

Queer Law and Order: Sex, Criminality, and Policing in the Late Twentieth-Century United States

Timothy Stewart-Winter

In November 1970, after a lengthy foot chase, two Chicago police officers apprehended James Clay Jr., a twenty-four-year-old African American man, and fired eight shots into his back, killing him. Clay, who was wearing women's clothing when police encountered him, had a long arrest record that included charges for impersonating the opposite sex and solicitation to commit prostitution. The killing was covered by the local Chicago newspapers, including the *Sun-Times*, the countercultural biweekly *Seed*, and on the front page of the black-owned *Defender*. The Chicago Gay Alliance, founded a few months earlier, demanded that the Federal Bureau of Investigation look into whether Clay's rights had been violated. The officers have never been brought to trial. At the time of Clay's shooting, Chicagoans had been mobilizing for nearly a year, since the police killing of the Illinois Black Panther party leaders Fred Hampton and Mark Clark, to protest surveillance and infiltration of the black power movement. On the first anniversary of Clay's death, Ortez Alderson, a twenty-year-old black man raised on the city's South Side and the co-founder of the Black Caucus of Chicago Gay Liberation, organized a memorial march on the city's Eighteenth District police station in his memory. Clay's death led to the formation in 1971 of the Transvestites Legal Committee, Chicago's first transgender political organization.¹

The protests against Clay's death offer a window onto the neglected intersection of the histories of sexuality and the carceral state by highlighting a missing link in the trajectory of gay politics: black-gay coalitions against police harassment. The rise of the gay rights movement and the emergence of the carceral state coexist uneasily in the historiography of the late twentieth-century United States. In the 1970s, as the nation embarked upon its unprecedented experiment in tightened drug enforcement and racialized mass incarceration, half the states repealed their sodomy laws, yet historians have only just begun to

Timothy Stewart-Winter is an assistant professor of history at Rutgers University–Newark. The author wishes to thank Heather Ann Thompson, Margot Canaday, George Chauncey, Donna Murch, Whitney Strub, Alison Lefkowitz, Kwame Holmes, Kevin Mumford, Julio Capó Jr., and the *JAH* editors and anonymous reviewers for their feedback.

Readers may contact Stewart-Winter at timsw@andromeda.rutgers.edu.

¹ "‘Female Impersonator’ Killed by Cop in W. Side Street Brawl," *Chicago Defender*, Nov. 28, 1970, p. 1; "Why Should We Live in Fear?," *Chicago Seed*, 7 (no. 10, 1971), 7; "Protest Police Harassment of Gays," *ibid.*, 7 (no. 13, 1971), 6; "Peace and Brotherhood," *Chicago Gay Alliance Newsletter*, Dec. 1971, p. 1; Ferd Eggan interview by Timothy Stewart-Winter, April 30, 2007, audiotape and transcript (in Timothy Stewart-Winter's possession); John D'Emilio, *In a New Century: Essays on Queer History, Politics, and Community Life* (Madison, 2014), 164–65.

examine this seeming contradiction. What happens if we view the history of the lesbian and gay rights movement in terms of its relationship to the criminal justice system? How might queer lives illuminate unknown dimensions of policing and punishment?

While historians have developed an extensive body of work on the gay rights movement and the black freedom struggle, the two are rarely considered in concert. Yet in cities such as Chicago, where gay mobilization was weaker and antigay policing persisted longer than in the vanguard cities of San Francisco and New York, they were two key constituents in a coalition against police harassment. Examining the two together offers a new vantage point for understanding the origins and scope of the carceral state that would arise in the wake of the 1960s. Gay activists succeeded in combating police brutality and in instituting reforms that sharply curtailed the antigay tactics of big-city police departments. The gay rights movement was more successful in ending routine harassment of lesbians and gays in civic spaces, and this would have important consequences for the future of the nation. In short, as the gay rights movement saw victory—as gay bars with predominantly white, middle-class patrons came under less scrutiny and suffered much less harassment—its activists largely withdrew from the fight against the growing police state. The targeted policing of black and Latino communities was made possible by mobilized social conservatives and by the evaporation of organized support from white liberals—including gays—for reining in police.

In ways that few scholars have appreciated, the collapse of once-promising black-gay coalition efforts against excessive policing had serious yet initially hidden consequences for the gay rights movement. Although those activists had won a major battle against the unwanted attentions of the police in the 1970s and into the 1980s, they had by no means won the war. Indeed, as the organized gay community lost interest in criminal justice-related matters, a massive carceral state was being erected in this country. That carceral state began to disproportionately imprison African Americans and would soon criminalize gays of color in unexpected and devastating ways.

State Power and the Rise of the Gay Movement

Policing and punishment occupy a curious place in the historiography of sexuality. The dynamics of police harassment were central to the first wave of urban gay community histories and are understood to be involved in the rise of the homophile and gay liberation movements. Scholars have traced the association of gays and lesbians with crime in the 1950s, but far less has been written about how antigay policing changed in the 1960s and 1970s, as big-city police departments adopted a more aggressive approach to black insurgency. Police tactics and the criminal justice system have also been somewhat marginal to the growing body of scholarship on the political and legal history of sexuality. In part, this is for good reason: scholars have not focused on state and local levels of governance, instead illuminating previously neglected reasons for growth in the federal government's hostility toward the gay community by the mid-twentieth century.²

² On police harassment and the rise of homophile and gay liberation movements, see John D'Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940–1970* (Chicago, 1983); Elizabeth Lapovsky Kennedy and Madeline D. Davis, *Boots of Leather, Slippers of Gold: The History of a Lesbian Community* (New York, 1993); George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890–1940* (New York, 1994); Terence Kissack, "Freaking Fag Revolutionaries: New York's Gay Liberation Front, 1969–1971," *Radical History Review*, 62 (Spring 1995), 104–35; Marc Stein, *City of Sisterly and Brotherly Loves: Lesbian and Gay Philadelphia, 1945–1972* (Chicago, 2000); and Emily K. Hobson, "Policing Gay L.A.: Mapping Racial Divides in the Homophile Era, 1950–1967," in *The Rising Tide of Color: Race, State Violence*,

Regina Kunzel has documented the resistance of prison sexual subcultures to the purported ascent by the mid-twentieth century of a binary opposition between heterosexuality and homosexuality. She has also demonstrated that gay liberationists in the 1970s were quite concerned with the fate of gays and lesbians in prison. Christina Hanhardt's book on gay antiviolence organizing since the 1970s reveals the embeddedness of such activity in the ascendant politics of gentrification and crime, while Christopher Lowen Agee has shown the remarkable ability of gay-bar owners in San Francisco to align themselves with political reformers by challenging police graft. Scholars in other disciplines have examined how the sexual politics and romantic economy of black communities were shaped by the incarceration of extraordinary numbers of young men.³

Missing, however, is an approach to gay political history that foregrounds the movement's evolving critique of law enforcement and criminal justice. In an era when many white city dwellers were drawn to a new politics of "law and order," white gay activists found themselves among those suspicious of it. Gay migration to cities in the postwar era—what Kath Weston has called the "great gay migration"—represented a countervailing trend to white flight. White gay men and lesbians diverged from the pattern of white suburbanization by remaining childless and by preferring to live in the city. While historians have emphasized differences between the homophile movement and the gay liberation movement that quickly overtook it after the 1969 uprising at the Stonewall Inn in New York City, the movements' shared focus on police excesses was an important similarity. For all their differences, both movements took a more radical stance on criminal justice than did the nationally cohesive gay rights movement that developed in the late 1970s.⁴

America's gay rights movement began as a response to criminalization and escalating police harassment after World War II. Reformers and urban political bureaucrats for decades had sought to devise ways of confining, suppressing, or reforming illegal "vice" activities associated with particular spaces and populations. Police raids were the most important point of contact between gays and lesbians and the state, and the practices of local law enforcement were the crucial targets of activism for most of the movement's first half century. Gay men most often risked police action when plainclothes officers, who had been sent to monitor bars undercover, witnessed men dancing together, kissing, touching, or "soliciting" sex. Places that catered to women endured mass arrests more often because

and *Radical Movements across the Pacific*, ed. Moon-Ho Jung (Seattle, 2014), 188–212. On the association of gays and lesbians with crime in the 1950s, see George Chauncey, "The Postwar Sex Crime Panic," in *True Stories from the American Past*, ed. William Graebner (New York, 1993), 160–78; Estelle B. Freedman, "'Uncontrolled Desires': The Response to the Sexual Psychopath, 1920–1960," *Journal of American History*, 74 (June 1987), 83–106; and Fred Fejes, "Murder, Perversion, and Moral Panic: The 1954 Media Campaign against Miami's Homosexuals and the Discourse of Civic Betterment," *Journal of the History of Sexuality*, 9 (July 2000), 305–47. On the transformation of policing in the 1960s and 1970s, see Robert O. Self, *American Babylon: Race and the Struggle for Postwar Oakland* (Princeton, 2003); and Andrew J. Diamond, *Mean Streets: Chicago Youths and the Everyday Struggle for Empowerment in the Multiracial City, 1908–1969* (Berkeley, 2009). On the federal government's hostility toward the gay community, see David K. Johnson, *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* (Chicago, 2004); and Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton, 2009).

³ Regina Kunzel, *Criminal Intimacy: Prison and the Uneven History of Modern American Sexuality* (Chicago, 2008). Christina B. Hanhardt, *Safe Space: Gay Neighborhood History and the Politics of Violence* (Durham, N.C., 2013); Christopher Lowen Agee, *The Streets of San Francisco: Policing and the Creation of a Cosmopolitan Liberal Politics, 1950–1972* (Chicago, 2014). Russell K. Robinson, "Racing the Closet," *Stanford Law Review*, 61 (April 2009), 1463–533; Megan Comfort, *Doing Time Together: Love and Family in the Shadow of the Prison* (Chicago, 2008).

⁴ Kath Weston, "Get Thee to a Big City: Sexual Imaginary and the Great Gay Migration," *GLQ: A Journal of Lesbian and Gay Studies*, 2 (no. 3, 1995), 253–77.



For “butch” lesbians, drag queens, and others whose gender presentation was non-normative, police harassment in the postwar decades was bolstered by local laws that criminalized cross-dressing. At a New York City drag ball attended by some 2,000 people in October 1962, forty-four attendees who were dressed in drag were arrested and charged with impersonation. *Courtesy Associated Press.*

lesbians—simply by being part of a subculture organized around “butch” and “femme” forms of gender expression—were treated as violators of local and state laws. Disorderly conduct laws and other catchall violations allowed the police to shut down establishments on the basis of plainclothes officers’ casual observations.⁵

White gays and lesbians faced capricious punishment by the criminal justice system more often than other whites did. To have one’s name printed in the newspaper following a police raid was the quintessential punishment for being gay. In America’s postwar antigay witch-hunts, even though “such a charge will probably be dismissed the following morning,” “there is a name spread on a record that will not be lost” and ultimately “the whole of this very common procedure will surely spell ‘pervert’ in blazing letters for anyone who cares to take the trouble.” Exposure as a homosexual—especially via an arrest—jeopardized one’s ties to friends and family, and especially threatened access to employment.⁶

Even before the Stonewall uprising created a radical gay liberation movement centered in cities and university towns, Americans perceived the issue of gay visibility as part and parcel of a breakdown of law and order. A war on vice burgeoned during the Cold War

⁵ I. Bennett Capers, “Cross Dressing and the Criminal,” *Yale Journal of Law and the Humanities*, 20 (no. 1, 2008), 1–30.

⁶ J. D. Mercer, *They Walk in Shadow: A Study of Sexual Variations* (New York, 1959), 390–91.

era, built on the earlier law enforcement response to organized crime during Prohibition. Urban policy makers responded to periodic police corruption scandals and calls for reform by demanding that criminal vice activities—not least those, such as gay nightlife, that were controlled by organized crime—be rooted out. Widely publicized crimes against children in the 1950s fueled panicked calls for police to “round up every known sex offender and moron.” Politicians made law enforcement agencies bigger and tougher, sustained partly through calls to defend family life against the perceived threats of juvenile delinquency and violent criminality.⁷

The state tended to punish working-class African American lesbians and gay men most harshly, funneling some into a youth correctional system that snatched children deemed troublesome away from their parents. Thus, Ron Vernon, a “flamboyant” black teenager who grew up on Chicago’s South Side, recalls that when he began high school in the early 1960s, he was “sent to a counselor immediately,” “because of my overt femininity.” Later, a family court judge asked the boy’s father during a hearing if he was “aware that your son is a homosexual?” The man recalled, “My father is a very honest man, and just said, ‘Yeah.’ So they said, ‘Well, we’re going to send him to Galesburg Mental Institution to try to correct his homosexuality.’” The young Vernon, twelve or thirteen years old at the time of the hearing, would spend much of his adolescence in and out of the custody of the state of Illinois.⁸

As their first, and too regular, contact with the criminal justice system, police officers were the source of tremendous fear among ordinary lesbian, gay, bisexual, and transgender people. White gay people simply had more negative experiences with the police than did similarly situated heterosexuals. In a February 1961 raid on the C&C Club, a blue-collar lesbian bar in Chicago, more than fifty women were arrested along with the bartender. At the police station, “those women wearing ‘fly fronts,’ regardless of whether they wore lipstick, long hair, or earrings, were made partially to undress in order to determine whether they wore jockey shorts,” according to one account. The raid prompted Del Shearer to establish, later that year, Chicago’s first chapter of the Daughters of Bilitis, the nation’s first lesbian organization, based in California. Even political meetings in private homes were not immune from concern. An ethnographer attending a 1967 potluck, held in a private home and sponsored by a homophile group, reported, “I was apprehensively greeted at the door by persons I had not met before.” He later learned that “until someone recognized me there was fear that I was ‘the fuzz.’”⁹

Cruising on city streets also brought gay men into conflict with law enforcement. In detailed interviews with 458 white gay men, conducted in Chicago in 1967 by researchers from Indiana University’s Kinsey Institute, fully half reported that they “often” or “sometimes” worried about “being caught by the police” while seeking sexual partners.

⁷ “Sex Degenerate of Sadist Type Slew Three Boys, Alienist for Court Believes,” *Chicago Tribune*, Oct. 19, 1955, p. 2.

⁸ Ron Vernon, “Black and Gay: Growing Up in Chicago,” *Chicago Gay Crusader*, 1 (Nov. 1973); “Sissy in Prison: An Interview with Ron Vernon,” in *Out of the Closets: Voices of Gay Liberation*, ed. Karla Jay and Allen Young (1972; New York, 1992), 99–112, esp. 100, 103. L. Mara Dodge, “‘Our Juvenile Court Has Become More like a Criminal Court’: A Century of Reform at the Cook County (Chicago) Juvenile Court,” *Michigan Historical Review*, 26 (Fall 2000), 51–89.

⁹ D. S. [Del Shearer], Illinois, “Readers Respond,” *Ladder*, 5 (April 1961), 21–22; “Civic Virtue Triumphs Again,” *Chicago Mattachine Society Newsletter* (no. 11, March 1961), 1; N. L. [Del] Shearer to John Stanton, May 27, 1964, folder 2, box 58, Correspondence 1962–1966, Barbara Gittings and Kay Tobin Lahusen Gay History Papers and Photographs 1855–2009 (New York Public Library, New York). “Klassen Field Notes, Mattachine Midwest (Chicago Area Homophile Society), Pot Luck, May 28 (Sunday, 4 PM–7PM),” 1967, folder 4, box 10, series 4: Institute for Sex Research Materials 1956–1968, William Simon Papers ca. 1954–1975 (Chicago History Museum, Chicago, Ill.).

This was a larger proportion than those with the second most frequently reported worry—"catching a disease"—or who worried about being exposed, blackmailed, or robbed. Moreover, 101 men, or 22 percent of the interviewees, reported that they had been "arrested by the police" for a reason "related to homosexuality" in their lifetimes. The editor of the Los Angeles-based *ONE* magazine explained its refusal to print lists of gay bars and baths by asking: "Why should the homosexual always make it easy for the police? Why print a list that in the wrong hands can be used against us?" Gay and lesbian citizens' experiences with the police set the terms by which they participated in the political culture of their city in an era of crisis, as crime and policing became increasingly important political issues after the August 1965 Watts uprising in California.¹⁰

Black-Gay Coalition Politics

In urban America gay activists drew inspiration from black radicals and assistance from black politicians—processes neglected by historians. While police abused criminal laws, such as those against public indecency and lewd acts, to harass white gays and lesbians, African Americans endured brutal treatment simply for being black. Gay activists borrowed from the playbook of African Americans who increasingly challenged police brutality in city halls and state legislatures, in the courts, and in public protests. Black mobilization against police harassment was buoyed by the revolution in the rights of criminal defendants begun by the Warren court in the late 1950s. Joined by their shared concern with combating the overzealous activities of law enforcement, black and gay activists found common cause.¹¹

All but forgotten today, these fragile alliances of black and gay activists stretched from the late 1960s to the early 1980s, fueled by a backlash against police surveillance and intimidation of black militants. In Chicago, for example, activists forged institutional links through the Alliance to End Repression, a police watchdog group founded in the wake of the killing of the Black Panthers Hampton and Clark. Homophile and gay-liberation activists attended a Black Panther-organized tour of Hampton and Clark's apartment and issued a rare joint statement siding with those challenging the police account of the raid. "The Black Panthers are getting support from a surprising source—the Mattachine Midwest, a society for homosexuals," wrote the city's most widely read newspaper columnist.¹²

Gay activists made contact with other radical movements in the heady late 1960s. One activist attended an April 1969 conference on police treatment of minorities and reported back to his gay-movement colleagues. He was particularly struck, he said, by a talk by Renault Robinson, who had founded the Afro-American Patrolmen's League the previous summer: "He found the disorderly conduct charge discriminatorily applied to Chicago's black population, in approximately the same manner as homosexuals frequently find it." At a police-community meeting in the Lincoln Park neighborhood, where urban renewal had pitted progressive activists and clergy against homeowners and developers, radical gay activists demanded to know "why homosexuals in the district are arrested for kissing and holding hands." They observed, afterward, that Latino speakers at the meeting "came up

¹⁰ "ISR H Study Code Book," 142, 143, box 186, John Gagnon Papers, RG 64 (University Archives: Faculty Collections, Stony Brook University, Stony Brook, N.Y.). "Tangents: News & Views," *ONE*, 12 (July 1964), 14.

¹¹ Timothy Stewart-Winter, *Queer Clout: Chicago and the Making of Gay Politics* (Philadelphia, forthcoming).

¹² Irv Kupcinet, "Kup's Column," *Chicago Sun-Times*, Dec. 23, 1969, p. 50.



At an April 1970 gay-liberation rally in Chicago's Grant Park, a protestor holds a handmade sign reading "Stop Police Entrapment." Plainclothes vice officers frequently propositioned and then arrested men cruising in gay bars, on city streets, in parks and public restrooms, and at highway rest stops in search of consensual sexual encounters with other men; such harassment declined in many U.S. cities in the 1970s and 1980s. *Courtesy Margaret Olin.*

with names, dates, times, and places of Pig harassment and brutality" and proposed that gay activists follow their example.¹³

This activism created important successes for both groups. African Americans led liberal political coalitions that won power in many big cities, and many black elected officials worked to check police brutality. In Chicago, the Alliance to End Repression successfully challenged the police surveillance and infiltration of civil rights and New Left groups and won a landmark consent decree in the early 1980s that forced the city to curtail its monitoring of activist groups. Police monitors volunteering for the Alliance to End Repression took an interest in arrests of gay men in lakefront cruising areas. The alliance's Gay Rights Task Force, moreover, became the first vehicle for gay activists pushing for the passage of a local antidiscrimination ordinance. Clifford P. Kelley, a heterosexual black alderman who first introduced the ordinance in committee, also introduced a bill to repeal the city's cross-dressing ban, and he explained to the *Chicago Defender* that most arrests of black transvestites were made by white policemen. Black candidates, unable to win citywide election without at least

¹³ William B. Kelley, "Report on Attendance at Conference on Police Discretion, Held at University of Chicago Law School, April 12, 1969," William B. Kelley Papers (in William B. Kelley's possession). Frank Blatchford, "Youths Harass Conlisk," *Chicago Tribune*, June 2, 1972, p. 4; Bob Olmstead, "100 Walk Out on Rochford at Police-Community Parley," *Chicago Sun-Times*, June 2, 1972, clipping, miscellaneous clippings collection (Gerber/Hart Library and Archives, Chicago, Ill.); Patricia Stewart, "New Latin Group Fights Alleged Cop 'Harassment,'" *Booster*, Nov. 4, 1970, clipping, *ibid.* "Community Control of the Police . . . Not Police Control of the Community," *Chicago Seed*, 8 (no. 9, 1972), 16. "How Far Have We Gotten?," n.d., leaflet, box 1, Chicago Gay Liberation Memorabilia Collection (Gerber/Hart Library and Archives).



Following an August 1970 gay power march from Times Square to Greenwich Village, New York City policemen pull one young man by the hair and club another long-haired protestor as members of the New York Police Department Tactical Patrol Force attempt to disperse demonstrators in front of the New York Women's House of Detention. Two weeks earlier, the Black Panther party chairman Huey Newton had issued a statement urging party members to "form a working coalition with the gay liberation and women's liberation groups." Huey Newton, "A Letter from Huey to the Revolutionary Brothers and Sisters about the Women's Liberation and Gay Liberation Movements," *Black Panther*, Aug. 21, 1970, p. 5. *Courtesy Associated Press.*

some white votes, saw white gays and lesbians as the low-hanging fruit; like other African American mayoral candidates, Chicago's Harold Washington reached out to gay voters in 1983, acknowledging that gay Chicagoans had "suffered at the hands of brutal policemen."¹⁴

In the decade and a half after 1968, however, as urban gay subcultures flourished, many urban gay organizations shifted their focus from policing the police to policing employers. This shift occurred, in part, because police entrapment of gay men in public places and routine police raids on gay and lesbian establishments declined sharply. By the early 1980s, raids on the largest gay bars were no longer routine in any of the nation's largest cities. Another factor was that more and more gay people were coming out of the closet and realizing the costs involved in doing so. As more gays and lesbians weighed disclosing their sexuality more often, in more spheres of their lives, they faced the risk of being fired

¹⁴ On African American liberal political coalitions, see Heather Ann Thompson, *Whose Detroit? Politics, Labor, and Race in a Modern American City* (Ithaca, 2001); Matthew J. Countryman, *Up South: Civil Rights and Black Power in Philadelphia* (Philadelphia, 2006); and Thomas J. Sugrue, *Sweet Land of Liberty: The Forgotten Struggle for Civil Rights in the North* (New York, 2008). The consent decree is still in effect, though courts have twice narrowed its reach, in 1984 and 2001. Adrian Vermeule, "Posner on Security and Liberty: *Alliance to End Repression v. City of Chicago*," *Harvard Law Review*, 120 (March 2007), 1251–62. "Six Arrested at Belmont Rocks," *Chicago Gay Life*, Aug. 15, 1975, p. 2. Joseph Longmeyer, "Gays Push for Rights Here," *Chicago Defender*, Oct. 10, 1973, p. 3. Paul Cotton, "Washington Appears at Community Forum," *GayLife*, April 7, 1983, p. 1. Stewart-Winter, *Queer Clout*.

and organized to protect themselves by expanding the state antidiscrimination apparatus. The assault on bar raids, in particular, was so successful that it became easy to forget how recently such harassment had been the central object of gay mobilization. Grassroots campaigns to end police harassment of gay establishments were aided by increased exposure and prosecution of police corruption, in which gay activists played a role but were not the key actors. The Watergate scandal of 1972–1974 empowered reformers of many stripes, and good-government organizations and prosecutors increasingly saw police corruption and criminality as a graver threat to the social order than white gay sociability.¹⁵

The forms of antigay police harassment that implicated middle-class whites declined sharply in most cities during the 1970s. Simultaneous with the development of the racialized apparatus of mass incarceration, white gays and lesbians—no longer subjected to previous levels of arrest, prosecution, and incarceration—moved toward a reconciliation with the law-and-order state. Even as the carceral state was expanding in other ways—especially via the war on drugs—gay bars were increasingly owned by lesbians and gay men. A movement that had only recently seen big-city police departments as its enemy began not only to negotiate with police chiefs but to advise them on police academy curricula and push for the recruitment of openly gay officers.¹⁶

The Coalition Splinters

The gay rights movement achieved extraordinary success in pushing police out of gay bars, just as a militarized war on drugs began to reshape cities. Sex and drugs—linked by mid-century liberals under the category of “victimless” crimes—went on to have dramatically different regulatory histories. The recommendations made by President Lyndon B. Johnson’s crime commission in 1967 included the rehabilitation of offenders, flexibility in sentencing for drug possession, and a dramatic expansion of the welfare state; one of the few recommendations realized in the ensuing four decades of public policy was the decriminalization of homosexuality. During the 1970s the gay rights movement grew rapidly and yet shifted away from its radical roots and from a critique of state power. Those for whom gay identity was politicizing were overwhelmingly white and male. For gay people of color and for white women, the gay rights movement was often not the one that spoke most directly to their daily concerns. Many gay men were—and are—privileged by race and class at the same time that they were victimized by antigay discrimination. Though despised and vulnerable to being fired if their sexuality became known, a sizeable and growing number of white gay men held economically comfortable positions in urban America.¹⁷

White middle-class gay activists underestimated the importance of fighting law enforcement power beyond what immediately shaped their everyday lives. As more gays

¹⁵ In the 1970s, as prosecutors such as Chicago’s James R. Thompson went after corrupt police, the extortionate practices of vice squads appeared to be more of a threat to the social order than the actions of bar owners who had little choice but to pay off such officers. See *United States v. Clarence E. Braasch*, 505 F.2d 139 (1974). D’Emilio, *In a New Century*, 210–28; Stewart-Winter, *Queer Clout*.

¹⁶ “Kelley to Urge OK on Fire, Cop Gays,” *Chicago Sun-Times*, Jan. 5, 1978, clipping, Police Clippings File, Municipal Reference Collection (Harold Washington Library Center, Chicago Public Library, Chicago, Ill.); Katy Butler, “The Gay Push for S. F. Police Jobs,” *San Francisco Chronicle*, April 9, 1979, p. A1; Randy Shilts, “Gay Police,” *Police Magazine*, 6 (Jan. 1980), 32–33.

¹⁷ Edwin M. Schur, *Crimes without Victims: Deviant Behavior and Public Policy* (Englewood Cliffs, 1965). “Crime Panel Wants Laws Liberalized,” *Chicago Tribune*, May 8, 1967, p. 9; John D. Morris, “Panel Hits Curbs on Ex-Criminals,” *New York Times*, May 21, 1967, p. 45; William N. Eskridge Jr., *Dishonorable Passions: Sodomy Laws in America, 1861–2003* (New York, 2008). Kwame A. Holmes, “Chocolate to Rainbow City: The Dialectics of Black and Gay Community Formation in Postwar Washington, D.C., 1946–1978” (Ph.D. diss., University of Illinois, 2011).

and lesbians could hold down good jobs, a gulf opened between those who could live respectably and the more marginal queer city dwellers who cross-dressed or engaged in sex work or participated in other survival economies. In the 1980s, the AIDS (acquired immune deficiency syndrome) crisis became the center of gay activism in ways that also contributed to the coalition's decline. On the one hand, the epidemic renewed the militancy of the gay movement, and radical activists offered a powerful challenge to some forms of state power, including repressive legislation. On the other hand, white men became the most visible face of AIDS activism and did not always see the benefits of a coalition with African Americans—even as black activists began to make a similar calculation about the gay rights movement. Moreover, the crisis introduced a new source of tension by making the gap in organizational infrastructure between poor black neighborhoods and newly visible, predominantly white middle-class gay enclaves more consequential.¹⁸

The gay rights movement was far more successful in ending gay bar raids and eradicating sodomy laws than black and Latino activists were in eliminating unequal treatment throughout the criminal justice system. More research is needed to explain how the decline in bar raids occurred so quickly despite local variations. At the national level, the U.S. Supreme Court in 2003 struck down the thirteen remaining state laws prohibiting same-sex acts. Still, the gay rights movement's success has obscured some of its persistent vulnerabilities caused by its residual association with crime. The criminalization of sexual and gender deviance—especially police harassment of transgender women of color—has persisted. In addition, the purported threat to children posed by gay visibility remained an effective tool of antigay politics. It was at the heart of the singer Anita Bryant's successful 1977 antigay campaign in Miami that sparked a wave of repeals of local gay rights laws; it was central, too, to the narrowly defeated 1978 California referendum that would have banned gay and lesbian schoolteachers statewide. More recently, the stereotype of gays as recruiters of children was employed to help pass state constitutional amendments codifying the exclusion of gays and lesbians from civil marriage.¹⁹

Thinking that the criminal justice system was no longer its concern, the gay rights movement turned its attention first to AIDS in the 1980s and then to marriage equality in the 1990s. Meanwhile, however, the carceral state was growing unchecked, and one of its most virulent products—sex offender laws—would prove a new threat to sexual minorities. The criminal justice system still mattered to gays and lesbians—not only the particular kinds of policing that had long been a problem (now focused on criminalizing and policing so-called sex offenses) but also the threat of being singled out in prison. This proved true for all gays and lesbians, but, as before, it has proven particularly deadly for queers of color. Gay and gender-nonconforming prisoners disproportionately suffer sexual violence, while transgender and HIV (human immunodeficiency virus)-positive prisoners are routinely denied access to needed health care. Sex offender laws resurged in the 1990s as

¹⁸ Jennifer Brier, *Infectious Ideas: U.S. Political Responses to the AIDS Crisis* (Chapel Hill, 2009); Deborah B. Gould, *Moving Politics: Emotion and ACT UP's Fight against AIDS* (Chicago, 2009). Cathy J. Cohen, *The Boundaries of Blackness: AIDS and the Breakdown of Black Politics* (Chicago, 1999); Stewart-Winter, *Queer Clout*.

¹⁹ Gayle S. Rubin, "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality," in *Pleasure and Danger: Exploring Female Sexuality*, ed. Carol S. Vance (New York, 1984), 267–319. Gillian Frank, "The Civil Rights of Parents: Race and Conservative Politics in Anita Bryant's Campaign against Gay Rights in 1970s Florida," *Journal of the History of Sexuality*, 22 (Jan. 2013), 126–60. Dudley Clendinen and Adam Nagourney, *Out for Good: The Struggle to Build a Gay Rights Movement in America* (New York, 1999).



Carlos Crespo, the first openly gay police officer to receive the New York Police Department's Medal for Valor, appears with his boyfriend, Noel Garcia, after receiving the medal from Mayor Rudolph W. Giuliani in a September 1997 ceremony at police headquarters. Crespo, a member of the Gay Officers Action League, shot and killed a knife-wielding man who had attacked a fellow police officer. In the process, Crespo received a lung-puncturing stab wound. *Courtesy Associated Press.*

part of the broader growth of state carceral power. The 1994 federal crime bill required states to enact mandatory registration and community notification statutes.²⁰

Like the harsh sentencing guidelines with which they coincided, community notification of registered sex offenders—the group of laws informally referred to as Megan's Law—presumes that there is no such thing as an ex-offender and therefore extends the carceral space of the prison to the outside world, as Loïc Wacquant has argued. Many states have also passed laws mandating preventive civil confinement for some categories of sexually dangerous predators, in a further departure from the liberal rehabilitative views and safeguards of defendants' procedural rights that prevailed in the 1960s. If arrested today, Ernesto Miranda, whose name is synonymous with the procedural rights of criminal defendants, would be warned of his right to remain silent and to legal advice. Because he was a sex offender, however, in many states he would be subjected to actuarial sex-offender risk assessment instruments that have rapidly become popular since 2000.²¹

To be sure, mainstream gay organizations have opposed some new forms of carceral power, such as new laws criminalizing HIV transmission, which at least twenty-five states

²⁰ Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, *Queer (In)justice: The Criminalization of LGBT People in the United States* (Boston, 2011), 92–117. On the resurgence of sex offender laws, see Chrysanthi S. Leon, *Sex Fiends, Perverts, and Pedophiles: Understanding Sex Crime Policy in America* (New York, 2011); and Roxanne Lieb, Vernon Quinsey, and Lucy Berliner, "Sexual Predators and Social Policy," in *Crime and Justice*, vol. XXIII: *An Annual Review of Research*, ed. Michael Tonry (Chicago, 1998), 43–114. Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355, 103rd Cong. (1994).

²¹ Jonathan Simon, "Megan's Law: Crime and Democracy in Late Modern America," *Law and Social Inquiry*, 25 (Autumn 2000), 1111–50; Rose Corrigan, "Making Meaning of Megan's Law," *ibid.*, 31 (Spring 2006), 267–312; "America's Unjust Sex Laws," *Economist*, Aug. 6, 2009, pp. 21–23. Loïc Wacquant, *Punishing the Poor: The Neoliberal*

passed between 1986 and 2001. These laws typically prohibit sexual activity regardless of whether disease transmission occurs and without attending to the relative risk involved in specific acts; as Russell Robinson has shown, prosecutors typically invoke them only in cases where the subject was already in the criminal justice system—which is to say, disproportionately against poor and working-class black and brown men. The Lambda Legal Defense and Education Fund has recently campaigned for the repeal of these statutes. However, in a time of growing prosecutorial powers, the gay rights movement's advocacy for hate crime legislation, culminating in enactment of the federal Shepard-Byrd Act of 2009, aligned it with this trend. Most state-level hate-crimes laws include enhanced penalties. Strikingly, the passage of California's version of Megan's Law resulted in thousands of elderly gay men, convicted under lewd conduct or sodomy statutes decades ago, being forced to register with the state and notify their neighbors in the late 1990s. The response of gay rights groups was to lobby the California assembly to alter the classification so as to exclude them—a successful effort. They mounted no other objection to the law. While this partly reflects the public's growing awareness that gays and lesbians do not pose a threat to children or strangers, it also reflects the gay rights movement's retreat from a coalition critical of state power.²²

Police harassment of sexual and gender minorities has not ended, but rather has narrowed, focusing increasingly on queer people of color living in poverty. In 2005 an Amnesty International report on the United States found that “within the LGBT community, transgender individuals, people of color, youth, immigrant and homeless individuals, and sex workers experience heightened risk of police abuse and misconduct,” and that “transgender people, particularly low-income transgender people of color, experience some of the most egregious cases.” State and federal prison regulations and penal officials often harshly enforce gender conformity and isolate and punish queer prisoners. While the policing of queer communities of color has increasingly drawn the attention of scholars in the humanities, a historical perspective is needed to help place recent developments in perspective.²³

Although gay-black alliances to challenge police practices proved fleeting, it was not inevitable that white gays and lesbians would throw off the yoke of police harassment so much earlier than their queer of color counterparts. White gay liberals' success in curtailing one variety of police harassment was thus an aspect, largely neglected until recently by historians, of the broader reconfiguration that simultaneously devastated segregated urban black and brown neighborhoods. At the same time, the gay movement's changed relationship to state police powers also formed the context for its increasing incorporation into a Democratic party in which tough-on-crime laws became ever more central to its electoral strategies by the 1990s. Explaining the rapid growth of the carceral state in the late twentieth century, in short, requires an understanding not only of the sources of its support but also of the reasons why liberal coalitions failed to mobilize effectively against it.

Government of Social Insecurity (Durham, N.C., 2009), 220. On Ernesto Miranda's 1963 arrest and prior record, see Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America* (New Haven, 1998), 110. On risk-assessment instruments, see Bernard E. Harcourt, *Against Prediction: Profiling, Policing, and Punishing in an Actuarial Age* (Chicago, 2007), 12–14.

²² Robinson, “Racing the Closet,” 1515–16. Scott Schoettes, “World AIDS Day 2013: 15 Ways HIV Criminalization Laws Harm Us All,” *Lambda Legal*, http://www.lambdalegal.org/blog/20131115_world-aids-day-2013-15-ways-hiv-criminalization-laws-harm-us-all. Shepard-Byrd Hate Crimes Prevention Act of 2009, 18 U.S.C. 249 (2009). Mogul, Ritchie, and Whitlock, *Queer (In)justice*, 118–40; Hanhardt, *Safe Space*, 155–84. Wacquant, *Punishing the Poor*, 229.

²³ Amnesty International, *Stonewalled: Police Abuse and Misconduct against Lesbian, Gay, Bisexual, and Transgender People in the U.S.* (New York, 2005), 3. Mogul, Ritchie, and Whitlock, *Queer (In)justice*, 92–117.