

Chapter 13

United States: Multi-Institutional Politics, Social Movements and the State

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This chapter seeks to answer the question, to what extent is the lesbian and gay movement in the US influenced by the state compared to other possibly relevant factors. Most recent work on the lesbian and gay movement in the US focuses on the impact of one factor to the exclusion of others. Smith (2008), Andersen (2005), and Mucciaroni (2008) focus on how various structural features of the state and the law, including referendum procedures, actions by the courts, the configuration of political elites, political institutions and policy legacies influence lesbian and gay political and legal outcomes. In contrast, Fetner (2008) examines how the opposing Religious Right movement shaped lesbian and gay activism, while Armstrong (2002) illustrates the importance of other social movements and broader cultural shifts in society for understanding the lesbian and gay movement. Isolating a focus on the state, other social movements or culture produces only a partial picture. Instead, we need a theoretical framework that can explain the impact of the state on a movement that works for legal and policy change, that seeks to challenge dominant cultural patterns, that targets the state, the media, religion, and a myriad of other institutions. In short, can we, and, if so, how can we make sense of the impact of the state on this diverse social movement?

The state matters not only because of the rules and regulations it promulgates and enforces, but it matters to the lesbian and gay movement because of its place in a larger system of cultural meaning. The structural features of the US state, including its federal structure, horizontal separation of powers between the executive, legislative, and judicial branches and vertical separation of power between the federal, state, and local levels, as well as the structure of the courts, including the power of state constitutions (Smith 2008) as well as state procedures for placing issues on the ballot for popular vote (Andersen 2005), set the framework that helps to explain where the battles will be fought and how easily opponents can thwart each others' efforts. But to understand how the state influences the lesbian and gay movement, one must situate its location within

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psychiatrists or religious authorities as experts on homosexuality. However, ONE was not involved in political organizing, although it did become embroiled in a court case when its magazine was seized as pornography by the US Postal Service (D'Emilio 1983). So while this period has been described as one marked by assimilation and quiescence, the institutions targeted and the cultural logics challenged were interwoven with the political structure and illustrated both the importance of the state in repressing lesbians and gay men, as well as the state's reliance on other institutions and their constructions of homosexuality.

Cultural Innovation: Paths to Visibility 1965–1977

Between 1965 and 1977, two factors influenced the strategies and goals of the lesbian and gay movement. First, the new social movements of the 1960s, including the Civil Rights Movement, the New Left, and the Women's Movement, produced innovative forms of collective action that provided a template for other movements to follow (McAdam 1995). As younger activists who were steeped in these movements entered the lesbian and gay movement and some older activists became inspired by the more radical politics of the time, the lesbian and gay movement began to shift its strategies, tactics, and goals. Second, the differential enforcement of anti-gay/lesbian state policies provided not only grievances but led activists to set priorities based on how directly they felt the impact of those policies. Varying degrees of access to the polity also affected the extent of conflict between protesters and the state. Over time, as lesbians and gay men began to achieve some relief from police harassment, some organizations emerged to engage in party politics, while others formed to focus on national, rather than local change. Non-state targets such as the media and the American Psychiatric Association continued to garner much attention from lesbian and gay activists.

According to Armstrong (2002), gay liberation was born during the cultural crisis of the late 1960s and emerged from the encounter between the homophile movement and the New Left, underscoring issues of pride and producing the novel strategy of 'coming out'. The radical social movements of the 1960s created a spillover effect (Meyer and Whittier 1994) as the emerging lesbian and gay rights movement adopted direct action tactics. Two main branches of the lesbian and gay movement developed: the lesbian and gay rights movement typified by the Gay Activists Alliance (GAA) and the gay liberation movement embodied in such organizations as the Gay Liberation Front (GLF) (Marotta 1981). Unlike the GAA, the GLF did not seek change through the state, but pursued multi-issue revolutionary politics that sought to free the bisexual in everyone and to form coalitions with other oppressed peoples (Teal 1971).

The lesbian and gay rights arm of the movement was also affected by the cultural crisis of the late 1960s and began to shift tactics. State policies helped to structure this shift. State policies facilitated a concentration of highly educated gay men with grievances against the state that could be challenged through the

courts, pointing to the importance of a state with a horizontal division of powers that allows challenges through the courts as well as through the legislature. Comprised primarily of federal government employees, the Mattachine Society of Washington (MSW) was uniquely situated to break with the cautious homophile tradition by making demands on the state. The concentration of (white) gay men (few lesbians were involved) in Washington DC, who feared the government's draconian employment practices, provided fertile ground for mobilization. The MSW pursued a public, political agenda through litigation and public pressure. Because the MSW's local battle challenged federal policies, their efforts had national impact as states looked to the federal government for guidance in their employment policies. Like earlier homophile organizations, the MSW continued to seek redress from the courts, but this time used other political tactics as well.

State policies influenced the priority of different items on the lesbian and gay movement's agenda through differential enforcement. Of immediate concern were the glaring incidents of police abuse that often triggered the growth of new organizations and the use of more radical tactics (Murray 1996). The Stonewall riots of 1969 (Duberman 1993) were at the time but one in a series of uprisings (Armstrong and Cragg 2006), but produced a new surge in organizing. However activists had to win the legal right to form organizations and to protect themselves from discrimination. Both state harassment of lesbians and gay men and the relative enforcement of various anti-gay laws helped to set the lesbian and gay agenda.

From the early 1970s on, the movement began to shift from seeing the state as oppressor to demanding that the state provide protection and activists began pushing city government agencies to investigate employment discrimination. Lesbian and gay activists fought to add 'sexual orientation' to local and state human rights ordinances, which typically protected people from discrimination in housing, employment, and public accommodations, based on characteristics such as race, sex, national origin, and religion. Through the 1970s, more than thirty cities and counties added sexual orientation to these laws (Button, Rienzo and Wald 1997).

Political conditions continued to vary across the states and even across cities within the same state. Early forays into the political arena were usually repelled, although in some scattered locations, lesbians and gay men became important political constituencies and even ran for or were elected to office (Clendinen and Nagourney 1999). In other local races, lesbian and gay activists provided the crucial margin for political victory of gay-supportive candidates. Throughout the early 1970s, lesbians and gay men slowly became a nationally-recognized political constituency.

The sodomy statutes provided a formidable legal barrier to lesbian and gay rights and could be used to justify a panoply of anti-gay/lesbian laws, leading activists to refocus their efforts to challenge state-level laws. Activists brought a class action suit, *Doe v. Commonwealth's Attorney of Virginia*, that named the District Attorney of Richmond as defendant and challenged Virginia's punitive

sodomy laws (Leonard 1993). The district court ruled that the sodomy law was constitutional and the case was appealed to the US Supreme Court where it was summarily affirmed. A case is summarily affirmed when no arguments are heard and no opinion is issued. Because there was no opinion, courts were divided over the precedential value of *Doe*.

In the early 1970s, members of GAA started Lambda Legal Defense and Education Fund and the National Gay Task Force (NGTF) in New York City to create national legal and political change (Clendinen and Nagourney 1999). These organizations ushered in a new professionalized style of organizing. The NGTF, which incorporated in 1973 (Cain 1993), focused its efforts on federal agencies, with minimal success. By the late 1970s, the NGTF was still struggling for survival. Lambda began as a volunteer organization in the apartment of co-founder William Thom. For the next five years, surviving and achieving credibility were Lambda's primary goals (*Lambda Update* 1993).

Activists still had to contend with non-state institutions whose assessment of homosexuality had significant cultural power and impact on the state. The American Psychiatric Association continued to define homosexuality as a mental disorder and various state agencies relied on this collective diagnosis as justification for repressive policies. Lesbian and gay liberation groups and lesbian and gay psychiatrists challenged the authority of the sickness paradigm in the 1970s. Protest movement pressure and contradictions between mounting psychiatric evidence, and dated assumptions about homosexuality as sickness led the APA to its landmark 1973 decision to remove homosexuality from its list of mental disorders (Bayer 1987). This change influenced federal immigration policy, public health regulations, and made it easier for lesbian and gay organizations to incorporate.

The 1976 presidential campaign and election of Democratic Party candidate Jimmy Carter inaugurated a new period of unprecedented political access for lesbians and gay men which the NGTF, with its focus on national politics, was ready to seize. Although the NGTF failed in its bid to add a gay rights plank to the Democratic and Republican party platforms, activists gained some influence within the increasingly liberal national Democratic party. In 1978, President Carter signed the Civil Service Reform Act which prohibited discrimination based on sexual orientation in 95 percent of federal civil service jobs (*NGTF* 1980). Despite the unprecedented access to federal agencies under the Carter administration, lesbians and gay men lacked political power in most states, which precluded the possibility of federal legislative victories.

In the late 1960s and early 1970s, the movement began to utilize attention-getting tactics which generated national publicity and led to increased mobilization. By challenging cultural norms and fighting publicly for political change, lesbians and gay men mobilized a constituency and increased their ability to gain political power. Lesbian and gay activists began to form the nucleus of political and legal organizations that would be able to challenge the state during the next phase of activism. However, these efforts were not sufficient to gain entry into the polity

and, as Fetner (2008) argues, ironically, it would be the emergence of the Religious Right that would further propel lesbians and gay men into party politics.

Opposition and Retrenchment, 1978–1986

By the late 1970s, we see lesbian and gay political clubs, nationally oriented political organizations, legal organizations, as well as grassroots political groups in numerous cities across the country. From the late 1970s through the late 1980s, the state was less influential in setting the lesbian and gay movement's agenda and which venues it would emphasize than it had been before. The emergence of the Religious Right, in large part, determined what issues the lesbian and gay movement would pursue and in what venues. In particular, most US states have procedures that allow citizens or the legislature to place a referendum on the ballot that is subject to popular vote. Access to the referendum process allowed the Religious Right to place the lesbian and gay movement on the defensive by forcing it to fight anti-gay initiatives at the local and state levels, thus affecting where lesbian and gay activists placed their resources. The Religious Right's entrenchment within the Republican Party also meant that the lesbian and gay movement needed to fight anti-gay/lesbian federal initiatives as well. As Fetner (2008) argues, the growing influence of the Religious Right within the Republican Party as well as its wealthy media empire gave the issue of lesbian and gay rights a prominence it might not have otherwise had. Once lesbian and gay issues were on the political agenda more broadly, individual politicians and eventually their political parties had to take a position on the issue of gay rights. In short, the Religious Right made it impossible for the two political parties to ignore or remain indifferent to lesbian and gay rights. So for better or for worse, the lesbian and gay movement was compelled to turn toward party politics in order to protect itself from its opponents.

In 1977, Anita Bryant's 'Save Our Children' campaign, which repealed Dade County Florida's recently passed lesbian and gay rights ordinance, became the first anti-lesbian/gay campaign to gain national prominence (Adam 1987). With the demise of gay liberation and the emergence of the Religious Right, professionalized lesbian and gay organizations aimed at the national arena grew stronger. Dozens of new local organizations sprang up across the country committed to passing state and local anti-discrimination ordinances (*Coalition for Lesbian and Gay Rights* n.d.).

Activists felt that the threat posed by the Religious Right demanded a coordinated national response. In 1979, lesbian and gay activists from across the country held a series of national meetings to plan a march on Washington to protest the growing anti-lesbian and anti-gay backlash and to place concrete demands on elected officials. On 14 October 1979, the first national lesbian and gay march on Washington took place (Ghaziani 2008).

The growing Religious Right helped elect Ronald Reagan president in 1980. Reagan's election delighted the Religious Right, and caused alarm in lesbian and gay circles. The easy access to federal agencies enjoyed by activists under Carter ended abruptly. The Religious Right sought to capitalize on the availability of referendum procedures and to take advantage of its new found national political clout. As Smith (2008) argues, the structure of the two party system in the US as well as its lack of party discipline allows groups like the Religious Right to wield tremendous influence. Local drives to repeal the sexual orientation clauses of anti-discrimination ordinances continued to proliferate. Additionally, lesbian and gay groups now had to contend with proactive anti-lesbian/gay federal legislation.

The lesbian and gay movement's response to the newly-organized opposition and to their decreasing political access produced new forms of mobilization, strategies, and goals. Although local, grassroots groups continued to be important, national lesbian and gay organizations began to play a greater role in mobilizing activists at the state and local levels than they had before. In 1976, the Gay Rights National Lobby was founded to lobby Congress, and in 1980, the Human Rights Campaign Fund was founded to support political candidates sympathetic to gay rights (Epstein 1999). Given that politicians in the US operate more as independent agents and rely heavily on campaign contributions, such organizations become particularly important (Smith 2008). The 1980s witnessed an institutionalization of lesbian and gay organizations, creating professional, paying jobs for activists. The lesbian and gay movement of the 1980s also became more specialized, with the formation of lesbian and gay professional associations, gay groups centred around race, class, and physical disability, gay hobby groups, gay religious organizations and organizations aimed at monitoring the media, what Armstrong (2002) refers to as 'gay-plus-one' organizations. These groups represented not only a multiplication of gay identity, but challenges to multiple institutions.

Lambda Legal Defense and Education Fund began to take a proactive leadership role in precedent-setting litigation. In 1983, Lambda leaders called a meeting of lesbian and gay litigators, to coordinate a search for an ideal test case with which to challenge the remaining sodomy statutes (Cain 1993). The newly formed Ad Hoc Task Force to Challenge the Sodomy Statutes that emerged coordinated a test case to take before the US Supreme Court that, activists hoped, would overturn the remaining state-level anti-sodomy laws. The case, *Bowers v. Hardwick*, decided in 1986, would prove to be a legal catastrophe (in fact, the Court reaffirmed the constitutionality of the sodomy statutes), but it would also significantly increase mobilization and shift the tactics of the lesbian and gay movement.

AIDS, probably more than any other external threat, mobilized huge numbers of formerly apathetic gay men and lesbians (Vaid 1995) and this response was contoured by both the state and the Religious Right. The state's neglect of the AIDS crisis and the fact that people were dying led to increased mobilization of gay men and lesbians to provide care for those who were sick. Homophobic proposals to quarantine those with AIDS, or require mandatory AIDS testing, led legal organizations to focus on these issues.

of the Project was to encourage open discussion of sexuality. The link between cultural and legal change was clear. In contrast to previous strategies, the NGLTF began to address the issue of sexuality directly. The Project argued that proscribing certain sexual behaviours by leaving the sodomy laws on the books would not decrease the spread of AIDS, but would deter people from being tested for fear of arrest. And, continued criminalization of sodomy would impair educational efforts designed to prevent the spread of AIDS (Bernstein 2003).

Family policies also became more important during the 1980s. Widespread assumptions that mothers should get custody of their children after divorce collided with homophobia to deny divorced lesbians custody of their children. While this affected many lesbians, the issue was largely ignored by the movement in part because of its dominance by gay men. With the advent of AIDS, family policies, such as domestic partnership, access to a sick or dying partner, and inheritance became critically important to gay men (Cruikshank 1992). Thus recognition of lesbian and gay families became a main focus of lesbian and gay politics whose importance was underscored by losses due to AIDS. Frustrated with the lack of government recognition of lesbian and gay family relations, the domestic partnership movement emerged in the wake of the 1987 march and demanded domestic partnership benefits (such as health insurance and bereavement leave) from corporations, unions, and cities (Raeburn 2004) as well as adoption reform and inheritance rights.

During the late 1980s and 1990s, the Religious Right worked to place anti-lesbian/gay referenda on the ballots of dozens of cities and states (Goldberg 1993). The deluge of anti-lesbian/gay legislation required resources and organizing skill, which activists in many states lacked thus leading professional lesbian and gay organizations to flourish and to gain increased influence in the movement. As a result, Lambda and the NGLTF began to take on a greater leadership role and litigation became ever more important to the movement. During the 1990s, Lambda attorneys provided crucial legal assistance to local lesbian and gay organizations (e.g., Goldberg 1993) and the NGLTF hired political consultants to assist state organizations in defeating their gay rights opponents. In 1992, Colorado passed Amendment 2 which invalidated existing local anti-discrimination laws that protected people from discrimination on the basis of sexual orientation.

The time period between 1986 and 1992 was marked by outrage over the *Hardwick* decision which not only signalled the close of the federal judiciary to lesbian and gay claims, but because of its symbolic importance, the decision triggered new types of organizing and an emphasis on the cultural underpinnings of state policies and of heteronormativity more generally. Some activists targeted the state with a renewed emphasis on challenging the cultural assumptions underlying state policies. Other activists avoided the state entirely, focusing on challenging heteronormativity itself through challenging categories as in the case of Queer Nation. Other groups, such as ACT UP, did both. Yet by 1992, this renewed focus on challenging the cultural dimensions of gay oppression waned. The Religious

Right kept up its daunting strategy of placing anti-gay initiatives on state ballots and continued to influence the agenda of the lesbian and gay movement.

1992–2010: Hope, Conflict, and Contradiction

The election of Democratic Party presidential candidate Bill Clinton in 1992 marked the end of 12 years of Republican presidential rule and ushered in a new period of hope for political change as Clinton had courted the lesbian and gay vote. At the same time, the movement continued to be deluged with state-level anti-gay/lesbian referenda. As in earlier time periods, the change in presidential administration brought with it increased political access for lesbians and gay men, helped shift their political agenda, and also changed the composition of the US Supreme Court which would have important consequences for the lesbian and gay movement. So while there were major advances made through the courts during this time period, there were also significant legislative setbacks at the federal level. The lesbian and gay movement also had some initial success through the state courts relating to co-parent adoption and same-sex marriage. A pending victory through the courts in allowing same-sex couples the right to marry would propel the issue to the forefront of the lesbian and gay movement's agenda. But both the issues of gays and lesbians in the military as well as same-sex marriage would prove to be highly controversial and generated heightened internal movement conflict over strategies and goals.

During his election campaign, candidate Clinton had promised to end the military's ban on lesbian and gay personnel (Bull and Gallagher 1996), pushing the issue to the forefront of lesbian and gay politics. Until the 1990s, the fight to reform the military's anti-gay/lesbian policies had been waged primarily in the courts. Clinton did not anticipate the extent of homophobia and opposition to repealing the military ban. The result was a 'compromise', called 'Don't Ask, Don't Tell' that was worse than the previous policy, as statements about being gay or lesbian could be considered evidence of a 'propensity' to engage in 'homosexual acts' (Cole and Eskridge 1994: 320). And, more lesbian and gay military personnel were discharged under the new policy than under the old policy and had a disproportionately negative impact on lesbian service members (Ghaziani 2008). Don't Ask, Don't Tell was finally repealed in December 2010.

The emphasis on the military was a major source of conflict within the lesbian and gay movement, as many activists decried militarism and saw the fight for inclusion as regressive. Almost accidentally, same-sex marriage quickly emerged as the other main issue on the lesbian and gay political agenda. Like ending the ban on the military, achieving entry into what many considered to be a conservative and patriarchal institution was anathema to many (BeyondMarriage.org 2006, Duggan 2004, Walters 2001, Warner 2000). When three same-sex couples, with the aid of a private lawyer, sued the state of Hawaii for the right to marry, the national lesbian and gay organizations wanted nothing to do with the case, since

they felt it would have no chance of winning. Despite expectations to the contrary, the *Baehr v. Lewin* decision of 1993 found that denying same-sex couples the right to marry violated equal protection based on sex based on the Hawaii state constitution and remanded the case back to the trial court to see whether or not it could find a compelling state interest to legitimately deny the right to marry to same-sex couples. National organizations such as Lambda quickly joined the cause (Andersen 2005).

In the US, the states, rather than the federal government, retain control over marriage (who can marry, at what age, with what residency requirements, etc.), allowing the Hawaii case in the first place. Hawaii also proved to be a catalyst for renewed Religious Right organizing at both the federal and state levels. The result was the passage of the federal Defense of Marriage Act in 1996 which defined marriage as being between one man and one woman and, in possible violation of the full faith and credit clause of the US Constitution, allowed both states and the federal government to refuse to recognize same-sex marriages performed in other states (Andersen 2005, Bernstein 2001). As it looked like same-sex marriage might become lawful in Hawaii, the Hawaii legislature introduced its own DOMA in the form of an amendment to the state constitution which was approved by the voters in 1998. The Religious Right continued to pass an avalanche of state-level DOMAs similarly restricting marriage and precluding the recognition of lesbian and gay relationships. As time went by, these laws became more expansive and even had the effect of overturning existing domestic partnership laws which granted benefits to ‘marriage-like’ relationships (Gossett 2009).

What we see in the same-sex marriage debate is a multiplication of entry points by which the lesbian and gay movement and its opponents could pursue change. While seeking marriage rights through the state courts made sense, pursuing change through the courts also left the movement vulnerable to having favourable decisions undone by the legislature, by referendum, or both (Andersen 2005). For example, in 2008, California passed an anti-same-sex marriage measure by referendum, in reaction to a previous California Supreme Court decision that had ruled that same-sex couples had a constitutional right to marry. Although the ban on same-sex marriages in California has since been found unconstitutional, it remains in effect as the case is appealed. Many think that the US Supreme Court will ultimately decide the case (NYT 2010). Even as bitter debates among movement activists over the wisdom of pursuing same-sex marriage as a goal continued, the issue maintained its salience in large part because the Religious Right continued to place ‘baby’ DOMAs on the ballots of the vast majority of US states (NGLTF 2009), marking the issue with symbolic importance. Yet public opinion data also suggests (Fetner 2008, Loftus 2001) that real shifts in public opinion that are increasingly favourable to lesbian and gay rights and even to same-sex marriage are taking place as a result of this ongoing battle between the lesbian and gay movement and the Religious Right.

Because of the federal structure of the US, as of this writing, the lesbian and gay movement achieved the right to marry for same-sex couples in six states and

Washington DC through court decisions or legislative action. Forty states have officially banned same-sex marriage through 67 statutes, amendments to state constitutions, or both.

The structure of the US Constitution, in particular, the Bill of Rights, has given the lesbian and gay movement an important avenue for pursuing change. Two major decisions occurred during this time period. One of the Religious Right's most significant victories at the ballot box was the passage of Amendment 2 in Colorado, overturning existing human rights protections for lesbians and gay men, prohibiting the passage of other such laws, and effectively barring gays and lesbians from organizing. In 1996, the US Supreme Court overturned Amendment 2 in *Romer v. Evans*, arguing that there was not even a legitimate government interest in this law that could support treating lesbians and gay men differently from heterosexuals. *Romer* had a chilling effect on Religious Right efforts to overturn or prevent anti-discrimination laws that protected lesbians and gay men.

In 2003, in *Lawrence v. Texas*, a case brought by lesbian and gay legal organizations and their allies, the US Supreme Court found Texas's anti-sodomy law to be unconstitutional because it violated due process rights. More importantly, the Court criticized and expressly overturned *Hardwick*. These victories, particularly *Lawrence*, were important as much for the symbolic value of legitimating lesbian and gay lives. However, the lesbian and gay movement also lost two US Supreme Court cases that effectively allowed private organizations to exclude lesbians and gay men from participating in those groups.

Conclusion

Since 2003, obtaining the right to marry and defending against anti-same-sex marriage initiatives promulgated by the Religious Right remains the most important issue on the lesbian and gay agenda. The federal structure of the US polity has left the lesbian and gay movement with a strange patchwork of rights and disabilities. The horizontally and vertically federated US state and its separation of powers allowed a strong antagonist, the Religious Right, to stymie the achievement of lesbian and gay victories, producing an uneven pattern of lesbian and gay policies across the country. The strength of the Religious Right and its entrenchment in the Republican Party ensure that these battles will continue to be waged through the state and federal courts, through local, state, and federal legislatures, and through direct challenges to cultural systems of meaning that underpin state policies.

The state is important for its differential enforcement of various anti-gay/lesbian policies which influence the lesbian and gay political agenda as well as for the material impact those policies have. Yet the state is important not only because it provides the structure through which lesbian and gay rights proponents and opponents operate, but because it produces symbolic meaning both directly, through court decisions, and because it allows symbolic battles to be waged not only through the political parties and the legislatures, but at the ballot box as

well. However, despite the importance of the state, adopting a multi-institutional politics perspective allows us to situate the state as one institution among many that influences lesbian and gay lives. I have argued that in order to understand the impact of the state on the lesbian and gay movement relative to other factors, one must understand how systems of domination promulgated by institutions such as religion and psychiatry provide systems of meaning that are constitutive of state policies. A multi-institutional politics view also allows us to understand the state as a meaning maker in its own right, often drawing that meaning from other institutions, as in the *Hardwick* decision. Finally, by recognizing the power wielded by other institutions and the cultural meanings they produce, we can better situate the state in a complex web of domination that has historically disadvantaged lesbians and gay men.

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