

Abstract

How does policy affect identity? This thesis uses the theories of American Political Development to analyze the effects of government action on the identities of citizens, specifically focusing on how policy regimes can structure the lives of citizens. Using the development of the punitive sexuality regime of the 20th century as a case study, I argue that the rapid change in the societal status of gay Americans from the late 20th century to the present is the result of government policy shaping both gay identity and political perceptions of homosexuality in such a way that eventually there was a break in the regime. I trace the development of the regime from its inception in the years prior to World War II to its apogee during the Lavender Scare. This regime was dependent upon the way in which it silenced gay Americans limiting their ability to advocate for their rights. I argue that the AIDS crisis constituted a break in the regime because the deadly nature of the disease meant that being openly gay and fighting for an adequate government response was more important than any benefits which might come from being closeted. Finally, I analyze the present state of LGBT rights and the status of gay Americans in light the formation of a new sexuality regime.

From Bathroom Stalls to “Born This Way”
The Rise and Fall of the Punitive Sexuality Regime in 20th Century America

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Chapter 1

Introduction: The Difference a Generation Makes

I lied to my parents about why I was going to Boston. I was 19 and dealing with the crushing blow of returning to my childhood home in rural Connecticut after a fall spent studying abroad in Rabat, Morocco, and then starting college, in earnest, that spring. This would prove challenging for any teenager, but it was particularly brutal for me because of what had happened over the course of the previous nine months. In short, I kissed a British woman on a beach in Rabat, realized I was a lesbian, started attending the college that the Princeton Review calls the “second most LGBT friendly in America,” and fallen fast in love with another girl.

It would be wrong to say that the thought of being gay had never crossed my mind before that year. But what had long been an internal crisis that I pushed deep into the recesses of my mind turned into an external crisis as I lived a double life -- too afraid to tell people the truth but too excited by the possibilities of young love to not live that truth. So, I told my parents I was going to Boston for a girls’ weekend with friends from my college newspaper when in reality I was going to Pride with my then-girlfriend.

Our first day in Boston, my girlfriend and I attended one of the more radical events held during the city’s Pride celebration. It was a march specifically for queer women, with a name too provocative for me to comfortably write in an academic context. We stomped through the Common with a few dozen people -- primarily lesbians, bisexuals, and transgender women -- screaming obscenity-laden slogans against fascism generally, the Trump administration specifically, the police, and capitalism. At this point, I did not fully understand the political implications of anything I was chanting, really. The historical reasons for why an event for gay

women would be so leftist and highlight issues which to me seemed only tangentially related to the gay rights movement, seemed opaque. Still, it was exhilarating to walk through a major city screaming about my mostly hidden identity.

After exhaustion hit and the cheers dissipated, we stayed on the Common a little while longer, taking pictures of each other before heading to a cafe across the road. Sipping my chai latte, I stared at the newly taken photographs on my phone. For months, I had done everything in my power to maintain the image of heterosexuality on social media. Something shifted that night, though. Suddenly, my costs of existing openly just did not seem as significant as the benefits of living honestly. I had just done something exciting. I wanted to tell the world about it. I bit the bullet and drafted an Instagram post. The photo was of me on the Commons with a Pride flag, with a caption referencing a news story from earlier that week: “Can you believe that Masterpiece Cakes doesn’t want to serve cute lesbians like me? #pride.”

I posted it, turned my phone off, and we headed back to our Airbnb.

Our host was a gay man, a few years younger than my parents, who worked in construction and lived in a beautifully restored 18th century house in Dorchester. He beckoned us into the living room and asked about our day. Inevitably, we ended up talking about Pride and quickly began to swap stories. He asked us to define terms that were well known to our generation of queer people: what did it mean to be genderqueer? Asexual? Polyamorous? In turn, he told us stories of a time before gay rights entered the mainstream. I was distracted, of course, filled with an awareness that my phone was probably filling up with Instagram notifications. Then, suddenly, our host said something which jarred me back to the conversation.

“There was a time when I was going to multiple funerals every month. I buried more than thirty friends.” My facial expression must have shifted because he paused to ask, “I’m sorry,

you're upset -- did you lose someone?" I shook my head and he continued. I had no connection to the crisis we had yet to explicitly name -- AIDS. But I was overcome with emotion. Of course, I knew the AIDS crisis had happened in the 1980s and 1990s. Up until that point, however, it had merely been a reference in history books. I did not know many gay adults and no one in my life had direct contact with the crisis, which meant it seemed much further away than it really was. And now, here I was, listening to a man younger than my own parents recount in detail his life during that tragic period.

Eventually, I pleaded exhaustion, leaving my host, and heading up to bed. My curiosity about AIDS and politics and identity and history temporarily evaporated in favor of a more immediate question. What happened with my Instagram post? I turned my phone back on and it quickly lit up with notifications -- a satisfying array of likes and comments and a few texts flooded my screen. I was not fully relieved because it was still too early to gauge what this would mean for my life. I was, however, glad that no matter what, the lie was over.

Research Questions

For a long time, it seemed like the events of that weekend -- going to the march, coming out of the closet, the conversation with my host -- all seemed significant but separate. Certainly, they all fell under the broad issue of sexuality, but just how direct the links between a decades-old political struggle and my posting on social media were was not clear to me until much later. When I began research for this thesis, I thought I was studying the history and politics of people who were similar to me. What's become increasingly clear; however, is that it's not just my ability to access civil rights that was influenced by the previous century of gay politics. The very

core of who I am as a person is the result of legislation, legal battles, protests, and policy which came into existence decades before I was born.

How could this be possible? How could I live in a world with gay marriage, gay celebrities, gay politicians, and gay pop culture when ten years before my birth people died, in effect, because they were gay? How has the world changed so much? How had gay people changed so fast? This became the puzzle which defined the next several years of my life, transforming from a casual interest in history to an academic obsession, which eventually led to me writing this thesis.

The last four decades of the gay rights movement alone provoke an array of questions. When this analysis of history is expanded to the whole of the twentieth century things become even more complex. While I intellectually disagree with the idea that gay rights have “moved so fast” as people often say, the question still arises intuitively in my mind. There is a clear and profound difference between my life as a lesbian in 2021 and the life of most gay people born in my parents’ generation. What is it about American politics that allowed for a civil rights struggle to go from buried underground to generationally defining in less than half a century? How much of a role do activists play in shaping their communities? How much of a role does the government play? How does the government we live under influence who we are?

This thesis takes up these various questions by looking at how government policy shapes political identity through the evolution of the punitive sexuality regime in the twentieth century. I chose to study the evolution of gay politics at three specific points in history: during the early Cold War when government paranoia allowed for an onslaught of restrictive policies; during the AIDS crisis when persecutory policies ultimately led to both an exacerbation of the epidemic and the end of government’s longstanding mistreatment of homosexuals; and, finally, during the early

twenty-first century, following the rapid expansion of civil rights for LGBT Americans. I argue that the government shapes the identity of its citizens as much as citizens shape their governments. At each historical moment it was the government's treatment of gay Americans which shaped how they talked about their sexuality, how they chose to advocate, and what aspects of citizenship were considered of paramount importance.

Literature Review: How Do We Understand Gay Politics?

The fundamental challenge in writing about LGBT history and politics is how fluid the concept is -- even more so than most identity-based political movements. Terminology is often redefined or discarded, understandings of gay and transgender identity are constantly expanding, and legal protections are sometimes broadened and sometimes stripped away. Texts that were on the cutting edge ten years ago can, today, seem painfully outdated. Additionally, legal protections for gay and transgender Americans are deeply fragmented across state lines. In 2003, it took a United States Supreme Court case to strike down Texas' anti-sodomy laws. A year later, Massachusetts courts struck down its ban on same-sex marriage. In 2016, North Carolina passed House Bill 2, legislation which preempted any local anti-discrimination ordinances protecting transgender people. Eleven years before, California banned all anti-transgender discrimination in public accommodations. It is from these contradictions and complications that a rich but sometimes frustrating literature emerges.

While this project primarily focuses on the mid to late twentieth century, I pull from the history and political science literatures spanning from the early twentieth century to the present. In conducting this research, I looked for texts which addressed both the change in gay life and politics over time and the government's involvement in gay life throughout the twentieth and

twenty-first centuries. The historical texts tend to address discussions of the lives of activists or the historical experience of gay identity and homophobia, while political science texts tend to revolve around public opinion and quantitative research regarding popular contemporary issues regarding gay rights.

Historical accounts of the lives of gay Americans are useful because there is a tendency to view LGBT politics as being recent and also as progressing abnormally quick for a civil rights movement. One of the goals of this thesis is to challenge the conventional view of the evolution of gay rights. The idea that gay rights “moved so fast” is almost ubiquitous in mainstream American discourse. This progression of gay rights is largely understood to have begun with the 1969 Stonewall Riots, escalated during the AIDS crisis, and peaked with the legalization of same-sex marriage in 2015. There are many issues with this analysis, including the erasure of several previous decades of activism. The challenge to this analysis is that there have always been gay people in the United States, yet there was virtually no acknowledgement of gay rights until the late twentieth century.¹

There is a wide array of literature regarding gay history in the United States and its overlap with the AIDS crisis. Due to the nature of gay history, many of these texts rely heavily on oral traditions -- it was often challenging to create contemporary written records of gay history due to obscenity laws. Included among these works are Charles Kaiser’s *Gay Metropolis*, and Eric Manus’s *Making History: The Struggle for Gay and Lesbian Equal Rights, 1945-1990*.² The written primary sources which do exist are a collection of recently publicized government

¹ I should note that I’m not making the claim that there have always been people who would call themselves gay or consider that to be their identity. There have, however, always been men who have had sex with other men and women who have had sex with other women.

² Eric Marcus, *Making History: The Struggle for Gay and Lesbian Equal Rights, 1945-1990: An Oral History* (New York, NY: HarperCollins, 1991). Charles Kaiser, *Gay Metropolis: the Landmark History of Gay Life in America* (Grove/Atlantic, Incorporated, 2019).

documents, often unflattering media records, and covertly circulated pro-gay literature. Margot Canaday's *The Straight State*, Eric Cervini's *The Deviant's War*, and David Johnson's *The Lavender Scare* all rely heavily on government records which were hidden from the public for decades.³

In their 2017 literature review, Barry Tadlock and Jami Taylor analyzed over 30 years of research on gay politics.⁴ They found that since 1996, the number of articles published in political science journals on LGBT politics has steadily increased. These articles encompass a large array of topics relevant to gay politics, including public opinion, marriage and civil union laws, as well as access to institutions such as education and the military. The majority of research since 2004 has focused either on the legality of same-sex marriage or public opinion on gay rights. AIDS received a large amount of attention in the early 1990s but there was a sharp reduction in research as the crisis began to dwindle. There were very few articles published regarding the role of the state, particularly the role of the federal government, in gay politics.

While there is an increasing amount of contemporary political research on gay politics, it falls within a relatively narrow scope of topics and analysis. Tadlock and Taylor point to the fact that frequently topics are extensively studied for a period of time but then drop off when the issue is deemed to be "resolved." This is the case with same-sex marriage, military participation, and the AIDS crisis. Though it is understandable that researchers choose to focus on areas which are major topics of contemporary discourse, this trend leads to a lack of historical perspective and long-term analysis on these issues within political science. Tadlock and Taylor also point to a

³ Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton, N.J: Princeton University Press, 2011).

Eric Cervini, *The Deviant's War: the Homosexual vs. the United States of America* (New York City, NY: Farrar, Strauss And Giroux, 2020).

David Johnson, *The Lavender Scare: the Cold War Persecution of Gays and Lesbians in the Federal Government* (Chicago, Ill: The University of Chicago Press, 2006).

⁴Barry L. Tadlock and Jami K. Taylor, "Where Has the Field Gone?," *LGBTQ Politics*, January 2017, pp. 212-233, <https://doi.org/10.2307/j.ctt1pwt8jh.17>.

challenging trend in political science literature on gay politics: for two decades the discourse was so dominated by discussions of marriage laws that the *Obergefell v. Hodges* ruling raised “questions about the future of LGBTQ-related policy and opinion research.”⁵

While there is, in many respects, a wealth of sources to pull from, there is a clear gap in the existing literature. Conventional analyses of gay history and gay politics are one-sided -- the protests, legal battles, and social struggles of gay Americans are studied, but the root cause of their marginalization is often ignored. There are very few texts which adequately address the role of the state in the gay rights movement. This widespread lack of historical knowledge is harmful because it conceals pervasive government involvement in the lives of private citizens and a series of legislative and bureaucratic decisions which could easily be replicated across many other demographic groups.

There is also a flaw in viewing systematic homophobia as an inherent part of American life, one which gay activists simply had to overcome. The overwhelming focus on quantitative public opinion research is indicative of this attitude within political science. While public opinion on gay rights and gay people is a significant area of research, much of this research tends to be based in an assumption of pre-existing homophobia that is changing over time. Similarly, other research focuses heavily on institutions like marriage and the military, from which gay Americans are currently or were historically excluded. This research is predicated on the assumption that such institutions were inherently exclusive towards gay Americans until relatively recently, rather than analyzing why this exclusion occurred or the identities of the responsible people and institutions.

⁵ Ibid

In his research Richard Valelly has pointed to the fact that the very idea of LGBT history is foreign to most people.⁶ Gay and straight people alike often share the uncritical belief that homophobic laws and policies are merely a part of life rather than a series of decisions made by political actors. Viewing systems of oppression as inherent to human existence allows the government to continue covertly controlling American lives.

Analytical Framework

This thesis utilizes the theoretical framework of American Political Development (APD) to analyze policy feedback, citizenship, and regimes. APD is an analytical tradition within political science which studies how ideas and institutions structure American politics over time. The field, which emerged in the 1980s, uses American history as a tool by which theoretical ideas can be studied and analyzed. While APD is rich in historical analysis, the field has paid insufficient attention to LGBT issues in American politics. This gap in the literature has been studied by both Richard Valelly and Stephen Engel. According to Valelly, “since they began publishing in the late 1980s, the two leading journals associated with APD, *Studies in American Political Development* and the *Journal of Policy History*, have published fewer articles on LGBT politics than other leading political science journals.”⁷ Engel suggests that this gap in the literature is not due to institutional prejudice, but rather the commonly understood nature of LGBT politics and how it clashes with the preferred methods of APD scholars.⁸ Perhaps due to the relative recency of mainstream gay politics, there is still a prevailing view that LGBT issues are inherently tied to out-group social movements. APD largely deals with entrenched systems of authority which

⁶ Richard M. Valelly, “LGBT Politics and American Political Development,” *Annual Review of Political Science* 15, no. 1 (2012): pp. 313-332, <https://doi.org/10.1146/annurev-polisci-061709-104806>.

⁷ Ibid

⁸ Ibid

seems to inevitably exclude gay politics.⁹ Engel and Valelly argue, and I agree, that there are other ways to understand LGBT politics, including through the lenses of policy regimes and citizenship.

In this thesis, I will use APD concepts of policy feedback and sexuality regimes to answer the broader empirical questions that were spurred by my interest in the change in gay politics. I think the evolution of the state's influence on gay Americans presents an interesting case study about how policy shapes identity and how policy regimes rise and fall.

What is policy feedback?

There is a tendency when studying politics to create a universally applicable model, which can be transported across any number of cases. We line up causes and effects sequentially, like a never-ending trail of dominos knocking each other over. We might imagine, for example, that a group of people are advocating for a policy which will benefit them. The policy is enacted and the group is satisfied. If this policy is then altered or abolished, those same people might come back and demand that the government continues to provide them this benefit. Alternatively, the government could seek to punish or stigmatize a marginal group in our society. Policymakers can enact oppressive policies, in response to a preexisting dislike of this group, and the policies will remain in place until the tides shift and the group becomes less marginal. But what happens when a group of people who never asked for the government to act also benefits or suffers from such a policy? What happens when policies unintentionally create a marginal group, not by nefarious action but by normative assumptions? What happens when dozens of these policies build off of

⁹ Stephen Engel, "Developmental Perspectives on Lesbian and Gay Politics: Fragmented Citizenship in a Fragmented State," *Perspectives on Politics*, June 18, 2015, <https://doi.org/https://doi.org/10.1017/S1537592715000043>)

one another over the course of decades? In short, do policies follow people or do people follow policies?

In her 2003 book, *How Policies Make Citizens: Senior Political Activism and the American Welfare State*, Andrea Louise Campbell analyzes the policy feedback effects of Social Security and the ways in which those effects shaped the political identities of senior citizens. Today it is a given among those interested in electoral politics that seniors are the age group that are most active in elections. This was not always the case -- in the 1950s, seniors voted at rates that were lower than younger people. Campbell argues that the expansion of old age welfare policies led to increased political interest and involvement among seniors because old age programs had the dual effects of improving the quality of life for seniors and giving them a greater interest in the system. Once policies relating to old age were implemented, seniors had a reason to fight to keep those policies. A formerly passive group of people were transformed into activists *after* the government created policies which benefited them -- not *before*, as our models might lead us to expect.¹⁰

Policy feedback suggests that policies shape the political landscape, much in the same way politicians, constituents, and major historical events shape politics. After all, it is through policy that we determine who is permitted to vote or who has access to opportunities like education and economic participation. Policies shape citizenship by determining what citizens have access to as well as what non-citizens cannot access. In the case of LGBT issues, policies can determine the public's perception of an identity group. As I will elaborate in subsequent chapters, prior to the early 20th century, there simply was not the same sort of widespread stigma directed towards homosexuality that we now accept as a fact of previous generations. It was not

¹⁰ Campbell, *How Policies Make Citizens: Senior Political Activism and the American Welfare State*, pg 14 - 37.

until the government created stigmatizing policies that stigma became pervasive in the mainstream.

In the case of LGBT politics, these policy feedback effects are evident in studying the political landscape of gay activism during the Cold War. During the 1950s, there was a concerted effort on the part of Congress and the executive branch to remove gays and lesbians from federal employment. This purge of gay employees occurred as a result of Cold War-era paranoia regarding possible communist infiltration of the federal government. This purge forced many activists into secrecy, leading to a gay rights movement that was surreptitious and structured in secretive cells, ironically comparable to Communist Party organizations in the United States. The secretive nature of gay politics persisted for decades, limiting the manner in which activism could occur. Essentially, positive government action in regard to gay rights did not occur because (among other reasons) gay activists had to be secretive. The activists had to be secretive because the government criminalized open activism.

In studying policy feedback, we are able to look at a fuller picture of the political landscape. We do not need to separate one facet of American politics from the rest or create narratives with specific sequences that might not necessarily exist. Policies follow political action, but political action also follows policies. This is not only a historical way to study politics but also a way in which we can make sense of the present. When studying modern gay politics, aspects of twentieth century policy are still evident. For example, the return to the exclusion of transgender service members from the military during the Trump administration was not a prejudiced decision that came out of nowhere for the sake of prejudice. Rather, it is a modern extension of a military policy banning homosexuals which became highly politicized in the twentieth century. Since so much politicization surrounded LGBT service members, there was

already a fervent opposition to gay people in the military among many on the right. There was also a similar passionate level of advocacy for queer inclusion among some Democrats. The opinions held by Americans on LGBT service members were highly politicized as a result of prior government policy.

What is a sexuality regime?

One of the many challenges inevitably faced by anyone advocating for political change is that they must constantly fight a war on many fronts. There is never just one obstacle to altering the behavior of the government. Rather, there are countless issues which need to be addressed -- constitutional amendments, executive orders, acts of Congress, local ordinances, court precedent, and bureaucratic decisions all interact with each other, multiplying, and self-replicating over the course of decades until there is a constellation of government behavior to challenge. That constellation is a policy regime. Rather than looking at individual government actions, a policy regime is a view of the many overlapping decisions made at different levels of government.

A significant component of policy regimes is their long-term durability. For a policy regime to truly take shape there typically needs to be years of legislation and policy making, followed by years of reaction and reinforcement. Regimes are durable and they are extraordinarily difficult to alter once they are in place. For this reason, in particular, if and when a policy regime falls, it is often after years of pushback as well as significant events (e.g., the AIDS crisis) that trigger a collapse.

The current literature in APD on policy change does emphasize how challenging it is to alter a regime. It is important, however, to understand that while regimes are durable, they are not permanent. In APD, the term *intercurrence* is used to describe one of the reasons for regime

change. Intercurrence addresses the fact that regimes are not manufactured by individuals in one go. They are systems which build up over time due to a variety of actors and institutions. As a result, over time, as one policy is added on top of another, tensions emerge.¹¹ Inevitably, intercurrency allows for some contradictions to be built into a system -- these contradictions can be exploited by those with a vested interest in changing the system. Additionally, regimes are often built on assumptions about how the government or political actors are going to behave. These assumptions are not a matter of legislation or policy but there are often points at which policies hinge on the assumption that certain behaviors are going to persist. If these behaviors do not persist, it can begin to undo the existing policies which make up a regime. Another way regimes can shift is through layering or policy drift. Layering occurs when new policies are layered on top of old policies, which leads to an unintentional, but fundamental, reshaping of how policies function. Policy drift is when institutions are not adequately updated for the changing times, essentially manufacturing their own irrelevance. Intercurrences, layering, and policy drift, among other phenomena, contribute to changes in policy regimes which can eventually lead to extreme shifts or breaks in spite of the long-term durability of these regimes.

The specific policy regime which this thesis will address is the sexuality regime of the twentieth century. In this case, there are decades of government action -- some made with an explicit intention to discriminate and some which happened as a result of heteronormative assumptions -- which created a system of “federal policies that allocated public stigma and esteem according to sexual orientation.”¹² Over the course of the first half of the twentieth century, hundreds of government decisions, made at all levels, worked together to create a culture that was hostile to homosexuals, eventually reaching its apogee with the Lavender Scare,

¹¹Adam Sheingate, “Institutional Dynamics and American Political Development,” *Annual Review of Political Science* 17, no. 1 (November 2014): pp. 461-477, <https://doi.org/10.1146/annurev-polisci-040113-161139>.

¹² Valelly, “LGBT Politics and American Political Development,” pg 317

which resulted in the expulsion of thousands of gay men and lesbians from federal government jobs.

The concept of a sexuality regime is not unique to the United States in the 20th century -- there are always systems within government which privilege certain behaviors and identities while stigmatizing others. While sex is, generally speaking, a private activity, it is also a societal necessity, a public health concern, a site of violence and exploitation, and an influencing factor on the economy. The government regulation of sex is inevitable and often necessary, particularly to protect vulnerable people from harm. What is not inevitable are the ways in which certain sexual behaviors and the people who partake in them become the subject of public scorn and government persecution.

In studying sexuality regimes, we can understand why some people are discriminated against while others are not. We can also better understand how individual policies can build up and build on each other -- with no one architect who sought to create the eventual system in which people live.

Chapter Outline

The central argument of this thesis is that the punitive sexuality regime led to a change in both gay politics and gay identity. In turn, however, these altered forms of gay politics were what caused the eventual downfall of the punitive sexuality regime and rise of the new, expansive sexuality regime in the early twenty-first century. I argue that it was actions performed by the state, at all levels of government, which led to reactions from gay activists, that best explains this dramatic transformation, rather than the typical view that gay activism provoked government response.

In Chapter Two, I will outline and analyze the beginning of the punitive sexuality regime and post-War World II gay rights activism. While the first documented government policies discriminating against homosexuals were in the eighteenth and nineteenth centuries, the early twentieth century marks the first time there was a concerted government effort to quash homosexuality and gay rights. There was an expansion of policies and stigma that overtly and covertly increased stigma towards gay Americans, with the regime reaching its peak during the Lavender Scare. At this point, the gay rights movement reacted in two ways: on the West Coast, the Mattachine Society began to operate in secret, using a complex system to ensure that they would not be arrested or accused of communism. On the East Coast, federal employees, like Frank Kameny, openly fought the federal government's decision to purge homosexuals from civil service positions. The secretive nature of the West Coast was the result of suffocating government policies, while the overt activism in the East was the result of massive job loss galvanizing people who were previously not involved in the movement.

In Chapter 3, I discuss the AIDS crisis and the ways in which it led to the downfall of the punitive regime. President Ronald Reagan's administration was essentially silent on the crisis for all of his first and much of his second term. This government inaction was largely the product of the ways in which the previous generation had silenced gay voices. Any gay person with political power was effectively silenced by the sexuality regime, which meant that in turn federal government officials had little reason to believe that homosexuals dying of AIDS was an issue of any relevance to them. The structure of the punitive sexuality regime, however, would prove to be its own downfall. The regime was dependent on gay people believing that it was in their best interests to remain closeted. Because people were closeted, the government was able to ignore the crisis' very real impact on the country. This meant that gay people now faced a life-or-death

struggle that could not be solved through remaining in the shadows, -- eliciting a popular rallying cry that “silence equals death.” Eventually, the scale of protest and political outrage from gay Americans was powerful enough that it smashed old barriers of silence and secrecy.

The final chapter addresses the current sexuality regime, beginning in the early 1990s and continuing into the 2020s, which I describe as the expansive sexuality regime. This chapter discusses the rapid rights expansion which occurred during the 2000s and 2010s and contemporary attitudes towards gay identity. I reflect on how the vestiges of the old regime still influence the lives of people living in the new regime and how the cost of overcoming oppression might be the destruction of gay culture.

Ultimately, I conclude that while the sexuality regime of the twentieth century frequently stymied the ability to access equal rights, it also eventually set the stage for a new type of gay politics. The regime was self-sustaining for decades, but ultimately its fundamental attributes are what killed the regime. Its legacy persists both in gay culture and in mainstream law, but the fundamental silencing effect associated with the regime would be extremely challenging to recreate.

Chapter Two

Are You Now or Have You Ever Been a Homosexual?

The Rise of the Punitive Sexuality State

The teenager's voice was audibly distraught. He was a young servicemember -- only 19 -- and he had just been arrested. Less than an hour before he was sitting on the beach with his girlfriend. But he had left her there and headed towards a public bathroom in a nearby park. Like many homosexuals in 1967, he knew that a public bathroom was the surest and, surprisingly, the safest place to find another man to have sex with. Little did he know that the bathroom was being watched by the police and outside a CBS news crew was waiting to use him as an example in their documentary about the growing homosexual problem in America.

"Will my parents find out," he asked the police officer.

"Your parents won't know about this, but your lieutenant commander probably will."

The serviceman's panic heightened. In 1967 being arrested for sodomy could result in being discharged from the military. Over the past half century, committing homosexual acts had become increasingly dangerous, changing from a stigmatized secret to an explicitly criminalized act.

"Any child could walk in," the police officer said. "How do you think it would affect them mentally for the rest of their life if they saw an act like that committed?"

"I realize that," he replied. "But the thing is, my life -- I'll be wrecked. I'm only 19. This'll ruin me. I couldn't take it if anyone knew this -- I mean, what about my family?"¹³

CBS concealed the identity of the young man, so whether or not his life was ruined remains a mystery. But the broader message is clear. The world was changing in the late 1960s: this was two years before the Stonewall riots and two decades before the AIDS crisis would

¹³ *CBS Reports: The Homosexuals* (CBS, 1967).

catapult gay rights to front page headlines. Yet for gay Americans, every day life could be fraught with peril.

This chapter will discuss the broad political conditions which led to that teenager's arrest in 1967, as well the arrests, firings, and military discharges of thousands of others throughout the first several decades of the twentieth century. The conditions for a state which was hostile to gay people began to take shape through the policies of immigration officers in the 1910s and military officials during World War I. Policies which stigmatized or penalized homosexuality proliferated in the 1920s and 1930s, eventually leading to what I describe as the punitive sexuality regime taking shape in the years following World War II.

As a result of Cold War paranoia, these local, state, and federal government policies were able to coalesce into a powerful regime which had a silencing effect on gay Americans. Consequently, even the pro-gay activism which did occur during this period was shrouded in secrecy and limited in effectiveness. This was the height of punitive, anti-gay politics in the United States. In this chapter, I will argue that these extreme punitive policies had a such a silencing effect on gay Americans that the ability for activists to organize and push for change was extremely limited. The policies of the United States government were so strong and self-perpetuating that there was virtually no way to break the regime and advance the cause of gay rights.

I will first discuss the formation of the regime in the years leading up to and immediately following the Second World War. Prior to this period in American history there was cultural stigma against homosexuality and there were laws in some places restricting the rights of those who engaged in sodomy. Additionally, the existence of laws prohibiting obscenity meant that open discussion of homosexuality was often tightly restricted or illegal. Technically speaking,

prior to 1962, sodomy was a felony in every state and those convicted could face time in prison. Nevertheless, there was actually a greater level of cultural tolerance towards homosexuals prior to World War II than there was in the years following the war. This was in part because the idea of the homosexual as a type of person, rather than an activity someone engaged in, had not yet taken shape.

During the early years of the regime, governmental decisions typically were put into place in a haphazard manner -- there was no single top-down decision which made being gay illegal or restricted freedom across the board. As more of these laws sprang up across the country, they spurred further government regulation -- creating a self-perpetuating regime. As I will elaborate below, many laws and attitudes regarding homosexuality were originally based on assumptions born of ignorance, which meant that there was extraordinarily little pushback within the government or the public sphere, which in turn led to further policies and regulations built on these assumptions. I will then discuss the reaction that gay Americans had to these policies which were typically closeting in nature. Since these policies strongly incentivized concealing one's identity, most gay people during this era would never actively fight for the expansion of their own civil rights. Those who did faced so many restrictions that they were forced to operate in an inherently limiting secrecy. The even smaller number of people who were openly gay and public activists experienced limited success and faced extreme social consequences for their activism. The silencing power of the punitive regime meant that forward progress on gay rights was almost impossible at this period in American history.

In order to understand the formation of the punitive American sexuality regime, it is best to conceive of it in three component parts: there were normative assumptions which were not intended to be homophobic but perpetuated government enforced homophobia nonetheless; there

were explicitly prejudiced laws which were intended to marginalize and restrict the lives of gay people; and there were the contemporaneous reactions which gay people had to oppressive conditions – namely, whether they choose to describe their sexuality as a matter of conduct (i.e. there is no true homosexual, rather there are people who have gay sex) or character (i.e. being gay is a minority culture, comparable to minority races and religions). The first two components of the regime are actions which were shaped by the government and the heterosexual majority in American society. The third component is the reaction which the homosexual minority had to the majority. This third component served to both indicate how the sexuality regime shaped the lives of gay people and also reveals the role which gay people played in upholding the regime themselves.

Normative Assumptions: The New Deal and the Formation of a Heteronormative Welfare State

Normative assumptions by their very nature are challenging to immediately identify. Actions and beliefs which seem innocuous to many may be deeply harmful to some. The distinction between policies built on normative assumptions and policies built on explicit prejudice is that the intention behind the former was not to punish homosexuals for being homosexual. Criminalizing sodomy because the prevailing cultural view is that only reproductive sex is moral is a normative assumption. Creating police units for the specific purpose of arresting men for having oral sex with other men but not doing the same for men who have oral sex with women is an explicitly prejudiced government action because oral sex between men and women is also sodomy and was also usually criminalized.

In this section, I will discuss normative assumptions which are not openly tied to gay identity. These assumptions were built around the idea that the ideal Americans were masculine men and feminine women who would get married and have children. Assumptions in this category often related to issues of how the government created policies to organize American life.

Historian Margot Canaday has researched how the welfare state and immigration laws were strongly influenced by normative assumptions in the twentieth century. According to Canaday, this aspect of the punitive sexuality regime first took shape in the early years of the century, due to fallout from the Great Depression and World War I.

The earliest federal policies that explicitly targeted homosexuals came from immigration law. In the early twentieth century, as Europeans poured into the United States, the Immigration Bureau had growing concerns about “sodomites” entering the country. This concern was the result of what officials claimed was a parallel issue occurring in Europe as immigration numbers rose in the United States. According to government officials, gay men, seeking money or resources, would target affluent but closeted homosexuals in cities like Berlin, have sex with these men and then extort them. Often the only way for wealthy men to end this extortion was through paying for the extortioner’s passage to the United States. This decadent European depravity was imported to the United States via new immigrants.¹⁴

The first efforts to classify people as homosexuals came from immigration officials, who feared that homosexuals were inherently inferior, would lower the moral character of the United States, and would inevitably become public charges due to their obvious deficiencies. The idea of a homosexual, as a category of person, was in its infancy. The government’s actions were not

¹⁴Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton, N.J.: Princeton University Press, 2011), 19.

directed at gays simply because homosexuality was a category of identity that it considered inferior. Rather, the concern came from an assumption that to engage in sodomy there must be something fundamentally wrong with a person. In psychology, a relatively new field at the time, engaging in homosexual behaviors was described as a form of sexual psychopathy.¹⁵

The exclusion of individual gay immigrants from the United States was almost always justified by the belief that they would not hold steady jobs and would instead become a burden of the state. There was no legislation that explicitly prohibited gay people from immigrating to the United States until the passage of the McCarran-Walter Act of 1952 but people were screened for homosexuality when entering the country as early as 1910.¹⁶ In this way, it was not homosexuality on its own which led to exclusion. Rather it was an assumption as to what homosexuality would lead to that concerned officials.

The government's concern with the effect of homosexuality on American life was not limited to immigrants. The Depression, in particular, provoked fear in government officials due to a prevailing belief that men without jobs were inherently feminized and weaker. At the time many men felt emasculated by their reduced circumstances and fled their families. One man interviewed by an economist during the Depression said, "I guess we'll all be wearing skirts pretty soon."¹⁷ This type of sentiment led to government concern that the American family was in crisis. The government's fear that American men were becoming feminine was not intrinsically built on the idea that feminine men were gay men and gay men were bad. Rather, Americans believed that men ought to be providers -- thus it was a sign of decline in American life when men were unable to provide. In a country which was already in an economic crisis,

¹⁵Ibid 20

¹⁶Ibid 21

¹⁷Ibid 95

adding the apparent decay of American families and the psychological weakening of American men seemed catastrophic.

In response to these concerns the government tailored many relief programs to encourage traditional heterosexual families while also providing economic relief. James McEntee, the director of the Civilian Conservation Corp (CCC), justified the program because it would provide “better husbands to two and half million girls.”¹⁸ The reality was, however, that many gay men were part of the CCC.¹⁹ Additionally, there are several cases of men listing their required dependent on CCC forms as “close male friends” with whom they “made their homes.”²⁰ So while normative assumptions tended to ascribe more benefits to traditional, heterosexual life, there weren’t stringent restrictions designed to punish homosexuals. If gay men benefited less from these programs, it was somewhat incidental but still harmful.

When Assumptions Meet Persecution: Gay Killers and Gay Traitors

There is a second category of assumptions -- these were explicitly about gay identity but were borne out of a combination of ignorance towards actual gay people and a lack of information. These assumptions were widespread cultural beliefs about who gay people were and how they behaved. This second set of assumptions often led to the implementation of explicitly homophobic laws. Such cultural ideas became the inflection point at which ignorance shifted to persecution. There was constant negative representation of homosexuals with essentially no positive information to counterbalance public perception.

Historian Eric Cervini and attorney Joey Mogul both write about popular misconceptions as to who and what gay people were and how these misconceptions became so entrenched in American society that they eventually dictated laws and policies. Mogul writes about the idea of

¹⁸Ibid 126

¹⁹Ibid 121

²⁰Ibid 131

the “gleeful gay killer” -- a homosexual who is so sexually perverse and amoral that he commits violent crime with no remorse. The formation of this archetype led to widespread moral panic in the United States and became a significant factor in rising numbers of police crackdowns on gay sex. Cervini discusses the concept of the traitorous homosexual, who could not be trusted and would inevitably act as a double agent -- an archetype so entrenched in the government during the Cold War that it became the primary justification for the legislation of the Lavender Scare. Both of these stereotypes can be traced back to individual people and events in history, whose behavior was then widely applied to all homosexuals, in part due to the lack of public representation and knowledge of gay people.

The idea of the gleeful gay killer can be traced back to a single court case in 1924. Richard Loeb and Nathan Leopold, two University of Chicago students, who “sometimes had sex with each other” brutally murdered a 14-year-old boy named Bobby Franks.²¹ Following the murder they poured hydrochloric acid over the child’s body, including on his genitals. The nature of the attack meant that the police presumptively assumed the murder was committed by sexual deviants. The initial suspect was in fact one of Bobby Franks’s teachers, who was described as “effeminate.” Loeb and Leopold were eventually caught and put on trial for the murder, leading to a national media sensation. The prosecution heavily leaned on Loeb and Leopold’s apparent homosexuality as the reason for their criminal activity -- they were understood as amoral hedonists who did not think of the ethical implications of their activities. It was suggested that if the police had not apprehended the two in time, they would’ve escaped to a foreign, gay city like Paris, where they would live off the fortune they intended to extort from Franks’s father.

²¹Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, *Queer (In)Justice: The Criminalization of LGBT People in the United States* (Boston, MA: Beacon, 2011), 20.

Loeb and Leopold were both convicted, and Loeb was eventually murdered in prison. His killer claimed the murder happened in a moment of “homosexual panic” and was acquitted by the courts. The aftermath of the trial, however, spread far beyond these two men and the family of their victim. According to Mogul, “the story inspired an award-winning, fictionalized ‘documentary’ novel, films, stage plays, and at least one musical.”²² This case and the media’s reaction to it created an enduring image of gay murderers who were sexually depraved and acted without remorse. This image endures in pop culture, across genres, in films as disparate as *The Silence of the Lambs*, *Pulp Fiction*, and many of the James Bond movies.

Loeb and Leopold’s case, on its face, appears to be more harmful than helpful to an argument in favor of gay rights. The two were having sex with each other and the crime definitely seems to have been at least partially sexual in nature. It reveals, however, the roots of an assumption which persisted across the 20th century and, to some extent, still persists today. It also reveals the inherent hypocrisy of the assumption. There have been countless violent crimes and countless sexual crimes that were committed by straight people. While I would not ascribe morality to one group over another in this case -- violence and cruelty are traits which are not exclusive to any identity -- it’s worth noting that by numbers alone, there are far more straight people than gay people in the world, meaning there are almost certainly far more violent crimes committed by heterosexuals than by homosexuals. The difference, however, was that in 1924 heterosexuality was so ubiquitous it was hardly worth commenting on in the media. Crimes committed by straight people were crimes, crimes committed by gay people were gay crimes. This assumption, in concert with other social and political developments, contributed to a rising criminalization of gay identity. Stereotypes shifted to systems of sexualized policing, in which criminal stigma was accorded to gay people. Since gay people did not have the same access to

²²Ibid 22

the media that powerful straight people had, there was no way to counteract the negative assumptions that were being enforced and reinforced by politicians, the police, and journalists.

While Loeb and Leopold are not the only example of this archetype appearing in the media, their case came early in the era of the punitive sexuality state and had staying power in the consciousness of the American people. Their story and similar stories allowed for the shift I will discuss in the next section, towards harsher policing of those with so-called deviant sexualities.

The idea that gay men were violent and amoral was not the only significant persecutory assumption of the twentieth century. Another deeply harmful myth was that of the gay traitor. During a time as politically tense and paranoid as the early Cold War, the United States government deeply feared spies and treason. When the myth of the gay traitor travelled to America from its origin in Europe, it became an easy way to incite homophobic panic in Congress and among federal agencies.

The origin of the gay traitor stereotype can be traced back to one man -- the Austro-Hungarian colonel, Alfred Redl. Redl was a high-ranking official in the Austrian government from 1901 until 1913. He developed Austria's counterespionage program and had access to an enormous amount of classified information. He was also gay, a fact which widely known in Vienna. While men did not advertise their homosexuality in Austria at this time, they also did not need to make an enormous effort to conceal it -- even the emperor's brother was known to have sex with men.

Redl eventually sold out the Austrian government. For years he passed their secrets on to Italy and Russia. Shortly before World War I broke out, Redl was caught, confronted by government officials, and allegedly committed suicide. When Austria began to experience

massive casualties in the war, they scapegoated Redl and insisted to the public that it was his sexuality that led to his treachery because it made him more susceptible to blackmail. In reality, Redl was not being manipulated by the Russians or the Italians -- he just wanted the money. Redl's story spread to the United States through Allen Dulles, who worked for the US embassy in Austria during this time and would later become the head of the CIA.²³

When the Red Scare began to take shape in the 1950s, this fear of homosexual treachery, rooted in one inaccurate story about one traitor who was only incidentally gay, became the basis for the ejection of thousands of gay men and lesbians out of government employment.

Perpetuating an inaccurate belief that homosexuals were traitors who could not be trusted forced unfair stigma, upon gay people at arguably one of the worst times in American history to be seen as a potential security threat. While the Austrian government was trying to cover up their own failings, Dulles was not party to that scapegoating, nor were the other government officials who repeated the claims of gay traitors, once again, this is an example of people who have little contact with a misunderstood, minority group making assumptions rooted in fear and ignorance but not explicit malice.

At this point in American history, there was an expansion of anti-gay policies as the result of these assumptions. At a state and local level, there was fear that deviant homosexuals posed a very real risk to communities due to their violent and perverse nature. At a federal level, during a time of extreme paranoia, government officials were concerned that gay Americans posed a risk to national security because of the flawed interpretation of the Redl case. This is an example of a policy regime taking shape: rather than an organized effort to criminalize the lives of gay people,

²³Eric Cervini, *The Deviant's War: the Homosexual vs. the United States of America* (New York City, NY: Farrar, Strauss And Giroux, 2020), 30-33.

there were several different issues being addressed at different levels which unintentionally came together to create a government which was hostile to gay Americans.

Explicit Persecution: Vice Squads and the Lavender Scare

The war on homosexuality became overt during the Lavender Scare of the 1950s. In an amendment to a 1950 foreign policy bill, Republican congressman Arthur L. Miller of Nebraska proposed that all homosexuals be banned from federal employment. He described a skeleton of homosexuality, covered with “fetid stinking flesh” that threatened to contaminate all of America. This amendment was in response to recent reports that the State Department had employed over 90 homosexuals.²⁴ During this era of heightened paranoia about spies and blackmail, gays were viewed as particularly dangerous to American security. While this fear of homosexuals was clearly already present in American political culture, it was greatly exacerbated with the true beginning of Senator Joseph McCarthy’s Lavender Scare.

Best known for his role in the anti-communist Red Scare, in the early years of the Cold War, McCarthy experienced a meteoric rise and rapid decline in power in just four short years. The legacy he left behind, however, persisted far longer. Though the anti-communist rhetoric of the era is far better remembered, McCarthy’s anti-gay actions were also deeply destructive. McCarthy himself was suspected of being a closeted homosexual by many of his contemporaries -- he was not married and had no children -- which perhaps played a role in him later recusing himself from congressional hearings related to homosexuality.²⁵

²⁴ Naoko Shibusawa. "The Lavender Scare and Empire: Rethinking Cold War Antigay Politics." *Diplomatic History* 36, no. 4 (2012): 723-52.

²⁵ Cervini, *The Deviant's War*, 32.

The Red Scare and the Lavender Scare were intertwined, both rooted in a widespread paranoia regarding communist influence and infiltration in the United States. McCarthy was able to inflame this paranoia using examples of communist infiltration in the government that were either false or distorted beyond recognition. He spoke on the floor of the Senate for six hours, describing eighty-one alleged communists working in the State Department. Of those communists, two were homosexuals. The following week, fellow Republican senators questioned the deputy undersecretary of state, leading to the State Department officially admitting ninety-one homosexual State Department employees had resigned in the previous three years due to a loyalty program started by Harry Truman.

The loyalty program, which began in 1947, sought to investigate federal government employees in order to determine their loyalty to the United States. In the same year, the Senate Committee on Appropriations claimed that there was extensive employment of “admitted homosexuals, who are historically known to be security risks.”²⁶ The known historical risk was literally just Red. Once the existence of homosexual employees in the federal government became widely known, there was an increasing concern in Congress that these people posed an outsized security risk to the United States. They repeatedly cited an increasingly distorted version of the Albert Redl case.²⁷

Homophobia was already widespread throughout American culture and encoded in the law, but the Lavender Scare brought new fear into the lives of gay Americans and in many ways stripped them of their citizenship.²⁸ Five thousand gay and lesbian government employees were

²⁶ Ibid 38

²⁷ Ibid 39

²⁸ Andrea Friedman. "The Smearing of Joe McCarthy: The Lavender Scare, Gossip, and Cold War Politics." *American Quarterly* 57, no. 4 (2005): 1105-129.

fired and outed during this witch hunt, and countless more were locked out of federal employment -- like Frank Kameny, whom I will discuss in the next section.

Lavender Scare politics, and the sexuality regime it created, effectively stripped gay men of their status as Americans. Sexuality regimes, by definition, accord stigma and esteem to groups of citizens on the basis of their sexual orientation. Homosexuality is typically stigmatized in modern history but rarely on the level that was seen during the Lavender Scare. This was an extreme example of a punitive, anti-gay regime. The fear that the mass outings of the Lavender Scare brought to gay people forced them into a silence which allowed the government to erase them. It is quite easy to ignore that people are being harmed when you strip them of their value or make them conceal the ways in which they were harmed. For gay people in the mid-twentieth century, it seemed those were the only two options: remain closeted and continue to hold political influence or be open and lose your job, your influence, and possibly your freedom. In Washington, DC, being gay became equated with being a traitor. Gay people were no longer merely perverted and immoral; they were, by nature, treasonous. To be gay was to be a threat to American values and an asset to the Soviet enemy.

In concert with the federal government classifying homosexuality as tantamount to treason, local governments were cracking down on people whom they believed to be perverse and violent threats to the American people. Anti-sodomy laws were not new, by any means, at midcentury. The manner in which they were enforced, however, was a function of the moral panic regarding homosexuality. Alfred Kinsey's research in *Sexual Behavior in the Human Male* indicated that in 1948, when the book was published, 95% of Americans broke laws which regulate sexual activity. Fifty percent of men admitted to cheating on their wives, which was illegal in many states, and most men, gay and straight, engaged in sodomy.²⁹

²⁹ Cervini, *The Deviant's War*, 18-20

Senator Miller, partially in response to Kinsey's research, as well as fears of sexual revolution following World War II, sponsored legislation in 1948 which he claimed was intended to protect children from sexual abuse. Miller, however, seemed to have a view of sexuality similar to many of the people who followed the Loeb and Leopold case. He wrote into the bill a system of diagnosing people with sexual psychopathy and committing them to mental institutions. Sexual psychopathy was not limited to abusing children -- it punished anyone who "took into his or her mouth the sexual organ of any other person or animal." In the years following Miller's bill becoming law, twenty-nine states revised and strengthened their own laws regarding sodomy. The invention of sexual psychopath meant that the consequences for sodomy became more extreme -- in addition to going to prison, it was also possible to punish gay men by castrating or lobotomizing them.³⁰

Vice squads, which are commonly associated with cracking down on drug dealers and prostitutes, became increasingly interested in arresting homosexuals. Often police would hide in public bathrooms, waiting for gay men to meet up for sex. At this time, public bathrooms were known as a relatively safe zone for gay meetups. In an apartment there was a risk of being found out by a landlord, and in a house there was likely a wife. Gay bars were subject to violent raids and were at the mercy of their own landlords, who frequently were connected to organized crime. The seemingly public and private nature of a public bathroom made it a no-man's land with fewer repercussions.³¹ Still they weren't truly safe because at this point there was nowhere that gay men were truly safe from a persecutory government.

At this point the level of stigma faced by homosexual men was perhaps at its most extreme. Not only was it excruciatingly challenging to live a gay life, in the sense of having

³⁰Ibid 39

³¹ Stewart-Winter, Timothy, interview with Eric Cervini, *The Deviant's World*, podcast audio, October 9, 2020, <https://podcasts.apple.com/us/podcast/the-gay-october-surprise/id1492504640?i=1000494259962>

romantic relationships and a gay social circle, but it was also becoming a greater risk to simply have gay sex in private while living an otherwise conventional life. At this point the level of stigma faced by homosexual men was perhaps at its most extreme. Not only was it excruciatingly challenging to live a gay life, in the sense of having romantic relationships and a gay social circle, but it was also becoming a greater risk to simply have gay sex in private while living an otherwise conventional life. A prominent example of this reality is the story of Walter Jenkins, an aid to President Lyndon B. Johnson. Jenkins was one of the president's most trusted advisors and worked for Johnson for twenty-five years until October 1964, just three weeks before Election Day. Shortly before his resignation, Jenkins was arrested with another man in the bathroom of a YMCA in Washington, D.C. Though the White House tried to cover up the story, it was published by United New International, a wire service, and received press coverage across the country.³² Following the initial breaking of the story, it was also revealed that Jenkins had been arrested on similar charges in 1959. In the aftermath of the story breaking, Jenkins left the administration, citing exhaustion and never worked in politics again.

Jenkins never lived a gay life. He was married to the same woman until he died in 1985 and they had two daughters and four sons. His story reveals two things about the punitive regime: the total grip it had all gay people no matter how conventional their lives might have been and the way in which it removed political agency from gay Americans. For all intents and purposes, Jenkins was straight. While that might not be an accurate description of his romantic and sexual desires it is the reality of the life he lived.³³ He was not a part of the gay social scene. He was married with children. Jenkins had the ear of the president and enormous political influence when his identity was a secret. As soon as the world knew about his sexual encounters

³²Bart Barnes, "LBJ Aid Walter Jenkins Dies," *The Washington Post*, November 26, 1985.

³³Stewart-Winter, Timothy Interview

with men, however, he was stripped of much of his political clout. Though he remained close to Lyndon and Lady Bird Johnson, he never worked in the government again. He was silent about his sexuality while working in politics and was silenced in politics when his sexuality was revealed.

Fear of losing a job, fear having one's life ruined, and fear of being institutionalized pushed people to their breaking points. Many people simply lived in secrecy and silence, the government shaping them in such a way that their sexuality was all but erased because the alternative was devastating.

Conduct or Character? The Early Activism of the Mattachine Society and Frank Kameny

The Mattachine Society

For a short-lived organization, the Mattachine Society had a remarkably tumultuous history. Founded in 1950 by communist activist, Harry Hay, the organization is probably the second organized gay rights group in American history.³⁴ The group's name came from medieval French societies, where critics of the monarchs would meet wearing masks to ensure that their identities were protected. To ensure Mattachine members' identities were protected, the society was structured similarly to the communist groups where Hay first learned of political organizing. Much like a multilevel marketing scheme, there were five levels of membership, each requiring increasing levels of involvement and increasing levels of secrecy.

The Mattachine rose from obscurity to relative prominence in the California gay community following the trial of Dale Jennings, one of its founding members. Jennings was arrested in the spring of 1952 on charges of lewd behavior in a Los Angeles park. At the time it

³⁴ The first group was the ill-fated Society for Human Rights which was founded in 1924. Given the extreme secrecy of all early gay rights activists, it is possible that there are unknown groups whose security measures led to them being lost to history.

was common for people arrested for this type of crime to plead guilty in an effort to avoid a trial which could result in media coverage and public scrutiny. Rather than pleading guilty to avoid publicity, Jennings decided to fight the charges. The Mattachine raised money for his legal fees and used the trial as an opportunity to show the general public the ways in which gay men were routinely entrapped by the police.³⁵ Once again, desperate to preserve privacy, the Mattachine aided Jennings under yet another false name -- the Citizens' Committee to Outlaw Entrapment. Jennings was acquitted and the Mattachine gained a major upswing in both money and volunteers.³⁶

With prominence came complications, however, especially as Cold War tensions brewed in the United States. New members of the Mattachine were not necessarily as far-left as the founders -- many were not communists at all. Some, like Hal Call and Marilyn Reiger, stridently argued in favor of denouncing communism in all official materials and swearing to adhere to the laws of the United States -- the latter would be particularly challenging given that sodomy was still illegal in the United States.³⁷ In May 1953, these tensions came to a head at a days-long conference wherein the secret founders of the Mattachine finally revealed themselves and dozens of members fought over virtually every piece of writing produced by the society.³⁸ The original founders of the organization wanted to conceal their identities and continue to advocate for the idea of an ethical homosexual culture. Meanwhile, the moderates wanted the organization to end its secrecy, hand over leadership to the non-leftist members of the organization, and produce literature that was less radical. There was a war for the very soul of the first American gay rights

³⁵Dudley Clendinen, "William Dale Jennings, 82, Writer and Gay Rights Pioneer," *New York Times*, May 22, 2000.

³⁶ Ibid

³⁷ Devlyn Camp, *Queer Serial*, podcast audio, February 15, 2018, <https://www.mattachinepod.com/episodes>

³⁸ Ibid

organization to actually achieve anything and that war was rooted in a very real fear of being persecuted -- once for homosexuality and once for communism.

These debates were not merely over the divide between leftists and liberals. Two schools of thought, already bubbling beneath the surface, boiled over that weekend. By the end of the convention, it seemed that there would be a conclusion as to what it meant to be gay. This debate occurred for political reasons but had very real consequences for the individual members' personal concepts of self. In essence, the two groups were the leftists who believed homosexuality was a matter of character and the liberals who believed homosexuality was a matter of conduct.

Those who believed homosexuality was a matter of character and identity, a minority culture the same as a marginalized racial or religious group, tended to align with the original founders of the Mattachine. They believed that there needed to be a development of "highly ethical homosexual culture."³⁹ Those who believed that homosexuality was a matter of conduct – which is to say the only difference between a gay person and a straight person was who they took to bed – tended to align with the liberal anti-communists who took over the organization.

Following the conference, all of the original members of the Mattachine resigned from their roles and the liberals who had influenced the changes in messaging took over. In subsequent years, the society adopted an official policy of non-confrontational politics which caused many members to leave out of frustration with what they perceived as a lack of action.⁴⁰ At the same time, stepping into the light and removing the layers of secrecy meant that the Mattachine was able to gain more allies and influence the development of other gay organizations and publications.

³⁹ Ibid

⁴⁰ Ibid

The significant takeaway from Mattachine's political shift is that while there were certainly questions of identity, the primary reason for internal conflict was in response to external political pressure. The government's actions during the Red Scare and Lavender Scare equated homosexuals with communists, something which sparked fear in many gay Americans. Accusations of being a communist had ruined people's lives and careers. And while some gay people were leftists, many held the same anti-communist beliefs that were ubiquitous in mainstream politics during the 1950s. Furthermore, the government put gay Americans in a position where they felt that they had to behave the same way that communist organizations behaved. Both identities were criminalized to an extent that it was dangerous to even discuss support for either's ideology. Additionally, the very way that gay Americans described their identities were rooted in Cold War-era fears. The debates about conduct and character weren't merely rhetorical. They were a matter of describing oneself as a part of an outgroup -- a minority -- or describing oneself as a typical American in a time when deviating from the typical American identity could come with grave consequences.

Frank Kameny

While the Mattachine Society organized itself on the West Coast on the other side of the country in Washington DC, astronomer Frank Kameny was also fighting Cold War persecution of gay Americans. Kameny was an army veteran and held a doctorate in physics at the dawn of the Space Race. By all rights, he should have been one of the most sought-after employees of the United States government.⁴¹ Unfortunately for Kameny, he had a criminal record. In 1956, he had been arrested at a San Francisco bus terminal during a sexual encounter with another man which

⁴¹ Cervini, *The Deviant's War*, 23

Kameny claimed it was non-consensual. Kameny pleaded guilty and was sentenced to three years of probation. Shortly afterwards he moved to Washington, DC, and was hired by the Army Map Service. When news of his criminal conviction came to light, Kameny staunchly refused to provide an explanation of either his action or his identity, leading to his firing and, following his repeated letters of complaint, his being barred from working for the federal government.⁴²

While in many respects Kameny's situation was not unique for gay men of this period, his response was. He refused to comply with federal government officials' requests for an explanation into his arrest. Instead he devoted his life to fighting for gay rights. After his appeals through the judicial system failed, he became involved in direct action against the federal government. Kameny founded the Washington, DC, Mattachine Society (which was only loosely linked to the California organization) and organized protests against city's anti-sodomy laws and the American Psychiatric Association's classification of homosexuality as a mental illness. He wrote letters to President John F. Kennedy and organized some of the first public gay rights protests in American history outside of the United Nations and the White House.

Kameny's letter to Kennedy echoed the views of the original founders of the Mattachine Society. In the letter's opening paragraph Kameny likened homosexuals to Catholics, Jewish and Black people, all of whom were minority groups persecuted in 1960s America.⁴³ He appealed to Kennedy's support for the civil rights movement and the elevation of other minority groups. Perhaps most importantly, he pointed out the ways in which government homophobia harmed all Americans. "You have said: ask not what your country can do for you but what you can do for your country. I know what I can do best for my country [astronomy], but my country's government, for no sane reason, will not let me do it."⁴⁴

⁴² Ibid 67

⁴³ Ibid 58

⁴⁴ Ibid 62

Prior to his firing from the federal government, Kameny did have a gay social circle and sexual relationships with other men. He was not, however, an activist for gay rights. Unlike the original founders of the west coast Mattachine, Kameny was not a political radical.. Nor was he, like the second round of Mattachine leaders, a traditional liberal, who wanted his sexuality to be something of minor consequence. In being fired from the federal government for his sexuality, Kameny was radicalized in his own way. He wanted to be gay and treat his sexuality as part of his identity, but he didn't want to have to live outside the conventions of mainstream American politics. The Lavender Scare persecution assumed that all gay people were at risk of being compromised by blackmail. Kameny fought back to prove that if he could just live openly there would be no way to blackmail him. While Kameny did see some limited political success, it came at both great financial and personal cost to him. He never again held a job in astronomy, nor did he ever have a successful romantic relationship. Publicly working as a gay rights activist at this point opened him up to so much political backlash that his life became both dominated and restricted by his public refusal to adhere to the limitations of the punitive sexuality regime.

Conclusion

During the formation of the twentieth century's punitive sexuality regime, life for gay Americans became increasingly restrictive, as the risk of living as an openly gay person grew higher and higher. The regime was not deliberately constructed but rather took shape during the years immediately before and after World War II. As disparate policy decisions coalesced, the regime became self-perpetuating and increasingly challenging to break. Even those who attempted to improve life for gay Americans faced difficult restrictions on their activism, limiting the possibility of success. At this juncture in American history, the only way it would be possible to break the regime would be to reverse the incentives for hiding one's identity. At the peak of the punitive regime, there were very few incentives for living openly but many for remaining closeted. These incentives meant that it was particularly challenging to justify any sort of activism which could potentially have catastrophic effects on the lives of individual activists. The regime was so strong at this point that the only way to reverse its power would be to flip the incentives for gay activists -- that is, it would have to be more advantageous to be open both in activism and in one's personal life than it would be to remain closeted.

Chapter Three

I Don't Have AIDS. Do You?

The AIDS Epidemic and the Collapse of the Punitive Sexuality Regime

The year was 1982 and 853 Americans had died from strange new illness, nicknamed the “gay plague.” Fifteen months prior, the disease was first covered by the mainstream press in a *New York Times* article, entitled “Rare Cancer Seen in 41 Homosexuals.”⁴⁵ At the White House, Press Secretary Larry Speakes was taking questions during a run-of-the-mill press conference.

Speakes called on Lester Kinsolving, a journalist from Maryland, to ask a question.

“Larry, does the President have any reaction to the announcement—from the Centers for Disease Control in Atlanta, that A-I-D-S is now an epidemic and has over 600 cases?”

Kinsolving pronounced AIDS as an initialism, rather than the acronym we are familiar with today.

Speakes replied, “What’s A-I-D-S?”

“Over a third of them have died. It’s known as ‘gay plague.’” At this point the press room began to laugh at Kinsolving’s question. He continued, “I mean it’s a pretty serious thing that one in every three people that get this have died. And I wondered if the President is aware of it?”

“I don’t have it, do you,” Speakes replied, laughing.

The two went back and forth for several minutes. Kinsolving attempted to press Speakes on the issue, saying at one point, “does the White House look on this as a great joke?”

Speakes continued to jokingly misinterpret Kinsolving’s questions.

“Does the President, does anybody in the White House know about this epidemic, Larry?”

⁴⁵ *When AIDS Was Funny, When AIDS Was Funny* (Vanity Fair, 2015), <https://www.youtube.com/watch?v=yAzDn7tE1IU>.

“There has been no personal experience here, Lester. I checked thoroughly with Dr. Ruge this morning and he’s had no —” Speakes broke off here, because he was laughing. “No patients suffering from A-I-D-S or whatever it is.”

Speakes and Kinsolving continued laughing and making jocular comments in which each sarcastically implied the other was gay.⁴⁶ Kinsolving’s original question was never answered.⁴⁷

AIDS would, of course, not be the last time a presidential administration failed to adequately address a pandemic. Those suffering from coronavirus, however, were not met with the same derision that AIDS patients faced in the early years of the pandemic. The exchange between Speakes and Kinsolving makes one fact about AIDS abundantly clear: the issue was not that AIDS was unknown. The issue was that to those in power it seemed as though no one they knew was suffering.

In this chapter I will first discuss the Reagan administration’s response to the AIDS crisis, which ranged at various times from a conscious homophobic choice to ignore its existence to a reckless disregard of the rapidly hastening spread of the virus in hopes it would go away to a negligent misunderstanding of the scope of the problem and the risk it presented. This recklessness was predicated on the assumption that the people who were affected most by the AIDS crisis were not people who would be close to the Reagan administration or Reagan’s voter coalition. This assumption was born out of the closeting effect of the punitive sexuality regime -- because hiding one’s identity was incentivized, many straight people were unaware of the gay people who were present in their own lives. I will then discuss how the AIDS crisis led to a shift in the identities of those who participated in gay activism -- from initially being mostly those

⁴⁶ It initially seemed to me, that Kinsolving was at least sympathetic to gay Americans, even if he was straight. He was, however, extraordinarily religious and opposed to gay rights -- going so far as to call gay rights organizations ‘the sodomy lobby.’

⁴⁷ Ibid

who were the most marginalized to a broader cross-section of the entire gay community. This was the result of the flipped incentives of the AIDS crisis -- while previously there was very little incentive for being openly gay, the nature of the government's reaction to AIDS meant that being openly gay was now a matter of life or death for many Americans. Then I will discuss the nature of AIDS activism, particularly the AIDS Coalition to Unleash Power (ACT UP) and how it marked a shift in the way gay activism worked in the United States eventually causing the decline of the punitive sexuality regime. Ultimately, I will argue that the catastrophic effects of the AIDS crisis were brought on by the sexuality regime because the closeting nature of the regime meant that initially there was little cause for intervention on the part of the government. The regime, however, was eventually destroyed by the AIDS crisis because the lack of government intervention left people with no option but to explicitly share their identities with the world so that people would see the necessity of government action.

The closeting effect of the punitive sexuality regime meant there was functionally no way to live openly and to retain any sort of comfort, let alone influence. There was very little incentive for most people to be openly gay. It is both possible and likely that someone working in the White House or someone in the press room that day was gay. To Speakes, however, the possibility was absurd. Implicit in his comment about how no one at the White House had AIDS was that no one in the White House was gay. In order to survive, any gay people in the government were forced to carefully conceal their identities. To be openly gay was to cede all power and authority.

At the start, AIDS represented something of a Catch-22: if gay people spoke out and fought for government intervention then they exposed themselves and lost their ability to advocate. If they did not expose their identities, however, there was no way to adequately wield

their influence to encourage the government to address the epidemic. Over the next decade, as AIDS became headline fodder and began to represent something of an existential threat towards gay men, the scales tipped. The old incentives were wiped away and now there was cause to fight -- loudly and publicly. Those in the government who upheld the punitive sexuality regime, which consisted of layers of policies designed to discourage and conceal any sort of homosexual identity or activity, became the authors of their own demise. The political response to the AIDS crisis, on both the side of the government and the activists, broke the old regime.

In the previous chapter, I divided the government's actions in regard to gay rights into two sections -- normative assumptions and explicit persecution. While, broadly speaking, those were still the two constituent elements of the government's role in the sexuality regime, by the time of the AIDS crisis, punitive homophobia was so mainstream that the issue was no longer mere misunderstanding. In the early days of the regime, homosexuality was not discussed frequently and when it was discussed, there was little comprehension of what it meant. By the 1980s, homosexuality had been framed as a certain type of moral failing for so long that assumptions about gay people were inherently persecutory. For that reason, government action in this chapter will be discussed in one section.

Ignorance and Recklessness: The Reagan Administration's Response to AIDS

When Ronald Reagan took office in 1981, there was no doubt as to his feeling on homosexuality. On the campaign trail he had made his opposition to the gay liberation movement clear, saying in one speech, "my criticism of the gay movements isn't just asking for civil rights. It's asking for recognition and acceptance of an alternative lifestyle which I don't believe society can condone

nor can I.”⁴⁸ When he took office, he was not passive in his opposition to homosexuality or other social issues which religious conservatives opposed. In his first term, the president established the Family Policy Advisory Board, a group of primarily pro-life Christians who advocated for what they described as traditional “family values.”

The board’s members were not, however, the only stridently homophobic members of the Reagan administration. Reagan fought Congress to be able to appoint C. Everett Koop as the Surgeon General. Koop was vocally opposed to abortion, gay rights, feminism, and welfare -- to such an extent that he was involved in the production of several anti-abortion films.⁴⁹ He called sodomy “repugnant” and said it was out of line with American values. It took eight months for Congress to actually confirm his appointment -- an unusually long amount of time for a president to stand by an initial nominee. One of Reagan’s press secretaries, Patrick Buchanan, was particularly adamant about his opposition to gay Americans, to the point that he explicitly stated that AIDS was a punishment from God for the sin of sodomy. The Secretary of Education, William Bennett, was also a notably anti-gay figure in the executive branch, so much so that even in the late 1980s when AIDS was widely understood to be a massive national crisis, he still opposed including any discussion of AIDS in school curricula.⁵⁰

During the period when Reagan established the Family Advisory Board and appointed these officials, religious conservatives believed that feminism and gay liberation were an existential threat to the American family. The way they conceived of this threat was different from even modern conservatives, who might discuss a decline in morality or setting a bad example for children. At one point Reagan’s Special Working Group for the Family, established

⁴⁸ Colin Clews, *Gay in the 80s: From Fighting for Our Rights to Fighting for Our Lives* (Leicestershire, United Kingdom: Matador, 2017), 151-158.

⁴⁹ Ibid

⁵⁰ Ibid

in 1986, published a report saying that if the government did not act there would be no families left in America by 2008 due to the corrosive effects of the aftermath of the Sexual Revolution.⁵¹ In the same report, the group also claimed that the most economical decision was to continue teaching abstinence-only sex education (this was six years into the AIDS crisis) because trying to prevent the spread of sexually transmitted diseases and AIDS, as well as stopping teen pregnancy, would be too expensive with any other form of sex education. As regressive as it was, this report was actually the first time the Reagan administration put forth any concrete plan to address AIDS at all.

The president himself would not even use the word AIDS in public until later that year, when there were close to 16,000 cases of the disease in the United States. Even then he showed that he lacked basic knowledge about the disease. The purpose of his mentioning AIDS at this press conference was to say that he wasn't sure if children with AIDS should be allowed in schools because they risked spreading it to other children through contact. At this point, the scientific community had spent several years emphasizing to the public that HIV could not be contracted through casual contact.⁵² Whether Reagan was fear mongering or just genuinely oblivious seems to be a moot point. At this point AIDS had been a significant issue for the majority of his time in office. Lacking basic knowledge represented a recklessness so extreme that it was functionally the same as committing deliberate harm.

The following year, Reagan did participate in public discussion of fighting the virus but when he discussed his reasons for caring, he made it clear that his concern was not for the gay community, who were still the primary victims of the disease. Reagan told reporters that his desire to fight AIDS was born out of a story he'd heard about a man getting AIDS from a blood

⁵¹ Ibid

⁵² Ibid

transfusion and passing it to his wife, killing them both.⁵³ Stories like these were more accepted by the public than stories about gay men or heroin users -- people who had contracted HIV through blood transfusions were considered “innocent.”⁵⁴

For Reagan and his political allies, AIDS represented what gay activist, Colin Clews, described as “an inconvenient political fact.”⁵⁵ The pervasive conservative doctrine of the Reagan era was that the solution to issues of morality was to simply not present “immoral” actions as choices a person could make. The solution to any moral concern, be it drugs or sexuality, was to tell people “no” or “stop” rather than figuring out what to do if that was not a possibility. At one point, Reagan even echoed his wife Nancy Reagan’s famous anti-drug slogan: when asked about how to prevent further AIDS cases, he told reporters that people should “just say no.”⁵⁶

Perhaps, the most egregious aspect of Reagan’s handling of AIDS was the way in which he prevented the Surgeon General Koop from acting on AIDS. Koop was far from a supporter of gay rights, but he was doctor and in the face of overwhelming data, he felt compelled to act and work within the administration to find solutions for the crisis. He was actively kept from meeting with Reagan to discuss AIDS for years -- officials simply did not let him schedule a meeting. Until 1985 the White House forbade Koop from even speaking about AIDS to the public. And when Reagan finally created the Presidential Commission on AIDS, Koop was excluded while many prominent opponents to safe sex, like Cardinal John O’Connor, were included. Even when

⁵³ Ibid

⁵⁴ Though it should be emphasized that even people who became sick due to blood transfusions faced homophobic stigma because of the general public’s misunderstanding of the disease. Ryan White, a child who contracted AIDS through a transfusion was subject to widespread harassment in his hometown, including people sending him messages that said “we know you’re gay.”

⁵⁵ Ibid

⁵⁶ A very charitable interpretation of this quote is that Reagan was thinking specifically of AIDS cases where contraction occurred due to heroin usage, though even in that case it would not be a very good solution. There is, however, no real elaboration as to what he thought people should be saying no to.

the president apparently did want Koop's contributions, he did so in a manner that seemed to be designed to undermine the surgeon general. He never told Koop directly what to do about AIDS, but at a press conference he told the media that he had instructed Koop to write a report -- it was pure chance that Koop was at the conference and found out the president wanted him to write it.⁵⁷

In many respects, Reagan's response was the ultimate punitive attack on gay Americans. While during the Lavender Scare, the federal government sought out specific gay people to punish, the way the AIDS crisis was handled was a much more insidious form of punishment. Rather than imprisoning or firing those who failed to be sufficiently discreet about their sexuality, the Reagan administration effectively sentenced every man in America who had gay sex to death. The punitive sexuality regime had reached such heights that there was no longer a need for direct government interventions. On the contrary, the government was in a position to do nothing at all but still see the elimination of people whom they viewed as harmful to society. Vito Russo, an AIDS activist, succinctly described the root of the problem with AIDS by saying, "if I'm dying from anything it's from the fact that not enough rich white heterosexual men have gotten AIDS for anyone to give a shit."⁵⁸ In the absence of a punitive sexuality regime, there would almost certainly not be the same level of targeted recklessness.⁵⁹ The argument that AIDS was a punishment from God was in many ways the conclusion of forty years of policy. The punitive sexuality regime was so powerful that its fallout seemed to be the result of divine intervention.

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Initially, the government response to the coronavirus pandemic made me question whether this was actually a fair assessment of the nature of the AIDS crisis. However, the rhetoric around the current pandemic frequently dismisses it as a disease which is only harmful to the elderly and the disabled -- people who are also marginalized in the United States.

The Shift in Gay Advocacy

There is popular misconception that gay activism began in earnest during the AIDS crisis, with a few prior examples of fighting back, like the Stonewall Riots. As this thesis has hopefully made clear, that was not the case. What is true is that during the AIDS crisis most privileged gay men, especially those who were white and traditionally masculine with good jobs and moderate politics, suddenly had a reason to fight alongside the most radical and marginalized members of their community. As an early executive director of the Gay Men's Health Crisis (GMHC) aptly stated, "for a white man with a graduate degree and a good job who can pass, [discrimination was] not an issue. Never was. Until [AIDS] really got down to it and you realized they want you to die. . . You are literally left to die."⁶⁰ In his seminal book, *And the Band Played On*, gay journalist Randy Shilts described the affluent gay men he encountered on Fire Island in the years leading up to the crisis. They either did not care or did not understand why other gay people had to be loud and complain so much. They voted Republican because it made the most sense for them financially, even if the Democrats expressed marginally more support for gay rights.⁶¹

As I discussed at the beginning of this chapter, the gay men who had the greatest access and influence within the government were also the ones who had to conceal their identities most tightly. They made themselves invisible because the only other option was to lose everything. What made this era of gay activism so transformative was that it ultimately led to all gay men realizing that they had something to lose by hiding their identities, making it of paramount

⁶⁰ Stephen M. Engel, *Fragmented Citizens The Changing Landscape of Gay and Lesbian Lives* (New York: New York University Press, 2019), 136.

I do not fully agree with this assessment -- while privileged men certainly were in a better position than their peers, they still could not be their authentic selves or have the kind of life they might ideally want. Discrimination takes many forms and being erased has consequences, just different consequences than being hyper-visible.

⁶¹ Randy Shilts, *And the Band Played On* (New York, NY: St. Martin's Press, 1987), 27.

importance for everyone involved to be as loud and as open as possible. This transformation was not unilaterally positive. Engel points to the fact that the radical, leftist politics of earlier eras of gay rights activism were quashed when the movement experienced an influx of moderates whose primary interest was fighting AIDS above all else.⁶² While gays finally had more opportunities to lobby Congress for rights and protections, these opportunities primarily centered on AIDS -- any other issues they faced went to the backburner.⁶³ It was also at this point that advocacy began to focus strongly on mainstream recognition and approval. The ideologically moderate activists of the AIDS crisis were convinced that federal government intervention was the only solution, a logic which transferred to other issues like wanting access to the institutions to which heterosexuals had access.

Fighting Back by Coming Out

In 1987, the AIDS epidemic had been raging, effectively unaddressed by the government, for close to a decade. Gay activist Larry Kramer had grown frustrated with the ineffectiveness of AIDS protests thus far and began to advocate for a more radical approach. In March he gave a speech which outlined the foundational ideology of ACT UP, a group which is known for its loud and confrontational style of protesting.⁶⁴ Just two days after suggesting the possibility of such a group, 300 people showed up for their first meeting, a far cry from the much smaller protests and secretive meetings of Lavender Scare-era activists. Just a few weeks later, they held their first protest in front of Trinity Church on Wall Street. Seventeen people were arrested and within two

⁶² Engel, *Fragmented Citizens*

⁶³ Ibid, 137

⁶⁴ACT UP continues to work in both AIDS activism and other issues involving injustice in healthcare. As I finish editing this thesis, ACT UP is currently protesting the Biden administration's failure to release the patent on the COVID-19 vaccine.

months the FDA changed its long-standing policy on drug testing to meet the demands of the activists.

ACT UP organized several groundbreaking political protests. In 1987 they organized the first ever March for Lesbian and Gay Rights in Washington, DC, to protest the Reagan administration's failure to address the crisis. At the march, activists demanded the decriminalization of sodomy, legal recognition of gay relationships, and increased funding for AIDS research. This event became one of the largest and most covered gay activist events in American history. ACT UP received national news coverage and groups spread across the country, with some pre-existing AIDS groups changing their names and politics to align with ACT UP.⁶⁵ In September 1989, ACT UP protested against price-gouging by the pharmaceutical industry on the floor of the New York Stock Exchange. This protest was the first time in history that protestors were able to halt all trading for the day.

Throughout the late 1980s and early 1990s, ACT UP continued to conduct radical, public activism: they interrupted Mario Cuomo's state of the state address, stormed the National Institutes of Health, and blocked off the Queens-Midtown tunnel in New York. Some of ACT UP's protests were particularly dramatic expressions of the ultimate consequence of ignoring AIDS. In Washington, DC, they held political funerals at which people sprinkled the ashes of deceased AIDS victims on the White House lawn. At President George H.W. Bush's vacation home in Kennebunkport, Maine, activists staged a die-in -- they laid on the ground like dead bodies, representing those who would die due to the government's failure to act.⁶⁶

This public antagonism was not limited to the obvious enemies of AIDS activists, like Reagan appointees and big pharmaceutical companies. Dr. Anthony Fauci, who at the time was

⁶⁵ Clews, *Gay in the 80s*, 254 - 258.

⁶⁶ "ACT UP Accomplishments 1987 - 2012," ACT UP New York (ACT UP), accessed April 20, 2021, <https://actupny.com/actions/>.

the coordinator of AIDS research at the National Institute of Allergies and Infectious Diseases, was the frequent target of criticism by AIDS activists -- particularly Kramer. Fauci would appear on television programs with Kramer to discuss AIDS and Kramer would publicly berate him. Afterwards, he would tell Fauci that it was not personal. Kramer simply knew that yelling at a government official would pull attention towards the movement.⁶⁷ At a time when so many officials were sweeping AIDS under the rug, bringing any sort of attention to the movement was vital even when it flew in the face of normal interpersonal relationships.

A less confrontational but equally dramatic example of AIDS activism was the AIDS quilt. The quilt was a project to memorialize those who had died of the illness. It began organically when a San Francisco resident asked people to write the names of those they'd lost from AIDS on placards. When all the names were visually displayed the real impact of the disease was clear: one thousand people had died in San Francisco and now people could see all of their names. The quilt was a permanent version of the temporary signs. Each square was in honor of someone who had died of AIDS. The victim's name and personal information about them were included to demonstrate the real human loss.⁶⁸

Historically, gay people were closeted even in death. Long-term partners of the deceased were shut out of planning their loved one's funerals -- they were not next-of-kin and had no legal right to decide how their significant others were remembered. The quilt was a way to document people, predominantly gay, who were dying from prejudice. Though many tried to conceal AIDS deaths, the quilt made it clear and impossible to deny the humanity or the suffering of gay

⁶⁷ Donald G McNeill, "We Loved Each Other: Fauci Recalls Larry Kramer, Friend and Nemesis," *New York Times*, May 27, 2020, sec. Health.

⁶⁸ Clews, *Gay in the 80s*, 259

people. When people did die of AIDS-related causes, the *New York Times* and other publications went out of their way to hide their cause of death.⁶⁹

Even if obituaries did include the cause of death, families often would lie and say the disease was contracted via blood transfusion. For example, Republican Congressman Stewart McKinney of Connecticut, died of AIDS related causes in 1987. His family initially claimed this was the result of a transfusion done during heart surgery, though it was revealed that the timeline for him contracting AIDS through a transfusion was inconsistent and that he was in a gay relationship at the time of his death. McKinney even left substantial property to a gay man with whom he lived in Washington, D.C.⁷⁰ The stigma surrounding a gay illness was so great that even in death people needed their reputations protected from the suggestion of homosexuality. The AIDS Quilt and similar activism rendered those efforts moot.

The radical activism of ACT UP also allowed for moderate groups of gay activists to advocate more effectively for their issues. While ACT UP protests involved direct action in the streets and bold statements of identity and demands, other activists sought an expansion of rights and protections in more subtle ways. For example, middle-class and wealthy gay activists were now able to demand better treatment in workplaces in the form of expanded benefits, protection from firings based on their identity, and policies against homophobic harassment. As a result of ACT UP and comparable groups (who were frightening radicals in the eyes of moderate, middle class heterosexuals), openly gay professionals asking for better workplace treatment seemed quite acceptable to many employers. These more moderate activists would have likely never had the space to ask for better treatment prior to the AIDS crisis -- the consequences of being openly

⁶⁹ Kurt Soller, ed. "Six Times Journalists on the Paper's History of Covering AIDS and Gay Issues." *New York Times Magazine*, April 27, 2018.

⁷⁰ Michael Specter and Richard Pearson, "Rep. Stewart B. McKinney Dies of AIDS Complications," *Washington Post*, May 8, 1987.

gay during the height of the punitive regime would've been catastrophic for many of their careers and social statuses. Now that the idea of openly gay people was widely present in the culture, it was possible for these middle class activists to assert their identities as well.⁷¹ Set in contrast to the people marching in the streets and staging die-ins, acceding to the demands of more mainstream activists was a less frightening prospect. This also had the effect of making moderate straight people realize that they actually knew gay people -- which delivered another blow to the old sexuality regime. So much of the logic of the regime depended on rendering gay people invisible unless they wanted to face brutal consequences. Once the consequences of AIDS outweighed the consequences of defying the regime, gay people in a myriad of social positions were better able to advocate openly for themselves.

It should be noted, however, that the radicalism of AIDS activism was largely in execution rather than in actual politics. Prior to AIDS activism there was gay liberation, a political movement with strong connections to 1960s and 1970s counter-culture and second-wave feminist movements. This movement tended to attract people who were already political radicals -- someone who was moderate in every other aspect of their politics was unlikely to take a liberatory approach to gay rights. This was an important distinction between the gay liberation and AIDS activism. While AIDS activism was radical in its expression, e.g. large and dramatic demonstrations, it tended to focus on working within systems like the federal government. AIDS activists came from all walks of life and notably included middle-class moderate white gay people -- a departure from the leftism of the previous decade's activism.

The increasing numbers of openly gay people was important for breaking the punitive sexuality regime. Since the punitive regime was built on silencing gay people and locking them out of mainstream society the gay liberationists, who wanted to be outside mainstream society

⁷¹ Engel, *Fragmented Citizens*, 140.

were not going to break the regime like the more moderate AIDS movement. This is not to say that gay liberation was inferior to moderate movements. Some people, like sociologist Elizabeth A. Armstrong, argue that while ACT UP and similar organizations marked a significant moment for AIDS activism, it was actually detrimental to the gay movement as a whole. All other political concerns were supplanted in favor of fighting for an effective response to AIDS from the government and pharmaceutical companies.⁷² Urvashi Vaid, the former executive director of National Gay and Lesbian Task Force, wrote, “In place of liberation, the AIDS movement substituted nondiscrimination; instead of building a movement, it built agencies and bureaucracies; instead of placing its political faith in training and organizing gay and lesbian people, and our allies, into an electoral coalition, it placed faith in friends in high places.”⁷³

This was a consequence of the way the regime structure led to changing activism. Under the punitive regime, only the most radical people would seek out a gay rights movement -- the consequences of being out were so great that few moderates would take the risk. During the AIDS Crisis, unprecedented numbers of moderate, mainstream gay Americans came out of the closet.⁷⁴ Even though from a contemporary perspective, the expansion of gay rights over the last four decades is largely positive, it is still shaped from the conservative policy regime from which it emerged.

As a result of AIDS, most other political issues were pushed to the side and the movement became mainstream in a manner which could not be undone. But this is not as totally negative as some leftists argue. While the mainstreaming of the gay movement did change the previously radical gay political identity, it also made space for a wider swath of gay Americans

⁷² Elizabeth A. Armstrong, *Forging Gay Identities: Organizing Sexuality in San Francisco, 1950-1994* (Chicago: University of Chicago Press, 2002), 165.

⁷³ Ibid

⁷⁴ Engel, *Fragmented Citizens*, 135.

to live openly and have fulfilling romantic and social relationships and eventual access to equal rights. Many of the liberationist activists already occupied a political position which would not be damaged by living as gay people. There were many other people for whom this was not a reality because of their more moderate political beliefs and social status. While I personally do favor politics that are comparable to those advocated for by radical gay liberationists, I also don't think that having access to one's gay identity should be limited by politics. The moderation of gay activism allowed for far more gay people to participate in society and lead fulfilling lives, even though it did come at the cost of more radical political activism.

It is impossible to know what would have happened if liberationist politics had carried through more fully into the AIDS movement. The result of AIDS activism, however, is that the punitive regime broke in the 1980s and 1990s. Furthermore, it broke in a manner which led to the gay rights movement becoming oriented towards inclusion in mainstream society and assimilation to the dominant heterosexual culture.

The mass protests and fiery speeches of the 1980s represented a fundamental shift in how gay activism functioned in the United States. Gay activists no longer felt the need to hide behind shadowy organizations and pseudonyms. In fact, they could not hide. Hiding would have been counterproductive to their protests, which now, more than any other point in gay history, were life or death. In fact, one of the most iconic slogans of the AIDS crisis is "silence equals death." For AIDS activism to work it was necessary to show that the virus could feasibly affect millions of people. Without the sheer volume of people who participated in AIDS activism, the average person could not comprehend the threat posed by AIDS. The government's decades-long effort to silence and conceal homosexuality culminated in catastrophe so great that there was no choice but to be loud and open about gay identity. The means to end the punitive regime were built into

the constellation of policies which created the regimes. Carl Stychin describes this situation as a paradox.

In seeking to silence an identity and deny a right of sexual citizenship, the prohibition of expression creates discursive space for the identity to be excluded. A prohibition must acknowledge the existence of the prohibited and thus brings the prohibited practices into the public domain of discourse.⁷⁵

The public discourse did not immediately turn in favor of gay Americans. When Gallup polled Americans on whether or not gay sex between consenting adults should be legal in 1986, only 32% of Americans agreed. Shortly after AIDS deaths peaked, in 1996, that number was 44%. The majority of Americans did not support the legalization of gay sex until after the Supreme Court ruled on the issue in 2004.⁷⁶ Even though the majority of Americans might not have supported gay rights during the crisis, for the first time they were actually discussing the issue. Every effort to silence gay Americans contributed to the intense recklessness of the government during the AIDS crisis. The silence of the government meant that everyone could hear when the activists fought back.

Conclusion

In the years prior to the AIDS Crisis, there was a rise of pro-gay rights activism. There were, however, limited examples of this activism being productive. Even if individuals were able to lead marginally more public lives, in aggregate there were few advantages to be openly gay and few legal protections extended towards gay Americans. In the early 1980s, remaining closeted was still more advantageous than being openly gay. This, in turn, meant that few straight people in positions of political authority were aware of the gay people in their lives. Living through the

⁷⁵ Engel, *Fragmented Citizens*, 136.

⁷⁶ Gallup, "Gay and Lesbian Rights," Gallup.com (Gallup, February 24, 2021), <https://news.gallup.com/poll/1651/gay-lesbian-rights.aspx>.

coronavirus pandemic, we know that even with total public support and a dedication by the scientific community towards preventative measures and effective treatment, it can still take an extremely long time to actually overcome a massive public health crisis. The amount of effort extended towards addressing AIDS was far more limited, due to both recklessness and open hostility on the part of the government. It was this recklessness, however, which forced gay Americans to openly protest the government and reveal their identities. There would otherwise be no way to convince the government to act on fighting the epidemic.

As a result of thousands of previously closeted gay Americans openly asserting their identities in the political sphere, the punitive sexuality regime was broken. The regime relied on a system of incentives which kept gay people silent. Ultimately, however, the possibility of dying from an especially destructive disease was far worse than the possibility of losing one's job or being arrested. Once this became the case, the preexisting system was no longer effective. There was more to gain from defying the state than there was from compliance. The regime created the conditions which led to the AIDS crisis, but it was the AIDS crisis which led to the conditions that destroyed the regime.

Chapter Four

What Will You Tell Your Children? The Rise of the New Sexuality Regime

It was during the first in a long line of Republican presidential primary debates that then-Fox News anchor Megyn Kelly asked this question of former Ohio governor John Kasich: “Governor Kasich, if you had a son or daughter who was gay or lesbian, how would you explain to them your opposition to same-sex marriage?”

Kelly’s question asked on stage at a Republican primary debate was revolutionary. Just eight years prior, even the Democratic candidates for president largely would not endorse same-sex marriage, instead calling for civil unions. In August 2015, however, a defining political question of the generation had been answered. Two months prior to the debate, the Supreme Court had ruled, in *Obergefell v. Hodges*, that the right to same-sex marriage was protected by the due process and equal protection clauses of 14th Amendment.

Kasich paused and seemed to frown before answering. “Well look ... I ... I’m an old-fashioned person here,” he raised his arms in a somewhat dramatic shrug. “I happen to believe in traditional marriage. But I also said the court has ruled --”

Kelly cut him off. “But how would you explain to your child --”

Kasich interrupted Kelly, “Wait, Megyn. The ... the ... the court has ruled. And I said we’ll accept it.” His voice became more emphatic, “And guess what? I just went to the wedding of a friend of mine who happens to be gay.” The audience began to cheer, as he continued, “Because someone doesn’t think the way I do, doesn’t mean I can’t care about them or ... uh ... can’t love them. So, if one of my daughters happened to be that --,” he paused, shrugging again, while the cheers grew louder, “of course I would love them and I would accept them because,

you know, that's what we're taught when we ... when we have strong faith. So, if she's like that, well I'm gonna love my daughters no matter what they do."

The answer was stuttery, and it is notable that Kasich could only describe his daughters as potentially being "like that" rather than saying "gay" or "lesbian." The audience's response, however, was enthusiastic, with cheers growing louder throughout. The next day the *Washington Post* described Kasich's response as "touching."⁷⁷

In many ways, Kasich's response typifies the current sexuality regime, which began to emerge in the mid-1990s. This new regime, which I call the expansive regime, is one which celebrates openness and fluidity of identity. Data indicate both an increase in acceptance of LGBT people and an increase in Americans who identify as something other than straight and cisgender. At the same time, however, the old regime did not evaporate. While the AIDS crisis marked the fall of a culture of silence, it did not eradicate homophobia on a personal or political level. Kasich still openly opposed same-sex marriage in the months following its legalization but was now forced to balance two conflicting ideologies which were layered on top of one another. American conservatism still demanded homophobia and its definition of traditional values. At the same time, however, American society writ large no longer approved of disowning or mistreating a gay child. Kasich walked the line of the two regimes; in one breath disavowing same-sex marriage and in another stating that he would, of course, attend a same-sex wedding.

There are three factors of the new sexuality regime that I will discuss in this chapter. First, I will analyze the expansion of gay rights at federal, local, and state levels, particularly the decision to allow gays to serve in the military and the expansion of marriage rights during the first two decades of the twentieth first century. I will then discuss the simultaneous restrictions of gay rights which occurred alongside these expansions. Restrictions included discriminatory

⁷⁷ Ibid

ballot initiatives and the increase in specifically transphobic legislation. I argue that while some of these policies can accurately be described as backlash, many are also the remaining legacy of the old sexuality regime which is now transformed due to shifts in the public identities of gay Americans. Finally, I will discuss gay political and social identity in the 21st century. The old debates of conduct and character are no longer applicable; aspects of both theories have won out in different ways. Rather, the ways in which the fall of the old regime forced gay Americans into public life has resulted in two concurrent phenomena: there is both an extreme normalization of gay identity, so it resembles straight identity entirely, and an expansion of increasingly radical expressions of gender and sexuality. These different expressions of sexuality are both manifestations of the political impact of the AIDS crisis. Ultimately, I will argue that in the wake of the AIDS crisis a new regime emerged which revolves around social acceptance and the expansion of rights, but that this expansion is inherently shaped and restricted by the lasting legacy of the old regime.

The Expansion of Rights

In the years following the AIDS Crisis, the expansion of gay rights gained increasing momentum. In the ten years between 1996 and 2006, support for same-sex marriage increased from 27% to 37%. Ten years after that, same-sex marriage was legal nationwide and more than half of Americans supported marriage equality. In 2001, 60% of Americans polled believed that homosexuality was morally wrong, by 2020 that number had dropped to 32%.⁷⁸ While the number Americans still morally opposed is still relatively high, a 28% drop in disapproval in just two decades is remarkable. The American public's increasing approval of gay rights tracks with the government's expansion of many institutions to include gay people.

⁷⁸ Gallup, "Gay and Lesbian Rights"

Military participation

Even the United States military, long viewed as a bastion of traditional masculinity, ceased to ban gay people from service with the enactment of the Don't Ask, Don't Tell (DADT) policy in 1993. The policy reversed long-standing military policy on homosexuality wherein gay soldiers faced at best discharge from the military and at worst criminal charges. DADT was a compromise on the part of President Bill Clinton, who had campaigned on a policy of allowing gay people to serve with no restrictions. Instead, DADT allowed homosexual and bisexual people to serve in the military, but only if they concealed their identity and never spoke about their same-sex relationships. There was still considerable conservative backlash, with one naval officer stating that the presence of homosexuals in the military would make their straight counterparts feel "uncomfortable" and like they were "being watched."⁷⁹

At the same time, however, this was a radical change -- gay people were no longer locked out of working for one of the nation's largest employers. Furthermore, in the United States military service is closely tied to citizenship. As Engel writes, "the military is one of the primary institutions not only by which state development is measured but also with which citizens directly interact; access and participation within it is one of the key ways in which citizenship is marked and/or conferred."⁸⁰ In other words, being American and being able to serve in the United States military are widely viewed as one in the same.

While many left-wing gay activists have criticized the focus on accessing military service, viewing the United States military as a vehicle for imperialism, the fact remains that within mainstream American culture there is legitimacy attached to being a servicemember, which allows gay Americans to participate in American culture and traditional citizenship.⁸¹

⁷⁹ Eric Schmitt, "Military Cites Wide Range of Reasons for Its Gay Ban," *New York Times*, January 27, 1993.

⁸⁰ Engel, *Fragmented Citizens*, 38.

⁸¹ Ibid

Engel describes the Don't Ask, Don't Tell era as one where gays and lesbians occupied a sort of in-between role in American society, where they were "decriminalized but held from public view."⁸² This attitude spread throughout the federal government through the 1990s and early 2000s and is aptly described by Justice Anthony Kennedy in the *Obergefell* decision as the time when gays went from "outlaws to outcasts."⁸³

Marriage equality

Perhaps no issue is considered more representative of the LGBT movement in the 21st century than the expansion of marriage rights. While there were examples of gay couples attempting to marry in the late twentieth century, these cases were never widespread, nor did they usually have any success. The first major step towards same sex marriage occurred in 1993, when Hawaii's Supreme Court ruled that there needed to be a compelling reason to deny marriage licenses to same sex couples⁸⁴. The Hawaii legislature responded by passing a state constitutional amendment to ban same sex marriage. In 1996, President Clinton signed the Defense of Marriage Act (DOMA), which defined marriage at the federal level as being between one man and one woman. Additionally DOMA allowed states where same sex marriage was not recognized to refuse to recognize marriage licenses issued in states where it was legal. This law was inconsistent with other policies regarding marriage in the United States. For example, if two 17-year-olds want to get married in Mississippi, their marriage is not invalid in Kentucky, where the age of legal marriage is 18. Furthermore, marriage generally does not fall under the jurisdiction of the federal government, though many federal laws and policies are structured around the institution. This type of legislation represented a new sexuality regime -- one where

⁸² Ibid

⁸³ *Obergefell v. Hodges* (Supreme Court of the United States June 26, 2015).

⁸⁴ 80 Hawaii 341 (1996)

gay people could not be excluded by assumption but rather were the subject of explicit legislation.

Initially, the nuances of how DOMA would effect gay Americans were not obvious. At the time, same-sex marriage was not legal in any state. This changed in 2003, when Massachusetts, by a decision of its Supreme Judicial Court in *Goodridge v. Department of Public Health*, became the first state to legalize same sex marriage.⁸⁵ Over the course of the following nine years, eleven states and the District of Columbia also legalized same sex marriage through court orders, legislation, and referenda.

In 2013, the Supreme Court ruled in *Windsor v. The United States* that DOMA was unconstitutional. Edith Windsor, the plaintiff sued the federal government over her right to claim an estate tax exemption. Her wife, Thea Spyer, died in 2009 and left her assets to Windsor. Normally, surviving spouses are not required to pay the estate tax. Windsor and Spyer were married in New York but because of DOMA the federal government was initially able to refuse Windsor request for an exemption. The court held that DOMA violated the due process and equal protection clauses of the fifth amendment. In the two years following *Windsor*, 25 more states also legalized same sex marriage. And on June 26, 2015, the United States Supreme Court held in *Obergefell v. Hodges* that the right to marry, regardless of gender, was protected by the due process and equal protection clauses of the 14th Amendment.

This emphasis on marriage is of some controversy within LGBT political organizations -- with many pointing to the fact that the hyper-focus on marriage equality meant that following *Obergefell* activists and advocacy organizations were left with no clear mission or rhetoric. The popular slogan “Love Wins,” for example, implied that this was the endpoint rather than a step forward. There was also a feeling that marriage equality represented an ultimate surrender to

⁸⁵ 440 Mass 309 (2003)

heteronormativity; in accessing the economic and social status of straight couples, the uniqueness of gay life and gay love was wiped away. Rather than living as the distinct cultural minority, as described by the founders of the Mattachine Society, the lives of gay Americans would instead align with the conduct-based interpretation of homosexuality. In accessing marriage, it seemed that the only true distinction between heterosexuals and homosexuals was the gender of their spouses.

In the aftermath of *Obergefell*, many gay Americans expressed the feeling of finally belonging, as true citizens, in the United States. Engel points out that as a regulatory policy, marriage is a mechanism by which “the state classifies, tracks, and produces citizens.”⁸⁶ A similar idea was put into somewhat more poetic words by *New York Times* columnist Frank Bruni, who, following *Obergefell* wrote, “the Supreme Court’s decision wasn’t simply about weddings. It was about worth. From the highest of this nation’s perches, in the most authoritative of this nation’s voices, a majority of justices told a minority of Americans that they’re normal and that they belong — fully, joyously and with cake.”⁸⁷

Backlash and Political Legacy

Though there are rarely straight paths forward in politics, the path of gay rights is especially winding. This is certainly true when looking at gay rights on a state-by-state basis. In some states, like Alabama, the only legal advances in gay rights are those that are dictated at a federal level. In others, like California, legal protections extend far past the wildest dreams of activists only two decades ago. In many cases, even within states there is a patchwork of regulations. Massachusetts, for example, was the first state with legal same-sex marriage but did not ban

⁸⁶ Engel, *Fragmented Citizens*, 38.

⁸⁷ Frank Bruni, “Our Weddings, Our Worth,” *New York Times*, June 26, 2015, sec. Opinion.

conversion therapy for minors until 2019 -- after 15 other states had enacted similar policies. For gay Americans there is not a clear-cut delineation between the state of being a full citizen with rights and not being a citizen and lacking rights. Different institutions may recognize and identify different levels of access to rights and responsibilities, creating what Engel calls a “fragmented identity.”⁸⁸ Elizabeth Cohen describes the current state of gay and lesbian rights as a semi-citizenship, where LGBT Americans have access to some but not all elements of citizenship.⁸⁹

The new sexuality regime is not a clean slate -- the remnants of the old regime exist both in policy and in public discourse. And, as much as the new regime may seem to be progressive and more aligned with the aspirations of gay activists, there are elements of the expansive regime that function as a new form of bigotry. I argue that in the current sexuality regime there are two concurrent phenomena. The first consists of remnants of the old regime and the second is backlash towards the new regime. The former is the result of layering, which occurs when new elements are grafted onto old aspects of institutions.⁹⁰ There was no identifiable time and place when the old regime died and the new one was born. There were changes, some dramatic and others subtle to the punitive sexuality regime that eventually led to its decline. Every institution, however, did not change overnight. The latter factor in contemporary attacks on gay rights is a new backlash born out of the new regime. As theoretical arguments for gay rights become practical and previously invisible populations come into view, there were reactionary responses from both politicians and the public.

⁸⁸ Engel, *Fragmented Citizens*, 23.

⁸⁹ Ibid

⁹⁰ Danel Beland "Ideas and Institutional Change in Social Security: Conversion, Layering, and Policy Drift." *Social Science Quarterly* 88, no. 1 (2007): 20-38. <http://www.jstor.org/stable/42956169>.

Anti-gay stigma has evolved since the days of Frank Kameny and the Lavender Scare. When activists and politicians in the AIDS era pushed gay issues to the forefront of national discourse, there was a distinct shift in how the public perceived not just gay people but also the battle for gay rights. In the old regime, there was a presumption that all decent people were opposed to sodomy and what distinguished one person's position from another was the degree to which they believed homosexuals should be punished. Under the current regime, however, political positions on gay rights are broadly framed as a battle between two opposing forces. Depending on who is speaking, these forces may be Republicans versus Democrats or traditionalists against progressives or conservative religion as opposed to secular morality. The result of this battle-oriented ideology is that people's stances on gay rights become malleable based on their own political identities and consequently both proponents and opponents can use LGBT issues as political tools.

The new sexuality regime, which began in earnest following the AIDS crisis but has roots stretching back into the 1970s, has always been marked by simultaneous expansions and restrictions in rights. Between 1974 and 1992, approximately one anti-gay ballot initiative appeared every year at state or local levels. This overlaps almost entirely with the time period in which other municipalities were passing anti-discrimination ordinances.⁹¹ By the 1990s, 23% of American workers were employed in jurisdictions with legislation banning discrimination against gays, either at a state or local level.⁹² Polling from the same time period, however, consistently shows that around 40% of LGBT adults experienced some form of workplace

⁹¹ Susan Gluck Mezey, *Queers in Court: Gay Rights Law and Public Policy* (Lanham Md.: Rowman & Littlefield, 2007). 189.

⁹² Ibid 200

discrimination.⁹³ There was slow progress on this issue for the next two decades and by 2020 sexuality was a protected class in 21 states.

The partisan malleability of American's position on LGBT rights was made clear in the aftermath of the 2003 Supreme Court case, *Lawrence v. Texas*. The petitioner challenged a Texas law which criminalized certain consensual, sexual acts when performed between two people of the same sex, which were not criminalized when performed between people of opposite sexes. The Supreme Court ruled six to three in favor of the petitioners, John Lawrence and Tyron Garner, who were adult men arrested for having consensual sex inside of Lawrence's home.⁹⁴ The case invalidated laws prohibiting sodomy between consenting adults in 13 other states, effectively making homosexuality entirely legal in the United States.⁹⁵ Prior to the Court's decision, polling consistently showed that 60% of Americans believed that gay sex between consenting adults should be legal. Within two months of the Court's decision, however, those numbers dropped by 10% in what seems to be backlash brought on by the issue skyrocketing in prominence.⁹⁶ Within a year, the numbers changed again and the majority of Americans did believe that gay sex should be legal. At the moment when the issue was most prominently in the public eye, however, there was immediate negative response. The clear split between the liberal and conservative justices, as well as the Bush administration's apparent displeasure with the decision, heightened partisan fervor around the issue.⁹⁷

In 2004, Bush's deputy chief of staff, Karl Rove, used this partisan malleability to the president's advantage while campaigning for Bush's reelection. Prior to the 1990s and the

⁹³ Ibid 200

⁹⁴ 539 U.S. 558 (2003)

⁹⁵ Ibid

⁹⁶ Mezey, *Queers in Court* 45

⁹⁷ The White House declined to comment on the case following the decision. However, the same law that *Lawrence v Texas* overturned was one which George W. Bush had previously defended during his tenure as governor of Texas. Other prominent supporters of the Bush administration publicly criticized the decision, though many focused on the perceived overstep in the Court's authority, rather than the morality of sodomy.

increasing prominence of pro-gay marriage advocates, states did not have legal bans on same sex marriage. Marriage was still defined as being between one man and one woman, and while some gay couples attempted to get married in protest, these unions were rarely recognized on any official level and did not come with the same rights and privileges as heterosexual marriages. With the rise of civil unions and some states legalizing gay marriage, however, there was a desire among conservatives to transform custom into constitutional law. At a state level, Rove used the increasing anti-gay fervor among Republicans as a tool to drive voter turnout in the 2004 election. In eleven states, Rove and the Bush campaign persuaded politicians to propose ballot initiatives which would make gay marriage unconstitutional under their states' laws. The initiatives drove voters who might have otherwise stayed home to the polls. Based on polling data collected by the Pew Research Center, the ballot initiative in Ohio proved decisive in swinging the state in favor of Bush and sealing his reelection.⁹⁸ This type of political strategy would not have occurred under the old regime because the idea of gay marriage was so absurd there was no need to legislate it out of existence. It was only when there was genuine concern among conservative voters that gay marriage might occur that the ability to ban changes to marriage law became politically important.

Employment rights and protections were extended to all gay Americans through the Supreme Court case *Bostock v. Clayton Country*. The court ruled six to three in favor of the petitioners on the grounds that discrimination based on sexuality was an extension of discrimination based on sex, which had long been illegal in the United States.⁹⁹ This is again an example of the semi-citizenship that Cohen described. It was not until five years after the

⁹⁸ David Masci, "An Overview of the Same-Sex Marriage Debate," Pew Research Center's Religion & Public Life Project (Pew Research Center, May 30, 2020), <https://www.pewforum.org/2008/04/01/an-overview-of-the-same-sex-marriage-debate/>.

⁹⁹ 59 US __ 2020

legalization of same sex marriage and ten years after the repeal of Don't Ask, Don't Tell that these protections were achieved. As Rhode Island representative David Cicilline put it in 2015, "in most states, an LGBT person can get married on Saturday, post photos of their wedding on Sunday, and get fired from their job or thrown out of their apartment on Monday, just for who they are."¹⁰⁰

In some respects, it seems like employment protections could have been achieved prior to same sex marriage and with more ease, had it been the major focus of gay rights activists. The vote margin on *Bostock* was less narrow than the margin on *Obergefell*, which was decided by a more progressive court. The decision, written by conservative justice Neil Gorsuch, indicates that ultimately the justices found the argument in favor of *Bostock* rather straightforward. Gorsuch wrote that "those who adopted the Civil Rights Act might not have anticipated their work would lead to this particular result. But the limits of the drafters' imagination supply no reason to ignore the law's demands. Only the written word is the law, and all persons are entitled to its benefit."¹⁰¹

Assimilation and Expansion

In mid-May 2019, history was made through the most conventional of photographs: a young, attractive white couple, dressed in J. Crew and standing in front of a white picket fence. The traditional, American ideal of midwestern wholesomeness -- the politician was a veteran, and his spouse, who had taken his name upon their marriage, was a schoolteacher. They stood, smiling on the cover of *Time* magazine and the headline described them as the "First Family." The only

¹⁰⁰ Paul Kane, "Gay Rights Supporters Push Beyond Marriage to Broader Legal Protections," *Washington Post*, June 27, 2015.

¹⁰¹ 59 US __ 2020

aberration in Pete Buttigieg's cover story was the smiling significant other his arm was wrapped around -- Buttigieg had a husband and not a wife.

In the weeks following the cover story, Buttigieg's prominence began to rise. It was an unlikely stardom and an unlikely candidate -- a young mayor of a small midwestern city was competing and holding his own against senators and governors in the 2020 Democratic primary. While he garnered praise for his charisma and criticism from the mainstream press for fairly standard reasons within Democratic politics, he also received a unique degree of scrutiny from the gay press and gay writers. Frank Bruni of the *New York Times* pointed out a double standard in the way the Buttigieg relationship played out in front of the public eye. Chasten Buttigieg was nearly ten years younger than his husband, left his job in a care-taking oriented profession to support his husband on the campaign trail, and often tweeted self-deprecating comments about how Pete was hardworking and smart, while he sat at home eating take-out and missing his husband.¹⁰² Bruni pointed out -- and I agree -- that a similar relationship dynamic between a 28-year-old woman and a 35-year-old man would have been seen as regressive and old-fashioned. In the Democratic primary it seemed that the most traditional marriage was the one that had been illegal less than a decade prior. Writing for the *LA Review of Books*, Greta LaFleur described the Buttigieg marriage in even more explicit terms -- heterosexuality without women.¹⁰³

A narrative which emerged during the campaign and one that was repeated by Buttigieg himself was that some queer people believed that he was not "gay enough."¹⁰⁴ That is not my view and I do not think it is the view of Bruni or LaFleur. If the word gay is defined in binary

¹⁰² Frank Bruni, "Pete and Chasten Buttigieg Are a Traditional Wonder," *New York Times*, June 18, 2019, sec. Opinion.

¹⁰³ Greta LaFleur, "Heterosexuality Without Women," *LA Review of Books*, May 20, 2019.

¹⁰⁴ Masha Gessen, "The Queer Opposition to Pete Buttigieg Explained," *The New Yorker*, February 12, 2020.

terms, then Pete Buttigieg, as a man who is attracted to other men and not to women, is literally, definitionally as gay as a person can be. What Buttigieg was representative of, however, was perhaps the most radical change between the old punitive sexuality regime and the new expansive regime. In the old regime, living a gay life -- which is to say, a life where one's primary sexual and romantic relationships are with someone of the same gender -- was rare and radical. Those who did so risked everything -- their families, their livelihood, and their freedom. It was not a decision to make lightly, and it was certainly not a popular choice.

During the punitive sexuality regime, it was far more common to marry someone of the opposite sex and do one of two things: completely suppress any sexual or romantic desire for the same gender or have covert sexual relationships, which were cordoned off from the rest of one's life. The fall of the punitive sexuality regime enabled people to both live gay lives and utterly conventional lives, which were indistinguishable from those of their heterosexual neighbors.

While couples like Pete and Chasten Buttigieg represent the extreme mainstreaming of gay culture and identity, there is a concurrent phenomenon of more expansive and more radical queer identities emerging in the current sexuality regime. These identities are somewhat harder to analyze in a political science context -- Engel points out that "queer theory warns against the essentializing of queer identities in the way that racial and ethnic minority-rights models might foster."¹⁰⁵ Outside of the traditional categories of lesbians, gays, bisexuals, and transgender people there are amorphous identities, shifting and evolving as the threat of political and social persecution lessens.

Identities which were practically unknown among the general public in prior generations are mainstreamed among Generation Z. For example, 35% of Gen Z-ers say that they personally know someone who uses gender neutral pronouns, compared to just 16% of Gen Xers and 12%

¹⁰⁵ Engel, *Fragmented Citizens*, 31.

of Baby Boomers. Additionally, 59% of Gen Z-ers say that official forms should offer more than two options for gender while only 50% of millennials, the generation closest in age to Gen Z, believe the same.¹⁰⁶ According to a 2017 study done by Harris Polls, 20% of millennials identify as a sexuality other than straight, compared to 12% of the overall population.¹⁰⁷ Michael Warner said that what differentiates queer people from other minority groups is that they are not autochthonous -- that is to say, they did not emerge from any one place.¹⁰⁸ Gay people appear anywhere and everywhere and frequently live separate from any sort of gay community until adulthood. In the past that meant that many lacked the language to describe not just their identity but their internal state of being until they encountered other gay people. Today, when gay issues are discussed on the news and in prime-time television and across social media, it means that people can explore their feelings and identities, independent of a broader community, allowing for more individualized expressions of sexuality and gender.

The AIDS crisis demanded open and loud expressions of identity. Anything less than that would have proved fatal to those involved in the movement. As the new sexuality regime emerged, a new approach to identity seems to have become codified. It is widely expected that gay people should talk openly and freely about their identities -- whether they are as buttoned-up as Pete Buttigieg or as radical as the queer, nonbinary Gen Z-ers I encountered at the Boston Pride events, I discussed in the opening of this thesis. In the new sexuality regime, the operative question is no longer “how should we talk about being gay” as it was during the Lavender Scare

¹⁰⁶ Kim Parker and Ruth Igielnik, “What We Know About Gen Z So Far,” Pew Research Center's Social & Demographic Trends Project (Pew Research Center, February 9, 2021), <https://www.pewresearch.org/social-trends/2020/05/14/on-the-cusp-of-adulthood-and-facing-an-uncertain-future-what-we-know-about-gen-z-so-far-2/>.

¹⁰⁷ “Accelerating Acceptance: GLAAD Study Reveals Twenty Percent of Millennials Identify as LGBTQ,” GLAAD, February 24, 2021, <https://www.glaad.org/releases/accelerating-acceptance-glaad-study-reveals-twenty-percent-millennials-identify-lgbtq>.

¹⁰⁸ Engel, *Fragmented Citizens*, 31.

and the AIDS crisis. The answer to that seems to be settled -- current culture dictates that gay identities should be talked about openly and honestly. What remains to be seen is what questions will define the politics of this regime and whether gay people will continue to interact with a government that grants them rights on a piecemeal, incremental basis.

Conclusion

It is abundantly clear that the last thirty years have been marked by a major expansion in rights for gay Americans. LGBT people now have access to institutions like the military or marriage that a generation ago would have totally been beyond their reach. This is the legacy of the AIDS crisis in action. Once thousands, if not millions of Americans, came out of the closet in order to fight against the consequences of AIDS, there was no way to reverse this new openness in American society. The effectiveness of the old regime relied upon the fact that there was little to gain by being openly gay. Since there was so little gain from publicly identifying oneself as queer, few people were willing to do so. Since so few people were openly gay, it was particularly challenging to effectively campaign for one's rights. In the aftermath of the AIDS crisis, so many people were openly gay that there was now a momentum that gay people could use to campaign for other rights. Straight Americans also became more aware of the presence of gay people in their lives. This reality made people more sympathetic to the cause of gay activists and led to mainstream acceptance and interest in promoting gay rights. Ultimately, the government and the American people had more to gain by expanding gay rights -- a reversal of what had been true before the 1980s.

The legacy of the punitive regime, however, is not totally gone. As I wrote at the beginning of this thesis, no form of discrimination is born out of thin air. There is, of course, still

homophobia present throughout American life, and queer Americans still do not have access to all the rights and privileges extended to their straight peers. Additionally, the way queer identity is understood in the US in the twenty-first century hinges on how the regime forced prior generations to conceive of themselves. This can be seen in the presumption that queer people should publicly identify and define themselves. It is also clear in the assumption that queer identity is something which should be named and labeled. Before the punitive regime existed being gay was not an identity one possessed, it was an action that one did. Modern conceptions of being gay remain politicized due to the political persecution of the twentieth century.

Chapter Five

Conclusion

The goal of this thesis was primarily to understand how policy shapes political identity and secondarily to understand the evolution of gay politics in the twentieth and twenty-first centuries. The primary research question was an inversion of most other research I had previously read regarding minority groups and civil rights activism. Typically, there seemed to be a focus on how groups influence their government rather than how government influences its citizens. When I read political science accounts of gay politics, there was an emphasis on how Americans felt about LGBT people and how laws regarding gay rights tended to become more progressive over time. There seemed to be little discussion as to where homophobia and restrictions on gay people's lives emerged from in the first place.

Once I began to research the government actions which shaped gay politics in the twentieth century, a clear pattern in American politics became evident. The government would act in a discriminatory manner that was not based on any empirical evidence but rather on fears, suspicions, and stereotypes, thus creating conditions which limited the political actions that gay Americans could take. This limiting of political actions led to gay political activists articulating their identities and goals within frameworks which were the direct result of government attitudes towards gay Americans.

In Chapter Two, I laid out the formation of the punitive sexuality regime. I discussed how stereotypes towards gay Americans coalesced with Cold War-era paranoia to form a state which harshly penalized anyone who acted outside the traditional, heterosexual norms of the mid-twentieth century. As a result of this regime, gay activism was limited in scope and dependent on maintaining a level of secrecy which was counterproductive for civil rights

advocacy. In Chapter Three, I linked this extreme level of security to the early governmental neglect of the AIDS crisis. Although there were many factors leading to Reagan's recklessness, a significant factor in ignoring the crisis for so long was simply an attitude that no one who mattered to those in power was going to be affected by an illness that primarily affected gay men. While this attitude did contribute to the catastrophic spread of the virus across gay communities in the 1980s and 1990s, it also led to a break in what had been a decades-old pattern of political work by gay activists. The previous incentives for keeping silent were significant -- being out could lead to criminal charges, loss of employment, and a drop in social status -- but being silent and not acting during the AIDS crisis would lead to a profoundly painful illness and possible death. The punitive regime set the conditions for the catastrophe of the AIDS crisis, but the level of catastrophe meant that there was virtually no way for the regime to continue in the aftermath. Since the regime was so dependent on the silence of gay Americans, the vocal political action during the AIDS crisis irreparably damaged the existing system. In Chapter Four, I analyzed the aftermath of the end of the old regime and the beginning of the current regime. I discussed how new patterns emerge, but aspects of old regime still persist in different ways and how the policies of the past still shape gay identity to this day.

As I wrote at the beginning of this thesis, I find the traditional narrative of gay politics to be frustrating, both in the way it treats homophobia as an inevitability and the way it erases large swaths of gay history. This thesis presents a different empirical account of how gay political identity emerged in the twentieth century, one which reveals the degree to which the state influenced the actions and identities of gay Americans. From the structure of the witch hunt that was the Lavender Scare to the dismissal of the severity of the AIDS crisis, the government repeatedly forced gay Americans into silence until the severity of their oppression became fatal.

This research makes clear the full extent of the government's involvement in the construction of political identity. Sexuality as a category of identity is unique in that it is both seemingly innate but also requires a level of conscious choice to embody. This means that it is more malleable by outside factors, while still being an identity group. In that sense, both groups of early activists were right: being gay is a matter of conduct *and* character. This means that as a case study, sexuality is an especially significant area of study for the way policies affect identity formation. While many people do understand gender and race as constructed categories, the construction can often seem so abstract that it is difficult to see the ways in which the category itself has been manufactured in part by the government. Since race and ethnicity are passed through generations of families and there is a flawed but obvious biological method for determining gender, it is more challenging to see that these identity categories are also being constructed by the American government in some way. When the act of being a certain identity is illegal (rather than the ability to access aspects of citizenship, as is the case with race and gender), the ways that laws shape that identity become especially stark. In this case, it is clear that policies shape identity by shaping the ability people have to act on their own behalf and advocate for political change.

While the evolution of gay rights and identity show that it is possible for rapid political change to occur when barriers are lifted, it also reveals the ways in which there is never a clean slate in politics. To this day, the identities of gay Americans are still shaped by the politics of the old sexuality regime, as are the political beliefs of those opposed to the expansion of gay rights. The expectation of extreme openness with one's identity in the new regime would perhaps not seem so paramount were it not for the silencing effect of the old regime. The political aims of the gay rights movement and the order in which these aims were pursued is also the result of the

lingering effects of old regime. Intercurrence is still apparent in certain policies which seem contradictory to current attitudes on gay identity. For example, there continue to be policies on gay couples adopting children which are out of sync with the Supreme Court's now six-year-old decision on same-sex marriage. Since reforms and rights expansions have happened at varying rates in different parts of the country, it was not until June 2020 that gay workers had their employment rights protected, which was five years following the legalization of gay marriage and ten years after gay Americans could serve openly in the military. There is no one point at which state-sanctioned homophobia was definitively supplanted by gay equality. Rather there is constant evolution and additions to the sexuality regime, which transform it into something distinct from what it once was.

The rise and fall of the punitive sexuality regime also has implications for the government's capacity to allow for rapid policy changes. APD often deals with slow-moving, entrenched issues in politics, and the formation of gay identity is something which was slow-moving. At the same time, however, in the last several decades there has been massive upheaval of government policies on issues including taxation, the military, international adoption, and employment law -- all of which were the result of the sexuality regime change. While not all changes were unilaterally positive and many queer people were excluded from this progress, the rate at which the government changed once the old regime broke is remarkable. In many respects, this is actually something that political groups should find hope in. Political change is hard to come by, particularly in the last twenty years, but it still remains possible that putting enough stress on a regime will cause it to break. Particularly in the last year, when both the welfare state and the criminal justice system received heightened levels of scrutiny, it is

possible that these entrenched government behaviors could actually shift more quickly than anticipated.

Over the course of this thesis several new questions have emerged regarding the state's involvement in sexuality and identity formation. One which continues to fascinate me is the ways in which sexuality regimes took shape in other countries as compared to the United States. Even countries with relatively similar legal systems and cultural traditions seem to have regulated sexuality in a vastly different manner than this country. In the future, I think further research could be conducted to determine what it is that makes the United States distinct from countries like the United Kingdom or Australia. Another aspect of the sexuality state which interests me is the formation of gay identities prior to the twentieth century. This thesis has dealt with the current and previous regimes but there are still nearly two centuries of American history which fell outside the scope of this research. The state's involvement in sexuality prior to modern conceptions of heterosexuality and homosexuality seems like a particularly rich area of study.

While I do think most of my research is in some way applicable to all LGBT people, it does not escape me that I have focused primarily on cisgender gay men, and of the gay men I specifically discussed, most were white and middle or upper class. While I do think most of this research is applicable across identities, I do think that there is substantial work to be done researching how the sexuality regime differed for lesbians, bisexuals, and transgender people. I also think the progression of gay rights was experienced differently by people of color and the working class and there is a necessity for further research to be conducted on these groups of people.

Outside the realm of sexuality, another area of identity formation which I think would benefit from a similar type of analysis would be the identities of disabled people in the United

States. Similarly to LGBT people, there have always been disabled Americans but most substantive progress on civil rights for this group is relatively recent. Both groups share similar attributes like being literally silenced by the state through institutionalization for disabled people and obscenity laws for gay people. Sexuality and disability are both non-inherited identities -- any person in any family can be gay or disabled, which leads to different organizing challenges than inherited identities like race or religion. Both groups also suffer from the discomfort that even those who favor their cause feel in discussing the issue of their civil rights. Disabled people are frequently excluded from the institution of marriage due to both regulations on receiving government aid and by abled people presuming incompetence. Like gay people, there are aspects of citizenship which the disabled cannot access because of barriers created by the government which do not actually need to exist. Disabled people still lack access to many of the institutions which have now expanded to include gay people and I think it would be constructive to research why it is that so many barriers remain towards equity and how these inequities can be resolved.

In the introduction to this thesis, I wrote about my objection to the idea that the gay rights moved more quickly than other civil rights movements. I stand by that assertion -- it took literally centuries for gay Americans to access the same civil rights that were available to others. I do, however, believe that the movement progressed rapidly once it reached the inflection point that was the AIDS crisis. Following the 1980s, there has been a massive expansion of rights to a segment of the American population which previously received little acknowledgement or protection. Between May 1999, when I was born, and May 2021, when this thesis was completed, sodomy was decriminalized nationwide, gays were permitted to serve openly in the military, same-sex marriage was legalized in all fifty states, gay workers began to receive protection under the Civil Rights Act, and the number of openly gay Americans continued to

surge. At the risk of sounding too saccharine, I do think this represents a remarkable shift in American culture.

This shift, however, has not occurred without backlash. In the spring of 2021, unprecedentedly harsh bills were passed through many state legislatures restricting the rights of transgender youth. There have been deadly mass shootings, specifically targeting gay Americans. LGBT people still face disproportionate levels of homelessness and mental illness and nearly one in five hate crimes are motivated by homophobia. This is also the consequence of the sexuality regime. The prejudice did not emerge from nowhere -- it is the direct result of close to a century of government demonization and erasure of gay Americans. If there is one thing which I hope is clear from this thesis, it is that the government is a not neutral actor in the construction of bigotry. Homophobia is a tool the government utilized to scapegoat people during the Cold War, to ignore their responsibilities towards citizens during the AIDS crisis, and to win elections in the early 2000s. Gay Americans have been forced to react to these discriminatory government actions for generations. It does a disservice to marginalized groups to only study their progress, while ignoring exactly who it was that was responsible for their marginalization in the first place.

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