Against Orders, Says Dr. Kozol," *Boston Globe*, October 20, 1967.

²⁴ "Titicut Follies: A Grotesque Invasion," *Boston Herald Traveler*, October 20, 1967. Jean Dietz, "Sex Offender a Local Problem," *Boston Globe*, June 14, 1966.

²⁵ *Improper Bostonians: Lesbian and Gay History from the Puritans to Playland* (Boston: Beacon Press, 1998), 148.

uproot these joints so the innocent kids won't be contaminated," Langone warned in a speech before the city council. "The people don't want to discuss this, but we can't bury our heads in the sand and we can't condone it any longer."²⁶ The city council unanimously upheld the order Langone submitted calling for an investigation of the numerous cafes and bars that catered to gay men and lesbians.²⁷ In addition to justifying the criminalization of gay sex, the exclusion of gay men and lesbians from employment, and police witch hunts targeting gay men, the stereotype of the gay child molester was a key engine driving the repression of gay culture.

Like other major cities around the country, Boston had a chapter of the Mattachine Society in the 1950s, and activists with this early homophile organization contested the circulation of the stereotype of the gay child molester in popular culture. Founded with the assistance of members of the New York Mattachine chapter, the first meeting of the Boston one took place on Sunday, October 27, 1957.²⁸ In 1961, when a local radio show did a segment about homosexuality in which "the sex deviate [homosexual] was called all kinds of names from murder [sic] traitor down to recruiters," the outspoken Mattachine activist Prescott Townsend called the station to refute the "recruitment accusation." The radio host, Townsend reported proudly, allowed him to voice his criticism for a full 15 minutes before "200,000 political and intellectually [sic] minded" listeners.²⁹ Through efforts such as these, the Boston Mattachine fought to disentangle homosexuality from its popular association with child molestation.

²⁶ "Langone Asks Logue & O'Neil To 'Kiss', Blasts Queer 'Joints,'" *Mid-Town Journal*, July 12, 1965.

²⁷ "Mattachines Elated over Word 'Sex' in Civil Rights Bill," *Mid-Town Journal*, July 19, 1965.

²⁸ Boston Mattachine, Part One, box 1, folder: "Notes re Boston Chap. from NY Mattachine," Mattachine Society, Boston, Collection, History Project.

²⁹ Prescott Townsend to One, November 13, 1961, box 1, folder: "Boston Demophil Newsletter c. 1961–1966 May," Mattachine Society, Boston, Collection, History Project.

Starting in the 1950s, liberal law reformers and gay activists promoted the proposal to legalize gay sex specifically between consenting adults in private, as a way of countering the stereotype that gay men were sex predators who influenced children. Members of the Society framed it as a social organization, not a sexual one, and they emphatically distanced themselves from any association with sexual deviance (though, of course, they were a group dedicated to the defense of same-sex desire).³⁰ “The Society provides a great amount of social activity, where friends can meet. It is not, however, a cruising ground,” read one statement, while another asserted that the “Society does not condone public sexual behavior, or the involvement of juveniles.” A guest lecturer echoed that gay sex “should be limited to what can take place in *private*, where they can offend no one, and where the law *cannot* and *should not* intrude.”³¹ But early efforts on the part of Boston Mattachine to get gay sex between consenting adults in private legalized were unsuccessful. The Civil Liberties Union of Massachusetts was loathe to touch the controversial issue, and the New York chapter of the Mattachine Society refused when the Boston activist Prescott Townsend asked them to help him introduce a sex law reform bill in the Massachusetts Senate in 1959.³²

II. Divorcing the Homosexual from the Boy Molester

At the beginning of the 1970s, the gay rights movement in Boston expanded dramatically in size and scope, both in terms of its public visibility and in terms of its influence on

³⁰ Boston Mattachine, Part One, box 1, folder: "Notes re Boston Chap. from NY Mattachine," Mattachine Society, Boston, Collection, History Project.

³¹ Interim Boston: A Quarterly Report, December 1960–March 1961, box 7, folder 4, Mattachine Society, Inc. of New York Records, NYPL.

³² Boston, Massachusetts Area Council Newsletter, May 1959, box 1, folder: “Boston Demophil Newsletter c. 1961–1966 May,” Mattachine Society, Boston, Collection, History Project.

local and state politics. Young people, especially students, helped fuel the groundswell of gay activism through groups like the Student Homophile League and the Boston University Homophile Club, which were joined by non-student groups like the Homophile Union of Boston, the Gay Activists Alliance, and the Gay Liberation Front. Activists with the latter organization founded the gay art and politics periodical *Fag Rag* in 1971, while Boston's premiere gay newspaper, the *Gay Community News*, formed two years later in 1973. Gay people and politics achieved greater visibility in the city through the first pride march in 1971 and advertisements in the subway featuring a lavender-colored rhinoceros, the signature mascot of the Boston gay movement.³³ The lesbian feminist Elaine Noble became the first openly gay person to be elected to the state legislature in 1974, and Barney Frank, while not yet openly gay, acted as a liaison between the gay movement and the legislature.³⁴ While the Civil Liberties Union of Massachusetts (CLUM) had shied away from associating with the gay movement when the Boston Mattachine Society approached it in 1959, the organization now followed the entrance of the gay movement into official politics in the pages of its newsletter.³⁵

The new cohort of gay rights activists contested the circulation of the stereotype of the gay child molester in popular culture more forcefully and in a more organized way than their homophile predecessors had been in a position to do. In 1974, the gay rights organization Gay Media Action of Boston, in collaboration with the National Gay Task Force (NGTF) and local gay organizations in other cities like the Gay Media Project in

³³ Jim Marko, "Thousands March to Celebrate Gay Pride," *Gay Community News*, July 1, 1978. "Rhino Ad Promotes Image," *Gay Liberator*, May 1974.

³⁴ Liz Master, "Winning Noble," *Gay Community News*, September 21, 1974. "Gay Rights Movement Gains on Beacon Hill," *Docket*, October 1973.

³⁵ Report of the April Meeting, Boston, Massachusetts Area Council Newsletter, May 1959, box 1, folder: "Boston Demophil Newsletter c. 1961-1966 May," Mattachine Society, Boston, Collection, History Project.

Philadelphia, coordinated a national protest of the American Broadcasting Company over an episode it planned to air of the TV drama “Marcus Welby, M.D.” The episode, entitled “The Outrage,” depicted a 14-year-old boy being sexually assaulted by his male science teacher.³⁶ In a letter to the National Association of Broadcasters, Ron Gold of the NGTF wrote that the episode would “work against the human rights of 20,000,000 Americans by presenting a distorted and inaccurate view of their lives.”³⁷ Ultimately, ABC aired the episode, but several local stations in Boston, Baltimore, and elsewhere cancelled it.³⁸ Activists convinced a number of corporate sponsors, including the Lambert Company and the Ralston-Purina Company, to pull their advertisements from the show, while two prominent professional organizations, the American Federation of Teachers (AFT) and the American Psychiatric Association (APA), lent their support to the protest.³⁹ At the same time as the Welby protest, gay rights groups from multiple cities organized another national action against NBC, which had scheduled to air an episode of the TV show “Policewoman” showing a girl being gang raped by lesbians in a juvenile home.⁴⁰ In response to the wave of depictions of gay child molesters on TV, the NGTF set up an emergency telephone hotline to help activists around the country coordinate their protests in the future.⁴¹

The understanding of homosexuality as dangerous to children lost one of its main advocates when the American Psychiatric Association stopped classifying same-sex desire as a mental disorder in 1973. Starting with the publication of the first edition of its

³⁶ Loretta Lotman, “ABC-TV Protest,” *Gay Community News*, August 17, 1974.

³⁷ Loretta Lotman, “Welby Protest Gains Strength,” *Gay Community News*, August 24, 1974.

³⁸ “ABC to Air Welby; NBC Protest Begun,” *Gay Community News*, October 12, 1974.

³⁹ Thomas Mayer, “Second Sponsor Rebukes ABC over ‘The Outrage,’” *Gay Community News*, September 28, 1974.

⁴⁰ Staff, “NBC Reneges: Police Woman to Air,” *Gay Community News*, November 9, 1974.

⁴¹ “NGTF Telephone Alert,” *Gay Community News*, February 1, 1975.

Diagnostic and Statistical Manual of Psychiatric Disorders in 1952, the official position of the APA was that homosexuality constituted a “personality disturbance.” At the turn of the 1970s, many psychiatrists still subscribed to the view that homosexuality was a curable condition that children acquired as a result of improper gender socialization by their parents.⁴² Echoing the view made popular by Irving Bieber in the 1950s, the psychoanalyst Charles Socarides argued in an article in the *Journal of the American Medical Association* in 1970 that “only massive childhood fears can damage and disrupt the standard male-female pattern and ultimately lead to the later development of obligatory homosexuality.”⁴³

In the same year, gay activists started making the APA’s pathologizing of homosexuality a target of their protest. At the professional organization’s meeting in San Francisco, activists disrupted a panel about homosexuality and transsexualism (as it was then called) in which Bieber was participating. One activist told the psychoanalyst, “I’ve read your book, Dr. Bieber, and if that book talked about black people the way it talks about homosexuals, you’d be drawn and quartered and you’d deserve it.” In 1973, the APA’s board of trustees voted to remove homosexuality from the second edition of the *DSM*, ignoring protests from Bieber that doing so would have disastrous effects on the “pre-homosexual child.”⁴⁴ By declassifying homosexuality as a mental disorder, the APA removed a key pillar supporting the view that homosexuality was a disease that threatened to derail children from developing into mature heterosexuals.

⁴² Bayer, *Homosexuality and American Psychiatry*, 103.

⁴³ Charles W. Socarides, “Homosexuality and Medicine,” *Journal of the American Medical Association* 212, no. 7 (1970): 1199–1202.

⁴⁴ Bayer, *Homosexuality and American Psychiatry*, 135.

Homosexuality gained still more distance from the specter of child molestation in the context of the sharp attacks to which critics subjected the nation's sexual psychopath laws in the 1970s. Legal scholars and psychiatrists declared that the sexual psychopath laws that state legislatures had begun enacting in the 1930s were a failed experiment in controlling sexual violence. Most states were unable to guarantee adequate treatment, leading to a situation in which offenders were being confined indefinitely under conditions that were hardly different from plain old prison.⁴⁵ The states that maintained "behavior modification" programs typically focused their efforts on exterminating homosexuality—a purpose far afield of the laws' intended goal of curtailing acts of sexual violence against women and children. As the Group for the Advancement of Psychiatry argued in one of the most influential critiques of the sexual psychopath laws, "treatment of sex offenders and reports of results often involve groups that cause society the least concern."⁴⁶ As a result of these criticisms, the once-fashionable sexual psychopath laws declined dramatically over a period of just a few years. While over half the states had adopted such laws between the late 1930s and the 1970s, half of those statutes were repealed between 1975 and 1981.⁴⁷

At the same time as legal prohibitions against "good" gay sex fell both in Massachusetts and nationally, state legislators deployed the stereotype of the gay child molester in order to block a gay antidiscrimination bill. The gay political movement in Massachusetts first became a significant presence in state politics in 1973. In that year, Robert Dow, the president of the Homophile Union of Boston, and Elaine Noble, who

⁴⁵ American Bar Foundation, "The Sexual Psychopath and the Law," 342–375.

⁴⁶ Group for the Advancement of Psychiatry, *Psychiatry and Sex Psychopath Legislation*, 893.

⁴⁷ Eric S. Janus and Robert A. Prentky, "Sexual Predator Laws: A Two-Decade Retrospective," *Federal Sentencing Reporter* 21, no. 2 (2008): 90–97.

was then a recent appointee to the Governor's Commission on the Status of Women, facilitated the introduction of two gay rights bills, one to remove the state's sodomy law, the other to ban discrimination against homosexuals.⁴⁸ Neither bill passed (though they did enjoy the support of some key liberal political figures, including Michael Dukakis, the Democratic nominee for Massachusetts Governor).⁴⁹ When they tried again the next year, one of the main complaints that activists registered in their testimonies before the legislature was that employers refused to hire gay people because they feared that they posed a threat to children. The activist John Kiper testified that he was deemed ineligible for a job at the Massachusetts Mental Health Center because, as the people who interviewed him later explained, "I couldn't be hired because I was a homosexual. She told me I was not qualified to work with children." An anonymous college professor stated that "in the teaching profession especially, to be known as a homosexual, you lose your position."⁵⁰ The bill did not pass again. When gay activists tried for the third year in a row in 1975, they were again thwarted by antigay politicians who associated homosexuality rhetorically with child molestation. As the Democratic Representative William A. Connell argued in a debate in the House of Representatives, "These people are predatory. They are recruiting, and the only thing that they are looking for in this bill is our endorsement of their actions."⁵¹

And even though Massachusetts's high court had declared that it should not be enforced against the sexual behavior of consenting adults in private, Massachusetts's

⁴⁸ Proposed homophile legislation, carton 73, folder 26, American Civil Liberties Union of Massachusetts, Massachusetts Historical Society.

⁴⁹ "Dukakis Reiterates Stand on Gay Issues," *Gay Community News*, October 12, 1974.

⁵⁰ William E. Alberts, "The Homosexual's Dilemma—Speak out for Your Rights, and You May Lose Them All," *Ledger*, March 8, 1974.

⁵¹ David Brill, "Amended Mass. Bill Passes," *Gay Community News*, May 17, 1975.

sodomy law remained on the books and continued to justify discrimination against gay people. (And it is still on the books today, though it is no longer enforceable in the case of conduct involving consenting adults in private.)⁵² Here, too, the child molester was one of the factors that stood in the way of repeal. In 1974, the Massachusetts legislature considered repealing several of the state's laws governing sexual morality—fornication, obscenity, “open and gross lewdness,” sodomy, and “lewd and lascivious cohabitation.” As the attorney Richard Rubino argued before the legislature's Judiciary Committee, “Employers use the laws as an excuse to discriminate. After all, how can you discriminate against someone who violates a criminal code?” Committee members expressed concern that removing the sodomy law would create opportunities for gay people to prey on children. The committee chairman Cornelius F. Kiernan stated that he would not hire an otherwise qualified gay person at a summer camp or other place of employment involving children. Others worried that the mere presence of a gay person might “influence” a child.⁵³ In the early days of the gay movement's participation in official politics, the myth of the gay child molester persisted in casting a shadow on the legal status of homosexuality as a whole.

III. The Emergence of the Child Protection Movement

The gay movement's battle against the myth of the gay child molester coincided with increased concern on the part of other social activists with the sexual abuse of children. And that increase in concern was particularly pronounced with respect to boys. The rise of the women's anti-rape movement transformed sex involving underage males into a

⁵² MGL Ch. 272, § 34.

⁵³ Jack Armstrong, “Morality Laws Will Remain On the Books,” *Boston Phoenix*, March 26, 1974.

legally recognizable form of sexual assault. Activists with the National Organization for Women, the flagship organization of the feminist movement founded in 1966, lobbied lawmakers at the state and federal levels to change how the state conceptualized and responded to the crime of rape. As things stood, most state-level rape statutes relied on a definition of rape that was so narrow that it was often nearly impossible to prosecute the crime. Laws defined it specifically as vaginal penetration while excluding other forms of assault like forced anal or oral sex. Moreover, rape laws usually did not recognize the rape of a wife by her husband as a legitimate crime. In 1973, NOW's Rape Task Force developed a model rape law that expanded the definition of the crime to include forced oral and anal sex as well as "homosexual assault."⁵⁴

In 1974, the Massachusetts legislature codified NOW's proposal by rewriting the state's rape and statutory rape laws in gender-neutral terms. The new text substituted in the word "person" for "female" and "sexual intercourse and unnatural sexual intercourse" for "carnally knows." For the first time, rape law in Massachusetts now recognized males as potential victims of sexual assault.⁵⁵ Some lawmakers supported the reforms for homophobic reasons: they were particularly concerned about criminalizing predatory gay men. As a spokesperson for the Democratic Representative Jon Rotenberg, the bill's sponsor, put it, legislators intended for the revision to provide men and "young boys" with legal protection against "homosexual attacks." "We really didn't propose the legislation because we expected an increase in attacks on men by women," the spokesperson commented. In addition, the law reform changed the criteria necessary for proving statutory rape. Whereas it had formerly been necessary to show penetration to

⁵⁴ Proposed Model Rape Law, carton 49, folder 5, National Organization for Women Records, 1959–2002, Schlesinger Library, Radcliffe Institute, Harvard University.

⁵⁵ Reeves, "Hidden Oppression."

prove rape of a minor, now, non-violent and non-penetrative acts like masturbation, fondling, and kissing were sufficient evidence.⁵⁶ The rape law reforms spearheaded by feminists transformed gay sex involving underage males into a legally recognizable form of sexual assault that was subject to increasingly harsh punishment.

Multiple news scandals about the sexual exploitation of children also zeroed in on adult men who molested boys as the primary object of their concern. In 1977, major news outlets reported that an epidemic of child pornography was sweeping the nation. The *Chicago Tribune* ran a series of articles that similarly raised concern about child sexual abuse with a particular focus on gay men as the perpetrators. “A nationwide homosexual ring,” one of the articles warned, “with headquarters in Chicago has been trafficking in young boys, sending them across the nation to serve clients willing to pay hundreds of dollars for their services.”⁵⁷

On May 15 of that year, the CBS news program 60 Minutes broadcast a special report entitled “Kiddie Porn” that, after briefly discussing adult sexual interest in underage girls, focused for the rest of its exposé on erotic magazines with pictures of boys and footage of teenage male hustlers turning tricks on the street. The program substantiated the claim that the sexual abuse of young boys by homosexual men was extremely widespread through an interview with the Los Angeles Police Department detective Lloyd Martin. Martin was a law enforcement entrepreneur who was making a career out of fomenting social concern about child sexual abuse in general and gay pedophiles in particular. The detective played an instrumental role in establishing the

⁵⁶ “Revised Law Lets Men File Rape Charges,” *Boston Globe*, July 7, 1974.

⁵⁷ “2 Seized in Child Sex Ring,” *Chicago Tribune*, May 15, 1977. “Chicago Is Center of National Child Porno Ring,” *Chicago Tribune*, May 16, 1977. “How Ruses Lure Victims to Child Pornographers,” *Chicago Tribune*, May 17, 1977. “Federal Agents Raid Porno Book Stores,” *Chicago Tribune*, May 18, 1977.

LAPD's Sexually Exploited Child Unit in 1976, and he had coordinated police crackdowns on alleged "chicken hawks"—adult men with a sexual interest in underage boys—in Los Angeles since the early 1970s. "This particular film," Martin explained about a video he presented on the 60 Minutes special, "I would say, was produced by a 'chicken hawk.' That is, an adult male who likes little boys. And I would guarantee you that the two boys that are depicted in this film have been molested by this male prior to this production."⁵⁸

Corresponding to the spike in concern about the sexual abuse of boys in the media, child protection advocates lobbied for the creation of new legislation at the federal level about child pornography and prostitution that applied to boys as well as girls. On May 23, 1977, barely a week after the 60 Minutes special aired, the U.S. Congress held hearings for a bill about child pornography that was proposed by Democratic Congressmen Dale E. Kildee and John W. Murphy. In a hearing before the Subcommittee on Crime of the Committee on the Judiciary in the House of Representatives, Lloyd Martin testified that there existed a large-scale national ring of child pornography and boy prostitution. As evidence for his claim, Martin cited a book called *Where The Young Ones Are*—a copy of which he never presented to the committee for examination—which he described as a directory of playgrounds, bus stations, and other places where children gathered unattended, that had supposedly sold over 70,000 copies. The child protection advocate Judianne Densen-Gerber, founder of the child abuse and drug treatment center Odyssey House, presented the committee with a trunk full of child pornography that she

⁵⁸ Pat Califia, "The Age of Consent: An Issue and Its Effects on the Gay Movement, Part One," *Advocate*, October 16, 1980. United States, *Protection of Children against Sexual Exploitation Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary, United States Senate, Ninety-Fifth Congress, First Session, Chicago, Ill., May 27, 1977, Washington, D.C., June 16, 1977* (Washington: U.S. Govt. Print. Off., 1978).

claimed had been purchased by her 17-year-old daughter and her daughter's friend. When a Congressman reprimanded her for displaying the material on television, where his children might see it, Densen-Gerber replied, "So why don't you clean it up so I don't have any magazines to show?"⁵⁹

After the hearings were over, Congress passed the Kildee-Murphy bill, which made it a felony to photograph or film a child under the age of 16 in the nude, engaged in sexual activity, or masturbating. Along with many other states, Massachusetts passed a version of the law in 1978.⁶⁰ In the same year, the U.S. Congress amended the Mann Act, formerly known as the White-Slave [sic] Traffic Act, which lawmakers enacted in 1910 to prohibit the transportation of a woman or girl across state lines for "the purpose of prostitution or debauchery." Like the rape law reforms that preceded it, the amendment made the Mann Act gender-neutral and added a new section prohibiting the interstate transportation of child pornography.⁶¹ Through new child protection legislation that applied to both boys and girls, lawmakers codified the concern that child protection entrepreneurs had raised about child sexual abuse in general and the molestation of boys in particular.

In 1977, a right-wing Christian evangelical social movement rose to prominence by exploiting the issue of gay child molesters in an attempt to roll back the recent civil rights gains that the gay movement had made. On January 18, 1977, the metropolitan government in Dade County, Florida, passed an ordinance prohibiting discrimination

⁵⁹ Pat Califia, "Age of Consent, Part One." United States, *Sexual Exploitation of Children: Hearings before the Subcommittee on Crime of the Committee on the Judiciary, House of Representatives, Ninety-Fifth Congress, First Session . . . May 23, 25, June 10, and September 20, 1977* (Washington: U.S. Government Printing Office, 1977).

⁶⁰ Mitzel, "Man Sentenced to Total Of 39 Years on Charges of Child Pornography, Rape," *Gay Community News*, February 9, 1980.

⁶¹ George Mendenhall, "Congress Passes Child Porn Bill," *Advocate*, March 8, 1978.

against gay people in the areas of housing, employment, and public accommodations. The next month, the evangelical gospel singer Anita Bryant, with the support of right-wing political groups as well as grassroots organizing in fundamentalist churches, launched a social campaign called “Save Our Children” in an effort to overturn the gay rights law.⁶² A former winner of the “Miss Oklahoma” crown, Bryant had toured as a singer with the evangelist Billy Graham and the comedian Bob Hope, and she went on to become the owner of a religious recording and publishing company, as well as the spokeswoman for the Florida Citrus Commission.⁶³ As Lloyd Martin had done, Bryant drew on the midcentury political rhetoric of the gay child molester and breathed new life into it in the context of the child protection movement. “Homosexual acts are not only illegal,” she stated, “they are immoral. Through the power of the ballot box, I believe the parents and straight-thinking normal majority will soundly reject the attempt to legitimize homosexuals and their recruitment plans for our children.” The campaign prevailed when, in June, 69.3 percent of voters elected to repeal the gay rights ordinance in a referendum.⁶⁴

Ironically, Save Our Children’s effort to crush gay rights had the opposite effect of inspiring a surge in the size, organization, and strength of the gay movement, which rallied new members and funds to oppose the resurgence of the idea that gay people were dangerous to children.⁶⁵ Gay activists in Miami reported that they had received money from people in every state except two. Activists organized hugely successful protests in New York, Los Angeles, Chicago, Houston, New Orleans, San Francisco, and other

⁶² “Bryant Launches Anti-Gay Campaign,” *Gay Community News*, February 26, 1977.

⁶³ Joe Baker, “Anita . . . With The Smiling Cheek,” *Advocate*, April 20, 1977. “OJ and Politics,” *Gay Community News*, March 26, 1977.

⁶⁴ Sasha Gregory-Lewis, “Right-Wing Links to SOC Revealed,” *Advocate*, July 13, 1977.

⁶⁵ Joe Baker, “The Bitter Message from Miami,” *Advocate*, July 13, 1977.

major cities, with many reporting unprecedented levels of attendance. To the increasingly nationalized and centralized gay movement, the success of the Bryant campaign underscored the need to develop an effective strategy to combat the myth of the gay child molester. “One fact is clear,” wrote David Goodstein, the editor of the *Advocate*, in a letter to readers reflecting on the success of the Bryant campaign. “We have a much bigger education job than we thought.” Because “no problem haunts our community’s struggles more than the false myth that gay men are all child molesting sex-fiends,” the magazine reviewed its advertisements, many of which were sex-related, to make sure none of them involved minors.⁶⁶ At the same time, the National Gay Task Force launched a million-dollar fundraiser to support a public education campaign to “show the American people who we really are.”⁶⁷

The gay movement won its first major victory against the return of the gay child molester the next year in a controversy in California about gay teachers. In 1978, drawing on the momentum of the Bryant campaign, the California Senator John Briggs spearheaded a ballot initiative to ban “advocating, soliciting, imposing, encouraging, or promoting private or public homosexual acts” in public schools, and to ban gay people from teaching in them.⁶⁸ However, the coalition of groups that formed in order to oppose the Briggs initiative raised over \$300,000, and California voters overwhelmingly rejected the it at the polls that November. Eventually, former California Governor Ronald Reagan and even the Catholic Church came out against it.⁶⁹ Liberal professional organizations rallied to defend gay teachers: the National Education Association (NEA) and the

⁶⁶ David Goodstein, “Opening Space,” *Advocate*, July 13, 1977.

⁶⁷ Robert I. McQueen and Randy Shilts, “The Gay Movement’s ‘Born Again,’” *Advocate*, July 27, 1977.

⁶⁸ “California Voters Prepare for Proposition 6,” *Gay Community News*, November 4, 1978.

⁶⁹ “Reagan Opposes 6,” *Advocate*, November 1, 1978. Gerald Hunt, *Laboring for Rights: Unions and Sexual Diversity Across Nations* (Philadelphia: Temple University Press, 2009), 66.

American Psychiatric Association had both backed gay teachers the year before.⁷⁰ In Massachusetts, *Boston Globe* readers reported that they approved of gay people working as teachers (and police officers, clerical workers, and prison guards) by a margin of three to one.⁷¹ In spite of these important victories, however, gay teachers remained vulnerable to workplace discrimination. The school district in Paramus, New Jersey, compelled the public school teacher and gay rights activist John Gish in 1979 to submit to a psychiatric examination. Still, through the controversies over gay teachers, the gay movement accrued a critical mass of supporters who also opposed the idea that gay people as a class were dangerous to children.⁷²

IV. The Boston Sex Scandal

In late 1977, soon after the Save Our Children campaign had overturned Miami's gay rights ordinance, metropolitan police departments in the U.S. and Canada conducted a series of seemingly disconnected crackdowns on gay sex between adults and minors. On August 30, 1977, the owner of a gay disco in Seattle named Peter LeGrow was arrested for allegedly facilitating the prostitution of two teenage boys. LeGrow's crime was helping an undercover officer find two young men to date; one of the boys, it turned out, was himself a police decoy. Though no money had changed hands, the newspaper and television journalist Hilda Bryant inaugurated a series about boy prostitution.⁷³

In another case, the police took aim at the mere discussion of the subject in the gay press. On December 30, 1977, the Toronto police raided the *Body Politic*, one of the

⁷⁰ Neil Miller, "Victory Celebrated in Briggs Initiative Vote," *Gay Community News*, November 18, 1978.

⁷¹ Neil Miller, "WBZ Poll: Boston Backs Gay Teachers 45–30%," *Gay Community News*, August 13, 1977.

⁷² Rick Hillegas, "Teacher Submits to Testing," *Gay Community News*, July 21, 1979.

⁷³ Pat Califia, "The Age of Consent, Part One."

most highly respected gay and feminist periodicals in the world. The police had obtained a warrant to search the paper's offices after it had printed "Men Loving Boys Loving Men," an essay that defended intimate relationships between men and boys, in its December issue.⁷⁴

But the most intense and prolonged crackdown on gay sex involving minors happened in Boston. In June 1977, the Boston Police arrested a gay man named Richard Peluso in the nearby suburb of Revere on charges of having sex with underage boys. As Peluso later testified in court, he had slept with about 200 teenage boys since 1964 and taken Polaroids of many of them. The Suffolk County District Attorney Garrett Byrne seized the photographs and used them to identify 64 local youths, many of whom were by then in their early 20s; only 13 of them agreed to cooperate with police interrogators.⁷⁵ Two 15-year-old hustlers, who had turned tricks with men they had met in Peluso's apartment as well as elsewhere in Revere and Boston, provided the police with the bulk of the information. Based on the evidence the police garnered from their interrogations, on December 8, District Attorney Byrne indicted 24 men for over 100 felonies in what he dubbed the "Revere sex ring."⁷⁶

Soon after the arrests, gay activists in Boston formed an ad hoc organization they called the Boston/Boise Committee (BBC) in order to oppose the police crackdown. The committee's name was a self-conscious reference to the antigay police campaign of 1955 in Boise, Idaho. And there were indeed clear parallels between the two cases. As the journalist John Gerassi reported in his book about the Boise case, members of the city's

⁷⁴ Gerald Hannon, "Men Loving Boys Loving Men," *Body Politic*, December 1977–January 1978. Richard Burns, "Files Seized in Raid on Body Politic," *Gay Community News*, January 14, 1978.

⁷⁵ Mitzel, *The Boston Sex Scandal* (Boston: Glad Day Books, 1980), 21–25, 52.

⁷⁶ Jim Marko, "Committee of Outrage to Protest Arrests," *Gay Community News*, December 24, 1977.

business elite were the ones who had set in motion the police repression of the city's "homosexual underworld" in an effort to take down an unnamed politician whom they did not like. Likewise, activists with the Boston/Boise Committee suspected that the Revere "sex ring" was also politically motivated—a concoction of the octogenarian District Attorney Byrne, who wanted to shore up his tough-on-crime credentials before running for reelection the next year. If the historical example of Boise was any indication, the crackdown in Boston could easily extend to a war on gay people as a whole. As committee member John Mitzel warned, the investigation was "the beginning of a witch hunt by the District Attorney. This is a political attempt to smear the entire gay community."⁷⁷

The news reporting about the Revere case resembled that of the Boise homosexuality scandal in the way that it constructed a narrative that cast adult gay men as an organized network of predators who had conspired to molest young boys. "24 Indicted in Boys Sex Ring Probe," read one headline in the *Boston Globe*. "The arrest of one man on sex charges several months ago led to the implication of 17 men in the Revere-based boys-for-hire homosexual ring."⁷⁸ "Boys for Love or Money," read another, rather voyeuristic headline of an otherwise sympathetic article about the case in the *Village Voice*. In addition to dramatizing the Revere case by portraying it as a sex "ring," the news media falsely depicted the adolescent boys in the case as young children, amplifying the reader's sense of their vulnerability and helplessness.⁷⁹ As the gay rights activist John Kyper charged in a letter to the editor of the *Globe*, "You erroneously report

⁷⁷ Ibid.

⁷⁸ "24 Indicted in Boys Sex Ring Probe: It Began with Bus Driver's Arrest," *Boston Globe*, December 9, 1977.

⁷⁹ Tom Reeves, "Notes on 'Sex-Ring' Cases," *Gay Community News*, April 1, 1978.

that the 24 men indicted were accused of having sex with children, when in fact the alleged ‘victims’ are adolescents (several of whom are openly gay). To see references, again, to the ‘child-porn-sex ring’ is an example of your continued journalistic irresponsibility.”⁸⁰ Through rhetoric that portrayed the indicted men as predatory child molesters and teenage boys as their young, helpless prey, the news coverage led readers to believe erroneously that the Revere scandal was a clear-cut case of child exploitation and abuse.

The BBC intervened in the sensationalistic representation of the Revere crackdown in the media by circulating a document containing a range of recommendations about how journalists could report on the case in an accurate and ethical way. The document, entitled “Suggestions for Media on Handling Alleged Sex ‘Crimes’ involving Gay Men,” charged that the Boston news media had prematurely portrayed the indicted men as guilty before they had even gone to trial. “The coverage amounted to trial by media,” the guidelines pointed out, “and the bitter atmosphere of public outrage generated by the coverage would have been appropriate to a brutal murder case, certainly not to cases in which no violence or coercion was alleged.” To a degree, the document succeeded in its goal of persuading the news media to temper its incendiary rhetoric about the case. The *Boston Herald* and the television station Channel 7 both changed their coverage in response to the guidelines, and the *Globe* published an op ed written by members of the BBC allowing them to give their side of the story.⁸¹

But it was difficult to undo the narrative that the police and the media had constructed about the alleged homosexual boy sex “ring.” When BBC members met with

⁸⁰ John Kyper, “Adolescents Not Children,” *Boston Globe*, March 25, 1978.

⁸¹ Suggestions for Media on Handling Alleged Sex ‘Crimes’ involving Gay Men, box 14, folder 5, BSEFR. Boston/Boise Committee to Friends, July 4, 1978, Boston/Boise Committee Collection, History Project. “

Charles Whipple, the ombudsman of the *Boston Globe*, Whipple admitted that the paper had erred in describing the case in terms of “child molestation,” as one headline had done. Whipple promised the committee that the *Globe* would print a retraction, but, a month later, it still had not done so.⁸²

In addition to its efforts to change how journalists represented the Revere affair, the BBC also contested the police crackdown by giving the boys themselves the chance to articulate their points of view, which flew in the face of the official narrative of the media and the police. On December 13, 1977, individuals and representatives from “a dozen gay organizations and several straight groups” met in order to deliberate how to respond to the police campaign. At the meeting, the committee heard statements from two teenage boys who were involved in the scandal. One of the teenagers told the audience that his parents had kicked him out of the house when he came out to them as gay. One of the indicted men, he explained, gave him a place to live, made it possible for him to stay in school, and addressed his medical needs as a diabetic. The other teenager, a boy who was now 18, testified that he had been “on the streets” since he was eight years old. Though he had met many of the indicted men separately, he did not believe that they knew each other, throwing into question the police’s claim that there existed an organized “sex ring” of gay pedophiles who collectively preyed on young boys. While he did not believe that the men he knew were capable of violence or coercion, his experience with the police was a different matter. Police investigators had come to his school, humiliated him, spoken with his teachers, and shown him files bearing the names of hundreds of different men, demanding that he reveal whether or not he had had sex with any of them. As Boston/Boise Committee’s press release about the meeting paraphrased it, the boy

⁸² Boston-Boise Presses the *Globe* for Meeting,” *Gay Community News*, January 28, 1978.

“said that only one kind of rape had happened to him: he had been emotionally raped by the police investigators.”⁸³

Shortly after the wave of arrests in the Revere sex “ring,” the Suffolk County District Attorney’s office set up a telephone “hotline” to receive tipoffs from anonymous callers about alleged sex abuse of minors. In partnership with the Civil Liberties Union of Massachusetts, the BBC filed a class action lawsuit against the D.A. to try to force an end to the hotline. The hotline, their complaint argued, “fulfills no substantial and legitimate law enforcement function, but serves only to create a climate of hysteria that casts needless suspicion upon all men, whatever their sexual persuasion, who work with or associate with youth.” In an interview the day the suit was filed, Assistant District Attorney John Gaffney defended the hotline’s necessity and vowed to keep it running. “The ‘hotline’ is very busy and we will continue investigating all the calls we receive on the line. We are looking for any adult who has sex with a boy.” But about two weeks later, in mid-January, District Attorney Garrett Byrne ordered the hotline to be shut down in order to ward off the impending lawsuit.⁸⁴

The controversy over the hotline made clear that there were deep divisions of opinion among gay community leaders about how to respond to the police crackdown on sex between men and teenage boys. In the controversy over the hotline, the openly lesbian Representative Elaine Noble sided with the D.A. and the police. At a press conference she held about the Revere incident, Noble expressed her “deep concern and outrage regarding the scandalous sexual exploitation and abuse of young children by

⁸³ Committee Forms to Protest Police & Media Witchhunt against Gay Men, box 1, folder: “Boston/Boise Committee Records and Flyers, 1977–1978,” Boston/Boise Committee Collection, History Project.

⁸⁴ Jim Marko, “Class Action Suit Is Filed to End ‘Hotline,’” *Gay Community News*, December 31, 1977. Tony Domenick, “Boston-Boise Forces End to ‘Hotline,’” *Gay Community News*, January 14, 1978.

adults.” On a local morning television talk show the next day, Noble trafficked in the news media’s guilty-until-proven-innocent mentality by referring to the indicted men as “the guilty parties,” adding “those people who manipulate children [should be] pictured as an extremely small minority within the gay community.”⁸⁵

But the police repression did not stop at sex that violated the age of consent. As the gay rights activist John Mitzel had predicted they would at the outset of the Boston sex scandal, the police expanded the scope of the crackdown to other kinds of deviant gay sex that did not even involve minors. In late March 1978, the *Gay Community News* reported an extraordinary uptick in arrests in the men’s room on the first floor of the Boston Public Library in Copley Square. Police records indicated that almost 50 men had been arrested there over a five-day period on charges ranging from open and gross lewdness to prostitution. Most of the arrests were made by Officer Angelo Toricci, an “attractive, young” man dressed in civilian clothes who, according to some of the men he arrested, stood near the urinals “masturbating himself to encourage sexual advances.”⁸⁶

The crackdown elicited intense anger from the gay community, and over 100 people gathered in the offices of the *Gay Community News* on March 29 in order to formulate a response. At the gathering, the Reverend Ed Hougen of the Metropolitan Community Church urged the assembly not to make defending public sex the central concern of their response to the police. Lee Stone of the Boston/Boise Committee, however, argued that the library arrests were “but one front of a multi-fronted political war against gay people in the Boston area.”⁸⁷ On April 1, more than 200 people

⁸⁵ Mitzel, *Boston Sex Scandal*, 32.

⁸⁶ “Nearly 50 Charged After Increase in Arrests at Boston Library,” *Gay Community News*, March 25, 1978.

⁸⁷ David Brill, “Community Responds to Library Arrests,” *Gay Community News*, April 8, 1978.

demonstrated in front of the Boston Public Library and the Boston police headquarters to protest the arrests. The protest received the support of politicians like the Democratic Representative Mel King, who filed legislation directing the state Attorney General to investigate “allegedly unlawful conduct” by police officers in the district where the arrests had occurred.⁸⁸ Ultimately, only one of the 105 arrested men was found guilty outright. Through the library arrests, the Boston police extended what had originally been a crackdown on the gay male subculture of intergenerational sex into the most intense instance of state repression of the Boston gay community in two decades.⁸⁹

Outraged and emboldened by the police entrapment at the library, the Boston/Boise Committee organized a fundraiser to benefit the indicted men in the Revere case. On the evening of April 5, 1978, over 1100 people jammed into the pews of the Unitarian Universalist Arlington Street Church to hear the writer Gore Vidal give a lecture titled “Sex and Politics in Massachusetts.” “Police departments ought not to be allowed to entrap people,” Vidal commented in his lecture. “District Attorneys ought not to be allowed to have a Hotline so anybody can call up and say who’s a witch and who was last seen down on Boston Common with Goody Bellows.”⁹⁰ Representative Barney Frank, who attended the lecture, made a statement of support for the BBC, while Joe Martin of the Massachusetts Caucus for Gay Legislation read letters of support from Representatives Sandra Graham, Mel King, Doris Bunte, and Elaine Noble. Noble’s tepid expression of “support for the principles of the civil liberties of all persons within the Commonwealth” was greeted by boos and hisses from the crowd. The BBC raised

⁸⁸ David Brill, “Demonstration Protests Arrests in Library,” *Gay Community News*, April 15, 1978.

⁸⁹ David Brill, “BPL Arrests: A Year Later,” *Gay Community News*, April 7, 1979.

⁹⁰ Mitzel, *Boston Sex Scandal*, 86.

more than \$4,000 at the event in what the *Gay Community News* described as a “dramatic display of strength.”⁹¹

The day after the Vidal lecture, yet another public controversy related to the Revere affair erupted over Robert M. Bonin, the Chief Justice of the Massachusetts Superior Court, who had attended the fundraiser with his wife.⁹² District Attorney Garrett Byrne called for Bonin to resign from his post, accusing him of violating the section of the state’s Judicial Code of Ethics that forbade a judge from “lend[ing] the prestige of his office to advance the private interests of others.” Bonin denied knowing that the event was a fundraiser for the upcoming Revere trials. “I went to a church solely to hear a lecture by an eminent literary figure,” he said. In defense of the judge, the Civil Liberties Union of Massachusetts argued in a lengthy amicus brief that “judges have a right, if not a responsibility, to inform themselves about events and issues of concern to the people in the communities which they serve.”⁹³ On July 31, though, the House of Representatives voted in favor of a bill of address—a legal procedure in Massachusetts that allows the legislature to remove judges from office—and Justice Bonin submitted his letter of resignation to Governor Dukakis a few days later.⁹⁴

By contrast, the outcome of the Revere trials was, for the most part, a great victory for the Boston/Boise Committee. By April 1979, about a year and a half after the initial police crackdown in Revere, almost all of the 24 indicted men had resolved their court cases with no prison time. Two of them were exonerated completely from charges of statutory rape, including a man named Richard Kellaher, whose name and address had

⁹¹ “Boston-Boise Raises \$4,000 at Benefit with Gore Vidal,” *Gay Community News*, April 15, 1978.

⁹² David Brill, “Judge’s Appearance at Lecture Causes Storm,” *Gay Community News*, April 22, 1978.

⁹³ David Brill, “Mass. Chief Justice Bonin Formally Censured,” *Gay Community News*, July 22, 1978.

⁹⁴ David Brill, “Justice Bonin Surprises Supporters and Resigns,” *Gay Community News*, August 12, 1978.

appeared on the front pages of the *Boston Herald-American* and *Globe*. (Both papers neglected to publish any report of his exoneration.) Most of the other men accepted plea deals carrying sentences far lighter than what they would have received for the crimes with which they were originally charged.⁹⁵ District Attorney Garrett Byrne tried to extradite two men from Baltimore and New York City to stand trial in Massachusetts, but judges in those jurisdictions refused to comply, because Byrne's office had failed to specify when, exactly, those men had committed their alleged crimes. As Judge Allen of the Baltimore City Court commented, "It seems basic to the requirement of due process that one accused of a crime in a foreign state at least be advised of when the crime was committed." Byrne, the person who had invented the narrative of the Revere sex "ring" in the first place, did not win reelection.⁹⁶

Not everyone got off, though. A psychiatrist named Dr. Donald Allen was found guilty of having sex with a 14-year-old boy, though the jury sentenced him to five years of supervised probation—a much lighter sentence than life in prison, which was the maximum penalty allowed by law. And a court deemed Richard Peluso, the first man to be arrested in the Revere affair, to be a "sexually dangerous person" in 1978, ordering him to be confined indefinitely at the Bridgewater State Hospital.⁹⁷

The consequences of the Revere affair, furthermore, reverberated far beyond the trials of the indicted men. Though most of the men in the Revere sex scandal did not go to prison, local lawmakers enacted tightened regulations of sex offenders in response to the controversy. On August 13, 1979, the Revere City Council passed by a unanimous

⁹⁵ Tom Reeves, "Revere Sex Cases Resolved," *Gay Community News*, April 28, 1979.

⁹⁶ Mitzel, *Boston Sex Scandal*, 104–113.

⁹⁷ "Psychiatrist Loses Bid to Postpone Sex Case Trial," *Boston Globe*, May 2, 1978. Philip Knighton, "Peluso Not 'Sexually Dangerous,'" *Gay Community News*, September 19, 1981.

vote an ordinance requiring people seeking jobs involving direct contact with children to obtain a special license from the police chief. The new law specifically singled out for exclusion persons who had been “convicted against any sexual offense regarding violations of child abuse laws.” In keeping with the Revere affair’s focus on illicit sex, the language of the ordinance targeted sex offenses against children but not other forms of child abuse.⁹⁸

At the same time, the criminalization of sex offenders was also intensifying at the state level. While half of the states’ sexual psychopath laws had been repealed by 1981, the practice of civil commitment of sex offenders to the Bridgewater state hospital continued unabated in Massachusetts. As of November 1980, there were 172 “sexually dangerous persons” (including Richard Peluso) being confined indefinitely at Bridgewater; about 25 of those commitments were for sex acts with boys that did not involve force.⁹⁹ Between 1960 and 1980, the proportion of people doing time for sex offenses in all state and county facilities in Massachusetts tripled from 4% to 12.8%.¹⁰⁰

Another consequence of the Revere affair was the formation of a new branch of gay activism devoted specifically to the issue of man-boy love. Prior to the Revere affair, there had been some discussion about the topic in Boston’s gay community: a panel discussion entitled “Of Men and Boys: Pederasty and the Age of Consent” in April 1976 and a speak-out about “erotic liberation” that June.¹⁰¹ Discussion about and organizing around sex that violated the age of consent swelled in response to the spike in police

⁹⁸ Dan Daniel, “Revere Law Licenses ‘Sex Offenders,’” *Gay Community News*, September 1 & 8, 1979.

⁹⁹ Reeves, “Hidden Oppression.”

¹⁰⁰ Linda K. Holt and Massachusetts. Department of Correction, *An Analysis of Recent Trends in Court Commitments to the Massachusetts Department of Correction* ([Boston] : The Dept., 1980), <http://archive.org/details/analysisofrecent00holt>.

¹⁰¹ Kennys Goethe, “Forum,” *Gay Community News*, May 1, 1976. Erotic Liberation and a March on the Vice Squad, box 1, folder: “Boston/Boise Committee Records and Flyers, 1977–1978,” Boston/Boise Committee Collection, History Project.

repression of boy lovers.¹⁰² On December 2, 1978, shortly before the trials of the indicted men in the Revere scandal commenced, the Boston/Boise Committee organized a conference on “Man-Boy Love and The Age of Consent.” About 150 people from the northeast and Canada attended the event, which, as its organizers conjectured, “may be the first conference of its kind in the United States.”¹⁰³ After the conference, activists founded a new organization called the North American Man/Boy Love Association.¹⁰⁴

V. Conclusion

By the end of the 1970s, the gay rights movement, along the public reputation of homosexuality, had come a long way. In the 1950s, in numerous discursive spheres the categories of the “homosexual” and the “child molester” were synonymous. This was no longer so clearly the case at the dawn of the 1980s. Even more radically, gay liberation activists had achieved some success defending gay men against the crackdown on the queer subculture of intergenerational sex in the Boston area. But no one at the time could predict the scale to which such crackdowns on sex involving minors would expand.

¹⁰² “Emergency Supplement,” *Fag Rag*, March 1978.

¹⁰³ Conference on Man-Boy Love and the Age of Consent, box 1, folder: “Boston/Boise Committee Records and Flyers, 1977–1978,” Boston/Boise Committee Collection, History Project.

¹⁰⁴ Chris Garten, “Boston Conference Addresses Difficult Topic of Man-Boy Love,” *Gay Community News*, December 16, 1978.

Part 2: The Age of the Victim, 1980s–2000s

Chapter 4: The Crackdown on the Queer Subculture of Intergenerational Sex

On June 22, 1986, an altercation took place between the organizers of the Christopher Street West pride parade in Los Angeles and the gay rights activist Harry Hay, who had founded the Mattachine Society, the earliest sustained gay rights organization in the U.S., in 1950. Hay had come to the parade wearing a large, white sign on his torso protesting the exclusion of two key figures from the event. The front of the sign read “VALERIE TERRIGNO WALKS WITH ME”—referencing a recent public scandal in which Valerie Terrigno, the lesbian mayor of West Hollywood, was convicted of embezzling federal funds during her mayoral campaign—while the back of it exclaimed “NAMBLA WALKS WITH ME.”¹ The parade’s organizers had banned the North American Man-Boy Love Association from participating because, as president Sam Haws explained, “child molestation is not a gay rights issue, and this is not a gay sex or a sex parade.” After West Hollywood sheriff’s officers tried unsuccessfully to get Hay to remove the sign from his person, one of Hay’s friends, who had once been in prison, tore up the sign for fear that Hay would be arrested.²

The controversy over NAMBLA’s participation in the Christopher Street West parade offers a window into the growing tensions between gay rights and gay liberation activists over the issue of the age of consent. Hay argued that the exclusion of NAMBLA

¹ Stephen Braun, “The Trouble With Terrigno: When West Hollywood’s First Mayor Was Driven From City Hall, She Took Part of the Dream of a ‘Gay Camelot’ With Her,” *Los Angeles Times*, June 1, 1986.

² Marcos Bisticas-Cocoves, “Harry Hay Barred from Carrying NAMBLA Sign,” *Gay Community News*, August 10, 1986.

from the parade was “an affront to the whole process of gay liberation,” because it was undemocratic: it was not the place of the parade organizers to “arbitrarily decide who are members of the gay community and who may speak.” He also expressed sympathy for the organization’s defense of consensual sex between teenagers and adults by recalling how such a relationship had been beneficial to him when *he* was a teenager: “And let me tell you, I will always be grateful that 25-year-old Matt was there for 14-year-old me.”³ But in the context of the growing war on child sexual abuse, it was becoming less and less viable for the mainstream lesbian and gay movement to entertain discussions about the issue of the sexuality of young people.



Figure 2: Photograph of Harry Hay at the Christopher Street West parade in Los Angeles, June 22, 1986

After the North American Man/Boy Love Association formed in the wake of the Boston sex scandal, it expanded rapidly beyond Boston to become a national organization with many chapters all around the country. NAMBLA adopted a political platform that was suspicious of state power and critical of the way in which age-of-consent laws

³ Marcos Bisticas-Cocoves, “Harry Hay Barred from Carrying NAMBLA Sign,” *Gay Community News*, August 10, 1986.

interfered with sexual activity involving young people that they argued was consensual. Like the Boston/Boise Committee had done, NAMBLA included many teenaged members, giving them a rare platform on which to speak for themselves and argue for their own sexual rights. The organization enjoyed the support of prominent veteran gay rights activists, such as Harry Hay and Frank Kameny, who recalled how sexual experiences they had as teenagers with an adult had helped them to come out as gay at a time when just about every other sector of society was hostile to homosexuality. NAMBLA refused to limit its defense of sexual conduct involving young people to teenagers but defended the sexual rights of children of any age, along with the sexual rights of adults who were attracted to minors. As pedophile rights activists, feminists, and intellectuals had done in the 1970s, the organization translated its defense of the sexual rights of youth and adults who were attracted to youths into the specific political demand that all age-of-consent laws be repealed.

NAMBLA became subject to more and more legal suppression as the child protection movement became increasingly powerful and national in scope. In the 1980s, the Federal Bureau of Investigation (FBI) helped orchestrate a crackdown on NAMBLA as well as international pedophile organizations, making it much more dangerous for those groups to continue their activism. At the same time, federal lawmakers passed a flurry of new laws related to child sexual abuse and child pornography. The U.S. Postal Service acquired vast new powers to track individuals who sent or received erotic material involving an underage person through the mails, along with many other technologies of public action for the suppression of activists who sought to liberalize the law of sex involving minors.

The expansion and federalization of the child protection movement was facilitated by a concomitant transformation of the women's movement, which became aligned increasingly with conservative and liberal lawmakers who advocated for a law-and-order response to the problem of sex offending. Sex-radical feminists, who had once defended non-normative sexual practices and argued that the nuclear family was a locus of patriarchal oppression that gave men ownership over women and children, became increasingly marginalized within the movement. In their place, a new brand of carceral feminism rose to prominence that collaborated with right-wing activists and lawmakers, as well as liberals, in order to expand the criminal justice system as a strategy for controlling sex crimes involving a young person.

The expansion of the child protection movement in the 1980s and '90s made the political culture in which lesbian and gay activists were operating more heteronormative, limiting the possibilities for sex law reform that they could viably achieve. The heteronormative turn in the sexual politics of the LGBT rights movement did not happen only or even primarily because mainstream activists were conservative or uninterested in the needs of the most stigmatized gender and sexual minorities.⁴ The queer theorists who have focused on the role of "homonormative" gay activists in producing the LGBT movement's heteronormative turn have focused too narrowly on a relatively small group of individuals while eliding explanations that are structural in nature. As the legal scholar Gwendolyn Leachman has argued, "the marginalization of intersectionally subordinated groups" was not primarily "the result of insensitive or strategic decisions made by

⁴ Duggan, "The New Homonormativity."

individual movement leaders.” Rather, she emphasizes, “institutional and organizational processes . . . reinforce[d] patterns of intramovement marginalization.”⁵

The rise of the child protection movement was one of the most important factors contributing to the LGBT movement’s heteronormative turn. The overwhelming new focus on child protection in U.S. political culture forced the hands of gay rights activists who wanted to fight antigay legal discrimination, making it imperative that they divorce themselves from the youth liberation position in order to maintain their credibility. In the context of the government crackdown on NAMBLA, and the hyper-visibility of the organization in the press, the mainstream lesbian and gay rights movement could no longer afford even to be associated with a defense of the sexual rights of any minors at all, even teenagers, lest it be accused of advocating for child sexual abuse. One of the collateral consequences of this was the decline of the youth liberation movement as well, which lost the platform that NAMBLA and other gay liberation organizations had once given it.

Now that it was unhindered by political protest, the child protection movement proceeded in the 1990s to establish exceptionally harsh laws and policies about child sexual abuse. Lawmakers at the state and federal levels revived the legal practice of “civil commitment,” which allowed for the indefinite confinement of persons convicted of certain sex offenses for “treatment.” As recently as the 1970s, it had seemed like those laws were gone for good. The same was true of sex offender registration. A policy that had originated at the state level in California after World War II, the registry migrated to the national level in 1994, when the federal government passed a law requiring all states to maintain one.

⁵ Leachman, “Institutionalizing Essentialism,” 657.

The justification for the new round of legislative activity during the second war on sex offenders was different from that of the first. During the first war on sex offenders, lawmakers had targeted homosexuals for criminalization by framing them as a threat to “public decency,” a vaguely defined notion facilitated the stigmatization and criminalization even of gay men who limited their sexual conduct to take place only with other adults in private. By the 1990s, the argument that gay men threatened public decency had lost its credibility in many sectors of U.S. political culture. Rather, lawmakers justified the sex offender laws of the late twentieth century by framing them as a tool with which to protect individual victims from harm. Like the older public decency argument, though, lawmakers’ definition of who counted as a victim was speciously broad, in the sense that it often encompassed not just prepubescent children but any young person under 18 years of age. By collapsing the children and teenagers together into the legal category of the “minor,” the new child protection laws conceptualized even teenagers who engaged in sexual activity always-already as vulnerable victims. In so doing, they elided the demand that teenagers in the youth liberation movement had once made not just for protection but for sexual self-determination, making teenagers themselves into stigmatized queer subjects who were excluded from the world of lawful sexuality alongside minor-attracted people.

I. Challenging the Age of Consent

On January 6, 1979, David Thorstad, the spokesperson for New York City’s Coalition for Lesbian and Gay Rights, published an editorial in *Gay Community News* entitled “A Statement to the Gay Liberation Movement on the Issue of Man/Boy Love.” A founding

member of NAMBLA, Thorstad implored his fellow activists to make the liberation of the sexuality of young people a core goal of gay politics. He wrote, “It is essential that the gay liberation movement as a whole recognize and fight for the rights of children to control their own bodies, free from the antisexual restraints now imposed upon them by adults and by the institutions adults control—religion, the state, the legal profession, the schools, and the family.” Because the ultimate goal of gay liberation was “the achievement of sexual freedom for all,” it was imperative that the gay movement not limit itself to a defense only of the rights of “lesbians and gay men” who were over the age of majority. Defending the sexual rights of young people, in turn, translated into a specific political aim: “Repeal all age of consent laws! Freedom of sexual expression for all!”⁶

Thorstad issued his call for the repeal of age of consent laws in the context of a relatively small but multifaceted and international social movement to liberate and legalize the sexuality of young people. In the U.S., some liberals, along with some feminists, fought for the age of consent to be lowered in order to legalize the sexual behavior of teenagers. At the same time, pedophile rights organizations in Holland, France, Germany, the U.K., and elsewhere, with the support of some prominent allies, called for age of consent laws to be repealed entirely.

The movement to lower the age of consent achieved one of its biggest successes, albeit a short-lived one, in New Jersey in 1978 and 1979. As it was in the process of revising the state’s Code of Criminal Justice, one of the changes that the state legislature made was to lower the age of consent to 13, reducing it from 16 in previous statutes. The

⁶ David Thorstad, “A Statement to the Gay Liberation Movement on the Issue of Man/Boy Love,” *Gay Community News*, January 6, 1979.

alteration was the brainchild of the New Jersey State Coalition Against Rape, a consortium of rape crisis centers, which helped to write the section of the criminal code dealing with sex offenses. Another important feminist organization, the New Jersey chapter of the National Organization for Women (NOW), also gave its imprimatur to the change. In her explanation of why the Coalition supported lowering the age of consent, spokesperson Roberta Kaufman said, “It was not our intention to come out and condone childhood sexuality or make it possible for people who are substantially older to have sex with teenagers. It *was* our intention, however, to reduce the number of teenagers in the courts—to reduce the number of teenagers with arrest records.” However, a number of disparate groups—the United Catholic Conference, the Knights of Columbus, local community police organizations, and the conservative New Jersey Majority Women—put considerable pressure on the legislature by organizing a petition drive to repeal the age of consent clause. The pressure resulted in a new bill introduced by Christopher Jackman, the Speaker of the State General Assembly, that criminalized consensual sex with a person under 16. The bill passed in 1979, defeating feminists’ goal of legalizing consensual sex involving younger teenagers.⁷

Alongside efforts to lower the age of consent, in countries where gay sex was already legal for consenting adults, reformers attempted to equalize the age of consent for homo- and heterosexual acts. In 1967, when the United Kingdom decriminalized gay sex between consenting adults in private, Parliament set the age of consent for homosexual behavior at 21, five years higher than the age of consent of 16 for heterosexuals. It was not until 2000 that lawmakers in the U.K. made the age of consent the same for both

⁷ Warren Blumenfeld, “NJ Tackles Age of Consent,” *Gay Community News*, May 26, 1979.

groups.⁸ West Germany, Sweden, Denmark, and Canada followed similar trajectories. In 1978, the French Senate passed a piece of legislation that would have lowered the gay age of consent from 18 to match the straight age of consent of 15.⁹

However, conservative groups, right-wing tabloids, and the Catholic Church organized to defeat the measure. While the bill was still being considered by the French Parliament, the right-wing tabloid *Minute* helped to foment a public scandal about Jacques Dugué, an amateur pornographer whose subjects were often teenage boys. Correspondence that the Los Angeles police officer Lloyd Martin had seized in a local raid led to the arrest of Dugué in January 1979 on charges of child sexual abuse. “Judging by the emotions aroused by the Jacques Dugué affair,” editorialized the liberal newspaper *Le Monde*, “the revision of the articles in the Penal Code dealing with adult-child relations is not yet ready to be accepted by the public.” In fulfillment of this prophecy, on November 14, 1979, a government commission advising the National Assembly, headed by arch-conservative Roman Catholic Jean Foyer, blocked the passage of the bill. In 1982, though, under a new Socialist government, France finally passed it, lowering the homosexual age of consent to 15.¹⁰ In European and Scandinavian countries that had legalized gay sex involving adults, gay sex involving minors, especially boys, remained a particularly sensitive issue.¹¹

There was also a movement in France to repeal the age of consent entirely. On January 26, 1977, *Le Monde* published an open letter signed by 69 people calling for the

⁸ “Q and A: The Age of Consent,” *BBC News*, November 29, 2000, http://news.bbc.co.uk/2/hi/uk_news/1045383.stm.

⁹ International Gay News Agency Press Release, November 14, 1979, box 8, folder 54, Bromfield Street Educational Foundation Records, Northeastern.

¹⁰ David Thorstad, “French Assembly Votes to Lower Age of Consent,” *Gay Community News*, January 16, 1982.

¹¹ “The Battle-Line: Los Angeles Cop Lloyd Martin,” *Pan*, May 1980. “Jacques Dugué s’explique,” *Libération*, January 21, 1979.

release of three men—Bernard Dejager, Jean-Cloude Gallien, and Jean Burckardt—who were about to be tried for “lascivious acts with a minor of less than 15 years of age” for sex with 13- and 14-year-olds. It was contradictory, the letter argued, for the law to make it possible to try and sentence children for a crime, and to give 13 year-olds access to the birth control pill, while, at the same time, denying children recognition of their “capacity for discernment . . . with respect to their emotional and sexual life.”¹² The letter was signed by a number of prominent intellectuals, including Roland Barthes, Simone de Beauvoir, Gilles and Fanny Deleuze, and Félix Guattari. The same year, an overlapping group of intellectuals, professionals, and people with a wide range of political affiliations submitted a petition to the commission responsible for reforming France’s penal code, calling for the decriminalization of consensual sex involving minors under 15. In a radio interview about the petition from 1978, the philosopher Michel Foucault argued that the law should make a distinction between consensual and non-consensual, violent and non-violent sex involving children. “An age barrier laid down by law does not have much sense. . . . [T]he child may be trusted to say whether or not he was subjected to violence.”¹³ Parliament did not heed the petition’s demand. Nonetheless, the support of such important French intellectuals lent the movement to repeal the age of consent unprecedented legitimacy.

¹² “We Received the Following Communication,” *Le Monde*, January 26, 1977, https://www.ipce.info/ipceweb/Library/00aug29b1_from_1977.htm.

¹³ Michel Foucault, Guy Hocquenghem, and Jean Danet, “Sexual Morality and the Law,” in *Politics, Philosophy, Culture: Interviews and Other Writings, 1977-1984*, ed. Lawrence D. Kritzman, trans. Alan Sheridan (New York: Routledge, 1988), 271–85, 284. Three other French philosophers, René Schérer, the gay liberation theorist Guy Hocquenghem, and Tony Duvert, dealt extensively with the subjects of child sexuality and pedophilia in their work. See “Interview: René Schérer,” *PAIDIKA: The Journal of Paedophilia* 1, no. 2 (Autumn 1987): 2–12. René Schérer, *Émile perversi; ou, Des rapports entre l'éducation et la sexualité.*, Libertés 2000 (Paris: R. Laffont, 1974). René Schérer and Guy Hocquenghem, *Co-Ire: Album Systématique de L'enfance* (Fontenay-sous-Bois: Revue du Cerfi, 1976). Tony Duvert, *Good Sex Illustrated*, trans. Bruce Benderson (Los Angeles: Semiotext(e), 2007). Georges Lapassade and René Schérer, *Le Corps Interdit: Essais Sur L'éducation Négative* (Paris: Éditions E.S.F., 1976).

Pedophile rights organizations around the world also pushed for age of consent laws to be repealed. Holland had the earliest and most developed pedophile emancipation movement. The country's first gay rights organization—the *Cultuur en Ontspanningscentrum* (COC), or the Center for Culture and Leisure—was founded in the 1930s and went underground during World War II. In the 1950s, the COC included a number of pedophile members, whom the psychologist and activist Dr. Frits Bernard organized into the International Enclave Movement, a pedophile rights group whose activities included a publishing house.¹⁴

Founded in 1974, Britain's Pedophile Information Exchange (PIE) described itself as an organization “campaigning for the legalization of consensual sex between adults and children.” As P.I.E. member Steven Adrian explained the group's purpose in a television interview with the British Broadcasting Corporation in 1983, “P.I.E. is not a procurement agency for children; it never has been and never will be. Our political objectives include developing a society where children are given a much higher status than today, where they are recognized as individuals in their own right, and this includes recognizing their right to certain sexual freedoms, while protecting them from . . . criminal assaults.”¹⁵ The organization was affiliated with the more mainstream National Council for Civil Liberties (NCCL) from the late 1970s through the early 1980s.

For most of the 1980s in Germany, the Green Party included within its membership the *Bundesarbeitsgemeinschaft Schwule, Päderasten und Transsexuelle*

¹⁴ “Paedophile Liberation in Holland,” *Pan*, June 1979. COC Nederland, accessed January 7, 2016, <http://www.coc.nl/algemeen/gelukkig-nieuwjaar-2016>.

¹⁵ “London's PIE Trial Opens,” *Gay Community News*, February 7, 1981. Tom de Castella and Tom Heyden, “How Did the pro-Paedophile Group PIE Exist Openly for 10 Years?,” *BBC News Magazine*, February 27, 2014.

(*BAG SchwuP*), a national “working group on gays, pederasts, and transsexuals.”¹⁶ In Paris in November 1982, about 50 people attended a two-day conference organized by the *Groupe de Recherche pour une Enfance Differente* (GRED, or the Research Group for an Alternate Childhood). The conference was held in the Paris headquarters of the *Comite d’Urgence Anti-Repression Homosexuelle* (CUARH), or the Ad Hoc Committee against Gay Repression, which had recently adopted the position that all laws prohibiting consensual sex should be repealed, including age-of-consent laws.¹⁷ At the turn of the 1980s, the international pedophile movement was an active participant in both the gay movement and in official politics.

The nascent international pedophile movement was an active participant in both the gay movement and in official politics. PIE was affiliated with the more mainstream National Council for Civil Liberties (NCCL) from the late 1970s through the early 1980s.¹⁸ For most of the 1980s in Germany, the Green Party included within its membership the *Bundesarbeitsgemeinschaft Schwule, Päderasten und Transsexuelle* (*BAG SchwuP*), a national “working group on gays, pederasts, and transsexuals.”¹⁹ Decades later, the Green Party’s opponents dug up this information and exploited it to try to discredit them.²⁰ In Paris in November 1982, about 50 people attended a two-day

¹⁶ “GRÜNE Torso von SchwuP,” *Der Spiegel*, March 25, 1985, <http://www.spiegel.de/spiegel/print/d-13513384.html>. There is an ongoing public scandal today about the Green Party’s supposed endorsement of pedophilia in the 1970s and 80s. Thomas Rogers, “A Major German Political Party Used to Support Pedophilia—And It’s Coming Back to Haunt Them,” *New Republic*, November 24, 2014, <https://newrepublic.com/article/120379/german-green-party-pedophilia-scandal>.

¹⁷ David Thorstad, “Pedophile Group Meets in France,” *Gay Community News*, January 2–9, 1982.

¹⁸ Tom de Castella and Tom Heyden, “How Did the pro-Paedophile Group PIE Exist Openly for 10 Years?,” *BBC News Magazine*, February 27, 2014, <http://www.bbc.com/news/magazine-26352378>.

¹⁹ “Grüne Torso von SchwuP,” *Spiegel*, March 25, 1985, <http://www.spiegel.de/spiegel/print/d-13513384.html>.

²⁰ Thomas Rogers, “A Major German Political Party Used to Support Pedophilia—And It’s Coming Back to Haunt Them,” *New Republic*, November 24, 2014, <https://newrepublic.com/article/120379/german-green-party-pedophilia-scandal>. On the use of accusations of homosexuality or pedophilia as a political

conference organized by the *Groupe de Recherche pour une Enfance Differente* (GRED, or the Research Group for an Alternate Childhood). The conference was held in the Paris headquarters of the *Comite d'Urgence Anti-Repression Homosexuelle* (CUARH), or the Ad Hoc Committee against Gay Repression, which had recently adopted the position that all laws prohibiting consensual sex should be repealed, including age-of-consent laws.²¹

Social scientists contributed to the pedophile movement by furnishing empirical evidence showing that sex was not necessarily harmful to minors. In 1979, the Netherlands Institute for Socio-Sexological Research published a 260-page report entitled *Pedosexual Contacts and Pedophile Relationships* by a young doctoral candidate at the Catholic University of Nijmegen named Theo Sandfort. In the 1980s, Sandfort published prolifically on the subject of sex between adult men and male youths, culminating in his 1987 book *Boys On Their Contacts with Men: A Study of Sexually Expressed Friendships*, a qualitative interview study of 25 boys, some of them as young as 10, who were in relationships with adult men. Sandfort found that the boys' experience of their relationships was overwhelmingly positive, with boys reporting that they felt "nice," "happy," "free," "safe," "satisfied," "proud," and "strong" far more often than they felt "naughty," "afraid," "dislike," "shy," "angry," "sad," or "lonely." In his introduction to the book, Dr. John Money, a prominent sexologist and professor at Johns Hopkins University, praised the study as "a very important book, and a very positive one. . . . Pedophilia and ephebophilia are no more a matter of voluntary choice than are left-handedness or color blindness." Sandfort's study lent a scientific basis to NAMBLA's

weapon, see Helmut Puff, *Sodomy in Reformation Germany and Switzerland, 1400–1600* (Chicago: University of Chicago Press, 2003).

²¹ David Thorstad, "Pedophile Group Meets in France," *Gay Community News*, January 2–9, 1982.

assertion that sex between a man and a boy, even a pre-teen one, could be a positive experience for the younger partner.²²

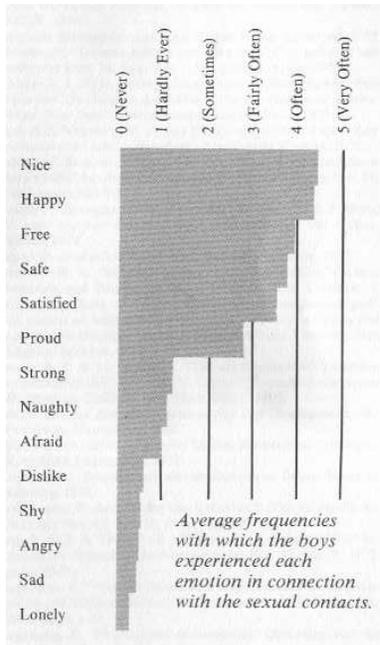


Figure 3: Table from the appendix of Theo Sandfort’s 1987 study *Boys On Their Contacts with Men: A Study of Sexually Expressed Friendships*. Sandfort used qualitative sociological methods to assess how boys felt about their intimate relationships with adult men.

Articulate teenage boys corroborated Sandfort’s findings. In 1980, *Semiotext(e)*, an independent publisher of critical theory, printed an interview entitled “Loving Men” between the journal’s founder, Sylvère Lotringer, and a 15-year-old boy named Mark Moffett, a student at a private high school in New York City and a member of NAMBLA’s steering committee. In the interview, Moffett told of his experience having sexual relationships with older men as a teenager. He explained, “The first time I ever began to express sexual feelings toward anyone was within a man-boy relationship. Man love is also something which has helped thousands of boys [to] discover their own sexuality and get in touch with what they really feel.” When he had his first sexual

²² Theo Sandfort, *Boys On Their Contacts with Men: A Study of Sexually Expressed Friendships* (Global Academic Publishers, 1987).

experience with another person when he was 13 (two years before the interview), Moffett said that he was the one who “did the seducing” of the older man.²³

Moffett argued further that efforts to protect young people from sex ironically made them more vulnerable by figuring them simplistically as vulnerable victims who were totally incapable of intelligent sexual decision-making. “Children will be able to make their own decisions if they are forced to make them. As it is now, all the decision-making is done for them, so they’re not used to doing it.”²⁴ In the “Speaking Out” section of the *Gay Community News*, periodically, numerous other adults and teenagers joined Moffett in describing the positive sexual experiences they had with older men when they were boys. Their testimonies refigured children, especially teenage boys, not as necessarily passive victims of sexual abuse but rather as young people who deserved the right to control their own bodies and sexual behavior.²⁵

At the same time, adult gay men in the man-boy love movement adopted the identity of the “boy lover” as a way of identifying and legitimizing their sexual orientation, much as gay identity had done for countless other homosexuals. One of the most articulate and prolific writers on the subject was Tom Reeves, a founding member of NAMBLA who was part of the original cohort of gay liberation activists in Boston. In an essay entitled “Loving Boys” (which was published in the same volume as the interview called “Loving Men”), Reeves described his attraction to boys as a relatively fixed sexual orientation that was analogous to being gay. “I’m coming out again,” he

²³ Sylvère Lotringer and Mark Moffett, “Loving Men,” in *The Age Taboo*, 14–24, 14.

²⁴ Lotringer and Moffett, “Loving Men,” 18.

²⁵ Ian Michaels, “Boys Loving Men: A Personal Reintroduction to Life and Loving,” *Gay Community News*, January 13, 1979. Scott O’Hara, “Man-Boy Sex: Think About the Love a Gay Youth Needs,” *Gay Community News*, July 20–26, 1986. Jack Ryan, “Man-Boy Sex: A Boy Prostitute’s Perspective,” *Gay Community News*, July 20–26, 1986.

wrote. “At some point in life you decide. You either employ your wit and energy to cover up, or you start to open up and find it never ends. Coming out as a faggot, step by step, took long enough, but it wasn’t enough. There are secrets I want to keep and sensitivities I’ll only share with lovers, but the essentials that make up my self will come out. One essential is that I’m a faggot who loves boys.” Reeves discovered his preference for boys in working-class Baltimore, where the streets were populated with teenage hustlers and other boys looking for sex, describing it as “a center of faggot-boy sex and the culture and potential politics it fosters.”²⁶ In Baltimore in 1979, at NAMBLA’s third conference, Reeves stated in a lecture on the “Ethics of Man/Boy Relationships” that “the authentic boy love identity is not apologetic, does not view sex as a temptation, and does not see the need for therapy or ‘help’ of any kind to reform or modify its sexuality.” It was not man-boy love that was pathological, Reeves argued, but the society that tried to “mold boys into what society expects of ‘adults’” and “‘normal’ heterosexual men.”²⁷

Within the gay rights and youth liberation groups that were invested in the sexual rights of young people, there was some controversy over whether the age of consent should be lowered or abolished altogether. In an essay from 1978 entitled “Children and Sex,” the editors of the Ann Arbor, Michigan- and New York City-based *FPS: A Magazine of Young People’s Liberation*, asserted that “age of consent laws should be lowered and probably abolished. But only after coercion laws have been strengthened and there has been an adequate education of prepubescent children. As it stands now, a lot of kids would be in danger since they don’t know much about sex and relationships.”²⁸ In

²⁶ Reeves, “Loving Boys,” 25.

²⁷ “Third NAMBLA Conference Held in Baltimore,” *Gay Community News*, October 27, 1979.

²⁸ A View from the Staff, “Children and Sex,” *FPS: A Magazine of Young People’s Liberation*, April–June 1978.

1979, the Baltimore Gay Alliance adopted a resolution by a margin of more than 3–1 calling for the repeal of age of consent laws, which, the group argued, prevented gay youths “from determining the use of their own bodies.”²⁹ NAMBLA took the same position in its 1981 essay “The Case for Abolishing the Age of Consent Laws.”³⁰

In October 1982, at NAMBLA’s sixth membership conference at the Philadelphia Gay and Lesbian Community Center, some members came to the conference hoping to persuade the organization to support some minimal age of consent at puberty. Such a position had practical and strategic advantages, since more people could accept sex between men and teenagers than sex between men and boys. But, at the end of the conference, the organization’s abolitionist position remained unchanged. As David Thorstad argued in a conference discussion paper, “NAMBLA would not be subject to less oppression from the state if only it would join the con game of ‘Pick an Age of Consent.’ We should support any lowering of existing ages of consent . . . but we should always point out the limitations and the injustice of it for those under the age. . . . The entire concept is based on property rights, not protection, and it is NAMBLA’s position that the children should not be the private property of anyone. . . . It would dilute our message, which is that the state stay out of consensual sex.”³¹ Though it was politically polarizing, NAMBLA maintained the view that the age of consent should be done away with entirely based on the moral conviction that sex involving pre-teens could be consensual and was punished unjustly by the state.

²⁹ “Group Urges Repeal of Age of Consent Laws,” *Gay Community News*, August 4, 1979.

³⁰ North American Man/Boy Love Association, “The Case for Abolishing Age of Consent Laws,” in *The Age Taboo*, 92–106.

³¹ Marc Killinger, “NAMBLA Holds Conference in Philadelphia,” *Gay Community News*, October 23, 1982.

NAMBLA's contention that sex between men and boys could be consensual won its first major legal battle in the court case over Richard Peluso, one of the men who was indicted in the alleged "Revere Sex Ring" in 1978. Peluso, who was the first man to be charged with a crime in the scandal, was found guilty of fellating and masturbating two boys aged 11 and 13. Prosecutors did not allege any violence or coercion (and they did not have to in order to secure a conviction, because the statutory rape law under which Peluso was tried did not require it). He received a punishment of three 15-to-25-year and two five-year concurrent sentences. But the judge also ordered for Peluso to undergo a psychiatric examination, and he was declared to be a "sexually dangerous person," earning him lifetime commitment to the Bridgewater Treatment Center and making him ineligible for parole, work release, or community access programs.³²

On December 7, 1980, 25 NAMBLA members and supporters conducted a rally outside of Bridgewater to protest the incarceration of gay men for nonviolent, consensual sex with boys. 30 of the 170 people at the facility, activists contended, were gay men who had been convicted of statutory sex offenses, while at least 125 such men were imprisoned throughout Massachusetts. "PRISON IS NO PLACE FOR *LOVERS*," read one of the protest signs.³³ The organization's protest gained ground when, on August 28, 1981, Massachusetts Superior Court Judge Walter E. Steele overturned Peluso's designation as a sexually dangerous person.³⁴ Overriding objections by the Assistant Attorney General Linda Katz, Steele had allowed a lengthy testimony from Dr. Charles Silverstein, a psychologist, gay activist, and co-author of the popular sex manual *The Joy of Gay Sex* with the novelist Edmund White. Sex between and boys, Silverstein asserted,

³² "Short Takes," *Advocate*, January 22, 1981.

³³ "NAMBLA IN THE NEWS!!!," *NAMBLA News*, Fall 1981.

³⁴ Philip Knighton, "Peluso Not 'Sexually Dangerous,'" *Gay Community News*, September 19, 1981.

was not always harmful and could even be “nurturing.” In his decision, Judge Steele wrote, “The evidence showed that the petitioner’s sexual contact with boys was in consensual and mutually agreed upon circumstances . . . [and] there is no evidence of petitioner’s propensity to inflict physical or psychological injury on them.” NAMBLA spokesperson Tom Reeves called Steele’s finding a “landmark decision” that established legal precedent for distinguishing between consensual and non-consensual sex between men and boys.³⁵

NAMBLA activists also challenged the child protection movement, and its conflation of consensual with non-consensual sex involving minors, by protesting a conference at Boston University about child sexual abuse. The March 1981 conference on “Child Victimization: Pornography, Prostitution & Sex Rings” was the brainchild of Nurse Ann Burgess, a child protection advocate who had recently risen to prominence when she received a \$50,000 grant from the federal government to rehabilitate children who had been photographed by pedophiles.³⁶ For the event’s keynote speaker, Burgess invited child protection superstar Lloyd Martin, the law enforcement official from the Los Angeles Police Department’s Sexually Exploited Child Unit who played a key role fomenting social and political concern about child sexual abuse in general and the molestation of boys in particular. “Child pornography is the ultimate crime,” Martin argued in his banquet speech. When an audience member asked him how he would handle the case of a sexually active 14-year-old male who identified as gay, Martin replied, “We must protect him until he is 18 . . . from himself and from the pedophile he

³⁵ Charles Silverstein and Edmund White, *The Joy of Gay Sex: An Intimate Guide for Gay Men to the Pleasures of a Gay Lifestyle* (New York: Crown Publishers, 1977).

³⁶ “Trashing the Party of the Nutty Nurse,” *Pan*, April 1981.

will find who will give him love and attention. . . . The pedophile will destroy the boy's soul."³⁷

About 15 NAMBLA supporters demonstrated outside of the event and distributed literature documenting the police officer's history of homophobia and child abuse.³⁸ Martin, the activists charged, had once targeted Los Angeles gay activists Don Kilheffner, Morris Kight, and David Glasscock, who ran the drop-in center for gay youth Beulahland, with phony allegations of statutory rape and child pornography. In 1973, Martin had "threatened to kill" two boys, aged 10 and 12, when they refused to cooperate with him in his effort to identify men involved in an alleged "sex ring." Though the confrontation was modest in size, NAMBLA activists organized the only direct-action protests ever of the burgeoning child protection movement.³⁹

NAMBLA enjoyed the support of prominent and venerated homophile activists who had been active in gay politics since the earliest days of the movement. On October 10 and 11, 1981, NAMBLA held its fifth national conference at the Gay Community Center in Baltimore. David Carroll, the president of the center, opened the conference by welcoming NAMBLA and affirming his organization's commitment to fostering discussion about controversial issues. Among the participants was Frank Kameny.⁴⁰

Kameny was an important gay liberation activist who had served in the U.S. Army during World War II and then went on to earn a Ph.D. from Harvard in astronomy. He found employment with the Army's Map Service but got fired in 1957 when

³⁷ "Notes Made by Mitzel during Lloyd Martin's Banquet Speech," *Pan*, April 1981.

³⁸ Boy-Lovers Crash Conference Aimed at Man-Boy Sex, box 1, folder: "NAMBLA Information," NAMBLA Manuscripts, #7729, Cornell.

³⁹ Who Is This LAPD Det. Lloyd Martin Whom B.U Honors Tonight?, box 1, NAMBLA Manuscripts, #7729, Cornell.

⁴⁰ Philip Knighton, "NAMBLA Conference Features Frank Kameny, Melvin Boozer," *Gay Community News*, November 7, 1981.

investigators discovered that he had been arrested the year before on charges of “lewd conduct.” Kameny’s firing attached the stigma of homosexuality to his record, making it impossible for him to find gainful employment in his field. “At the very first,” he wrote, I did not look for another job because I rather naively felt that this affair would quickly be resolved in my favor.”⁴¹ As somebody who had been a public servant his whole professional life, Kameny must have been particularly aware of how unjust it was for his right to full citizenship to be curtailed. These experiences radicalized and spurred him to become part of the leading edge of the new, more militant style of gay liberation activism of the 1960s and ’70s.

In the talk he gave at the conference, Kameny argued that NAMBLA was important because it was part of a broader activist project to expand the freedoms, choices, and types of relationships that individuals could enjoy in society. “Society exists for me,” he told the audience, “not me for it.” He accused recent child protection laws of promoting the attitude of “no sex at all for younger people between themselves, not even mentioning adults.” That attitude was “the ultimate sexual perversion: no sex; an insane position.” Melvin Boozer of the National Gay Task Force also addressed the conference at an open forum that included members of the interested public on the evening of October 10. Referring to a recent crackdown on NAMBLA by the Federal Bureau of Investigation—a topic to which we will return later—Boozer expressed his opposition to “institutionalized state repression against people interested in exploring the issues involved in man/boy love.”⁴²

⁴¹ D’Emilio, *Sexual Politics*, 151.

⁴² Philip Knighton, “NAMBLA Conference Features Frank Kameny, Melvin Boozer,” *Gay Community News*, November 7, 1981.

The mainstream gay movement's engagement with NAMBLA in the U.S. was paralleled abroad by the International Gay Association (IGA), a worldwide coalition of gay rights organizations of which NAMBLA was a member. At its annual meetings, the IGA featured thoughtful discussion and debate about pedophilia and child sexuality. "Children have limited power at present to determine the course of their own lives," resolved the IGA's Women's Caucus at the organization's second annual meeting in Catalonia in April 1980. "A liberation movement should aim to change the relations between adults and children to provide children with more ability to control the course of their own lives."⁴³ In sum, NAMBLA was not totally marginal or anathema to mainstream gay politics during the early years of its existence, as it would later become. Rather, prominent gay activists, old and new, took NAMBLA seriously and entertained discussion of its political goals.

However, NAMBLA was a source of constant, acrimonious controversy within the gay movement from the very beginning. On October 14, 1979, gay activists held the National March on Washington for Lesbian and Gay Rights. The first political rally of its kind, the march was attended by somewhere between 75,000 and 125,000 people.⁴⁴ At first, the ad hoc committee that organized the march included the demand for age-of-consent laws to be abolished, but the committee dropped that part of its platform after receiving pushback from a number of lesbian and gay groups.⁴⁵ Other gay organizations in the march that were invested in the politics of children did not share NAMBLA's focus

⁴³ International Gay Association Newsletter, [April 1980], box 8, folder 52, Bromfield Street Educational Foundation Records, Northeastern.

⁴⁴ On the 1979 March on Washington, see Amin Ghaziani, *The Dividends of Dissent: How Conflict and Culture Work in Lesbian and Gay Marches on Washington* (Chicago: University of Chicago Press, 2008), 42–71.

⁴⁵ Pat Califia, "The Age of Consent: An Issue and Its Effects on the Gay Movement, Part Two," *Advocate*, October 30, 1980.

on expanding sexual freedom for minors. The Los Angeles-based Parents and Friends of Gays, for example, called instead for “non-discrimination in Lesbian mother or Gay father child custody cases” and “protection for Lesbian and Gay youth.”⁴⁶⁴⁷ In turn, at its second conference in New York City in April 1979, NAMBLA members sent a letter to the organizing committee to inform it that NAMBLA would endorse the march only if it reinstated the demand to repeal the age of consent. The organizers did not, but NAMBLA members and supporters ultimately participated in the march anyway. Still, the conflicts over NAMBLA at the two marches signaled that the issue of the age of consent was becoming a wedge dividing the gay movement.

Another conflict over NAMBLA erupted on April 12, 1980, when between 150 and 300 New York lesbians marched on Albany, the state capital. Spearheaded by members of New York City’s Lesbian Feminist Liberation (LFL), the controversy centered on the selection of NAMBLA member David Thorstad, a leading figure in New York City gay politics, as the event’s keynote speaker. The march’s organizers passed a resolution “almost unanimously” in which they declared that man-boy love was not part of their political platform and refused to take a position on the issue. The New York State chapter of the National Organization for Women outright condemned the idea, arguing in a statement that they believed that “the involvement of children with adults in sexual activity is, by its very nature, exploitative.”⁴⁸

Many other feminist activists were also vocal in their opposition to NAMBLA’s challenge to the age of consent. Robin Morgan, a prominent feminist activist and editor

⁴⁶ 1979 National March on Washington, box 65, folder 9, Federation of Parents, Families, and Friends of Lesbians and Gays (P-FLAG) Records, #7616, Cornell

⁴⁷ Harold Pickett, “NYC Hosts Second Man/Boy Conference,” *Gay Community News*, April 7, 1979.

⁴⁸ “NOW-NYS Rejects ‘Man-Boy Love’ As Gay Rights Issue,” *National NOW Times*, June 1980.

of the classic 1970 radical feminist anthology *Sisterhood Is Powerful*, expressed a similar view in an interview with *Gay Community News* in January 1979. “I think boy-love is a euphemism for rape, regardless of whether the victim seems to invite it.”⁴⁹ In a statement from 1980, the editors of the lesbian-feminist newspaper *Lesbians Rising* condemned the man-boy love movement for promoting the exploitation of vulnerable pre-teens. “Such issues as ‘Man/Boy Love,’” they wrote, “actively challenge the supposed stance of feminism in the lesbian and gay movement. In these circumstances, the child, and we are not referring to teenagers, is in the traditional female position, that is, without power, economic resources, physical strength or the social freedom of the adult male.”⁵⁰ Unlike for NAMBLA, which sought to establish a distinction between consensual and non-consensual sex involving minors, for these feminists, any sex at all between adult men and children represented yet another abuse of patriarchal power. At the same time, though, their comments revealed how it was really the idea of sex involving children, as opposed to adolescents, that repulsed them the most.

Other feminists, though, either endorsed NAMBLA and its goals or were at least willing to engage in principled debate with the group’s position on the age of consent (as opposed to simply condemning it). In a public discussion sponsored by NAMBLA in September 1981, Elizabeth R. Brown, an incest survivor, denounced the group’s defense of sex between adults and pre-teen children but found common ground with their belief in “the right of adolescents to have sex.” And even though she did not think younger children could ever consent to sex, she endorsed NAMBLA’s right, at least, to discuss the

⁴⁹ Jill Clark, “Interview Robin Morgan,” *Gay Community News*, January 20, 1979.

⁵⁰ Editors of *Lesbians Rising*, “‘Lesbians Rising’ Editors Speak Out,” *Lesbians Rising: A Lesbian Feminist Newspaper*, Spring–Summer 1980.

matter, since “if/when censorship comes, [*Gay Community News*] goes first.”⁵¹ In his reply to Brown published in the same issue of the *GCN*, Steven Adrian—a member of the Executive Committee of the Pedophile Information Exchange in London—argued that Brown’s position lacked strong enough of a commitment to the liberation of youth as an oppressed minority. “Women and gays—like the Establishment and its rigor mortis straights—must themselves face up to a traumatic revision of our social structures, a radical redistribution of power, particularly within the family, and one of the major consequences of this will be that children—young people—are finally recognised as individual members of society in their own right (i.e., no longer legal “minors,” roughly on a par with the mentally incompetent).”⁵²

The feminist writer and activist Kate Millett, author of the influential 1970 book *Sexual Politics*, agreed.⁵³ “Part of the patriarchal family structure,” Millett said in an interview, “involves the control of the sexual life of children; indeed, the control of children totally. Children have virtually no rights guaranteed by law in our society and besides, they have no *money* which, in a money-economy, is one of the most important sources of their oppression. Certainly, one of children’s essential rights is to express themselves sexually, probably primarily with each other but with adults as well. So the sexual freedom of children is an important part of a sexual revolution.” However, she pointed out, it would be very difficult to bring about real sexual freedom for children so long as children remained a marginalized class of people, economically and otherwise, in society.⁵⁴ Cindy Patton, a lesbian activist in Boston who wrote for *Gay Community News*,

⁵¹ Elizabeth R. Brown, “More Thoughts on Boy-Love,” *Gay Community News*, September 12, 1981.

⁵² Steven Adrian, “The Rights of Children,” *Gay Community News*, October 24, 1981.

⁵³ Kate Millett, *Sexual Politics* (Garden City, NY: Doubleday, 1970).

⁵⁴ Blasius and Millett, “Sexual Revolution and the Liberation of Children,” 80.

argued that, in her experience, boy lovers did not pose a special threat to children. “While I do not want to deny that adults have social, psychological, and, in some cases, physical power (especially in the case of parents, whose beating of their children has only recently been considered assault), but, based on my discussions with a number of gay men, I do not think that boy lovers often abuse that power. The real abuse goes on in the family, an institution that some feminists who criticize boy lovers conveniently forget is intrinsically under attack in their *own* analysis.”⁵⁵ For these feminists, the biggest problem that children faced was not sexual predation by adult men. Rather, it was the fact that they lived in a society that denied them the authority to make decisions about how to conduct their own lives.

Though most of the discussion in the gay press about the age of consent centered on men and boys, teenage lesbians also asserted their need for greater access to sexual freedom, including the freedom to have sex with adults. At least in part, the reason for the gender disparity may have been that lesbians as a group simply had fewer adult-youth relationships than did gay men. As Kate Millett commented in the interview she gave with the critical theory journal *Semiotext(e)*, “In general, women are given more freedom than men within patriarchy to live across generations. But I don't see the correlative of the man-boy relationship existing in lesbian culture as I know it.”⁵⁶ If “woman-girl love” was not as widespread as its male counterpart, many lesbians reported that they had had good and pleasurable relationships with older women when they were underage. In December 1979, an anonymous “militant young dyke” wrote in *Gay Community News*, “I have had fully consensual sexual relationships with women (who happened to be over 21)

⁵⁵ Cindy Patton, “Our Sexuality, Ourselves: Power and Empowerment,” *Gay Community News*, November 14, 1981.

⁵⁶ Blasius and Millett, “Sexual Revolution,” 81.

since the age of 13. I could have been punished. I could have been punished beyond my relationship being destroyed, cut-off, taken away . . . my lovers imprisoned . . . my being put through a trial and pressured to testify against them. . . . I could have been taken ‘into custody’ by the state.”⁵⁷ “Having become involved with both older women and women my own age,” wrote the 18-year-old Mary O’Shaughnessy in 1982, “I decided long ago that the quality of any relationship depends mainly on the persons in it.”⁵⁸ As was the case with lesbian sexuality in general, sex between women and girls was less visible and policed than was sex between men and boys. However, the age-of-consent laws did affect lesbians, and many lesbians joined the man-boy love movement in pointing out the ways in which age-of-consent laws were oppressive to their consensual relationships.

The man-boy love movement also garnered support from other stigmatized sexual minorities, particularly lesbian sadomasochists (SM). The first known public organization dedicated to lesbian SM, called Samois, was founded in San Francisco in June 1978. The group took its name from the well-known S/M novel *Story of O* (1965) by the pseudonymous Pauline Réage, in which “Samois” is the location of the home of the novel’s one female dominant and a place where SM activities were conducted exclusively by women.⁵⁹ Like boy lovers, lesbian sadomasochists came under attack by other feminists who accused them of promoting sexual behavior that was patriarchal and exploitative. In April 1980, Philadelphia Women Against Violence Against Women (WAVAW), sparked a controversy when it criticized the gay and feminist bookstore

⁵⁷ The essay by the “militant young dyke” was reprinted as: Anonymous, “A Militant Young Dyke’s Feminist Perspective on the Age of Consent Question,” in *The Age Taboo*, 128–132, 130–31.

⁵⁸ Mary E. O’Shaughnessy, “Younger and Older Lesbians,” *Gay Community News*, February 6, 1982. Luciana Kathmann, “Sex and Younger Partners,” *Gay Community News*, February 20, 1982.

⁵⁹ Gayle Rubin, “Samois,” *Leather Times: News from the Leather Archives & Museum*, Spring 2004. Pauline Réage, *Story of O* (New York: Grove Press, 1965).

Giovanni's Room for carrying *Story of O*. According to WAVAW member Michele Belloumini, the group raised the issue because "we wanted to open dialogue on ways the community oppresses itself. We wanted to use the *Story of O* because it is such a blatant example of total misogyny."⁶⁰ Numerous other controversies over lesbian sadomasochism erupted in feminist circles around the country in the early 1980s, including one in the Fall of 1982 over a Boston feminist SM group's request to use the Cambridge Women's Center for their weekly support and discussion group meetings.⁶¹

Some prominent lesbian SM activists argued that they had common cause with boy lovers because of their shared experience of political and legal oppression. Pat Califia, one of the co-founders of Samois who later came out as a trans man, wrote in the *Advocate* in 1980, "We were capable of smashing windows in City Hall and torching police cars when somebody we loved was taken away from us, and it was already too late. It is not too late to stop the police from seizing vulnerable members of our community and sentencing them to a living death. We should not allow one more boy-lover to go to prison."⁶² Gayle Rubin, an anthropologist and Samois co-founder, argued similarly that boy lovers were an unjustly stigmatized class of sexual outlaw. "The recent career of boy-love in the public mind should serve as an alert that the self-interests of the feminist and gay movements are linked to simple justice for sexual minorities. Such

⁶⁰ Lee Swislow, "Store, WAVAW Clash Over Story of O," *Gay Community News*, April 19, 1980.

⁶¹ Jil Clark, "Controversy Develops Over Lesbian S&M Group," *Gay Community News*, November 13, 1982.

⁶² Pat Califia, "The Age of Consent, Part Two." Rona Marech and Chronicle Staff Writer, "Radical Transformation / Writer Patrick Califia-Rice Has Long Explored the Fringes. Now the Former Lesbian S/M Activist Is Exploring Life as a Man," *SFGate*, accessed January 27, 2016, <http://www.sfgate.com/bayarea/article/Radical-Transformation-Writer-Patrick-3303152.php>.

groups have been mobilizing in the margins of the sexual left for some time, but their presence can no longer be ignored nor their claims dismissed.”⁶³

II. The Expansion of the Child Protection Movement

At the turn of the 1980s, it came to light that a surprising number of the child protection advocates who had risen to prominence just a few years before were guilty of some kind of corruption. In the Fall of 1979, the New York State Attorney General Robert Abrams launched an investigation into charges published in the *New York Post* about the child protection advocate Judianne Densen-Gerber, founder of the drug and child abuse rehabilitation center Odyssey House. In the *Post* article, former Odyssey House staffer John Malik accused Densen-Gerber of “squander[ing]” more than \$100,000 in federal and publicly donated funds on herself.⁶⁴ Then, the 19 November 1979 issue of *New York Magazine* ran a cover story about Densen-Gerber revealing that she had never actually completed her psychiatric residency and detailed Odyssey House’s horrid living conditions and “jailhouse atmosphere” of fear and paranoia.⁶⁵ In 1982, after completing its two-year investigation, the New York Attorney General found her guilty of misusing tens of thousands of dollars of federal, state, and city grants to pay for travel in the U.S. and abroad, membership at an expensive private health spa, private entertainment, and other extravagances.⁶⁶

At the exact same time, Robert F. Leonard, a past president of the National District Attorneys Association (NDAA), was convicted of embezzling more than

⁶³ Rubin, “Sexual Politics.”

⁶⁴ David Thorstad, “Densen-Gerber Under Investigation,” *Gay Community News*, October 6, 1979.

⁶⁵ “More on Jingle-Bells Judy . . .,” *Pan*, February 1980.

⁶⁶ “Densen-Gerber Is Guilty, Guilty, Guilty,” *Advocate*, March 4, 1982.

\$100,000 between 1973 and 1976. Leonard had helped establish the Association's Task Force on Sexual Exploitation of Children in 1977, and he had helped popularize the myth of a vast, organized criminal ring of homosexual boy-lovers. "These adult perverts," Leonard had written in a letter to then Assistant Attorney General Benjamin Civiletti, "appear to be aware of the [boy-love] network and travel between states attending these camps and sexually abusing these children for money." In 1980, U.S. Congressman John M. Murphy, co-sponsor of the successful 1977 Kildee-Murphy anti-child pornography bill, was found guilty of accepting bribes from wealthy Middle Eastern businessmen in exchange for U.S. citizenship. Kildee had claimed that his bill was "absolutely necessary to protect our children from the most vicious creatures that breathe, the pornographers who live off the blood of children." "People never seem to learn," quipped an anonymous writer in the pedophile magazine *Pan*, "that 'moral crusaders' who talk this way are usually drunks, thieves or into kinky sex themselves."⁶⁷

In the winter of 1982, the Los Angeles Police Department reassigned Detective Lloyd Martin from his former post as head of the Sexually Exploited Child Unit to a lower-level administrative position. Police Captain Robert Taylor said that the department had reassigned Martin in part because of his outside activities with the organization he had founded with his wife in 1980 called the Foundation for America's Sexually Exploited Children, Inc. On many occasions, Martin had not made clear that he was speaking for his foundation and not for the police department; he also characterized

⁶⁷ "Porn Crusader Convicted," *Gay Community News*, December 8, 1979. "In Brief . . .," *Pan*, September 1980.

on multiple occasions the Boy Scouts and the Big Brothers of Los Angeles as organizations that gave sex offenders access to boys.⁶⁸

Martin's reputation suffered further discredit at the hands of the Illinois Investigating Commission, which in 1981 published the report on juvenile prostitution and child pornography that it had undertaken at the height of what activists called the Great Kiddie-Porn Panic of 1977. The report carefully refuted the negative stereotypes about man-boy relationships promulgated by a 1976 LAPD study on the subject that Martin had commissioned. "The relationships established with the offenders seemed, at least at the time, to be the only valid relationships many of the victims ever had had. Transcripts . . . include that final phrase 'his best friend' too often to be mere coincidence."⁶⁹

Though many of the most important child protection advocates were now widely discredited, the media helped to make sure that child sexual abuse still remained a key social and political issue. NBC aired a made-for-TV movie called *Fallen Angel* in 1981 portraying a little girl who is seduced by pedophiles into becoming a pornographic movie star. The film's writer and producer, Lew Hunter, said the film was about "pedophiles, the people who seduce children into the world of pornography. . . . Pedophiles are mentally sick men or women who are unable to handle adult relationships. So they seek out children."⁷⁰ Tabloids ran stories about child sex abuse cases with shocking titles casting pedophiles as monsters: "Your Child's No. 1 Enemy" and "He Won't Abuse Any

⁶⁸ Lay citizens stood to profit from making claims about child sexual abuse, too. In 1980, Margaret Schultz of Emerson, New Jersey, sued the Franciscan Brothers and the Boy Scouts of America for \$10 million over the alleged sexual abuse of her eleven-year-old son, Christopher. After noticing signs of mental anguish in their son, Christopher's parents had him committed to a Catholic hospital for psychiatric treatment, where he committed suicide. "The Battle Line," *Pan*, September 1980.

⁶⁹ Mitzel, "LA Vice Cop Lloyd Martin Moved to Administrative Job," *Gay Community News*, March 27, 1982. "The Battle Line," *Pan*, July 1981.

⁷⁰ "In Brief . . .," *Pan*, September 1980.

More Kids.”⁷¹ Popular magazines participated, too: “Beware of Child Molesters,” warned an article in *Newsweek* on August 9, 1982; an article appeared in the July 1983 *Reader’s Digest* called “Children for Sale: Pornography’s Dark New World.”⁷² In a high-profile case that began in 1983, members of the McMartin family, who ran a preschool in Manhattan Beach, California, faced charges of sexual abuse of children in their care. In 1990, after six years of criminal trials—the longest and most expensive criminal trial in U.S. history—all of the charges were dropped.⁷³ If media outlets had been consumed in the 1970s by caricatures of adult homosexuals who preyed on children, now they were obsessed with the monstrous figure of the pedophile more broadly.

Soon enough, a new cohort of child protection advocates picked up the baton from their discredited predecessors. William Katz, the executive director of an organization called the American Society for the Prevention of Cruelty to Children, came to national attention in 1980 when he tried to get the police in Tomkins County, New York, to arrest Cornell University Art Professor Jacqueline Livingston for publishing nude posters of her six-year-old son playing with his genitals. In an interview he gave with the *New York Post*, Katz claimed that there were 200,000 children involved in the child pornography industry in the U.S. “If you want to have sex with a child, you can buy one,” he stated.⁷⁴ Celebrities participated, too: the fading actor Robert Vaughn toured state legislatures in 1981 advocating for tougher laws punishing sex between men and

⁷¹ “Your Child’s No. 1 Enemy,” *Weekly World News*, March 22, 1983. Shelley Murphy, “‘He Won’t Abuse Any More Kids’: ‘Tooky’ Sentenced to Prison,” *The Boston Herald*, August 22, 1986.

⁷² Eloise Salholz et al., “Beware of Child Molesters,” *Newsweek*, August 9, 1982. Rita Rooney, “Children for Sale: Pornography’s Dark New World,” *Reader’s Digest*, July 1983.

⁷³ Robert Reinhold, “The Longest Trial—A Post-Mortem; Collapse of Child-Abuse Case: So Much Agony for So Little,” *New York Times*, January 24, 1990. On the McMartin trials, see Debbie Nathan and Michael Snedeker, *Satan’s Silence: Ritual Abuse and the Making of a Modern American Witch Hunt* (New York: Basic Books, 1995).

⁷⁴ “In Brief . . .,” *Pan*, May 1980.

boys, while in 1982 the poet-musician Rod McKuen toured to raise funds for the National Committee for the Prevention of Child Abuse.⁷⁵

Nurse Ann Burgess, professor at the University of Pennsylvania School of Nursing and organizer of the conference at Boston University that NAMBLA had protested, continued to gain traction. “Complex Coercion Binds Sex Rings Using Children,” read the title of an article in the *New York Times* about Burgess’s research.⁷⁶ Burgess co-edited a 1984 book entitled *Child Pornography and Sex Rings*.⁷⁷

Activists with Society’s League Against Molestation (SLAM), an anti-pedophile group that originated in California, formed chapters in many states around the country that lobbied for conservative legislation about child sexuality.⁷⁸ SLAM chapters also hosted screenings of the pseudo-educational film the organization had produced called “The Pedophile.”⁷⁹ The right-wing Interfaith Committee Against Child Molesters, of which the evangelical Christian singer Pat Boone was an “honorary founding member,” made a similar video called “The Child Molesters—America’s Secret Shame!”⁸⁰

There was also a great deal of discussion at the federal level in the 1980s about child sexual abuse that produced a host of new ways to identify, regulate, and criminalize sex involving a minor. Between 1982 and 1985, the Subcommittee on Juvenile Justice, a subsidiary of the U.S. Senate’s Committee on the Judiciary, held at least 9 hearings on child pornography, “exploited and missing children,” child sexual abuse victims in the

⁷⁵ “In Brief . . .,” *Pan*, October 1982.

⁷⁶ “Trashing the Party of the Nutty Nurse,” *Pan*, April 1981. “In Brief . . .,” *Pan*, October 1982. Daniel Goldman, “Complex Coercion Binds Sex Rings Using Children,” *New York Times*, May 8, 1984.

⁷⁷ Ann Wolbert Burgess and Marianne Lindeqvist Clark, *Child Pornography and Sex Rings* (Lexington, MA: LexingtonBooks, 1984).

⁷⁸ Larry Goldsmith, “Anti-Molestation Group Comes To Cambridge,” *Gay Community News*, November 10, 1984.

⁷⁹ David Sonenschein, “Anti-Pedophile Cinema,” *Gay Community News*, December 1, 1984.

⁸⁰ The Interfaith Committee Against Child Molesters, box 166, folder 40, National Gay and Lesbian Task Force records, #7301, Cornell.

courts, and other related topics.⁸¹ Federal legislators were concerned, too, about child exploitation committed by their fellow politicians. In 1983, the House of Representatives Ethics Committee spent \$400,000 on an investigation into allegations that two U.S. congressmen, Daniel B. Crane and Gerry E. Studds, had had sex and done drugs with teenage pages. Ultimately, the committee recommended found both men guilty of misconduct and recommended that they be reprimanded, though, in his testimony, the 27-year-old ex-employee with whom Studds had had sex emphasized that “He did nothing to me which I would consider destructive or painful.”⁸² (Studds became the first federal legislator in history to come out as gay in the context of that scandal.)⁸³ In 1985, President Reagan commissioned the President’s Child Safety Partnership, a coalition of government agencies, private businesses, nonprofits, and media outlets whose aim was to

⁸¹ United States Congress Senate Committee on the Judiciary, *Child Pornography: Hearing before the Subcommittee on Juvenile Justice* (Washington, D.C.: United States Government Printing Office, 1983), <http://catalog.hathitrust.org/Record/007419436>. United States Congress Senate Committee on the Judiciary, *Exploited and Missing Children: Hearing before the Subcommittee on Juvenile Justice* (Washington, D.C.: United States Government Printing Office, 1982), <http://hdl.handle.net/2027/mdp.39015008706130>. United States Congress Senate Committee on the Judiciary, *Missing Children’s Assistance Act: Hearings before the Subcommittee on Juvenile Justice* (Washington, D.C.: United States Government Printing Office, 1984), <http://catalog.hathitrust.org/Record/011342396>. United States Congress Senate Committee on the Judiciary, *Child Sexual Abuse Victims in the Courts: Hearings before the Subcommittee on Juvenile Justice* (Washington, D.C.: United States Government Printing Office, 1985), <http://catalog.hathitrust.org/Record/011342407>. United States Congress Senate Committee on the Judiciary, *Media Violence: Hearings before the Subcommittee on Juvenile Justice* (Washington, D.C.: United States Government Printing Office, 1985), <http://catalog.hathitrust.org/Record/002768075>. United States Congress Senate Committee on the Judiciary, *Child Abuse Victims’ Rights Act: Hearing before the Subcommittee on Juvenile Justice* (Washington, D.C.: United States Government Printing Office, 1986), <http://catalog.hathitrust.org/Record/008516734>. United States Congress Senate Committee on the Judiciary, *Child Victim Witness Protection Act of 1985: Hearings before the Subcommittee on Juvenile Justice* (Washington, D.C.: United States Government Printing Office, 1986), <http://catalog.hathitrust.org/Record/007414489>. United States Congress Senate Committee on the Judiciary, *Computer Pornograph [i.e. Pornography] and Child Exploitation Prevention Act: Hearing before the Subcommittee on Juvenile Justice* (Washington, D.C.: United States Government Printing Office, 1986), <http://catalog.hathitrust.org/Record/008517090>. United States Congress Senate Committee on the Judiciary, *Juvenile Rape Victims: Hearing before the Subcommittee on Juvenile Justice* (Washington, D.C.: United States Government Printing Office, 1985), <http://catalog.hathitrust.org/Record/011342546>.

⁸² “In Brief . . .,” *Pan*, March 1983.

⁸³ “In Brief . . .,” *Pan*, October 1983.

combat “child victimization.”⁸⁴ A multi-layered federal crackdown on child sexual abuse was emerging.

But the expansion of the federal government’s involvement in the business of child protection was most dramatic in the area of child pornography.

The U.S. Postal Service and U.S. Customs cracked down on child pornography with increasing intensity in the course of the 1980s. A law enforcement circular produced by the Postal Service kept readers apprised of the latest convictions for selling child pornography through the mails.⁸⁵ Martin Locker, a “prohibited mail specialist” for the Postal Service, had completed over 50 child pornography investigations by January 1980; only three of them produced convictions in large part because it was difficult to convince the children to participate in the prosecutions.⁸⁶ The pedophile liberation periodical *Pan* alerted readers to possible entrapment plots being conducted by the Postal Service to lure pedophiles into placing a mail order for child pornography.⁸⁷

The effectiveness of such entrapment plots became evident in February 1984, when the police arrested 29-year-old New York City resident Michael Rakoff on a federal warrant for selling child pornography videotapes to an undercover officer. The same year, U.S. Customs began compiling a “target list” of the names and addresses of boy-lovers who received contraband erotic material from overseas and distributed the list to local law enforcement agencies.⁸⁸

⁸⁴ President’s Child Safety Partnership Executive Summary, 1987, box 63, folder “Child Safety 11/07/1987,” Office of Media Relations Records, Reagan Library.

⁸⁵ “In Brief . . .,” *Pan*, December 1981.

⁸⁶ “In Brief . . .,” *Pan*, May 1980.

⁸⁷ Stanley Penn, “Cracking Down: Postal Service, Armed With a Tough New Law, Steps Up Campaign Against Child Pornography,” *Wall Street Journal*, January 23, 1980.

⁸⁸ “In Brief . . .,” *Pan*, May 1984. “In Brief . . .,” *Pan*, July 1984.

Government agencies in other countries employed similar tactics. In London in 1984, a U.K. Customs raid of London's only gay bookstore, "Gay's the Word," led to a public scandal over the fact that the bookstore carried *minor Problems*, a "review for children's liberation and for free intergenerational and childhood relations."⁸⁹ In response, the bookstore stopped carrying the periodical.⁹⁰ In 1987, the US Department of Justice conducted a "child pornography operation" in collaboration with the Postal Service. Federal agents used lists confiscated from pornography manufacturers in order to identify people who had allegedly bought or traded child pornography and sent these "suspects" catalogues of child pornography in order to entice them into committing a crime. This kind of entrapment was similar to the tactics that law enforcement commonly used to criminalize gay men for public sex starting in the 1950s. The government crackdown on the distribution of child pornography through the mails was repressive not only of erotic imagery that involved exploitation but also of non-abusive erotica (such as drawings) and literature that advocated politically for children's liberation.⁹¹

On July 2, 1982, the US Supreme Court declared that child pornography was a "category of material outside of the protection of the First Amendment." The case, *New York v. Ferber*, came out of New York, which had been the site of legal battles over child pornography for several years. In January 1979, a divided United States Court of Appeals for the Second New York Circuit overturned a lower court's ruling that prevented the enforcement of a 1977 New York State anti-child pornography law against the sale of

⁸⁹ "The Battle Line," *Pan*, October 1984.

⁹⁰ Jeffrey Vernon, "minor Problems Too Controversial," *Gay Community News*, May 19, 1984.

⁹¹ Chris Bull, "Feds Nab 150 in Porn Sting," *Gay Community News*, November 8, 1987.

Show Me!, a sex-education book for small children that contained photographs of naked children.⁹² Soon after, St. Martin's press withdrew *Show Me!* from publication.⁹³

But the courts soon reached a different conclusion in a different case. On May 12, 1981, the New York Court of Appeals struck down the part of the 1978 law that barred “non-obscene” depictions of children engaged in sexual activity. That case involved Paul Ira Ferber, a Times Square bookseller who had sold an undercover police officer two 12-minute films of young boys masturbating. A jury found Ferber guilty of promoting a sexual performance of a child but acquitted him of the obscenity charge. Since the material was not obscene, the Court of Appeals then argued, it was “entitled to Constitutional protection from government interference under the First Amendment.”⁹⁴ The next year, though, the US Supreme Court reversed the holding. The protection of children from sexual abuse and exploitation was a government objective of “surpassing importance” and the “distribution network for child pornography must be closed if the production of material which requires the sexual exploitation of children is to be effectively controlled.”⁹⁵ The law now defined sexual imagery involving a minor as an illegal commercial product instead of as protected speech. The American Civil Liberties Union Attorney Arthur Spitzer told *Gay Community News* that, while he did not like child pornography, he considered the ruling's ban on the distribution of such material to

⁹² Arnold H. Lubasch, “Ruling Against Barring the Sale Of ‘Show Me!’ As Smut Reversed,” *New York Times*, January 14, 1979.

⁹³ “News Briefs,” *Pan*, June 1979.

⁹⁴ “In Brief . . .,” *Pan*, October 1982.

⁹⁵ *New York v. Ferber*, 458 U.S. 747 (1982). On the *Ferber* case, see Harris Mirkin, “The Social, Political, and Legal Construction of the Concept of Child Pornography,” *Journal of Homosexuality* 56, no. 2 (2009): 233–67, 241.

be a clear-cut case of speech suppression. “It’s just pure censorship, and I don’t believe the First Amendment permits censorship.”⁹⁶

In the wake of the *Ferber* decision, the Massachusetts legislature passed a punitive new law designed to eliminate “kiddie porn.” Massachusetts had already enacted a different anti-child pornography law in 1978. The first conviction under that law was of George Jacobs of Woods Hole, Massachusetts, who in January 1980 pled guilty to having had sex with a 14-year-old boy and to possession with intent to distribute of sexually explicit photos of minors. The judge ordered for Jacobs to undergo 60 days of psychiatric observation at the Bridgewater State Hospital; his psychiatrists ultimately determined that he was not “sexually dangerous,” and he was transferred to a medium-security prison, where he was to spend 18 months before becoming eligible for parole.⁹⁷

The new statute, which Governor Edward J. King signed into law on July 20, 1982, was the brainchild of Massachusetts Democratic Representative Kevin Blanchette, who had recently attended a seminar on child abuse at the 1981 National Conference of State Legislators. It mandated a prison term of 10 to 20 years and a fine of \$10,000 to \$50,000 for any person who “hires, coerces, solicits or entices, employs, procures, uses, causes, encourages, or knowingly permits” a minor under the age of 18 to pose in the nude or engage in sexual activity “for purpose of visual representation or reproduction.”⁹⁸ Had George Jacobs been convicted under the new law, he would have faced a much longer prison sentence.

⁹⁶ Mitzel, “N.Y. Court Eases Kid Porn Law,” *Gay Community News*, June 13, 1981.

⁹⁷ “Not a Sexually Dangerous Person,” *Gay Community News*, April 26, 1980.

⁹⁸ Larry Goldsmith, “Amid Claims of ‘Billion-Dollar’ Industry, New ‘Kiddie-Porn’ Law Passed in Massachusetts,” *Gay Community News*, August 7, 1982.

The U.S. Congress dramatically extended the federal government's power to criminalize pornography involving a minor through the Child Protection Act of 1984 (which was itself an extension of the 1977 Protection of Children Against Sexual Exploitation Act). The act increased fines for child pornography offenses by about tenfold, raised the legal definition of "child" from 16 to 18, and authorized the use of wiretapping, contingent on receipt of a warrant from a federal judge, to catch producers of child pornography. Like the 1982 Massachusetts law, the new federal statute codified an extremely broad definition of what a "child" was, lumping teens into the same category as young children.⁹⁹

The crackdown on pornography involving "children" (defined as anybody under the age of 18) dovetailed with efforts on the part of conservatives and some feminists to combat pornography more broadly. In the 1980s, feminist activists at the local and state level in places all over the country—places as various as Minneapolis, Indianapolis, Los Angeles, Cambridge, Massachusetts, Arlington, Virginia, Long Island, New York, and the state of Maine—fought for the passage of ordinances or statutes banning all pornography.¹⁰⁰ The feminist theorists Catherine MacKinnon, who was also a lawyer, and Andrea Dworkin played a key role in the anti-pornography movement by conceptualizing pornography as an engine of sexism and sexual violence against women

⁹⁹ Remarks of the President in Signing Ceremony for the Child Protection Act of 1984, May 21, 1984, box OA 13326, folder: "Pornography," Carolyn Sundseth Files, Reagan Library.

¹⁰⁰ Minnesota Civil Liberties Union, box 108, folder 40, National Gay and Lesbian Task Force records, #7301, Cornell. Sharon Page, "Minneapolis Mayor Vetoes Anti-Porn Law," *Gay Community News*, January 14, 1984. Sharon Page, "Indianapolis Enacts Anti-Pornography Bill," *Gay Community News*, May 19, 1984. Stephanie Poggi, "Anti-Porn Leader Named Head of Commission," *Gay Community News*, June 15, 1985. Regina Gillis, "Council Again Dismisses Cambridge Anti-Porn Law," *Gay Community News*, September 28, 1985. Julie Ogletree, "Maine Squashes Anti-Porn Bid," *Gay Community News*, June 21, 1986.

and, thus, as a violation of the civil rights of women as a class.¹⁰¹ The ordinance in Indianapolis passed in 1984, thanks in part to the local activism there on the part of the Christina Right, but a federal court struck it down on November 19 of that year, arguing that it clashed with the First Amendment's protection of free speech.¹⁰²

Joining these feminists in the war on pornography, activists with the Christian Right lobbied the U.S. Congress and President Reagan to ban so-called “dial-a-porn” telephone hotlines and pornography on cable TV, citing the alleged danger that both posed to children.¹⁰³ In August–October 1984, the Subcommittee on Juvenile Justice of the Senate Committee on the Judiciary held a series of hearings on the “effect of pornography on women and children,” further entrenching the view that pornography of any kind, regardless of whether it involved only adults or featured minors, was harmful to women and children.¹⁰⁴ In 1985, the U.S. Attorney General Edwin Meese's Commission on Pornography—formed as an adjunct to the aforementioned Child Protection Act of 1984—conducted a series of hearings into the nature of pornography. Some feminists supported the commission's repressive aims, while others, especially Nan Hunter of the New York Feminist Anti-Censorship Task Force (FACT), expressed strong opposition to them.¹⁰⁵ In its final report, the commission linked exposure to most pornography with sexual violence and called for tougher enforcement of obscenity laws. The crackdown on

¹⁰¹ Donna Turley, “Feminists Divided Over L.A.’s Anti-Porn Measure,” *Gay Community News*, March 23, 1985.

¹⁰² “Anti-Pornography Rally Set for October,” *Moral Majority Report*, September 21, 1981. Sue Hyde, “Anti-Porn Bill Dies; Indianapolis Law Cited,” *Gay Community News*, January 19, 1985.

¹⁰³ Thomas J. Bliley, Jr., to Ronald Reagan, June 9, 1986, box 18, folder: “Pornography (2 of 2),” Morton Blackwell Files, Reagan Library. “Reagan, Public Agree, Too Much TV Sex,” *Moral Majority Report*, February 22, 1982. “Telephone Pornography,” *Moral Majority Report*, May 1983.

¹⁰⁴ United States Congress Senate Committee on the Judiciary, *Effect of Pornography on Women and Children: Hearings before the Subcommittee on Juvenile Justice* (Washington, D.C.: United States Government Printing Office, 1985), <http://hdl.handle.net/2027/mdp.39015012249283>.

¹⁰⁵ Stephanie Poggi, “Anti-Porn Leader Named Head of Commission,” *Gay Community News*, June 15, 1985. Pam Dorries, “Feminists Differ at Chicago Porn Hearing,” *Gay Community News*, August 17, 1985.

child pornography was inextricably bound up with the repression of pornography in general.¹⁰⁶

The repressive child protection laws fanned outward into the repression of other non-normative sexual practices that were unrelated to the specific issue of minors. In December 1986, the U.S. Congress passed and President Reagan signed into law yet another revision to the Mann Act. The 1986 revision took the further step of criminalized the interstate transportation of any person with the intent of having any kind of illegal sex whatever.¹⁰⁷ In effect, what this meant was that taking somebody to have gay sex in a state in which “sodomy” was still illegal was now a criminal offense. The next year, federal officials focused their efforts on eliminating visual depictions of sadomasochism. Agents used the powerful Racketeer Influenced and Corrupt Organizations Act (RICO), enacted in 1970 to combat organized crime, to make several arrests of SM practitioners.¹⁰⁸

III. The Repression of the Challenge to the Age of Consent

The expansion of child protection laws was accompanied by a government crackdown on pedophile and man-boy love activism internationally. On March 13, 1981, in the UK, Tom O’Carroll, the secretary of Britain’s Pedophile Information Exchange, was sent to prison for two years after being found guilty of “conspiracy to corrupt public morals” for encouraging PIE members to make contact with one another, allegedly in order to have

¹⁰⁶ Janice Irvine, “Meese Report Links Porn to Sexual Violence,” *Gay Community News*, December 10, 1986.

¹⁰⁷ Daniel Tsang, “Law Bars Interstate Transport for Illegal Sex,” *Gay Community News*, December 21, 1986.

¹⁰⁸ Chris Bull, “Anti-Porn Crackdown Hitting Hard on the Fringes,” *Gay Community News*, February 14–20, 1988. 18 U.S. Code § 1962(c).

sex with children. The conviction represented a dramatic and sudden revival of the public morals statute: the UK's Law Commission had recommended its abolition just five years before in 1976.¹⁰⁹

In 1983, Australian pedophiles tried to launch a viable self-support group for the second time. The first had disbanded after a gay rights group threatened to disclose members' names to the police. The new group held meetings throughout the summer in Melbourne, Sydney, and other places, and it published several issues of a small magazine called *Rockspider* (Australian slang for pedophile or child molester). That November, the Delta Squad of the Melbourne Police raided one of the group's support meetings; three days later, the *Melbourne Herald* published the names and addresses of all its members.¹¹⁰

In 1984, the former Kinsey Institute researcher David Sonenschein published an informational pamphlet entitled "How To Have Sex with Kids." In the introduction, Sonenschein described the pamphlet thusly: "I would like to introduce this into the growing archives of the pedophile and children's liberation movements as a gesture of public education." In Philadelphia, the gay and feminist bookstore Giovanni's Room stocked and sold ten copies of the pamphlet in March and April. On June 7, somebody hurled a brick through the window of the bookstore (though it was impossible to confirm whether the attack was motivated specifically by the pamphlet). State authorities in Pennsylvania and Texas conducted investigations into the pamphlet and its author.¹¹¹ In 1985, Sonenschein was found guilty of a third-degree felony under a 1979 Texas child pornography law for illegally photocopying a photograph of a child in a "pornographic"

¹⁰⁹ Roger Moody, "PIE Defendant Convicted," *Gay Community News*, March 28, 1981.

¹¹⁰ "In Brief . . .," *Pan*, May 1984.

¹¹¹ Sue Hyde, "Pedophile Pamphlet Prompts Philly Furor," *Gay Community News*, August 4, 1984.

magazine. He received ten years in jail and a \$5,000 fine. Governments all around the world were directly repressing the pedophile and children's liberation movements.¹¹²

Likewise, the North American Man/Boy Love Association came under attack by the police and the FBI. In New York state on July 11, 1981, in a raid they called "Operation Hawk," a combination of local, state, and federal police arrested four men, two of them members of the NAMBLA steering committee, on charges involving minor males. Two of the men, Martin Swithinbank and Jerry Fox, were arrested at Swithinbank's home on Long Island. The men had been watching television with two teenage males when 30 police officers raided the house with drawn guns, did considerable damage to the property, and took the two teenagers into custody and questioned them for six hours.¹¹³ New York papers reported on the arrest using headlines like "Man-Boy Sex Ring Smashed" and "Child Porno Ring Cracked." A few days later, NAMBLA members went to check on Swithinbank's house and found it had been ransacked by neighbors, who threw stones and other objects at them.¹¹⁴

The next year, on December 3, 1982, police raided a private home in Wareham, Massachusetts, and arrested three men on charges of having sex with minors and possession of "obscene" material with intent to distribute it. Two of the men, David Groat (28) and Brett Portman (26), were NAMBLA members.¹¹⁵ That December 19, federal agents carrying several warrants broke into the empty homes of two men as a part of an investigation of NAMBLA. Simultaneously, pairs of FBI agents without warrants visited the homes of at least five men who had served on NAMBLA's steering committee,

¹¹² Stephanie Poggi, "Sonnenschein [sic] Found Guilty of Felony," *Gay Community News*, June 15, 1985.

¹¹³ Mitzel, "NAMBLA Says National Crackdown Starting," *Gay Community News*, August 1, 1981.

¹¹⁴ "FBI/Local Police Launch 'Operation Hawk' Against NAMBLA," *Advocate*, September 3, 1981.

¹¹⁵ Larry Goldsmith, "NAMBLA Members Busted," *Gay Community News*, December 18, 1982.

saying they were conducting a search for two unnamed fugitives.¹¹⁶ NAMBLA members later discovered that the police had been trying to frame the organization for the highly publicized disappearance of a six-year-old boy named Etan Patz, who had mysteriously vanished in May 1979 on his way to school in Lower Manhattan. NAMBLA ultimately disproved the allegations and protested the police harassment through leaflets bearing titles like “Fight State Molestation!” and “All Sex Is Not Rape.”¹¹⁷ Almost half a century later, in February 2017, a man named Pedro Hernandez, a former bodega store clerk, was found guilty of kidnapping and murdering Patz.¹¹⁸

The crackdown on NAMBLA was fueled by demonizing urban legends about the organization popularized by the pop discourse about law enforcement. In December 1981, the tabloidesque law enforcement periodical *Juvenile Justice* ran an article about sex between adults and children contending that NAMBLA maintained “a child sex-by-catalogue operation.” The article quoted police sergeant Tom Rodgers as saying, “a lot of them [the children] are killed and dumped in shallow graves, especially if they rebel against what is being done to them.” The sergeant’s rhetoric was a twist on the urban myth from the Progressive era that “white slaves” who fell into lives of prostitution in the big city usually died within five years.¹¹⁹

Numerous boy lovers were incarcerated for extremely long periods of time in the context of the police crackdown. In April 1981, the 33 year-old Mark Davis, one of the

¹¹⁶ Larry Goldsmith and Bob Nelson, “FBI Searches NAMBLA Members’ Homes,” *Gay Community News*, January 1, 1983.

¹¹⁷ Fight State Molestation!, box 1, NAMBLA manuscripts, #7729, Cornell. All Sex Is Not Rape, box 1, NAMBLA manuscripts, #7729, Cornell. On the FBI crackdown, see *A Witchhunt Foiled: The FBI vs. NAMBLA* (New York: North American Man/Boy Love Association, 1985).

¹¹⁸ Rick Rojas, “Pedro Hernandez Found Guilty of Kidnapping and Killing Etan Patz in 1979,” *New York Times*, February 14, 2017.

¹¹⁹ “In Brief . . .,” *Pan*, December 1981. On white slavery, see David J. Langum, *Crossing over the Line: Legislating Morality and the Mann Act* (Chicago: University of Chicago Press, 2007).

defendants in the “Revere sex ring,” was sentenced to 3-to-5 years in prison for having sex with a minor male (who was 12 or 13 at the time) in 1972.¹²⁰ On May 27, 1982, Martin Swithinbank, one of the men who was arrested in the police sting of NAMBLA and a contributor to *Gay Community News*, pled guilty to two counts of having sex with a 14-year-old male and to one count of producing a pornographic videotape of the same youth and his brother.¹²¹ Each of the three charges carried a prison sentence of between two and a half and five years, which Swithinbank was to serve consecutively. Had Swithinbank not accepted a plea deal, he could have been sentenced to 40 years in prison.¹²² In 1980, the acrobat Robert Butler of Nevada received 21 life sentences (plus 10 years) for having consensual sex with his 13 year-old protégée. In a plea for help written from prison and published in *Gay Community News*, Butler said, “This 13 year-old boy was brutalized, harassed and threatened for a month before he was coerced into signing a complaint against me written by a juvenile detective.”¹²³ Tom Reeves of NAMBLA estimated that there were 125 gay men in Massachusetts who were incarcerated for consensual sex involving minors, including 25 at the Bridgewater Treatment Facility.¹²⁴ Many other boy lovers were also incarcerated.¹²⁵

Many of the men who were incarcerated for sex involving minors were subjected to chemical castration. At midcentury, before the rise of the gay liberation movement,

¹²⁰ Mitzel, “Davis Convicted of ’72 Sex Act,” *Gay Community News*, April 18, 1981.

¹²¹ David Morris, “Boy-Lover Pleads Guilty,” *Gay Community News*, June 12, 1982.

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¹²³ Robert Butler, “Sex More Punished Than Murder,” *Gay Community News*, August 24, 1985.

¹²⁴ Reeves, “Hidden Oppression.”

¹²⁵ Bob Condon, “20 Years in Bridgewater,” *Gay Community News*, January 31, 1981. “NAMBLA Officer Arrested for ‘Assault,’” *Advocate*, March 18, 1982. “Charges Dropped Against Man/Boy Love Leader,” *Advocate*, April 15, 1982. Larry Goldsmith, “Charge of Sex with Minor Brings Prison Sentence,” *Gay Community News*, November 6, 1982. Larry Goldsmith, “Your Money Or Your Life: David Groat’s Bail,” *Gay Community News*, March 12, 1983. Marcos Bisticas-Cocoves, “Court Overturns Sexual Battery Conviction,” *Gay Community News*, August 17, 1985. Shane Que Hee, “Ohio Reverses Zeh Conviction,” *Gay Community News*, May 17, 1986.

states made eugenic use of drugs in an attempt to reduce or eliminate homosexual desire in men. Such was the fate of Alan Turing, the British mathematician who is now widely considered to be the father of the field of computer science. In 1952, after he was convicted of “gross indecency” with another man, Turing was forced to undergo so-called “organo-therapy”—chemical castration—as an alternative to going to prison. Turing committed suicide by cyanide poisoning two years later in 1954.¹²⁶

California’s Atascadero State Hospital, which was run by the state’s so-called Department of Mental Hygiene, also relied on drugs to “cure” patients of sexual deviance. In 1969, a Harvard law student sparked a controversy when he revealed that Atascadero psychologists had experimented with a form of aversion therapy involving a suffocation-producing drug. Drugs had devastating effects on the people on whom they were imposed.¹²⁷ One pedophile described his experience being on Stilbesterol throughout the 1960s and 70s thusly: “I increased my weight by 3 stone (19 Kg). I not only developed breasts but also broad hips and thighs. I used to get hot flushes [sic] and was constantly in pain with perspiration rashes. At one time I had four very painful large red marks, one on each of the palms of my hands and the soles of my feet: I sometimes felt like a new Messiah.”¹²⁸

The use of drugs to curb sexual desire continued into in the 1980s particularly for pedophiles. In 1979–80, contributors to the pedophile liberation magazine *Pan* corresponded with the prominent sexologist Dr. John Money of the Johns Hopkins medical school about the ethics of chemical castration. Money had recently

¹²⁶ “Grant a Pardon to Alan Turing,” *Petitions—UK Government and Parliament*, accessed April 8, 2016, <https://petition.parliament.uk/archived/petitions/23526>.

¹²⁷ Rob Cole, “Aversion Therapy: How Bad Is Real?,” *Advocate*, September 27, 1972.

¹²⁸ “Letters,” *Pan*, November 1979.

recommended to the Maine legislature that, rather than cutting off the nerve supplies from the penises of pedophiles, they should be treated with sex-repressive drugs instead. “Face the facts,” Money wrote to *Pan*. “Pedophilia is not currently acceptable in most legal jurisdictions of the US and Europe. . . . I think you would be well advised to learn how to join forces with your natural allies in science and medicine in this less than perfect world.” “With friends like that, who needs enemies?” quipped an anonymous writer for the magazine. Although the cast of characters to whom they applied changed, the same brutal techniques for “treating” sexual “deviance” stayed the same.¹²⁹

At least one institution, though, took a different tack, encouraging men who were incarcerated for having sex with boys to reinvent themselves as “gay.” Such was the strategy employed by psychiatrist Michael Serber at California’s maximum-security Atascadero State Hospital. After he experienced a “zap”—a direct-action, militant style of protest—conducted by the Gay Activists Alliance at a meeting of the Association for Advancement of Behavior Therapy in New York in 1972, Serber developed a new “retraining” program, in lieu of chemical castration or aversion therapy, for inmates he called “inadequate homosexuals.” As reporter Rober Cole of the *Advocate* described it, Serber aimed through his program to “teach adult males how to make it with each other instead of with young boys, and not get arrested.” Though it was much more humane than the brutalities to which this population of criminals was usually subjected, Serber’s program still promoted the eugenic imperative to extirpate sexual desire for young people.¹³⁰

¹²⁹ “Letters,” *Pan*, February 1980.

¹³⁰ Regina Kunzel, *Criminal Intimacy: Prison and the Uneven History of Modern American Sexuality* (Chicago: University of Chicago Press, 2010), 216–18.

The Boston gay liberation periodical *Gay Community News (GCN)* attempted to aid gay men who were doing time for having sex involving minors by fighting to get prisoners access to the periodical and through a prisoners project that included a correspondence program for incarcerated gay people. In 1977, *GCN*, along with the National Gay Task Force, the publishers of the feminist newspaper *Off Our Backs*, and others, sued the US Bureau of Prisons after the Bureau decided to ban gay periodicals from federal prisons.¹³¹ They finally succeeded in 1980, when the agency was compelled to stipulate that gay publications “of a news or informational nature, gay literary publications, and publications of gay religious groups” were allowed in federal prisons.¹³² Still, activists struggled to achieve the same thing at the state level: in 1987, the prison systems of Michigan, Arkansas, and Alabama all banned *GCN*.¹³³ Tom Reeves of NAMBLA noted hopefully in 1980 that more and more of the 125 who were doing time in Massachusetts for consensual sex involving minors were requesting copies of it, which suggested to him that they were beginning to come out as boy lovers and challenge the legitimacy of their imprisonment.¹³⁴

However, it was in general very difficult for incarcerated boy lovers to self-identify as such. As an incarcerated boy lover named Peter wrote to the *GCN* Prisoners Project in 1989, “It is even very hard to meet others in the same housing units, who are incarcerated for the same reason I am. One reason is that you can not openly talk about your crime to others for fear of the harassment and problems that the ‘big bullies’ give us. So we rarely get to know one another [sic] or for that matter, other inmates. Myself for a

¹³¹ Bureau of Prisons Bans Gay Publications, box 36, folder 1, National Gay and Lesbian Task Force records, #7301, Cornell.

¹³² “GCN Sues US Bureau of Prisons,” *Gay Community News*, June 4, 1977.

¹³³ Stephanie Poggi, “GCN Banned From Prisons,” *Gay Community News*, March 29–April 4, 1987.

¹³⁴ Kunzel, *Criminal Intimacy*, 206–7, 217. Reeves, “Hidden Oppression.”

[sic] example, have had to lie about exactly why I'm doing time here, for my own protection. Right from the very first day in jail my story has been that, I'm in for a drugs charge."¹³⁵ The extreme secrecy that boy lovers had to maintain while in prison prevented them from organizing to contest their own oppression.

As countless child-lovers went to prison, the state repression of discussions about child sexuality in the gay press persisted. On October 6, 1981, a panel of three judges of the Canadian Supreme Court upheld the decision of a lower court to overturn the acquittal of the gay liberation periodical *The Body Politic*, which had been charged in the winter of 1978 with "using the mails to transmit indecent, immoral or scurrilous matter" for publishing the article "Men Loving Boys Loving Men." The law in question had been used only twice before and never against a publication. In April and May 1982, the Morality Bureau of the Metropolitan Toronto Police Force raided the city's gay bookstore, Glad Day Books, and the office of the *Body Politic*, respectively, on charges of distributing obscene material that did not apparently even involve minors.¹³⁶ In June, ultimately, the paper was acquitted for a second time. Provincial Court Judge Thomas Mercer ruled that although pedophilia was "indecent and immoral," and although the article in question did advocate for pedophilia, the publication of the article was not a violation of the law.¹³⁷ In November, the police in Washington, D.C., raided the office of the gay erotic magazine *Stars*, as well as the home of the magazine's publisher, Glenn Turner, in what they described as an investigation of child pornography. Turner denied that the four-year-old magazine, which published photographs of young men in the nude,

¹³⁵ Peter to GCN Prisoners Project, December 14, 1989, box 14, folder 4, Bromfield Street Educational Foundation Records, Northeastern.

¹³⁶ David Morris, "TBP Faces Second Trial," *Gay Community News*, November 28, 1981.

¹³⁷ "Defending the Right to Read," *Body Politic*, June 1982.

had ever “photographed anyone under 18.” It was becoming harder and harder for the gay press to touch the issue of child sexuality.¹³⁸

Police crackdowns on types of “deviant” gay sex that were unrelated to minors persisted as well. In 1980, two years after the initial crackdown that sparked the Boston Sex Scandal, plainclothes police officers were still entrapping men in the men’s room of the Boston Public Library as well as at the cruising areas of the popular gay resort destination Provincetown.¹³⁹ In May 1982, Suffolk County police arrested two men in a sensational raid of Boston’s Club International bathhouse based on allegations of a “male prostitution ring”; that October, a Boston Municipal Court judge ruled that the police had illegally seized evidence during the raid, and the charges against the two men—possession of obscene matter with intent to distribute and deriving support from the earnings of a prostitute—were dropped.¹⁴⁰

Underage boys who were involved in sexual relationships with adult men continued to be the victims of state violence. In 1985, two mothers and eight male youths between 11 and 18 years of age filed a \$200 million federal civil rights lawsuit against Bronx police officer Robert Maginnis, his partner Vito, and other New York City government officials, contending that the officers had used outrageous and criminal tactics in their investigations of alleged sexual contact between the youths and a 36-year-old man named Ed Bagarozy. One of the youths, a 14-year-old, reported that Officer Maginnis had repeatedly abducted him from school every two to three days for five hours

¹³⁸ David Morris, “Washington Police Raid Office of Gay Magazine,” *Gay Community News*, November 27, 1982.

¹³⁹ Barney Frank to Joseph Jordan, May 1, 1980, box 8, folder 24, Bromfield Street Educational Foundation Records, Northeastern. Mitzel, “Summer Busts Return to Provincetown,” *Gay Community News*, July 25, 1981. Christine Guilfooy, “25 Arrested in P’town Busts,” *Gay Community News*, August 10, 1985.

¹⁴⁰ Larry Goldsmith, “Illegal Seizure, Insufficient Evidence In Club International Case,” *Gay Community News*, November 6, 1982.

at a time in order to interrogate him about alleged sexual acts. The youth maintained that no sex had taken place, but the officer would not accept his statement, threatening the boy that he would be arrested and calling him a “queer.” After a while, the boy stopped going to school in order to avoid Maginnis, and he stated that he had lied to the grand jury when he told them that a sexual act had occurred. Another boy testified that the officer had intimidatingly placed a gun on the table while interrogating him and threatened that the boy would be sent to the Bronx’s notorious Spofford “juvenile” detention center, where he would be gang raped. If the boys are to be believed, the real abuse they suffered was at the hands of the state, not boy-lovers.¹⁴¹

Boys (or former boys) challenged the official narrative about male youth-adult sex as inherently abusive by narrating on their own terms the sexual experiences that they had as minors with adult men. In 1986, the 25-year-old San Francisco resident and porn star Scott O’Hara wrote in the “Speaking Out” section of *Gay Community News* that “from age 12, I actively sought out contact with gay men, especially for sex. Although I did fantasize about my peers, it was always older gay men who taught me—not only about sex, but about being proud of myself, being socially aware and compassionate—in short, all the things that my conservative, deeply religious (and loving) parents could not teach me. . . . Am I the only gay person to have learned a sense of identity from a 50-year-old man—who just happened to be great sex as well?”¹⁴² In the same issue of *GCN*, another man named Jack Ryan told of his experience working as a sex worker in Philadelphia when he was 13. He wrote, “I wish to stress that the *overwhelming* majority

¹⁴¹ Moms and Teens File \$200M Federal Suit, box 14, folder 9, Bromfield Street Educational Foundation Records, Northeastern.

¹⁴² Scott O’Hara, “Man/Boy Sex: Think About the Love a Gay Youth Needs,” *Gay Community News*, July 20–26, 1986.

of adult boy-lovers were in my experience decent reasonable people who were gentle and respectful of us and generally well-heeled. I set certain standards about what they could and could not do to me in bed and these standards were graciously respected.” Ryan went on to explain how he viewed his former career as a boy prostitute as less exploitive than the “legitimate” jobs he worked as a stock and messenger boy, in which he earned an extremely low salary and had no benefits.¹⁴³ For these two men, the sexual experiences they had as boys with adult men actually helped them to cope with various abuses they suffered in their everyday lives.

By contrast, the official narrative about NAMBLA produced by the mainstream media was quite unsympathetic. In January 1983, for example, *Time* magazine published an article about the organization entitled “A New Furor Over Pedophilia: Authorities assail the special pleading of an adult-child sex lobby.” “For parents watching excerpts from the press conference on television,” read the opening sentence of the article, “it was yet another appalling development on the sexual front: a group devoted to child molester’s [sic] lib.”¹⁴⁴ By portraying NAMBLA as an organization of “child molesters,” such press accounts denied the possibility that sex between an adult and a minor could be consensual.

Lawmakers tried to pass legislation designed specifically to quash NAMBLA’s activities. In 1983, two New York state legislators introduced a bill making “conspiracy to corrupt the morals of a minor” a felony punishable by up to five years in prison and a \$5,000 fine. In public statement about the bill, Judianne Densen-Gerber, who had by now founded a new group called Protect All Children Today (PACT), argued, “It is wrong to

¹⁴³ Jack Ryan, “Man/Boy Sex: A Boy Prostitute’s Perspective,” *Gay Community News*, July 20–26, 1986.

¹⁴⁴ “A New Furor Over Pedophilia: Authorities Assail the Special Pleading of an Adult-Child Sex Lobby,” *Time*, January 17, 1983.

even discuss and contemplate the use of a three-month-old or a three-week-old by a sixty-year-old man.”¹⁴⁵ In June of the same year, the Massachusetts House of Representatives gave initial approval to a lesbian and gay anti-discrimination bill. However, an amendment added to the bill during debate by Democratic Senator Michael Flaherty stipulated that “nothing in this act shall be construed to apply to members of the National Association of Man Boy Love relationships [sic] or any person whose sexual preference applies to minor children.”¹⁴⁶ NAMBLA was so politically polarizing that lawmakers tried to pass laws designed specifically to suppress it.

There were vigilante witch-hunts of boy lovers at the local level. In the spring of 1983, police in Joplin, Missouri, tore through the city’s gay male community in search of an alleged “teenaged homosexual sex ring.” According to prosecuting attorney William Fleischaker, a total of 20 gay men had “persuad[ed]” 15 to 16 “youngsters” between the ages of 11 and 15 “into homosexual activity by means of alcohol and drugs and sometimes money.” Just two months before he said this, Fleischaker had estimated that there were 30 boys involved. One of the accused, Michael Byerly, became the third gay man to be sentenced to seven years at the state penitentiary in Moberly, joining Danny Owen and Joseph Henlee. Prosecutors allegedly coerced Byerly into being a state witness. Charges against 11 of the men were dropped after one of the alleged victims recanted his testimony and signed an affidavit stating that the prosecuting attorney and the police had coerced him into saying on videotape that there was a “sex ring” in Joplin. The remaining nine men, who had been accused by other boys who did not recant their

¹⁴⁵ Bob Nelson, “Anti-NAMBLA Law Prompted by New Group,” *Gay Community News*, February 26, 1983.

¹⁴⁶ Larry Goldsmith, “House Approves Massachusetts Rights Bill,” *Gay Community News*, October 7, 1983.

testimonies, settled to plea bargain for reduced sentences. Two 19-year-olds, Steve Pickett and Duane Muller, were committed to the Fulton State Hospital for the Criminally Insane for 11 months. Pickett, who was unable to raise bail and was disowned by his parents, tried to commit suicide while he was in jail awaiting trial.¹⁴⁷

The police crackdown had the additional effect of sparking vigilantism on the part of private citizens, too. Local members of the gay community in Joplin conjectured that the police designed the investigation to inflict the maximum possible amount of damage on the gay male community there. The police released the full names and addresses of the accused men to the press, and many of the arrests were made in public places or at work, flamboyantly using numerous squad cars with lights and sirens on to haul off one person. The crackdown inspired an antigay demonstration, at which a gay man named Terry Murphy was beaten by the police. Murphy commented, “Police have been successful at lodging groups against each other. Younger gays are distrustful of older ones, older gays feel the younger ones betrayed them.” As the Joplin witch-hunt shows, in the early 1980s local police departments were cracking down on boy-lovers in just as hard-core of a way as in the 1950s.¹⁴⁸

Similarly, the U.S. Senate used the same tactics it had employed in the time of Joseph McCarthy—this time not to crack down on homosexuals in general but rather on boy lovers in particular. In late November 1984, the Senate’s investigations subcommittee held two days of joint hearings with the juvenile justice subcommittee on child pornography and pedophilia. The hearings featured eight witnesses who testified about the “underground world of commercial child pornography and pedophiles,” in the

¹⁴⁷ Jil Clark, “Cops, Townsfolk Prey Upon Missouri Men,” *Gay Community News*, May 7, 1983.

¹⁴⁸ *Ibid.*

words of Republican subcommittee chair William V. Roth, Jr. Roth promised that the investigation would shed light on the activities of “several organizations in America devoted to the advocacy and practice of sex with children.” No representative from any of those organizations was given the opportunity to testify to counter Roth’s allegations. Foreshadowing the federalization of sex offender registration in the 1990s, one of the witnesses, Detective Lieutenant William G. Thorne of Bergen County, New Jersey, called for the Senate to establish “a central registry on the federal level to be responsible for the collection, organization and dissemination of pedophilia intelligence information.”¹⁴⁹

When the Senate concluded its two-year investigation in September 1986, it found that NAMBLA was not guilty of conspiring to violate laws against the sexual exploitation of children. The report that the investigation produced implied that police investigations of political organizations like NAMBLA might have reached their saturation point. “Such sting operations have become so popular with police that several investigators told the subcommittee that they had corresponded with suspected pedophiles for weeks only to later discover they were writing to other undercover police officers.”¹⁵⁰ If the Senate was losing interest in specifically targeting NAMBLA as an organization, the new child protection laws that NAMBLA helped inspire would have long-lasting effects.

¹⁴⁹ Daniel Tsang, “Senate Investigates Kiddie Porn, NAMBLA,” *Gay Community News*, January 19, 1985.

¹⁵⁰ Daniel Tsang, “NAMBLA Exonerated after U.S. Senate Probe,” *Gay Community News*, September 21–27, 1986.

IV. An Issue Divides a Movement

The expansion of the child protection movement, coupled with the witch-hunt of NAMBLA, created a veritable chasm within the gay movement over the issue of the age of consent. There were numerous controversies in different cities over the use of official gay community spaces for NAMBLA meetings. On September 16, 1982, the board of directors of Custody Action for Lesbian Mothers (CALM) sent a letter to the board of the Lesbian and Gay Community Center of Philadelphia (LGCCP) protesting the center's decision to allow NAMBLA to meet there. The decision was "anti-woman, anti-child, anti-gay" because NAMBLA was, presumably, meeting in order to "advocate a reduction in the age of consent," which was a goal that was "abhorrent to us as feminists," since it would "legalize a serious and all-too prevalent form of child abuse." Other groups echoed CALM's concern in their own letters, including the runaway youth home Voyage House, Inc., the Human Rights Campaign Fund, and the National Association of Social Workers Women's Issues Task Force of Pennsylvania.¹⁵¹

A few gay activists still defended NAMBLA, though. The founder of Gay Fathers of Philadelphia noted that "CALM's protest of NAMBLA's intergenerational love seems to repeat the same unfounded fears that are voiced by many of the wives of gay fathers when they protest our rights of visitation and custody." Ed Hermance, owner of the gay bookstore Giovanni's Room, expressed his concern that "the public, including lesbian

¹⁵¹ Marc Killinger, "Use of Gay Center For NAMBLA Meeting Sparks Controversy," *Gay Community News*, October 23, 1982.

activists, is willing to believe the most unbelievable assertions about gay men and boys.” The Center ultimately allowed NAMBLA to use its space for the meeting.¹⁵²

Similar controversies arose over the use of the Cambridge, Massachusetts, Women’s Center and the inclusion of speakers from NAMBLA at a regional gay conference in Terre Haute, Indiana. In 1983, spokespeople for the Horatio Alger Chapter of NAMBLA in New York reported they had run out of spaces in which to hold regular meetings and had been forced to suspend their meetings indefinitely.¹⁵³ NAMBLA was becoming increasingly marginalized within gay spaces.

Readers of the gay press also feuded over NAMBLA and the issues it represented. “I really enjoyed Gay Pride this year, only there is one thing I’m not proud of in the gay community and that is pederasty,” wrote Brad Walton of Boston in a letter to the editor of *Gay Community News*. “There is no valid reason for straights to deny us our rights, except when we insist on man/boy love. I don’t accept man/girl love with straights and just because I am gay I’m not going to condone gays who practice pederasty. It should be made clear to the world that we as consenting adults want to be free but on the other hand we are not supporting man-boy love.”¹⁵⁴ Likewise, mainstream gay rights organizations distanced themselves increasingly from the group. “We are engaged in a struggle for the protection of the civil rights of consenting adults,” said Virginia Apuzzo of the National Gay Task Force in an interview about NAMBLA, “and the key words are *consenting adults*.” Steve Endean, the first-ever gay lobbyist in Washington, commented to the novelist Edmund White, “That’s the politics of self-indulgence. Our movement cannot

¹⁵² Marc Killinger, “NAMBLA Holds Conference in Philadelphia,” *Gay Community News*, October 23, 1982. Chicago Stonewall Committee, “Who Belongs in the Gay Movement, Who Decides?,” *Gay Community News*, March 26, 1983.

¹⁵³ David France, “No Space for NAMBLA,” *Gay Community News*, September 3, 1983.

¹⁵⁴ Brad Walton, “Not Proud of Pederasty,” *Gay Community News*, July 18, 1981.

survive the man-boy issue. It's not a question of who's right, it's a matter of political naiveté."¹⁵⁵ Whether it was because they actually believed that any sex between an adult and a minor did constitute abuse, or because they simply feared that the controversy over man-boy love would take the rest of the gay movement down with it, the opposition to NAMBLA within the gay movement was growing.

Gay activists may have been hesitant to associate with an organization as controversial and hyper-visible as NAMBLA especially because gay rights remained either non-existent or precarious in a number of areas. In January 1980, the Justice Department ruled that the U.S. Immigration and Naturalization Service had to enforce a statutory ban on the entrance of gay aliens into the United States.¹⁵⁶ Throughout the 1980s, the anti-discrimination bills that gay activists tried to push through the Massachusetts legislature failed over and over again, in no small part due to vigorous opposition by the Roman Catholic Church.¹⁵⁷ Massachusetts became the second state, after Wisconsin, to pass such a law in 1989.¹⁵⁸ Gay teachers remained under fire as they had been in the '70s.¹⁵⁹ The mainstream gay movement had a lot to lose by its association with NAMBLA.

¹⁵⁵ Pat Califia, "The Age of Consent, Part Two."

¹⁵⁶ Maida Tilchen, "Ruling by Justice Dept. Would Force Exclusion of Suspected Gay Foreigners," *Gay Community News*, January 12, 1980.

¹⁵⁷ Kevin Liebhaber, "State House Ends Session, Mass. Rights Bills Die," *Gay Community News*, July 19, 1980. Larry Goldsmith, "Massachusetts Senate Kills Gay Rights Bill," *Gay Community News*, November 12, 1983. Larry Goldsmith, "AIDS Is New Issue in Rights Bill Hearing," *Gay Community News*, March 31, 1984. Christine Guilfooy, "Mass. House Crushes Gay Rights Bill, 88-65," *Gay Community News*, October 5, 1985. A Statement by the Roman Catholic Bishops of Massachusetts on Homosexuals and Homosexuality, box 6, folder 30, Lesbian, Gay, Bisexual and Transgender Political Alliance of Massachusetts Records, 1982–2002, Northeastern. Urgent Action Alert, box 6, folder 13, Lesbian, Gay, Bisexual and Transgender Political Alliance of Massachusetts Records, 1982–2002, Northeastern.

¹⁵⁸ "A Gay Rights Law Is Voted in Massachusetts," *The New York Times*, November 1, 1989.

¹⁵⁹ Betty Krier, "Judge Upholds Gish's Firing," *Gay Community News*, January 15, 1980. "Teacher Convicted," *Gay Community News*, February 28, 1981. John Zeh, "Fired Bisexual Teacher Still Faced with Problems," *Gay Community News*, February 13, 1982. "Atlanta," *Washington Blade*, June 10, 1983.

And many gay people themselves had a lot to lose in the areas of marriage and parenting rights. In 1979, gay activists succeeded in electing openly gay delegates to the White House Conference on Families, but that achievement was fraught with controversy.¹⁶⁰ In 1981, conservative Republicans associated with the Christian Right introduced a piece of legislation called the Family Protection Act, which proposed to make the legal definition of the family explicitly heterosexual.¹⁶¹ It did not pass, but the act would have had the effect of excluding gays and lesbians from, among other things, adoption and custody rights. Local activists formed a new national organization in 1981 called Parents and Friends of Lesbians and Gays (P-FLAG) in an effort to challenge the Right's exclusionary, hetero-only definition of the "family."¹⁶² Many lesbian and gay parents lost custody of their children in the 1980s.¹⁶³ Massachusetts, Maine, New York, and Hampshire all had bills proposing to ban gays and lesbians from being foster parents. Massachusetts Governor Michael Dukakis signed the bill into law in 1985.¹⁶⁴ For many gay people, particularly ones who were parents, there was a lot at stake in trying to convince homophobes that they were not dangerous to children.

As gay activists in Boston made inroads into city hall, it became impossible for openly gay politicians to associate with any challenge to the criminalization of consensual sex involving minors.

Oklahoma Federal Judge Clears Way for Challenge to Helm Bill, box 36, folder 203, National Gay and Lesbian Task Force records, #7301, Cornell.

¹⁶⁰ Coalition on Families Recommends Gay Inclusion at White House Conference, box 36, folder 1, National Gay and Lesbian Task Force records, box 108, folder 40, #7301, Cornell.

¹⁶¹ NGTF Mounts National Campaign to Defeat the Family Protection Act, box 36, folder 198, National Gay and Lesbian Task Force records, #7301, Cornell.

¹⁶² Parents Groups Nationwide Establish Federation, box 65, folder 9, Federation of Parents, Families, and Friends of Lesbians and Gays (P-FLAG) Records, #7616, Cornell. Louise Rice, "We Are Everywhere, and We Have Children," *Gay Community News*, June 1, 1985.

¹⁶³ Christine Guilfooy, "Custody Denied Lesbian Mother," *Gay Community News*, December 29, 1979–January 5, 1980. Jim Ryan, "Gay Custody Denied," *Gay Community News*, February 2, 1985.

¹⁶⁴ Lesbian/Gay Pride, box 8, folder 65, Bromfield Street Educational Foundation Records, Northeastern.

Activists founded the Boston Lesbian & Gay Political Alliance in 1982.¹⁶⁵ It was an exceptionally active local gay activist organization. The group raised funds to support the electoral campaigns of local candidates, established a liaison to the gay community in city hall, helped elect openly gay Bostonian David Scondras to the city council in 1984, and got a local human rights ordinance passed in the same year that provided specific protections for lesbians and gay men.¹⁶⁶

The entry of Boston gay activists into official city politics constrained the types of causes that they could support or be associated with. In 1987, the Boston City Council fired two of David Scondras's aides for their involvement in an organization called the Committee for Civil Liberties and Sexual Freedom (CCLSF) that advocated for fair trials for gay men and lesbians accused of having sex with minors.¹⁶⁷ On September 16 of that year, the *Boston Herald* had published an article entitled "SCONDRAS AIDES IN GAY-SEX SUPPORT GROUP," alleging that the aides, J. French Wall and Gary Dotterman, were "involved in an activist group dedicated to supporting gays accused of illegal sexual activities with teenagers."¹⁶⁸ Ed Hougen, a member of the CCLSF, said he found "the idea that you can fire someone for exercising their first amendment rights horrifying."¹⁶⁹ Eventually, a judge ordered for the aides to be reinstated. However, the damage extended

¹⁶⁵ Lois Johnson, Eric Rofes, Ann Maguire, Richard Burns, Tim McFeely, Marsha Levine, Sheri Barden, and others, "Announcing: The Boston Lesbian & Gay Political Alliance," *Gay Community News*, May 29, 1982.

¹⁶⁶ Alliance News, February 1984, box 3, folder 53, Lesbian, Gay, Bisexual and Transgender Political Alliance of Massachusetts Records, 1982–2002, Northeastern. Alliance Contributes \$2,500 to DiCara: Alliance News, August 1983, box 3, folder 53, Lesbian, Gay, Bisexual and Transgender Political Alliance of Massachusetts Records, 1982–2002, Northeastern. Katherine Triantafillou to Mayor Kevin White, March 13, 1982, box 8, folder 3, National Lawyers Guild, Massachusetts Chapter, Inc., Northeastern. Larry Goldsmith, "Boston Council Approves Rights Bill," *Gay Community News*, July 7, 1984.

¹⁶⁷ Chris Bull, "Scondras Aides Fired," *Gay Community News*, October 11, 1987.

¹⁶⁸ Alliance Blasts Herald Gaybashing, box 4, folder 33, Lesbian, Gay, Bisexual and Transgender Political Alliance of Massachusetts Records, 1982–2002, Northeastern.

¹⁶⁹ Maureen Dezell, "The Herald's Homophobia," *Boston Phoenix*, October 2, 1987.

beyond the immediate scandal by creating the need for Scondras and other gay politicians to distance themselves completely from the issue of sex involving teens.¹⁷⁰

Efforts to provide for the needs of gay youth endeavored to “protect” young people from harm but did little to defend their right to sexual freedom. On August 4, 1980, the Massachusetts Committee for Children and Youth (MCCY), which was formed by the governor in 1959, held a meeting to discuss the needs of gay youth in particular in the greater Boston area. Sarah Benet, the associate director of the MCCY, explained that the purpose of the meeting was to “assist us in finding out some of the answers to gay teenage depression and suicide. . . . Going into the schools, we are finding that gay youth are at high risk for suicide and at this point we just don’t have the answers.”¹⁷¹

In some cases, efforts to help queer teenagers with their problems entailed a coercive sexual paternalism. The same year, the M.D. and gay rights activist Emery Hetrick, along with his partner Damien Martin, founded the Institute for the Protection of Lesbian and Gay Youth, Inc. (IPLGY), in New York City. In an interview with the biweekly gay newspaper *New York Native*, Hetwick explained that the idea for the organization had originated he had with city officials about gay youth who fell victim to sexual relationships with adults allegedly because they lacked any other type of support system. “What we found, universally, is that such experiences are not positive for the young person. When we interviewed young gay and lesbian people, what we found was that what they really wanted was the opportunity to *speak* to gay and lesbian adults, without having to worry about whether or not they had to ‘come across.’ Contrary to NAMBLA mythologies, these kids did not need *or want* adults to have easier access to

¹⁷⁰ Peggy Hernandez, “Judge Rules Council Must Rehire Aides to Scondras,” *Boston Globe*, November 18, 1987.

¹⁷¹ Warren Blumenfeld, “Needs of Gay Youth Studied,” *Gay Community News*, August 23–30, 1980.

them sexually, or vice versa.”¹⁷² In a 1983 letter to *Gay Community News*, Hetwick and Richard Ashworth, president of New York City Parents of Lesbians and Gay Men, Inc., argued that, while “any sexual involvement between an adult and a prepubescent child” was inherently exploitive, gay and lesbian teenagers needed to be taught how to “manage their sexuality.” “For heterosexually oriented adolescents, problems center around adequate sex education, peer pressure to have sex, venereal disease, and pregnancy. Gay youth have the same problems but face additional ones because of their need to hide.” For Hetwick, gay youth needed social services and the freedom to ‘experiment’ with their nascent, ‘developing’ sexuality with other teenagers.¹⁷³

In his own letter to *GCN*, 17-year-old NAMBLA member Bill Andriette of Levittown, New York, took umbrage at the paternalistic way in which IPGLY proposed to speak on the behalf of gay youth instead of letting them articulate their needs for themselves. “The Institute,” Andriette wrote, “seems to treat gay youth with all the naïve condescension with which Good Liberals often approach black people. We are presented as inherently passive, befuddled, and needful of guidance from the ‘experts’ who can view our sexuality in supposedly apolitical, scientific terms. Gay youth don’t need protection; we need power. The exploitive adults are not boy lovers, as Hetrick intimates, but those who deny young people economic rights, sexual freedoms, and alternatives to intolerable family structures. A drive to improve the lot of gay youth must begin here.”¹⁷⁴ Several months later, in July 1983, Andriette lost the scholarship he had received from

¹⁷² Lawrence Mass, “Protecting Lesbian and Gay Youth,” *New York Native*, July 1, 1985.

¹⁷³ Emery S. Hetrick and Richard Ashworth, “Protect Gay Youth,” *Gay Community News*, April 2, 1983.

¹⁷⁴ Bill Andriette, “Gay Youth Talks Back,” *Gay Community News*, April 23, 1983.

the Telluride Association at Cornell University because of his outspokenness about his involvement with NAMBLA.¹⁷⁵

Echoing Andriette's accusation of paternalism, Justin Walker, a "same-gender-oriented kid from New Jersey," complained in the "Speaking Out" section of *GCN* in 1987 that numerous gay groups marginalized gay youth and their right to self-determination. "Same-gender-oriented (s.g.o.) kids," he wrote, "are a part of the s.g.o. family and community, yet we are denied membership and participation in the activities of some of the major gay organizations around. We are kept in sort of a gay 'kiddy camp,' usually run by grownups who are self-appointed 'protectors.' GAANJ (Gay Activist Alliance of NJ) runs an ad in the local papers that specifies '18 and older' for prospective members. SAGE (Senior Action in a Gay Environment) wants '19 and above.' Same with some groups of 'friends and buddies' of people with AIDS."¹⁷⁶ In the 1990s, the paternalistic "protection" model, which advocated for sex education and freedom from harassment for gay teens but not the broader freedom for teens to be able to do what they wanted with their bodies, became the dominant mode of institutional support for lesbian and gay youth promoted by organizations like Parents and Friends of Lesbians and Gays, the Human Rights Campaign, and the Lesbian, Gay, Bisexual and Transgender Political Alliance of Massachusetts.¹⁷⁷

The passing of the gay liberation press (as opposed to more mainstream gay publications) also signaled the decline of the gay movement's challenge to the age of

¹⁷⁵ Bob Nelson, "Scholarship Aid Denied To NAMBLA," *Gay Community News*, July 30, 1983.

¹⁷⁶ Justin Walker, "Under 18? Go Away!," *Gay Community News*, January 18, 1987.

¹⁷⁷ Lesbian and Gay Youth, box 7, folder 18, Lesbian, Gay, Bisexual and Transgender Political Alliance of Massachusetts Records, 1982–2002, Northeastern. Making Colleges and Universities Safe for Gay and Lesbian Students, box 6, folder 32, Lesbian, Gay, Bisexual and Transgender Political Alliance of Massachusetts Records, 1982–2002, Northeastern. First International Convention, box 49, folder 60, Federation of Parents, Families, and Friends of Lesbians and Gays (P-FLAG) Records, #7616, Cornell.

consent. Toronto's *Body Politic*, the paper that had published Gerald Hannon's essay "Men Loving Boys Loving Men" in 1978, ran its final issue in February 1987.¹⁷⁸ *Gay Community News* did not officially close its doors until 1999, but its issues grew thinner and more infrequent, and the level of community participation lower, starting around the mid-to-late 1980s.¹⁷⁹ The gay liberation press was a key, irreplaceable indigenous institution that gave people space to discuss and challenge conventional wisdom about sex and young people.

By the late 1980s, increasingly prominent national gay rights organizations were glaringly silent about any issue pertaining to sex involving minors. The 1987 National March on Washington for Lesbian and Gay Rights is a case in point. The march, which took place on October 11, was extremely successful: the *New York Times* estimated that 200,000 people participated, and the organizing committee was left with a \$70,000 surplus after the event.¹⁸⁰ In its lobbying efforts associated with the event, the Human Rights Campaign Fund focused on AIDS issues, civil rights issues, President Reagan's nomination of archconservative Robert Bork to the Supreme Court, and reforming state sodomy laws.¹⁸¹ Before the event took place, over 400 activists met at a national conference in New York to discuss the event's political platform. The resolution they produced included demands for the passage of a federal gay rights law and the repeal of "all laws restricting sexual conduct between consenting adults" but made no mention of sexuality involving young people. The silence of these organizations about sex involving

¹⁷⁸ Elizabeth Pincus, "The Passing of Canada's Body Politic," *Gay Community News*, February 15, 1987.

¹⁷⁹ On the decline of *Gay Community News*, see Amy Hoffman, *An Army of Ex-Lovers: My Life at the Gay Community News* (Amherst: University of Massachusetts Press, 2007).

¹⁸⁰ Lena Williams, "200,000 March in Capital to Seek Gay Rights and Money for AIDS," *New York Times*, October 12, 1987. Kim Westheimer, "March Coffers Bulge," *Gay Community News*, November 8, 1987.

¹⁸¹ Lobby Day Briefing Paper, box 18, folder 43, Human Rights Campaign records, #7712, Cornell.

minors was not an accident or mere happenstance. They were silent because the child protection movement, and the political culture in which it was ensconced, made it extremely dangerous for the gay movement to touch the issue of children and sex.¹⁸²

It became more dangerous for gay community institutions to allow NAMBLA chapters to hold meetings on their grounds, and most gay institutions had completely iced out the organization by the end of the 1980s. In 1986, NAMBLA New York filed a complaint with the City Commission on Human Rights alleging that the Lesbian and Gay Community Services Center had illegally discriminated against the group by not allowing it to meet there. NAMBLA dropped the complaint the following March. In October 1987, the Baltimore Gay and Lesbian Community Center rescinded the permission it had given to NAMBLA to hold a conference there in response to bomb threats it had received, criticism from its constituents, and protests instigated by a local right-wing radio station. In contrast with the beginning of the 1980s, when NAMBLA could still participate in gay politics even though it was controversial, by the end of the 1980s the group had been almost entirely cut off from gay community rituals, institutions, and identity.¹⁸³

V. The Expansion of the Carceral State

The expulsion of NAMBLA from the mainstream gay movement proceeded in the 1990s when the U.S. Congress forced the International Lesbian and Gay Association (ILGA) to disavow the group. A global federation of gay organizations from dozens of countries, in

¹⁸² Bob Lederer, "Bitter Debate Opens Nat'l March Planning," *Gay Community News*, December 7–13, 1986.

¹⁸³ Marcos Bisticas-Cocoves, "NAMBLA Fights Exclusion from L.A. Pride," *Gay Community News*, June 28, 1986. Marcos Bisticas-Cocoves, "NAMBLA Contests Exclusion from NY Ctr.," *Gay Community News*, December 14, 1986. Elizabeth Pincus, "NAMBLA Skips Suit v. NY Center," *Gay Community News*, March 15, 1987.

1993 ILGA won “non-governmental consultative status” at the United Nations. Soon, however, Republican U.S. Senator Jesse Helms of North Carolina introduced a resolution stipulating that the federal government’s contributions to international organizations would be reduced by \$118 million annually unless “no United Nations Agency or United Nations Affiliated Agency grant any official status, accreditation, or recognition to any organization which promotes, condones, or seeks the legalization of pedophilia, or which includes as a subsidiary or member of any such organization.” Backed into a corner, ILGA—the same organization that had fostered critical discussion about pedophilia and child sexuality in the early 1980s—banished NAMBLA from its ranks.¹⁸⁴

For the rest of the 1990s and into the 2000s, boy lovers continued to live under oppressive legal conditions, making any further political organizing very difficult. In the first place, it remained extremely dangerous for boy lovers just to communicate with one another, especially if they spoke of the relationships they had with boys. As Bill Andriette wrote in NAMBLA’s newsletter sometime between 1988 and 1990, a recent wave of crackdowns on boy lovers in California had resulted “. . . not from complaints of boys or their parents, nor participation in NAMBLA. . . . Rather, the charges arose from the association of boy lovers with other boy lovers. When one fell, so did the others, domino style.”¹⁸⁵ On March 19, 1990, Chris Farrell, editor of the *NAMBLA Bulletin*, was arrested and charged with having consensual sex with four teenage boys.¹⁸⁶ In June 1994, NYC activists with Spirit of Stonewall, an alternative gay pride group that included NAMBLA in its platform, had to defy a court order and march illegally up Fifth Avenue

¹⁸⁴ Harry Hay, “Our Beloved Gay/Lesbian Movement at a Crossroads,” *Gay Community News*, Fall 1994.

¹⁸⁵ Take Steps to Protect Yourself, box 9, folder 9, Bromfield Street Educational Foundation Records, Northeastern.

¹⁸⁶ Editor of NAMBLA Bulletin Arrested, box 9, folder 9, Bromfield Street Educational Foundation Records, Northeastern.

in order to participate in the main pride parade.¹⁸⁷ In 1993, a controversy broke out over Peter Melzer, a Bronx high school teacher who was a NAMBLA member and was a regular contributor to the organization's newsletter. Melzer maintained that he had not done or advocated for any illegal acts. Nevertheless, in 2004 the Second Circuit upheld Melzer's firing for his membership in NAMBLA.¹⁸⁸

In 2000, echoing the earlier scapegoating of NAMBLA for the death of Etan Patz, the parents of a brutally murdered boy named Jeffrey Curley filed a \$200 million lawsuit against NAMBLA, alleging that one of the two murderers belonged to the group using a pseudonym, viewed NAMBLA's website, and read NAMBLA publications before the murder. The ACLU of Massachusetts defended NAMBLA on free-speech grounds and successfully got the case dismissed.¹⁸⁹ As an organization, NAMBLA was not nearly as active as it had been in the early 1980s, but the few activities that it did conduct in the 1990s and 2000s continued to come under intense fire.¹⁹⁰

After falling out of favor in the 1970s and 80s, in the 1990s the practice of indefinite "civil" commitment of people identified as sex offenders returned in full force. In 1990s, the Washington legislature inaugurated the new wave of sex offender legislation by passing a new sexual predator commitment law (among other laws that the legislature passed in that year designed to protect the community against sex offenders). Compared with Washington's former sexual psychopath law, the new "sexually violent

¹⁸⁷ Tom Reeves to Supporters and Endorsers of Spirit of Stonewall, August 3, 1994, box 1, folder 98, John C. Graves Papers, 1971–1996, Northeastern.

¹⁸⁸ Selwyn Raab, "Dismissal Urged for Teacher With Ties to Child-Sex Group," *New York Times*, September 22, 1993. Mary K. McCann, "Lucidity Sinks as These Twain Converge: Keeping Pickering Afloat despite *Locurto v. Giuliani* and *Melzer v. Board of Education*," *St. John's Law Review* 79, no. 221 (2005): 221–52, 224.

¹⁸⁹ Why Is the ACLU Defending NAMBLA?, box 18, folder 10, American Civil Liberties Union of Southern California Lesbian & Gay Rights Chapter records, Coll2007-013, ONE Archives.

¹⁹⁰ *Curley v. North American Man Boy Love Association*, CIVIL ACTION No. 00-10956-GAO (D. Mass. 3/31/2003).

predator” law was even more punitive: it required a person to serve his full prison sentence before being committed to the state hospital, and it did not require any allegation or proof of recent criminal wrongdoing in order to secure a lifetime confinement.¹⁹¹ 19 other states, the District of Columbia, and the federal government had passed similar laws by 2009; as of the fall of 2006, 2,694 individuals ranging from 18 to 102 years old were committed nationwide under those laws.¹⁹² The practice of civil commitment enjoyed the support of the US Supreme Court, which affirmed the constitutionality of Kansas’s Sexually Violent Predator Act in the 1997 case *Kansas v. Hendricks*.¹⁹³ In 1990, the Massachusetts legislature had de-authorized the use of the state’s “sexually dangerous persons” statute in response to a panel of experts who found that the civil commitment program “neither enhance[s] public safety nor successfully treat[s] these offenders”; nine years later, however, in 1999 the Massachusetts legislature reauthorized the statute.¹⁹⁴

At the same time, lawmakers dramatically expanded sex offender registration throughout the country in response to the child protection movement. In 1994, the U.S. Congress passed the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act, so named after a young boy from Minnesota who was kidnapped in 1989. The act required all states to start maintaining a centralized database in order to monitor the whereabouts of “sexually violent predators.”¹⁹⁵ In 1997, Congress

¹⁹¹ John Q. La Fond, “Washington’s Sexually Violent Predator Law: A Deliberate Misuse of the Therapeutic State for Social Control,” *University of Puget Sound Law Review* 15 (1991–92): 655–708, 655–56.

¹⁹² 18 U.S. Code § 4248. Lave, “Only Yesterday,” 591.

¹⁹³ *Kansas v. Hendricks*, 521 U.S. 346 (1997).

¹⁹⁴ Lisa Kavanaugh, “Massachusetts’s Sexually Dangerous Persons Legislation: Can Juries Make a Bad Law Better?,” *Harvard Civil Rights-Civil Liberties Law Review* 35, no. 2 (2000): 509–68, 509.

¹⁹⁵ Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub.L. 103–322, Title XVII, Subtitle A, § 170 101, Sept. 13, 1994, 108 Stat. 2038.

amended the Wetterling Act through Megan’s Law, which added the additional requirement that states make their registries of personal information about convicted sex offenders accessible to the public.¹⁹⁶ In 2003, the US Supreme Court found in *Connecticut Department of Public Safety v. Doe* that the community notification aspect of the registry was constitutional in the case of a convicted sex offender who argued he was “non-dangerous.”¹⁹⁷ Also in 2003, “the US Supreme Court upheld the constitutionality of Alaska’s Sex Offender Registration Act, finding that it could be applied to convicted criminals retroactively because its complex provisions were merely regulatory and not punitive—a precedent-setting decision.”¹⁹⁸ In 2006, the U.S. Congress passed another major piece of sex offender legislation called the Adam Walsh Child Protection and Safety Act, which, among other things, established a national database of registered sex offenders and created a federal civil commitment program for “sexually dangerous persons.”¹⁹⁹ Most recently, in 2016, Congress passed a law signed by President Obama making it a rule that registered sex offenders must have that designation listed on their passports.²⁰⁰

An effort on the part of a group of psychologists who argued that some sex between adults and minors can be consensual met an intense backlash. In 1998, Bruce Rind, Robert Bauserman, and Philip Tromovitch published an article entitled “A Meta-Analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples” that challenged the pervasive assumption within the field of psychology that

¹⁹⁶ Megan’s Law, Pub.L. 104–145, May 17, 1996, 110 Stat. 1345.

¹⁹⁷ *Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1 (2003).

¹⁹⁸ Halperin, *The War on Sex*, 14. Smith v. Doe, 538 U.S. 84 (2003).

¹⁹⁹ Richard G. Wright, “From Wetterling to Walsh: The Growth of Federalization in Sex Offender Policy,” *Federal Sentencing Reporter* 21, no. 2 (2008): 124–32.

²⁰⁰ Joe Palazzolo, “Law Creating Passport Mark for Sex Offenders Faces First Challenge,” *Wall Street Journal*, March 29, 2016.

any sex at all between an adult and a minor was always harmful. A meta-analysis of 59 other psychological studies of child sexual abuse, the Rind study found that growing up in an abusive family environment was more likely to cause “adjustment” problems later in life than the mere fact of having had a sexual experience with an adult as a child. Negative effects of a sexual experience with an adult as a child “were neither pervasive nor typically intense” and “men reacted much less negatively than women.” “Problems of scientific validity of the term CSA are perhaps most apparent when contrasting cases such as the repeated rape of a 5-year-old girl by her father and the willing sexual involvement of a mature 15-year-old adolescent boy with an unrelated adult. Although the former case represents a clear violation of the person with implications for serious harm, the latter may represent only a violation of social norms with no implication for personal harm.”²⁰¹

The fallout from the article’s controversial assertion was enormous. The right-wing talk show host “Dr. Laura” Schlessinger and Republican U.S. Representative Tom DeLay criticized the study, while Janet Marshall of the Family Research Council said the article “gives pedophiles a green flag.”²⁰² The American Psychological Association, which had published the study in its peer-reviewed journal, defended the study’s scientific validity but disavowed its political implications. “We do not support,” Raymond D. Fowler, the CEO of the APA wrote in a letter to DeLay, “the ‘normalization’ or decriminalization of any form of sexual relations between adults and children. Such behavior must remain criminal and punishable to the full extent of the

²⁰¹ Bruce Rind, Robert Bauserman, and Philip Tromovitch, “A Meta-Analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples,” *Psychological Bulletin* 124, no. 1 (1998): 22–53, 22, 23.

²⁰² Erica Goode, “Study on Child Sex Abuse Provokes a Political Furor,” *New York Times*, June 13, 1999.

law.”²⁰³ In an unprecedented move, the U.S. House of Representatives passed a resolution condemning the study and “vigorously oppos[ing] any public policy or legislative attempts to normalize adult-child sex or to lower the age of consent.”²⁰⁴ As the public response to the publication of the Rind study made clear, it was becoming more and more dangerous to think critically about the issue of sex between adults and minors.

The case of Massachusetts perfectly encapsulates the new sexual order that rose to prominence in the late-twentieth-century United States. In 1996, Massachusetts “shed its label as the only state without a sex offender registry.” The Senate passed the bill by a vote of 36 to 1.²⁰⁵ Seven years later, on November 18, 2003, the Supreme Judicial Court of Massachusetts ruled that gay and lesbian couples had the right to marry under the state constitution, making Massachusetts the first state ever to legalize same-sex marriage. That was the same year that the US Supreme Court legalized sodomy between consenting adults in private in all 50 states *and* found, in the case of Alaska, that registration for sex offenders counted as a civil, as opposed to a criminal, law, making the registry immune to the higher standards of judicial scrutiny to which criminal statutes are subject. Together, these developments codified a new sexual order that offered increased tolerance to some while marginalizing others.²⁰⁶

²⁰³ “APA Letter to the Honorable Rep. DeLay (R-Tx),” accessed December 14, 2015, <http://web.archive.org/web/19991010055703/http://www.apa.org/releases/delay.html>.

²⁰⁴ H.Con.Res. 107, 106th Cong., 1st sess. (1999).

²⁰⁵ Doris Sue Wong, “By 36–1, Senate OK’s Sex-Offender Registry,” *Boston Globe*, May 30, 1996. MGL Ch. 6, § 178D.

²⁰⁶ Terence Neilan, “High Court in Massachusetts Rules Gays Have Right to Marry,” *New York Times*, November 18, 2003.

VI. Conclusion

The outcome of the political contests over child sexuality from the late 1970s to the early 2000s had ambivalent effects on queer people. On the one hand, the new anti-child sexual abuse laws still criminalized much of the sexual conduct involving minors that gay liberation activists had once argued was non-harmful and sought to legalize. The criminal law now came down the hardest on boy lovers, whom the state now categorized as pedophiles or child molesters or sexual predators as opposed to homosexuals and punished more harshly than ever. Even queer teenagers themselves, too, remained vulnerable to criminalization, and progressive activists no longer claimed teenagers as a population of marginalized queer subjects who were deserving of sexual rights. At the same time, gay rights activists had largely succeeded in their goal of de-coupling the figure of the homosexual from the figure of the child molester in American culture and politics. By distancing itself from the issue of kids, the mainstream gay movement preserved its fragile status as a legitimate actor in the sphere of politics. This allowed gay activists to continue to pursue the objective of carving out a space in the law in which it was legal to have gay sex and, by extension, legal to be a gay person.

Chapter 5: Making the Zone of Privacy Gay-Neutral

In the 1976 case *Doe v. Commonwealth's Attorney*, the US Supreme Court issued a decision about a state sodomy law for the first time since the *Buchanan v. Batchelor* case in 1971. The year before, a three-judge federal court of appeals had ruled against the gay activists who had challenged the constitutionality of Virginia's sodomy statute as it applied to the conduct of consenting adults in private.¹ On appeal, the US Supreme Court declined, without argument or explanation, to evaluate the constitutionality of Virginia's sodomy law, leaving the states free to continue punishing sodomy if they so chose.² As the legal scholar W. Cecil Jones noted at the time, the Court's decision to decline the case was an active statement affirming the legality of state sodomy laws. If the Court had wanted to remain neutral with respect to the issue, it could have simply denied certiorari to review the case. As Supreme Court Justice Thurgood Marshall had argued in a different case from 1973, "When we deny certiorari, no one, not even ourselves, should think that the denial indicated a view on the merits of the case."³ On the other hand, the Court's choice to *affirm* the lower court's holding was "a decision . . . having

¹ *Doe v. Commonwealth's Atty. for City of Richmond*, 403 F. Supp. 1199 (E.D. Va. 1975). VA. Code Ann. § 18.2-361 (1975).

² *Doe v. Commonwealth's Attorney*, 425 US 901 (1976).

³ *United States v. Kras*, 409 U.S. 434, 460-61 (1973, Marshall, J., dissenting). Quoted in Jones, "*Doe v. Commonwealth's Attorney*," 554.

precedential value, not a mere refusal to review that allows the lower court’s decision to stand.”⁴

After the *Doe* decision, the battle over sodomy laws in the United States shifted increasingly toward the national level, as gay activists set their sights on legalizing sodomy between consenting adults in private not just in individual states but nationwide. By 1979, the gay movement had managed to legalize sodomy between consenting adults in private in 29 states. But activists still had to contend with some stubborn holdouts, such as Virginia and Texas, in order to win the battle nationwide. It was gradually becoming clear that the only way they were going to accomplish that goal was if the U.S. Supreme Court issued a ruling in their favor. To that end, activists formed new gay rights organizations in Washington, D.C., that focused their energies increasingly on federal politics.

The quality of “privacy” that the LGBT movement was ultimately able to achieve shrank between the late 1970s and the early 2000s. In the 1970 case *Buchanan v. Batchelor*, the main plaintiff, Alvin Leon Buchanan, had been arrested while cruising for sex in public venues—though one of his two arrests happened in an enclosed bathroom stall in a restroom at Sears, which could arguably be construed as private. Yet Buchanan’s lawyer—the young, maverick gay attorney Henry McCluskey—used Buchanan to challenge Texas’s sodomy law as it applied to the behavior of consenting adults in private. Implicitly, at least, McCluskey was relying on a broad definition of personal privacy that encompassed not just sex in private or domestic spaces but also

⁴ Robert L. Stern and Eugene Gressman, *Supreme Court Practice: Jurisdiction, Procedure, Arguing and Briefing Techniques, Forms, Statutes, Rules for Practice in the Supreme Court of the United States* (Washington, DC: Bureau of National Affairs, 1969), 230–31. W. Cecil Jones, “*Doe v. Commonwealth’s Attorney*: Closing the Door to a Fundamental Right of Sexual Privacy,” *Denver Law Journal* 53 (1976): 553–76, 554.

clandestine behavior done in spaces that were technically public. In the face of mounting conservative opposition to gay rights, as well as the declining reputation of gay male public sexual culture in the age of AIDS, gay activists shifted gears to pursue a less expansive and less inclusive right to privacy centered on behavior in the home.

When the LGBT movement finally achieved the legalization of gay sex between consenting adults in private in all 50 states in the 2003 *Lawrence v. Texas* decision, the reform effected a nationwide redistribution of legal stigma on queer gender and sexuality. At midcentury, married heterosexual coitus had been the only kind of sexual conduct in which individuals were officially allowed to engage. As Alfred Kinsey commented in his 1948 study *Sexual Behavior in the Human Male*, “the written codes severely penalize all non-marital intercourse, whether it occurs before or after marriage.”⁵ (Though in practice, of course, some behaviors were more heavily criminalized than others). After *Lawrence*, the figure of the consenting adult in private supplanted the married heterosexual couple as the reference point through which the state conceptualized lawful sexuality. This was a more expansive definition of lawful sexuality than what came before, normalizing some kinds of sexual conduct that the American state had formerly stigmatized as “queer.” And yet, like the figure of the married heterosexual couple that preceded it, the consenting-adults-in-private paradigm excluded many other kinds of queer conduct that gay and sexual liberation activists had once argued were equally deserving of legalization.

I. “The Perfect Plaintiff”

By the end of the 1970s the idea that the sexual behavior of consenting adults in private should be legalized had become increasingly mainstream within US political culture even

⁵ Kinsey, *Sexual Behavior in the Human Male*, 389.

as certain implications of this principle remained hotly contested. By 1979 liberal coalitions had achieved the repeal or invalidation of laws punishing sodomy between consenting adults in private in twenty-nine states.⁶ After years of lobbying from gay activists, in 1980 the Texas Democratic Party finally passed a resolution calling for the repeal of the homosexual conduct law's prohibition of "private sexual conduct . . . between consenting adults of the same sex."⁷ National gay rights organizations, too, framed their efforts in terms of "privacy," as was the case with the Right to Privacy Foundation (RPF), a forerunner to the Human Rights Campaign (HRC), which incorporated in July 1981.⁸

At the same time, conservatives were successful over and over again in blocking the repeal of the homosexual conduct law in Texas. A 1975 repeal effort, which received the support of over one hundred mental health professionals, as well as the Texas Women's Political Caucus, failed, as did subsequent attempts during the 1977 and 1979 legislative sessions.⁹ The police repression of public sex persisted with bathhouse raids in Dallas and Galveston in 1976 in which the police arrested gay men on charges ranging from public lewdness to indecent exposure to homosexual conduct.¹⁰

Gay activists in Texas struggled to find a suitable plaintiff to contest the constitutionality of the homosexual conduct law in court. Their best shot at convincing a court to overturn the statute was to show that the police were using it specifically to regulate the consensual sexual behavior of adults in private, yet the vast majority of

⁶ Eskridge, *Dishonorable Passions*, 201.

⁷ "Democrats Vote No on 21.06," *Dialog: Newsletter of the Dallas Gay Political Caucus*, October 1980.

⁸ RPF Articles of Incorporation, box 39, folder 1, Human Rights Campaign records, #7712, Cornell.

⁹ "Texas Group Says 'Yes,'" *Advocate*, June 4, 1975; "Women Back Rights," *Advocate*, September 24, 1975; Rob Shivers, "Lone Star Solons Defeat Sodomy Reform," *Advocate*, August 13, 1975; "Point of Order Kills Rider on Texas Bill," *Advocate*, June 14, 1979.

¹⁰ "Dallas Police Begin Bar Raids," *Advocate*, December 15, 1976; "Dallas Won't 'Cower,'" *Advocate*, December 29, 1976; "40 Men Busted at Texas Bath," *Advocate*, September 8, 1976.

arrests for gay sex did not involve such a case. Lacking an ideal test case, gay activists tried to engineer one themselves. In 1976 activists with the Houston Gay Political Caucus (HGPC) appealed to the city's police chief, R. W. "Pappy" Bond, to authorize the arrest of a gay man for having sex with another adult man in private. The homosexual conduct law, the HGPC pointed out at a meeting with Bond, had never been enforced in Houston, where the police relied on the state's public lewdness statute to arrest gay men. When activists asked the police chief if he would cooperate in making an arrest for homosexual conduct in a "private dwelling," he laughed and replied, "Sure. I've never turned down a chance for a legal arrest yet." In its coverage of the meeting, the *Advocate* urged readers to contact the HGPC if they had been prosecuted under the homosexual conduct law or were willing to volunteer as "test subjects" for a legal challenge to its constitutionality.¹¹ In order to challenge the statute's prohibition of gay sex between consenting adults in private, activists needed to find someone who had actually been arrested for having gay sex in private with another consenting adult partner.¹² They never found one.

In addition to the problem of finding a suitable plaintiff to challenge the homosexual conduct law, gay activists now also had to deal with the Christian Right, a powerful new counterinsurgency dedicated to promoting what they insisted were "traditional" family values. The Christian Right became an important player in national sexual politics in 1977 through the evangelical Christian singer Anita Bryant's "Save Our Children" campaign, which succeeded in overturning a gay rights ordinance in Dade County, Florida, by claiming that homosexuals were trying to "recruit" children into their

¹¹ "Texas Police Chief Will Cooperate in Sodomy Test," *Advocate*, March 24, 1976.

¹² Gay activists' attempt to mastermind a test case to challenge the homosexual conduct law resembled the strategy of the American Civil Liberties Union in the infamous 1925 Scopes trial. In that case, the ACLU purposefully drummed up a test case in order to defend teaching evolution in public schools. See *Scopes v. State*, 278 S.W. 57 (1925).

ranks. “This recruitment of our children,” the Bryant campaign warned in a full-page advertisement in the *Miami Herald*, “is absolutely necessary for the survival and growth of homosexuality—for since homosexuals cannot reproduce, they *must* recruit, *must* freshen their ranks.”¹³ When Bryant visited Houston that June, the HGPC and the Dallas Gay Political Caucus (DGPC) organized a protest march of over six thousand gays and lesbians and their allies.¹⁴

In the face of the new right-wing movement to restigmatize gays and lesbians as sex deviants, gay activists mounted their first court challenge to the new homosexual conduct law using a plaintiff whom they presented as “respectable” by distancing his public persona from any association with sex, public or private. In 1979 Donald “Don” Baker, a gay man from Dallas who was the vice president of the Dallas Gay Political Caucus, filed a class-action lawsuit to challenge the police enforcement of the statute with the support of the Texas Human Rights Foundation (THRF), an Austin-based gay legal advocacy organization. Baker had never actually been arrested or accused of having sex in private; rather, he argued in his suit that the homosexual conduct law had a “chilling effect” on his sex life, as well as on the social climate for gay people in the state, and thus violated their rights to privacy and equal protection under the law.¹⁵ Baker and his lawyers crafted a public identity portraying him as, in the words of the THRF, the “perfect plaintiff” to challenge the homosexual conduct law.¹⁶ Up until that point, a THRF press release pointed out, all of the known arrests of gay men under the

¹³ David B. Goodstein, “Opening Space,” *Advocate*, April 20, 1977.

¹⁴ “First Texas Gay Protest Staged in Houston June 16,” *Dallas Gay Political Caucus News*, [July 1977].

¹⁵ “New Challenge Mounted to Texas Sodomy Law,” *Advocate*, February 7, 1980.

¹⁶ History of the Texas Human Rights Foundation’s Effort to Challenge Sec. 21.06, [1982], box 4B31, folder: “THRF—Press Releases 1979–83,” Texas Human Rights Foundation Papers, UT– Austin; Steve Blow, “‘The Perfect Plaintiff’ Hits Legal Trail for Homosexuals,” *Dallas Morning News*, November 21, 1979.

homosexual conduct law had been for sex in bookstores, bathhouses, and parks—discredited sexual practices that did not lend themselves to gaining support for the national strategy of decriminalizing homosexual conduct between consenting adults in private. One of the THRF’s main objectives in the case was therefore to educate the public that “gays are normal, productive members of society.”¹⁷

To that end, the publicity surrounding Baker de-emphasized his sex life, highlighting instead other aspects of his identity. In an interview with the *Dallas Times-Herald*, Baker described himself as “pretty much a middle-of-the-road, typical Dallas man” (and, the interviewer added, “a schoolteacher, a Vietnam veteran, a devout Christian—and a homosexual”).¹⁸ “In order for them to prove that homosexuals are not perverts,” he explained elsewhere, “I just had to be the average Joe Blow on the street.” “Out of the Closet, into the Fire: A ‘Private’ Man Now Goes Public for Gays’ Rights,” read another headline in the *Dallas Morning News*.¹⁹ Baker and his lawyers aimed to distance gay sex from its associations with perversion and criminality by constructing him as a model citizen whose sex life, other than the fact that he slept with men, adhered rigorously to heteronormative moral standards.

Unlike in the last court challenge to Texas’s sodomy law and with Baker as their poster boy, gay activists could now make the argument that the homosexual conduct law violated the rights of consenting adults in private without contradicting the facts of the case. Reflecting on a recent televised debate in Houston about gay rights in 1980, a THRF media coordination memo from Keith McGee noted that “the opposition insisted on emphasizing sexual acts when describing gay people. She [the unnamed conservative

¹⁷ Roger Oglesby, “Gay Man Says He’s ‘Typical,’” *Dallas Times-Herald*, June 16, 1981.

¹⁸ *Ibid.*

¹⁹ Keith Anderson, “Out of the Closet, into the Fire,” *Dallas Morning News*, August 9, 1981.

Christian interlocutor] repeatedly called gays sodomites, and in so doing created an introduction to the biblical scriptures supposedly referring to gays by that term.” The interlocutor’s persistent use of the word “sodomy,” McGee complained, helped her win the debate by emphasizing the disgustingness of gay sex and avoiding substantive discussion about how the homosexual conduct law underpinned discrimination against gay people. Gay activists, McGee continued, could combat this kind of stigmatizing rhetoric about gay sexuality by framing the stakes of the law in terms of the “rights of consenting adults in private,” since “privacy is something everyone can understand in this age of computers, big government, and 1984 being four years away.”²⁰ Faced with the reality that the Christian Right could successfully discredit gays by highlighting their association with deviant sex, gay activists redoubled their efforts to shift the debate away from a conversation about gay people’s right to sexual freedom toward a more broadly palatable discussion about privacy, now carefully defined as the right to be left alone by the state.²¹

The new punishments for sex offenders that Texas legislators were enacting in the early 1980s made it even more urgent for gay activists to achieve the legalization of gay sex between consenting adults in private in the *Baker* case. In 1981 the legislature considered a bill proposing to establish a new program for the treatment, punishment, and surveillance of sex offenders called the Interagency Council on Sex Offender Treatment (CSOT). Gay activists opposed the bill because it included “public lewdness”—a law that authorized the police to arrest gay men for public sex—within its ambit. “There is also

²⁰ 21.06 Media Coordination Memo, [1980], box 495, folder 10, Resource Center LGBT Collection, Series 6: Personal Collections, Sub-Series 3: Don Baker, AR0756, UNT.

²¹ On how feelings of disgust underpin opposition to gay rights, see Martha C. Nussbaum, *From Disgust to Humanity: Sexual Orientation and Constitutional Law* (New York: Oxford University Press, 2010).

the real possibility,” worried Austin’s Lesbian/Gay Rights Advocates in a lobby report, “that the scope of this bill might be widened to include [the homosexual conduct law], and thus lead to the labeling of all homosexuals as sex offenders.”²² This did not come to pass, and the legislature removed public lewdness from the purview of the CSOT before enacting it. However, the mere possibility that the program could be applied to consensual and private gay sex raised the stakes for the gay movement in its effort to remove “homosexual conduct” from the purview of the criminal law.²³

Gay activists got their wish the following year when the US District Court judge Jerry Buchmeyer found in favor of Don Baker and declared Texas’s homosexual conduct law to be unconstitutional. In his fifty-three-page decision, Judge Buchmeyer asserted that the homosexual conduct law’s sole and illegitimate function was to single out gay sex between consenting adults in private for criminalization, since there already existed other sex laws prohibiting rape, “sexual abuse by force,” “offenses involving minors,” and “sexual conduct in public.”²⁴ Unlike the decision in *Buchanan* twelve years earlier, which had overturned Texas’s sodomy law because it violated the right to privacy of married heterosexuals, Judge Buchmeyer’s decision invalidated the homosexual conduct law on the grounds that it discriminated against gay people by denying them the same right that heterosexuals in Texas had enjoyed since the reform of the sodomy law in 1974.

While homosexual conduct was now legal when practiced by consenting adults in private, gay activists noted, the decision allowed a range of other gay behaviors to remain vulnerable to criminalization. As M. Robert Schwab, the president of the Texas Human

²² LGRA Lobby Report, March 28, 1981, box 14, folder: “Lesbian/Gay Rights Advocates,” TGLTF.

²³ LGRA Lobby Report, May 27, 1981, box 14, folder “Lesbian/Gay Rights Advocates,” TGLTF.

²⁴ *Baker v. Wade*, 553 F.Supp. 1121 (1982).

Rights Foundation and chief legal strategist in *Baker*, warned in a press release: “I want to caution the gay community as to the impact of Baker vs. Wade. Private sexual acts of consenting adults have been legalized. The ruling did not effect [sic] laws against prostitution or sex acts between adults and minors. It did not legalize any sexual activity in public. To the extent that people were charged with 21.06 [homosexual conduct] in the past for sexual activity that was arguably public, those people will now likely be charged with Public Lewdness, a far more serious crime. Caution is essential.”²⁵ In other words, for Schwab, the invalidation of the homosexual conduct law did not represent a total liberation of gay sexuality from legal oppression. Rather, the *Baker* decision created a new distinction between “good” and “bad” gay sex in the law, affording protection to sex on the good side of the line from which behaviors on the bad side were disqualified.

In Wisconsin, the battle to legalize gay sex between consenting adults in private resulted not only in the exclusion of many other modes of queer conduct but even made the law more punitive toward some of them. In May 1983, Wisconsin’s Governor Anthony Earl signed into law a bill, sponsored by Democratic Representative David Clarenbach of Madison, legalizing sodomy between consenting adults in private. Before the bill passed, though, Republican Senator Donald Hanaway added an amendment raising the penalty from a misdemeanor to a felony for sexual intercourse between a person over 18 (the age of consent in Wisconsin) and a 16 or 17 year-old.²⁶ The final bill that was enacted lifted criminal sanctions on some types of queer conduct while increasing penalties for others, all in one fell swoop.

²⁵ Final Decision: *Baker v. Wade*, August 17, 1982, box 4B31, folder: “THRF—Press Releases 1979–83,” Texas Human Rights Foundation Papers, UT– Austin. Schwab died of AIDS-related complications two years later in 1984. He was thirty-six years old. See Hollis Hood and Peter Freiberg, “Texas Attorney, Activist M. Robert Schwab Dies of AIDS,” *Advocate*, January 24, 1984.

²⁶ “Senate Passes Sex Bill,” *Wisconsin State Journal*, May 4, 1983.

Some of the progressive supporters of the bill overlapped with conservatives in their thinking, forming a rough bipartisan consensus about what should count as “bad” sex. In an “issues & comment” document prepared by Representative Clarenbach’s staff, Dr. Lawrence A. Sinclair, Chairperson of the Department of Religion at Carroll College in Waukesha, argued that it was “dangerous for any government body to legislate morality and infringe on the privacy rights of individuals, [sic] on the other hand, the suggested legislation strengthens the laws against prostitution and sexual abuse of minors.”²⁷ (Ultimately, the final statute did not actually strengthen the laws against prostitution but rather left them in place, along with the ones against adultery, rape, and bestiality.)²⁸ If liberals disagreed with conservatives on the point of whether gay sex between consenting adults in private should be legalized, some liberals agreed with conservatives that it was right for a range of other queer behaviors to remain criminalized.

But this was only a rough, not a total, consensus among progressives. As David Clarenbach explained in an interview with *Gay Community News*, “Politically, we could not hold the votes for the 3 or 4 weeks it would have taken to defeat the amendment” about sex involving teenagers.²⁹ Like M. Robert Schwab, Clarenbach did not actually want harsher punishments for sex crimes involving minors, but his bill was constrained by the structure of political opportunities in which he was operating.

Conservative lawmakers exploited the outbreak of the HIV/AIDS epidemic in an effort not just to reinstate but to intensify the homosexual conduct law, but the gay-

²⁷ The Consenting Adults Bill, box 2, folder 24, David Clarenbach Papers, MSS 1029, Wisconsin Historical Society, Madison, Wisconsin.

²⁸ Assembly OK of Amended Sex Bill Seems Sure” *Capital Times*, May 4, 1983.

²⁹ Loie Hayes, “Wisconsin Decriminalizes Consensual Sex,” *Gay Community News*, May 21, 1983.

progressive coalition held its ground. In 1983 Republican Representative Bill Ceverha introduced House Bill 2138, which proposed a reinstatement of the homosexual conduct law and taking convictions for “deviate sexual intercourse with another individual of the same sex” up to a second-degree felony—a penalty much more draconian than the former punishment prescribed for homosexual conduct when that crime was classified as a Class C misdemeanor.³⁰ Worse still, the bill also proposed to criminalize mere solicitation for sex, and it would have banned gays and lesbians from employment as schoolteachers, food handlers or processors, health care workers, police officers, or “any other position of public leadership or responsibility.”³¹

When the House Committee on Criminal Jurisprudence considered the bill, it heard testimony from the Nebraska psychologist Dr. Paul Cameron, a key spokesperson for the Christian Right organization the Moral Majority and author of the article “Is Homosexuality Disproportionately Associated with Murder?”³² In his testimony before the committee, Ceverha made a range of arguments about the dangerousness of gay sex: the “homosexual himself will say that it is not uncommon to have five hundred to a thousand different sexual partners”; homosexuals were “disproportionately involved in child abuse in real fact and in statistics”; and many gay men engaged in the allegedly risky sex practice of “handballing” (fisting).³³

³⁰ Anti-Gay Bill Introduced, box 14, folder “HB2138 (1983),” TGLTF; Tex. Penal Code § 21.06.

³¹ Anti-Gay HB 21.38 Still a Threat, box 14, folder “HB2138 (1983),” TGLTF.

³² Campbell B. Read to Wayne Peveto, May 6, 1983, box 14, folder “HB2138 (1983),” Texas Gay/Lesbian Task Force Records, 1970s–1991, MSS 380, TWU. In 1984 the American Psychological Association revoked Cameron’s membership in the professional organization for violating ethical principles. See Hollis Hood, “Anti-Gay Crusader Paul Cameron Ousted from Psychology Group,” *Montrose Voice*, 30 November 1984.

³³ HB 2138 Criminal Jurisprudence Committee transcripts, April 19, 1983, box 4B38, folder: “HB 2138,” Texas Human Rights Foundation Papers, UT– Austin.

But other participants in the hearing about the bill regarded Ceverha's incendiary rhetoric about homosexuality as extravagant. As Dr. Peter Mansell, a professor of Preventive Oncology at the University of Texas's Anderson Hospital in Houston, made clear: "I was originally asked to come here to talk about Acquired Immune Deficiency Syndrome, and the contention in the original bill that this was a public health hazard which was being increased by homosexual activity. *I was not aware of the fact that I would actually be taking part in a moralistic sexual witch-hunt.*"³⁴ In a desperate attempt to convince his colleagues to take his bill seriously, Ceverha stressed that, "from my viewpoint, while *a lot of people make light of this legislation, joke about it*, it's not a funny issue." His fellow lawmakers disagreed, though, and House Bill 2138 died in committee.³⁵ Legislators' response to Ceverha suggested that the progress gay activists had made in the previous fifteen years was holding steady. Most viewed his proposal as extreme, and even in the context of the AIDS epidemic, they were unwilling to recriminalize gay sex between consenting adults in private, at least not in a way that was even more severe than it had been before Judge Buchmeyer held that the statute was unconstitutional.

While the Christian Right's attempt to exploit AIDS as an argument for making the homosexual conduct law more draconian was unsuccessful, it did get the law reinstated in its previous form. At first, it had seemed that no one was going to appeal Buchmeyer's decision. The older cohort of law-and-order conservatives that had opposed the gay movement in the *Buchanan* case did not seem interested in challenging *Baker*. Dallas County District Attorney Henry Wade said in an interview that his office would

³⁴ Ibid.

³⁵ "New Antigay Sex Bill Dead, for Now, in Texas Legislature," *Advocate*, July 21, 1983.

probably not contest it because so few cases of private homosexual conduct had been prosecuted under the now-defunct law anyway; Texas Attorney General Jim Mattox also declined to appeal.³⁶

However, the case was revived when Danny Hill, the district attorney in Amarillo, picked up the “appeal ball,” as he put it, using the justification that he, along with all other district attorneys in the state, had been named codefendants in the suit.³⁷ A new appeal was scheduled before the Fifth Circuit Court of Appeals, the federal court in New Orleans whose jurisdiction included Texas. Joining Hill, a newly incorporated nonprofit group calling itself Dallas Doctors Against AIDS (DDAA) filed successfully a motion asking for permission to provide the court with evidence positing a causal link between homosexual conduct and the transmission of AIDS.³⁸

In 1985 the court overturned Judge Buchmeyer’s decision and reinstated the homosexual conduct law by a 9–7 vote. Six of the nine judges who voted for the law’s restoration were Reagan appointees.³⁹ In its majority opinion, the court did not mention AIDS explicitly, justifying its decision instead on the basis of a supposedly timeless tradition of moral and legal prohibition of homosexuality.⁴⁰ Donald Campbell, an attorney for DDAA, celebrated the judgment as “a great victory for the citizens of Texas,

³⁶ Doug Nogami, “Law against Homosexuality Rejected,” *Dallas News*, August 18, 1982; “Mattox Foe Targets Sodomy Law,” *Dallas Times-Herald*, November 27, 1985.

³⁷ Joe Baker, “Texas Backs Out of Sodomy Appeal, but New Foes Will Take Up Case,” *Advocate*, April 28, 1983.

³⁸ Glenna Whitley, “Group Seeks Reinstatement of Law in Effort to Fight AIDS,” *Dallas Morning News*, February 25, 1983.

³⁹ Christy Hoppe, “Homosexual-Acts Law Needed, Lawyers Say,” *Dallas Morning News*, April 18, 1984. It is the purview of the US president to appoint judges to the federal circuit courts of appeals.

⁴⁰ *Baker v. Wade*, 769 F.2d 289 (5th Cir. 1985).

the American people, the American judicial system and for morality and public health in this country.”⁴¹ “We Are Criminals, Again,” a headline in the gay press noted drily.⁴²

Baker and his lawyers appealed the Fifth Circuit Court’s decision to the US Supreme Court, but the Court declined to review it shortly after it reached its ruling in the case of *Bowers v. Hardwick*.⁴³ At 8:30 a.m. on Tuesday, August 17, 1982, Atlanta police officer K. R. Torick scaled the steep stairs up to the front porch of a gay man named Michael Hardwick, a bartender who lived in Atlanta’s gay neighborhood of Midtown.⁴⁴ This was not Torick’s first encounter with Hardwick. Earlier that summer, Torick had arrested Hardwick at 7 a.m. under Georgia’s “open container” law after Hardwick had exited the gay bar where he worked and thrown away the beer he was drinking into the garbage can, which was sitting next to the front door.⁴⁵ Officer Torick questioned Hardwick’s roommate, who was severely hung over and had been “passed out on the couch,” about Hardwick’s whereabouts, and then entered the home on the basis of the expired warrant he had obtained in the case of Hardwick’s previous public-drinking offense. Torick then witnessed Hardwick engaged in “mutual oral sex” with an unnamed man and arrested him on the charge of sodomy.⁴⁶

After four rounds of litigation at the state and federal levels, the US Supreme Court granted certiorari to hear the case with the purpose of resolving the disputes that

⁴¹ Mark Carreau, “Appeals Court Upholds Texas Anti-Sodomy Law,” *Houston Chronicle*, August 27, 1985.

⁴² Don Ritz, “We Are Criminals, Again,” *Dallas Voice*, August 30, 1985.

⁴³ Thomas J. Coleman, Jr., “Disordered Liberty: Judicial Restrictions on the Rights to Privacy and Equality in *Bowers v. Hardwick* and *Baker v. Wade*,” *Thurgood Marshall Law Review* 12 (1986): 81–108, 82.

⁴⁴ John Howard, “Southern Sodomy; Or, What the Coppers Saw,” in *Southern Masculinity: Perspectives on Manhood in the South since Reconstruction*, ed. Craig Thompson Friend (Athens: University of Georgia Press, 2009), 196–218, 205.

⁴⁵ O.C.G.A. § 40-6-253. Howard, “Southern Sodomy,” 207.

⁴⁶ *Bowers v. Hardwick*, 478 US 186 (1986).

had been playing out at the lower levels of the court system.⁴⁷ In a 5–4 decision written by Justice Byron R. White, the Republican-controlled Court held that it was constitutional for the state of Georgia to continue prohibiting “homosexual sodomy,” as it ostensibly always had done continuously throughout time. He wrote, “In 1816 the Georgia Legislature passed the statute at issue here, and that statute has been continuously in force in one form or another since that time. To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching.”⁴⁸

In his dissenting opinion, Justice Harry Blackmun countered that the Court was targeting homosexuality in a discriminatory way that the actual language of the sodomy statute did not. He wrote, “The Court’s almost obsessive focus on homosexual activity is particularly hard to justify in light of the broad language Georgia has used.”⁴⁹ In focusing on the specific issue of whether “homosexual sodomy” was a fundamental right, the majority opinion elided the fact that Georgia’s sodomy law actually banned “any sexual act involving the sex organs of one person and the mouth or anus of another” and was therefore neutral with respect to the sexes of the persons engaged in sodomy.⁵⁰ The letter of the law simply did not support the specific animus that the majority Court harbored against gays and lesbians.

In the historical record documenting the *Bowers* case, writers have tended to construct a sanitized image of Michael Hardwick that de-emphasizes the seamy aspects

⁴⁷ *Hardwick v. Bowers*, 760 F.2d 1202 (1985). *Hardwick v. Bowers*, 765 F.2d 1123 (1985). *Bowers v. Hardwick*, 478 US 186 (1986).

⁴⁸ *Bowers v. Hardwick*, 478 US 186 (1986).

⁴⁹ *Bowers v. Hardwick*, 478 US 186 (1986) (Blackmun, H. et al., dissenting).

⁵⁰ *Bowers v. Hardwick*, 478 US 186 (1986); Ga. Code § 16-6-2; Janet E. Halley, “Misreading Sodomy: A Critique of the Classification of ‘Homosexuals’ in Federal Equal Protection Law,” in *Body Guards: The Cultural Politics of Gender Ambiguity*, eds. Julia Epstein and Kristina Straub (New York: Routledge, 1991), 351–77.

of his life story in favor of ones that comport with middle-class expectations for sexual propriety. After Hardwick lost his case, an expose about him in the *Atlanta Constitution* produced a redemption narrative about Hardwick who, through the case, had transitioned from “party boy” to upstanding citizen and spokesperson for his minority group. “He’s 32, shy and self-effacing one moment, cocky the next, a party boy reborn with a mission. ‘He’s gone from a good-time guy to Joan of Arc of the gay world,’ laughs his ex, a Cuban named Jorge Vazauez. ‘He’s much more serious than he used to be.’”⁵¹ This characterization implied that gay “party” culture was immature and lacked social value. In *The Court of Their Convictions*, a book about famous Supreme Court cases, Peter Irons wrote of Hardwick that “Conviction for sodomy carried a maximum prison term of twenty years. Too, a college-educated gay artist like Michael would be torn apart by the human pit bulls in Georgia’s prisons.”⁵² “Hardwick was, more precisely, a college dropout,” historian Howard quipped.⁵³ He was “a drinker, drug-taker, and ‘practicing homosexual’ . . . a Georgia scene queen, an unattached urbanite of promiscuous pleasures” who had once been to rehab for heroin addiction.⁵⁴ The disconnect between Hardwick’s constructed public image and his actual life underscores how access to full citizenship is not universally available but rather is predicated on the requirement that individuals conduct themselves according to a code of “respectable” conduct.

After *Baker* and *Bowers*, the activist institutions that made up the lesbian and gay movement migrating increasingly toward the national level. In a speech entitled “Racism

⁵¹ Art Harris, “The Hero Who Lost His Case,” *Atlanta Constitution*, September 1, 1986.

⁵² Peter Irons, “Michael Hardwick v. Michael Bowers,” in *The Courage of Their Convictions: Sixteen Americans Who Fought Their Way to the Supreme Court* (New York: Free Press, 1988), 380–403, 382.

⁵³ Howard, “Southern Sodomy,” 205.

⁵⁴ Howard, “Southern Sodomy,” 196. The language of “practicing homosexual” is the U.S. Supreme Court’s. *Bowers v. Hardwick*, 478 US 186 (1986).

in the Gay Male World” at the annual benefit dinner of the Lambda Legal Defense Fund, the historian Martin Duberman lamented, “The more those [prosperous white male recruits] who earlier eschewed the gay movement have now joined it, the more their bland deportment and narrow social perspectives have come to dominate.”⁵⁵ In the wake of *Bowers*, the National Gay and Lesbian Task Force finally formed its Privacy Rights Project, after years of struggling to secure funding for it, to combat state sodomy laws.⁵⁶ The shift toward the national level made it more difficult for diverse gay activists and community members to find representation in and shape the trajectory of the movement than it had been when movement politics played out primarily at the local level.

II. The Fall of the Homosexual Conduct Law

The dominant feeling among Texas gay activists in the wake of *Baker* and *Bowers* was that their defeat in the final phase of the case was a temporary setback. “I feel very strongly that my opinion is right and that someday it will be the law,” Judge Buchmeyer stated confidently in a speech he gave at a banquet sponsored by the Dallas Gay Alliance in 1987.⁵⁷ The same year, Don Baker, writing in the *Dallas Times-Herald* about the progressive coalition he helped form to block President Ronald Reagan’s nomination of archconservative Robert Bork to the Supreme Court, commented: “The system is slow to move, but it will move. . . . In the meantime, we must keep the pressure on.”⁵⁸ Numerous

⁵⁵ Martin Duberman, *Left Out: The Politics of Exclusion: Essays 1964–1999* (New York: Basic Books, 1999), 348. Quoted in Howard, “Southern Sodomy,” 209–10.

⁵⁶ What Is the NGLTF Privacy Project?, box 100, folder 2, National Gay and Lesbian Task Force records, #7301, Cornell.

⁵⁷ Curtis Rist, “Judge Buchmeyer Publicly Assails ’85 Ruling Upholding Sodomy Law,” *Dallas Morning News*, September 13, 1987.

⁵⁸ Ron Boyd, “Minorities Fear Erosion of Rights Gains,” *Dallas Times-Herald*, September 13, 1987. President Reagan ultimately nominated Antonin Scalia for the U.S. Supreme Court instead of Bork. See David A. Kaplan, “Scalia Was ‘Worse’ Than Bork,” *New York Times*, October 9, 1987.

other states had legalized gay sex between consenting adults in private, and it was only a matter of time, gay activists and their allies believed, until Texas would do the same.

Though the homosexual conduct law remained on the books in the 1990s, the gay movement's challenge to it gained ever more momentum. In 1989 a woman named Mica England filed a lawsuit against the Dallas Police Department for refusing to hire her because she was a lesbian. Because England had failed a polygraph test question asking if she had "ever committed a deviant sex act," the DPD argued that she was guilty of the crime of homosexual conduct and was thus unfit to work as a police officer. England's suit challenging the constitutionality of the homosexual conduct law ultimately failed, but she and the Dallas Gay Alliance persuaded the city council to force the police department to change its hiring policies in order to stop excluding gay people from employment.⁵⁹

Also in 1989 the Texas Human Rights Foundation, drawing on support from a range of religious, mental health, and other professional organizations, mounted another constitutional challenge to the homosexual conduct law in the case *State v. Morales*. Since the THRF's previous challenge to the law in the federal courts had failed, the five plaintiffs in *Morales* pursued their case in a civil court at the state level, where they argued that the statute violated the property and personal rights of gays and lesbians by limiting their right to privacy, by curtailing their employment opportunities, and by encouraging hate crimes.⁶⁰ They won their case in a state district court in 1990, and the court of appeals in Austin upheld the ruling in 1992.⁶¹ However, the Texas Supreme Court reinstated the law two years later on procedural grounds, arguing that state district

⁵⁹ City of Dallas v. England, 846 S.W.2d 957 (1993); City Council Meeting, January 22, 1992, box 35, folder 41, Resource Center LGBT Collection, Series 1: Resource Center Records, Sub-Series 3: Research, Sub-Series 2: LGBT Research, AR0756, UNT.

⁶⁰ "Suit Filed against Sodomy Law," *Washington Blade*, May 5, 1989.

⁶¹ Mary Lenz, "State Judge Throws Out Texas Anti-Sodomy Law," *Houston Post*, December 11, 1990.

court lacked the jurisdiction to rule on the constitutionality of a criminal law in a civil case in which “no vested property rights were being impinged.”⁶² Still, the homosexual conduct law was becoming increasingly unpopular. During the gubernatorial race against Republican candidate George W. Bush in 1994, incumbent candidate Ann Richards was outspoken about her opposition to the homosexual conduct law, calling it “really nothing more than statutory harassment.”⁶³

The US Supreme Court dealt a blow to the legal practice of targeting homosexuality in an explicitly discriminatory way in a case from 1996 involving local anti-discrimination ordinances in Colorado. Starting in the late 1970s, a number of jurisdictions—including the Cities of Aspen and Denver, along with Colorado’s insurance code—began passing measures prohibiting discrimination on the basis of sexual orientation.⁶⁴ In reaction, in 1992, Colorado voters passed a ballot measure, Amendment 2, that prohibited localities from “enact[ing], adopt[ing] or enforce[ing] any statute, regulation, ordinance, or policy” giving “homosexual, lesbian, or bisexual orientation, conduct, practices or relationships . . . any minority status, quota preferences, protected status, or claim of discrimination.”⁶⁵ The measure was spearheaded by the Colorado for Family Values, a right-wing group in Colorado Springs. Will Perkins, the leader of the group, argued that they were not advocating for discrimination against

⁶² State v. Morales, 869 S.W.2d 941 (1994). The homosexual conduct law, the court acknowledged, “stigmatize[d] [the plaintiffs] as criminals,” making it harder for them to find employment opportunities. However, “not one of the plaintiffs point[ed] to any *specific* instance of such an injury, making the fashioning of any specific equitable relief [by the courts] impossible.” The opinion made no mention of Mica England, who clearly had suffered such an injury. Lisa M. Keen, “Texas Sodomy Ruling ‘Bizarre,’” *Washington Blade*, January 14, 1994.

⁶³ Ken Herman, “Anti-Sodomy Law Becomes Issue in Race between Richard, Bush,” *Houston Post*, January 14, 1994.

⁶⁴ Aspen, Colo., Mun.Code § 13-98 (1977). Boulder, Colo., Rev.Code §§ 12-1-2 to -4 (1987). Denver, Colo., Rev.Mun.Code art. IV, §§ 28-91 to -116 (1991). Colorado Insurance Code, § 10-3-1104, 4A C.R.S. (1992 Supp.).

⁶⁵ Colo. Const. art. II, § 30b.

homosexuals. “Our position is that sexual orientation is not an acceptable criterion for special rights.”⁶⁶

Several parties, include the Boulder Valley School District and the cities of Denver, Boulder, and Aspen, filed suit against the state seeking to prevent the implementation of the amendment.⁶⁷ The District Court in Denver issued an injunction prohibiting the enforcement of the measure in 1993, which the Colorado Supreme Court affirmed on October 11, 1994, arguing that it sought unconstitutionally to exclude “an independently identifiable class of persons” from full participation in the political process.⁶⁸ On appeal, the US Supreme Court granted certiorari to hear the case. The majority opinion was written by Justice Anthony Kennedy, a Reagan appointee who joined the Court in 1988. Parting ways with the overt homophobia espoused by many other Reagan supporters, Kennedy asserted in his opinion that the amendment was an unconstitutional inscription of antigay animus in the law. The amendment had no identifiable purpose other than “a bare . . . desire to harm a politically unpopular group” in violation of the Equal Protection Clause’s guarantee of “the law’s neutrality where the rights of persons are at stake.”⁶⁹ Justice Antonin Scalia, another Reagan appointee to the Court, wrote a dissent joined by Clarence Thomas and Chief Justice William Rehnquist. Scalia argued that Amendment 2 was “a modest attempt by seemingly tolerant Coloradans to preserve traditional sexual mores against the efforts of a politically powerful minority to revise those mores through use of the laws.”⁷⁰

⁶⁶ Dirk Johnson, “Colorado Homosexuals Feel Betrayed,” *New York Times*, November 8, 1992.

⁶⁷ “Courtwatch: *Evans v. Romer*,” *Circles: Buffalo Women’s Journal of Law and Social Policy* 4 (1996): 83–84.

⁶⁸ *Evans v. Romer*, Civ. A. No. 92-CV-7223, 1993 WL 518586 (Colo. Dist. Ct. December 14, 1993). *Evans v. Romer*, 882 P.2d 1335 (Colo. 1994).

⁶⁹ *Romer v. Evans*, 517 U.S. 620 (1996).

⁷⁰ *Romer v. Evans*, 517 U.S. 620 (1996) (Scalia, A., dissenting).

On the evening of September 17, 1998, in Houston, a gay man named Robert Royce Eubanks called the police in order to report “a black man [who] was going crazy in the apartment and . . . was armed with a gun.” When police deputies arrived on the scene, Eubanks pointed them to the apartments on the second floor, looking “highly upset, shaking, and crying a little,” according to one of the deputies.⁷¹ When the deputies entered the apartment, they found three men: John Lawrence, the owner of the apartment, Tyron Garner, the “black man” who was ostensibly “armed with a gun,” and one other anonymous other man. Two deputies claimed to have witnessed Lawrence and Garner having anal sex (though that claim was probably specious).⁷² Once the officers removed all four men to the living room, Eubanks admitted that he had fabricated the story about Garner in order to retaliate against Garner. According to *Lawrence* historian Dale Carpenter, “Eubanks was angry and jealous that his current lover, Garner, was cheating on him with his ex-lover, Lawrence.”⁷³ Nonetheless, the police arrested Lawrence and Garner on charges of “homosexual conduct.” “Why did they arrest Lawrence and Garner?” William Eskridge explains, “The most apparent reason is that the officers were ‘pissed off.’ They had rushed to the scene of a potentially violent crime; they had stormed the apartment and had drawn their weapons—all they found was a homosexual ‘love triangle.’”⁷⁴

In jail, Lawrence and Garner were each allowed to make a phone call, and Lawrence made his to Lane Lewis, an activist friend, who in turn contacted Ray Hill, an elder gay rights activist from Houston. Hill had come out in the late 1950s and was

⁷¹ Quoted in Carpenter, “Unknown Past of *Lawrence v. Texas*,” 1479.

⁷² Carpenter, “Unknown Past of *Lawrence v. Texas*,” 1491.

⁷³ Carpenter, “Unknown Past of *Lawrence v. Texas*,” 1483.

⁷⁴ Eskridge, *Dishonorable Passions*, 311.

imprisoned in 1969 on a burglary conviction.⁷⁵ After he was released in 1975, Hill went on to co-found the Houston Human Rights League to challenge police harassment and brutality.⁷⁶ After arranging to bail out Lawrence and Garner, Hill put them in touch with Mitchell Katine, a prominent local criminal defense attorney, who connected them with lawyers at the Lambda Legal Defense and Education Fund. Attorneys at Lambda quickly recognized the significance of the arrest: a rare instance in which the police had actually enforced the homosexual conduct law against the consensual behavior of adults in private, affording the LGBT movement an irresistible opportunity to challenge the law on privacy grounds. “This was too good to be true,” recalled Lambda’s legal director Beatrice Dohrn.⁷⁷

Lambda appealed the conviction in a Texas state appellate court in the case *Lawrence v. State*, arguing that the homosexual conduct law violated Lawrence and Garner’s privacy rights, and their right to equal protection of the laws. On June 8, 2000, the court voided the convictions and declared the homosexual conduct law to be in violation of the Texas state constitution—not for the reasons proffered by Lambda, but because it violated the state Equal Rights Amendment’s ban on sex discrimination.⁷⁸ The court’s reasoning was that the state was punishing conduct between two men that, if one of the partners were female, would have been legal.⁷⁹ After the Texas Court of Criminal

⁷⁵ Eskridge, *Dishonorable Passions*, 301.

⁷⁶ David Morris, “Unabashed Activism: Ray Hill of Houston,” *Gay Community News*, February 11, 1984.

⁷⁷ Quoted in Eskridge, *Dishonorable Passions*, 311.

⁷⁸ On the history of the Equal Rights Amendment, see Dorothy Sue Cobble, *The Other Women’s Movement: Workplace Justice and Social Rights in Modern America* (Princeton, NJ: Princeton University Press, 2004) and Self, *All in the Family*.

⁷⁹ Eskridge, *Dishonorable Passions*, 314–15.

Appeals declined to hear the case, Lambda submitted a request for the US Supreme Court to review it, which the Court granted on December 2, 2002.⁸⁰

The press coverage of and litigation in *Lawrence* retrofitted Lawrence and Garner into a heteronormative identity that cast gay people as respectable sexual citizens whose conduct was in alignment with hegemonic heterosexual mores. As John Howard has argued, Lawrence and Garner were “deviant” in numerous ways that needed to be papered over in order to construct a sanitized, de-sexualized political identity that was more likely to be agreeable in court. “John Lawrence and Tyron Garner were not only an interracial couple but also a nonmonogamous, cross-class, intergenerational pair; a fifty-five-year-old white medical technician and a thirty-one-year-old African American described variously as unemployed, a shipyard worker, or roadside barbecue vendor.”⁸¹ In its amicus brief to the US Supreme Court, the Human Rights Campaign—joined by 27 other organizations, including the Mexican American Legal Defense & Education Fund (MALDEF)—omitted discussion of the details of Lawrence and Garner’s actual relationship, arguing instead that gay men and lesbians were predisposed to live in couples and raise children. “Gay men and lesbians . . . tend to live in committed relationships. The 2000 Census data count 1.2 million gay people living as couples, but that number reflects a significant undercounting of the actual number of gay couples. . . . Many gay men and lesbians raise children in their homes.”⁸² The *Lawrence* legal team

⁸⁰ *Lawrence v. State*, 41 S.W.3d 349 (Texas Court of Appeals, Fourteenth Circuit, en banc, 2001). Eskridge, *Dishonorable Passions*, 317.

⁸¹ John Howard, “Southern Sodomy; Or, What the Coppers Saw,” in *Southern Masculinity: Perspectives on Manhood in the South since Reconstruction*, ed. Craig Thompson Friend (Athens: University of Georgia Press, 2009), 196–218, 196.

⁸² Brief for the Human Rights Campaign et al. as Amicus Curiae, *Lawrence v. Texas*, 539 U.S. 558 (2003).

made sure that none of the lascivious details about the events leading up to the arrest would go public by forbidding interviews with Lawrence and Garner before the trial.⁸³

As Siobhan Somerville has argued, race probably played a role fueling Lawrence and Garner's arrest, triggered by jealous lover Robert Eubanks's initial call to the police department in which he claimed falsely that a "black man" was "going crazy" with a gun inside of Lawrence's apartment. Nonetheless, "most people not aware of the interracial aspect of the case" until newspapers finally published a photograph of Lawrence and Garner in July 2003—after the US Supreme Court decision had already been decided. What was more, race went "unmarked in the official documents related to the Supreme Court decision."⁸⁴ Deliberately or not, the shortening of the case title to "Lawrence v. Texas" effaced the fact that Garner, the Black plaintiff, was part of the case.⁸⁵ By deemphasizing race, supporters of Lawrence and Garner strategically avoided evoking racist assumptions about deviant and improper black male sexuality.

The 18 amicus briefs in support of Lawrence and Garner were submitted by organizations hailing from a broad range of ideological locations. The stunning range of the amicus briefs reflected how the movement to legalize a certain kind of "good" gay sex was fueled not just by the left but also moderates and even some conservatives as well. As William Eskridge has argued about sodomy law reform at the state level in the late twentieth century, "Only after liberals, pragmatists, and even some traditionalists had come to an overlapping consensus that consensual sodomy should not be a crime and homosexuals accepted as presumptively lawful citizens, only then did individual state

⁸³ Howard, "Southern Sodomy," 202.

⁸⁴ Siobhan B. Somerville, "Queer Loving," *GLQ: Journal of Lesbian and Gay Studies* 11, no. 3 (2005): 335–70, 346.

⁸⁵ Jasbir Puar, "Intimate Control, Infinite Detention: Rereading the *Lawrence* Case," in *Terrorist Assemblages*, 114–165.

legislatures repeal their consensual sodomy laws . . .”⁸⁶ Friends of the Court on the side of Lawrence and Garner included the usual suspects like the ACLU and the HRC but were also joined by the Log Cabin Republicans, an organization of gay conservatives, and the Cato Institute, a right-leaning liberation group, whose brief was co-written by Eskridge.⁸⁷

The amicus briefs in support of Lawrence and Garner made it seem like the gay “consenting adult in private” was a “natural,” timeless type of sexual citizen who throughout history had been on a world-historical journey toward legalization and acceptance. In *Bowers v. Hardwick*, the Court had argued that to “hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching.”⁸⁸ The historians who were involved in the *Lawrence* case had to find a way to counter the *Bowers* Court’s argument that their anti-gay position was supported by historical tradition.

They did so by deploying a kind of “strategic essentialism” that, as John Howard has put it, “participated in the hardening of a discrete social category.”⁸⁹ The historians involved in *Lawrence* argued that not only was the Court wrong about the unchanging nature of legal stigma on homosexuality but also that they, in fact, were the ones who were on the right side of history. As William Eskridge and Robert Levy argued in their brief for the CATO Institute, “Sodomy statutes have historically focused on predatory

⁸⁶ Eskridge, *Dishonorable Passions*, 371.

⁸⁷ Brief for the American Civil Liberties Union and ACLU of Texas as Amicus Curiae, *Lawrence v. Texas*, 539 U.S. 558 (2003). Brief for the Human Rights Campaign et al. as Amicus Curiae, *Lawrence v. Texas*, 539 U.S. 558 (2003). Brief for the Log Cabin Republicans and Liberty Education Reform as Amicus Curiae, *Lawrence v. Texas*, 539 U.S. 558 (2003). Brief for the CATO Institute as Amicus Curiae, *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁸⁸ *Bowers v. Hardwick*, 478 U.S. 186 (1986).

⁸⁹ Howard, “Southern Sodomy,” 200. On strategic essentialism, see Gayatri Chakravorty Spivak, “Subaltern Studies: Deconstructing Historiography,” in *In Other Worlds: Essays in Cultural Politics* (New York: Methuen, 1987).

and public activities; consensual ‘homosexual’ activities became their focus only in the mid-twentieth century.”⁹⁰ In their amicus brief, George Chauncey and the other historians wrote that “throughout American history, the authorities have rarely enforced statutes prohibiting sodomy, however defined. Even in periods when enforcement increased, it was rare for people to be prosecuted for consensual sexual relations conducted in private, even when the parties were of the same sex.”⁹¹ In other words, the consenting adult in private had historically been left alone most of the time by the state, and it was actually the state that was deviant for starting to police it in the twentieth century. The *Lawrence* historians crafted arguments that naturalized and reified the gay consenting adult in private—but this was a necessary strategy that they had to employ in order to counter the slippery-slope arguments being made by their right-wing opponents.

In its majority opinion, the *Lawrence* Court displaced the married heterosexual with the consenting adult in private as the new figure defining legally acceptable sexual conduct in the United States. Reversing the holding of its *Bowers v. Hardwick* decision 17 years earlier, the Court asserted that “the Texas statute furthers no legitimate state interest which can justify its intrusion into the individual’s personal and private life.”⁹² In so ruling, the Court invalidated all of the thirteen remaining state sodomy laws as they applied to the sexual behavior of consenting adults in private.⁹³ By removing the homosexual conduct law’s attribution of a criminal status to gay sex, *Lawrence* undermined a key justification for denying gays and lesbians the rights and obligations of

⁹⁰ Brief for the CATO Institute as Amicus Curiae, *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁹¹ Brief for the Professors of History, George Chauncey, et al. as Amicus Curiae, *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁹² *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁹³ Technically, thirteen and a half states still had sodomy laws on the books at the time of *Lawrence*. In 1999 a Missouri court of appeals invalidated some of the remaining sodomy ordinances—which were the purview of the counties, not the state government—in the state, but the decision applied only to Missouri’s Western District counties. *State v. Cogshell*, 997 S.W.2d 534 (Mo. Ct. App. 1999).

full citizenship: immigration, parenting, military service—and, as Reagan-appointed justice Antonin Scalia forecasted correctly in his dissenting opinion, marriage. “If moral disapprobation of homosexual conduct is ‘no legitimate state interest’ for purposes of proscribing that conduct . . . what justification could there possibly be for denying the benefits of marriage to homosexual couples exercising ‘[t]he liberty protected by the Constitution?’”⁹⁴

On a more general level, *Lawrence* also advanced the rights of sexual minorities in ways that cannot necessarily be predicted in advance by setting a precedent that subsequent court cases have already begun to draw on and extend. The decision has since provided a precedent of protecting sexual liberty that lawyers have extended to conduct besides that of consenting adults in private. Two years after *Lawrence*, in 2005, the Kansas Supreme Court drew on the case in order to argue that the state sodomy law was being enforced discriminatorily against gay sex. In 2000, 18-year-old Matthew Limon had been convicted of having oral sex with a 14-year-old boy at the school for developmentally disabled children that they both attended. The punishment he received of 206 months’ imprisonment was greater than what he would have gotten had the conduct been heterosexual. With Limon as the plaintiff, the ACLU launched a challenge to Kansas’s “Romeo and Juliet” law under which Limon had been convicted. The statute legalized some consensual sex between teenagers, as long as they were less than four years apart. The enforcement, the ACLU argued, was prohibited under the terms of *Lawrence v. Texas*, which had held that legal discrimination against gays and lesbians violated the Equal Protection Clause. In 2005, the Kansas Supreme Court agreed,

⁹⁴ *Lawrence v. Texas*, 539 US 558 (2003) (Scalia, A., dissenting). George Chauncey, “‘What Gay Studies Taught the Court’: The Historians’ Amicus Brief in *Lawrence v. Texas*,” *GLQ: A Journal of Lesbian and Gay Studies* 10, no. 3 (2004): 509–38, 510.

reversing the lower court's holding and ordering it to assign Limon a fair sentence.⁹⁵

How else will attorneys extend the precedent *Lawrence* set in the future?

Although *Lawrence* represented a major expansion of rights, both sexual and otherwise, for gays and lesbians, the decision excluded a range of non-normative sexual behaviors, both gay and straight, from legalization. In *Bowers v. Hardwick*, the Court had asserted that decriminalizing private homosexual conduct between consenting adults would lead to the decriminalization of other, more nefarious behaviors: "If respondent's submission is limited to the voluntary sexual conduct between consenting adults, it would be difficult, except by fiat, to limit the claimed right to homosexual conduct while leaving exposed to prosecution adultery, incest, and other sexual crimes even though they are committed in the home. We are unwilling to start down that road."⁹⁶ Justice Anthony Kennedy, author of the *Lawrence* majority opinion, was for this reason at pains to distinguish between the behaviors that it was and was not legalizing.

Kennedy's majority opinion reflected the blended, moderate politics of sexuality that the Supreme Court Justice has since come to embody. In his opinion, countering the paranoid, slippery-slope argument put forward by *Bowers*, Kennedy emphasized that the case "does not involve minors, persons who might be injured or coerced, those who might not easily refuse consent, or public conduct or prostitution. It does involve two adults who, with full and mutual consent, engaged in sexual practices common to a homosexual lifestyle."⁹⁷ Nominated by President Reagan in 1987, Justice Kennedy went

⁹⁵ *State v. Limon*, 280 Kan. 275 (2005). Franke, "Domesticated Liberty of *Lawrence v. Texas*," 1412–13.

⁹⁶ *Bowers v. Hardwick*, 478 U.S. 186 (1986).

⁹⁷ *Lawrence v. Texas*, 539 U.S. 558 (2003). Numerous scholars have drawn attention to the limitations of the sexual right that *Lawrence* established. For three particularly salient analyses of this issue, see Franke, "Domesticated Liberty of *Lawrence v. Texas*"; Stein, *Sexual Injustice*, 301–2; and Fischel, "Transcendent Homosexuals and Dangerous Sex Offenders."

on to become the surprise swing vote, authoring the *Romer* decision, *Lawrence*, and eventually *Obergefell v. Hodges*, the 2015 decision that legalized gay marriage.⁹⁸ (He has also authored a number of other decisions outside of the area of LGBT rights that more clearly embodied conservative principles.)⁹⁹ His formulation here, which combined significant liberal elements with just as significant conservative ones, perfectly embodied the new sexual politics of consensus that simultaneously facilitated the rise of LGBT rights as well as the expansion of the carceral state.

III. Conclusion

After five decades of effort on the part of gay activists and their sympathizers, *Lawrence*, at long last, codified legal protection for the sexual behavior of consenting adults in private. At the same time, in the wake of the decision, a range of consensual but non-normative sexual behaviors remained subject to criminalization, and the people who engaged in those behaviors remained exposed to the full interdictory and punitive force of criminal law. This was true especially of individuals who participated in queer public sexual cultures in the age of AIDS.

⁹⁸ *Obergefell v. Hodges*, 576 U.S. ____ (2015).

⁹⁹ David S. Cohen, "It's Justice Kennedy's World, and We're Just Living in It," *Rolling Stone*, June 30, 2015.

Chapter 6: Policing Queer Public Sexual Culture in the Age of AIDS

On October 17, 1987 an anonymous HIV-positive person sent a letter to Dr. David Werdegar, one of the Directors of the San Francisco Department of Public Health, containing an urgent warning. The writer informed Dr. Werdegar that he or she had been infected with HIV by another San Francisco resident who refused to change his sexual conduct in order to prevent transmitting the virus to others. “Dear Dr. Werdegar,” he or she wrote, “I am a person who has recently been privately diagnosed as having the A.I.D.’s [sic] virus. I know for dead certain that the person I caught the virus from knows that he has it. When I confronted him with this he calmly admitted it, said that he knew he was carrying the virus, and just intended to go right on having sexual activity without precautions till he died or a cure was found.”¹ If this malicious individual would not control his sexual behavior of his own volition, the letter writer hoped, perhaps the Department of Public Health would police it for him.

Alongside the child protection movement, the outbreak of the HIV/AIDS epidemic in the 1980s was the other major factor driving realignment of the lesbian and gay movement with a heteronormative politics of sexuality. In the early days of the epidemic, it was not evident where the mysterious illness had come from or what caused its transmission. But it seemed clear that it was somehow connected to sex, especially gay

¹ Anonymous to David Werdegar, October 28, 1987, folder: “Sex Clubs and Public Sex Troubleshooting,” carton 8, AIDS Office of the San Francisco Department of Public Health Records, 1982–1994, MSS 95-01, Archives and Manuscript Collections, San Francisco Public Library, San Francisco, California.

male sex, since it was in gay male sexual culture that the first reported cases of the disease emerged. In that context, gay community members, such as the anonymous letter writer to Dr. Werdegar, were in the vanguard of those who called for state-run public health agencies to police the sexual conduct of men who had promiscuous gay sex. In the age of AIDS, many gay activists and community members became far less likely to be supportive of, or see the value in, gay men's queer public sexual culture or the radical sexual politics that many gay and sexual liberation activists had once espoused.

In the decade that followed the outbreak of AIDS, a bipartisan group of liberal and conservative lawmakers, business leaders, public health officials, and some (though by no means all) gay activists created a new system at the state level for the policing of promiscuous sexual conduct in the age of HIV/AIDS. By 1989, two years after the writing of the letter, 9 states had passed laws making it a crime for an HIV-positive person to expose another person to the virus through sex, sharing needles, and in some cases, even bodily fluids such as saliva. Today, 32 states and 2 U.S. territories have such laws. In order to secure a conviction of an HIV-positive person, the statutes do not require for the virus actually to be transmitted; most of them do not require proof of intent to transmit or even evidence that the sexual practices in question posed any risk of transmission. Between 2008 and 2016, there were at least 260 reported prosecutions nationwide of cases involving the alleged risk of HIV-transmission. Sentences tied to a conviction for HIV exposure are often extremely punitive and out of sync with the level of harm involved in the case, if indeed any harm occurred at all.² States such as Michigan

² The Center for HIV Law & Policy, "When Sex Is A Crime and Spit Is a Dangerous Weapon: A Snapshot of HIV Criminalization in the United States," 2016, <http://hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/Snapshot%20of%20HIV%20Criminalization%20Updated%20March%202016.pdf>.

have “health threat” laws that give public health departments the authority to subject HIV-positive persons so labeled to forced testing, counseling, or quarantine.³

While criminalization of sexual conduct involving HIV/AIDS played out primarily at the local and state levels at first, by the late 1980s the federal government began playing an increasingly key role. California was part of the vanguard of the new wave of legislative activity criminalizing HIV, along with New York and other states that were home to major urban centers with flourishing queer public sexual cultures. But the federal government was slower to get involved in the political and legal response to the epidemic, in part due to a simple lack of interest in the fate of queer citizens on the part of the Reagan administration. In the face of mounting pressure to do something, in 1987 President Reagan finally established the Presidential Commission on the Human Immunodeficiency Virus Epidemic to study the issue and make recommendations about how the federal government should respond to it.

The commission’s work culminated in a sweeping piece of legislation that the U.S. Congress passed in 1990 called the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act. Through the Ryan White Act, the federal government allocated vast new resources to fund HIV/AIDS treatment and prevention initiatives, on the basis of concern for “innocent” AIDS victims like children and recipients of a blood transfusion who, unlike gay men, sex workers, IV-drug users, and other queer and marginalized populations, had done nothing to “deserve” contracting the virus. Paradoxically, the act also mandated that the states that did not already have one establish a way to criminalize HIV-related misconduct, creating a hierarchical distinction between

³ Trevor Hoppe, “Controlling Sex in the Name of ‘Public Health’: Social Control and Michigan HIV Law,” *Social Problems* 60, no. 1 (2013): 27–49.

“good” (celibate) and “bad” (promiscuous) people with AIDS, and adding the latter category to the newly constituted criminal underclass of queer people targeted by the war on sex offenders in the late twentieth century.

The criminalization of HIV facilitated the expansion of the branch of the carceral state concerned with punishing sex crimes by amplifying the police power that had traditionally been endowed in public health institutions. Since the 19th century, public health officials had used their powers of surveillance and quarantine to control the conduct of individuals in an effort to curtail various epidemics, from smallpox to tuberculosis. As the historian Nayan Shah has argued, “The idea of securing the ‘health’ of the population linked the condition and conduct of individuals with the vitality, strength, and prosperity of society overall.”⁴ In the 1980s, the criminalization of HIV in particular extended the police power of public health institutions through new laws and policies allowing specifically for the social control of the sexual conduct of HIV-positive individuals in collaboration with the police, in the name of protecting the public health.

The criminalization of HIV contributed to a broader reconstitution of the legal category of the “public” on the basis of which the state criminalized not only sexually promiscuous people with HIV but also a broader range of modes of promiscuous sexual conduct. Before AIDS, the state had already viewed sexually promiscuous people—especially gay men, sex workers, and gender non-conforming individuals—as dangerous criminals who threatened the body politic. In the eyes of the law, potentially any gay person was a perpetrator of sexual misconduct simply for being at a bar, while the alleged victim was not an individual person but a vaguely defined, heteronormative notion of “public decency.”

⁴ Shah, *Contagious Divides*, 3–4.

By the early 1980s, gay activists had nearly wiped out what had once been the rampant problem of police harassment of gay bars, removing those spaces from the legally constructed sphere of the “public” that needed to be defended against offensive sexual conduct. But the criminalization of queer promiscuity persisted in spaces that were more clearly public, affecting especially gay men who cruised for sex in parks and restrooms, the public expression of gender non-conformity, and sex workers. And the criminalization of HIV increased the significance of the public “health” as a category of victim in the name of which the state regulated and punished the promiscuous sexual conduct of HIV-positive individuals.

The contemporary criminalization of queer public sexual cultures has disproportionately affected populations that are already marginalized for other reasons, especially along the lines of race, class, and gender presentation. Trans women, especially poor ones of color, are subject to more than their share of police harassment and arrest in urban areas, in a phenomenon that has become known as “walking while trans.”⁵ The criminalization of HIV disproportionately affects black and Latinx people, sex workers, and women. On a more general level, because lower-income people have less access to private spaces than higher-income individuals, they are more likely to inhabit public spaces in the first place where they are more likely to come into contact in the first place with the police state.

The rise of the criminalization of HIV foreclosed other strategies for controlling the spread of the virus that proponents argued would be more effective than criminal justice solutions. By criminalizing the intent to transmit the virus, the new HIV-specific criminal laws increased the stigma and shame attached to being HIV-positive, giving

⁵ Ginia Bellafante, “Poor, Transgender and Dressed for Arrest,” *The New York Times*, September 30, 2016.

people an incentive to *not* get tested in order to avoid punishment and state coercion. As gay activists argued in the 1980s, it was essential that the political response to the AIDS crisis be a sex-positive one that did not stigmatize individuals for being sexually active but rather respected the central place that sexual pleasure occupied in many people's own sense of personal fulfillment. As an alternative to the stigmatizing criminal justice response to the problem of HIV transmission, gay activists elaborated an ethic of "safer sex" that proposed to curtail the expansion of the epidemic by educating people about the different levels of risk attending different specific sexual behaviors. For these activists, gay bathhouses were not just a site of deviance and disease but also a space that could foster frank discussion about sexual practices and the circulation of sexual knowledge.

I. The Uneven Outcome of 1970s Public Sex Law Reform

In the wake of their successful effort in 1979 to reform California's lewd or dissolute conduct law, in 1980 Thomas Coleman of the National Committee for Sexual Civil Liberties (NCSCL) and his law partner Jay Kohorn mounted another legal challenge, this time to the state's prostitution law. Like the lewd conduct law, California's anti-prostitution statute—which criminalized "any lewd act between persons for money or other consideration"—was a subcategory of the state's broader vagrancy law. On August 30, 1979, the Los Angeles Police Department (LAPD) Vice Detail arrested a man named Fabian Farnia on charges of soliciting and engaging in an act of prostitution. While Farnia was still awaiting his arraignment, his lawyers, Coleman and Kohorn, added to the case 16 other defendants charged with similar offenses and filed a demurrer to the original complaint against Farnia challenging the constitutionality of the anti-prostitution

law as a violation of the right to privacy. “There is no compelling state interest or even rational basis,” they argued, “for a total prohibition of private sexual conduct merely because money or other consideration is offered.” On June 20, 1980, however, Judge David Rothman, who was presiding over the case in the Los Angeles Municipal Court, issued an order overruling the demurrer, nullifying their challenge to the prostitution law.⁶

In another case from the same year, gay men and lesbians fought to extend the right they had won in *Pryor* for gays and lesbians to express intimacy in gay bars, to private spaces that were dominated by heterosexual culture. On September 13, 1980, security guards ejected two gay men, Andrew Ross Exler and Shawn Elliott, from the Disneyland theme park in Anaheim, California, for dancing with each other at the park’s Tomorrowland Terrace in violation of Disneyland’s regulation providing that “couples only are allowed on the dance floor (male/female).”⁷ Exler and Elliott sued the park unsuccessfully until, on May 18, 1984, judge James R. Ross of the Orange County Superior Court ordered Disneyland to stop enforcing its policy against same-sex dancing.⁸ However, the issue remained unresolved until three other gay men, Eric Hubert, Christopher Drake, and Jeffrey Stabile, Jr. again sued the park in 1988 after a security guard allegedly told them that “touch [slow] dancing is reserved for heterosexual couples only.”⁹ (Exler and Elliott had been removed from the park for “fast” dancing.)

⁶ Farnia v. Los Angeles Municipal Court legal brief, box 2, folder 18, Thomas F. Coleman and Jay M. Kohorn Papers, Coll2014-031, ONE Archives.

⁷ Shawn Elliott v. Disneyland, box 2, folder 17, Thomas F. Coleman and Jay M. Kohorn Papers, Coll2014-031, ONE Archives.

⁸ “Let Gays Dance Together, Judge Orders Disneyland,” *Los Angeles Times*, May 18, 1984.

⁹ Mary Lou Fulton, “Disneyland Pledges No Sex Bias; 3 Gay Men Drop Suit Over Dancing,” *Los Angeles Times*, September 30, 1989.

Before the case went to trial, Disneyland lifted its ban on gay dancing, and the men dropped their suit.

Activists took another step toward reducing criminal sanctions on public sex through a committee that Governor Jerry Brown commissioned called the California Commission on Personal Privacy (CCPP). Though the right to privacy was a ubiquitous legal trend, it was particularly entrenched in California state law because of a referendum that voters had passed in 1972 adding “privacy” to a preliminary section of the state constitution enumerating certain inalienable rights of citizenship.¹⁰ On that basis, the commission investigated and made recommendations about a range of issues from the privacy of jurors and the disabled to the sexual rights of teenagers.¹¹ At a series of hearings about the lewd conduct law, witnesses testified about the statute’s discriminatory impact on gay men and recommended that it be removed from among the categories of offenses requiring registration as a sex offender. The framing of the commission in terms of “privacy,” then, was contradictory, since this aspect of its work pertained to the criminalization of sex in public. In contrast with the political culture of the 1970s, in which it was common to criticize the sex offender registry as a whole, at the CCPP hearings E.H. Duncan Donovan, a representative of the Gay Rights Chapter of the American Civil Liberties Union, was the only person to do so. “The feeling here is that you create two classes of citizens,” he argued.¹² In the report it ultimately issued in 1983, however, the CCPP recommended only that the registration requirement be removed for

¹⁰ “Californians bolster privacy right, reject censorship,” *Advocate*, December 6, 1972.

¹¹ Scott P. Anderson, “The California Commission Report: Privacy: An Issue for the ’80s?,” *Advocate*, January 20, 1983.

¹² Draft of Transcript of Public Hearings, November 1981, box 14, Arthur C. Warner Papers, Public Policy Papers, Princeton.

lewd conduct offenses, thereby leaving the sex offender registry more generally unhindered by political protest.

The 1983 California Supreme Court case *In re Reed* codified this shift. In that case, the court determined that the lewd conduct law's registration requirement was a form of punishment that was out of proportion to the crime. The petitioner Allen Eugene Reed had been arrested by an undercover vice officer in a public restroom and, upon conviction, was required to register as a sex offender. The language the court used to describe Reed's behavior could not have been more different from the way courts had talked about deviant gay men in the 1950s and 1960s: Reed was "not the prototype of one who poses a grave threat to society." At the same time, the court made clear that its decision to remove the lewd conduct law's registration requirement was contingent on the fact that Reed had challenged registration as it applied to that particular statute but not registration overall. His "relatively simple sexual indiscretion" did not "place him in the ranks of those who commit more heinous registrable sex offenses." The culmination of three decades of political conflict, the *Reed* case reconstructed the legal definition of the sex offender, deemphasizing homosexuality and concentrating instead on sex crimes against women and children.¹³

Although a conviction under the lewd conduct law no longer entailed registration as a sex offender, the statute still threatened the livelihoods of many gay men. After the *Reed* decision, lewd conduct remained a crime of "moral turpitude" that required the automatic suspension of teaching and other professional licenses—a consequence that did not follow from other misdemeanors, such as battery, that did not involve sex. Moreover, under the terms laid out by *Reed*, individuals convicted of lewd conduct were no longer

¹³ *In re Reed*, 33 Cal.3d 914 (1983).

allowed to enter a plea bargain to a lesser offense, meaning a teacher, for example, was now forced to contest the testimony of a vice officer in court if he wanted keep his job. Though gay activists achieved major reforms of the lewd conduct law, they were not able to overturn the legal framework that supported it. The basic idea that there existed something called “lewd or dissolute conduct” persisted, leaving gay men who cruised for sex vulnerable to criminalization.¹⁴

Though the criminal sanctions that attached to a lewd conduct conviction were now lower, at the same time gay activists and law enforcement officials also developed new ways of policing and suppressing cruising and other forms of public sex. In the early 1980s, activists with the Gay and Lesbian Police Advisory Task Force (GLPATF) extended earlier efforts to reform the LAPD by presenting the department with an 11-point list of demands, including the active recruitment of gay and lesbian police officers. “My view is that their sexual proclivity is unnatural,” police chief Daryl F. Gates commented in a statement declining to honor activists’ request.¹⁵ While the gay police officer initiative failed, gay activists’ negotiations with the police succeeded in producing a new mode of community policing of after-hours cruising in the alleys after the bars closed in West Hollywood. After being solicited to do so by the Los Angeles Police and County Sheriff’s Departments, the Gay and Lesbian Community Services Center (GLCSC) initiated a new program in which representatives patrolled the alleys on foot and handed out leaflets reading, “We all know that gay sex is wonderful. It just should

¹⁴ National Committee for Sexual Civil Liberties, “Implications of Reed,” Unmarried America, accessed July 18, 2014, <http://www.unmarriedamerica.org/Archives/1980-1983-sex-registration-law-challenge/reed-implications.pdf>.

¹⁵ Task force calls for the active recruitment of gays by LAPD, box 1, folder 1, Gay and Lesbian Police Advisory Task Force (Los Angeles) Records, Coll2011-049, ONE Archives.

not be happening in the backyards of residential neighborhoods.”¹⁶ Longtime gay activist Morris Kight criticized gay activists’ collaboration with law enforcement for marginalizing the needs of the gay community’s most stigmatized members, such as “transvest[ites], transsexualists, street gays, male prostitutes, the very young,” who were least able to challenge being arrested.¹⁷

To make matters worse, gay activists did not manage to extend some of their achievements reforming public sex law in California to the national level. In 1984, the US Supreme Court issued a ruling that reversed the progress that gay activists almost made challenging the public lewdness law in New York. The law punished not just sex in public but also the mere act of “soliciting another person to engage, in deviate sexual intercourse or other sexual behavior of a deviate nature.”¹⁸ In a case involving a man named Robert Uplinger, who was convicted of soliciting a police officer for sex, the New York Court of Appeals issued a ruling holding the public lewdness law to be unconstitutional. The decision came on the heels of another case from the same state in 1980, *People v. Onofre*, that legalized “sodomy” between consenting adults in private.¹⁹ When the case reached the US Supreme Court, however, the Court dodged the issue by refusing to consider the merits of the case and instead allowing the public lewdness law to stand on procedural grounds.²⁰ In so doing, it provided a precedent affirming the legitimacy of such laws in the other states that maintained them, too.

¹⁶ Gay Alley Patrols Help Police Discourage After-Hours Cruising, box 1, folder 3, Gay and Lesbian Police Advisory Task Force (Los Angeles) Records, Coll2011-049, ONE Archives.

¹⁷ Larry Goldsmith, “A Change in Style: The Los Angeles Cops,” *Gay Community News*, December 12, 1981.

¹⁸ N.Y. Penal Law § 240.35(3).

¹⁹ *People v. Onofre*, 424 N.Y.S.2d 566 (1980).

²⁰ *New York v. Uplinger*, 467 U.S. 246 (1984).

II. “Cancer in the Gay Community”

The discovery of the AIDS epidemic in the early 1980s prompted a fresh round of legal efforts to regulate and criminalize gay male public sexual culture. A recent study from 2016 of the HIV genome determined that the virus circulated in the United States throughout the 1970s and even earlier in the Caribbean. The earliest casualties in San Francisco, it now turns out, were two African American baby girls born to an IV drug-using mother.²¹

But the mysterious illness was first discovered in “sexually active, previously healthy gay men” in Los Angeles and the earliest cases to come to the attention of medical professionals all emerged from the gay male enclaves of New York and California, leading doctors to hypothesize that the disease was somehow related to gay men’s sexual practices. The Centers for Disease Control’s (CDC) first report on the disease, published in its *Morbidity and Mortality Weekly Report* in June 1981, noted that five young men in Los Angeles had been treated during the previous year for *Pneumocystis carinii* pneumonia (PCP). Since the men were “all active homosexuals,” the reported conjectured that the outbreak was connected to “some aspect of a homosexual lifestyle” or “disease acquired through sexual contact.”²² On July 3, the CDC registered 26 cases of young gay men afflicted with Kaposi’s sarcoma, a rare cancer most commonly affecting elderly men that often manifested in the form of tumors on the

²¹ Michael Worobey et al., “1970s and ‘Patient 0’ HIV-1 Genomes Illuminate Early HIV/AIDS History in North America,” *Nature* advance online publication (October 26, 2016).

²² “Pneumocystis Pneumonia—Los Angeles,” *Morbidity and Mortality Weekly Report* 30 (1981): 250–252. Quoted in Steven Epstein, *Impure Science: AIDS, Activism, and the Politics of Knowledge* (Berkeley: University of California Press, 1996), 45.

skin.²³ The coverage of the report in the *New York Times*, tucked away on page A20, reported that “doctors said that most cases had involved homosexual men who have had multiple and frequent sexual encounters with different partners, as many as 10 sexual encounters each night up to four times a week.”²⁴ At the end of July, Dr. Lawrence Mass echoed in the *New York Native*, a gay newspaper with national circulation, that there was a “cancer in the gay community.” “At this time,” he wrote, “many feel that sexual frequency with a multiplicity of partners—what some would call promiscuity—is the single overriding risk factor.”²⁵

Further solidifying the discursive link between homosexual promiscuity and the illness, in early 1982 some medical professionals informally called the disease “GRID,” or Gay-Related Immunodeficiency.²⁶ In 1981–82, the CDC conceptualized the syndrome as confined to homosexuals and a few other minority groups through its “4-H list”—homosexuals, hemophiliacs, heroin addicts, and Haitians—of categories of people who were particularly at risk to acquire AIDS.²⁷ Other theories proffered by medical professionals about why the disease was so prevalent among gay men ranged from a possibly contaminated batch of amyl nitrates, or poppers, a popular inhalant that many gay men used to facilitate anal sex, to the “fragile anus” theory, which held that anal intercourse, compared with vaginal, was a particularly likely mode of transmission.²⁸

Influenced by the Christian Right, which promoted the view that gay men had

²³ “Kaposi’s Sarcoma and Pneumocystis Pneumonia among Homosexual Men—New York City and California,” *Morbidity and Mortality Weekly Report* 30 (1981): 305–308.

²⁴ Lawrence K. Altman, “Rare Cancer Seen in 41 Homosexuals,” *The New York Times*, July 3, 1981.

²⁵ Lawrence Mass, “Cancer in the Gay Community,” *New York Native*, 27 July 1981. Quoted in Epstein, *Impure Science*, 46.

²⁶ For an example of the use of this term, see Lawrence K. Altman, “New Homosexual Disorder Worries Health Officials,” *The New York Times*, May 11, 1982. Epstein, *Impure Science*, 50.

²⁷ Paula A. Treichler, “AIDS, Homophobia, and Biomedical Discourse: An Epidemic of Signification,” *October* 43 (1987): 31–70, 44.

²⁸ Treichler, “AIDS, Homophobia, and Biomedical Discourse,” 46, 48.

brought AIDS on themselves, in the early years of the epidemic the federal government neglected to formulate an adequate response. The magazine of the Moral Majority, a conservative political organization founded by the Baptist minister Jerry Falwell in 1979, portrayed AIDS as a disease that was caused by gay men's depraved sexual practices and threatened to infect virtuous heterosexuals. "AIDS: Homosexual Diseases Threaten American Families," read the headline of the July 1983 issue of the *Moral Majority Report* with a photograph of a mother, father, and their two children wearing medical face masks.²⁹

The Reagan administration, which rose to power in 1980 thanks in large part to the influence of the Christian Right, did not request for Congress to make an appropriation to fund AIDS research until May 1983 and, for that reason, the National Institutes of Health (NIH), the federal agency responsible for conducting medical research, did not launch a large-scale research initiative about AIDS until that year. In the years that followed, the Reagan administration repeatedly tried to cut Congressional appropriations earmarked to address the AIDS crisis.³⁰ "In this Administration, there is a sharp contrast between the rhetoric of concern and the reality of response," criticized Virginia Apuzzo, the executive director of the National Gay Task Force, in a testimony before a U.S. House of Representatives subcommittee on August 1.³¹ "I hope my epitaph won't read that I died of red tape," said Roger Lyon, a 34-year-old gay man from San Francisco, at the same hearing.³² Ultimately, President Reagan did not even utter the

²⁹ "AIDS: Homosexual Diseases Threaten American Families," *Moral Majority Report*, July 1983.

³⁰ Deborah B. Gould, *Moving Politics: Emotion and ACT UP's Fight against AIDS* (Chicago: University of Chicago Press, 2009), 49–50.

³¹ NGTF Assails Response on AIDS in Congressional Testimony, box 113, folder 32, National Gay and Lesbian Task Force records, #7301, Cornell

³² Sue Hyde, "Men with AIDS: 'Dying of Red Tape,'" *Gay Community News*, August 13, 1983.

word “AIDS” in public until a press conference held in late 1985. As the president’s chief domestic policy advisor Gary Bauer explained in a TV interview, “It hadn’t spread to the general population yet.”³³

While the Christian Right played a particularly influential role in producing a narrative about AIDS that blamed gay men for causing the epidemic, it is perhaps more surprising that many gay people themselves also contributed to the creation of a narrative that attributed the epidemic to the unrestrained hedonism of “the urban gay male lifestyle.”³⁴ Some gay intellectuals had put forth the idea that there was something pathological about gay male sexual culture even before the discovery of the AIDS epidemic. The writer Larry Kramer’s 1978 novel *Faggots* derisively portrayed the gay male world of 1970s New York City as a cold and meaningless culture characterized by anonymous sex and drugs that thwarted the protagonist Fred Lemish’s, who was modeled on Kramer himself, quest for a loving, long-term relationship.³⁵ The historian Martin Duberman later reflected, “To me, *Faggots* represented not uncanny clairvoyance but merely Kramer’s own garden-variety sex-negativism.”³⁶ In *The Normal Heart*, a largely autobiographical play about the rise of the AIDS crisis in New York City, Kramer suggested that the epidemic was caused by the underworld of gay male promiscuity through the protagonist Tommy, who lamented, “Maybe if they’d let us get married to begin with none of this would have happened at all.”³⁷ In articles bearing titles like “The Second Gay Revolution: AIDS Brings a New Maturity,” the straight press, too, echoed

³³ Quoted in Jan Zita Grover, “AIDS: Keywords,” *October*, no. 43 (1987): 17–30, 23.

³⁴ “Is the Urban Gay Male Lifestyle Hazardous to Your Health? A Special Report on the New Diseases Attacking Gay Men,” *Advocate*, March 18, 1982.

³⁵ Larry Kramer, *Faggots* (New York: Random House, 1978).

³⁶ Martin Duberman, *Midlife Queer: Autobiography of a Decade, 1971–1981* (Madison: University of Wisconsin Press, 1996), 20.

³⁷ Larry Kramer, *The Normal Heart* (New York: Samuel French, 1985), 73.

Kramer's call for gay men to abandon promiscuity in favor of a more "mature" life of monogamy and coupledness.³⁸

To be fair, though, in the 1980s Kramer also helped to introduce and promote a culture of safer sex, and establish an infrastructure of care for people with AIDS. The organization he helped found in January 1982, the Gay Men's Health Crisis (GMHC), to combat the new, mysterious gay cancer recommended that gay men engage only in sexual practices that were demonstrably risk-free.³⁹ A charismatic leader, Kramer went on in 1987 to help found the AIDS Coalition to Unleash Power (ACT UP), which became the most influential grassroots AIDS protest organization in the country.⁴⁰

The gay journalist Randy Shilts's 1987 account of the AIDS epidemic, *And the Band Played On*, which soon became a classic, went a step farther, attributing the crisis not just to the culture of gay male promiscuity but even to the supposedly malicious intent on the part of gay men who knew they were positive but continued anyway to have sex without informing their partners of their status. Shilts's book claimed that epidemiologists had attributed the origin of the AIDS epidemic to a French-Canadian man named Gaétan Dugas, a handsome, unapologetically promiscuous gay male flight attendant whom press accounts referred to as "Patient Zero."⁴¹ Dugas came to the attention of the CDC when, in 1982, three HIV-positive men from three different counties in California told researchers that they had all had sex with the flight attendant.

The researchers tracked down Dugas in New York City and, with his cooperation,

³⁸ John Jacobs, "The Second Gay Revolution: AIDS Brings a New Maturity," *The Washington Post*, October 16, 1983.

³⁹ Michael Warner, "Unsafe: Why Gay Men Are Having Risky Sex," *Village Voice*, January 31, 1995. Quoted in David M Halperin, *What Do Gay Men Want? An Essay on Sex, Risk, and Subjectivity* (Ann Arbor: University of Michigan Press, 2009), 40.

⁴⁰ "Larry Kramer Accuses Gay Community of Death Wish," *Gay Community News*, June 14, 1987.

⁴¹ Randy Shilts, *And the Band Played On: Politics, People, and the AIDS Epidemic* (New York: St. Martin's Press, 1987), 23.

definitively linked HIV transmission to sexual activity for the first time.⁴²

Shilts—who himself died of AIDS in 1994—portrayed Dugas as having deliberately spread the virus even after a doctor demanded that he stop having unprotected sex. To publicize his book before its release, Shilts’s publishers planted the sensational story with nationally circulated newspapers like the *New York Post*, which declared in one headline that it had discovered “THE MAN WHO GAVE US AIDS.”⁴³ More than any other contemporaneous account of the AIDS epidemic, *And The Band Played On* helped to promote the notion that the epidemic was caused by the irresponsible and vindictive sexual conduct of some gay men. By blaming AIDS on the behavior of a few deviant individuals, the narrative that Shilts’s book helped consolidate erased the social dimensions—such as the systemic lack of sex education, poverty, the war on drugs, the lack of needle exchange, and the lack of a national plan to stop AIDS—that played a much greater role in facilitating the disease’s spread.

In 1984, the San Francisco Department of Public Health, along with other public health departments around the nation, extended the public’s scrutiny of gay male promiscuity through an effort to combat AIDS by shutting down gay bathhouses. Between April and August of that year, Larry Littlejohn, a longtime gay activist and founder of the Pride Foundation, a gay and lesbian philanthropic organization, conducted a petition drive to have an initiative placed on the electoral ballot to outlaw sexual activity in the baths.⁴⁴ While the petition drive itself did not succeed, it set in motion an initiative on the part of the public health departments in San Francisco and elsewhere to

⁴² Sara Reardon, “HIV’s Patient Zero Exonerated,” *Nature News*, October 26, 2016.

⁴³ “The Man Who Gave Us AIDS,” *New York Post*, October 6, 1987. Quoted in Phil Tiemeyer, *Plane Queer: Labor, Sexuality, and AIDS in the History of Male Flight Attendants* (Berkeley: University of California Press, 2013), 137.

⁴⁴ Christine Guilfooy, “San Francisco Bathhouse Debate Rages,” *Gay Community News*, April 14, 1984.

regulate or shut down the gay sex institutions in their jurisdictions. On October 9, Dr. Mervyn Silverman, the director of San Francisco's Department of Public Health, announced that he was ordering the closure of 14 such businesses in the city.⁴⁵ About two weeks later, New York State empowered local health officials to close "homosexual bathhouses" and other places where "high-risk sexual activities" took place; New York's Mineshaft, once one of the city's most renowned and beloved after-hours sex clubs, voluntarily closed down a year later on November 7, 1985.⁴⁶ On that same day, the CDC issued a letter to local health officers about AIDS that encouraged localities to shut down gay sex businesses. The letter reasoned, "If these establishments facilitate behaviors, such as anonymous contacts and/or having intercourse with multiple partners, this clearly could lead to transmission of HTLV-III as well as other sexually transmitted diseases."⁴⁷ Two years later, on October 4, 1987, the last operating gay bathhouses in San Francisco, faced with jail terms and fines, closed their doors.⁴⁸

The gay activists who contested the bathhouse closures sought to reframe them as crucial to the formation of gay identity and the political protest movement that accompanied it. For the historian Allan Bérubé, in a statement he gave in the 1984 legal case *California v. Ima Jean Owen*, which concerned closing the bathhouses in San Francisco, "for centuries, society has stigmatized homosexual men and women as sinners, criminals and diseased because of their sexuality. Baths and bars were the first institutions in the United States that contradicted these stigmas and gave gay Americans a

⁴⁵ Defendants' Response to Order to Show Cause re Preliminary Injunction, box 1, folder 11, Thomas F. Coleman and Jay M. Kohorn Papers, Coll2014-031, ONE Archives.

⁴⁶ Maurice Carroll, "State Permits Closing of Bathhouses to Cut AIDS," *New York Times*, October 26, 1985. Marcos Bisticas-Cocoves, "New York Locks Up the 'Mineshaft,'" *Gay Community News*, November 23, 1985.

⁴⁷ Robert C. Gates to Each Supervisor, November 8, 1985, box 15, folder 22, AIDS History Project Collection, Coll2007-015, ONE Archives.

⁴⁸ Charles Linebarger, "S.F. Plugs Last Gay Bath," *Gay Community News*, June 31, 1987.

sense of pride in themselves and their sexuality. As such, gay bars and baths are an integral part of gay political history.”⁴⁹ For Bérubé, the closing of the baths represented the destruction of institutions that played a key role in the rise of gay civil rights.

Furthermore, activists argued, the campaign to close the baths were based not in scientific evidence that such efforts would actually stem the spread of AIDS but rather in homophobia—unexamined prejudice against gay people—and erotophobia—unexamined prejudice against sex itself. The anthropologist and gay-feminist activist Gayle Rubin observed in an ethnography of the Catacombs, an exclusive club for “fisting” and other kinds of kinky sex, that the “Catacombs environment enabled adults to have an almost child-like wonder at the body. It facilitated explorations of the body’s sensate capabilities that are rarely available in modern, Western societies.”⁵⁰ Pat Califia, another gay activist-intellectual, commented in *Gay Community News* in 1986 that, from the perspective of HIV-prevention, the targeting of the leather and fisting clubs was counterproductive: “The most dangerous gay sex is vanilla sex, because its eroticism is based on the savoring and exchanging of bodily fluids. The AIDS epidemic has become an excuse to stigmatize any gay sexual practice that is perceived as marginal or more deviant than cocksucking and ass-fucking. But more gay men will die from having 'normal' gay sex than will ever die from accidental injuries while being fisted.”⁵¹ In New York, activists with the Coalition for Lesbian and Gay Rights (CLGR) charged in a December 1985 lawsuit that New York State’s Public Health Council’s (PHC) newly implemented “safe sex” regulations were directly antigay, since they prohibited oral and anal, but not vaginal, sex

⁴⁹ Declaration of Allan Bérubé, box 1, folder 12, Thomas F. Coleman and Jay M. Kohorn Papers, Coll2014-031, ONE Archives.

⁵⁰ Gayle S. Rubin, “The Catacombs: A Temple of the Butthole,” in *Deviations*, 224–40, 231.

⁵¹ Pat Califia, “Quote of the Week,” *Gay Community News*, November 2–8, 1986.

in commercial establishments.⁵²

Other gay activists, along with many straight observers, wholeheartedly supported the bathhouse closures—and the decline of gay male sexual culture more generally—and worked closely with public health officials to achieve that goal. As Donald Ira Abrams, the assistant director of the AIDS clinic at San Francisco General Hospital, said in his statement in *California v. Ima Jean Owen*, the 1984 legal case about closing the San Francisco bathhouses, “At one point a few months ago, I was interested in attempting to organize a grassroots movement in the gay community to boycott the baths so that they would close on their own accord.”⁵³ And, indeed, that was precisely what the gay activist Larry Littlejohn attempted to do when he launched the petition drive that justified the San Francisco Department of Public Health’s effort to close the city’s baths in the first place. In 1985, the activist Leonard Matlovich, a decorated Vietnam war veteran and HIV-positive gay conservative who was a member of the Log Cabin Republicans, considered fighting for a similar ban in Washington, D.C. He commented, “I am committed to stopping public suicide, commercial suicide. Bathhouses are no different from Russian roulette parlors.”⁵⁴ Matlovich died of AIDS in 1988 at the age of 44. In the face of mass death of thousands of others like Matlovich from AIDS in the 1980s, with no clear solution to the crisis in view, some gay activists aligned themselves with official efforts to wipe out the gay sex institutions that had once provided an alternative to the heteronormative constraints placed on sexual conduct in most other spheres of life.

But another stripe of gay activists countered the idea that closing the baths would

⁵² Sib Connor, “AIDS Activists Take to the Courts, Streets,” *Gay Community News*, December 14, 1985.

⁵³ Declaration of Donald Ira Abrams, M.D., box 1, folder 9, Thomas F. Coleman and Jay M. Kohorn Papers, Coll2014-031, ONE Archives.

⁵⁴ “Lenny Matlovich May Push for DC Ban on Sex in Bathhouses,” *Advocate*, May 14, 1985. Burt A. Folkart, “Gay Activist Leonard Matlovich, 44, Dies,” *Los Angeles Times*, June 24, 1988.

stop AIDS by formulating and promoting safer sex guidelines in the baths themselves, thereby rebranding gay sex businesses as important sites of education about how to stop the spread of HIV. In the early years of the AIDS epidemic, in their 1982 pamphlet-size book *How To Have Sex in an Epidemic*, gay activists Richard Berkowitz and Michael Callen developed the first safer-sex guidelines by pointing out that the mysterious illness seemed to be transmitted only through certain higher risk behaviors. Their impression of what behaviors were dangerous was somewhat misguided; they believed, for example, that fisting carried an unusually high risk of transmission. Nonetheless, their call for gay men to “limit what sex acts you choose to perform to ones which interrupt disease transmission” was an early manifestation of what eventually became a key public health strategy.⁵⁵

In March 1985, in the midst of the bathhouse closure controversy, about half of the city’s bathhouses began promoting these “safe sex” practices in order, as Sue Hyde of *Gay Community News* put it, “to reduce both the risk of AIDS and the risk of forced closure or police raids.”⁵⁶ For the activists who defended the baths, sexual pleasure was a core part of many people’s experience of happiness, and any HIV-prevention effort needed to take seriously the important role that sexuality played in many gay men’s lives. As the art historian Douglas Crimp argued—in an article whose title “How to Have Promiscuity in an Epidemic” referenced the title of Callen and Berkowitz’s pamphlet—scare tactics that attempted to get people to be celibate would never work, because sex was too important to too many people’s concept of a good life. “It is our promiscuity that will save us. . . . [The epidemic] will only be stopped by respecting and celebrating their

⁵⁵ Berkowitz et al., *How to Have Sex in an Epidemic*, 3.

⁵⁶ Sue Hyde, “New York Bath Owners to Promote Safe Sex,” *Gay Community News*, March 23, 1985.

pleasure in sex and by telling them exactly what they need and want to know in order to maintain that pleasure.”⁵⁷ Through the safer sex guidelines they developed, activists complicated the notion that sexual promiscuity *in toto* was harmful. Although the notion and practice of “safer” sex were indigenous to the gay community, ironically, in the 1990s public health and other state officials coopted those guidelines and imposed them on gay men and others from the top down. By making the safer sex guidelines into legal mandates, the state created a new hierarchical and stigmatizing regulatory and criminal distinction between HIV-positive individuals who did have safer sex and ones who did not.⁵⁸

⁵⁷ Douglas Crimp, “How to Have Promiscuity in an Epidemic,” *October* 43 (1987): 237–71, 253, 268.

⁵⁸ David M. Halperin, “The Biopolitics of HIV Prevention Discourse,” in *Biopower: Foucault and Beyond*, eds. Vernon W. Cisney and Nicolae Morar (Chicago: University of Chicago Press, 2016), 199–227.

February 27, 1985 the weekly news page 41

CLUB MIAMI
presents

Great Sex!

Don't let AIDS stop it.



Don't let him come in your ass. Don't come in his.

Don't come in his mouth. Don't let him come in yours.

Don't rim.

Jacking off is hot and safe.

Affection is our best protection.

Remember....
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Saturday, March 2nd
At Midnight
We will present -
"A SAFE SEX FORUM"
by RICH BERKOWITZ
Co-Author
"HOW TO HAVE SEX IN AN EPIDEMIC"
In The Gym - Miami

Figure 4: Safer sex advertisement in the *Weekly News*, February 27, 1985. Richard Berkowitz, one of the authors of the pamphlet *How To Have Sex in an Epidemic*, also gave safer-sex lessons at gay bathhouses.

The police added to the repression of bathhouses and other institutions of gay male sexual culture by raiding the ones that had not yet closed, much as they had done before the rise of the gay rights movement. In January 1988, officers with the Los Angeles Police Department arrested several men for “lewd or dissolute conduct”—the same statute criminalizing public sex that gay activists had struggled to reform in the 1970s—at Drake’s bookstore and continued to harass the bookstore in the months that

followed. On January 10, 1988, the LAPD raided the Melrose Baths, arresting three patrons for “lewd conduct.” Between January 17th and 22nd, officers likewise raided the Corral Club, the Compound, and again the Melrose Baths. “Clearly, no one should think that these actions are isolated from the AIDS-hysterical decision recently made by the Los Angeles County Board of Supervisors to give broader powers to the County Department of Health Services to close the bathhouses at their discretion,” commented the newsletter of the Los Angeles chapter of the AIDS Coalition to Unleash Power.⁵⁹ Such raids were the most explicit example of the state’s use of repressive methods to attempt to control the spread of AIDS.

Other extralegal cultural and economic forces would still have decimated gay male sexual culture—and the project of erotic liberation more broadly—even if many localities had not forced their gay bathhouses to close in the 1980s. As pundits in the gay press predicted early on in the epidemic, many gay men simply chose to leave the sexual culture of the 1970s behind. “AIDS and Moral Issues: Will Sexual Liberation Survive?” asked one article on the subject in the *Advocate* in 1983.⁶⁰ Kevin McConville, a 28-year-old gay man with AIDS and other activists with the AIDS Action Committee of Massachusetts, commented in *Gay Community News*, “I think it’s [the AIDS epidemic] going to redefine a lot of what it means to be gay. It doesn’t mean free and easy sex and drugs and dancing. There was nothing wrong with that when it was safe, but it isn’t [safe] anymore.”⁶¹

In some cases, pundits used their critiques of sexual liberation as an opportunity it

⁵⁹ ACT UP Los Angeles Newsletter, February–March 1988, box 20, folder 1, ACT UP/Los Angeles Records, Coll2011-010, ONE Archives.

⁶⁰ “AIDS and Moral Issues: Will Sexual Liberation Survive?,” *Advocate*, October 27, 1983.

⁶¹ Art Cohen, “Creating Family Feelings: Companions for Men with Aids,” *Gay Community News*, November 24, 1984.

to celebrate a turn toward a more “mature” domesticity and coupledness in gay culture. As the gay activist Michael Bronski commented wryly, “There has been a plethora of articles—many in the gay press—praising the revival of ‘dating,’ speaking quite seriously about ‘sexual addiction,’ and hoping fervently that gay men would come out of their hypersexual, collective adolescence.”⁶² “It’s just like the fifties. People are getting married again for all the wrong reasons,” agreed Larry Glover, one of the interview subjects in the writer Frances FitzGerald’s book *Cities on a Hill*, a paean to the rich and diverse cultures in American cities.⁶³

Moreover, the neighborhoods gay men had occupied in large numbers in New York and San Francisco, such as Greenwich Village and the South of Market area, once low-cost thanks to the population losses that deindustrialization had caused in the 1960s, fell victim to gentrification at the hands of large-scale developers.⁶⁴ But while the state was not directly responsible for the decline of the urban gay male world, it would soon come to play a key role enhancing the social stigma attached to HIV through new laws for the regulation and punishment of HIV-positive people.

III. Making HIV a Crime

During the second half of the 1980s, gradually, the mainstream media shifted how it represented the AIDS epidemic by “discovering” that it was possible for heterosexuals to contract HIV. In October 1985, the actor Rock Hudson, a former matinee idol and a closeted gay man, suddenly died of AIDS, sparking a flurry of articles in the straight

⁶² Michael Bronski, “The Effect of Death-Fear on the Decadence of the 1970s,” *Advocate*, January 7, 1986.

⁶³ Frances FitzGerald, *Cities on a Hill* (New York: Simon & Schuster, 1987), 115.

⁶⁴ Rubin, “Blood under the Bridge,” 222. See also Gayle Rubin, “Studying Sexual Subcultures: Excavating the Ethnography of Gay Communities in Urban North America,” in *Devotions*, 310–346.

press expressing a sense of betrayal by a man whom they had believed was heterosexual.⁶⁵ By 1986, the straight mainstream press began acknowledging more and more that the AIDS epidemic was not confined to homosexuals and IV-drug users. “AIDS: At the Dawn of Fear,” read one title from 1987, as if the epidemic had only just begun now that straight people had discovered it.⁶⁶ A *Los Angeles Times* poll published in July 1987 found that one in five Americans had modified their sexual behavior because of a fear of contracting HIV.⁶⁷ In October 1989, the women’s magazine *Cosmopolitan* ran a story titled “When a Wife Discovers Her Husband Is Bi-Sexual” promoting the “bisexual bridge” theory that bi men triangulated the virus between gay men and straight women.⁶⁸

The discovery of heterosexual AIDS coincided with an explosion of attempts to regulate, control, and punish people with HIV, often in extreme ways. The most brazen of these was an editorial in the *New York Times* written by William F. Buckley, founder of the conservative magazine the *National Review*, in which he argued that all HIV-positive people “should be tattooed in the upper forearm, to protect common-needle users, and on the buttocks, to prevent the victimization of other homosexuals.”⁶⁹ In early 1987, the CDC issued a recommendation suggesting that all people admitted to hospitals, pregnant women, and people applying for marriage licenses be subjected to mandatory HIV testing. Gay rights activists with the Lambda Legal Defense and Education Fund

⁶⁵ Richard Meyer, “Rock Hudson’s Body,” in *Inside/Out: Lesbian Theories, Gay Theories*, ed. Diana Fuss (New York: Routledge, 1991), 259–88.

⁶⁶ Kathleen McAuliffe, et al., “AIDS: At the Dawn of Fear,” *US News and World Report*, January 12, 1987. For two other examples, see: Erik Eckholm, “Broad Alert on AIDS: Social Battle Is Shifting,” *New York Times*, June 17, 1986. Katie Leishman, “Heterosexuals and AIDS: The Second Stage of the Epidemic,” *Atlantic*, February 1987. Michael Fumento, *The Myth of Heterosexual AIDS* (New York: Basic Books, 1990).

⁶⁷ Robert Brook, “AIDS Threat Changes Life Style of 1 in 5,” *Los Angeles Times*, July 30, 1987.

⁶⁸ “When a Wife Discovers Her Husband Is Bi-Sexual,” *Cosmopolitan*, October 1989.

⁶⁹ William F. Buckley Jr., “Identify All the Carriers,” *The New York Times*, March 18, 1986.

conjectured that “heterosexual panic” accounted for the move, coupled with a reticence about supporting HIV-prevention education measures.⁷⁰ On May 31 of that year, President Reagan gave a speech at a fundraiser for the American Foundation for AIDS Research in which he called for mandatory HIV testing for prisoners, marriage license applicants, potential immigrants, and possibly even for patients in Veterans Administration hospitals.⁷¹ In addition to mandatory testing, some jurisdictions also enacted measures making it mandatory for doctors to disclose to the state the names of people who tested positive for HIV and granted new quarantine powers to health officials in case of persons who “endanger[ed] the public health.” When Colorado did this in 1985, the *Village Voice* reported that applications at gay men's health clinics dropped by 600 per cent in just three months.⁷²

The granting of quarantine powers to public health officials revived one of the oldest forms of public health regulation, but there were significant differences between AIDS and older epidemics that made quarantine less fitting a strategy to control the new disease. The word “quarantine” derives from the Latin *quadraginta*, which means forty days and refers to the practice in the late medieval and early modern period of detaining ships for forty days that had come from ports afflicted by the plague. The word also has biblical roots going back to Leviticus, which stipulated the isolation of lepers—a practice that persisted in medieval Europe. European cities drew on this tradition when they denied entrance to people suffering from the plague in the fourteenth century. But in the

⁷⁰ Elizabeth Pincus, “CDC’s Forced Testing Plan Wins Few Backers,” *Gay Community News*, March 1, 1987.

⁷¹ Kim Westheimer, “Reagan to Force HIV Testing,” *Gay Community News*, June 7, 1987.

⁷² Stephanie Poggi, “Colo. Mandates AIDS Reporting,” *Gay Community News*, May 24, 1987. Simon Watney, *Policing Desire: Pornography, AIDS, and the Media* (Minneapolis: University of Minnesota Press, 1987), 44.

20th century public health officials retooled quarantine to use it not just for the short-term detention of people with illnesses that were sure to kill them quickly but also to isolate people suspected of having illnesses that were less sure of carrying a rapid death sentence. During World War I, public health officials targeted sex workers, whom they believed were responsible for spreading venereal disease, thereby giving quarantine a new law enforcement function, since it provided a way to detain sex workers for longer than traditional criminal sentences permitted. In light of quarantine's new role as a form of police power, in two cases from 1921 involving sex workers the California Court of Appeals established new standards of proof required to quarantine a person suspected of having a contagious disease.⁷³ And yet in the case of HIV/AIDS, which did not necessarily portend a quick death, quarantine could foreseeably manifest as akin to a long-term prison sentence that the state imposed disproportionately and discriminatorily on gay men (which in fact did happen in Cuba).⁷⁴

After medical researchers developed a blood test for HIV in 1984, gay activists regarded it with suspicion because of a concern that it would lead to such discrimination against HIV-positive gay men—which, indeed, turned out to be true in the years that followed. On January 11, 1985, a coalition of gay and lesbian and AIDS service organizations led by the National Gay Task Force released a joint statement recommending that gay men not take the soon-to-be licensed test. The statement

⁷³ Wendy E. Parmet, "AIDS and Quarantine: The Revival of an Archaic Doctrine," *Hofstra Law Review* 14, no. 1 (1985): 53–90, 55, 66. *Ex parte Arata*, 52 Cal. App. 380, 198 P. 814 (1921). *Ex parte Shepard*, 51 Cal. App. 49, 195 P. 1077 (1921).

⁷⁴ Allan M. Brandt, *No Magic Bullet: A Social History of Venereal Disease in the United States Since 1880* (New York: Oxford University Press, 1987). Judith Walzer Leavitt, *Typhoid Mary: Captive to the Public's Health* (Boston: Beacon Press, 1997). Dorothy Porter, *Health, Civilization and the State: A History of Public Health from Ancient to Modern Times* (New York: Routledge, 2005). Nayan Shah, *Contagious Divides: Epidemics and Race in San Francisco's Chinatown* (Berkeley: University of California Press, 2001). Donald G. McNeil, Jr., "Cuba's AIDS Sanitariums: Fortresses Against a Viral Foe," *New York Times*, May 7, 2012.

reasoned, “If a positive antibody test becomes part of an individual’s permanent medical records, potential employers interested in screening out gay men could conceivably use the test as an indicator for homosexuality, since more than 70% of the reported cases of AIDS are gay men.”⁷⁵ Gay activists’ concern that the test would underwrite antigay discrimination was borne out in a case from 1988 in which the ACLU filed a lawsuit against Judge Eleanor VanScriver of the Fifth Circuit Court of Appeals in an attempt to prevent circuit court judges from surreptitiously ordering AIDS tests. According to ACLU attorney Brad Rich, Third Circuit judges had ordered hundreds of AIDS tests for people found guilty of “lewdness and disorderly conduct”—the very same category of crime, of course, that the police had for decades used discriminatorily to crack down on gay male sexual culture.⁷⁶

In California, people with AIDS faced an especially great threat from multiple efforts to endow public health officials with new powers of forced testing and quarantine. In 1986, Lyndon H. LaRouche, Jr., a Virginia-based political activist known for promoting controversial conspiracy theories about world problems, sponsored a group in California called the Prevent AIDS Now Initiative Committee (PANIC). Activists with PANIC gathered almost 700,000 signatures—more than twice the number necessary—for a petition to place on the November ballot an ambitious initiative about AIDS. The ballot initiative, Proposition 64, proposed to require medical professionals to report to local health authorities the names of people with HIV/AIDS and even people who were merely suspected of having the virus, prohibit such people from working in the food service

⁷⁵ Gay/Lesbian, AIDS Groups Respond to Licensing of Blood Test, box 35, folder 28, National Gay and Lesbian Task Force records, #7301, Cornell.

⁷⁶ Barrows v. Van Scriver Petition for Extraordinary Writ, box 4733, folder: “Barrows v. VanScriver,” American Civil Liberties Union Records: Subgroup 4, MC001.04, Public Policy Papers, Princeton.

industry, subject them to travel restrictions, and make it easier for law enforcement and public health officials to quarantine people with HIV/AIDS.⁷⁷ In the wake of an opposition effort led by San Francisco's Community AIDS Network (CAN), California voters overwhelmingly defeated the measure by a margin of two to one, but LaRouche's supporters placed a nearly identical one on the June ballot two years later in 1988, again to no avail.⁷⁸ The same year, voters, with the support of major governing bodies like the Los Angeles City Council, approved a different measure, Proposition 96, that expanded mandatory AIDS testing of people taken into police custody.⁷⁹

The movement to allow for the quarantining of people with AIDS was fueled also by some AIDS organizations who called upon the San Francisco Department of Public Health to control "recalcitrant patients" with HIV/AIDS. In 1987, the California Conference of Local Health Officers proposed a plan allowing for the use of public health laws to quarantine AIDS carriers who "knowingly and willfully infect others."⁸⁰ "These guidelines," the draft proposal read, "are prepared to assist the Local Health Officer when he/she is confronted with that rare individual with AIDS or ARC who knows he/she is infected with HIV virus, knows how transmission is accomplished and continues to knowingly and willfully engage in high risk activities which are likely to expose others."

At the hearings of the conference's Epidemiology Committee, the National Lawyers

⁷⁷ Expected Legal Consequences of LaRouche Initiative, March 4, 1986, box 86, folder 5, AIDS History Project Collection, Coll2007-015, ONE Archives.

⁷⁸ Jim Denison, "LaRouche AIDS Quarantine Bill Bombs," *Gay Community News*, November 9, 1986. No on 69, box 86, folder 22, AIDS History Project Collection, Coll2007-015, ONE Archives.

⁷⁹ "The LA City Council just voted . . .," box 86, folder 23, AIDS History Project Collection, Coll2007-015, ONE Archives. ACLU Argues First Challenge to Proposition 96, box 86, folder 23, AIDS History Project Collection, Coll2007-015, ONE Archives.

⁸⁰ Bill Gordon, "State Plan For AIDS Quarantine," *San Francisco Chronicle*, February 26, 1987. Rally Against New Proposals for AIDS Quarantine, carton 1, folder: "Quarantine," National Lawyers Guild AIDS Network, MSS 94-25, UCSF. Statement of the National Lawyers Guild on the Quarantine Proposal of the California Conference of Local Health Officers, carton 1, folder: "Quarantine," National Lawyers Guild AIDS Network, MSS 94-25, UCSF.

Guild, an organization of nearly 9,000 lawyers, along with the Mobilization against AIDS and the AIDS Vigil, opposed the measure. However, the Lobby for Individual Freedom and Equality (LIFE) submitted a paper and sent a representative to the hearings to support the quarantine procedures with certain modifications, highlighting again how even some grassroots pro-gay, pro-civil liberties organizations themselves supported the use of coercive state techniques to stem the epidemic.⁸¹

Ordinary citizens, too, contributed to the drive to give public health officials the power to quarantine AIDS patients. In March 1988, Kim Lawton of the San Francisco Department of Public Health (SFDPH) wrote to her colleague George Rutherford to inquire how to deal with members of the public who contacted her in an effort to control “recalcitrant” people with AIDS. “To whom should I direct calls from people who want to report 'unsafe sexual activity' and people who want to report 'someone spreading AIDS'? I get a lot of calls that I refer because my phone number is the one linked in the directory and have lately gotten several like these, and realized I don't know the answer.”⁸² In August of that year, George Lemp, chief of the Surveillance and Investigations Branch of the SFDPH AIDS Office, reported that his department received between 12 and 15 such complaints each year.⁸³

Some liberals, too, joined the growing consensus that HIV should be criminalized. On August 31, 1987, the *Washington Post* published an editorial making an ostensibly progressive argument for criminalization. The editorial denounced the “nasty mix of

⁸¹ “California Local Health Jurisdictions and the Management of Recalcitrant Patients with AIDS,” folder: “Quarantine,” carton 1, National Lawyers Guild AIDS Network, MSS 94-25, UCSF.

⁸² Kim Lawton to George Rutherford, March 14, 1988, folder: “Sex Clubs and Public Sex Troubleshooting,” carton 8, AIDS Office of the San Francisco Department of Public Health Records, 1982–1994, MSS 95-01, UCSF.

⁸³ George F. Lemp to David Werdegar, August 28, 1988, folder: “Sex Clubs and Public Sex Troubleshooting,” carton 8, AIDS Office of the San Francisco Department of Public Health Records, 1982–1994, MSS 95-01, UCSF

hysteria and vengefulness” that characterized some of the national reaction to the AIDS epidemic while maintaining nonetheless that “it is not hysterical to penalize as a crime the willful exposure of unknowing people to this virus.”⁸⁴ Two weeks later, Nan Hunter, the coordinator of the ACLU’s AIDS Task Force, criticized the editorial’s position, arguing that “the truth we must confront is that there are no shortcuts to preventing the spread of AIDS. Criminal law won’t work and is dangerous to utilize. An intensive public health campaign is long overdue; if anything ought to be criminal, it is the refusal immediately to commit massive resources to that.”⁸⁵ The disagreement between Hunter (and the civil liberties organization she represented) and the *Post* underscored how divided liberals were over the proper role of the criminal law in the response to AIDS.

At the same time, numerous state legislatures enacted several types of laws criminalizing the sexual activity of HIV-positive people that compounded the preexisting social stigma attached to the virus. In 1986, Idaho was the first state to enact a statute specifically targeting sexual activity involving potential exposure to HIV, followed by Alabama, Arkansas, Louisiana and Nevada in 1987. The penalties for violations of the statutes varied widely, though most of them constituted a felony. The most draconian laws were Louisiana’s, which provided for up to ten years imprisonment and hard labor for intentional exposure to the “AIDS virus through sexual contact,” and the Nevada law, which authorized a \$10,000 fine and up to 10 years imprisonment, while misdemeanor statutes in states like Maryland set the penalty at \$500 or one year in jail. The statutes defined the type of harm that they were punishing in terms that were speciously vague and broad. In 1989, the Illinois legislature passed an HIV criminal statute banning

⁸⁴ “The Crime of Spreading AIDS,” *The Washington Post*, August 31, 1987.

⁸⁵ Nan D. Hunter, “AIDS Transmission As a Crime: The Law Won’t Work,” *The Washington Post*, September 12, 1987.

“intimate conduct,” which it defined as “exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of HIV.”

However, the statute did not specify which body fluids it covered, thereby vesting law enforcement officials with a great deal of discretion to define what kinds of “intimate contact” were criminalizable. Like all of the other statutes, the law in Illinois stipulated that if a person “knew” they were infected and did not tell the other person, they could be charged with engaging in “intimate contact” even if HIV was not transmitted.⁸⁶ In June 1987, the California Senate overwhelmingly passed a bill giving three additional years in prison to people who knew they carried the AIDS virus and committed a sex crime.⁸⁷ By making prosecution of HIV cases contingent not just on having HIV but on whether or not a person *knew* they had HIV, the laws created a disincentive for people to get tested.

Nowhere was the culture of villainizing people with HIV more severe than in the U.S. military. Defying a recent congressional prohibition on AIDS-based discrimination, in 1987 the Pentagon persisted in punishing enlisted personnel who tested HIV positive. By August of that year, the military had tested 75 per cent of its personnel with 1.5 per thousand testing positive. Kathleen Gilberd of the San Diego-based National Lawyer’s Guild Military Task Force charged the military with discriminating against homosexual personnel, failing to offer AIDS education and counseling, and threatening to court martial soldiers who “engage[d] in unsafe sex or share[d] needles.” In a meeting of the congressional Health and Human Services subcommittee, Democratic U.S. Congressman Henry Waxman of California criticized the military for making homosexuality and drug

⁸⁶ The Multiple Tragedies of HIV Related Criminal Prosecutions, folder: “‘Exchange’ Newsletter (10/86–12/93)”, carton 1, National Lawyers Guild AIDS Network, MSS 94-25, UCSF. 5 Nev. Rev. State. Ann. §201.358 (Michie Co. 1991 Supp).

⁸⁷ Mark Z. Barabak, “Senate OKs Penalty For AIDS Sex Crime,” *San Francisco Chronicle*, June 23, 1987.

use legitimate grounds on which to punish, remove, or cause the reassignment of a member of the military. “If we allow the use of information from military interviews to be used to the detriment of those being interviewed,” he commented, “they will not admit to anything. And, if they do not admit to anything, efforts to isolate the disease will fail.”⁸⁸

But in at least some cases, military personnel were motivated more by a hatred of gay people and people with AIDS than by a desire to actually stem the spread of the disease. In a memo he circulated to his colleagues on “AIDS Prosecutions,” military prosecutor Major Cal Scovel callously advised that “[y]our smorgasbord of possible charges includes sodomy, of course, but the more adventurous of you will want to see if an assault or order-violation (failure to follow safe-sex procedures) specification fits your facts. . . . A final point to ponder: consider scoring early points with members or judge [sic] by having surgical gloves and masks ready for their use in the courtroom. Good hunting, and remember, even if the accused is acquitted, you’ll still get the death penalty.”⁸⁹ In December, a jury of four enlisted officers and four enlisted men gave Richard W. Sargeant, a 28-year-old former Army medical instructor, a dishonorable discharge and sentenced him to five months in the stockade for having sex with three female soldiers without disclosing that he was HIV-positive.⁹⁰

Alongside the new statutes and policies criminalizing HIV, in some cases prosecutors secured convictions for misconduct involving HIV using traditional laws related to assault and murder. In Los Angeles in 1987, the sex worker Joseph Markowski

⁸⁸ Chris Bull, “Defense Dept. Punishes People with AIDS,” *Gay Community News*, August 2–8, 1987.

⁸⁹ HIV-Related Prosecutions Under Gender Criminal Statutes, folder: “‘Exchange’ Newsletter (10/86–12/93)”, carton 1, National Lawyers Guild AIDS Network, MSS 94-25, UCSF.

⁹⁰ “Solidier With AIDS Virus to Be Imprisoned for Sexual Contacts,” *New York Times*, December 4, 1987.

was charged with “assault likely to produce great bodily injury” and attempted murder for knowingly donating or selling AIDS-infected blood and allegedly sodomizing a male customer without telling him that he had AIDS.⁹¹ In November 1988, a 42 year-old HIV-positive man named Curtis Weeks, who was already incarcerated for a theft conviction, started banging around in the back of the van while being uncomfortably transported from one correctional facility to another. When the officers stopped to further restrain him, Weeks spat on one of them and made vaguely threatening statements, such as that he was going to “dog” the officers. For his act of spitting, Weeks was convicted a year later of attempted murder and sentenced to 99 years or life in prison—an extreme punishment based not on an assessment of actual harm but rather on a Gothic cultural narrative that portrayed people with AIDS as villains.⁹²

The push to criminalize HIV targeted sex workers in a discriminatory way—even though the available data suggested that sex workers as a class were particularly unlikely to transmit the virus—thereby intensifying the already draconian criminal penalties that sex workers faced. By 1987, public health officials in Nevada had tested all of the sex workers working in legal brothels, conducting over 4,500 tests on 500 women, and not one of them was seropositive—a perhaps surprising outcome that went unnoticed by major news outlets like the *New York Times*.⁹³ In spite of this evidence, in California and elsewhere law enforcement officials and legislators spearheaded new laws and policies ramping up the criminalization of prostitution. Traditionally, California law had criminalized sex workers for the act of solicitation, or initiating the sexual contract. But

⁹¹ Thomas Fitting, “Criminal Liability for Transmission of AIDS: Some Evidentiary Problems,” *Criminal Justice Journal* 10 (1987): 69–97, 73–74.

⁹² HIV-Related Prosecutions Under Gender Criminal Statutes, folder: “‘Exchange’ Newsletter (10/86–12/93)”, carton 1, National Lawyers Guild AIDS Network, MSS 94-25, UCSF.

⁹³ Amber Hollibaugh et al., “The Second Epidemic,” *October* 43 (1987): 127–42, 135.

in January 1986, a new law took effect that made it a crime simply to agree to accept money in exchange for erotic labor, which the police used to arrest sex workers who operated discreetly by advertising in newspapers and sex-business journals.⁹⁴ In 1988, the Republican California U.S. Congressman William Dannemeyer launched a ballot initiative, Proposition 102, that, among other things, would have made it a felony carrying a sentence of between five and nine years to commit an act of prostitution if the person knew they were infected with the AIDS virus.⁹⁵ The initiative did not pass, but the same year the California legislature enacted a law allowing for the forced testing of persons convicted of prostitution, and by 1991 the law remained intact after several rounds of court challenges.⁹⁶

Alongside sex workers, the HIV-positive child molester was another category of AIDS villain that occupied a prominent place in the public spotlight. “Wisconsin: Judge Orders AIDS Test for Molester,” read one headline about a 24-year-old man named Marvin E. Crowell from Illinois who pled guilty to sexually assaulting a six-year-old girl and “admitted in a pre-sentence investigation that he was a homosexual prostitute with many sexual contacts.” The judge who ordered for Crowell to be tested for HIV said he could not ignore the possibility that the man could “carry death into people’s homes.”⁹⁷ “AIDS HORROR: Cops fear suspect infected ‘dozens’ of boys,” read another headline in the tabloid the *New York Post*. A 37-year-old man named Michael Hawkrigg from Long Island, the *Post* reported, was arrested “on charges of sodomizing a 16-year-old boy”—

⁹⁴ Carol Leigh, “Further Violations of Our Rights,” *October* 43 (1987): 177–81, 178–79.

⁹⁵ NO on 96 & 102, box 86, folder 24, AIDS History Project Collection, Coll2007-015, ONE Archives.

⁹⁶ “AIDS: The Meaning of 102,” *Los Angeles Times*, November 15, 1988. “Assembly OKs Bill for AIDS-Testing Prostitutes,” *Los Angeles Times*, January 26, 1988. Julie Graham, “HIV Testing Law Upheld,” *Gay Community News*, January 14–20, 1990. Philip Hager, “State Justices Uphold AIDS Test Law,” *Los Angeles Times*, March 15, 1991.

⁹⁷ “Wisconsin: Judge Orders AIDS Test for Molester,” *Pacific Stars and Stripes*, April 22, 1987.

language that barely concealed a homophobic disgust for gay male sex. The article potentially exposed Hawkrigg to abuse at the hands of angry vigilantes by publishing his address—“234 River Av. in Patchogue”—and it led the reader to believe that the problem might be much more widespread by speculating that Hawkrigg “may have lured dozens of boys to his apartment over the last five years and infected them with AIDS.”⁹⁸ The news reporting on cases such as these produced and reinforced a conventional narrative holding that the spread of HIV/AIDS was caused by a class of deviant, sociopathic individuals who did not shy away from harming even children.

Adding to the villainization of people with AIDS, lawmakers at the state, national, and international levels enacted numerous forms of AIDS-related legal discrimination. In the 1986 legislative session, the Republican California state Senator John Doolittle sponsored a bill, which passed without a single opposing vote, legalizing the creation of designated donor pools in order to keep donated blood within families and prevent the transmission of HIV from anonymous donors to the “general population.” The measure helped to construct a system of segregation privileging heterosexual families—figured as a locus of sexual purity that was exempt from contagion—over the rest of the population of blood donation recipients.⁹⁹ In 1987 the U.S. Congress passed a law that was spearheaded by the far-right Republican Senator Jesse Helms forbidding aliens with HIV from immigrating to the United States.¹⁰⁰ The same year, shortly after the release of Randy Shilts’s *And The Band Played On*, Helms and Congressman Dannemeyer succeeded in getting a bill passed that outlawed giving federal funds to AIDS

⁹⁸ Charles Sussman and Mike Brennan, “AIDS Horror: Cops Fear Suspect Infected ‘Dozens’ of Boys,” *New York Post*, October 11, 1987.

⁹⁹ Grover, “AIDS: Keywords,” 22–23.

¹⁰⁰ Kenneth B. Noble, “U.S. Rules Are Set Barring Aliens Who Test Positive for AIDS Virus,” *The New York Times*, August 29, 1987.

organizations that “promoted” homosexuality or gay sex—a law which remains in force to this day.¹⁰¹ The year before, the CDC had already banned the depiction of “explicit sex” from federally funded AIDS education materials, a measure that was likewise inspired by homophobia.¹⁰² As James Mason, the director of the CDC, argued, “We don’t think that citizens care to be funding material that encourages gay sex lifestyles.”¹⁰³ Until late 1986, similarly, the British government banned AIDS educational materials from the U.S. dealing explicitly with gay sex, effectively cutting many people off from learning about how to avoid HIV transmission.¹⁰⁴

But there were also many other progressive legal responses to AIDS sponsored in some cases even by political conservatives. In California, New York, and elsewhere, gay men challenged the legal definition of “family” to make it include their relationships, in order to secure access to key rights and social welfare provisions that were normally distributed via the institution of marriage, such as survivor benefits, retaining the home of a deceased partner, and custody rights.¹⁰⁵ Los Angeles became one of or perhaps the first locale in the country to ban anti-AIDS discrimination after a grassroots petition drive gathered over 3000 signatures in support of such a law, and discrimination against people with AIDS was subsequently banned nationally by federal legislation passed in 1990.¹⁰⁶ At the end of 1987, the number of states mandating that public schools educate students

¹⁰¹ Tiemeyer, *Plane Queer*, 169.

¹⁰² Kim Westheimer, “CDC Bans ‘Explicit Sex’ from AIDS Education,” *Gay Community News*, January 18, 1986.

¹⁰³ Quoted in Richard D. Mohr, “AIDS, Gays, and State Coercion,” *Bioethics* 1, no. 1 (1987): 95–110, 103.

¹⁰⁴ Crimp, “How to Have Promiscuity in an Epidemic,” 237. Watney, *Policing Desire*, 13.

¹⁰⁵ Christine Guilfooy, “Gay Man in California Granted Survivor Benefits,” *Gay Community News*, December 31, 1983. “Craig Corbett Wins Custody of Dead Lover’s Son,” *Advocate*, September 1, 1987. *Braschi v. Stahl*, 74 NY2d 201 (1989).

¹⁰⁶ Marcos Bisticas-Cocoves, “Los Angeles Bans Anti-AIDS Discrimination,” *Gay Community News*, September 31, 1985. Ryan White Comprehensive AIDS Resources Emergency Act, 42 U.S.C. § 201 (1990).

about AIDS had tripled in the course of just six months to 17 states and the District of Columbia—thanks in part to the advocacy of C. Everett Koop, the Surgeon General under the Reagan administration, who defied his conservative colleagues by pushing for youth sex education to combat AIDS.¹⁰⁷

Alongside these progressive legal responses to AIDS, however, at the end of the 1980s a bipartisan coalition of politicians and business leaders pushed to enact federal legislation criminalizing HIV. William Dannemeyer, the Republican U.S. Congressman from California, was the most vociferous exponent on Capitol Hill of the criminalization movement. Dannemeyer positioned himself as an exceptionally antigay politician in 1985 when he hired as an AIDS advisor Paul Cameron, the right-wing psychologist who had advocated for the quarantining of homosexuals to prevent the spread of AIDS.¹⁰⁸ In 1986 the congressman was a key supporter of Proposition 64, the ballot initiative led by Lyndon LaRouche proposing to introduce a range of punitive AIDS policies, including quarantine.¹⁰⁹ In 1988 Dannemeyer unsuccessfully tried to add an amendment to a housing bill that would have allowed landlords to deny housing to people with AIDS—the openly gay congressman Barney Frank led the opposition to it—and he opposed a new Office of Personnel Management policy prohibiting discrimination against federal workers with AIDS.¹¹⁰ In 1989 Dannemeyer again introduced another unsuccessful,

¹⁰⁷ Jennie McKnight, “Surgeon General Praised for Youth Sex Ed Push,” *Gay Community News*, November 9, 1986. Lindsey Gruson, “Koop, at Workshop on Children and AIDS, Stresses Early Education,” *The New York Times*, April 7, 1987. “States That Require AIDS Education in School Triple in Six Months,” *New York Times*, December 4, 1987.

¹⁰⁸ “Public Financing of Hate,” *Los Angeles Times*, August 21, 1985.

¹⁰⁹ Barney Frank to Colleague, February 1, 1989, box: “Gay Rights California 1987–1988–1989,” folder: “Dear Colleagues—Frank on AIDS,” Congressman Barney Frank Archives Collection, UMass Dartmouth.

¹¹⁰ “Frank Blocks Dannemeyer Amendment to Housing Bill,” *The Washington Blade*, May 13, 1988. William E. Dannemeyer to Constance Horner, March 29, 1988, box: “Gay Rights California 1987–1988–1989,” folder: “Misc. Dannemeyer—AIDS,” Congressman Barney Frank Archives Collection, UMass Dartmouth.

multifaceted bill called the Public Health Response to AIDS Act that would have required, among other things, the mandatory testing of incarcerated people for HIV/AIDS and criminal penalties for HIV-positive people who engaged in sexual behavior without disclosing their status.¹¹¹

Lobbying from pharmaceutical companies prompted the American Legislative Exchange Council (ALEC)—a think tank with conservative leanings whose goal was to develop business-friendly model legislation at the state level—to join the campaign to criminalize HIV. In 1988, ALEC formed its National Working Group on State AIDS Policy, which was composed of state legislators and representatives from major insurance and pharmaceutical companies, marking the first time that the organization had used its power to influence the politics of a single issue. Michael Tanner of ALEC recalled in an interview that the pharmaceutical industry, specifically the company Hoffmann-La Roche, was a “big mover” and provided ample funding to the working group. Its members included J. Brian Munroe of Hoffmann-La Roche and representatives from other insurance companies, along with state representatives such as Susan Grimes Munsell—who had previously headed a Michigan GOP task force on AIDS prompting the creation of Michigan’s HIV-specific criminal statute.¹¹² The working group published its findings in the 1989 book *The Politics of Health: A State Response to the AIDS Crisis*, which offered 13 pieces of model AIDS legislation, including provisions about the quarantining of people with HIV, isolation of HIV-positive prisoners, and the “HIV Assault Act,” which made it a felony for an HIV-positive person to knowingly engage in

¹¹¹ HRCF Blasts Dannemeyer “Public Health” Bill, box: “Gay Rights California 1987–1988–1989,” folder: “Misc. Dannemeyer—AIDS,” Congressman Barney Frank Archives Collection, UMass Dartmouth.

¹¹² Todd Heywood, “The Crime of Being Positive,” *Advocate*, April 1, 2013.

“intimate contact” without disclosing their status.¹¹³ In the wake of the AIDS crisis, ALEC went on to influence a range of other specific policy issues, including prison construction and privatization, “three-strikes-and-you’re-out” felony statutes, and “stand your ground” laws—such as the one involved in the case of the shooting of 17-year-old Trayvon Martin in 2012—which removed the obligation to retreat before using force in self-defense.¹¹⁴

By the late 1980s, the federal government could no longer maintain its official silence as the AIDS epidemic continued to spread. In 1987, President Reagan established the Presidential Commission on the Human Immunodeficiency Virus Epidemic to prepare a comprehensive report analyzing its social, epidemiological, and political dimensions and formulate a policy response.¹¹⁵ President Reagan appointed a number of conservatives to the commission, including Richard DeVos, co-founder of the health and beauty product company Amway, and Cardinal John O’Connor, the archbishop of the Roman Catholic Archdiocese of New York, who opposed promoting condoms as a strategy for preventing HIV transmission. Penny Pullen, who had also spoken before the ALEC working group, was an Illinois legislator who advocated for mandatory premarital HIV testing—a strategy that, like Cardinal O’Connor’s opposition to condoms, proposed to contain the epidemic by containing sexuality within the heterosexual family.¹¹⁶

After protests from gay activists, President Reagan agreed to appoint a representative of the gay community to the commission, choosing Dr. Frank Lilly, a

¹¹³ Michael Tanner, *The Politics of Health: A State Response to the AIDS Crisis* (American Legislative Exchange Council, 1989).

¹¹⁴ Gottschalk, *Caught*, 21.

¹¹⁵ United States Presidential Commission on the Human Immunodeficiency Virus Epidemic, *Report to the President* (Washington, D.C.: Government Printing Office, 1988), v.

¹¹⁶ Philip M. Boffey, “Reagan Names 12 to Panel on AIDS,” *New York Times*, July 24, 1987. Todd Heywood, “The Crime of Being Positive,” *Advocate*, April 1, 2013.

geneticist at the Albert Einstein College of Medicine in New York and a former member of the board of the Gay Men's Health Crisis. But gay activists feared that he would be more inclined to represent the interests of the medical establishment than those of the gay community. As Larry Kramer complained, "He's better than nobody but not by much. He is a scientist and I think more in sympathy with his friends at the National Institutes of Health than he is with the needs of the gay community. They couldn't have picked a safer person."¹¹⁷

During their deliberations, the commissioners all agreed that public health interventions should be the first line of the response to the epidemic, but one of the three legal experts who testified before them advocated for the use of the criminal law. Commissioners themselves expressed concern about those "rare" individuals who did intentionally try to spread HIV. "I'm really concerned that the net effect of this would be that, with regard to intentional spread, which we're all concerned about, that people will be crippled to act until laws are passed," stated commissioner Theresa Crenshaw, a sex therapist from California. Frank Lilly retorted, "I worry about the criminalization section very simply because I think we must do everything possible to keep people from using — acting upon their anger about AIDS by rushing to the district attorney as a first stop." (In this respect, at least, Larry Kramer clearly underestimated the extent to which Lilly would represent the interests of the gay community on the panel.) During her testimony, Penny Pullen, the Illinois legislator, introduced members to ALEC's model HIV Assault Act.¹¹⁸

¹¹⁷ Richard L. Berke, "Ex-Leader in Gay Group Chosen For AIDS Panel," *New York Times*, July 21, 1987.

¹¹⁸ Todd Heywood, "The Crime of Being Positive."

In its final report published in 1988, the commission constructed a Manichean vision of deserving (“innocent”) versus undeserving (sexually promiscuous) people with AIDS. The report’s epigraph was a quote from the early modern English poet John Donne that read “No man is an Iland, intire of itself . . . / Any man’s death diminishes me, / because I am involved in Mankinde,” positioning the report as having a liberal empathy for AIDS victims.¹¹⁹ And so it did, in the sense that it included calls for dramatic funding increases for AIDS research and treatment and the acceleration of the Food and Drug Administration’s licensing process for new drugs.¹²⁰ At the same time, the report argued, “HIV infection is a disability and should be treated as such under federal and state law in the public and private sectors.”¹²¹

But the commission’s liberality in the areas of funding and protections against discrimination were accompanied by a simultaneous investment in creating ways of criminalizing sexual conduct involving HIV, in keeping with the concerns that some of the commissioners had voiced while they were deliberating. The report framed responsibility for preventing transmission in individualizing and moralistic terms when it prescribed recommendations for the “ethical behavior of HIV-infected individuals.” “Our society values highly the rights of individuals to privacy and liberty. But liberty entails a responsibility not to harm or interfere with others, a responsibility to be non-maleficent.”¹²² In the case of these individuals who insisted on engaging in “maleficent” behavior and “pose[d] a health risk to others by remaining noncompliant with recommended behavior change, appropriate control measures should be employed to

¹¹⁹ Presidential Commission on HIV, *Report to the President*, iii.

¹²⁰ Chris Bull, “Presidential AIDS Panel Calls for Dramatic Funding Increases,” *Gay Community News*, March 6, 1988.

¹²¹ Presidential Commission on HIV, *Report to the President*, xviii.

¹²² Presidential Commission on HIV, *Report to the President*, 139.

achieve the public health objectives of controlling the spread of HIV.”¹²³ Laws that criminalized the intent to transmit HIV were one the best “control measures” that the states could employ, since they “provided clear notice of socially unacceptable standards of behavior specific to the HIV epidemic and tailor[ed] punishment to the specific crime of HIV transmission.”¹²⁴ Some people with AIDS—ones who refused to conform to a set of expectations for their sexual conduct defined by the government—did deserve to be stigmatized as their own particular class of sex criminal.

Children, however, did not. In the late 1980s, the specific issue of children with AIDS provided lawmakers with a potent figure of an “innocent” AIDS victim on the basis of which they curried up support for dramatically expanding the state’s response to the epidemic. In 1988, the U.S. House of Representatives Select Committee on Children, Youth, and Families published a report entitled *A Generation in Jeopardy: Children and AIDS*, while a House subcommittee on Human Resources and Intergovernmental Relations published another report the next year on *Children and HIV Infection*.¹²⁵ “AIDS is not limited to adults,” the former report alerted its readers. “It has already killed hundreds of children and threatens to kill thousands more, many of them very young. As a nation we have failed to meet this terrible challenge, which only promises to worsen.”¹²⁶

The innocent child AIDS victim was the most powerful cultural figure driving the enactment of a sweeping piece of federal legislation called the Ryan White

¹²³ Presidential Commission on HIV, *Report to the President*, 77.

¹²⁴ Presidential Commission on HIV, *Report to the President*, 130.

¹²⁵ United States House of Representatives Select Committee on Children, Youth, and Families, *A Generation in Jeopardy: Children and AIDS* (Washington, D.C.: United States Government Printing Office, 1988). United States House of Representatives Human Resources and Intergovernmental Relations Subcommittee of the Committee on Government Operations, *Children and HIV* (Washington, D.C.: United States Government Printing Office, 1989).

¹²⁶ Select Committee on Children, Youth, and Families, *A Generation in Jeopardy*, vii.

Comprehensive AIDS Resources Emergency (CARE) Act of 1990. The law was so named after a young hemophiliac teenage boy from Kokomo, Indiana, who had contracted HIV via a blood transfusion and whose case rose to national prominence in 1985 when he fought for the right to attend the middle school from which he had been banned. As Thomas Brandt, the spokesperson for the National Commission on AIDS, argued in an interview, “After seeing a person like Ryan White—such a fine and loving and gentle person—it was hard for people to justify discrimination against people who suffer from this terrible disease.”¹²⁷ White died on April 8, 1990, at 18 years of age, but the plight of the innocent—and, therefore, “deserving”—child AIDS victim that his case had introduced into U.S. political culture continued to provide a key foundation on which to argue for the necessity of new AIDS legislation. In a hearing on August 3 of that year about the federal AIDS bill named in White’s honor, the Republican Representative Norman Lent of New York reminded his fellow legislators, “Among the most tragic victims of this terrible epidemic are the poor children that have been stricken with this terrible disease. And, according to the Centers for Disease Control, children constitute the fastest growing AIDS population.”¹²⁸

When President George Bush signed the Ryan White Act on August 18, 1990, the new law allocated vast new resources devoted to AIDS research and treatment, particularly for populations that legislators considered to be deserving. The Act authorized a total of \$875 million in federal spending on AIDS programs in order to provide “disaster relief” to the 16 cities that were hit hardest by the AIDS epidemic,

¹²⁷ Dirk Johnson, “Ryan White Dies of AIDS at 18; His Struggle Helped Pierce Myths,” *New York Times*, April 9, 1990.

¹²⁸ Conference Report on S. 2240, Ryan White Comprehensive AIDS Resources Emergency Act of 1990, 136 Cong. Rec. H 6915.

which had by then grown to afflict more than 100,000 people in the U.S. alone.¹²⁹ The bipartisan nature of the bill's sponsorship—in the Senate by Democratic Senator Ted Kennedy of Massachusetts in collaboration with Republican Senator Orrin Hatch, and by Democratic Representative Henry Waxman of California in the House—underscored how successful the figure of the child AIDS victim, encapsulated in the figure of Ryan White, had been at making lawmakers on both sides of the aisle care about the AIDS epidemic. The Act contained provisions establishing special programs addressing the specific needs of “infants, children, women, and families with HIV disease” and “individuals with hemophilia,” marking out these categories of people as being in especial need of state resources.¹³⁰ On the other hand, it did not specify gay men, sex workers, or other sexual minorities as deserving/in need of special programs or services, even though those groups were some of the main populations affected by the epidemic.

At the same time as the Ryan White Act, federal legislators afforded people with HIV/AIDS additional state support by including them within the ambit of the Americans with Disabilities Act (ADA) of 1990, a powerful new civil rights bill for people with disabilities. The law established a set of “positive” rights for people with disabilities, in the sense that it not only prohibited discrimination against disabled people in the workplace but also required employers to make changes to their workplace in order to accommodate the needs of the disabled.¹³¹ While legislators were considering the bill, they heard numerous testimonies that established HIV-positive people as victims in need

¹²⁹ Memorandum from Carlton Lee to Commissioners, November 1, 1990, folder 22, box 120, National Gay and Lesbian Task Force records, #7301, Division of Rare and Manuscript Collections, Cornell University Library, Ithaca, New York. Kelly Gaines, “AIDS Cases Reach 100,000,” *Gay Community News*, July 30–August 5, 1989.

¹³⁰ Ryan White Comprehensive AIDS Resources Emergency Act, 42 U.S.C. § 201 (1990).

¹³¹ Steven A. Holmes, “Rights Bill for Disabled Is Sent to Bush,” *New York Times*, July 14, 1990.

of legal protection against discrimination. Belinda Mason, a 30 year-old HIV-positive freelance writer of Tobinsport, Indiana, told a Senate subcommittee about the case of a woman from Kentucky who worked at a public school cafeteria. “The woman went to California to bring her son home, so she could care for him. But when she returned, she was abruptly fired from her job.”¹³² The narrative reinserted the presumably gay son into a heteronormative framework by emphasizing the mother-son bond in order to make him a sympathetic character to lawmakers. When President Bush signed it into law on July 26 of that year, the ADA extended sweeping new protections to people who had “a physical or mental impairment that substantially limits one or more of the major life activities of such individual”—an expansive definition of disability according to which having HIV/AIDS clearly qualified.¹³³

But the federal government did not simply establish more rights and protections for people with AIDS through this legislation but rather created a distinction between “normal” and “deviant” people with AIDS and new ways of regulating and punishing ones on the deviant side of the line. In keeping with the recommendations of the final report of the Presidential Commission on HIV, one of the caveats of the Ryan White Act was to make disbursement of funds to states contingent on a state’s capacity to “prosecute any HIV infected individual who knowingly and intentionally exposes a nonconsenting individual to HIV.”¹³⁴ Originally an invention of legislatures at the state level in the mid-1980s, by 1990 the federal government had started playing a much more important role driving the criminalization of HIV, in the process marking out a national subclass of

¹³² United States House of Representatives Committee on Education and Labor, *Legislative History of Public Law 101-336, the Americans with Disabilities Act* (Washington, D.C.: United States Government Printing Office, 1990), 1005.

¹³³ Americans with Disabilities Act, 42 U.S.C. § 12101 (1990).

¹³⁴ Ryan White Comprehensive AIDS Resources Emergency Act, 42 U.S.C. § 201 (1990).

“bad” because sexually promiscuous people with AIDS.

IV. Expanding the Criminalization of HIV in the 1990s

In the wake of the passage of the Ryan White Act, conservatives attempted to pass further legislation criminalizing conduct related to HIV. On August 21, 1991, a dozen members of the AIDS Coalition to Unleash Power from Los Angeles and Orange County were arrested after they occupied the Republican U.S. Senator John Seymour’s office in Anaheim for 90 minutes. The activists invaded Seymour’s office dressed in hospital gowns and carrying toy doctors’ and nurses’ kits in protest of the senator’s recent vote in favor of an amendment that the right-wing North Carolina Senator Jesse Helms had introduced to the Postal Appropriations Bill. The bill mandated a \$10,000 fine and/or a minimum of 10 years in prison for healthcare providers who tested positive for HIV but did not obtain the informed consent of their patients before performing invasive procedures. The activists chained themselves to desks, answered the senator’s telephones, and faxed to the media announcements of their takeover demanding that Seymour publicly apologize to people with AIDS for trying to criminalize HIV and that he appoint a liaison to communities affected by AIDS.¹³⁵ Congress ultimately rejected the Helms amendment in favor of one requiring states to adopt CDC guidelines or their equivalent.¹³⁶

A further controversy erupted around the same time over the issue of mandatory reporting and contact tracing of people diagnosed with HIV. On December 5, 1990, the

¹³⁵ ACT UP/LA News, September–October 1991, box 20, folder 4, ACT UP/Los Angeles Records, Coll2011-010, ONE Archives.

¹³⁶ Mary Carter, “Testing Health Care Workers for AIDS: Public Necessity or Private Intrusion?,” *Journal of Civil Rights and Economic Development* 7, no. 1 (1991): 359–387, 363.

policymaking body of the American Medical Association (AMA), the most prominent voluntary association of physicians in the United States, passed a resolution in support of the practice of tracing the contacts of people who tested positive for HIV and the mandatory reporting of their names to the state. The history of the AMA's support of contact tracing dated back to 1987, when the organization's president, Dr. John J. Coury, called for traditional standards of doctor-patient confidentiality to be curbed in the case of people with HIV/AIDS in order to allow medical professionals to notify their partners. "If people out there are having multiple sexual partners and going to houses of prostitution," he argued, "they're playing Russian roulette. What we're talking about is preventing death."¹³⁷ Concurrent with the 1990 resolution, doctors in New York sued David Axelrod, the state's health commissioner, in an attempt to compel the state to institute mandatory name reporting and contact tracing, which state health departments already practiced with respect to other sexually transmitted infections such as gonorrhea and syphilis. AIDS activists were critical particularly of the part of the AMA resolution that called for contact tracing to be mandatory. As Pierre Ludington of the American Association of Physicians for Human Rights, an organization of gay physicians, argued, "You should tell unsuspecting partners who you've had unsafe sex with that you are HIV positive, and if the health department can inform people who you might not feel able to, that's an important service"; making contact tracing mandatory, however, was akin to "Big Brother looking over your shoulder."¹³⁸ A year later, in June 1991 police arrested 28 ACT UP demonstrators who were protesting the AMA's policies on mandatory reporting and other HIV-related issues at a demonstration outside the organization's annual

¹³⁷ "New Morality Is Urged to Stem AIDS Spread," *The Boston Globe*, April 14, 1987.

¹³⁸ Laura Briggs, "AMA Body Urges Increased HIV Testing," *Gay Community News*, December 22, 1990.

meeting in Chicago.¹³⁹

More than two decades later, social scientists furnished empirical evidence supporting ACT UP's warning that setting up a state-run system of registration and contact tracing of people with HIV could have deleterious effects. In a study he did of the state of Michigan's Department of Public Health, the sociologist Trevor Hoppe found that public health officers were using data they garnered from HIV test results and contact tracing—surveillance techniques that were intended, officially, to be used solely for epidemiological purposes—in order to identify potential “health threat” cases, who might then come into contact with law enforcement as a result. In addition, health officials also took phone calls from local residents accusing other community members whom they suspected of being HIV positive but not disclosing their infection to their partners. In performing these functions, Hoppe argues, the Department of Public Health played the role of the cop, spurring the policing of people with HIV both by health officials and by their own peers.¹⁴⁰

The fate of HIV-positive prisoners was equally unsettling. In 1985, the Alabama Department of Corrections instituted a program of mandatory HIV testing of all state prisoners that pulled those who tested positive from the “general population” and segregated them. “You have AIDS, you're going to die,” they were told. In 1990, A U.S. District Court judge has upheld the constitutionality of Alabama's practice of quarantining HIV-positive prisoners, and it remained in place until a U. S. district court ruled in 2012 that it violated the Americans with Disabilities Act (ADA)'s prohibition of discrimination against people with disabilities, including people with AIDS. “It is evident

¹³⁹ Jacob Smith Yang, “AIDS Activists Brutalized in Chicago,” *Gay Community News*, July 13, 1991.

¹⁴⁰ Trevor Hoppe, “The Public Health Police,” in *Punishing Disease: HIV and the Criminalization of Sickness* (Berkeley: University of California Press, forthcoming).

that, while the . . . segregation policy has been an unnecessary tool for preventing the transmission of HIV, it has been an effective one for humiliating and isolating prisoners living with the disease,” U. S. District Judge Myron Thompson wrote in his ruling.¹⁴¹ Mississippi discontinued a similar policy in 2010, as did South Carolina in 2013 under pressure from the Department of Justice under the Obama Administration.¹⁴²

The 1990s saw, too, the creation of more laws targeting sex workers as well as the first convictions under the ones that legislators had enacted in the mid-1980s. In California, on October 17, 1991, a sex worker named Patricia Sweeting became the first woman and the third person to be convicted under the new state law that went into effect in 1988 that allowed for the forced testing of sex workers and mandated stiffer penalties for sex workers who knew they were HIV-positive.¹⁴³ The next year in Louisiana, the state house of representatives criminal justice committee approved a bill punishing sex workers who “knowingly” placed others at risk for HIV by having condomless sex. The bill called for first-time offenders to be forcibly tested for HIV and told of their test results in open court and for repeat offenders to receive a prison term of ten years at hard labor or a \$5,000 fine.¹⁴⁴

The baths came under a fresh round of attacks, too, in locales where the police or private citizens witnessed men having sex without condoms. As in the controversy over closing the baths in the '80s, in the early 1990s private citizens in San Francisco

¹⁴¹ Jennie McKnight, “Judge Okays Quarantine in Alabama,” *Gay Community News*, February 4–10, 1990.

¹⁴² Verna Gates, “Judge Orders End to HIV Prison Segregation in Alabama,” *Reuters*, December 21, 2012, <http://www.reuters.com/article/us-usa-aids-alabama-idUSBRE8BK0XY20121221>. United States Department of Justice, “Justice Department Settles with South Carolina Department of Corrections to End Discrimination Against Inmates with HIV,” accessed June 23, 2017, <https://www.justice.gov/opa/pr/justice-department-settles-south-carolina-department-corrections-end-discrimination-against>.

¹⁴³ “The Criminalization of Sex: Laws around the Country Bring Mandatory Testing and Jail to HIV-Positive People Who Knowingly Practice Unsafe Sex,” *Gay Community News*, December 7, 1991.

¹⁴⁴ “News in Brief: The South,” *Advocate*, June 16, 1992.

continued to complain to city officials that some gay men were still practicing unsafe sex in sex clubs. As one “concerned gay San Francisco voter” wrote to Mayor Art Agnos in 1991, “I believe it is my civic duty to inform you of the burgeoning number of 'sex clubs' in San Francisco, at which Gay men are engaging in unsafe sex and poor judgment. I am appalled that your Administration, including the Department of Public Health and the Police Department, is tolerating the existence and operation of such establishments.”¹⁴⁵

In response to letters such as these, in 1990 a group of private citizens, public health educators, and sex business owners formed a group called the Coalition for Healthy Sex to develop guidelines to ensure that “sex establishments offer a healthy and safe environment for the community,” including the stipulation that sex clubs provide monitoring to make sure that no unsafe sex occurred on the premises.¹⁴⁶ The San Francisco Department of Public Health subsequently adopted the coalition’s guidelines as official policy.¹⁴⁷ The next year, in September 1991 mayor Art Agnos announced a crackdown on “illegal social clubs” operating after hours in the South of Market neighborhood. “I want people to be safe, to take care of themselves and not slip back into unhealthy behavior that could place them or their partners at risk for HIV infection,” Agnos said.¹⁴⁸ In Los Angeles, the District Attorney Ira Reiner filed a civil lawsuit

¹⁴⁵ A Concerned Gay San Francisco Voter to Art Agnos, August 19, 1991, folder: “Sex Clubs and Public Sex Troubleshooting,” carton 8, AIDS Office of the San Francisco Department of Public Health Records, 1982–1994, MSS 95-01, Archives and Manuscript Collections, San Francisco Public Library, San Francisco, California.

¹⁴⁶ Recommended Standards for the Operation of Sex Clubs, folder: “Sex Clubs and Public Sex Troubleshooting,” carton 8, AIDS Office of the San Francisco Department of Public Health Records, 1982–1994, MSS 95-01, Archives and Manuscript Collections, San Francisco Public Library, San Francisco, California.

¹⁴⁷ San Francisco Department of Public Health, “Clarification on the Permitting Process for New Bathhouses in the City and County,” *SFHIV.ORG*, accessed December 30, 2016, <http://www.sfhiv.org/wp-content/uploads/FAQ-regarding-Bathhouses-in-SF.pdf>.

¹⁴⁸ Social Clubs Targeted for Code Violations, folder: “Sex Clubs and Public Sex Troubleshooting,” carton 8, AIDS Office of the San Francisco Department of Public Health Records, 1982–1994, MSS 95-01, Archives and Manuscript Collections, San Francisco Public Library, San Francisco, California.

aiming to shut down three gay bathhouses after undercover police officers witnessed “gay men engaged in multiple-partner, anonymous sex practices without using condoms.”¹⁴⁹

The law enforcement crackdown on unsafe sex in bathhouses was accompanied by the emergence of a psychopathologizing discourse about barebackers and “bug chasers.” In 1999, *Deviant Behavior*, a tabloidesque academic journal founded in 1979 focusing on sex, drugs, and crime, published an article titled “Bareback Sex, Bug Chasers, and the Gift of Death” arguing that HIV-negative gay men who purposefully sought “infection with a deadly virus” were afflicted with a category of psychological and behavioral disorder called “bug chasing.”¹⁵⁰ In a 2002 op-ed for the *New York Times* titled “A Clue to Why Gays Play Russian Roulette With H.I.V.,” the M.D. Richard A. Friedman claimed that such gay men were the victims of “internalized homophobia”—“a common and often serious psychological problem in gay men and women that lies at the root of many self-destructive behaviors, including risky sex.”¹⁵¹ These theories sustained the idea that gay men who engaged in risky sex constituted a class of mentally ill, dangerous individuals whose behavior needed to be restrained.

In the context of the persistence of pathologizing narratives about people with HIV/AIDS, in 1998 California further intensified the criminalization of HIV by supplementing its quarantine, forced testing, and blood donation laws by enacting a new exposure with intent to infect law. In 1992, the Republican California Senator Ed Davis introduced a bill proposing to make it a felony punishable by life in prison for a person

¹⁴⁹ Josh Meyer and Jeffrey Ball, “D.A. Seeks to Shut Three Bathhouses; Unsafe Sex Charged,” *Los Angeles Times*, June 29, 1990.

¹⁵⁰ DeAnn K. Gauthier and Craig J. Forsyth, “Bareback Sex, Bug Chasers, and the Gift of Death,” *Deviant Behavior* 20, no. 1 (1999): 85–100.

¹⁵¹ Richard A. Friedman, M.D., “A Clue to Why Gays Play Russian Roulette With H.I.V.,” *The New York Times*, September 24, 2002. See Halperin, *What Do Gay Men Want*, 34 ff. for a discussion of that article.

with HIV to engage in certain forms of “unprotected sexual activity” proscribed by the bill, even in cases in which there was no intent to injure.¹⁵² Davis, who was once the notoriously homophobic LAPD police chief and frequent target of gay political protest in the 1970s, tried to rebrand himself as a moderate with respect to gay rights in his bid for the U.S. Senate in 1986 by accusing his opponent William Dannemeyer of conducting a campaign of “hatred and bigotry” against homosexuals.¹⁵³ Davis’s bill did not pass, but in 1998 the California legislature finally enacted a law making it a felony for an HIV-positive person to have sex “with the specific intent to infect the other person with HIV,” contrasting with many other state laws that required only the knowledge that one had HIV. The bill’s author argued that it was necessary by citing anecdotal evidence suggesting that existing laws were inadequate to prosecute some HIV-related criminal cases, such as one in which a man who knew he was HIV-positive but did not tell his partner was unsuccessfully prosecuted under California’s assault with a deadly weapon statute. However, legislative staff members were unable to locate any court cases to provide more concrete evidence of the insufficiency of existing legal remedies.¹⁵⁴ Nationally, by 2013 34 states and two U.S. territories maintained criminal statutes for HIV transmission, exposure, or non-disclosure.¹⁵⁵

In the decades after their passage, California’s suite of HIV criminalization laws

¹⁵² ACT UP/LA News, December 1991–January 1992, box 20, folder 4, ACT UP/Los Angeles Records, Coll2011-010, ONE Archives. Life Lobby Legislative Agenda (1992 Session), box 3, folder 5, ACT UP/Los Angeles Records, Coll2011-010, ONE Archives.

¹⁵³ Edward Iwata, “Ed Davis Says GOP Foe Is ‘Gay-Bashing,’” *San Francisco Chronicle*, January 23, 1986.

¹⁵⁴ Amira Hasenbush, Ayako Miyashita, and Bianca D.M. Wilson, “HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS,” Williams Institute, accessed December 12, 2016, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-California-Updated-June-2016.pdf>.

¹⁵⁵ Sarah J. Newman, “Prevention, Not Prejudice: The Role of Federal Guidelines in HIV-Criminalization Reform,” *Northwestern University Law Review* 107, no. 3 (2013): 1403–36, 1403.

disproportionately and discriminatorily affected people who were for other reasons already the most marginalized members of society. Between 1988 and 2014, over 800 people came into contact with the California criminal justice system for HIV-specific offenses, with about half of them occurring in Los Angeles County. People convicted under the state's general exposure to communicable disease law spent between 45 and 90 days in jail, while HIV-positive people convicted of solicitation for commercial sex spent an average of two years. More than any other category of person, the HIV laws affected sex workers the most, with 95% of all HIV-specific criminal incidents during this period involving people who engaged or were suspected of engaging in sex work. Black and Latinx people made up two thirds of the population criminalized for HIV (though they constituted only half of California's population), while women made up 43% of the HIV-specific criminal population (even though they constituted only 13% of the total population of people with HIV).¹⁵⁶ In 2013, the National HIV Criminalization Survey, a study conducted by the Sero Project and the Transgender Law Center, found that fear of being prosecuted under HIV criminalization laws had a negative influence on trans people's relationship to HIV. 58% of transgender and third sex-identified people living with HIV viewed the possibility of prosecution as grounds to avoid testing, 61% viewed it as ground to avoid disclosure of one's HIV status to sexual partners, and 48% viewed it as grounds to avoid treatment.¹⁵⁷ Together, the new HIV laws transformed many HIV-positive people, especially sex workers, women, gay men, trans women, and people of color, into members of the newly constituted criminal underclass of queer people that sex

¹⁵⁶ Hasenbush et al., "HIV Criminalization in California."

¹⁵⁷ Sarah Giovanniello, "Study: Fear of Criminalization Harms Trans People Living with HIV," *GLAAD*, accessed April 7, 2016, <http://www.glaad.org/blog/study-fear-criminalization-harms-trans-people-living-hiv>.

law reformers created in the late 20th century.

California legislators capped off the redistribution of legal stigma on promiscuous sexuality by moving to exonerate gay men who had decades before been put on the sex offender registry for “lewd conduct.” In 1995, the wife of a man named “Paul” (a pseudonym) found an envelope in their mailbox with the words “SEX CRIME” stamped on the envelope containing a letter warning Paul that he would be arrested if he did not register as a sex offender. In 1944, Paul explained to his bewildered wife, he had been charged with lewd or dissolute conduct after the police arrested him for touching another man’s knee in a parked car on a secluded street in West Hollywood. Though the California Supreme Court had ruled 14 years earlier in 1983 that lewd conduct convictions were no longer registrable offenses, the decision did not apply retroactively. The situation of people like Paul worsened in 1997, when law enforcement agencies began implementing the newly passed Megan’s Law, which ordered the creation of a publicly available database on CD-ROM containing the names, photographs, and ZIP codes of California’s 57,000 registered sex offenders.¹⁵⁸ Attorneys with the American Civil Liberties Union attempted to ameliorate the situation in meetings with the state Department of Justice, and they soon realized their plan through a rare coalition with Republican Assemblywoman Barbara Alby, who introduced a bill calling for the old cohort of lewd conduct offenders to be removed from the registry.¹⁵⁹ Nonetheless, the lewd conduct law’s criminalization of gay male public sexual culture persisted: in April 1998, for example, the English pop star George Michael was arrested in Beverly Hills for

¹⁵⁸ Nicholas Riccardi and Jeff Leeds, “Megan’s Law Calling Up Old, Minor Offenses,” *Los Angeles Times*, February 24, 1997.

¹⁵⁹ Nicholas Riccardi and Jeff Leeds, “Legislators Seek to Narrow Megan’s Law,” *Los Angeles Times*, April 4, 1997.

allegedly engaging in a “lewd act” in a public restroom.¹⁶⁰ Still, the legislature’s move represented a major relaxing of the legal stigma on public sex.

V. Conclusion

By the beginning of the 21st century, the participants in the contests over the politics of public sexual culture had shifted the line dividing “normal” from “deviant” conduct. By the early 1980s, gay activists and their liberal allies had carved out new privacy protections against police surveillance and harassment of gay commercial venues, particularly gay bars, transforming the legal definition of “public” to exclude this type of venue. However, the state continued to punish sex in public, along with many other kinds of stigmatized conduct—such as the targeted policing and criminalization of poor trans women of color and sex workers—that threatened heteronormative erotic conventions of privacy, domesticity, and coupledness. In response to the outbreak of the AIDS epidemic, lawmakers created a distinction between “good” and “bad” people with AIDS, along with new ways of controlling and punishing HIV-positive people who were sexually promiscuous. It will require a novel kind of social movement—one that challenges the overall practice of stigmatizing particular modes of conduct as “deviant”—in order to recuperate the forms of queer conduct that got left behind in the new war on sex offenders.

¹⁶⁰ Sue McAllister, “Pop Singer George Michael Arrested in Restroom of Beverly Hills Park,” *Los Angeles Times*, April 9, 1998.

Epilogue: Beyond Normal and Deviant

On April 25, 2017, the gay California state Senator Scott Wiener introduced a bill proposing to create a “tiered” sex offender registry in the state. As it stands, California’s registry—which has more than 100,000 people on it—is one of the four state registries in the country to require all offenders to register for life, regardless of the nature of the offense that they committed. Echoing the “victimless crimes” argument that gay activists popularized in the 1960s and ’70s, Wiener argued that the sex offender registry has a “damaging impact on the LGBT community” because it still includes some older gay men who had “sex in a park 40 or 50 years ago.”¹ Creating a tiered registry would offer many of those men a pathway to being released from its grip. At the same time, though, Wiener reaffirmed the legitimacy of the sex offender as a tool that was necessary to punish and control more serious sex crimes. “After decades of research,” he added, “we now have a much better sense of who is high risk and who isn’t,” and the registry simply needed to be modified “to account for this distinction.”²

Senator Wiener’s reform bill, if it passes, will help to solidify the larger redistribution of legal stigma on queer sexuality that I have examined in this project. As I have shown, when California enacted the first sex offender registry in the nation in 1947, it provided a useful tool to the police and prosecutors to target and suppress the queer

¹ This in spite of an apparently only partially successful effort in the 1990s to remove such men from the registry once and for all. Nicholas Riccardi and Jeff Leeds, “Legislators Seek to Narrow Megan’s Law,” *Los Angeles Times*, April 4, 1997. Stewart-Winter, “Queer Law and Order,” 71–72.

² Seth Hemmelgarn, “Bill Would Reform CA Sex Offender Registry,” *Bay Area Reporter Online*, April 27, 2017. I am indebted to Bill Dobbs for drawing my attention to this case.

public sexual cultures of Los Angeles, San Francisco, and other urban centers. Since that time, gay activists and their progressive allies have made major inroads challenging the most explicitly homophobic aspects of the carceral state—most notably the discriminatory policing of gay bars and the criminalization of “homosexual conduct” between consenting adults in private. During the same period, however, a bipartisan coalition of victims’ rights advocates revived the war on sex offenders that had begun in the 1930s but had fallen into a crisis of legitimacy by the 1960s. The resurrection of the war on sex offenders has contributed to the massive expansion the carceral state since the 1960s, in the process amping up the criminalization of many other kinds of “bad” queer gender and sexuality that gay and sexual liberation activists had once sought to legalize.

In tracing this history, “Punishing Queer Sexuality in the Age of LGBT Rights” provides a lesson in historical hindsight about the need for the contemporary LGBT movement, along with other progressives, to challenge not only the stigma on LGBT identities but also the stigma on sex more broadly. As we have seen, in the 1950s, ’60s, and ’70s, gay activists and their progressive allies achieved the decriminalization of certain kinds of “good” gay sex by arguing that such conduct was “victimless” and did not warrant punishment alongside the “real” sex offenders. This was a necessary political argument that lesbian and gay activists had to make in order to separate gay identity from the stigma associated with dangerous sex offenders—and, ultimately, attain for LGBT people key rights and benefits attached to full citizenship. However, one of the consequences of that strategic maneuver is that there must now be a new social movement challenging the criminalization of those modes of queer conduct that got left behind during the first wave of the LGBT movement. We should, as Michel Foucault

argued in a 1981 interview, “consider the battle for gay rights as an episode that cannot be the final stage.”³

I am not the first person to point out the need for a progressive movement to challenge the stigma on sex, but what is more original about my analysis is the emphasis I am placing on how essential it will be for that movement to include a challenge to the stigma on sex involving young people in particular. In *The Trouble with Normal*, Michael Warner argued for the need for the lesbian and gay movement to “become a broader movement targeting the politics of sexual shame.”⁴ However, what Warner did not realize was that a successful confrontation of the stigmatization and criminalization of non-normative sexual activity will require progressives to include a critique of how the state stigmatizes sexual conduct involving young people in particular, as well as formulate a positive perspective on how we think the state should regulate it differently. It is crucial that progressives do this because, as this project has made clear, legislative activity about child sexual abuse has had a tendency to criminalize not only sexual activity involving minors but many other forms of sexual misconduct as well. The elaboration of a new method of regulating child sexuality is the linchpin of de-stigmatizing queer gender and sexuality more broadly.

In the first place, we have to rethink how we punish adults who engage in sexual activity involving an underage person (as well as how we punish young people themselves who engage in such conduct). The punishments are too high. As Joseph Fischel has argued, “The legislative attack on the ‘sex offender,’ and the judicial affirmation of this attack—both in its rhetorical and doctrinal dimensions—skew our

³ Michel Foucault, “The Social Triumph of the Sexual Will,” in *Ethics: Subjectivity and Truth*, ed. Paul Rabinow (New York: New Press, 1998), 157–62, 157.

⁴ Warner, *Trouble with Normal*, 31.

understanding of sexual harm onto and into one person, thus simplifying the world and its multiply sourced dangers.”⁵ As a part of the larger project of bringing an end to mass incarceration, progressives must develop less stigmatizing responses to sexual violence outside of the criminal justice system, such as the ones explored by Eric Janus and John Borneman.⁶

Rethinking how we punish people for sexual activity involving minors must be accompanied by a rethinking of how we protect children, away from efforts to protect children from sex towards a strategy based on the implementation of children’s rights, broadly defined. As the historian John D’Emilio once wrote, “The rights of young people are especially critical. The acceptance of children as dependents as belonging to parents, is so deeply ingrained that we can scarcely imagine what it would mean to treat them as autonomous human beings, particularly in the realm of sexual expression and choice. Yet until that happens, gay liberation will remain out of our reach.”⁷ Such rights would include not only the “negative” right to be free from sexual victimization but also the “positive” rights to economic independence and sex education, for example. If we got rid of the ideology of childhood sexual innocence and replaced it with a concept of childhood sexual rights, it would, as Kamala Kempadoo and Leith Dunn argue, “empower [children] . . . to be more confident in exerting control over their bodies.”⁸

Achieving children’s rights is a long-term goal that would require a major political and legal shift that is not likely to occur soon. But there are also more modest

⁵ Fischel, “Transcendent Homosexuals,” 277.

⁶ Janus, *Failure to Protect*. John Borneman, *Cruel Attachments: The Ritual Rehab of Child Molesters in Germany* (Chicago: University of Chicago Press, 2015).

⁷ D’Emilio, “Capitalism and Gay Identity,” 13.

⁸ Kamala Kempadoo and Leith L Dunn, “Factors That Shape the Initiation of Early Sexual Activity Among Adolescent Boys and Girls: A Study in Three Communities in Jamaica,” United Nations Children’s Fund and United Nations Population Fund, accessed May 26, 2017, https://www.unicef.org/evaldatabase/index_14463.html.

law reform goals that progressives could pursue in the short and medium term. Currently, statutory rape laws rely on a standard of “strict liability,” meaning the law finds that the accused statutory rapist is always already guilty by mere virtue of the fact that his sexual partner was under a certain age. If progressives were to reform statutory rape laws in order to make them rely instead on a standard of “rebuttable presumptions,” courts would have the opportunity to assess the harm that was or was not involved in individual cases in a more nuanced way.⁹

Ultimately, the new challenge to the war on sex offenders must challenge how the state criminalizes sex as a specific category of crime, and work toward the re-categorization of sex offenses under the law of assault and battery. In *Sexual Behavior in the Human Male*, Alfred Kinsey pointed out that the law assumed that most sexual practices outside of marital coitus were harmful without bothering to back up that assumption with scientific evidence. “It is ordinarily said,” he wrote, “that criminal law is designed to protect property and to protect persons, and if society’s only interest in controlling sex behavior were to protect persons, then the criminal codes concerned with assault and battery should provide adequate protection. The fact that there is a body of sex laws which are apart from the laws protecting persons is evidence of their distinct function, namely that of protecting custom.”¹⁰ Kinsey believed that the state was in essence enforcing socially constructed norms by dividing “good” from “bad” sex by baselessly stigmatizing “bad” sex as a uniquely harmful category of crime. The logical extension of Kinsey’s insight to public policy would be for the state to stop singling out sex as its own category of crime; to commission empirical research about whether or not

⁹ Orly Rachmilovitz suggested this idea to me.

¹⁰ Kinsey, *Sexual Behavior in the Human Male*, 4.

particular sex acts are actually harmful; and to punish those behaviors under the laws of assault and battery.

The sex-specific nature of sex crime law enshrines the assumption that sex is something that is uniquely harmful, rather than a key aspect of human flourishing, contributes to the stigmatization and demonization of sex itself as well as to the repression of benign sexual variation. “Sex” is not a synonym for “harm,” and the law should not treat it as such.

Bibliography

Archival Collections

Cornell University Rare and Manuscript Collections, Ithaca, New York
(Abbrev.: Cornell)

Federation of Parents, Families, and Friends of Lesbians and Gays (P-FLAG)
Records

Human Rights Campaign Records

NAMBLA Manuscripts

National Gay and Lesbian Task Force Records

Harvard University Schlesinger Library, Boston, Massachusetts

National Organization for Women Records

The History Project: Documenting LGBTQ Boston, Boston, Massachusetts
(Abbrev.: History Project)

Boston/Boise Committee Collection

Mattachine Society, Boston, Collection

Library of Congress, Washington, D.C.

Frank Kameny Papers

Massachusetts Historical Society, Boston, Massachusetts

American Civil Liberties Union of Massachusetts

New York Public Library, New York, New York

(Abbrev.: NYPL)

Mattachine Society, Inc. of New York Records

Northeastern University Archives and Special Collections, Boston, Massachusetts
(Abbrev.: Northeastern)

Bromfield Street Educational Foundation Records

John C. Graves Papers

Lesbian, Gay, Bisexual and Transgender Political Alliance of Massachusetts
Records

National Lawyers Guild, Massachusetts Chapter, Inc.

ONE National Gay and Lesbian Archives, Los Angeles, California

Adele Starr collection on Parents and Friends of Lesbians and Gays

American Civil Liberties Union of Southern California Lesbian & Gay Rights
Chapter records

Gay Liberation Front (GLF), Los Angeles Records

Homophile Effort for Legal Protection, Incorporated (HELP, Inc.), Records

Mattachine Society Project Collection

Society for Individual Rights (S.I.R.) Records

Thomas F. Coleman and Jay Kohorn Papers

Gay and Lesbian Police Advisory Task Force (Los Angeles) Records

AIDS History Project Collection

ACT UP/Los Angeles Records

Princeton University Seeley G. Mudd Library, Princeton, New Jersey

American Civil Liberties Union Records

Arthur C. Warner Papers

Ronald Reagan Presidential Library, Simi Valley, California

Carolyn Sundseth Files

Morton Blackwell Files

Office of Media Relations Records

San Francisco Public Library, San Francisco, California

AIDS Office of the San Francisco Department of Public Health Records

Texas State Library and Archives Commission, Austin, Texas
(Abbrev.: TSLAC)

Dallas Criminal District Court

Records of Lieutenant Governor Ben Barnes

Texas Woman's University Library, Denton, Texas
(Abbrev.: TGLTF)

Texas Gay/Lesbian Task Force Records

University of California San Francisco, San Francisco, California
(Abbrev.: UCSF)

National Lawyers Guild AIDS Network

UMass Dartmouth Claire T. Carney Library, Dartmouth, Massachusetts
(Abbrev.: UMass Dartmouth)

Congressman Barney Frank Archives Collection

University of North Texas Libraries, Denton, Texas
(Abbrev.: UNT)

Phil Johnson Collection

Resource Center LGBT Collection

University of Texas at Austin Dolph Briscoe Center for American History, Austin, Texas
(Abbrev.: UT–Austin)

Gammage (Robert) Papers

Texas Human Rights Foundation Papers

Wisconsin Historical Society, Madison, Wisconsin

David Clarenbach Papers

Newspapers and Periodicals

Advocate

Austin Statesman

Bay Area Reporter

BBC News

Body Politic

Boston Globe

Boston Herald

Boston Phoenix

Capital Times

Chicago Tribune

Cosmopolitan

Daily News

Dallas Morning News

Dallas News

Dallas Times-Herald

Dallas Voice

Docket

Entertainment West

Fag Rag

Flash

Gay Community News

Gay Liberator

Gay Sunshine

Houston Chronicle

Houston Post

Ladder

Le Monde

Ledger

Lesbian Tide

Lesbians Rising

Libération

Los Angeles Advocate

Los Angeles Herald-Examiner

Los Angeles Times

Mattachine Review

Mid-Town Journal

Montrose Voice

Moral Majority Report

Morbidity and Mortality Weekly Report

NAMBLA News

National NOW Times

Nature News

New Republic

New York Herald Tribune

New York Native

New York Post

New York Times

Newsweek

ONE

Pacific Stars and Stripes

Pan

Prison Legal News

Reader's Digest

Reuters

Rolling Stone

San Francisco Chronicle

SFGate

Spiegel

Tangents

The Atlantic

Time

US News and World Report

Village Voice

Wall Street Journal

Washington Blade

Washington Post

Washington Post

Weekly World News

Wisconsin State Journal

Court Cases

Baker v. Wade, 553 F.Supp. 1121 (1982).

Baker v. Wade, 769 F.2d 289 (5th Cir. 1985)

Boutilier v. INS, 387 U.S. 118 (1967)

Bowers v. Hardwick, 478 U.S. 186 (1986)

Braschi v. Stahl, 74 N.Y.2d 201 (1989)

Buchanan v. Batchelor, 308 F.Supp. 729 (1970)

Buchanan v. State, 471 S.W.2d 401 (1971)

City of Dallas v. England, 846 S.W.2d 957 (1993)

Com. v. Balthazar, 366 Mass. 298 (1974)

Com. v. Scagliotti, 373 Mass. 626 (1977)

Connecticut Dept. of Public Safety v. Doe, 538 U.S. 1 (2003)

Doe v. Commonwealth's Attorney, 425 U.S. 901 (1976)

Eisenstadt v. Baird, 405 U.S. 438 (1972)

Ex parte Arata, 52 Cal. App. 380, 198 P. 814 (1921).

Ex parte Shepard, 51 Cal. App. 49, 195 P. 1077 (1921)

Gordzelik v. State, 246 S.W.2d 638 (1952)

Griswold v. Connecticut, 381 US 479 (1965)

In re Anders, 25 Cal.3d 414 (1979)

In re Birch, 10 Cal.3d 314 (1973)

In re Martinez, 130 Cal.App.2d 239 (1955)

In re Reed, 33 Cal.3d 914 (1983)

Jones et al. v. State, 308 S.W.2d 48 (1957)

Kansas v. Hendricks, 521 U.S. 346 (1997)

Lawrence v. Texas, 539 US 558 (2003)

MANual Enterprises v. Day, 370 US 478 (1962)

New York v. Ferber, 458 U.S. 747 (1982)

New York v. Uplinger, 467 U.S. 246 (1984)

Obergefell v. Hodges, 576 U.S. ____ (2015)

ONE, Inc. v. Oleson, 355 US 371 (1958)

People v. Dudley, 250 Cal.App.2d Supp. 955 (1967)

People v. Mesa, 265 Cal.App.2d 746 (1968)

People v. Mills, 81 Cal.App.3d 171 (1978)

People v. Onofre, 424 N.Y.S.2d 566 (1980)

Pryor v. Municipal Court, 25 Cal.3d 238 (1979)

Roe v. Wade, 314 F.Supp. 1217 (1970)

Roe v. Wade, 410 U.S. 113 (1973)

Rosenberg v. Fleuti, 374 US 449 (1963)

Sartin v. State, 335 S.W.2d 762 (1960)

Scopes v. State, 278 S.W. 57 (1925).

Sinclair v. State, 311 S.W.2d 824 (1958)

Smith v. Doe, 538 U.S. 84 (2003)

State v. Cogshell, 997 S.W.2d 534 (Mo. Ct. App. 1999)

State v. Limon, 280 Kan. 275 (2005).

State v. Morales, 869 S.W.2d 941 (1994)

Wade v. Buchanan, 401 US 989 (1971)

Government Reports and Publications

Holt, Linda K. and Massachusetts Department of Correction. *An Analysis of Recent Trends in Court Commitments to the Massachusetts Department of Correction*. [Boston]: The Dept., 1980). <http://archive.org/details/analysisofrecent00holt>.

Home Office and Scottish Home Department. *Report of the Committee on Homosexual Offenses and Prostitution*. London: Her Majesty's Stationery Office, 1957.

National Center for Missing and Exploited Children. "Map of Registered Sex Offenders in the United States." Accessed February 8, 2016. http://www.missingkids.com/en_US/documents/Sex_Offenders_Map2015.pdf

San Francisco Department of Public Health. "Clarification on the Permitting Process for New Bathhouses in the City and County." SFHIV.ORG. Accessed December 30, 2016. <http://www.sfhiv.org/wp-content/uploads/FAQ-regarding-Bathhouses-in-SF.pdf>.

Smith, Wendy Serbin. *Victimless Crime: A Selected Bibliography*. Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, 1977.

Stern, Robert L. and Eugene Gressman. *Supreme Court Practice: Jurisdiction, Procedure, Arguing and Briefing Techniques, Forms, Statutes, Rules for Practice in the Supreme Court of the United States*. Washington, D.C.: Bureau of National Affairs, 1969.

United States Congress Senate Committee on Expenditures in the Executive

- Departments. *Employment of Homosexuals and Other Sex Perverts in Government*. Washington, D.C.: Government Printing Office, 1950.
- United States Congress Senate Committee on the Judiciary. *Child Abuse Victims' Rights Act: Hearing before the Subcommittee on Juvenile Justice*. Washington, D.C.: United States Government Printing Office, 1986.
<http://catalog.hathitrust.org/Record/008516734>.
- United States Congress Senate Committee on the Judiciary. *Child Pornography: Hearing before the Subcommittee on Juvenile Justice*. Washington, D.C.: United States Government Printing Office, 1983.
<http://catalog.hathitrust.org/Record/007419436>.
- United States Congress Senate Committee on the Judiciary. *Child Sexual Abuse Victims in the Courts: Hearings before the Subcommittee on Juvenile Justice*. Washington, D.C.: United States Government Printing Office, 1985.
<http://catalog.hathitrust.org/Record/011342407>.
- United States Congress Senate Committee on the Judiciary. *Child Victim Witness Protection Act of 1985: Hearings before the Subcommittee on Juvenile Justice*. Washington, D.C.: United States Government Printing Office, 1986.
<http://catalog.hathitrust.org/Record/007414489>.
- United States Congress Senate Committee on the Judiciary. *Computer Pornograph [i.e. Pornography] and Child Exploitation Prevention Act: Hearing before the Subcommittee on Juvenile Justice*. Washington, D.C.: United States Government Printing Office, 1986. <http://catalog.hathitrust.org/Record/008517090>.
- United States Congress Senate Committee on the Judiciary. *Effect of Pornography on Women and Children: Hearings before the Subcommittee on Juvenile Justice*. Washington, D.C.: United States Government Printing Office, 1985.
<http://hdl.handle.net/2027/mdp.39015012249283>.
- United States Congress Senate Committee on the Judiciary. *Exploited and Missing Children: Hearing before the Subcommittee on Juvenile Justice*. Washington, D.C.: United States Government Printing Office, 1982.
<http://hdl.handle.net/2027/mdp.39015008706130>.
- United States Congress Senate Committee on the Judiciary. *Juvenile Rape Victims: Hearing before the Subcommittee on Juvenile Justice*. Washington, D.C.: United States Government Printing Office, 1985.
<http://catalog.hathitrust.org/Record/011342546>.
- United States Congress Senate Committee on the Judiciary. *Media Violence: Hearings before the Subcommittee on Juvenile Justice*. Washington, D.C.: United States

- Government Printing Office, 1985.
<http://catalog.hathitrust.org/Record/002768075>.
- United States Congress Senate Committee on the Judiciary. *Missing Children's Assistance Act: Hearings before the Subcommittee on Juvenile Justice*. Washington, D.C.: United States Government Printing Office, 1984.
<http://catalog.hathitrust.org/Record/011342396>.
- United States Department of Justice. "Justice Department Settles with South Carolina Department of Corrections to End Discrimination Against Inmates with HIV." Accessed June 23, 2017. <https://www.justice.gov/opa/pr/justice-department-settles-south-carolina-department-corrections-end-discrimination-against>.
- United States House of Representatives Committee on Education and Labor, *Legislative History of Public Law 101-336, the Americans with Disabilities Act* (Washington, D.C.: United States Government Printing Office, 1990).
- United States House of Representatives Select Committee on Children, Youth, and Families, *A Generation in Jeopardy: Children and AIDS* (Washington, D.C.: United States Government Printing Office, 1988).
- United States House of Representatives Human Resources and Intergovernmental Relations Subcommittee of the Committee on Government Operations, *Children and HIV Infection* (Washington, D.C.: United States Government Printing Office, 1989).
- United States Presidential Commission on the Human Immunodeficiency Virus Epidemic. *Report to the President*. Washington, D.C.: Government Printing Office, 1988.
- United States Sentencing Commission. *2011 Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*. Accessed August 1, 2016. <http://www.ussc.gov/news/congressional-testimony-and-reports/mandatory-minimum-penalties/report-congress-mandatory-minimum-penalties-federal-criminal-justice-system>.
- United States Committee on the Judiciary, *Protection of Children against Sexual Exploitation Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary, United States Senate, Ninety-Fifth Congress, First Session, Chicago, Ill., May 27, 1977, Washington, D.C., June 16, 1977*. Washington, D.C.: U.S. Government Printing Office, 1978.
- United States, *Sexual Exploitation of Children: Hearings before the Subcommittee on Crime of the Committee on the Judiciary, House of Representatives, Ninety-Fifth Congress, First Session . . . May 23, 25, June 10, and September 20, 1977*. Washington, D.C.: U.S. Government Printing Office, 1977.

Digital Archives and Online Sources

- “APA Letter to the Honorable Rep. DeLay (R-Tx).” Accessed December 14, 2015.
<http://web.archive.org/web/19991010055703/http://www.apa.org/releases/delay.html>.
- “Grant a Pardon to Alan Turing.” Petitions—UK Government and Parliament. Accessed April 8, 2016. <https://petition.parliament.uk/archived/petitions/23526>.
- “Robert Suttle.” *Sero Project*. Accessed September 27, 2016.
<http://seroproject.com/video/robert-suttle/>.
- Center for HIV Law & Policy. “When Sex Is A Crime and Spit Is a Dangerous Weapon: A Snapshot of HIV Criminalization in the United States.” Accessed September 27, 2016.
<http://hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/Snapshot%20of%20HIV%20Criminalization%20Updated%20March%202016.pdf>
- Coleman, Thomas F. and Copilow, Barry. “Enforcement of Section 647(a) of the California Penal Code by the Los Angeles Police Department.” Accessed June 22, 2017, Unmarried America, <http://www.unmarriedamerica.org/Archives/1973-1974-coleman-Copilow-Toy-Reports/1973-Coleman-Copilow-Report.pdf>.
- Davis, Sid. “Boys Beware.” Accessed September 2, 2015.
http://archive.org/details/boys_beware.
- Giovanniello, Sarah. “Study: Fear of Criminalization Harms Trans People Living with HIV.” GLAAD. Accessed April 7, 2016. <http://www.glaad.org/blog/study-fear-criminalization-harms-trans-people-living-hiv>.
- Hasenbush, Amira, Ayako Miyashita, and Bianca Wilson, D.M. “HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS.” Accessed December 12, 2016. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-California-Updated-June-2016.pdf>.
- Kempadoo, Kamala and Leith L. Dunn. “Factors That Shape the Initiation of Early Sexual Activity Among Adolescent Boys and Girls: A Study in Three Communities in Jamaica.” United Nations Children’s Fund and United Nations Population Fund. Accessed May 26, 2017.
https://www.unicef.org/evaldatabase/index_14463.html.
- National Committee for Sexual Civil Liberties. “Implications of Reed.” Unmarried America. Accessed July 18, 2014.

<http://www.unmarriedamerica.org/Archives/1980-1983-sex-registration-law-challenge/reed-implications.pdf>.

Painter, George. "The History of Our Forefathers: The History of Sodomy Laws in the United States." GLAPN: Gay & Lesbian Archives of the Pacific Northwest. Accessed June 3, 2015. <http://www.glapn.org/sodomylaws/sensibilities/texas.htm>.

Velázquez, Tracy. "The Pursuit of Safety: Sex Offender Policy in the United States" Vera Institute of Justice. Accessed June 23, 2017.

https://storage.googleapis.com/vera-web-assets/downloads/Publications/the-pursuit-of-safety-sex-offender-policy-in-the-united-states/legacy_downloads/Sex_offender_policy_with_appendices_final.pdf.

Published Primary Sources

American Bar Foundation, *The Mentally Disabled and the Law*, edited by Samuel J. Brakel and Ronald S. Rock. Chicago: University of Chicago Press Press, 1971.

American Civil Liberties Union, *Sexual Privacy Project Legal Docket: Affiliate & National Litigation*. New York: American Civil Liberties Union, 1974.

American Law Institute, *Model Penal Code: Proposed Official Draft. Submitted by the Council to the Members for Discussion at the Thirty-Ninth Annual Meeting on May 23, 24, 25 and 26, 1962*. Philadelphia: American Law Institute, 1962.

American Psychiatric Association, *Dangerous Sex Offenders: A Task Force Report of the American Psychiatric Association*. Washington, D.C.: American Psychiatric Association, 1999.

Berkowitz, Richard, Michael Callen, and Richard Dworkin. *How to Have Sex in an Epidemic: One Approach*. New York: News From The Front Publications, 1983.

Bieber, Irving, et al. *Homosexuality: A Psychoanalytic Study of Male Homosexuals*. New York: Basic Books, 1962.

Blair, Jerry D. "Sex Offender Registration for Section 647 Disorderly Conduct Convictions Is Cruel and Unusual Punishment." *San Diego Law Review* 13, no. 2 (1976): 391–409.

Bryant, Anita. *The Anita Bryant Story: The Survival of Our Nation's Families and the Threat of Militant Homosexuality*. Old Tappan, NJ: Revell, 1977.

Burgess, Ann Wolbert and Marieanne Lindeqvist Clark, *Child Pornography and Sex Rings*. Lexington, MA: LexingtonBooks, 1984.

- Carter, Mary. "Testing Health Care Workers for AIDS: Public Necessity or Private Intrusion?" *Journal of Civil Rights and Economic Development* 7, no. 1 (1991): 359–387.
- Coleman, Thomas F. "Procedure and Strategy in Gay Rights Litigation." *New York University Review of Law and Social Change* 8 (1978–79): 317–23.
- Coleman, Jr., Thomas J. "Disordered Liberty: Judicial Restrictions on the Rights to Privacy and Equality in *Bowers v. Hardwick* and *Baker v. Wade*," *Thurgood Marshall Law Review* 12 (1986): 81–108.
- Crimp, Douglas, ed. "AIDS: Cultural Analysis/Cultural Activism." Special issue, *October* 43 (1987).
- Duberman, Martin. *Midlife Queer: Autobiography of a Decade, 1971–1981*. Madison: University of Wisconsin Press, 1996.
- Duvert, Tony. *Good Sex Illustrated*, translated by Bruce Benderson. Los Angeles: Semiotext(e), 2007 [1973].
- Ellis, Havelock, and John Addington Symonds. *Sexual Inversion: A Critical Edition*. Edited by Ivan Crozier. New York: Palgrave Macmillan, 2008.
- Feinberg, Leslie. *Stone Butch Blues*. Los Angeles: Alyson Books, 1993.
- Fitting, Thomas. "Criminal Liability for Transmission of AIDS: Some Evidentiary Problems." *Criminal Justice Journal* 10 (1987): 69–97.
- FitzGerald, Frances. *Cities on a Hill*. New York: Simon & Schuster, 1987.
- Freud, Sigmund. *Three Essays on the Theory of Sexuality*. New York: Avon Books, 1962.
- Gauthier, DeAnn K., and Craig J. Forsyth, "Bareback Sex, Bug Chasers, and the Gift of Death." *Deviant Behavior* 20, no. 1 (1999): 85–100.
- Group for the Advancement of Psychiatry. *Psychiatry and Sex Psychopath Legislation, the '30s to the '80s*. New York: Group for the Advancement of Psychiatry, 1977).
- Humphreys, Laud. *Tearoom Trade: Impersonal Sex in Public Places*. Chicago: Aldine, 1970.
- Jones, W. Cecil. "*Doe v. Commonwealth's Attorney*: Closing the Door to a Fundamental Right of Sexual Privacy." *Denver Law Journal* 53 (1976): 553–76.
- Kinsey, Alfred C., Wardell B. Pomeroy, and Clyde E. Martin. *Sexual Behavior in the*

- Human Male*. Philadelphia: W. B. Saunders Company, 1948.
- Kinsey, Alfred C., Wardell B. Pomeroy, Clyde E. Martin, and Paul H. Gebhard. *Sexual Behavior in the Human Female*. Philadelphia: Saunders, 1953.
- Kramer, Larry. *Faggots*. New York: Random House, 1978.
- Kramer, Larry. *The Normal Heart*. New York: Samuel French, 1985.
- La Fond, John Q. "Washington's Sexually Violent Predator Law: A Deliberate Misuse of the Therapeutic State for Social Control." *University of Puget Sound Law Review* 15 (1991–92): 655–708.
- Lapassade, Georges, and René Schérer. *Le Corps Interdit: Essais Sur L'éducation Négative*. Paris: Éditions E.S.F., 1976.
- Meyer, Richard. "Rock Hudson's Body." In *Inside/Out: Lesbian Theories, Gay Theories*, edited by Diana Fuss. 259–88. New York: Routledge, 1991.
- Miller, Merle. *On Being Different*. New York: Random House, 1971.
- Millett, Kate. *Sexual Politics*. Garden City, NY: Doubleday, 1970.
- Mitzel. *The Boston Sex Scandal*. Boston: Glad Day Books, 1980.
- Mohr, Richard D. "AIDS, Gays, and State Coercion." *Bioethics* 1, no. 1 (1987): 95–110.
- Project, "The Consenting Adult Homosexual and the Law: An Empirical Study of Enforcement and Administration in Los Angeles County." *UCLA Law Review* 13, no. 3 (1966): 647–832.
- Réage, Pauline. *Story of O*. New York: Grove Press, 1965.
- Riddle, E.A. "Compulsory Registration: A Vehicle of Mercy Discarded." *California Western Law Review* 3, no. 195 (1967): 195–202.
- Sandfort, Theo. *Boys On Their Contacts with Men: A Study of Sexually Expressed Friendships*. Global Academic Publishers, 1987.
- Schérer, René, and Guy Hocquenghem. *Co-Ire: Album Systématique de L'enfance*. Fontenay-sous-Bois: Revue du Cerfi, 1976.
- Schérer, René. *Émile perversi; ou, Des rapports entre l'éducation et la sexualité*. Paris: R. Laffont, 1974.
- Schwartz, Louis B. "Morals Offenses and the Model Penal Code." *Columbia Law Review*

- 63, no. 4 (1963): 669–686.
- Sherry, Arthur H. “Vagrants, Rogues and Vagabonds—Old Concepts in Need of Revision.” *California Law Review* 48, no. 4 (1960): 557–73.
- Shilts, Randy. *And the Band Played On: Politics, People, and the AIDS Epidemic*. New York: St. Martin’s Press, 1987.
- Silverstein, Charles, and Edmund White. *The Joy of Gay Sex: An Intimate Guide for Gay Men to the Pleasures of a Gay Lifestyle*. New York: Crown Publishers, 1977.
- Socarides, Charles W. “Homosexuality and Medicine.” *Journal of the American Medical Association* 212, no. 7 (1970): 1199–1202.
- Tanner, Michael. *The Politics of Health: A State Response to the AIDS Crisis*. American Legislative Exchange Council, 1989.
- Tenney, Jr., Charles W. “Sex, Sanity, and Stupidity in Massachusetts.” *Boston University Law Review* 42, no. 1 (1962): 1–31.
- Tsang, Daniel, ed. *The Age Taboo: Gay Male Sexuality, Power and Consent*. Boston: Alyson Publications, 1981.
- Tsang, Daniel. “Gay Ann Arbor Purges.” *Midwest Gay Academic Journal* 1, no. 1 (1977): 13–19.
- Von Beitel, Randy. “The Criminalization of Private Homosexual Acts: A Jurisprudential Case Study of a Decision by the Texas Bar Penal Code Revision Committee.” *Human Rights* 6, no. 1 (1976): 23–74.
- A Witchhunt Foiled: The FBI vs. NAMBLA*. New York: North American Man/Boy Love Association, 1985.

Secondary Literature

- Adam, Barry D. *The Rise of a Gay and Lesbian Movement*. Boston: Twayne Publishers, 1987.
- Agee, Christopher Lowen. *The Streets of San Francisco: Policing and the Creation of a Cosmopolitan Liberal Politics, 1950–1972*. Chicago: University of Chicago Press Press, 2014.
- Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: New Press, 2012.

- Alwood, Edward. *Straight News: Gays, Lesbians, and the News Media*. New York: Columbia University Press, 1996.
- Ariès, Philippe. *Centuries of Childhood: A Social History of Family Life*. New York: Vintage, 1965.
- Barnett, Walter. *Sexual Freedom and the Constitution: An Inquiry into the Constitutionality of Repressive Sex Laws*. Albuquerque: University of New Mexico Press, 1973.
- Bayer, Ronald. *Homosexuality and American Psychiatry: The Politics of Diagnosis*. New York: Basic Books, 1981.
- Bell, Jonathan. *California Crucible: The Forging of Modern American Liberalism*. Philadelphia: University of Pennsylvania Press, 2012.
- Berlant, Lauren. "Live Sex Acts (Parental Advisory: Explicit Material)." *Feminist Studies* 21, no. 2 (1995): 379–404.
- Berlin, Isaiah. "Two Concepts of Liberty." In *Four Essays on Liberty*. 166–217. Oxford: Oxford University Press, 1958.
- Bernstein, Elizabeth. "The Sexual Politics of the 'New Abolitionism.'" *differences* 18, no. 3 (2007): 128–51.
- Best, Joel. *Threatened Children: Rhetoric and Concern about Child-Victims*. University of Chicago Press, 1993.
- Borneman, John. *Cruel Attachments: The Ritual Rehab of Child Molesters in Germany*. Chicago: University of Chicago Press, 2015.
- Boyd, Nan Alamilla. *Wide-Open Town: A History of Queer San Francisco to 1965*. Berkeley: University of California Press, 2003.
- Braukman, Stacy. *Communists and Perverts under the Palms: The Johns Committee in Florida, 1956–1965*. Gainesville: University Press of Florida, 2012.
- Brooks, Robert A. "Psychiatrists' Opinions About Involuntary Civil Commitment: Results of a National Survey." *Journal of the American Academy of Psychiatry and the Law* 35, no. 2 (2007): 219–228.
- Bullough, Vern L. "Lesbianism, Homosexuality, and the American Civil Liberties Union." *Journal of Homosexuality* 13 (1986): 23–33.
- Cain, Patricia A. "Litigating for Lesbian and Gay Rights: A Legal History." *Virginia Law Review* 79 (1993): 1551–1642.

- Canaday, Margot. *The Straight State: Sexuality and Citizenship in Twentieth-Century America*. Princeton, NJ: Princeton University Press, 2011.
- Carpenter, Dale. "The Unknown Past of *Lawrence v. Texas*." *Michigan Law Review* 102, no. 7 (2004): 1464–1527.
- Carter, David. *Stonewall: The Riots That Sparked the Gay Revolution*. New York: St. Martin's Griffin, 2010.
- Charles, Douglas M. *Hoover's War on Gays: Exposing the FBI's "Sex Deviates" Program*. Lawrence: University Press of Kansas, 2015.
- Chauncey, George. "'What Gay Studies Taught the Court': The Historians' Amicus Brief in *Lawrence v. Texas*." *GLQ: A Journal of Lesbian and Gay Studies* 10, no. 3 (2004): 509–38.
- Chauncey, George. "The Postwar Sex Crime Panic." In *True Stories from the American Past*, edited by William Graebner. 160–78. New York: McGraw-Hill, 1993.
- Chauncey, George. *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890–1940*. New York: Basic Books, 1994.
- Chauncey, George. *Why Marriage? The History Shaping Today's Debate over Gay Equality*. New York: Basic Books, 2009.
- Chavez-Garcia, Miroslava. *States of Delinquency: Race and Science in the Making of California's Juvenile Justice System*. Berkeley: University of California Press, 2012.
- Cobble, Dorothy Sue. *The Other Women's Movement: Workplace Justice and Social Rights in Modern America*. Princeton, NJ: Princeton University Press, 2004.
- D'Emilio, John. "Capitalism and Gay Identity." In *Making Trouble: Essays on Gay History, Politics, and the University*. 2–16. New York: Routledge, 1992.
- D'Emilio, John. *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940–1970*. Chicago: University of Chicago Press, 1983.
- Dochuk, Darren. *From Bible Belt to Sunbelt: Plain-Folk Religion, Grassroots Politics, and the Rise of Evangelical Conservatism*. New York: W. W. Norton & Company, 2012.
- Duberman, Martin. *Left Out: The Politics of Exclusion: Essays 1964–1999*. New York: Basic Books, 1999.

- Duberman, Martin B. *Stonewall*. New York: Dutton, 1993.
- Duggan, Lisa. *The Twilight of Equality? Neoliberalism, Cultural Politics, and the Attack on Democracy*. Boston: Beacon Press, 2003.
- Duggan, Lisa. "Queering the State." *Social Text*, no. 39 (1994): 1–14.
- Duggan, Lisa. "The New Homonormativity: The Sexual Politics of Neoliberalism," in *Materializing Democracy: Toward a Revitalized Cultural Politics*, edited by Russ Castronovo and Dana D. Nelson. Durham, NC: Duke University Press, 2002. 175–94.
- Duggan, Lisa. *Sapphic Slashers: Sex, Violence, and American Modernity*. Durham, NC: Duke University Press, 2001.
- Eng, David L. *The Feeling of Kinship: Queer Liberalism and the Racialization of Intimacy*. Durham, NC: Duke University Press, 2010.
- Epstein, Steven. *Impure Science: AIDS, Activism, and the Politics of Knowledge*. Berkeley: University of California Press, 1996.
- Eskridge, William N. "Hardwick and Historiography." *University of Illinois Law Review* 1999, no. 2, 631–702.
- Eskridge, William N. *Dishonorable Passions: Sodomy Laws in America, 1861–2003*. New York: Viking, 2008.
- Eskridge, William N. *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment*. New York: Free Press, 1996.
- Faderman, Lillian, and Stuart Timmons. *Gay L.A.: A History of Sexual Outlaws, Power Politics, and Lipstick Lesbians*. New York: Basic Books, 2006.
- Faderman, Lillian. *The Gay Revolution: The Story of the Struggle* (New York: Simon & Schuster, 2015).
- Faderman, Lillian. *Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth-Century America*. New York: Columbia University Press, 1991.
- Fetner, Tina. *How the Religious Right Shaped Lesbian and Gay Activism*. Minneapolis: University of Minnesota Press, 2008.
- Fischel, Joseph J. "Transcendent Homosexuals and Dangerous Sex Offenders: Sexual Harm and Freedom in the Judicial Imaginary." *Duke Journal of Gender Law & Policy* 17, no. 277 (2010): 277–311.

- Fischel, Joseph J. *Sex and Harm in the Age of Consent* (Minneapolis: University of Minnesota Press, 2016).
- Foucault, Michel. "Friendship as a Way of Life." In *Power*, edited by James D. Faubion and Paul Rabinow, translated by Robert Hurley. New York: New Press, 2001), 135–140.
- Foucault, Michel. *The History of Sexuality: An Introduction*, translated by Robert Hurley. New York: Pantheon Books, 1978.
- Foucault, Michel. "The Social Triumph of the Sexual Will." In *Ethics: Subjectivity and Truth*, edited by Paul Rabinow. 157–62. New York: New Press, 1998.
- Foucault, Michel, Guy Hocquenghem, and Jean Danet. "Sexual Morality and the Law." In *Politics, Philosophy, Culture: Interviews and Other Writings, 1977–1984*, edited by Lawrence D. Kritzman, translated by Alan Sheridan. 271–85. New York: Routledge, 1988.
- Frank, Gillian. "'The Civil Rights of Parents': Race and Conservative Politics in Anita Bryant's Campaign against Gay Rights in 1970s Florida." *Journal of the History of Sexuality* 22, no. 1 (2013): 126–60.
- Franke, Katherine M. "The Central Mistake of Sex Discrimination Law: The Disaggregation of Sex from Gender." *University of Pennsylvania Law Review* 144, no. 1 (1995): 1–100.
- Franke, Katherine M. "The Domesticated Liberty of *Lawrence v. Texas*." *Columbia Law Review* 104, no. 5 (2004): 1399–1426.
- Franke, Katherine. *Wedlocked: The Perils of Marriage Equality*. New York: NYU Press, 2015.
- Freedman, Estelle B. "'Uncontrolled Desires': The Response to the Sexual Psychopath, 1920–1960." *Journal of American History* 74, no. 1 (1987): 83–106.
- Frydl, Kathleen J. *The Drug Wars in America, 1940–1973*. New York: Cambridge University Press, 2013.
- Gallo, Marcia M. *Different Daughters: A History of the Daughters of Bilitis and the Rights of the Lesbian Rights Movement*. New York: Carroll & Graf, 2006.
- Garrow, David J. *Liberty and Sexuality: The Right to Privacy and the Making of Roe v. Wade*. New York: Macmillan Publishing Company, 1994.
- George, Marie-Amelie. "The Harmless Psychopath: Legal Debates Promoting the

- Decriminalization of Sodomy in the United States.” *Journal of the History of Sexuality* 24, no. 2 (2015): 225–61.
- Gerassi, John. *The Boys of Boise: Furor, Vice, and Folly in an American City*. New York: Macmillan, 1966.
- Ghaziani, Amin. *The Dividends of Dissent: How Conflict and Culture Work in Lesbian and Gay Marches on Washington*. Chicago: University of Chicago Press Press, 2008.
- Gilbert, James. *A Cycle of Outrage: America’s Reaction to the Juvenile Delinquent in the 1950s*. New York: Oxford University Press, 1988.
- Gilmore, Ruth Wilson. *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*. Berkeley: University of California Press, 2007.
- Goluboff, Risa. *Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s*. New York: Oxford University Press, 2016.
- Gottschalk, Marie. *Caught: The Prison State and the Lockdown of American Politics*. Princeton, NJ: Princeton University Press, 2015.
- Gottschalk, Marie. *The Prison and the Gallows: The Politics of Mass Incarceration in America*. New York: Cambridge University Press, 2006.
- Gould, Deborah B. *Moving Politics: Emotion and ACT UP’s Fight against AIDS*. Chicago: University of Chicago Press, 2009.
- Halley, Janet E. “Misreading Sodomy: A Critique of the Classification of ‘Homosexuals’ in Federal Equal Protection Law.” In *Body Guards: The Cultural Politics of Gender Ambiguity*, edited by Julia Epstein and Kristina Straub. 351–77. New York: Routledge, 1991.
- Halperin, David M. *What Do Gay Men Want? An Essay on Sex, Risk, and Subjectivity*. Ann Arbor: University of Michigan Press, 2009.
- Hanhardt, Christina B. *Safe Space: Gay Neighborhood History and the Politics of Violence*. Durham, NC: Duke University Press, 2013.
- Herman, Didi. *The Antigay Agenda: Orthodox Vision and the Christian Right*. Chicago: University of Chicago Press, 1998.
- Hernández, Kelly Lytle. *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771–1965*. Chapel Hill: University of North Carolina Press, 2017.

- Higgins, Patrick. *Heterosexual Dictatorship: Male Homosexuality in Postwar Britain*. London: Fourth Estate, 1996.
- Hinton, Elizabeth. *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America*. Cambridge, MA: Harvard University Press, 2017.
- Hirshman, Linda. *Victory: The Triumphant Gay Revolution*. New York: Harper, 2012.
- Hobson, Emily K. *Lavender and Red: Liberation and Solidarity in the Gay and Lesbian Left*. Oakland: University of California Press, 2016.
- Hoffman, Amy. *An Army of Ex-Lovers: My Life at the Gay Community News*. Amherst: University of Massachusetts Press, 2007.
- Hoppe, Trevor and David M. Halperin, eds. *The War on Sex*. Durham, NC: Duke University Press, 2017.
- Hoppe, Trevor. "Controlling Sex in the Name of 'Public Health': Social Control and Michigan HIV Law." *Social Problems* 60, no. 1 (2013): 27–49.
- Hoppe, Trevor. "Punishing Sex: Sex Offenders and the Missing Punitive Turn in Sexuality Studies." *Law & Social Inquiry* 41, no. 3 (2016): 573–94.
- Hoppe, Trevor. "The Public Health Police," in *Punishing Disease: HIV and the Criminalization of Sickness*. Berkeley: University of California Press, forthcoming.
- Howard, John. "Southern Sodomy; Or, What the Coppers Saw." In *Southern Masculinity: Perspectives on Manhood in the South since Reconstruction*, edited by Craig Thompson Friend, 196–218. Athens: University of Georgia Press, 2009.
- Hunter, Nan D. "Sexual Orientation and the Paradox of Heightened Scrutiny." *Michigan Law Review* 102, no. 7 (2004): 1528–54.
- Improper Bostonians: Lesbian and Gay History from the Puritans to Playland*. Boston: Beacon Press, 1998.
- "Interview: René Schérer." *PAIDIKA: The Journal of Paedophilia* 1, no. 2 (1987): 2–12.
- Irvine, Janice M. *Talk About Sex: The Battles over Sex Education in the United States*. Berkeley: University of California Press, 2004.
- Jacobson, Robert L. "'Megan's Laws' Reinforcing Old Patterns of Anti-Gay Police Harassment." *Georgetown Law Journal* 87, no. 7 (1999): 2431–2474.
- Janus, Eric S., and Robert A. Prentky. "Sexual Predator Laws: A Two-Decade

- Retrospective.” *Federal Sentencing Reporter* 21, no. 2 (2008): 90–97.
- Janus, Eric S. *Failure to Protect: America’s Sexual Predator Laws and the Rise of the Preventive State*. Ithaca, NY: Cornell University Press, 2006.
- Jenkins, Philip. *Moral Panic: Changing Concepts of the Child Molester in Modern America*. New Haven, CT: Yale University Press, 2004.
- Jenness, Valerie. *Making It Work: The Prostitutes’ Rights Movement in Perspective* (New York: Aldine de Gruyter, 1993).
- Jersild, Jens. *The Normal Homosexual Male versus the Boy Molester*. Copenhagen: NYT Nordisk Forlag Arnold Busck, 1967.
- Johnson, David K. *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government*. Chicago: University of Chicago Press, 2006.
- Kavanaugh, Lisa. “Massachusetts’s Sexually Dangerous Persons Legislation: Can Juries Make a Bad Law Better?” *Harvard Civil Rights-Civil Liberties Law Review* 35, no. 2 (2000): 509–68.
- Klarman, Michael J. *From the Closet to the Altar: Courts, Backlash, and the Struggle for Same-Sex Marriage*. New York: Oxford University Press, 2012.
- Kunzel, Regina. *Criminal Intimacy: Prison and the Uneven History of Modern American Sexuality*. Chicago: University of Chicago Press, 2010.
- Laing, Mary, Katy Pilcher, and Nicola Smith, eds. *Queer Sex Work*. New York: Routledge, 2015.
- Lancaster, Roger N. *Sex Panic and the Punitive State*. Berkeley: University of California Press, 2011.
- Langum, David J. *Crossing over the Line: Legislating Morality and the Mann Act*. Chicago: University of Chicago Press, 2007.
- Lassiter, Matthew D. “Impossible Criminals: The Suburban Imperatives of America’s War on Drugs.” *Journal of American History* 102, no. 1 (2015): 126–40.
- Lave, Tamara Rice. “Only Yesterday: The Rise and Fall of Twentieth Century Sexual Psychopath Laws.” *Louisiana Law Review* 69, no. 3 (2009): 549–592.
- Leachman, Gwendolyn M. “Institutionalizing Essentialism: Mechanisms of Intersectional Subordination within the LGBT Movement.” *Wisconsin Law Review* 2016, 655–82.

- Leavitt, Judith Walzer. *Typhoid Mary: Captive to the Public's Health*. Boston: Beacon Press, 1997.
- Marshall, Daniel, Kevin P. Murphy, and Zeb Tortorici, eds. "Queering Archives: Historical Unravelings." Special issue, *Radical History Review* 1987, no. 120.
- Martel, Frédéric. *The Pink and the Black: Homosexuals in France since 1968*, translated by Jane Todd. Stanford, CA: Stanford University Press, 2000.
- McGirr, Lisa. *The War on Alcohol: Prohibition and the Rise of the American State*. New York: W. W. Norton & Company, 2015.
- Meyerowitz, Joanne J. *How Sex Changed: A History of Transsexuality in the United States*. Cambridge, MA: Harvard University Press, 2002.
- Miller, Neil. *Sex-Crime Panic: A Journey to the Paranoid Heart of the 1950s*. Los Angeles: Alyson Books, 2002.
- Mirkin, Harris. "The Social, Political, and Legal Construction of the Concept of Child Pornography." *Journal of Homosexuality* 56, no. 2 (2009): 233–67.
- Mitchell, Michele. *Righteous Propagation: African Americans and the Politics of Racial Destiny after Reconstruction*. Chapel Hill: University of North Carolina Press, 2004.
- Muhammad, Khalil Gibran. *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America*. Cambridge, MA: Harvard University Press, 2011.
- Murakawa, Naomi. *The First Civil Right: How Liberals Built Prison America*. New York: Oxford University Press, 2014.
- Nathan, Debbie, and Michael Snedeker. *Satan's Silence: Ritual Abuse and the Making of a Modern American Witch Hunt*. New York: Basic Books, 1995.
- Newman, Sarah J. "Prevention, Not Prejudice: The Role of Federal Guidelines in HIV-Criminalization Reform." *Northwestern University Law Review* 107, no. 3 (2013): 1403–36.
- Ngai, Mae. *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton University Press, 2005.
- Novak, William J. *The People's Welfare: Law and Regulation in Nineteenth-Century America*. Chapel Hill: University of North Carolina Press, 1996.
- Nussbaum, Martha C. *From Disgust to Humanity: Sexual Orientation and Constitutional*

- Law*. New York: Oxford University Press, 2010.
- Parmet, Wendy E. "AIDS and Quarantine: The Revival of an Archaic Doctrine." *Hofstra Law Review* 14, no. 1 (1985): 53–90.
- Petro, Anthony M. *After the Wrath of God: AIDS, Sexuality, and American Religion*. New York: Oxford University Press, 2015.
- Porter, Dorothy. *Health, Civilization and the State: A History of Public Health from Ancient to Modern Times*. New York: Routledge, 2005.
- Puar, Jasbir K. *Terrorist Assemblages: Homonationalism in Queer Times*. Durham, NC: Duke University Press, 2007.
- Rayburn Yung, Corey. "The Emerging Criminal War on Sex Offenders." *Harvard Civil Rights-Civil Liberties Law Review* 45, no. 1 (2010): 435–81.
- Reiss, Albert. "The Social Integration of Peers and Queers." *Social Problems* 9, no. 2 (1961): 102–120.
- Retzloff, Timothy Ford. "City, Suburb, and the Changing Bounds of Lesbian and Gay Life and Politics in Metropolitan Detroit, 1945–1985." Ph.D., Yale, 2014.
- Rind, Bruce, Robert Bauserman, and Philip Tromovitch. "A Meta-Analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples." *Psychological Bulletin* 124, no. 1 (1998): 22–53.
- Rubin, Gayle S. *Deviations: A Gayle Rubin Reader*. Durham, NC: Duke University Press, 2012.
- Rydström, Jens, and Kati Mustola, eds. *Criminally Queer: Homosexuality and Criminal Law in Scandinavia, 1842–1999*. Amsterdam: Aksant, 2007.
- Self, Robert O. *All in the Family: The Realignment of American Democracy Since the 1960s*. New York: Hill and Wang, 2012.
- Shah, Nayan. *Contagious Divides: Epidemics and Race in San Francisco's Chinatown*. Berkeley: University of California Press, 2001.
- Shah, Nayan. *Stranger Intimacy: Contesting Race, Sexuality and the Law in the North American West*. Berkeley: University of California Press, 2012.
- Simon, Jonathan. *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*. New York: Oxford University Press, 2007.

- Siobhan B. Somerville, "Queer Loving," *GLQ: Journal of Lesbian and Gay Studies* 11, no. 3 (2005): 335–70.
- Spade, Dean. *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law*. Boston: South End Press, 2011.
- Sparrow, James T. *Warfare State: World War II Americans and the Age of Big Government*. New York: Oxford University Press, 2011.
- Spivak, Gayatri Chakravorty. "Subaltern Studies: Deconstructing Historiography." In *In Other Worlds: Essays in Cultural Politics, 197–221*. New York: Methuen, 1987.
- Stansell, Christine. *American Moderns: Bohemian New York and the Creation of a New Century*. New York: Metropolitan Books, 2000.
- Stein, Marc. "Canonizing Homophile Sexual Respectability: Archives, History, and Memory." *Radical History Review*, no. 120 (2014): 53–73.
- Stein, Marc. *City of Sisterly and Brotherly Loves: Lesbian and Gay Philadelphia, 1945–1972*. Philadelphia: Temple University Press, 2004.
- Stein, Marc. *Sexual Injustice: Supreme Court Decisions from Griswold to Roe*. Chapel Hill: University of North Carolina Press, 2010.
- Stern, Alexandra Minna. *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America*. Berkeley: University of California Press, 2005.
- Stewart-Winter, Timothy. "Queer Law and Order: Sex, Criminality, and Policing in the Late Twentieth-Century United States." *Journal of American History* 102, no. 1 (2015): 61–72.
- Stewart-Winter, Timothy. "Raids, Rights, and Rainbow Coalitions: Sexuality and Race in Chicago Politics, 1950–2000." Ph.D., University of Chicago, 2009.
- Stewart-Winter, Timothy. *Queer Clout: Chicago and the Rise of Gay Politics*. Philadelphia: University of Pennsylvania Press, 2016.
- Strub, Whitney. *Perversion for Profit: The Politics of Pornography and the Rise of the New Right*. New York: Columbia University Press, 2013.
- Stryker, Susan. *Transgender History*. Berkeley, CA: Seal Press, 2008.
- Thompson, Heather Ann. "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History." *Journal of American History* 97, no. 3 (2010): 703–34.

- Tiemeyer, Phil. *Plane Queer: Labor, Sexuality, and AIDS in the History of Male Flight Attendants*. Berkeley: University of California Press, 2013.
- Valentine, David. *Imagining Transgender: An Ethnography of a Category*. Durham, NC: Duke University Press, 2007.
- Warner, Michael. *Publics and Counterpublics*. New York: Zone Books, 2002.
- Warner, Michael. *The Trouble with Normal: Sex, Politics, and the Ethics of Queer Life*. Cambridge, MA: Harvard University Press, 1999.
- Watney, Simon. *Policing Desire: Pornography, AIDS, and the Media*. Minneapolis: University of Minnesota Press, 1987.
- Wheeler, Leigh Ann. *How Sex Became a Civil Liberty*. New York: Oxford University Press, 2012.
- White, Heather Rachelle. *Reforming Sodom: Protestants and the Rise of Gay Rights*. Chapel Hill: University of North Carolina Press, 2015.
- Wright, Richard G. "From Wetterling to Walsh: The Growth of Federalization in Sex Offender Policy," *Federal Sentencing Reporter* 21, no. 2 (2008): 124–32.