

THE SEARCH FOR PLACE AND CONTEXT:
LOCATING STRATEGIES OF RESISTANCE
IN GAY AND LESBIAN SUBJECTIVITY

by

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A DISSERTATION

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ABSTRACT

This dissertation is about the nature of community and the substance of individual and collective subjectivity. Specifically, I interrogate the character of gay and lesbian subjectivity by investigating the ways in which the gay or lesbian subject is constituted through the discourse on same-sex marriage and military service. I argue that recasting gay subjectivity uncovers more meaningful ontological possibilities for the emergence of a new description of an individual who has relational and social attachments to a broader community while maintaining fidelity and integrity to descriptions of the self.

I argue that gay subjectivity begins as a search for models, a search for examples, and of a representation of the self. Gay subjectivity is about a search for place and context in an environment that views homosexuality as merely a marginal *sexual* identity. It is in this environment that gay and lesbian subjectivity is produced through a heteronormative discourse that distorts what it means to be gay. I argue that marital equality and unqualified military service successfully fulfill the Foucaultian promise of meaningful resistance which allows for a fuller, more meaningful subjectivity to be embraced by gays and lesbians.

DEDICATION

I dedicate this work to my sister Tonia, who has never left me wanting for place or context.

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CHAPTER 1
INTRODUCTION

This dissertation is about the nature of community and the substance of individual and collective subjectivity. Specifically, I interrogate the character of gay and lesbian subjectivity by investigating the ways in which the gay or lesbian subject is constituted through the discourse on same-sex marriage and military service. I argue that recasting gay subjectivity uncovers more meaningful ontological possibilities for the emergence of a new description of an individual who has relational and social attachments to a broader community while maintaining fidelity and integrity to descriptions of the self. The dual need for an authentic description of an individual in the political space coupled with a description that reflects his or her connection to those who are similarly situated sets the stage for this kind of inquiry into subjectivity. In the context of gay and lesbian political action, for example, Shane Phelan (2001) argues that gays and lesbians have more at stake than just any singular political objective. The significance of gay and lesbian political activism brings with it more than just acquiring a particular item on the political agenda; the significance lies in the political and cultural visibility that comes with

meaningful political participation. Mere political participation, however, is not enough even when it is accompanied by a sense of belonging to the political process. If one's status as a participant is the very object of debate, participation and recognition are not enough to bring with it inclusion in the "...persistent cluster of images and rhetoric that, however inadequately and imperfectly, signal to a population who and what it is," or what Phelan calls "the national imaginary" (2001, 7).¹

What does it mean to be gay? The ubiquitous presence of the heterosexual exemplar, by which I mean the infinite amount of visibility and representation given to the ordinary day-to-day existence of sexual identity specifically cast as heterosexual, has a profound effect on the ways in which gays and lesbians relate to sexuality.² Because sexuality is at first assumed to be heterosexual, young gays and lesbians must account for an experience disconnected from their peers. I argue that gay subjectivity begins as a search for models, a search for examples, of a representation of the self that mirrors back what the heterosexual exemplar already

¹ Patchen Markell (2003) underscores the point that belonging to a community of participants is not enough if "...after months, years, or decades of *persistent* loss at the game of politics, people may rightly wonder whether they're really being allowed to play in any meaningful way" (33). I would submit, for example, that access to civil unions and the ability to serve in the military on the condition of secrecy count as hollow political victories gained through a process of "meaningless" participation.

² I distinguish the "heterosexual exemplar" here from heteronormativity, which I describe more fully in chapter four, in order to separate it from homophobic or heterosexist connotation.

provides for heterosexuals. Gay subjectivity is about a search for place and context in an environment that has the tendency to view homosexuality as a thing that exists, but not as something that has moved beyond a marginal position as merely a *sexual* identity; it is to be “included-yet-excluded.” Gay adolescents might be told they are “questioning” their sexuality or “struggling” with it because the presumption of heterosexuality is so enmeshed with all that constitutes one’s identity, “questioning” allows for the preservation of a heterosexual standard while simultaneously allowing the opportunity to accept homosexuality as something else that exists, but always as something “else” or “other.” In this dissertation, I argue that the kind of subjectivity that should be embraced by gays and lesbians is one in which heteronormative definitions of the subject are dismantled; two of the ways I suggest this occurs is through full marital equality and through unqualified service in the military.

French historian and philosopher Michel Foucault in *The History of Sexuality, Volume 1*, set out to critique subjects that *seem natural* but that are actually contingent on socio-historical constructs of power and domination. Arguing from his “repressive hypothesis,” Foucault’s project was not “...to determine whether these discursive productions and these effects of power lead one to formulate the truth about sex, or on the contrary falsehoods designed to conceal that truth, but rather to bring out the ‘will to knowledge’ that serves as both their support and their

instrument" (1978, 11-12). Foucault argued that "sexual repression" is not what is problematic, but that we say we are repressed; historian Jonathan Ned Katz reiterates Foucault's central point that "...freeing an alleged natural sex from its social shackles is not the job that lies ahead. With an eye to the future, we need to focus instead on the ways eroticism is produced, now and in the past, noting how these social-sexual systems regulate and control individuals and populations" (1995 171). The value of Foucault's argument then, is to expose the "will to knowledge" that serves to support the discursive production of sex. The truths or lies that attend what we "know" about sex are less important than the discursive subject who is produced by, or who is the result of, these truths and lies which describe the environment in which the subject must exist.

Foucault's description of sexuality helps to uncover sites of resistance in which subjects can push back against the practices of a particular discourse. It is in, and through, discourse that the subject becomes the bearer of its power-knowledge having subjected him or herself to its meaning, power, and regulations (Hall 1997, 56). Discourses are the source of the production of the subject, who are

...figures who personify the particular form of knowledge which the discourse produces. These subjects have the attributes we would expect as these are defined by the discourse: the madman, the hysterical woman, the homosexual, the individualized criminal, and so on. These figures are specific to specific discursive regimes and historical periods (Hall 1997, 56).

Because the Foucaultian subject shoulders the weight of a particular and specific type of “knowledge” that is given, I ask what we know, or “know,” about the gay or lesbian subject in light of his rubric on subjectivity.

Dovetailing Foucault’s critique of the ways in which the subject is produced, Judith Butler agrees that we are constrained by the discourses that exist which describe sexed persons. Instead of considering gender as a fixed part of the self, Butler argues that “[t]he universal conception of the person... is displaced as a point of departure for a social theory of gender by those historical and anthropological positions that understand gender as a relation among socially constituted subjects in specifiable contexts” (Butler 1990, 14-15). In other words, rather than attributing gender as a fixed characteristic, gender ought to be theorized as ahistorical, as “...a fluid variable which shifts and changes in different contexts and at different times” (Gauntlett 2008, 150).

Butler famously addressed the construct of the gendered subject in her 1990 work *Gender Trouble* in order “...to show that the naturalized knowledge of gender operates as a preemptive and violent circumscription of reality” (1990, xxiii). The “reality” confronted by Butler is the problem of “[t]he heterosexualization of desire [which] requires and institutes the production of discrete and asymmetrical oppositions between “feminine” and “masculine,” where these are understood as expressive attributes of “male” and “female” (1990, 23). In the Foucaultian tradition

of analyzing produced subjects, Butler's model of the subject is one who is oppressively gendered through the regime of a rigid binary that serves as the authoritative description of subjects as men or women. "Men" and "women" are then the only coherent categories in which we can relate to each other; the consequences of such a stark contrast leave uncertain any expression of sex, gender, or sexuality that might not neatly fit into such a binary.

Not only does Butler envision the gender binary as oppressive, but in *Giving an Account of Oneself* (2005), she also looks into the circumstances of the subjectivity of a life lived with others. She frames a countermeasure to the ethical violence done to a subject when external "truths" are imported onto the subject by asking us to question why those figured as "men," for example, should be held accountable to a system of imposed "masculinity." Butler's argument raises an important question about those who stray from the normative epistemology of the gendered subject. The gendered subject must navigate a world in which one formulated as a "she" might not conform to "standard" accounts of what it means to be a "woman;" we might think of women who do not wear make-up, do not wear their hair long, or do not wear dresses and high-heeled shoes as examples of how the subject figured as "woman" must overcome the stereotypes of outward appearance. More injurious to the gendered subject, however, are the ways in which "women" might be figured in aptitude, which would govern a "proper" role for her in the workplace, or perhaps a

maternal duty which is ascribed to her. For the purposes of the argument I lay out in this dissertation, the gay or lesbian subject must communicate a positionality within a heteronormative discourse while negotiating coherent descriptions of the self which reduce the epistemic violence done to one's ability to interact with others in a way that facilitates the life lived among others.

Mark Blasius argues that "sexuality – or, better, in a lesbian or gay context, erotics – is the principle ethical category for lesbians and gay men. It is through their erotic relationships that subjectivity is constituted, that the lesbian or gay man constitutes her – or himself as an agent of actions in relation to an "other" or "others" (1994, 121). Because social movements call into question power relations, he analyzes one part of this "problematization," which is the production of knowledge by the contemporary gay and lesbian movement. He begins by claiming that the gay and lesbian existence ought to be conceived of as an ethos, rather than as a sexual orientation, or conceived of in any collectivist manner (i.e., a "community"). Blasius identifies the "coming out" moment as one in which an individual *becomes* a member of the community we call gays and lesbians. By "ethos," Blasius means "a shared way of life through which lesbians and gay men invent themselves, recognize each other, and establish a relationship to the culture in which they live" (1992, 645). This conceptualization, Blasius offers, is more fully meaningful than "sexual orientation." An ethos emerges when an individual creates

a relationship with himself and with others by engaging in the “practicing of the self.” Blasius prefers the characterization of the gay and lesbian existence as an ethos, or a set of guiding beliefs, as opposed to a “lifestyle” or “subculture” or “community” because while these may be elemental of a gay existence, they are incomplete descriptors for political analysis. Blasius’ project endeavors to correct for what he saw as an issue with the ways in which gays and lesbians relate to one another as individual subjects with a shared relationship to the culture at-large.

This dissertation also asks how the gay and lesbian subject is constituted, as evidenced in part by the politics of same-sex marriage and the ban on military service. If gay and lesbian “sexual identity” is a form of repression (as Foucault has argued), then, as I argue, recasting the gay and lesbian subject will uncover a more meaningful account of what it means to be gay or lesbian. My claim is that the anti-marriage and anti-military service rhetoric produces distorted descriptions of the gay or lesbian subject. As the dissertation unfolds, I present the “married gay couple” and the “gay soldier” as demonstrative of successful resistance strategies to those false descriptions by arguing that they craft a more meaningfully descriptive gay or lesbian subject. Access to civil marriage and the ability to serve in the military are constitutive of the ways in which gays and lesbians emerge as subjects for whom a new description can develop which is faithful to both the individual and the community.

Through the course of examining the implications of the nature of community, and the content of community-based political action, part of my project gives consideration to how the struggle for marital equality and the repeal of the ban on military service speak to ideas about community between gays and lesbians. In chapter two, I review the queer theory literature in order to position, in both historical and theoretical contexts, the ways in which queer theorists have modeled same-sex desire and gay and lesbian activism. Definitions of what constitutes a “homosexual,” the difficulty of producing such a definition, and the materialization of a “gay identity” for both personal and political reasons are examined through the lens of the gay rights movement. The inception of the gay rights movement in the early 1950s unlocks for us the origins of the contrasting emphases placed on assimilation as a way to achieve legal rights versus the liberation tactic which accentuated difference. As queer theory matured into an academic field, a robust debate arose over the exact nature of what gays and lesbians had in common with each other. The question at the heart of this divide was whether gays and lesbians were born gay or whether homosexuality was a choice. Moreover, queer theorists were very concerned over the social and political consequences of such a distinction; was homosexuality an essential characteristic that explained a natural, immutable, and historically enduring orientation or was homosexuality contingent upon cultural meanings that could not be interpreted across time or cultures?

In addition to the debate over the nature of sexual orientation, three books published in the mid to late 1990s addressed issues specific to gay and lesbian political action. During this time, questions about the ability of the gay rights' movement to address concerns over normality, or "mainstreaming," as a way to achieve equality were at the forefront of the debate between activists and theorists. At the end of chapter two, I unpack arguments laid out by Urvashi Vaid, Andrew Sullivan, and Michael Warner. Vaid, then-director of the National Gay and Lesbian Task Force, argued that the major problem facing gay activism at the beginning of the 1990s was the paradox of the unprecedented political and cultural visibility achieved by gays and lesbians parallel to the persistence of social stigma and prejudice, highlighted by the inauguration of President Bill Clinton in 1992 (1995, xvi). Vaid claims that from her position at the helm of a national grassroots lobbying organization focused on gay civil rights, she observed the genesis of a "virtual equality" which she describes as "...a state of conditional equality based more on the appearance of acceptance by straight America than on genuine civic parity" (1995, xvi).

Andrew Sullivan, editor of *The New Republic* at the time of his 1995 publication *Virtually Normal*, elaborates four theories of how he thinks society has dealt with what he calls the "conflicted politics of homosexuality." His solution is an alternative proposal to what he describes as the intractable positions each of the four

theories prescribes. Sullivan suggests that "...homosexuality is an essentially involuntary condition that can neither be denied nor permanently repressed" (1995, 170). His call is for an end to all *public* discrimination against gays and lesbians while leaving the *private* sphere to sort out its treatment of homosexuals as it will. Sullivan's support for a politics of normality drew the ire of leading queer theory scholar Michael Warner, who published *The Trouble with Normal: Sex, Politics, and the Ethics of Queer Life* in 1999, largely viewed as a direct response to Sullivan. Warner's work is a polemic against normality as he states "the embrace of normal is ...a prime example of antipolitical politics. The point of being normal is to blend, to have no visible difference and no conflict" (1999, 60). Warner's main argument is that the pursuit of normality as a means to achieve equality stigmatizes gays and lesbians who choose other kinds of relationships. The ethics of a queer life, according to Warner, would include the disavowal of the role sexual shame and social stigma play in demonizing gays and lesbians who don't seek "normality." These tensions are at the very core of what it means to be gay or lesbian and to participate (or not) in equality activism.

My aim in chapter two is to investigate how the problems of individual and community definitions have been fashioned by academics and activists. In order to accomplish this, I reveal how queer theory, as an academic field, has attempted to cultivate a theoretical disposition with regard to what it means to have a non-

conforming sexual orientation. Additionally, I examine the trajectory of the gay rights movement in expressing a community identity and the associated issues of such an enterprise, such as the recourse to essentializing identity by describing gayness as having a natural, enduring quality or an essence that all gays and lesbians share. And finally in chapter two, I discuss the quest for political and social “normality” as a means to achieve lasting equality and the ensuing debate that sought to reconcile the array of descriptions of gay and lesbian identity both as individuals and as members of a wider community.

While chapter two serves to establish how both activists and theorists have dealt with the attendant issues of gay and lesbian sexuality, I turn to Foucault in chapter three to elaborate my theory of gay and lesbian subjectivity which I argue is one that exists parallel to the dominant heterosexual identity; my theory describes the fluency with an existence that is “included-yet-excluded” – an experience or condition that is neither amorphous nor simultaneous. Simultaneity brings with it an implication of separate, at the same; “included-yet-excluded” is at once. In order to stake my claim that even though gays and lesbians are produced through a heteronormative discourse that distorts what it means to be gay, I argue that strategies of resistance are available that allow a fuller, more meaningful subjectivity to be embraced and that these disallow the restrictive and pejorative description of gayness. What it means to be gay or lesbian is not to exist in isolation from

heterosexuals, but rather consists in being excluded from particular modes of self-creation, self-interpretation, and self-description.

In chapter three, I delve into the ways Foucault understands subjectivity. He analyzes the conditions under which certain relationships are possible with respect to the production of a particular knowledge about the subject. He begins his inquiry by identifying a new technology of power which emerged in the second half of the eighteenth century. Rather than a disciplinary technique that had individual bodies as its focus, this new non-disciplinary mode of power operated on practices associated with birth, death, and illness (Foucault 2003, 243). This new method of power called “biopolitics” operated on man-as-species which looked toward the processes related to “...birth rates, mortality, longevity and the like and took them together with their related economic and political problems. These were the objects of biopolitics’ first objects of knowledge and the targets it seeks to control” (Foucault 2003, 243). The object of biopolitics was to rationalize the problems exhibited by government in its relation to a population in order to control interactions between people (Foucault 2003, 245). One of the examples he gives is the power biopolitics has over humans in the construct of race. Foucault describes racism as a distinction between people into a hierarchy wherein some races are good and others are inferior (2003, 255). The effect of the hierarchy is to introduce a division or fragmentation

among the populace which appears to be biological in origin, when in actuality race is a function or tool of biopolitics' power.

Foucault's treatment of racism is akin to how I understand the way homophobia to operate. Homophobia is the outgrowth of an imposed heterosexuality that is "normal," with well-defined pathways to full realization. Just as racism divides people by race into a hierarchy, so too does heteronormativity invite the organization of sexualities into hierarchical apportionment. Let us consider briefly what the civil union arrangement indicates about relationships. Heterosexual marriage signals the achievement of a fully mature, socially approved coupling. When gays and lesbians are excluded from marriage but granted civil unions instead, gay couples are organized into a hierarchy of approved relationships with heterosexuals at the apex and gays and lesbians existing in a space that can best be characterized as a pseudo-endorsement. What I mean by pseudo-endorsement is that civil unions imply a gesture toward social approval while maintaining distance from the normative, and legal, model of marriage. In this landscape, gay and lesbian subjectivity is at the mercy of a heteronormative definition of what it would mean to be a gay couple, which is to appear married but who are indeed decidedly not. The project of an embraceable gay and lesbian subjectivity is to resist this kind of rendering.

Resistance must not be thought of as a simple act of transgression against definitions. One cannot merely proclaim to reveal the truth of oneself. In chapter three, I explain how Foucaultian resistance is accomplished. Because the revelation of a “truth” about oneself through the practice of confession as a way to resist is problematic, I demonstrate how confession, through the prism of Foucault’s thought, is inadequate. I next turn in chapter three to a discussion of Judith Butler’s take on subjectivity. Butler’s project is to problematize subjectivity, or to call into question our certainties about what we know of the subject. I examine her theory of feminism and gender politics to discern what is necessary to arrive at successful social transformation. While political theory is not sufficient for social transformation, Butler argues, it is transformative in its effects when coupled with “...interventions at the social and political levels that involve actions... and institutionalized practice...” (2004, 204). At the end of chapter three, I engage the senior prom in a theoretical exercise by demonstrating how my theory of subjectivity illustrates the “excluded-yet-included” disposition of the gay and lesbian subject. I use the prom as a precursor to a more fully involved evaluation of the battle for marriage equality in chapter four.

In chapter four, I turn to marriage as a site of resistance for gays and lesbians. If, as I have described, resistance is the refusal of an imposed subjectivity, then full access to marital equality is essential to the gay and lesbian pursuit of self-definition.

It is through the description of the self as “married” that gays and lesbians embark on a course of a making and re-making of the self, giving lasting and meaningful intelligibility to what it means to be gay. Chapter four begins with an exposition of the significance of marriage as such. As covered in chapter two, the gay rights movement in its first phases focused on eradicating anti-gay laws that affected gays as individuals. In chapter four, I mark the shift from that attention to individual rights to the growing concerns related to community-wide issues beginning with the AIDS crisis in the early 1980s. It was the tragedy of the AIDS emergency that brought gay and lesbian activists to search for more than just the removal of legal obstacles into a program of activism that celebrated community.

The materialization of marriage on the gay rights agenda and its importance not only to the equality of gay people, but also its personal dimension is explored. I make the case, through intertwining these concerns of legal equality and personal worth, that marriage is of value as a political goal. I examine the struggle to justify why gays and lesbians should be allowed to marry as well as responses to claims that the movement is trying to “change the definition of marriage.” As my argument claims that marriage promotes a more meaningful subjectivity, Jonathan Rauch also argues that “marriage not only blesses our unions; it changes them. It changes us. It closes the book on gay liberation: it liberates us from liberation, if you will. And that is good” (2004, 56). The successful attainment of marital equality brings with it a

release from the constant struggle to define oneself against heterosexual relationships and allows the process of articulating the re-made gay self to begin.

Next in chapter four, I explain how litigation became the primary strategy to attain marital equality. Because recourse to the courts was imagined as the most successful route to legal equality, I explain that rationale as well as responses to that approach. The debate over whether courts are capable of producing social change is centered on Gerald Rosenberg's 1991 study in his book *The Hollow Hope*. Chapter four examines the arguments put forth by Rosenberg, that courts are not effective producers of social change, as well as several counter-assessments that courts can fulfill this function. I give a great deal of attention to the set of judicial decisions in the marriage cases in order to reveal the language that, as I argue, recognizes the character of gay subjectivity. Earlier, I explained that gays and lesbians occupy an "included-yet-excluded" space in the national imaginary; in my review of the marriage opinions, I demonstrate that we can see how gays and lesbians are situated in that space, as evidenced in the language used by judges.

In the final section of chapter four, I answer the question of how marriage equality provides a more meaningful account of gay and lesbian subjectivity. Simply stated, access to marriage dismantles the heterocentrist definition of marriage (without changing or damaging its fundamental core) by allowing gays and lesbians to be recast from the position of "included-yet-excluded," marked by domestic

partnership benefits or civil unions, to a position more closely resembling deliverance from the yearning for place and context. In the concluding moments of chapter four, I address how the kind of resistance that I advocate extricates one from the grip of the technology of power. In chapter three, I explain how Foucault takes care to advise us against relying on false methods of liberation or resistance. At the end of chapter four, I make the case that marriage successfully fulfills the Foucaultian promise of meaningful resistance. Gay married persons are not engaged in an exercise of confession or of telling a “truth” about the self, neither is marriage about revealing a previously hidden gay couplehood in an attempt to thwart the reach of power on the subject. I argue that marriage-as-resistance effectively expresses meaningful gay subjectivity because marital equality emancipates gays from the “included-yet-excluded” prison of an inadequate subjectivity – marital equality allows gays and lesbians to fashion definitions of the self that are not destructive to individual conceptions of the self or to types of available relationships. The inclusion of gays and lesbians into the institution of civil marriage dismantles the need for the “excluded” part of the social apparatus that distinguishes between relationships. Married gays have refused an imposed and distorted subjectivity and have engaged in successful self-definition (as persons who desire legal and public sanction for their relationships just as their heterosexual counterparts who choose to do the same). The married gay person has come closer to achieving a homosexual

exemplar, if you will, by crafting a recognizable and intelligible place and context in the national imaginary.

I take military service as my second case study to uncover how gays and lesbians are constituted through discourse as the topic of chapter five. The thematic organization of the chapter begins with the assertion that the “Don’t Ask, Don’t Tell” policy of discharging gays and lesbians from the armed services fundamentally misapprehends what it means to be gay or lesbian. The policy was formulated as a compromise to allow gays and lesbians to serve in the military with the specification that homosexual behavior, as opposed to identity, was the only target of regulation and grounds for separation. As I shall make clear in chapter five, while the ban initially purported to be solely concerned with homosexual acts, its reach went much further.

To begin my discussion on the origins of moral and social disapproval of homosexuality as the motivation for adamantly opposing gay and lesbian service, I expose the hypocrisy of the military’s own procedures in dealing with the issue. Drawing on the unease with disturbing available manpower resources, wartime and peacetime quickly became the acceptable division between when it would be and would not be appropriate to discharge “openly” gay soldiers. Quite simply, during wartime when manpower needs were at their highest, the military became flexible in enforcing their own aversion to homosexual service. In the immediate post-World

War II years, dismissals from the armed services underwent a shift from those arising from homosexual *conduct* to the admission of a homosexual *identity*. The major impetus behind this shift was the fear that gay soldiers were a threat to national security, particularly given the mindset of the Cold War climate.

Though the military had always forbidden the service of gays and lesbians in some form or another (ranging from proscriptions against sodomy to a formal ban on a homosexual identity), it was not until Bill Clinton campaigned for the presidency of the United States that the prohibition received national media attention. There are a number of reasons to explain why this was so. As I briefly mentioned above, and cover more in-depth in chapter two, the onset of the gay rights movement in the 1950s and 1960s concentrated more on developing a platform that would create an image for America what it was to be gay. The early years of activism were spent trying to eliminate anti-discrimination laws and ordinances and developing the appropriate tactics to accomplish those goals. The national gay and lesbian political movement, in its infancy, was not possessed of a large and complex infrastructure complete with organized leadership, staff, and rank-and-file membership. As the movement grew during the 1970s, much of the gay rights movement had aligned itself with the anti-Vietnam War sentiment; while not the dominant voices of the movement, "...gay libbers comprised only a fraction of a percent of gays, but, because they were the only people talking out loud about

homosexuality, their voices were the only ones heard" (Shilts 1993, 97). The feeling among these outspoken activists was that the military was the very embodiment of their opposition to the Vietnam War specifically, and the larger war machinery, by extension.

Throughout the dissertation, I offer evidence of the destructive power of discursive heteronormative practices that operate on gay and lesbian sexuality. Queer theory has provided an analytical tool for investigating those discursive practices and how they influence the social and political conditions of gay and lesbian life. Two such conditions, marriage and military service, are taken up here as a way to illuminate the central theme of this dissertation: what does it mean to be gay? That question is at the core of each chapter's topic and, though it hovers over the material in chapters two through five, it is given specificity in chapter six. Chapter six turns the question of what it means to be gay into a prescription for what kind of gay and lesbian subjectivity should be embraced.

CHAPTER 2

QUEER THEORY AND IDENTITY DESCRIPTION

INTRODUCTION

Queer theory is a relatively recent academic endeavor, having come into existence during the early 1990s after Teresa de Lauretis coined the term in "Queer Theory: Lesbian and Gay Sexualities" published in 1991. While the term enjoys a wide range of descriptive ingredients, we can find a common ground in understanding that queer theory describes "...those gestures or analytical models which dramatise [sic] incoherencies in the allegedly stable relations between chromosomal sex, gender, and sexual desire" (Jagose 1996, 3). Max Kirsch asserts that queer theory "...has been loosely directed at showing how and why traditional disciplinary expositions have failed to do justice to queer populations" (2000, 32).

Queer theory places sexuality at the center of its analysis as the key category through which we come to understand other social, political, and cultural phenomena (Kirsch 2000, 32). Historian William B. Turner describes the project of queer theorists as one which investigates the relationship between desire and

repression while recognizing and understanding gender, "...which in our culture is inextricably related to sexual practice and sexual identity" (2000, 4); moreover,

queer theorists perform these investigations with an eye to tracing the historical development of those concepts and their contributions to definitions of 'sex' and 'gender' such that differences of power along those axes of identity pervade our culture at a level that resists fulsomely the ministrations of political action conventionally defined" (2000, 3).

To construct a limit on the definition of the concept "queer" is problematic because the term's very flexibility has been construed as a benefit. Definitional limits would serve to disadvantage any encouragement of the term's lack of stable and discrete properties (Jagose 1996). The term was first used to lay a foundation for the resistance to a distinct description. Although the elasticity of the term's definition is part of its character, there are questions regarding its efficacy (Jagose 1996). The origins of this elasticity "...develop out of a specifically lesbian and gay reworking of the post-structuralist figuring of identity as a constellation of multiple and unstable positions" (Jagose 3). However,

[t]he most commonly voiced anxieties are provoked by such issues as whether a generic masculinity may be reinstalled at the heart of the ostensibly gender-neutral queer; whether queer's transcendent disregard for dominant systems of gender fails to consider the material conditions of the west in the late twentieth century; whether queer simply replicates, with a kind of historical amnesia, the stances and demands of an earlier gay liberation; and whether, because its constituency is almost unlimited, queer includes identificatory categories whose politics are less progressive than those of the lesbian and gay populations with which they are aligned (Jagose 1996, 3-4).

Given these questions regarding the meaning of the term queer, it is instructive to examine the discourses surrounding homosexuality and same-sex desire.

CONFRONTING SEXUALITY AND ITS DEFINITIONS

As a descriptive category, “homosexuality” is less than fully descriptive. Typically, the term is largely understood to communicate same-sex sexual attraction. This definition, while surely satisfactory in accounting for some individuals who identify as gay or lesbian, leaves open a range of “...ambiguous circumstances [which] cast doubt on the precise delimitations of homosexuality as a descriptive category” (Jagose 1996, 7). Even the Human Rights Campaign (HRC), the largest LGBT civil rights organization in the US, has no authoritative explanation of what it means to *identify* as gay or lesbian included in their mission statement other than the use of the terms as such.¹ How one would categorize (a) the self-identified heterosexual who engages in same-sex sexual activity; (b) the individual who identifies as gay or lesbian, but has never participated in any sexual activity; or (c) the ritualistic practices in certain indigenous populations around the world that involve sexual contact between same-sex pairings presents a host of consequences

¹ HRC Mission Statement: The Human Rights Campaign is America’s largest civil rights organization working to achieve lesbian, gay, bisexual and transgender equality. By inspiring and engaging all Americans, HRC strives to end discrimination against LGBT citizens and realize a nation that achieves fundamental fairness and equality for all.

for establishing a consistent and stable understanding of what it means to be homosexual.

In accounting for the origins of a modern concept of what it means to be a homosexual, Michel Foucault offers 1870 as the date of the transformation of sex into discourse as a way to separate non-reproductive forms of sex from reality (1978, 36). This discursive transformation served not to incorporate and define what a homosexual was, but rather “an incorporation of perversions and a new specification of individuals” (Foucault 1978, 42 – 43). Foucault argues that sodomy was an impermissible act which made those who engaged in it subject to legal punishment. Toward the end of the nineteenth century, however, the homosexual “...became a personage, a past, a case history, and a childhood, in addition to being a type of life, a life form, and a morphology, with an indiscreet anatomy and possibly a mysterious physiology” (Foucault 1978, 43). The homosexual was forged from an aversion to the kinds of various sexual perversions as defined in the discursive practices of the time. Indeed, Foucault argues that the creation of the modern homosexual was nothing less than a full formulation of the individual who could not separate himself from his sexuality.²

² Some theorists reject a reliance on discovering the origins of homosexuality. For example, Eve Kosofsky Sedgwick (1990) worries that because there is no framework in which to ask about the development of gay identity that isn't “...structured by an implicit, trans-individual Western project or fantasy of eradicating that identity...” theorists would do well to minimize their reliance on any particular account of the origins of sexual orientation and identity in individuals (41).

Eve Kosofsky Sedgwick offers an account of how the homo/heterosexual definition is structured, not as she says in contradiction to Foucault, but as a reassignment of attention and emphasis within his narrative in order to call attention to "...those unexpectedly plural, varied, and contradictory historical understandings whose residual force seems most palpable today" (1990, 48). Sedgwick argues that the classification of the homosexual as a species which Foucault identifies as a replacement of the previous, more traditional discourse on sexuality is actually an overlapping, coinciding taxonomy. The consequence of this is

that we now live with two irreconcilable assumptions about homosexuality that parallel the heterosexual/homosexual dichotomy – an "integrative" model that regards homosexuality as a universal potential of everyone, and a "separatist" model that regards it as the exclusive sexual orientation of a few individuals (Harned 1992, 106).

QUEER THEORY AND THE APPEARANCE OF THE HOMOSEXUAL

One of the most significant consequences of Eve Sedgwick's interpretations of homosexuality is the contradistinction, and tension, between what she calls the "minoritizing" and "universalizing" views of homosexuality; that is, between an understanding of the homo/hetero definition as an issue of active importance primarily for a small, distinct, relatively fixed homosexual minority and an issue of continuing, determinative importance in the lives of people across the spectrum of sexualities (Sedgwick 1990, 1). Moreover, she uses the closet as a metaphor for social

interaction around knowledge of homosexuality, a relation rather than a place; the closet shapes lesbian and gay life not because it conceals, but because it serves as a means of controlling presence (Abraham 1991). The ability of gays and lesbians to determine their own condition of being in or out of the closet is lost to the power of heterosexual domination.

Because the assumption of heterosexuality dominates our social relations, that it is the norm against which apologies must be made for deviance, not only does the closet operate on individuals who think they are concealed when they are not, but also on those who find themselves having to come out over and over in various social settings; this illustrates the system's proper working (Abraham 1991; Sedgwick 1990, 68). For Sedgwick, the relations of the closet comprise that which is known and unknown, the explicit and the inexplicit, about the homo/heterosexual definition and is inextricable from the question of knowledge and the processes of knowing in modern Western culture at large (1990, 3; 33). This represents for her the special centrality of homophobic oppression in the twentieth century (1990, 33). Sedgwick's chief objective in positing an epistemological analysis of the closet is to account for the available kinds of resistance. She is wary of a dependency on an overarching periodization of definitional issues surrounding the closet, but acquiesces that the closet, "...as a publicly intelligible signifier for gay-related epistemological issues is made available, obviously, only by the difference made by the post-Stonewall gay

politics oriented around coming *out* of the closet” [emphasis in original] (Sedgwick 1990, 14). The impact of the closet on gay and lesbian identity is not divorced from its effect on the history of the gay rights movement despite Sedgwick’s reticence to become beholden to the periodization paradigm. While the periodization framework is of less concern for her work, Sedgwick does acknowledge that in the era of post-Stonewall gay politics, the movement “...served notice that at least some people were in a position to demand the representational compact between the closet and the culture be renegotiated or abrogated” (1990, 57).

Kenji Yoshino (2006) provides a different perspective on the effects of the closet as a civil rights issue. Borrowing from sociologist Erving Goffman (1964), Yoshino replicates a history of gay rights that traces demands to convert, pass, and then cover through the backdrop of a decline on the pressure to assimilate. Yoshino marks these phases as having the same trajectory the gay rights movement endured from its beginnings. Tracing the path of the gay rights movement in this way as a critique against assimilation, Yoshino depicts three phases of gay history beginning in

...the middle of the twentieth century [when] gays were routinely asked to convert to heterosexuality, whether through lobotomies, electroshock therapy, or psycho-analysis. As the gay rights movement gained strength, the demand to convert gradually ceded to the demand to pass. This shift can be seen in the military’s adoption in 1993 of the “Don’t ask, don’t tell” policy, under which gays are permitted to serve so long as we agree to pass. Finally, at millennium’s turn, the demand to pass is giving way to the demand to cover – gays are increasingly permitted to

be gay and out so long as we do not “flaunt” our identities. The contemporary resistance to gay marriage can be understood as a covering demand: *Fine, be gay, but don’t shove it in our faces* [emphasis in original] (2006, 19).

THE GAY RIGHTS MOVEMENT

The gay rights movement, since its inception, has always been made of organizations that were both explicitly political as well as involved in politics indirectly. While pursuing an agenda “...dedicated to the proposition that they deserve the same rights and ought to be treated with the same respect as other Americans,” gays and lesbians gathered to influence elections results, pass or repeal laws, and apply pressure to public officials as an exercise of direct political action (D’Emilio 2000, 31). Early organizations such as the Mattachine Society developed as a way to “...foster a collective identity among homosexuals who, recognizing the institutional and hegemonic investments in their continued marginalization, might consequently be energized and enabled to fight against their oppression” (Jagose 1996, 25).

There were also a number of ways gays and lesbians gathered in an indirectly political way; having created community centers, sports leagues, health clinics, and publishing companies, these kinds of organizations and gathering places were strictly social or cultural with respect to their official missions, but did not shy away from political activity. The end result of encouraging more integrated community

connections among the burgeoning and increasingly visible minority was to foster lasting political linkages among members of the gay community.

In the aftermath of World War II in the United States, the gay rights movement began percolating as a result of the tension caused by a period of relative freedom followed quickly by a period of severe repression (D'Emilio 1983; 2000 and Bérubé 1990). Focusing on education and information campaigns, the so-called homophile movement saw the formation of the Mattachine Society in 1951 and the Daughters of Bilitis in 1955. The general social conservatism and the more virulently anti-gay McCarthyism that plagued the post-war era saw gays and lesbians excluded from employment, investigated in witch hunts, and victims of police surveillance and harassment. John D'Emilio argues that the tactics of the early homophile groups was "very much suited to the times" (2000, 33). The slow yet steady build of an accommodationist organizational approach would soon give way to a more radical call for liberation.

During the early morning hours of June 28, 1969, New York City police raided the Stonewall Inn, a gay bar that had not been immune to the attention of local law enforcement. Unlike previous instances of harassment, on this particular night, the police were met with resistance from the patrons. The following six days saw a series of violent protests and street demonstrations "...widely credited with being the motivational force in the transformation of the gay political movement" (Carter

2004, 1). As a testament to the enduring significance of the Stonewall rebellion as the realigning moment for the trajectory of the gay rights movement, William Eskridge notes that

literally overnight, the Stonewall riots transformed the *homophile reform movement* of several dozen homosexuals into a *gay liberation movement* populated by thousands of lesbians, gay men, and bisexuals who formed hundreds of organizations demanding radical changes in the way gay people were treated by the state [emphasis in original] (1999, 99).

The significance of the incident at the Stonewall Inn, the drama of the experience as it were, remains its symbolic importance; as Annamarie Jagose notes, Stonewall “functions in a symbolic register as a convenient if somewhat spurious marker of an important cultural shift away from assimilationist policies and quietist tactics, a significant if mythological date for the origin of the gay liberation movement” (1996, 30). And so while the events of the night of June 28, 1969 do not qualify as a the kind of pre-planned, calculated political statement on behalf of gay and lesbian equality that some might want it to be, it nevertheless properly functions as the bellwether of what was to come.

The birth of the gay liberation movement produced a profound change in the way that gays and lesbians viewed their relationship to society, as well as the ways in which they viewed themselves. The homophile movement had stressed a liberal, assimilationist approach to change how gays and lesbians were viewed by society; the rapidly growing liberationist approach stressed the assertion and creation of a

new sense of identity that was based on gay pride. The transition from a homophile assimilationist approach to a gay rights liberation approach was aided by the emerging counter-cultural forces of the 1960s; what the new rhetoric of gay rights stressed was the power of coming out of the closet in order to develop a unified movement mobilized around politicized identity (Jagose 1996; D'Emilio 1983).

The gay liberationist attitude toward a more sexualized identity changed the narrative from a private decision to acknowledge one's homosexuality in one's personal life toward a more declarative public coming out. Coming out was viewed not only as the legitimate way to be recognized in the world, but also as a "potent means of social transformation" (Jagose 1996, 38). What had been seen as a personal decision not meant for, or relevant to, the benefit of others, coming out was recast as a profoundly political act which would "...express the fusion of the personal and the political that the radicalism of the late 1960s exalted" (D'Emilio 1983, 235).

It is at this time "identity" took center stage as the liberationists started to represent same-sex sexual practices as legitimate. Constructionist understandings of sexuality started to color gay and lesbian politics as opposed to the essentialism the movement had been accused of in having banded together under the common banner of a homosexuality with fixed meaning. By the mid-1970s, liberation as a framework for the movement had been abandoned in favor of an ethnic model of identity which emphasized community identity and cultural difference (Jagose 1996,

59). The gay rights movement had begun its shift in emphasis from a sexualized public identity toward a collective identity model whereby gays and lesbians would be a legitimate minority group so that citizenship rights would be/could be secured (Jagose 1996).³ A general dissatisfaction with the liberationist model explains that shift; the liberationist model emphasized The evolution from “homosexual” to “gay” or “lesbian” to “queer” demonstrates the emphasis on identity “...not simply [as] the latest example in a series of words that describe and constitute same-sex desire transhistorically but rather a consequence of the constructionist problematizing of any allegedly universal term” (Jagose 1996, 74).

FORMING COMMUNITIES THROUGH IDENTITY DESCRIPTION

First there was Sappho (the good old days). Then there was the acceptable homoeroticism of classical Greece, the excesses of Rome. Then, casually skip two millennia, there was Oscar Wilde, sodomy, blackmail and imprisonment, Forster, Sackville-West, Radclyffe Hall, inversion, censorship; then pansies, butch and femme, poofs, queens, fag hags, more censorship and blackmail, and Orton. Then there was Stonewall (1969) and we all became gay. There was feminism, too, and some of us became lesbian feminists and even lesbian separatists. There was drag and clones and dykes and politics and Gay Sweatshop. Then there was AIDS, which, through the intense discussion of sexual

³ The other major theoretical departures of *queer theory* have been identified as: a conceptualization of sexual power as embodied “in different levels of social life, expressed discursively and enforced through boundaries and binary divides;” a problematization of sexual and gender categories, and identities in general; a rejection of civil rights strategies “in favor of a politics of carnival, transgression, and parody, which leads to deconstruction, decentering, revisionist readings, and an anti-assimilationist politics;” and a “willingness to interrogate areas which would not normally be seen as the terrain of sexuality, and conduct “queer” readings of ostensibly heterosexual or non-sexualized texts” (Stein and Plummer 1994, 181-182).

practices (as opposed to sexual identities), spawned the Queer movement in America. Then that supreme manifestation of Thatcherite paranoia, Clause 28, which provoked the shotgun marriage of lesbian and gay politics in the UK. The child is Queer, and a problem child it surely is.⁴

This “mock-historical sweep of gay evolution” as a tongue-in-cheek account of queer as a category underscores the way in which the term “queer” operates simultaneously as continuous with, and as a break from, previous models of liberation and assimilation. “Queer” has been “...a product of specific cultural and theoretical pressures which [has] increasingly structured debates (both within and outside the academy) about questions of lesbian and gay identity. Perhaps most significant in this regard has been the problematizing by post-structuralism of identity and the operations of power” (Jagose 1996, 76). Additionally, the difficulties in achieving a definitional coherence have led to a deadlock in queer theory between the essentialist and constructivist understandings of homosexuality, which is indicative of a more enduring chain of conceptual impasses between “...the relation of homosexual desires or persons to the wider field of all desires or persons” (Sedgwick 1990, 91).

⁴ Hayes, Susan. 1994. “Coming Over All Queer.” *New Statesman and Society*, 16 September, pp. 14 – 15, quoted in Jagose, Annamarie (1996, 75 – 76).

ESSENTIALISM AND SOCIAL CONSTRUCTION

In an attempt to unify gays and lesbians, indeed in order to create a unified political movement, lesbians and gay men have found commonality in rallying against the enactment of antigay initiatives⁵ and mobilizing themselves through the politicization of sexuality (Schroedel and Fiber 2000, 100). In these instances, the source of unity is to be found in the collective action against antigay forces and less from any kind of inherent (or essential) connection or commonality based on sexual orientation.

In *Essentially Speaking: Feminism, Nature & Difference* Diana Fuss argues that feminist scholarship suffers from a deadlock created by the binarism of the essentialism/constructionism debate (1989, 1). Fuss sets out in her text to assert that “in and of itself, essentialism is neither good nor bad, progressive nor reactionary, beneficial nor dangerous” (1989, xi). Her task, as she identifies it, is to not ask whether essentialism is bad, but rather ask what motivates the deployment of essentialism. Fuss very thoroughly makes clear the issues at stake in the essentialism/constructionism debate. At bottom, essentialism suffers from its inclination toward an ontology that resides outside of cultural influence and

⁵ For example, Colorado voters approved Amendment 2 to the state constitution in 1992, which repealed various anti-discrimination ordinances across the state and prohibited the passage of future anti-discrimination ordinances in the future. Amendment 2 also prohibited “aggrieved homosexuals” from seeking legal redress at local, county, and state-wide levels. The US Supreme Court held Amendment 2 to be a violation of the US Constitution’s Equal Protection clause in *Romer v. Evans*, 517 U.S. 620 (1996).

historical change; there is no allowance for the historical production of terms, i.e. a recognition of what the Greeks meant by categories like “man” or “woman” and how those meanings may be different from Renaissance France (Fuss 1989, 3).

While there is a recognition of the production of the categories “man” and “woman,” social constructionists still have a fundamental dependence on essentialism because those categories remain constant as objects of inquiry (Fuss 1989, 3). Moreover, the reliance on the pluralization of categories in order to privilege heterogeneity and to highlight cultural differences does not operate as a sufficient safeguard against essentialist tendencies; the plural categories still semantically mark a collectivity, constructed or not, and occupy a space of linguistic unity (Fuss 1989, 3, 4).

While mapping the boundaries of the essentialism/constructionism debate, and calling attention to the attendant advantages and disadvantages of each side, Fuss decidedly favors a constructionist approach in addressing the question of homosexual identity formation. She identifies a number of critical strengths of the constructionism argument:

...in addition to favoring more sophisticated analyses of how homosexual identities are socially produced, invention theories allow us to make important distinctions between male homosexuals and lesbians, two groups which are frequently conflated in the research on sexual minorities but which, in fact, are not constructed in precisely the same ways. And ... invention theories are marked by an impulse to historicize and to contextualize; such studies move us out of the realm of ontology

(what the homosexual is) and into the realm of social and discursive formations (how the homosexual role is produced) (Fuss 1989, 108).

The gap that exists between these two understandings of what it means to be gay is evident in the disconnect we see between the academy and gay activists. Fuss brings attention to the struggle with the question of whether there is an empirically knowable “gay identity.” This ultimately leads to a situation where, for the gay and lesbian activists, “...the notion of a gay essence is relied upon to mobilize and to legitimate gay activism; ‘gay pride,’ ‘gay culture,’ ‘gay sensibility’ are all summoned as cornerstones of the gay community, indices of the emergence of a long-repressed collective identity” (Fuss 1989, 97). Fuss also notes, however, that

[r]ecent gay theory, on the other hand, has increasingly rejected any such adherence to a natural, essential, or universal gay identity and emphasized instead “the making of the modern homosexual” - that is, the way in which the homosexual subject is produced not naturally but discursively, across a multiplicity of discourses (1989, 97).

How that identity is conceived of, and articulated, is at the very core of what it means to be gay and how “the movement” proceeds with political action. Fundamentally, this is to ask whether a politics emerges from a knowable, collective identity that demands to be freely expressed, or does a strategically articulated identity result from the exigencies of a politically defined group of individuals with nothing of substance in common but their repression?

Fuss argues that the essentialist/constructionist debate is both constitutive of the field of feminist theory and responsible for having caused an impasse in feminism, "... an impasse predicated on the difficulty of theorizing the social in relation to the natural, or the theoretical in relation to the political" (1989, 1). If the debate between the two camps has caused an impasse, Fuss acknowledges that the two do not always work to combat one another. Indeed, while essentialist arguments often make "...recourse to an ontology which stands outside the sphere of cultural influence and historical change" (Fuss 1989, 3), the constructionists still rely on linguistic categories (e.g., "man" or "woman") while recognizing them as produced across a variety of discourses (1989, 4). Ultimately, Fuss advises that if we are to effectively move beyond this impasse, we must begin to question constructionist assumptions that "... nature and fixity go together (naturally) just as sociality and change go together (naturally)" (1989, 6).

Nick O. Haslam examines the extension of "natural-kind concepts and essentialist thinking into the social domain" from two points of view: first, to what degree this extension is warranted epistemologically, which is to ask how far social inquiry should go in accommodating essentializing accounts of its kinds; and second, why it is that laypeople intuitively favor essentializing accounts of human concepts despite what theorists would have them believe (1998, 291). Haslam argues that there is a less problematic approach to essentialist thinking because essentialism

contains “several distinct and detachable conceptual components” (1998, 294) that are misunderstood by some theorists who “make the charge of essentialism promiscuously and opt for anti-essentialist positions that are needlessly polarized” (1998, 292).

Haslam asserts that the differences between human kinds and natural kinds are alleviated or reduced because “some human kinds are neither artifacts of social conventions, ‘nominalist’ effects of linguistic labeling, nor manifestations of underlying essences...” (1998, 292). The bundle of essentialist concepts are rarely fully clarified by those who levy critiques because typically they only choose one or a few of the components of essentialism (Haslam 1998, 296). The problem with this, Haslam contends, is that any anti-essentialist critique that seeks only to discredit *one* of the distinct “conceptually separable components” fails to fully dismantle the essentialist proposition, contrary to what they might believe they have accomplished.

Essentialism, as defined and understood by Haslam has six constituent elements: (1) a core of necessary properties, without which a kind does not attain any membership in the kind described <without which, a thing does not get to be a part of the kind>; (2) that the boundary of the kind is fixed and discrete; (3) that these necessary properties are inherent; (4) that the intrinsic properties are causally related to superficial properties; (5) that these properties are historically stable; and

(6) that generalizations become possible due to the internally homogenous nature of the kind (1998, 293 - 294).

While many queer theorists align themselves with the social constructionist side of the debate over identity, there do exist critiques of social constructionism from ardent defenders of an essentialist understanding of identity. Rictor Norton defends the allure of the essentialist proposition in its appeal to a common nature. By looking at the early work of gay liberationists, Norton agrees with their assertion that "...knowledge of history plays an important role in the development of solidarity: a consciousness of cultural community provides the necessary strength for collective action to overcome oppression" (1997, 3). Norton provides a working definition of social constructionism, from his point of view, as "...ideologies constructed by bourgeois society in order to control the working classes" (1997, 7). Norton believes class war to be the most important feature of the history provided by social constructionists, however, in his view "...if historical evidence can be produced which establishes the existence of the homosexual role and identity before capitalism, then the materialist theory starts to collapse." Norton says the dating of the emergence of the queer subculture is the weakest part of the constructionist theory, though it is crucial to it (1997, 7).

For Norton, essentialism provides a more historically accurate description of what he refers to as "queer culture." The controlling difference between

essentialism and constructionism lies in the relationship each approach has with knowledge; “in the social constructionist view, knowledge is constructed, deconstructed and reconstructed through ideological discourse. In [the] essentialist view, knowledge is discovered, repressed, suppressed and recovered through history and experience” (Norton 1997, 11 – 12). Norton’s clearest argument for supporting an essentialist understanding is in

the evidence of history [which] points to repression rather than construction as the shaping force of queer identity and culture. The opportunities for expressing queer desire have been increasingly restricted in modern times, but the desire remains the same. The inner drive has simply been repressed or liberated to varying degrees from one era and culture to another (1997, 13).

Perhaps the most interesting commonality between the essentialists and the constructionists remains their underlying concession that strategic essentialism in the course of activism can be reasonable. So while there is vigorous disagreement over the meaning of, and nature of, identity and culture, there still remains an approval, however reticent, for political strategy. Norton prepares us for such a situation when he says that

social constructionism is politically useful for undermining mechanisms of social control and oppression. Essentialism is politically useful for empowering minority groups by a sense of solidarity grounded upon an awareness of identity. An effective gay rights movement might well employ strategies suggested by both schools of thought, exploiting each approach according to circumstances, without regard to consistency; the fundamental contradiction between them can be mitigated by arguing that

homophobia is a construct while homosexuality is innate" (1997, 35).

Eve Sedgwick goes beyond the essentialist/constructionist divide in arguing "...that many of the major nodes of thought and knowledge in twentieth-century Western culture as a whole are structured – indeed fractured – by a chronic, now endemic crisis of homo/heterosexual definition..." (1990, 1). The major feature of this crisis is the incoherent ideas about homosexuality that have pervaded Western culture to the point where incoherence and contradiction has come to define all social relations; moreover, this incoherence and contradiction is less about the correctness or acceptability of one position over the other, it is the persistence of the deadlock itself that has become "...the single most powerful feature of the important twentieth-century understandings of sexuality..." (Sedgwick 1990, 91).

The effect of the crisis, as Sedgwick sees it, has produced a dramatic, often violent, contradiction in the discourse on how gay men (in particular, but applicable generally to the discourse on homo/heterosexual definition) are viewed. The kinds of incoherencies are readily available: are gay men ridiculous figures of fun and harmless amusement or are they sexual monsters who prey on children; is the homosexual a limp-wristed sissy unsuited for military service or the lothario of the showers who will gaze upon his fellow servicemen; is sexuality an orientation or is it a choice; is it essence or social construction; or is homosexuality a matter of nature or

nurture (Masterson 2006)? These kinds of binary absurdities⁶ exist in tandem to produce and ensure an enduring and fundamental contradiction between what she refers to as an opposition between a minoritizing and universalizing view of homosexuality.

The minoritizing view explains the homo/heterosexual definition as “...an issue of active importance primarily for a small, distinct, relatively fixed homosexual minority...” whereas the universalizing view sees it as “...an issue of continuing, determinative importance in the lives of people across the spectrum of sexualities” (Sedgwick 1990, 1). These irreconcilable assumptions position one view of homosexuality as an innate, natural feature exclusive to the lives of a few people who are actually gay and another view that makes homosexuality a possibility for anyone since it is a choice or something that is not inherent to our biology.

NORMALITY AND EQUALITY – VAID, SULLIVAN, WARNER

Three works on the relationship between gay political activism and equality find as their common thread the idea of normality and its utility for achieving equality for gays and lesbians. In *Virtual Equality: The Mainstreaming of Gay and Lesbian Liberation*, Urvashi Vaid argues that the gay rights movement finds itself at a

⁶ Sedgwick’s analysis on the instability of binarisms that result in definitional incoherence, as well as the their power effects and the distinctive entanglement it has with the homo/heterosexual definition include, among others, knowledge/ignorance, natural/unnatural, urbane/provincial, innocence/initiation, man/boy, secrecy/disclosure, public/private, and sincerity/sentimentality.

contradictory juncture; the staggering success exemplified by the open integration of gays and lesbians into society versus the profound stigmatization in which gay people remain closeted (1995, 1). She describes this state as one of “virtual equality” which she blames on the “mainstreaming” tactics of the movement. Vaid suggests that mainstreaming, or the resort to “normality,” cannot bring lasting freedom or enduring change. She says that each component of virtual equality challenges the gay rights movement to question whether mainstream civil rights alone will deliver gays and lesbians genuine freedom and full human dignity (1995, 6). Her problem with the mainstreaming approach is that through involvement in national and local electoral campaigns, the fight for legal reform, and lobbying for nondiscrimination laws, gay and lesbian activists sought integration into the mainstream (read: heteronormative) of politics, law, and society (1995, 107). Her example of military service as a failure of this tactic illustrates her point as well as how her assessment falls short of exactly what constitutes a “mainstream” goal.

Vaid speaks of a virtual equality, which is similar to my “included-yet-excluded” concept; however, virtual equality differs in an important way. Vaid calls “Don’t Ask, Don’t Tell” the end-point of gay mainstreaming. The compromise, according to her, “...mandates the closet for gay, lesbian, and bisexual members of the armed forces, and makes them vulnerable to prosecution... It underscores the idea that no matter how straight-acting, patriotic, normal-looking, accessible, and

heroic we are, the straight world resists our open integration into its society" (1995, 149). She is half-right and half-wrong. Military service *will* demonstrate patriotism in gays and lesbians when self-descriptions of what it means to be gay become embedded in the discursive practices of military culture. Self-descriptions *will* dislocate the concept of patriotism-as-heterosexual. Vaid is correct that "Don't Ask, Don't Tell" reinforces distorted views of gays and lesbians; she's right that under the dominion of a ban on military service, gays and lesbians cannot overcome the way in which a mandated closet forecloses the ability to appear (or be) patriotic or "normal-looking." She argues that "the mainstream is willing to accept homosexuality only to a point and entirely on its own terms..." (1995, 148). The "Don't Ask, Don't Tell" ban is about controlling the terms upon which gays and lesbians serve; resistance to this premise is key in recasting those terms and providing new descriptions and definitions of gayness that *do* link concepts like patriotism and heroism with gay and lesbian soldiers.

While Vaid explicitly rejects mainstreaming, or the desire for normality, as a successful strategy to achieve equality, Andrew Sullivan views normality as a requirement. Sullivan focuses on "...how we as a society deal with that small minority of us which is homosexual" (1995, 18). His project is to provide an account of the different political views about gay and lesbian politics and then offer a solution. Briefly, Sullivan's four types include: first, the prohibitionists who believe

there are no gay people, just sex acts; this is the unequivocal belief that everyone is heterosexual and some people, through choice, engage in deviant sexual behavior (1995, 20 – 21). Second, the liberationists are the inverse of the prohibitionists who believe that homosexuality is a construct of human thought (1995, 57). As the reverse image of prohibitionists, the liberationists conceive of sex acts as dependent on their social context for meaning; and although similar to the prohibitionists in that there are no homosexuals, just sex acts, Sullivan argues that the liberationist paradigm views “...the full end of human fruition is to be free of all social constructs, to be liberated from the condition of homosexuality into a fully chosen form of identity, which is a repository of individual acts of freedom” (1995, 57). Third, the conservatives are those committed to the premise of the liberal state’s values of liberty, pluralism, and freedom of speech and action, but who also “...believe politics is an arena in which it is necessary to affirm certain cultural, social, and moral values over others” (Sullivan 1995, 95). For the conservatives, it is okay to encourage morality. Fourth, those Sullivan calls liberals believe that homosexuality is a social phenomenon, much like the conservatives; however, whereas conservatives ask how society’s interests are affected by homosexuality, the liberals ask how the individual (homosexual) is affected (1995, 135 – 136).

The result of his analysis of four types of political assessments of gay and lesbian politics is his “politics of homosexuality” which he offers as a rejoinder to

what calls the “conflicted politics of homosexuality” (1995, 169). He argues for a politics that is respectful of the law, places a premium on liberty by limiting the regulation on people’s actions; it must take notice of the need for broader arguments, including morality, to persuade people of the need for change that go beyond rights and government neutrality. His politics calls for “...a simple and limited principle: that all *public* (as opposed to private) discrimination against homosexuals be ended and that every right and responsibility that heterosexuals enjoy as public citizens be extended to those who grow up and find themselves emotionally different” (1995, 171). His argument is best summed up by concluding his advocacy of normality as the only way to overcome what he sees as the “problem” of gay-straight relations; his conclusion is that upon the end of formal, legal discrimination, gays and lesbians will have succeeded in achieving equality. I charge that his solution does nothing by way of changing the ways in which gays and lesbians are cast in a heteronormative discourse.

Michael Warner’s polemic against Sullivan’s prescription of normality is what he calls a “...prime example of antipolitical politics. The point of being normal is to blend, to have no visible difference and no conflict” (Warner 1999, 60). Sullivan wanted gays and lesbians to abandon the notion of sexuality as a kind of subversion because, according to him, most gay and lesbian people wanted to be normal and be integrated into heterosexual society as it is. Warner felt compelled to respond. He

relates the story of a magazine editor who remarked on how he came to found a gay publication without sex: “no sexy underwear ads, no personals, no ads for phone sex or adult web sites, no stories on sex, no ads for HIV medications” (Warner 1999, 41). The impetus for creating the new magazine was motivated by an article he published that appeared next to a phone-sex ad. Reluctant to show his mother his accomplishment because of his distaste for what he called pornography, he clipped the article from the magazine and sent it separately. Warner characterizes that moment of reluctance thusly:

A gay man, feeling the embarrassment of stigma, feeling cut off from the heterosexual world (in the person of Mom), and feeling that his stigma is something he does not deserve by his actions, that his actions (writing an article) are in fact meritorious, find in the behavior of others in his group the real cause of his own stigma. It seems like a perfectly logical conclusion to him: to gain respect, to erase the barrier of stigma that shames him before his mother, he must purify the group. And the way to do that, for a gay man, is to redeem gay identity by repudiating sex. Whether the editors intended it or not, then, the magazine is one small token of the politics of shame (1999, 41).

This story is emblematic of Warner’s thesis that the problem with the gay and lesbian movement has been its inability to overcome the stigma and shame associated with sex.

Warner ensconces his argument, much like Vaid, as one in which marriage, for example, is about “straight people’s culture.” He says that gays and lesbians are more concerned with winning acceptance from the dominant culture, rather than with changing its self-understanding (1999, 50). Anything short of complete social

transformation, according to Warner, will do nothing to abate the stigma of being gay or lesbian. His assumption, which I reject, is that marriage is heterosexual; Warner's point of view is that gays and lesbians cannot (or perhaps will not) achieve equality until the gay rights movement ceases to pursue acceptance on heterosexual terms. The theory of subjectivity I offer *does* help the "dominant" culture to reevaluate its self-understanding by calling into question, or problematizing, the distorted images of gays and lesbians. Married gays and gay soldiers do this. Warner disagrees.

Seeing marriage as "selective legitimacy," Warner believes marriage should not be a goal of the gay rights movement because "[m]arriage, in short, would make for *good gays* – the kind who would not challenge the norms of straight culture, who would not flaunt sexuality, and who would not insist on living differently from ordinary folk" [emphasis added] (1999, 113; 82). His problem is that marriage offers approval to some couples and not others, indeed at the expense of others. I maintain that this misses the point of seeking marital equality. One of the shortcomings of the gay rights movement, according to Warner, has been its inability to create institutions of common memory; he argues that this is because "[n]onstandard sex has none of [the] normative richness, this built-in sense of connection to the meaningful life, the community of the human, the future of the world. It lacks this resonance with the values of public politics, mass entertainment, and mythic

narrative” (1999, 47). I argue that marital equality does provide the “normative richness” in the lives of gays and lesbians by inaugurating institutions of common memory he finds missing from queer life. Warner assumes marriage belongs to heterosexuals because gays have been excluded. I argue that we would have a different political ethic if we understood marriage as independent of heterosexuality and that the problem is gays and lesbians are excluded, not that gays want access to a problematic institution. Resisting this description recasts marriage as something gays and lesbians can choose to participate in. That marriage privileges some relationships over others, while true, is not the issue.

CONCLUSION

In this chapter, I began by establishing that sexuality is the primary category of analysis of gay and lesbian identity and subjectivity. This, however, has not proven to be a simple task. Queer theorists have wrestled with definitional limits of the term “queer,” the exact effect of heteronormativity on the gay and lesbian person, be it in the form of the closet or the phenomenon of “covering.” I also engaged the trajectory of the gay rights movement and how it has differentiated itself from the project of queer theory. The competing strategies of assimilationism and liberationism were the hallmark of the early days of the attempt by gay activists to forge a community-wide description. A kind of definitional crisis, if you will,

emerged that led to an intense debate among queer theorists over the nature of homosexuality – whether it was the effect of a natural, immutable essence or the result of a social construction of sexuality and of personhood. The controversial way in which these oppositions of identity were combined for political purposes in the form of a strategic use of theoretical models is an important investigatory tool for revealing the impasse between gay rights activism and academic queer theory inquiry. Finally, in this chapter, we saw the revival of the arguments for and against “normality” as the way to achieve gay and lesbian equality.

Following Eve Sedgwick’s original assessment, I agree that the homo/heterosexual definitional structure compels a view of homosexuality that is at once a universal potentiality and an exclusionary condition affecting a distinct minority. The impact of this structural incoherence—when understood under the domination of heteronormativity and the pervasive presence of homophobia—is double-sided. On the one hand, everyone is capable of homosexuality; on the other hand, homosexuality is independently confined to a narrow and unique set of people.

On the first point, I contend that the ill-defined and nebulous probability that homosexuality is lurking in and amongst any given person’s erotic possibilities is met with homophobic and hetero-dominant disciplinary practices. At the very least, these practices require homosexuality be understood as an ever-present scourge that

is structurally or institutionally discouraged through certain discourses. However, this conceptualization also allows (if not encourages) homosexuality to be violently resisted or defeated through discursive practices. Somewhere between the embedded bigotry and outright violence exists what I have called the “included-yet-excluded” disposition of gays and lesbians. This third “middle-ground” conceptualization supports the societal notion that homosexuality should either be quietly ignored, quelled, or allowed only a certain heteronormatively-managed range of acceptable displays or appearances in the discourse. As I have argued throughout this project, simply because the placement of homosexuality half-way between two points occupies an ostensibly moderate compromise – the first constituted by legally-affirmed injustice and societal repulsion and the second by overt animosity and threats of physical harm – cannot disguise nor diminish the incredible harm an “included-yet-excluded” existence promises for gays and lesbians.

Regarding Sedgwick’s second definitional structure, that homosexuality is independently confined to a narrow and unique set of people, I argue that under this view, homophobia and hetero-dominance treat homosexuality as non-standard and that requires the development of an identifiable inferior status which is substantiated through discursive practices (and that is in the best case). In the worst outcome of this representation, homosexuality is understood as so anathematic to

the proper functioning of heteronormative discourse that gays and lesbians wishing to be married are utterly prohibited from introducing themselves into the imaginary as a parallel erotic ethic.

Sedgwick explains that these two views of homosexuality are overlapping and coinciding, and I would like to also make clear that barriers to full inclusion in the national imaginary are direct outgrowths from practices which create and explain the variety of available ethical considerations regarding homosexuality and what it means to be gay. As I stated in chapter one, “included-yet-excluded” is the condition under which gays and lesbians are defined through heterosexuality and its normative power. The “included-yet-excluded” experience comes from the simultaneity of consequences emerging out of the homo/heterosexual definitional structure outlined above. It is clear that these consequences do not function as “one-or-the-other,” but rather the techniques of power are fluidly sampled from across this menu of injustice and exclusion at any given moment and applied under any given circumstances.

In the next chapter, I build on the thematic elements presented here. This chapter demonstrates that sexuality is a site of relational possibilities between heterosexuals and gays and lesbians. There has rarely been consensus among or between gay rights activists and queer theory scholars about how to pursue these interactions. These relational possibilities, I will argue, are not predicated on the

conditions necessitated by a dominant heterosexuality nor do they need to make recourse to a discursive violence upon the subjectivity of gays and lesbians.

CHAPTER 3

SUBJECTIVITY AND RESISTANCE

INTRODUCTION

For gay men and lesbians, sexuality is the marker by which contemporary politics has taken its form; indeed gay sexuality is by definition political because, as Mark Blasius contends, "...regardless of one's sexual practices one must *choose* to become gay or lesbian by 'coming out' subjectively and interpersonally" [emphasis my own] (1994, 1). The political significance of gay sexuality has its roots in the ways in which power is exercised on sexuality whereby gays and lesbians have become the principle subjects of such a politics (Blasius 1994). Foucault argues that the site of sexuality contains a number of maneuvers and is capable of serving as a lynchpin for a variety of strategies (1978, 103). As he describes it,

[s]exuality must not be described as a stubborn drive, by nature alien and of necessity disobedient to a power which exhausts itself trying to subdue it and often fails to control it entirely. It appears rather as an especially dense transfer point for relations of power: between men and women, young people and old people, parents and offspring, teachers and students, priests and laity, an administration and a population (1978, 103).

What is at stake here, then, is the ability of one to embark on a course of carving out a space within the discourse of sexuality to articulate one's relationship to oneself and to the broader community or communities to which one chooses to belong. In order to accomplish this, we must first analyze the projection of sexuality onto the "personhood" of the gay or lesbian subject. We need to investigate the links between the discourses and the effects of power and our object is to "...define the regime of power-knowledge-pleasure that sustains the discourse on human sexuality in our part of the world" (Foucault 1978, 11).

FOUCAULTIAN SUBJECTIVITY

How is the gay and lesbian subject produced and what kind of subjectivity is worth embracing? To begin, one must account for how sex has been put into discourse, which is to "...locate the forms of power, the channels it takes, and the discourses it permeates in order to reach the most tenuous and individual modes of behavior... how it penetrates and controls everyday pleasures..." (Foucault 1978, 11). The usefulness of examining sexuality as a site of productive power is seen in four particular strategies that Foucault develops that form specific mechanisms of knowledge and power centering on sex. While not fully developed at their beginnings in the eighteenth century, Foucault argues in *The History of Sexuality, Volume 1*, that it was then that they began to develop a consistency "...and gained

effectiveness in the order of power, as well as a productivity in the order of knowledge..." which serves to allow us to talk about them and describe them (1978, 103 – 104).

First, the "hysterization of women's bodies" was the way in which the body of the woman was interpreted as saturated with sexuality (1978, 104). The importance of this new way of describing women allowed its incorporation with the medical discourses so that a pathology intrinsic to a woman's body could be talked about authentically (1978, 104). An ideal-type is then created in "the Mother" whose fecundity is regulated through placement into organic communication with the social body of the family space (1978, 104). The pathologized version of "the Mother" becomes "the nervous woman" which "...constituted the most visible form of this hysterization" (1978, 104).

Second, the "pedagogization of children's sex" was the "...double assertion that practically all children indulge or are prone to indulge in sexual activity;" more importantly, that it was this kind of sexuality in children, which simultaneously was natural and unnatural, presented physical, moral, individual, and collective dangers (1978, 104). The effect of this discourse would be to require parents, educators, doctors, and psychologists to reign in and control this sexual potential, most evinced by the war against masturbation which Foucault describes as having lasted nearly two centuries in the West (1978, 104).

Third, Foucault enumerates a tripartite socialization on procreation along economic, political, and medical dimensions. An economic socialization on procreative behavior was necessary to blend the incitements and restrictions of fiscal measures onto the fertility of couples (1978, 104). What we might think of as incitements in this regard would include financial incentives to have children or laws which provide tax credits to married couples. The political element establishes what Foucault calls a "...responsibilization of couples with regard to the social body as a whole..." (1978, 105). This part of the discourse includes what we think of as the social obligation placed on couples to have children, to bear the responsibility to continue the human race. We might also appropriately regard the social pressure to avoid circumstances wherein children would be born out of wedlock or to single parents to rightly be placed here. Finally, medical socialization on procreative behavior was "...carried out by attributing a pathogenic value – for the individual and the species – to birth control practices" (1978, 105).

Foucault's fourth site of the productive character of sexuality was the "psychiatrization of perverse pleasure" whereby "...the sexual instinct was isolated as a separate biological and psychical instinct" (1978, 105). The discourses provided for the anomalies by which sex could be afflicted so that all manner and categories of sexual behavior could be allocated a normal quality as well as a pathological one

(1978, 105). The chief purpose of this type of categorization of pleasure was to then seek a corrective technology for the anomalies (1978, 105).

Produced by these discursive practices are "...four privileged objects of knowledge, which were also targets and anchorage points for the ventures of knowledge: the hysterical woman, the masturbating child, the Malthusian couple, and the perverse adult" (1978, 105). Each of these prototypes emerges from a preoccupation with sex, where each figure is invested with strategies that "...made use of the sex of women, children, and men" (1978, 105). By profiling the effects of the discourse on sex in the person of the aforementioned types, Foucault is able to then focus his query by asking

[w]hat was at issue in these strategies? A struggle against sexuality? Or were they part of an effort to gain control of it? An attempt to regulate it more effectively and mask its more indiscreet, conspicuous, and intractable aspects? A way of formulating only that measure of knowledge about it that was acceptable or useful (1978, 105)?

Indeed, the value of those strategies of regulation was the very production of sexuality (1978, 105).

THE SUBJECT AND THE OBJECT

In order to develop an understanding of how human beings understand themselves in culture, Dreyfus and Rabinow assert that Foucault turned his attention to investigations of the central sciences of man; after having engaged "...what was

radically “other” about human beings, [Foucault] now turned to the systems of self-understanding Western thought had generated through reflection on those aspects of human beings that were most accessible to it” (1982, 17). By the “central sciences of man,” Foucault means to describe biology, psychiatry, and the like; however, the ways in which man’s role as subject came to be understood in contrast to the “natural” sciences was termed the “human sciences” and was of great interest to Foucault in accounting for the origins of man’s subjectivity.

Foucault had, in his body of work, taken to classify the history of Western thought into three epochs: the Renaissance period, the Classical Age, and Modernity; this type of “...archaeological method of detachment allows him to characterize Modernity as the Age of Man, and to show that “man” is a special kind of total subject and total object of his own knowledge” (Dreyfus and Rabinow 1982, 18). It was in the Classical Age that Foucault identifies the development of a “...universal method of analysis [which] could lay forth in a clear and progressive fashion the representations which would give us the picture of the true order of the world” (Dreyfus and Rabinow 1982, 19).

At the end of the eighteenth century, however, Foucault’s archaeological method charts an abrupt and fundamental epistemic shift which signaled the end of the Classical Age and ushered in Modernity and the emergence of man (Dreyfus and

Rabinow 1982, 27).¹ It is during the Modern Age that man becomes not only "...a being among others, [but] now is a subject among objects. But Man is not only a subject among objects, he soon realizes that what he is seeking to understand is not only the objects of the world but himself. Man becomes the subject and the object of his own understanding" (Dreyfus and Rabinow 1982, 28). What begins to happen in the Modern Age is that Man becomes limited by language; language no longer serves as the source of dispensing "true" knowledge because it "...is no longer a transparent medium but a dense web with its own inscrutable history. Without a field of light which gives direct access to the structure of objects and the world, the knower, insofar as he is enmeshed in language, is no longer a pure spectator" (Dreyfus and Rabinow 1982, 28). The very function of language, Foucault argues, shifts from providing the true meaning of an experience or the true meaning of a thing to the province and responsibility of man to produce such meaning. It is precisely because "...language no longer does the job of representing and thus making knowledge possible [that] the representing function itself becomes a problem. The job of making representation possible is taken over by man" (Dreyfus and Rabinow 1982, 28). Moreover, the most important part of this development is

¹ It is instructive to note that Foucault's genealogy does not seek to explain why changes in historical periods have occurred, only to identify that such changes have occurred. Dreyfus and Rabinow offer that perhaps "the reason for his obstinacy may be less a penchant for obscurantism than the simple fact that any explanation would only make sense within a specific frame of reference and hence within a specific episteme" (27).

the way in which man begins to analyze his surroundings, to interpret the representations before him; no longer does man view things with which he has a metaphysical relationship, but instead constitutes everything around him according to his own experience and existence. What this means is that "...man emerges not merely as both subject and object of knowledge, but even more paradoxically, as organizer of the spectacle in which he appears" (Dreyfus and Rabinow 1982, 29).

Although the periodization of the history of Western thought is important to understanding Foucault's body of work, he makes it quite clear that "thought" serves us only to imagine a subject and an object; Foucault maintains that "...a critical history of thought would be an analysis of the conditions under which certain relations of subject to object are formed or modified, insofar as those relations constitute a possible knowledge" (1994, 459). Given this proviso, our task is only to uncover the problem of determining "...what the subject must be, to what condition he is subject, what status he must have, what position he must occupy in reality or in the imaginary, in order to become a legitimate subject of this or that type of knowledge. In short, it is a matter of determining its mode of 'subjectivation...'" (Foucault 1994, 459).

POWER AND RESISTANCE TO POWER

One way of conceiving of power is to imagine a top-down, vertical exercise of power wherein one possessed of its authority resides at the top and wields it to prevent or inhibit the action or actions of those at the base. This formulation is how we might typically visualize the way a ruler exercises power upon his subjects, or the way in which a supervisor regulates her employees. The application of power here functions only at the top and is used on those at the bottom. In *Discipline and Punish* and *The History of Sexuality, Vol. 1*, Foucault called into question this view of power. He argued that

...by remaining beholden to an anachronistic notion of power, the human sciences... remained impervious to the distinctive modalities and flows of power in modern society, tone-deaf to the diffuse and insidious operations of "biopower:" modern society's well-nigh totalitarian capacity to institutionally regulate and subjugate individual behavior — via statistics, public-health guidelines, and conformist sexual norms — down to the most elementary, "corpuscular" level (Wolin 2006).

Foucault's concept of biopower reorients us to think of power as a horizontal line, rather than the traditional vertical axis. To see power in this way allows us to consider the productive value of power rather than its capacity to control or suppress in its top-down manner. Reconsidered on a horizontal plane, "...power's uniqueness would lie in its ability to shape, fashion, and mold the parameters of the self..." (Wolin 2006). The outcome of Foucault's reconfiguration of power is his ability

...to demonstrate the compromised or origins of the modern "subject." In his view, the illusions of [the] autonomy [of the self] conceal a deeper bondage. The so-called subject is merely the efflux of... a totalizing "carceral society." From early childhood, the subject is exposed or "subjected" to... the "means of correct training:" an all-pervasive expanse of finely honed behavioral-modification techniques that suffuse the institutional structure of civil society — schools, hospitals, the military, prisons, and so forth (Wolin 2006).

While Foucault has written that the goal of his work was not to analyze the phenomena of power, but to study the general theme of the human subject, he does admit that questions of power are interwoven with his elaboration of subjectivity because "...while the human subject is placed in relations of production and of signification, he is equally placed in power relations which are very complex" (Foucault 1982, 209). It was this realization that led him to find it "...necessary to expand the dimensions of a definition of power if one wanted to use this definition in studying the objectivizing of the subject" (Foucault 1982, 209). And even though he resists developing a "theory of power," he does find a need for a "new economy of power relations" (Foucault 1982, 209). In order to accomplish this, Foucault takes forms of resistance to power as his starting point.

To properly identify resistance, Foucault looks at "...a series of oppositions which have developed over the last few years: opposition to the power of men over women, of parents over children, of psychiatry over the mentally ill, of medicine over the population, of administration over the ways people live" (Foucault 1982, 211). We see in these relationships the power dynamic Foucault speaks of, but he

cautions us to go beyond seeing these oppositions as “antiauthority struggles;” rather, it is more useful to examine what they have in common (Foucault 1982, 211). Briefly, he identifies six commonalities: first, they are “transversal” struggles which are not confined to a specific country or form of government (Foucault 1982, 211). Second, each of these oppositions are struggles against the power effects as such which leads people to criticize, for example, the medical profession not because of their “...profit-making concern, but because it exercises an uncontrolled power over people’s bodies, their health, and their life and death” (Foucault 1982, 211). Third, these oppositions have an immediacy to them because “...people criticize instances of power which are the closest to them, those which exercise their action on individuals” (Foucault 1982, 211).

The preceding three shared attributes are general and not what Foucault calls “...their most original points” (Foucault 1982, 211). The next three he isolates as specific; the fourth commonality between these modes of power relationships are

...struggles which question the status of the individual: on the one hand, they assert the right to be different and they underline everything which makes individuals truly individual. On the other hand, they attack everything which separates the individual, breaks his links with others, splits up community life, forces the individual back on himself and ties him to his own identity in a constraining way” (Foucault 1982, 211 – 212).

Fifth, “they are an opposition to the effects of power which are linked with knowledge, competence, and qualification: struggles against the privileges of

knowledge. But they are also an opposition against secrecy, deformation, and mystifying representations imposed on people" (Foucault 1982, 212). And finally, he connects them to the question of "who are we" (Foucault 1982, 212)? These oppositions refuse the abstract that is imposed upon us by the ideology of the state which ignores our individuality (Foucault 1982, 212). Foucault's point in identifying these six characteristics of antiauthority struggles is to point out "...the main objective of these struggles is to attack not so much... an institution of power, or group, or elite, or class, but rather a technique, a form of power (Foucault 1982, 212).

The operation of this kind of power is so insidious because it is this form of power, the operation of control over the individual, that

...applies itself to immediate everyday life which categorizes the individual, marks him by his own individuality, attaches him to his own identity, imposes a law of truth on him which he must recognize and which others have to recognize in him. It is a form of power which makes individuals subjects. There are two meanings of the word *subject*: subject to someone else by control and dependence, and tied to his own identity by a conscience or self-knowledge. Both meanings suggest a form of power which subjugates and makes subject to (Foucault 1982, 212).

While struggles against forms of domination or exploitation or alienation are not new, historically speaking, Foucault argues that the most important struggle in the Modern Age is against the submission of subjection because of a new political form of power manifested in the state (Foucault 1982, 213). Although Foucault recognizes

the state is not a new exercise of power, he articulates a more potent reach of state power and its totalizing effect on the individual.

The conventional interpretation of state power is one in which "...the state is envisioned as a kind of political power which ignores individuals, looking only at the interests of the totality or... of a class or a group among the citizens" (Foucault 1982, 213). And while he acknowledges this as true, Foucault undergirds this point by claiming that the state exercises not only an individualizing form of power, but a totalizing form of power, which he regards as "...a tricky combination in the same political structures of individualization techniques, and of totalization procedures" (Foucault 1982, 213). The reason for this development, he explains, is the emergence of what he calls pastoral power.

Christianity ushered in a new code of ethics which drastically differentiated it from the ancient world and "...as such, it postulates in principle that certain individuals can, by their religious quality, serve others not as princes, magistrates, prophets, fortune-tellers, benefactors, educationalists, and so on, but as pastors" (Foucault 1982, 214). And for Foucault, this pastoral power became the exercise of a new kind of power with important consequences. This kind of power is salvation oriented in its goals to (a) "...assure individual salvation in the next world;" (b) not only command, but which "...must also be prepared to sacrifice itself for the life and salvation of the flock" which distinguishes itself from "...royal power, which

demands a sacrifice from its subjects to save the throne;" (c) look after all of society, in addition to each individual for the duration of his life; and (d) serve the individual by knowing the inside of his mind, exploring his soul, and knowing his innermost secrets through a knowledge of the conscience with the concomitant ability to direct it (Foucault 1982, 214). Because this pastoral power is salvation-oriented, Foucault argues that it is "...coextensive and continuous with life; it is linked with a production of truth – the truth of the individual himself" (Foucault 1982, 214). In this highly complex arrangement, individuals do not exist in contrast to, or as separated from, the state, but rather as integrated and shaped by this new form of power.

As the state began to develop and grow in this role of exercising a new kind of power, Foucault places an emphasis on a progressive change in purpose. First, he argues that the nature of salvation changed from ensuring it in the next life to ensuring it in this world (Foucault 1982, 215). As the focus on salvation changed, so too did the available power of pastoral officials; not only was power utilized properly by the state, but "sometimes the power was exercised by private ventures, welfare societies, benefactors, and generally by philanthropists. But ancient institutions, for example the family, were also mobilized at this time to take on pastoral functions" (Foucault 1982, 215). The result of the increase in goals and players "...focused the development of knowledge of man around two roles: one,

globalizing and quantitative, concerning the population; the other, analytical, concerning the individual" (Foucault 1982, 215). Power exercised in this way, Foucault argues, is one that begins with an association to a religious or spiritual context to one which is mapped on to the entire social body where the two are no longer separable entities because "...instead of a pastoral power and a political power, more or less linked to each other, more or less rival, there was an individualizing "tactic" which characterized a series of powers: those of the family, medicine, psychiatry, education, and employers"

What can we make of this Foucaultian analysis of power and subjectivity and its link to knowledge of the subject? Foucault himself advises us not to seek to discover that we are under this regime of power imposed on the individual and the social body, but to refuse the "...political 'double bind,' which is the simultaneous individualization and totalization of modern power structures" (Foucault 1982, 216). Our task then, under Foucault's direction, is to liberate ourselves not from the operation of power by the state or from the pastoral power of the institutions of the state, "...but to liberate us both from the state and from the type of individualization which is linked to the state. We have to promote new forms of subjectivity through the refusal of this kind of individuality which has been imposed on us for several centuries" (Foucault 1982, 216). If a new form of subjectivity is to be realized, it must come from the liberated-from-the-state, liberated-from-individualization

subject he proposes. It is the individual who is the source of liberation and resistance. If we are to shake off the kind of subjectivity given to us under the auspices of the complex matrix of state power, we must do so in contradistinction to them. A new form of subjectivity can be claimed when we deny the capacity of this kind of power over ourselves because "...if we speak of the structures or mechanisms of power, it is only insofar as we suppose that certain persons exercise power over others" (Foucault 1982, 217). Therefore, through the refusal of an imposed subjectivity, the source of resistance to that resides with the individual who pursues his own forms and definitions of subjectivity.

We must take care to properly locate appropriate forms of resistance in order to avoid the pitfalls of seeking the "truth" of ourselves. In a confrontation with the modern technique of power, the manipulated and distorted and subjected individual is individualized and totalized as subject and object. In seeking a relationship to what is "true," one seeks not only a truth of himself, but also a truth about what self-examination is (Foucault 1978, 59 – 60). This began to mask the disciplinary technique of power over the individual; "truth" was viewed as something that was inside of us holding the very secrets of our nature. Failure to disclose our "truths" was interpreted as the result of some form of power or constraint keeping it from emerging; the "logical" response to this is to see our "truths" as being "...articulated only at the price of a kind of liberation. Confession frees, but power reduces it to

silence; truth does not belong to the order of power, but shares an original affinity with freedom" (1978, 60). Confession, now falsely linked with freedom, serves to make the individual think he or she has become emancipated from the effects of power. In *The History of Sexuality, Volume 1*, Foucault cautions against confession-as-resistance.

CONFESSIOAL PRACTICES

Foucault identifies "confession" as a moment of perceived, or false, liberation from power on the part of the subject. The confessional moment of "truth" is false because it does nothing to release one from the grip of the technology of power. This artificial sense of resistance is futile because it disguises the location of power. As the confession happens between two people, the interlocutor is not simply a listener, but rather "...the authority who requires the confession, prescribes and appreciates it, and intervenes in order to judge, punish, forgive, console, and reconcile..." (Foucault 1978, 61 – 62). The power then, resides with the one who hears the confession because the production of knowledge is operating on the confessor. Indeed, confession is in "...vain because the 'truth' is exactly what is required by those exercising the power of watching. And so belief in the idea of the liberating effect of a talking cure is an effect of a masked disciplinary technology, which Foucault calls... biopower" (Kemp 1984, 96).

The role of confession in producing truth stems from the practice of *scientia sexualis*, or the science of sex; by *scientia sexualis*, Foucault is describing a civilization which has created "...procedures for telling the truth of sex which are geared to a form of knowledge-power strictly opposed to the art of initiations and the masterful secret..." (Foucault 1978, 58). Some cultures or civilizations sought to learn about sex through an *ars erotica*, or erotic art, where "...truth is drawn from pleasure itself, understood as a practice and accumulated as experience; pleasure is not considered in relation to an absolute law of the permitted and the forbidden..." (Foucault 1978, 57). The science of sex, on the other hand, was a method of arriving at an empirical "truth" about sex and sexuality. Foucault's aim in unpacking the *scientia sexualis* is to "...reveal the development of different power rituals by describing specific models for exercising power: ... in the first volume of his *History of Sexuality*, he makes use of the institution of the confessional - ...as an instrument for diagnosing power-relationships which infect man's body and form his ideas" (Kemp 1984, 95). We remember that Foucault identified the four strategic mechanisms by which sex was put into discourse as a way to combine power and knowledge about sex. These were useful strategies of power-knowledge because "as the body was the locus of sexuality, and sexuality could no longer be ignored, science was impelled to know in minute detail all of the biological and psychic secrets which the body held" (Dreyfus and Rabinow 1982, 173).

As a scientific discourse of sexuality gained traction, “the examination, the technical heart of these new procedures, was the occasion for putting an underlying sexual discourse into acceptable medical terminology. Since the medical problem was hidden, the examination required the patient’s confession” (Dreyfus and Rabinow 1982, 173). Confession, then, was ostensibly the gateway to learning the truth about oneself. A discoverable, underlying truth was only accessible by way of confession. The violence done to individuals under this concept of a discoverable truth inheres in the obviousness of such a powerfully “freeing” confession. The idea that “...truth can be discovered through the self-examination of the consciousness and the confession of one’s thoughts and acts now appears so natural, so compelling, indeed so self-evident, that it seems unreasonable to posit that such a self-examination is a central component in a strategy of power” (Dreyfus and Rabinow 1982, 175). The relationship between power, knowledge, truth, and pleasure are completely intertwined with one another as they work to subvert the individual’s ability to define himself outside the grip of the invisible force of an external operation of control over his body and mind. Indeed,

the medical examination, the psychiatric investigation, the pedagogical report, and family controls may have the over-all and apparent objective of saying no to all wayward or unproductive sexualities, but the fact is that they function as mechanisms with a double impetus: pleasure and power. The pleasure that comes of exercising a power that questions, monitors, watches, spies, searches out, palpates, bring to light; and on the other hand, the pleasure that kindles at having to evade this power, flee from it, fool it, or travesty it. The power that lets

itself be invaded by the pleasure it is pursuing; and opposite it, power asserting itself in the pleasure of showing off, scandalizing, or resisting. Capture and seduction, confrontation and mutual reinforcement: parents and children, adults and adolescents, educator and students, doctors and patients, the psychiatrist with his hysteric and his perverts, all have played this game continually since the nineteenth century. These attractions, these evasions, these circular incitements have traced around bodies and sexes, not boundaries to be crossed, but *perpetual spirals of power and pleasure* [emphasis in original] (Foucault 1978, 45).

And so because the confessional moment is ingrained in us and appears to us as an “obvious” practice of true self-hood, to the point where we no longer perceive it as a feature of power, the confession is one of the West’s most valuable techniques for producing truth and “...and still remains, the general standard governing the production of the true discourse on sex” (Foucault 1978, 63).

JUDITH BUTLER – SUBJECTIVITY AND RESISTANCE

In her 2004 work *Undoing Gender*, Judith Butler evaluates the ways in which the category of the subject has been called into question. Her goal is to underscore the point that the questioning of “...the foundationalism of that category is not the same as doing away with the category altogether. Moreover, it is not to deny its usefulness, or even its necessity. To question the subject is to put at risk what we know, and to do it not for the thrill of the risk, but because we have already been put into question as subjects” (Butler 2004, 227). What she means by this, much like

Gloria Anzaldúa,² is her call to reject, or move beyond, the idea of a unitary subject. The narrative of the unitary subject is the very thing that stands in the way of meaningful “social transformation” (Butler 2004, 227). Butler argues that while “theory is presupposed” in acts of social transformation and that we, in these acts, are all “lay philosophers,” something other than theory must occur (Butler 2004, 204 – 205). The struggle to move beyond the unitary subject is marked by one’s capacity to cross the boundaries imposed on us by a regime of regulated subjectivity. The call is for a subjectivity that exists in many contexts. Butler poses an important issue which requires resolution for a subject who strives to engage in this type of questioning; does the subject who “crosses borders” of identity categories live them “...in a unified way, or does she live their incommensurability and simultaneity as the very meaning of her identity, an identity culturally staged and produced by the very complex historical circumstances of her life” (Butler 2004, 228)? For my purposes, the question is how gays and lesbians resolve to challenge a culturally given, and unitary, heterosexuality (a heterosexual identity) that then must be

² In her seminal work *Borderlands/La Frontera* (1987), Anzaldúa accounts for a way to break the restrictive hegemony of rigid boundaries between categories of sex, gender, cultures, and language. These borders, she argues, limit personal freedom in the search to answer the question of who one is, particularly when one’s identity straddles the line between two categories. It is by straddling these lines, by crossing borders, that one becomes “...the embodiment of the *hieros gamos*: the coming together of opposite qualities within” (19). The experience of this kind of difference calls for people to create a new space whereby “this coming together... can work to recreate wholeness in a divided world” (Woodward 1989). The rejection of a unitary subjectivity makes possible one kind of social transformation by which we can question epistemological “certainties” about the subject.

transformed into the capacity to produce a self who resists such hegemonic descriptions.

It is in Butler's critique of gender norms, which provides for an "undoing" of these hegemonic models of the subject, which allows me to posit more tenable practices of gay and lesbian subjectivity. Like Foucault, Butler is concerned with the question of the production of the subject and where the locus of that production resides. She agrees with Foucault in his assessment that "...subjection is neither simply the domination of a subject nor its production, but designates a certain kind of restriction *in* production, a restriction without which the production of the subject cannot take place..." (Butler 1997, 84). In analyzing *Discipline and Punish*, Butler grants Foucault's premise that

[t]he prison thus acts on the prisoner's body, but it does so by forcing the prisoner to approximate an ideal, a norm of behavior, a model of obedience. This is how the prisoner's individuality is rendered coherent, totalized, made into the discursive and conceptual possession of the prison; it is, as Foucault insists, the way in which 'he becomes the principle of his own subjection' (Butler 1997, 85).

In tracing what he calls "a genealogy of the modern soul," Foucault argues that the soul is not to be construed as non-corporal, as a mere philosophical or dogmatic entity, but rather as something that "...exists, ...has a reality, [because] it is produced permanently around, on, [and] within the body by the functioning of a power that is exercised on those punished..." (Foucault 1977, 29). The soul, as understood and decoded by Foucault, is the housing in which "...the effects of a certain type of

power and the reference of a certain type of knowledge, the machinery by which the power relations give rise to a possible corpus of knowledge..." is embedded (Foucault 1977, 29). Moreover, the importance of the soul as the site for this source of knowledge and technology of power persists in the act of the construction of concepts and "domains of analysis" which are carved from it: the psyche, subjectivity, personality, and consciousness are but a few of the locations upon which "scientific techniques and discourses," as well as "the moral claims of humanism," have been built (Foucault 1977, 29 – 30). And so we understand the prisoner to be the effect of a subjection "more profound than himself" because while the soul "...inhabits him and brings him into existence... the soul is the effect and instrument of a political anatomy; the soul is the prison of the body" (Foucault 1977, 30).

Butler's point of departure from Foucault is with her concern that Foucault has presupposed the soul as something that "...preexists in the body that animates it" (Butler 1997, 86). In what she calls a "clarification," Butler likens the Foucaultian "soul" to the Lacanian "psyche" (1997, 86). Her understanding, in this formulation, is that the

subject is always produced at a cost, and whatever resists the normative demand by which subjects are instituted remains unconscious. Thus the psyche, which includes the unconscious, is very different from the subject: the psyche is precisely what exceeds the imprisoning effects of the discursive demand to inhabit a coherent identity, to become a coherent subject (Butler 1997, 86).

In her quest to locate the ability of the subject to resist, Butler asks whether resistance is socially produced or discursively produced or, on the other hand, whether resistance to normalization is a resistance to social and discursive production *as such* (1997, 88). What she takes issue with in Foucault's thought is that "...it appears that there is an 'inside' to the body which exists before power's invasion" that she believes needs accounting for (Butler 1997, 89).

Again, Butler agrees with Foucault that the soul is an instrument of power "...through which the body is cultivated and formed... it acts as a power-laden schema that produces and actualizes the body" (1997, 90). Through her psychoanalytic framework, she wonders

[i]f the body is subordinated and to some extent destroyed as the dissociated self emerges, and if that emergence might be read as the sublimation of the body and the self be read as the body's ghostly form, then is there some part of the body which is not preserved in sublimation, some part of the body which remains unsublimated (Butler 1997, 92)?

Butler's concern is that if the body is a template for social and discursive inscription, then the body must exist prior to this inscription, which she uses as a jumping-off point for her psychoanalytic interpretation. I would argue, however, that Foucault's theory of the soul does not assume a prior signification; instead the soul appears coextensive with the body. Foucault indicates in *The History of Sexuality, Volume 1* that power produces both docile and resistant bodies because the body is not just the location of subjectivity but indeed it is the very condition of subjectivity. I do not

believe the consequence of Foucault's "body" is paradoxical, but multivalent. Butler is concerned that the soul might need to preexist in the body that animates it; I would argue that Foucault's theory does not presuppose a prior and separate soul, for the Foucaultian "soul" is created simultaneously with the body, and is given its birth and very meaning, in its creation as the location of a totalizing regime of subjectivation.

I do not think Butler misunderstands Foucault. In fact, she correctly recognizes that "[t]he Foucaultian subject is never fully constituted in subjection, then; it is repeatedly constituted in subjection, and it is in the possibility of a repetition that repeats against its origin that subjection might be understood to draw its inadvertently enabling power" (Butler 1997, 92). The "enabling power" of which she speaks is the locus of resistance. The site of resistance inheres in the constant remaking and reconstituting of the subject in discourse.

Both Foucault and Butler articulate the artificiality of confession, particularly when confession is sought as a technique of liberation. Butler offers an update, if you will, of Foucaultian confession with an eye to reassess the consequences of what it would mean to establish, or form, the self. Confession is not about discovering hidden desires in order that they be rendered public, "...but rather to constitute a truth of oneself through the act of verbalization itself" (Butler 2004, 163). We are not liberated by confession because it is the avenue by which we allow what we share to

become the only way in which we can be described or interpreted. The operation of pastoral power on the act of confession is the moment when confessors accept a given knowledge of themselves and the “pastor” is recognized as having authority over the discourse which provides a “truth” about the confessor. Power reaches through confession by way of the act of telling about ourselves, the result of which is then to use that information as the material by which we are interpreted. This is the act by which we expose ourselves to be defined by others. In one respect, the confessional “coming out” moment, then, under this formulation allows gays and lesbians to be defined in a particular way – the listener, the “expert,” designs the parameters of gay identity that gays must then overcome by carving out a new space for an identity that is different in sexual practice only, but looks not dissimilar in most other ways. Of course, by the very virtue of a separate sexual identity needing to be carved out in the first place betrays the ambition of dissimilarity. I, however, would like to place the act of coming out in a slightly different context. The disclosure of one’s non-normative sexual orientation provides the opportunity to counter possible narratives that present potential discursive violence to gays and lesbians.

EVERYDAY CHOICE AND SITES OF GAY SEXUALITY

As we strive to nuance the description of gay sexuality as a site of politics, and in order to better understand the policy discussions that will follow in chapters four and five, I will now engage in a theoretical exercise whereby we can uncover and explore the site of how gays and lesbians are described through sexuality. As I noted above, Foucault depicted four ways in which sex was put into discourse. His four categorizations of how sex and sexuality were put into discourse demonstrate his argument that particular descriptions of subjects become mechanisms by which control is exercised over sexuality. In what follows, I will demonstrate that the discourses of the family and of the social space are controlled through a heteronormative schematic which furthers the regime of compulsory heterosexuality and “normal” sexual expression and behavior.

The potency of discourse lies in the development of what Foucault calls an “authorized vocabulary” (1978, 17). An authorized vocabulary is the process by which coded and hidden-in-plain-sight meanings which appear on the surface to be distinct from or unrelated to the topic of sex are in actuality unmistakable references to sex.³ The emergence of “population” as a site for the production and management

³ Foucault says “[t]here was installed rather an apparatus for producing an ever greater quantity of discourse about sex, capable of functioning and taking effect in its very economy” (1978, 23) by which he means an expansion of an “authorized vocabulary” which shifts an explicit and literal discussion of sex to “...a multiplicity of discourses produced by a whole series of mechanisms

of sexuality, for example, shows how the economic and political concerns surrounding wealth and labor and material resources became connected to an entire institutional analysis of sex. Birth rates, the legitimacy or illegitimacy of children, the nature and character of sexual relations, fertility, and the unmarried became categories of analysis on the impact these might have on wealth, labor, or material resources. Foucault argued that the economic beliefs that characterized the mercantilist period signaled a whole system for observations regarding sex. We know that a mercantilist society would be concerned with unrestricted or unmanageable population growth for fear of too quickly depleting necessary resources or would conversely be concerned with maintaining a certain level of steady population growth to maintain the status quo. Under this kind of overarching belief system,

...it had long been asserted that a country had to be populated if it hoped to be rich and powerful; but this was the first time that a society had affirmed, in a constant way, that its future and its fortune were tied not only to the number and the uprightness of its citizens, to their marriage rules and family organizations, but to the manner in which each individual made use of his sex. Things went from ritual lamenting over the unfruitful debauchery of the rich, bachelors, and libertines to a discourse in which the sexual conduct of the population was taken both as an object of analysis and as a target of intervention... (Foucault 1978, 26).

operating in different institutions" (1978, 33). In this case, the use of population as a measure of the institution of the family through the discourse of sex and sexuality.

Just as the connection between population and sex as a site of regulation became necessarily intertwined, as traced by Foucault, I will now turn to an example of how the social space, in the form of a cultural tradition experienced by many high school students, operates as a standard-bearing description for a deeply entrenched heterosexuality which requires gays and lesbians to confront in everyday practices.

THE SENIOR PROM

As the spring semester begins, many high school seniors around the country begin preparing themselves for what can arguably be described as the most anticipated end-of-the-year social event. The senior prom is a tradition occasioned by the excitement and anticipation of its invitation-for-seniors-only character. On the surface, and quite innocuously, the high school prom is simply a dance. It is a cultural institution created to celebrate the end of the high school experience and to welcome with excitement, or perhaps anxiety, an unknown future all are facing. The prom is a punctuating moment, a time for memory-creating and commemorating the transition from adolescence to adulthood. On the other hand, we may also derive discursive properties from the prom because of the associated practices of what it means to be a part of such an event, which I describe below. More than just a social event, the prom is a site of a viewable gay sexuality, and that gay sexuality stands in

opposition to the custom of training boys and girls to behave as men and women in an exclusively heterosexual context.

At an early age, children are encouraged to begin preparing for heterosexual coupling through an innocent exchange of Valentine's Day cards in elementary school, for example, or through a role-playing game where boys and girls are coupled to "raise" an egg in home economics class. These activities are a "dress rehearsal," if you will, for an opening night of "appropriate" heterosexual union. The prom, as a capstone to one's formative years, maps and reinforces the rules of a heteronormative explanation of expected "grown-up" relationships. I call the prom an occasion of sexual regulation because gay and lesbian teens who wish to participate in their own ritual of sexual socialization in a way that mirrors what will become their "grown-up" relationships must chart for themselves a strategy to do so. A strategy like this would need to, on the one hand, allow them to simply go to a dance with their peers; on the other hand, it must also allow a kind of participation that refuses the violence done by heteronormative descriptions of their sexual identity. One such strategy is to publicly reveal same-sex orientation, or to "come out."

Coming out in this context is a resistance to an impending feeling of alienation caused by exclusion from sexual socialization. It is a move to mark one's self as included, even though such a move to be different-while-included might

appear to be a strange concept. For a young man to bring another boy to the prom is to recast a given assumption of identity as one where *my* description of myself would replace *your* description of myself, in order to resist being excluded from my own desire to be sexually socialized, while retaining my experience as a same-sex oriented subject. It is the refusal of the dominance of the heterosexual narrative that drives why self-description matters. An analogy of Judith Butler's discussion of the case of David Reimer demonstrates how, in coming out, gays and lesbians can craft new approaches to an analysis of what it means to be gay.

David Reimer was born a biological male whose penis was burned and severed during infancy while undergoing an operation to correct phimosis, a condition which restricts the ability of the foreskin to be retracted. Soon after, David's parents took him to a specialist on transsexual and intersexual surgery who explained to them "...that if a child underwent surgery and started socialization as a gender different from the one originally assigned at birth, the child could develop normally, [and] adapt perfectly well to the new gender..." (Butler 2004, 59).⁴ Socialized as "Brenda," David had never identified with the female gender assignment and had always struggled to link his internal feelings with his outward gender appearance. Butler uses David's case as a way to draw attention to the "...disciplinary framework within which Brenda/David develops a discourse of self-

⁴ See also John Colapinto (2000).

reporting and self-understanding, since it constitutes the grid of intelligibility by which his own humanness is both questioned and asserted" (2004, 67). For Butler, David's struggle to assert what he felt as maleness in a body that had been gendered as female indicates what might count as the truth of gender; while Brenda/David was scrutinized by medical professionals vacillating between arguments of the natural essence of gender versus the normalization process by which we accept proper gender roles, Butler sees the constant questioning as a way to ascertain whether a coherent personhood has been accomplished (2004, 67). David's mis-gendered body and the heteronormative account of relationship possibilities as evidenced by the ritual of the prom speak to why self-reporting and self-observation and disclosure reveal attempts to reconcile inclusion and exclusion.

Butler's argument is that self-reporting, self-observation, or self-descriptions occur with specific listeners in mind, that there is a relationship to a certain audience (2004, 67). This is precisely why asserting one's place at the prom is of particular importance. The audience in this instance includes classmates and friends and people with whom there are substantial community interactions. Students live and go to school within the same geographic space as their peers, which provides one source of connectivity between them. A gay teenager might not consider his sexuality as something that marks him as so different from his peers that he cannot enjoy the prom in spite of its heteronormative production of sexuality; indeed, he

might just be looking forward to being a part of the rite-of-passage that is the “harmless” part of the dance. His anticipation, however, does not overcome his exclusion from that other part of the prom that is meant to produce heterosexual personhood.

Just as Butler discussed David Reimer’s case as one in which the exercise of questioning him thoroughly about his inclination toward masculinity or femininity, I characterize the prom as an exercise in accomplishing a coherent heterosexual personhood. Coming out is the attempt to accomplish gay personhood in a way that does not need to be disconnected from the whole – only this one part called sexuality – yet succeeds in disrupting the prom as the exclusive province of heterosexuals. Just as “Brenda’s” self-description was always male, gays – even when induced to partake in heterosexual rituals – have always been already gay. It is in coming out that one’s own narrative of the self begins to match what was already internally acknowledged. External disclosure indicates no real change to the self, just the recasting of heteronormative assumptions into a more ontologically accurate narrative of the self. As Butler says, “[o]n the one hand, we have a self-description, and that is to be honored. These are the words by which this individual gives himself to be understood. On the other hand, we have a description of a self that takes place in a language that is already going on, that is already saturated with norms, that predisposes us as we seek to speak of ourselves” (2004, 69). Coming out

satisfies the resistance to the dominant narrative: it is to allow oneself to *want* to be included in the ritual of the prom event for reasons that are specific to self-descriptions as well as the deliberate act of doing so in front of a particular audience embedded in a heterosexual language. This is about a refusal to be defined by sexuality alone, an embrace of the non-distortive aspects of friendship and social enrichment and attachment to the communities of which we are a part because these are of continuing and determinative importance in our lives. Such aspects beget a healthier and more robust awareness of the self. Butler recounts Brenda/David's struggle with an enforced gender as a conflict with a "...norm... [which] is externally imposed, communicated through a set of expectations that others have; and then there is the world of feeling and being, and these realms are, for him, distinct. What he feels is not in any way produced by the norm, and the norm is other, elsewhere, not part of who he is, who he has become, what he feels" (2004, 69). Much like David's relationship with gendered norms in an oppressive binary that cannot accurately describe him, the prom is an instance of these same themes for gays and lesbians in a heteronormative environment.

The recasting of one's exclusively heterosexual environment into one that includes same-sex relationships is to disturb the orthodoxy of what is knowable about what the prom is. To attend the prom with a same-sex date is an act which does not conform to the requirement of what Butler calls intelligibility; for David, his

body was coercively gendered so that others could speak of him and so that he (as she) could be known. His non-conformity, as well as same-sex prom dates, "...offer a critical perspective on the norms that confer intelligibility itself" (Butler 2004, 73). David, through his speech, "...achieves this 'outside,' we might speculate, by refusing the interrogations that besiege him, reversing their terms, and learning the ways in which he might escape. If he renders himself unintelligible to those who seek to know and capture his identity, this means that something about him is intelligible outside the framework of accepted intelligibility" (Butler 2004, 73). David's speech acts, his refusal to render himself intelligible under the conditions and requirements of others, parallels the coming out act of bringing a same-sex date to the prom as a successful strategy of recasting identity under one's own terms without having to reject gender itself (for David), or without having to reject non-participation in sexual socialization (for the same-sex prom dates). Coming out and still attending or participating in what is largely designed to be specifically non-gay makes one simultaneously excluded/different and included/same by rupturing the intelligibility of the heteronormative prom narrative. Positioning oneself *in relation* to the norm without complying with its requirements is to "...emerge at the limits of intelligibility, offering a perspective on the variable ways in which norms circumscribe the human" (Butler 2004, 74).

CONCLUSION

In this chapter, I have shown that the account of subjectivity is characterized by an operation of power on the body. Foucault argued that power is productive; it produces the illusion of an autonomous self. Power regulates an imposed “truth” onto the body of the subject and dominates and subjugates him. He demonstrates this by focusing on sexuality as a site of how power produces the regulated subject. Foucault says that we are prisoners of certain conceptions of ourselves and of our conduct, and that as such, we should liberate our subjectivity, our relation to ourselves (Paras 2006, 107). Foucault also argues that liberation from this productive power occurs through a refusal of imposed subjectivity; the refusal comes from the individual because power operates on the body and thus it is the body which must originate resistance. Remember that Foucault said that the individual was not just the location of subjectivity but the very condition of it since the body is where power operates to produce the subject. Foucaultian resistance takes the shape of the pursuit of one’s own definitions of the self rather than a self who is described by the effects of power. Because power operates on the body as a way to discover knowable “truths” of an individual, Foucault makes his point by examining sexuality as a site to view how power does this.

Judith Butler puts Foucaultian resistance into practice in the context of gender. She argues that we need to question gender norms by constantly making and

remaking the self. According to Butler, the path to successful social transformation is to defy a constricting unitary subjectivity that is imposed on us by the operation of power. Butler wants us to acknowledge/embrace a more varied subjectivity, one which is capable of existing across the given possibilities. Possibilities ought to belong to the subject, not given to her, and if self-sought possibilities include those which appear to be incommensurable in the standard contexts, this is a successful approach to resisting the operation of regulated subjectivity.

Whereas Foucault uses sexuality as his evidence for the ways in which power produces a regulated subject, Butler uses a critique of gender norms to demonstrate a path to resisting subjection. I used the senior prom as an example of how heteronormativity operates to distort descriptions of the gay and lesbian subject and that recasting those descriptions and overcoming assumptions is the way to resist an imposed subjectivity. Foucault's project was to call upon us to liberate ourselves and my contribution to his argument is to show that gays and lesbians who get married or join the military promote a new form of subjectivity through the refusal of an imposed personhood. Foucault describes rejecting the imposition of certain descriptions of the self as a source of resistance. My project has been to expose strategies which articulate a coherent definition of the self whose sexuality is political. I argue that gays and lesbians develop a resistance strategy by marrying

and serving in the military thus transforming or recasting distorted descriptions of what it means to be gay into descriptions that are more meaningful.

The use of a model of Foucaultian subjectivity and my remedy for the recasted gay subject brings to light a tension between the plasticity of the Foucaultian subject and liberal discourse on individual rights. The Foucaultian subject is one wherein there exists no natural, pre-given identity to which we might be able to then endow with particular rights; this type of subject has no constant or enduring features because it is always changing and morphing, re-creating and re-interpreting. I argue that this model of subjectivity is indeed the remedy for recasting a gay subject who is currently interpreted through the lens of heterosexuality. I charge that by examining gay subjectivity through marriage and military service, we can see what re-creation and re-interpretation looks like and what it means for gays and lesbians to articulate a specific politics of the self. I use the Foucaultian idea of the subject and support the liberal outcome of marital equality and open military service.

It is through a discussion of liberal political issues such as marriage and military service that allow me to critique the liberal norms which characterize the discourse on marital equality and the ban on gay and lesbian military service. The framework of the Foucaultian subject allows me to establish how specific political issues and their surrounding discourses have a direct impact on the descriptions of individual persons. The discourse on marriage and military service, thoroughly

covered in the next two chapters, informs how politics and popular political debate is the space in which gays and lesbians are described through an imposed heteronormative paradigm. Foucaultian analysis of the subject allows for a description of the process by which politics becomes personal. To move beyond majority-minority politics and truly expose the viciousness of marital and military exclusion, we must adopt a theoretical structure which can describe a subject capable of showing the scars of power-knowledge's reach into specific discursive practices. Foucault's discussion of power in the first volume of *The History of Sexuality* addresses the way gays and lesbians experience those barriers to marriage and military service.

In the following two chapters, it is noteworthy that marriage and military service are not offered as exemplars of perfect emancipatory acts. However, it is instructive to analyze not only the effects of barriers on what it means to be gay, but also the ramifications of particular political choices. What does it mean that some gays and lesbians choose to define their relationships as marriages given the critiques of the institution? While I engage those critiques in the next chapter, I must again emphasize the parameters of my argument: removing the barriers to marriage and military service is crucial for gays and lesbians to resist the imposed subjectivity defined in opposition to heterosexuality. There are gays and lesbians who desire marriage and cannot have it; there are gays and lesbians who wish to serve their

country and cannot do so. This exclusion greatly hinders the exercise of a more meaningful gay and lesbian subjectivity. That some queer theorists like Michael Warner do not think gays and lesbians should want to be married is of less concern for me and is of little consequence to my assertion that barriers do lasting damage to the ability of gays and lesbians to project a variety of self-descriptions into the national imaginary beyond those enforced by heteronormative attitudes and structures. The ability to self-describe is key to the kind of Foucaultian resistance called for by my theory of subjectivity.

My aim has been to show the ways in which Foucaultian subjectivity and strategies for resisting an imposed subjectivity is visible in the heteronormative “included-yet-excluded” context in which gays and lesbians exist. In the next two chapters, I turn to a fuller discussion of marriage and military service as heteronormative sites of subjectivity which operate on gay and lesbian sexuality. What is at stake in the quest for marital equality and the end of discrimination on the ability to serve in the military is the very ability of an individual to establish a relationship to the self under his or her own terms. The political and legal struggles to bring about fairness and equality to gays and lesbians are indicative of marriage and military service working as important sites for discovering the possibilities of meaningful gay and lesbian subjectivity.

CHAPTER 4

MARITAL EQUALITY

INTRODUCTION

The initial political activity that characterized politics in the gay rights movement (as discussed in Chapter 2), was embodied by the homophile assimilationist approach and the transition into a liberationist approach undergirded by a call for gay rights. The challenges that faced early activists consisted of vocalizing for the “mainstream” what issues gays and lesbians needed to overcome. One of the first issues was seeking the repeal of sodomy laws which criminalized gay and lesbian sexual activity; in addition to sodomy laws,

the federal government enforced a blanket ban against its employment of lesbians, gay men, and bisexuals, and many state governments and professional licensing agencies did likewise. Cold War rhetoric about perversion and sexual menace saturated the public domain. Christian religious teaching utterly condemned same-sex desires. The medical profession categorized homosexuality as disease, and many states allowed judges to send gays to asylums with indeterminate sentences and permitted parents to institutionalize their queer teenagers (D’Emilio 2007, 46).

As gay men and lesbians gradually obtained the right to assemble, accomplished the de-criminalization of gay publications and, in 1973, succeeded in getting the medical profession to eradicate homosexuality-as-disease, queer life became more publicly visible in a meaningful way. How then did early activists turn the corner on adding marriage to an agenda characterized by a struggle for acceptance and inclusion, particularly given that the primary influences on the gay rights movement were the 1960s counterculture and radical feminism (D'Emilio 2007, 47)? The extent to which "family" became part of a political agenda previously mobilized around concerns for visibility and the removal of legal barriers to full citizenship, combined with a culture where family and homosexuality seemed mutually exclusive, is made evident in the developments and moments of personal tragedy that occurred beginning in the early 1980s.

The impact of the Sharon Kowalski case in 1983 sounded an alarm of sorts for the need to recognize the importance of family for gays and lesbians, but lesbian relationships in particular. Although the 1970s saw some preliminary attempts to gain rights for lesbian mothers to keep children born to them from heterosexual marriages, it was the attention garnered from the Kowalski case that left a lasting imprint on the road to including family as a central part of the gay rights agenda. In 1983, Sharon Kowalski was injured in an automobile accident that left her unable to communicate her own wishes. Kowalski's father was granted guardianship in favor

of her partner, Karen Thompson, who was then denied access to her for more than eight years. Although Sharon Kowalski's partner was eventually awarded guardianship, the experience spurred the lesbian community to host forums, organize fundraisers, and raise public awareness of the impact of not having legal recognition for their relationship (D'Emilio 2007, 49). As this case proved so powerful in driving a family-oriented agenda for lesbians, it was the onset of AIDS that motivated a re-evaluation of what family meant for gay men.

The early 1980s typified an environment where gay life took shape as antithetical to family; gay youth were particularly vulnerable to an inhospitable culture wherein they were disconnected from, and in many cases ostracized by, their families. It was the AIDS emergency, however, when many gay men faced the contrast of committed relationships and friendship circles on the one hand, and families of origin on the other; when disease and death began to describe what being gay meant, when it colored the everyday realities of lived experience, the inability to make decisions on behalf of friends and loved ones took its toll on legal strangers. That the law did not provide a framework for gays and lesbians to forge descriptions of their relationships outside of the traditional, heteronormative context became more than just troubling. The lack of place and context for gay relationships made their marginalization readily apparent. In an atmosphere of "created family," being one's legal next of kin took on considerable importance.

Although HIV/AIDS represented a considerable threat to public health, the public attention and governmental response it received was not consistent with other historically-recent public health emergencies.¹ When AIDS first received large-scale public attention in the US in 1981, it was called GRID (Gay-Related Immunodeficiency Disease); in addition to gay men, the early risk groups also included intravenous drug users, Haitians and other Caribbeans, and African-Americans. Because those with the disease were all recognizable members of distinctly identifiable groups, the disease was spread more rapidly due to ignorance regarding its transmission and because of the effect of this mindset on any plan of action for properly addressing it. Fear of infection, the false belief that only certain people were susceptible because of their membership in specific groups, or that particular deviant behaviors caused the disease, were major factors in allowing white, heterosexual, non-drug users to think they were safe which led to the disease being conceived of as the fault of the afflicted. Because the disease disproportionately affected gays and lesbians of color, it was AIDS that served as the backdrop for gay and lesbian organizing in local communities and "...the infrastructure generated by AIDS funding [which] helped build organizations"

¹ The CDC reports that substantial achievements were made in controlling vaccine-preventable diseases since 1900 including smallpox, measles, diphtheria, pertussis, typhoid, cholera, and rabies. ("Achievements in Public Health, 1900-1999: Impact of Vaccines Universally Recommended for Children -- United States, 1990-1998." April 2, 1999. *Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report* 48 (12): 243 – 248).

(D'Emilio 2007, 49). This new queer organizing was able to foster a tremendous leap forward, not only with respect to positive visibility, but also in terms of helping to re-examine the discourse on family.

Also contributing to the decline of the mutual exclusivity of “homosexuality” and “family” was the gay and lesbian baby boom. John D'Emilio argues that “...the growing visible presence of children in the community made family less metaphorical and more descriptive of the contours of queer life” (2007, 50). Generational shifts also played a role in reprioritizing family as a necessary formulation of gay and lesbian life. As more and more gays and lesbians of the older Stonewall generation began to settle into long-term relationships that had (in every way except legal) the “texture of marriage,” and as younger gays and lesbians came of age having never known anything except visibility and pride, the seamless weaving of sexuality into everyday life began to beg the question of why gays and lesbians should not have access to marriage (D'Emilio 2007, 50).

Over the course of many years, family-related issues took shape because of the way gays and lesbians had organized (both formally and informally) around other issues that brought family-related concerns to the fore. And so what started as a defensive posture toward an anti-homophobic discourse, the inclusion of “family” as part of the gay and lesbian rights agenda had organically evolved to include a thematically organized collage of issues in a way that deepened the network of

community-wide connections. This, in turn, gives way to expressions of a fuller, more meaningful subjectivity by shaping new definitions of the self, and of gay and lesbian relationships (both romantic and non-romantic), that begin to disrupt the heteronormative exclusivity on family and, by extension, marriage.

In the previous chapter, I employed the use of the prom as an example of how gay and lesbian sexuality is discursively produced and regulated. Because gay and lesbian subjectivity is constituted through heteronormative discursive practices, that subjectivity is projected as “included-yet-excluded.” I offer a solution that recasts this distorted version of subjectivity in favor of a more meaningful one. Marital equality is the rejection of imposed subjectivity; civil unions, domestic partnership benefits, or any of the other “anything-but-marriage” arrangements fail to do so regardless of their purported benefits.

WHY MARRIAGE IS IMPORTANT

The struggle for emphasizing marriage as a key ingredient for gay and lesbian equality has engendered vigorous debate as to the effect same-sex marriage will have on society as a whole. Guardians of “traditional” marriage charge that legal sanction of gay marriage will lead to the breakdown of family and cultural values. Many in the gay community, however, see legal marriage as a way to strengthen these very values. The intensity of the current political zeal suggests other issues of

significance underlying the debate. Central among these are the impact of gay marriage on the identity of those in traditional marriages (the heteronormative concept) as well as the effects of the politics of shame (the concept of internalized homophobia) on gays and lesbians who seek to validate their relationships through civil marriage.

For gay and lesbian Americans, developing a place in the national consciousness is primarily about overcoming the standard of heterosexist values. According to *The Dictionary of Psychology*, heterosexism is the assumption that everyone or a particular person is heterosexual; it can be distinguished from homophobia in that it does not necessarily imply hostility toward other sexual orientations, merely a failure to account for their existence (Corsini 2002, 444). In the context of fighting for the right for same-sex couples to marry, heterosexism is a standard that has been enshrined into law, transforming the social custom of “distinguishing by gender” into a legal control mechanism (Weiss 2001) whereby non-heterosexual couples are discriminated against. Moreover, in a heteronormative society, male and female are understood as normal counterparts, socially as well as biologically, especially when it comes to engaging societal institutions such as the family, marriage, and child-rearing. Ultimately, heteronormativity not only serves to undermine the value of gays and lesbians as members of society who deserve

equality under the law, but it also prevents lawmakers from codifying those very rights.

Marital equality will, at its core, signal a measure of worth and importance for same-sex relationships on par with that status enjoyed by opposite-sex relationships. Only after the heteronormative standard on intimate relationships is dismantled can the underlying foundations of love, commitment, unity, and familial bonds be evident in same-sex partnership. The National Gay and Lesbian Task Force emphasizes that marriage aims to promote healthy families by protecting the economic and emotional interdependence of family members and giving priority to their bonds (Cahill, Cianciotto, and Colvin, 2003). In addition to legally protecting gay and lesbian relationships with a host of benefits, civil marriage can solidify the bond between two loving, committed people because it confers legitimacy that comes with legal sanction.

The imagination gap I referenced in chapters one and two keeps heterosexuals from being able to picture gay and lesbian relationships as having the same substance. From this premise, Jonathan Rauch (2004) explains what marriage is for and how it benefits homosexuals, heterosexuals, and the institution of marriage itself. Rauch argues for the intrinsic value of marriage to couples, families, and society at large. He gives a systematic analysis of the institution of marriage and its history, focusing specifically on what marriage is for and the institutional principles

required for success. The core of Rauch's work is to distinguish between marriage's essential features and its incidental ones.

Love is a defining element of marriage, rendering the "marriage-as-business" and "marriage-as-gender-specialization" propositions only vestigial remnants resigned to history (Rauch 2004, 17). The essence of marriage is the inescapably reciprocal pair-bond created from an ideal, one-to-one commitment made by two individuals, with caregiving at its core (Rauch 2004, 22; 24). Caregiving is the substantive foundation of marriage. Three key pieces of evidence support this claim: the law, social opinion, and what Rauch calls "something else" (2004, 24). The law accords married people certain provisions such as spousal privilege, decision-making capabilities, visitation rights in hospitals, inheritance rights, and generally treats married couples as a single legal unit, particular with respect to taxes. Social opinion operates as the way in which society views the marital partnership; adultery, Rauch argues, creates a flawed spouse, not a non-spouse - abandonment is a relinquishment of the caregiver role and would lead people to think of the abandoning partner as a non-spouse (2004, 25). The "something else" to which Rauch refers is the wedding vows, which specify care and comfort, love, and a lifetime bond as an inseparable and interwoven *sine qua non* for marriage which makes the "...commitment to care for another for life [as] the love which exceeds all others, the love of another even above oneself" (2004, 27).

The social expectations placed on two individuals who desire to join in the marital relationship place a “near-magical” quality upon marriage (Rauch 2004, 32 - 33). It is for this reason that the “anything but marriage” arrangements do not suffice. One alternative to marriage is the privatization option, which separates civil marriage from religious marriage, a private contract whereby the parties themselves decide on the parameters of the agreement. The other alternative includes the host of options that fall under the “anything but marriage” designation, such as a civil registry, domestic partnership, or a civil union. As I stated in the introduction to this chapter, these alternatives fail because they misapprehend what marriage is; one relegates marriage to a mere contractual relationship, the other only confers a collection of benefits. The essence of marriage *is* the reciprocity of commitment and caregiving, not to mention the symbolic richness of community connection. Moreover, marital equality confers place and context on same-sex relationships. For Shane Phelan, however, the *sine qua non* for marriage lies elsewhere.

Another principal advantage of marital equality to gays and lesbians is central to the nature of citizenship, which includes not only equal protection and equal rights to such institutions as marriage and military service, but also political and cultural visibility, which brings with it inclusion in the national imaginary (Phelan 2001). Phelan argues that in order for gays and lesbians to partake in meaningful citizenship, that is, to go beyond legal protections, it is imperative that participation

be wholly realized in all aspects of social and political life with full political and cultural visibility. When the United States Supreme Court invalidated the criminal prohibition of homosexual sodomy in 2003, dissenting Justice Antonin Scalia declared that the Court had “signed on to the so-called homosexual agenda,” but that he had “nothing against homosexuals, or any other group, promoting their agenda through normal democratic means” (*Lawrence v. Texas* 2003). These “normal democratic means” include access to, and the protection of, laws that guarantee equal protection and due process, which are the *sine qua non* for citizenship precisely because these guarantees enact (or deny) state acknowledgment of individuals and are a prerequisite for meaningful participation (Phelan 2001).

Gays and lesbians have had success in harnessing the protection of the law in some areas, as noted above. Given the tenor of public opinion over the course of the past decade, however, this can be particularly difficult to accomplish when considering the public opinion research on attitudes toward gay rights has produced paradoxical findings. While current research indicates there is growing support for marital equality,² polls conducted in recent years indicate that people think discrimination against gays and lesbians is wrong while simultaneously remaining opposed to gay marriage (Yang 1997; Cain 2000; Brewer 2003). One possible

² A 2010 CNN Poll indicates that 49% of those surveyed believed gay and lesbian couples have a constitutional right to get married while 51% believed that right does not exist. Respondents were also asked whether the Constitution *should* grant gays and lesbians the right to marry with 52% responding yes and 46% responding no.

explanation for this pattern of “included-yet-excluded” is the way in which gay and lesbian sexuality is demonized and how that demonization has become enshrined in heteronormative law. By this measure, gay and lesbian sexuality exists parallel to a principal heterosexuality that acknowledges discrimination is unwarranted, yet remains committed to exclusive heteronormative descriptions of marriage; this is the very spirit of “included-yet-excluded.” It is for this reason that I argue that civil unions, or any of the other “anything but marriage” arrangements, do nothing to move gays and lesbians into the national imaginary because they do not capture the emotional context or the normative and cultural richness of marriage.³ The denial of such a publicly valorized, state-sanctioned relationship is tantamount to removal from full visibility in the spectrum of cultural and political participation.

LITIGATION AS THE PRIMARY STRATEGY

The gay and lesbian movement, in recent years, “...has embraced a narrow form of identity politics that is rooted in a top-down, hierarchical approach that embraces the language and framework of liberal democratic institutions, interest group liberalism, and pluralist democracy” (Rimmerman 2000, 54). The rights-based

³ Freedom to Marry, a national gay lobby group said that civil unions were “a step in the right direction,” but notes that “states [enacting civil union laws] would do the country and its families a favor if they avoided the detour of separate and unequal and went right to the clarity, security, and equality that comes only with the freedom to marry.” Evan Wolfson, the director, also added, “There is no verb for civil union, and nobody writes songs about domestic partnership” (Shapiro 2004).

discourse that characterized other civil rights struggles was adopted by the gay and lesbian movement in order to challenge mainstream political and social issues through greater equity in the legal system (Rimmerman 2000, 69). The Lambda Legal Defense and Education Fund, created in 1973, established itself as the leading organization designed to effect social change through litigation (Mezey 2007, 5). The efficacy of utilizing the courts as agents of social change can be "...particularly appealing, as they offer the hope of excluding arguments of morality and focusing debate on constitutional principles of freedom and equality" (Lewis and Edelson 2000, 195). Patricia Cain also argues that gay and lesbian groups should engage courts as the proper avenue for pursuing equal rights because "...courts understand and apply the notions of equality much more readily than legislatures or members of society in general" (2000, 1). Not everyone agrees with this assessment, and substantial debate has emerged to challenge the idea that courts are the appropriate venue for effecting lasting and meaningful change.⁴

There is evidence to suggest that making social policy is the improper function of courts, and that "...courts can *almost never* be effective producers of

⁴ Though I will briefly engage the material, it is instructive to note that "this debate appears largely confined to the academy as, for over half a century, whether wisely or not, civil rights groups have viewed the courts as potential allies in their efforts to seek social reform" (Mezey 2007, 6).

significant social reform [emphasis in original] (Rosenberg 1991, 338).⁵ In addition to the belief that social policy is outside the purview of the court, there is scholarly evidence that, absent specific conditions - even when courts do “make” social policy - there is no causal link from a court decision to actual change in policy (Rosenberg 1991; Cain 2000). The major impediment to courts making social change according to Gerald Rosenberg is that “...if the public or political elites are not ready or willing to make changes, the most elegant legal reasoning will be for nought [sic]” (1991, 16). Rosenberg describes two conceptions of the court, one in which the court is constrained and one in which the court is dynamic; he posits that conditions required for courts to produce significant social reform seldom exist (1991, 10) due to the limited nature of constitutional rights (1991, 13), lack of judicial independence (1991, 15), and the inability to develop appropriate policies and a lack of implementation power (1991, 21). The dynamic court is one in which courts are free from electoral constraints and institutional arrangements that stymie change; conceived in this way, a dynamic court is one that has the ability to act in the face of public opposition without fear of political repercussions, unlike legislatures, for

⁵ Several dissenters in landmark gay rights cases have buttressed this point and made their positions clear that the legislative process is more democratic, and that only the democratic process can bring about social change. This suggests that the likely effectiveness of using the courts can be undermined if a judge believes reform sought in this way is inappropriate (see *Goodridge et al. v. Department of Public Health* 440 Mass. 309 (Mass. 2003); *Lawrence v. Texas* 539 U.S. 558 (2003); *Romer v. Evans* 517 U.S. 620 (1996))

example, who are seldom willing to fight for unpopular causes and to protect the rights of disliked minorities (Rosenberg 1991, 22).

Rosenberg's conclusion is that when acting alone, courts have virtually no direct effect on ending discrimination in a number of civil rights settings, and that only when Congress and the executive branch acted did change occur (1991, 70 – 71). There are four conditions which can ease the constraints of the court: when other actors offer positive incentive to produce compliance with a court order; when other actors impose costs to induce compliance; when decisions can be implemented by the market; and by providing leverage for persons crucial to implementation who are willing to act (Rosenberg 1991, 33 – 35). If a group seeking change can overcome one of these conditions, the court is more effective in producing change. Because court decisions in the civil rights movement, namely desegregation, went unenforced until Congress acted a decade later, Rosenberg ultimately concludes that the constrained view is more accurate in describing the court as ineffective producers of significant social reform (1991, 337 – 338).

Pierceson disputes Rosenberg's thesis that courts in the U.S. cannot produce social change by arguing that "at best, they can second the social reform acts of the other branches of government" (Pierceson 2005, 5; Rosenberg 1991, 338). According to Rosenberg, activists should pursue change in the political branches of government, not the judicial branch and that those activists who fail to realize this

will waste their resources on strategies involving litigation (1991, 12). Indeed, Rosenberg points out that the mobilization expected by activists who have gone to the courts will find that counter-mobilization is the most likely effect of (response to) their litigation efforts (Rosenberg 1991, 341 - 342). Pierceson, however, maintains that there are important benefits to litigation strategies that can overcome the problem of counter-mobilization. Specifically, Pierceson argues that "...Rosenberg's sweeping assertions... of judicial decision making ignore important developments on the gay rights front, thereby causing them to disregard the 'constitutive' side of the equation in this policy area..." (Pierceson 2005, 5).⁶

THE MARRIAGE CASES

On September 21, 1996, President Bill Clinton signed the Defense of Marriage Act (DOMA) into law, which defined marriage as the union between one man and one woman for the purposes of federal law.⁷ As well as defining marriage, DOMA explicitly affirms the right of individual states to reject any recognition of same-sex

⁶ Additionally, Pierceson takes issue with Rosenberg's "narrow view of what constitutes social change" (2005, 7); Michael McCann (1994) also rebuts Rosenberg by arguing that litigation produces indirect effects that yield significant reform even if court rulings fail to do so directly.

⁷ "In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife." (1 USC, Chapter 1, § 7)

marriages performed legally in other states.⁸ The impulse for enacting such a law at the federal level was instigated by a ruling of the Hawaii Supreme Court in May 1993, which appeared to be ready to pave the way for same-sex marriage.⁹ The court's decision, while historic, did not change Hawaiian marriage law; rather, the court held that if the state discriminated against gay couples it would need to demonstrate a "compelling state interest." The court held that denying gays and lesbians access to marriage constituted sex discrimination, which Hawaii's equal rights amendment rendered suspect (*Baehr v. Lewin* 1993). On remand to the lower court, Judge Kevin Chang, in December 1996, found no compelling state interest to exist and "...concluded that disallowing the marriage of gay couples violated Hawaii's state constitution and the state's reputation for tolerating diversity" (Phy-Olsen 2006, 172).

In the intervening time between the *Baehr* decision in 1993 and Judge Chang's ruling in 1996, the issue of same-sex marriage began to accrue national attention.

⁸ "No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship." (28 USC, Chapter 115, §1738c)

⁹ In *Baehr v. Lewin*, 74 Haw. 530 (1993), the Supreme Court of Hawaii vacated and remanded a lower court ruling with instructions to review the case under the "strict scrutiny" standard, ordering the state to overcome the presumption of unconstitutionality by demonstrating that the statute barring same-sex couples from marriage "...furthers compelling state interests and is narrowly drawn to avoid unnecessary abridgments of constitutional rights."

Despite the lack of formal legal recognition of same-sex marriage by the Hawaii Supreme Court, indeed despite the Court not ordering the immediate instatement of full marital equality, the lasting impact of the *Baehr* decision remains that it was the first time a state court of last resort recognized marriage as a basic civil right for same-sex couples. Moreover, the Hawaii decision was significant because it was the time many gay people could imagine equality was even possible (Wolfson 2004, 32). Bolstered by the reasoning in the *Baehr* decision, same-sex marriage advocates took to the media in order to publicly share their personal stories; this led to other gay and lesbian couples to feel confident enough to challenge the bans on marital equality in *their* home states (Ball 2010, 186). Although gay men and lesbians began to make their lives more public in order to help foster change in the public's perception, social conservatives used the *Baehr* decision to energize opposition to same-sex marriage.

Carlos Ball emphasizes several factors that contributed to same-sex marriage becoming an important social and political topic outside of Hawaii in the wake of *Baehr*, which ultimately led to the Defense of Marriage Act. In addition to President Clinton's backslide on his promise to end the ban on the military service of gays and lesbians,¹⁰ social conservatives were emboldened by their part in helping Republicans to take control of both houses of Congress in November 1994 for the

¹⁰ This will be covered in depth in Chapter 5.

first time in almost fifty years (Ball 2010, 187). With President Clinton becoming increasingly more vulnerable politically, social conservatives took advantage of their new-found political power and explored other gay-related issues that might galvanize their base.

The “Campaign to Protect Marriage” was kicked off in February 1996 through a joint effort between the Christian Coalition, Focus on the Family, the Traditional Values Coalition, and the Family Research Council in order to convince Congress and the state legislatures of the need for “defense of marriage” laws which would bar gays and lesbians from marrying. Advocates of same-sex marriage had come to increasingly rely on the Constitution’s Full Faith and Credit Clause as a rallying point in order to reassure supporters that full marital equality was on its way nationally. Article IV, Section I of the Constitution, they charged, stipulates that if a couple was to travel to Hawaii to marry, their marriage would also be valid upon return to their home state. It would not have mattered if these claims were legally correct or a vast oversimplification of the clause’s meaning; invoking constitutional principles only strengthened the opposition to the point that, in May 1996, Republican Representative Bob Barr introduced the Defense of Marriage Act in the US House of Representatives. After debate during the summer of 1996, the House passed the bill 342 – 67 and the Senate passed the bill 85 – 14. President Clinton, who opposed the enactment of the bill, but “...who did not want to risk his

reelection by supporting another controversial LGBT rights cause, signed the bill in the middle of the night without the presence of the media or other elected officials” (Ball 2010, 191).

The federal Defense of Marriage Act, and its state-level progeny, endorses a heteronormative injunction against marriage from being interpreted as anything else but heterosexual. The reach of DOMA estopps marriage equality advocates from effectively marshaling legal or cultural pleas which explain why gays and lesbians should have marital equality. Marriage under DOMA is *by definition* between a man and a woman and thus presents a special challenge to gays and lesbians with regard to whether “same-sex marriage” is something different from “real” marriage. In the courts, as we shall see below, the various cultural properties of marriage (its essence, function, and role) are always measured in some way against an acknowledgment of the ever-looming *legal* definition of marriage. Reconciliation between these two competing representations of marriage has not always required gays and lesbians to bear the burden of proof, as it were, but the real damage is wrought from its insistent presence in the first place over any deliberations. The same holds true for DOMA’s cultural force. If marriage is *by definition* exclusively heterosexual, any conversation begins from that premise; the ontological possibilities for engaging debate are deployed under exclusively heteronormative conditions. I would like to add briefly, that the issue is less about the ease or difficulty with which the premise

is handled (it is either successfully refuted or not), but rather that the premise is given conversational priority as something that *needs to be refuted* or not. In what follows, two questions animate the organization of my analyses of court decisions on marital equality: first, what is the disposition of the heteronormative premise? Second, what does the language in the decision contribute to gay and lesbian subjectivity? The second question is to ask whether the language constitutes gay subjectivity through the lens of heteronormativity and whether the decision contributes to the dismantling of heteronormative definitions by allowing gays and lesbians to pursue marriage as an expression of self-description.

In the *Baehr* decision, the court held that if marriage was the exclusive domain of opposite-sex couples, the burden was on the government to provide proof. This tells us that marriage, according to the Hawaii court, is *not* automatically heterosexual. By requiring an elevated standard of review by the lower court, the Hawaii Supreme Court places the burden on the government to prove marriage is solely heterosexual and does not make same-sex couples prove that *marriage* needs “redefinition” (only who has access to it) because the heteronormative assumption was not the premise of their decision. That the court found the language in the state constitution to forbid discrimination removes the heterosexual exclusivity from the concept of marriage. And while the Hawaii court was unable to deliver marital equality to

Hawaiian citizens, the language in the decision rejects heteronormative standards as descriptive of gays and lesbians.

In the landmark Massachusetts marriage case *Goodridge v. Department of Public Health* (2003), the question before the Supreme Judicial Court was whether the Commonwealth "...may deny the protections, benefits, and obligations conferred by civil marriage to two individuals of the same sex who wish to marry." In the opinion for the court, Chief Justice Margaret Marshall wrote that "marriage is a vital social institution. The exclusive commitment of two individuals to each other nurtures love and mutual support it brings stability to our society (*Goodridge v. Department of Public Health* 2003). While the Hawaiian court used language in its decision that was strictly *legal*, the Massachusetts court made a case for the importance of civil marriage on the grounds that it is a nurturing institution with benefits and responsibilities. The court's decision held that the Commonwealth may not deny same-sex couples from civil marriage because "the Massachusetts Constitution affirms the dignity and equality of all individuals. It forbids the creation of second-class citizens." Citing a host of U.S. Supreme Court cases, the Massachusetts high court referenced language which was *not* strictly legal, but spoke of the nature of the marital relationship. By casting the question as one of marriage being a vital social institution, the court does not accept the heteronormative premise of marriage; indeed, the opinion explicitly rejects the use of any language that might cast gays

and lesbians through the prism of a dominant heterosexuality. The Massachusetts court relied on *Griswold v. Connecticut* (1965), *Loving v. Virginia* (1967), and *Zablocki v. Redhail* (1978) to deliver a right of marital equality to same-sex couples in Massachusetts. The language of these decisions on the marital relationship (though they are not about marital equality for gays and lesbians) also illuminate the ways in which gays and lesbians might seek place and context for their relationships.

The language in *Griswold*, written by Justice Douglas, casts the marital relationship as “an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects.” The *Goodridge* decision portrays marriage sought by all couples as a “deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family.” In such a relationship, the state is prohibited from arbitrarily interfering with one’s interpersonal liberty; specifically, *Griswold* necessarily separates constitutional protection of private sexuality from procreation, instead focusing on the social features of sexuality (Eskridge 1996, 127).

In *Loving*, the US Supreme Court found the denial of mixed-race marriages to violate the equal protection clause as well as the due process clause of the Fourteenth Amendment. The State of Virginia’s race-based discrimination provided “...no legitimate overriding purpose independent of invidious racial discrimination

which justifies this classification” (*Loving v. Virginia* 1967, 388 US 1 at 11); further that the Virginia statutes “...also deprive the Lovings of liberty without due process of law... [t]he freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men” (*Loving v. Virginia* 1967, 388 US 1 at 12). The Massachusetts Court in *Goodridge* underscores the holding in *Loving* that “the right to marry means little if it does not include the right to marry the person of one's choice...” (*Goodridge v. Department of Public Health* 2003). In applying *Loving's* race-based discrimination to same-sex discrimination, the Massachusetts court continued by saying

a statute deprives individuals of access to an institution of fundamental legal, personal, and social significance - the institution of marriage - because of a single trait: skin color in *Loving*, sexual orientation here. As it did in... *Loving*, history must yield to a more fully developed understanding of the invidious quality of the discrimination (*Goodridge v. Department of Public Health* 2003).

The *Goodridge* decision also applied *Zablocki v. Redhail* (1978), a case in which the US Supreme Court held that the right to marry is not a privilege conferred by the state, but a fundamental right that is protected against unwarranted state interference, and that any direct legal obstacles in the path of persons desiring to marry must be important state interests and closely tailored to meet that interest (*Zablocki v. Redhail* 1978). The *Goodridge* holding elaborates that “because civil marriage is central to the lives of individuals and the welfare of the community, our laws assiduously protect the individual's right to marry against undue government

incursion. Laws may not "interfere directly and substantially with the right to marry" (*Goodridge v. Department of Public Health* 2003; *Zablocki v. Redhail* 1978, 434 U.S. 374, at 387).

One of the major justifications relied upon by those opposed to same-sex marriage is that traditional marriage has a significant religious and moral historical tradition. The *Goodridge* decision explains that "as a public institution and a right of fundamental importance, civil marriage is an evolving paradigm" (*Goodridge v. Department of Public Health* 2003). In this instance, it was not important to demonstrate the past legal acceptance of same-sex relationships, only to demonstrate that same-sex couples are excluded from participating in marriage due to the direct legal obstacle described in *Zablocki*. The Massachusetts court "...recognized the long-standing statutory understanding, derived from the common law, that "marriage" means the lawful union of a woman and a man. But that history cannot and does not foreclose the constitutional question" (*Goodridge v. Department of Public Health* 2003).

One of the more encouraging parts of the *Goodridge* decision, especially in light of the problem of a heteronormative understanding of relationships, is how the Court responded to those who might feel opposite-sex marriages would be in peril at the onset of same-sex marriage. Chief Justice Marshall wrote:

Recognizing the right of an individual to marry a person of the same sex will not diminish the validity or dignity of opposite-sex

marriage, any more than recognizing the right of an individual to marry a person of a different race devalues the marriage of a person who marries someone of her own race. If anything, extending civil marriage to same-sex couples reinforces the importance of marriage to individuals and communities. That same-sex couples are willing to embrace marriage's solemn obligations of exclusivity, mutual support, and commitment to one another is a testament to the enduring place of marriage in our laws and in the human spirit (*Goodridge v. Department of Public Health* 2003).

Couched in this language, the commitment of same-sex couples, concomitant with the desire for civil marriage, is fashioned as identical (or near-identical) to opposite-sex couples in the way that an institution like marriage can be beneficial to the relationship because "...it fulfills yearnings for security, safe haven, and connection that express our common humanity" (*Goodridge v. Department of Public Health* 2003). Throughout the *Goodridge* decision, the court accented the character of marriage over the progeny of marriage.

Just as DOMA had been the response from anti-marriage equality advocates to the *Baehr* decision, "[t]he response on the part of social conservatives to *Goodridge* was both immediate and forceful" (Ball 2006, 1500). On May 21, 2003, just eleven weeks after oral arguments were heard in *Goodridge*, Republican Marilyn Musgrave introduced the Federal Marriage Amendment in the U.S. House of Representatives.¹¹

¹¹ H. J. Res. 56: "Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution or the constitution of any State, nor state or federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups."

A mere seven days after the *Goodridge* opinion, Republican Wayne Allard introduced a bill in the U.S. Senate on November 25, 2003 that was identical in wording to the House version.¹² While national polling information indicated that fifty-five percent of Americans favored an amendment to the constitution banning same-sex marriage (Seelye and Elder 2003), support for same-sex marriage was at fifty percent in Massachusetts (Phillips and Klein 2003). And although Republican Governor of Massachusetts Mitt Romney joined those socially conservative leaders opposed to same-sex marriage, "...the political atmosphere in the state, which seemed to favor providing same-sex relationships with at least some form of legal recognition, the idea of making *civil unions* available to same-sex couples, while limiting *marriage* to different-sex couples, soon emerged as a compromise position" [emphasis my own] (Ball 2006, 1502).

Following the opinion in *Goodridge* that forbade the creation of second-class citizens, the Massachusetts Senate sought an advisory opinion from the Supreme Judicial Court on the constitutionality of a statutory scheme compatible with the essential holding of *Goodridge*, specifically asking whether civil unions would be constitutionally permissible. In briefs submitted for this purpose, the plaintiffs emphasized that use of the word "marriage" mattered because "that is the institution which society already recognizes and respects. If the state were allowed

¹² S.J. Res 26.

to withhold the word ‘marriage’ from the plaintiffs, it would leave them with the burden of having to explain and defend continuously the legitimacy of their relationships” (Ball 2006, 1504). In response to the query from the state senate on February 4, 2004, the Supreme Judicial Court “...made clear that the constitutional infirmities found in *Goodridge* could be remedied only by affording lesbian and gay couples the opportunity to marry.”¹³

In the aftermath of the victory for marriage equality advocates in Massachusetts, attention turned to San Francisco Mayor Gavin Newsom’s February 12, 2004 order to the San Francisco County Clerk to begin issuing marriage licenses to same-sex couples in California. Mayor Newsom’s directive was on shaky ground because of Section 300(a) of the California Family Code, which defined marriage as “...a personal relation arising out of a civil contract between a man and a woman.” Though the California Code’s language on the definition of marriage appeared to be quite clear, Newsom was angered by President Bush’s comments on marriage during the State of the Union Address three weeks prior; in his address, President Bush said that “...a strong America must... value the institution of marriage. I believe we should respect individuals as we take a principled stand for one of the most

¹³ *Opinions of the Justices to the Senate*. Massachusetts Supreme Judicial Court, 440 Mass. 1201, 802 N.E.2d 565 (February 3, 2004).

fundamental, enduring institutions of our civilization.”¹⁴ Newsom told CNN that he was “...reacting to the president's decision to use this as a wedge issue to divide people. I think what he's doing is wrong. It's hurtful.”¹⁵ Irrespective of the language in the California Code, Newsom believed that his oath of office required him to issue marriage licenses to same-sex couples; he said that he “...took an oath of office to bear truth, faith and allegiance to the constitution of the state of California, and there is nothing in that constitution that says that I have the right to discriminate against people on any basis... and I simply won't do that.”¹⁶

From February 12, 2004 until March 11, 2004, San Francisco County issued 4,037 marriage licenses, 91 percent of which were to couples living in California (Pinello 2006, 87). It was on March 11, that the California Supreme Court

...issued an order... directing the city officials to show cause why... requiring the officials to apply and abide by the current California marriage statutes in the absence of a judicial determination that the statutory provisions are unconstitutional. Pending our determination of these matters, we directed the officials to enforce the existing marriage statutes and refrain from issuing marriage licenses or certificates not authorized by such provisions (*Lockyer v. City & County of San Francisco* 2004)

¹⁴ C-Span, “State of the Union Address 2004.”

¹⁵ CNN, “Mayor Defends Same-Sex Marriages.” February 22, 2004.

¹⁶ CNN, “Mayor Defends Same-Sex Marriages.” February 22, 2004.

The California Supreme Court halted the marriages in order to address the limited question as to "... the issue whether respondents are exceeding or acting outside the scope of their authority in refusing to enforce the provisions of Family Code sections 300, 301, 308.5, and 355 in the absence of a judicial determination that such provisions are unconstitutional" (*Lockyer v. City & County of San Francisco* 2004). The March 11 order by the Court enjoined the City and County of San Francisco from issuing licenses to same-sex couples pending a review of whether city and county officials had the authority to do so. The Court was clear in specifying that the determination as to whether the definition of marriage was constitutional was a separate legal matter. The question of the constitutionality of marriage was not before them and city and county officials were only directed to enforce the statute as it currently existed.

Five months later, in August 2004, the California Supreme Court unanimously held that Mayor Newsom and the City and County Clerk had acted beyond the scope of their authority in issuing marriage licenses to same-sex couples in violation of California marriage statutes. Further, the Court held by a 5 – 2 vote, that "...same-sex marriages that have been performed in California are void from their inception and a legal nullity" (*Lockyer v. City & County of San Francisco* 2004). Without addressing the constitutionality of the marriage statutes, the California Supreme Court in 2004 voided the marriages performed in San Francisco until the California

courts had an opportunity to address the question of their constitutionality as such. The Court did, however, say that even though City and County officials had acted unlawfully, they were free to challenge the constitutionality of the marriage statutes in the future.

On May 15, 2008, the California Supreme Court delivered its opinion “...involving the consolidated appeal of six cases that were litigated in the superior court and the Court of Appeal in the wake of this court's decision in *Lockyer* [and] squarely presents the substantive constitutional question that was not addressed in *Lockyer*” (*In re Marriage Cases* 2008). The consolidated appeal addressed several considerations regarding marriage in California. In addition to the definition in the California Code, California voters enacted Proposition 22 in November 2000 which contributed to the legal definition of what constitutes a marriage; Prop 22 was a ballot measure which amended the California Code to read “Only marriage between a man and a woman is valid and recognized in California.” Also, a statewide “domestic partnership” registry had been enacted in 1999.¹⁷ While the *Lockyer*

¹⁷ California's domestic partnership registry is codified in Section 297 – 297.5 of the California Code. Although several California municipalities offered some form of domestic partnership recognition beginning in the early 1980s, the 1999 domestic partnership registry was the first legislative enactment of its kind in the United States. Footnote 24 of *In Re Marriage Cases* addresses the distinction thusly: “Although the governing statutes provide that registered domestic partners have the same substantive legal rights and are subject to the same obligations as married spouses, in response to a request for supplemental briefing by this court the parties have identified various differences (nine in number) that exist in the corresponding provisions of the domestic partnership and marriage statutes and in a few other statutory and constitutional provisions.”

decision did not deal with the constitutionality of the several statutes regarding marriage in California, the matter before the California Supreme Court on appeal was

...not whether it would be constitutionally permissible under the California Constitution for the state to limit marriage only to opposite-sex couples while denying same-sex couples any opportunity to enter into an official relationship with all or virtually all of the same substantive attributes, but rather whether our state Constitution prohibits the state from establishing a statutory scheme in which both opposite-sex and same-sex couples are granted the right to enter into an officially recognized family relationship that affords all of the significant legal rights and obligations traditionally associated under state law with the institution of marriage, but under which the union of an opposite-sex couple is officially designated a "marriage" whereas the union of a same-sex couple is officially designated a "domestic partnership." The question we must address is whether, under these circumstances, the failure to designate the official relationship of same-sex couples as marriage violates the California Constitution (*In re Marriage Cases* 2008, 43 C4th 757 at 780).

In the *Goodridge* decision in Massachusetts, that Court held that the Commonwealth had no rational basis for excluding gays and lesbians from the institution of marriage; that because the respondents (the Commonwealth) argued that "...no fundamental right or "suspect" class is at issue here, and rational basis is the appropriate standard of review... we conclude that the marriage ban does not meet the rational basis test for either due process or equal protection. Because the statute does not survive rational basis review, we do not consider the plaintiffs' arguments that this case merits strict judicial scrutiny" (*Goodridge v. Department of Public Health* 2003). Rejecting the Commonwealth's arguments that there were

“...three legislative rationales for prohibiting same-sex couples from marrying: (1) providing a "favorable setting for procreation"; (2) ensuring the optimal setting for child rearing, which the department defines as "a two-parent family with one parent of each sex"; and (3) preserving scarce State and private financial resources,” the Massachusetts Court held that the marriage statute was an unconstitutional violation of the state’s equal protection and due process guarantees under the rational basis standard (*Goodridge v. Department of Public Health* 2003). The California Supreme Court would go further.

In Re Marriage Cases was the first state court decision to evaluate the marriage question under heightened review.¹⁸ The California Court wrote that

[a]lthough in most instances the deferential "rational basis" standard of review is applicable in determining whether different treatment accorded by a statutory provision violates the state equal protection clause, a more exacting and rigorous standard of review -- "strict scrutiny" -- is applied when the distinction drawn by a statute rests upon a so-called "suspect classification" or impinges upon a fundamental right (*In re Marriage Cases* 2008).

In Massachusetts, the Supreme Judicial Court did not consider a heightened standard because they held that the exclusion of gays and lesbians from marriage could not even pass the lower rational basis standard of review. In California, however, the Court held that

¹⁸ Remember that the Hawaiian court had vacated the lower court ruling and remanded with instructions to proceed without adjudicating the final question of whether the Hawaii Constitution permitted same-sex marriage.

...strict scrutiny... is applicable here because (1) the statutes in question properly must be understood as classifying or discriminating on the basis of sexual orientation, a characteristic that we conclude represents -- like gender, race, and religion -- a constitutionally suspect basis upon which to impose differential treatment, and (2) the differential treatment at issue impinges upon a same-sex couple's fundamental interest in having their family relationship accorded the same respect and dignity enjoyed by an opposite-sex couple (*In re Marriage Cases* 2008).

So, while the opinion in *Goodridge* held that the Commonwealth had no rational basis for excluding gays and lesbians from marriage with respect to the equal protection and due process clauses of the Massachusetts Constitution, *In Re Marriage Cases* elevated gays and lesbians as a constitutionally suspect class impermissibly denied access to marriage in violation of the California Constitution's equal protection clause. Just as in the *Baehr* case, the California court refuses the casting of gays and lesbians as inferior to heterosexuals by elevating the standard of review. Moreover, the California Court drew attention to the fact that state laws and policies recognized and respected gay and lesbian relationships through its domestic partnership registry, making the wording on marriage in the California Code (including Proposition 22) disrespectful to the equality and dignity of gay and lesbians. The Court wrote

[t]he current statutes -- by drawing a distinction between the name assigned to the family relationship available to opposite-sex couples and the name assigned to the family relationship available to same-sex couples, and by reserving the historic and highly respected designation of marriage exclusively to opposite-sex couples while offering same-sex couples only the new and unfamiliar designation of domestic

partnership -- pose a serious risk of denying the official family relationship of same-sex couples the equal dignity and respect that is a core element of the constitutional right to marry (*In re Marriage Cases* 2008).

Just as the *Goodridge* decision rejected the premise that gays and lesbians were not worthy of the respect and dignity of marital equality, so too did the California court. Not only was marriage not automatically heterosexual according to the California constitution, but gay and lesbian subjectivity is not properly situated within an exclusive heterosexual scheme of marriage.

The victory of marriage equality advocates in California was short-lived. In November 2008, the Proposition 8 ballot initiative was successful in overturning *In re Marriage Cases*.¹⁹ The voter-approved measure halted the issuance of marriage licenses to gay and lesbian couples, but did not alter the domestic partnership law nor did it dissolve the more than 18,000 gay and lesbian marriages performed between June 2008 and November 2008. The heterosexual premise of marriage, rejected by the California Supreme Court, was reinstated by 52% of California voters, successfully reinstating gays and lesbians as “included-yet-excluded.”

¹⁹ As indicated by the California Secretary of State’s “General Election Voter Information Guide,” the text of Proposition 8 overturned *In Re Marriage Cases* by amending the state constitution; it reads: This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution. This initiative measure expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in italic type to indicate that they are new. SECTION 1. Title: This measure shall be known and may be cited as the “California Marriage Protection Act.” SECTION 2. Section 7.5 is added to Article I of the California Constitution, to read: SEC. 7.5. Only marriage between a man and a woman is valid or recognized in California.

Proposition 8 discontinued same-sex couples from getting married, yet – in a situation that exists in no other jurisdiction – 18,000 same-sex couples remain legally wed as the result of a peculiar consequence of our legal system. What does this reveal about the character of gay and lesbian subjectivity? Even though some gays and lesbians are married in California, *no* gay people under this scheme enjoy marital equality. The heterosexual definition of marriage was not dismantled (though there was the temporary interruption) nor was a successful recasting of gay and lesbian subjectivity brought about.

As marriage battle was waging in California, the Connecticut Supreme Court delivered an opinion on a marriage equality case just a week before the November 2008 enactment of Prop 8. In their opinion, the court held that “...in light of the history of pernicious discrimination faced by gay men and lesbians, and because the institution of marriage carries with it a status and significance that the newly created classification of civil unions does not embody, the segregation of heterosexual and homosexual couples into separate institutions constitutes a cognizable harm” (*Kerrigan v. Commissioner of Public Health* 2008). In this case, we see that the language wholly rejects the premise of an exclusively heterosexual marriage, the “included-yet-excluded” distortion of civil unions, and the recognition that gay and lesbian couples cannot exercise a full and meaningful existence in a framework that names institutions as already heterosexual.

Not substantially different that the *Kerrigan* opinion, the Iowa Supreme Court also delivered marital equality to their citizens in early 2009. The first unanimous marriage decision by a state court of last resort, the opinion in *Varnum v. Brien* (2009) first unpacked the concept of “equal protection.” The court acknowledged that “equal protection” did not necessarily mean the law could not classify individuals. The state was arguing that the plaintiffs’ who were seeking marriage rights were not similarly situated to heterosexuals because they could not procreate naturally, and as a result, “...the statute does not treat similarly situated persons differently, but merely treats dissimilar persons differently” (*Varnum v. Brien* 2009). The Iowa court rejected the argument that they could “...simply look at the trait used by the legislature to define a classification under a statute and conclude a person without that trait is not similarly situated to persons with the trait” (*Varnum v. Brien* 2009). They argued that “similarly situated” did not mean simple possession of the classifying trait. The court found that the plaintiffs were similarly situated because, like heterosexuals, they were raising families and in loving, committed relationships. Further, the court held that

official recognition of their status provides an institutional basis for defining their fundamental relational rights and responsibilities, just as it does for heterosexual couples. Society benefits, for example, from providing same-sex couples a stable framework within which to raise their children and the power to make health care and end-of-life decisions for loved ones, just as it does when that framework is provided for opposite-sex couples (*Varnum v. Brien* 2009).

The court's language on the rights and responsibilities of marriage, as well as the affective emotional context, precludes the casting of gays and lesbians as different from heterosexuals. The presumption that marriage is the exclusive domain of heterosexuals is dismantled and allows for a more meaningful and unrestricted expression of gay subjectivity with respect to same-sex relationships.

Although the primary strategy for attaining marital equality has been through the court system, several states in New England, as well as the District of Columbia, delivered marriage rights via their respective legislatures. The Vermont legislature authorized a marriage bill in April 2009 and it was immediately vetoed by the governor, though the legislature overrode it. The next month, the New Hampshire legislature also successfully authored a marriage bill that the governor signed. In Washington, DC, the district council presented the Mayor with a marriage bill in early 2010 that was promptly signed. In May 2009, marriage equality was authorized by the Maine legislature, but the law was placed on hold pending a voter referendum in November of that year. The voters rejected the bill, preventing Maine from becoming the first state to authorize marital equality without a court order.

The analysis of these court decisions, and of the larger struggle for marital equality, has informed us that the language used by judges in several different state courts provides us with some key information regarding the outlook for gays and lesbians. These decisions have allowed for a deeper, more meaningful exercise of

gay and lesbian equality. In spite of the fact that gays and lesbians still do not have marriage rights *everywhere*, the impact of the language in these decisions serves to indicate that as gays and lesbians continue to dismantle the heteronormative definitions of marriage that operate on gay sexuality, resistance to the “included-yet-excluded” phenomenon of gay existence will invigorate a more meaningful gay and lesbian subjectivity.

Mark Blasius describes coming out as the “...ontological recognition of the self by the self. It involves a re-cognition of one’s sexuality... and – starting from this recognition – working on one’s sexuality so that the self appears and becomes” (1994, 116). Blasius’ theory marks the coming out moment as a profound political act because it involves the rejection of one’s current subjection as an individual subjugated by the domination of heterosexism over gay and lesbian identity (1994, 116). I call for the recasting of imposed subjectivity by providing gays and lesbians with strategies of resistance to the oppressive heteronormativity dominating what it means to be gay; Blasius’ way of describing coming out supplies a framework for understanding the importance of self-descriptions. Restrictions on choice (such as the choice to marry or serve in the military) perpetuate an enforced heteronormativity which encumbers self-creation.

The Foucaultian subject who is made up of the discursive practices of “traditional marriage” is vulnerable to the norms which map out rules for relational

possibilities. In this chapter, I have shown that through the struggle to attain marital equality, the normative agenda of the gay rights movement has recast the rights-based discourse on marriage to more adequately capture how to resist compulsory heterosexuality. I have demonstrated that the choice to marry contains a normative richness and gives gay and lesbian couples precisely the tool needed to dismantle the discursive reign of heteronormativity and heterosexism on their relationships.

When gays and lesbians choose to define their relationships as marriages, there is a danger that marriage as an *institution* becomes something we might valorize without critique. That marriage is a perfect institution, or that marriage as one remedy for recasting gay and lesbian subjectivity is without difficulties, is a false impression. In its form and content, the institution of marriage can be problematic. In fact, the focus on marital equality in politics is about recognizing the role *heterosexuals* place on marriage and *not* about some kind of aspiration by gays and lesbians to merely reproduce heterosexual relationships without any criticism of their content. Several critiques of marriage seek to discourage gays and lesbians from taking part in the institution, and it is to those critiques I now turn my focus.

Marriage signals to society that a gay couple is not different from a heterosexual couple and thus should not be described differently. Unfortunately, some theorists and activists (such as Michael Warner) wrongly suggest that marriage is the ultimate assimilation of gays to straight norms. Warner and those sharing his

opinion either ignore or do not appreciate the value the *choice* to marry has on the self-description of the gay subject. Furthermore, they are dismissing what having the *freedom* to make that choice would symbolize in the national imaginary. I argued both in this chapter and in chapter two that access to marriage dismantles the idea that gay relationships are inferior to heterosexual ones because such access confers the same worth, value, and importance on gay relationships as that enjoyed by heterosexual ones. I argue that the status of marriage as a symbol of stable, socially intelligible relationships makes it crucial to remove the barriers to that symbol. I have not argued that marriage as an institution or as a way of organizing and defining a couple is or has been the best relational principle, the best way to live, or the best and fairest construct in which two people may express their love for one another. Those ideas and the criticisms they rightfully provoke are immaterial to the fact that marriage is perceived as bearing a special moral and legal weight. To capitulate to the “marriage is assimilation” argument, however persuasive it may be, ignores the reality of how marriage is viewed in this country. Moreover, the assumption that marriage is assimilation forecloses the ability of gays and lesbians to make self-descriptive choices and to explain for themselves and by themselves how and why they make certain decisions and priorities. In this way, marriage as assimilation also attempts to enforce conformity at the expense of individual choice.

Judith Butler has argued that marriage privileges some relationships over others (2004, 5). I stipulate that her point is true. Her point also does not matter. The problem I have presented in this dissertation is that gay and lesbian subjectivity is harmed when gay people are defined by, against, or through heterosexuality. Marital equality releases gays and lesbians from this type of subjectivity; it does away with gay people having to explain their relationships with statements like “we have something *like yours*, but it is *just* a civil union.” Marital equality closes the imagination gap on gay relationships by making same-sex desire no longer inferior or separate. Butler has also levied the charge that marriage should not be the basis upon which health care benefits are allocated (2002, 21). Her concern is that there ought to be other ways of organizing benefits and entitlements so that marital status is not the way those things are accessed (2002, 21). Again, her point is well taken, but if we submit to Butler’s plan of not using marital status to allocate benefits, what would be next? Marriage is about more than health benefits and tax breaks. What would provide same-sex desire with the normative richness that is always in danger of being described in a heterosexist and heteronormative environment? Her critique is not strong enough to survive all of the other ways marriage conveys and confers worth to couples. My argument is less about a push for marriage than it is an examination of the effect of exclusion *from* marriage. The absence of a choice to marry and the reasons for that inability is more harmful than the problematic

aspects of the institution. Keeping marriage from gays and lesbians who want access to it keeps *all* gays and lesbians locked in a heteronormative construct which defines them as inferior, unequal, and less deserving of political and social freedom.

My argument supports a liberalism that provides legal rights which allow for meaningful gay and lesbian subjectivity: only within a liberally-conceived society can marriage be constructed in a way that supports equality and inclusion. However, the issue is more complicated than simply providing a legal framework and then abandoning gays and lesbians to the wider social fabric which is embedded with homophobia and heterosexism. I defend liberalism because it prioritizes a framework of legal rights accorded to all citizens equally; the work of translating that legal equality into social equality and of stripping homophobia and heteronormativity of their oppressive power may take time, but marital equality will set off the first shift in national imaginary. Gays need the legal right to marry to demonstrate the incoherence of heteronormative accounts of marriage. Gays and lesbians need to develop a history and tradition of marriage so that there is something to point to as a weapon against being defined as opposite or separate from heterosexuals. Removal of barriers will also have a significant impact and ripple effect throughout the national imaginary on the ways heterosexuals view gay couples. They will no longer be defined in contradistinction to heterosexual couples, but as a parallel and equal to them.

Right now, marriage is assumed as only a heterosexual construct because in most US jurisdictions, only heterosexuals can be married. Moreover, that assumption is given depth and meaning because even in jurisdictions where gays can marry, it is still new and has not accrued the cultural force to provide a time-earned depth to the normative richness which is beginning to percolate. This assumption is part of the discursive violence done to gays and lesbians; the discourse of “traditional” marriage is the power-knowledge regulatory vehicle over the discursive intelligibility of what it means to be married, of what it means to be gay, and of what it means to be normal, free, and equal (all of which currently means heterosexual). As marriage was put into the discourse as an object of knowledge, it then in turn became a source of knowledge. Power is then discursively exercised over gay and lesbian self-creating possibilities since gays are defined as “not heterosexual” and marriage is defined as “heterosexual.” Once gays and lesbians have marital equality, once a visible gay married subject is placed into the discourse on marriage, the ontological possibilities will begin to change marriage, but only after the removal of homophobic and heteronormative agents and practices of violence to gay subjectivity. Marital equality does not change the definition of marriage by altering the essence, function, or role of marriage as it operates on and through committed couples; what it does is change gay subjectivity for the better. The kind of gay subjectivity I have presented is free from being defined in

opposition to heterosexuality, and marital equality – the *choice* to marry – will be the evidence of that freedom. Under this recasted subjectivity, gays are *gay* but not because they are *not straight*, but because they are gay.

CHAPTER 5

MILITARY SERVICE

INTRODUCTION

In the United States, the proscription on homosexual acts has been part of the military's guiding principles concerning appropriate conduct since the Revolutionary War. Lieutenant Gotthold Frederick Enslin, having been found guilty of sodomy, was discharged from the Continental Army in 1778 in the first recorded incident of a separation from the armed forces for "homosexuality" (Frank 2009, 1). The regulations on "homosexual behavior" in the armed forces are a reflection of the wider moral and legal restrictions in Western society which did not tolerate any sex that was not procreative (Frank 2009, 2). Deeply embedded in existing moral and social attitudes, homosexuality was in conflict with the "normal" order of the day. The prohibitions on same-sex conduct allowed the heterosexual family structure to serve as

...the primary source of production and social stability. Any sex not geared toward reproduction was regarded as a barrier to the social and survival goals of increasing the population, dividing up labor, consolidating family wealth, and preserving the family lineage, including lines of blood, race, and religion. Both within and outside

the military, these beliefs took the form of efforts to control people's behavior, maintain social order, and protect existing relations of power (Frank 2009, 2).

Moral and/or social disapproval have not been the only justifications to keep gays and lesbians from serving in the military. Historically, reasons "...for excluding gay military personnel have ranged from mental illness to security risk to, more recently, concern for maintaining morale, good order, and discipline (subsumed under the term "unit cohesion")" (Mezey 2007, 135). Interestingly enough, the discharge of "open homosexuals" has vacillated between being mandatory and being at the discretion of military leadership. Typically, the military has exercised greater discretion in allowing "open homosexuals" to serve during wartime when having gay and lesbian soldiers was most convenient. During the Vietnam War, for example, Randy Shilts (1993) notes that there were men who pretended to be gay in an effort to evade compulsory service (the so-called "gay deceivers") as well as men who were actually gay that the military did not enforce its ban against. This was a curious enough situation because "...efforts to thwart gay deceivers... [would have] violated regulations [that were] meant to eject anyone gay or with 'homosexual tendencies,' whether or not those tendencies had been acted upon" (Shilts 1993, 68). The necessities of wartime, however, did not allow the government the luxury of enforcing the ban on gays and they certainly did not have the resources or time to

spend distinguishing which were legitimate homosexuals.¹ Time and again, the military's policy toward gay and lesbian service "...has been almost entirely dependent on the manpower needs of the services at any particular time" (Shilts 1993, 70).²

Although military policy regarding "homosexual service" was driven by considerations of expedience, prevailing attitudes toward homosexuality as a mental disorder guided official policy. During the 1940s, there was a shift in focus from the conduct or behavior of homosexuals, which would be construed as the consequence of a mental deficiency, toward a more enduring *feature* of homosexuality. As such, the pre-war era dismissals were grounded on sodomy convictions, whereas in the post-war era, the focus had shifted toward one's orientation, or identity, as a homosexual (Mezey 2007, 137). The first major inquiry into the fitness of gays and lesbians to serve in the military was the 639-page Crittenden Report commissioned

¹ Shilts also takes care to mention that the laxity toward these antigay military regulations was not unique to the Vietnam War; his research covering the period from World War II to Desert Storm indicates that antipathy toward gays and lesbians serving during times of war has occurred in "conflict after conflict" (1993, 70 – 71).

² Indeed, Shilts cites "...the military's own statistics [which] offer the most compelling evidence that the exigencies of wartime overrode the military's usual antipathy for those with nonconforming sexual orientations. Between 1963 and 1966, for example, the Navy discharged between 1600 and 1700 enlisted members a year for homosexuality. From 1966 to 1967, however, the number of gay discharges dropped from 1708 to 1094. In 1968, the Navy ejected 798 enlisted men for homosexuality. In 1969, at the peak of the Vietnam buildup, gay discharges dropped to 643. A year later, only 461 sailors were relieved of duty because they were gay. These dramatic reductions occurred during the period of the service's highest membership since World War II." (1993, 70).

in 1957.³ Charged with discovering whether homosexuals represented a national security threat, stemming from the susceptibility to exposure, the Crittenden Report found no evidence linking homosexuality with ability to serve. The report also dispelled the notion that gay people were a national security risk.

Despite no factual data supporting the notion that gays and lesbians were ill-suited for military service, the Department of Defense issued Directive 1332.14 on January 28, 1982 in order to “(1) establish uniform policies and procedures for all the services and (2) provide a stronger basis for defending the policies and procedures in the courts.”⁴ Under Directive 1332.14, gay and lesbian military personnel would be separated from the armed services specifically for being a “homosexual.” Prior to 1982, separation for homosexuality was at the discretion of the military and was only grounds for *possible* disqualification from military service. After 1982, the Department of Defense clarified that

homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of

³ Officially known as the “Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing with Homosexuals.”

⁴ United States General Accounting Office. 1992. “Report to Congressional Requesters: DoD’s Policy on Homosexuality.” June 12.

rank and command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain public acceptability of military service; and to prevent breaches of security.⁵

The military defended their policy of exclusion because they believed that a person with a homosexual orientation was *by definition* part of a class of people that participated in behavior that would jeopardize the mission of the military.⁶ It was of no concern to military leadership whether a gay person actually engaged in sexual activity because, by definition of their status as gay, they posed a serious risk to military order and discipline. The 1982 directive made clear that there was a distinction between a “homosexual identity” and “homosexual conduct” and that *either* were sufficient for discharge.⁷

While campaigning for the presidency of the United States in 1992, Bill Clinton made repealing the ban on military service one of his top priorities should

⁵ United States General Accounting Office. 1992. “Report to Congressional Requesters: DoD’s Policy on Homosexuality.” June 12.

⁶ Even though the military viewed homosexuality in contradistinction to military service, “[i]n conflict after conflict – from World War II to Desert Storm – the paradox has persisted: during World War II, Korea, Vietnam, and a generation after Vietnam, when the United States went to war again in 1991. The gay exclusion policies were enacted ostensibly to ensure good order and discipline in the military. At no time is order and discipline more essential than in combat. History also demonstrates that at no time are the regulations banning homosexuality more routinely sidestepped.” (Shilts 1993, 71).

⁷ In Directive 1332.14, “...a homosexual is “a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts.” The DoD also “...defines a homosexual act as “bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires.” United States General Accounting Office. Report to Congressional Requesters: “DoD’s Policy on Homosexuality.” June 12, 1992.

he be elected. One of Clinton's close political consultants during this time was his close friend, David Mixner, who had a solid name for himself as a respected and successful fundraiser for gay and lesbian causes (Frank 2009, 15). Clinton sought out Mixner for this reason; as a gay man, Mixner's role would be to help the Clinton campaign "...generate both gay dollars and gay votes" (Frank 2009, 15). How the gays-in-the-military issue merited the attention it did can be explained by Mixner's caveat on joining the campaign. Mixner agreed to help his friend run for the presidency, but Clinton would have to commit to establishing a public record of support for issues important to gays and lesbians. The issue of giving gays the right to serve in the military was the first issue Mixner picked as the one Clinton would use to build his record.⁸

Just after Election Day 1992, Bill Clinton was pressed to answer questions about his intent to lift the ban on gay and lesbian service as he had promised to do during his campaign. Reassuring reporters that his position had not changed, Clinton said on Veterans Day that status alone should not disqualify people from military service (Frank 2009, 67). In January 1993, just after he was inaugurated, Clinton directed the Secretary of Defense to write a draft of an executive order that

⁸ That military service was the issue given such primacy by Mixner, and then Clinton, was curious because many gay and lesbian activists considered the plague of AIDS to be of much more concern. Military service, by comparison, seemed to be trivial and of secondary importance to larger matters of interest. Frank explains that while military service was indeed important to working-class, female, and minority citizens, the issue seemed to be "...pushed to the front of the agenda by a small group of inexperienced, wealthy, white, male, Johnny-come-latelies suddenly eager to support gay issues, now that their political viability made them trendy" (2009, 16).

would end the military's ban on gay and lesbian service due by July 15, 1993 (Mezey 2007, 159). In the meantime, between January and July 1993, the President wanted the military to refrain from taking action against gays and lesbians in the service; Senate Republicans, however, threatened to draft legislation in order to keep the ban, which would be more forceful than just a Pentagon directive. Struggling against congressional and military leadership that had promised opposition, the President agreed that hearings conducted by the Senate Armed Services Committee would be appropriate.⁹ President Clinton had negotiated a six-month moratorium on lifting the ban while the Senate gaveled hearings into session. For the duration of the hearings, there would be a "...cessation on questioning recruits about their sexual orientation, but a continuation of punishment meted out for acts of homosexuality" (Mezey 2007, 159). And although action on the ban was temporarily postponed pending the outcome of the Senate hearings, the Republicans had signaled their plan to proceed with legislation that would attach the ban as an amendment to the Family and Medical Leave Act (Mezey 2007, 159). This would make the ban not only military policy, but federal law.

⁹ Just after Election Day in 1992, President-Elect Clinton met with Chairman of the Joint Chiefs of Staff Colin Powell. During this meeting to discuss lifting the ban as well as other military matters, "Clinton was aware of his damaged reputation in military circles.... He knew that his public promises to lift the gay ban using executive power sounded to many military men like one more prong in a misguided effort by young liberals to impose a radical social agenda on a traditional culture they did not understand or respect" (Frank 2009, 71).

The national attention surrounding President Clinton's proposal to let gays and lesbians serve openly in the military had reached a fever-pitch; both opponents and proponents of lifting the ban took to the morning shows. The senior military leadership began to publicly express their displeasure about not having been consulted more thoroughly while the White House was doing its best to reiterate the President's campaign commitment to repeal the ban. In late January 1993, Bob Schieffer of CBS's *Face the Nation* had acquired a copy of a confidential memo from the Secretary of Defense to the President outlining "...a strategy to both compromise on Clinton's pledge and press the JCS and congressional opponents of reform toward letting gays serve" (Frank 2009, 80). The leaked memo was disastrous for the White House. In the memo, the Secretary of Defense advised the President to meet with the Joint Chiefs in order to consult with them, but not negotiate. The memo, however, made it appear as though the Secretary was advising the President and the Joint Chiefs to discuss the matter even though the President had already decided on his own course of action. The memo made it look as though the Secretary was "...prodding the president to feign consultation with military leaders even though he had no intention of listening to their objections" (Frank 2009, 81). Moreover, the leaked memo was the first time there was a hint that the President might be willing back down from his campaign pledge; there was public discussion as to whether the

President was privately considering a deal that would require gay and lesbian soldiers to serve in secret (Frank 2009, 81).

Brokering a compromise on the issue was important for the newly-elected President because of the fierce opposition he faced from the senior military command. The language coming from the White House on allowing gays and lesbians to serve began to focus "...on the vague realm of 'status,' [while] ...continuing to restrict 'conduct'" (Frank 2009, 81). The President's hope was to successfully end discrimination against gays and lesbians while respecting the military's desire to maintain morale and unit cohesion. What the President could not hope for was any conciliation on the part of those in Congress and by the Joint Chiefs. At the end of the six-month period, the White House lost confidence in any ability they might have had to beat back a congressional override of an executive order lifting the ban (Frank 2009, 108). With no support in Congress and no support from the Joint Chiefs, the President's determination to end discrimination based on sexual orientation was weakening. And even though the administration believed they did not have the political strength to overpower congressional opposition, "...Vice President Gore argued with Clinton in July that he ought to lift the ban by executive order as a matter of principle, *even if* Congress threatened to write the ban into law..." (Frank 2009, 109). Saddled with too much resistance, the President

could no longer afford to continue spending political capital on this issue (Frank 2009, 109).

On July 19, 1993, at Fort McNair's National Defense University in Washington, DC, President Clinton announced the new policy governing the service of gays and lesbians in the armed services. Known as "Don't Ask, Don't Tell, Don't Pursue,"¹⁰ the compromise solution ostensibly balanced the individual rights of gays and lesbians to serve while preserving the military leadership's concern for morale and the privacy rights of heterosexual soldiers to be shielded from homosexuality. The "Don't Ask, Don't Tell" policy, as it came to be known in short, referred to recruiters not *asking* about sexual orientation, recruits and soldiers not *telling* anyone about their orientation, and a promise by the military that gays and lesbians would not be *pursued* for discharge, though they would be separated when and if their orientation was discovered by the military leadership. Codified into law by the 103rd Congress, President Bill Clinton's capitulation to congressional and military leaders on his campaign promise to end discrimination against gays and lesbians no longer referred to "homosexuality as incompatible with military service" but rather as an

¹⁰ In February 2000, the Pentagon added "Don't Harass" to the official title of the policy after reviewing the July 1999 murder of Army Private First Class Barry Winchell. Winchell had been harassed for several months on suspicion of being gay and because he was dating a pre-operative transsexual woman (Hackett 2000; Clines 1999; France 2000).

issue of one's sexual orientation being "...a personal and private matter... [which] is not a bar to service unless manifested by homosexual conduct" (Mezey 2007, 162).¹¹

According to the policy, separation for "homosexual conduct" would occur if a service member acknowledged that they were gay or lesbian, irrespective of actual conduct or behavior. The military reasoned that "...a 'statement by a service member that he or she is a homosexual' would create a 'presumption that the service member is engaging in homosexual acts or has the propensity or intent to do so'" (Frank 2009, 110). Much like the effect of the Defense of Marriage Act, the "Don't Ask, Don't Tell" policy places gays and lesbians as the *opposite* of heterosexuals. The positionality of gay subjectivity in this way makes it difficult for gay soldiers to be anything but ill-suited for the military. Gays and lesbians cannot begin to develop an ontological coherence for the idea of a "gay soldier" when faced with a policy that explains the military environment as compatible solely with heterosexuality. Military service and heterosexuality become fused concepts, conflated specifically in

¹¹ The "don't ask, don't tell" designation is understood as "...an umbrella term for the entire set of government restrictions against openly gay service" (Frank 2009, xv). The ban on military service is defined both by law and by military policy. The term "don't ask, don't tell" refers both to § 571 of the National Defense Authorization Act for Fiscal Year 1994 as well as a host of Department of Defense directives and implementing regulations. Notably, Article 125 (10 USC § 925) is the gender-neutral ban on sodomy and Article 134 (10 USC § 934) which prohibits "all disorders and neglects to the prejudice of good order and discipline in the armed forces, [and] all conduct of a nature to bring discredit upon the armed forces." Susan Gluck Mezey notes that "[c]onviction under § 934 requires the military to allege the commission of a specific offense that meets both criteria" (2007, 180). While the government policy and the federal law are distinct, they overlap and do not conflict with one another. Additionally, while I acknowledge the differences between them, those distinctions are not important for this project.

opposition to homosexuality. “Don’t Ask, Don’t Tell” estopps gays from being good soldiers because *by definition* they are not, irrespective of meritorious service. The “Don’t Ask, Don’t Tell” policy’s assumption that gays and lesbians, as an effect of their sexuality, are a threat to morale, order, and discipline positions gay and lesbian subjectivity at risk for several reasons. First, under “Don’t Ask, Don’t Tell,” gay and lesbian soldiers cannot disentangle heterosexuality from its centrality to successful military service. Second, the language of the policy constitutes gays and lesbians through the lens of heteronormativity by defining gayness as something that must be in conflict with heterosexuality. And third, the policy exacts a toll on gay and lesbian subjectivity to the extent that it does not allow gay soldiers to serve in a way that would allow them to be measured against the definition of military service as specifically and exclusively heterosexual.

In this chapter, I argue that the ban on gay and lesbian service in the US armed forces is rooted in a fundamental misapprehension of what it means to be gay or lesbian. In the military, homophobia is the byproduct of an enforced code of masculinity on servicemen and women. Predicated on intense displays of physical courage, honor, duty, and fierce loyalty, all of the ingredients that factor into “unit cohesion” and “troop morale,” – which are constructed as masculine and heterosexual – the presence of gay men and lesbians is constructed as a threat to this archetype. In order to flesh out my argument that these models of masculinity-as-

heterosexuality are problematic because they make damaging and, in many cases, patently false assumptions about gays and lesbians, I will make the following claims and observations throughout the rest of the chapter. First, military service is a suitable example as an appropriate site of resistance to the distorted descriptions of what it means to be gay. Second, I argue that the acceptance of gays and lesbians into the armed forces will expose the artificial connection between the idea that masculinity is the exclusive province of male heterosexuality, that lesbianism is somehow a kind of ersatz masculinity, and that masculinity is the distinct and manifest conduit of honor, loyalty, and the ability to perform with valor. Third, I will show that the ban on gays and lesbians is more properly about prejudice, not military necessity; prejudice is the result of the distorted descriptions produced by subtle, overt, or even unconscious anti-gay animus. Ultimately, I conclude that the “Don’t Ask, Don’t Tell” policy tells us that the “included-yet-excluded” circumstance in which gays and lesbians find themselves is indicative of the ironic, if hypocritical, result of the policy’s stated goals.

THE HOMOSOCIAL BOND

In *Between Men: English Literature and Male Homosocial Desire*, Eve Kosofsky Sedgwick uses the term homosociality to refer to the social bonds between people of

the same sex.¹² She uses the term to harness the full spectrum of "...such activities as 'male bonding,' which may, as in our society, be characterized by intense homophobia, fear and hatred of homosexuality" (1985, 1). In an attempt to expound upon the reasons homosexuality interferes with, and is incompatible with, military service, Mackubin Owens sketches an account of a military ethos; in doing so, he contrasts the homosocial concept of the Greek *philia* with *eros*. *Philia*, according to Owens, is the backbone of a military ethos based on friendship, comradeship, and brotherly love. Emanating from feelings of a non-amorous closeness between soldiers, *philia* is a bond that is created "...among disparate individuals who have nothing in common but facing death and misery together, [and] is the source of the unit cohesion that most research has shown to be critical to battlefield success" (Owens 2000).¹³ Analyzing the homosocial fiber of military bonding gives us critical

¹² Though the term is general, applicable to both men and women, Sedgwick focused on male homosociality to advance her thesis that the structure of the male pair-bond is comprehensible through the oppression men exercise over women, as well as the oppressive effects on gay men. She says: "To draw the 'homosocial' back into the orbit of 'desire,' of the potentially erotic, then, is to hypothesize the potential unbrokenness of a continuum between homosocial and homosexual – a continuum whose visibility, for men, in our society, is radically disrupted" (1985, 1 – 2). Male homosociality highlights differences in gender and power. Sedgwick asserts that obligatory heterosexuality is a component of male-dominated kinship systems whereby homophobia is a necessary result of patriarchal institutions such as heterosexual marriage. The corollary she draws is that the oppression of homosexuals is the inevitable outcome of the same system whose practices oppress women (1985, 3).

¹³ It is instructive to briefly pause here and examine the way in which I make use of Owens' contribution to my arguments. I invoke Owens in order to map an image of the military from an insider's point of view; he is a retired Marine Colonel with decorated service from the Vietnam War and serves on the faculty of the Naval War College. His description of a military ethos is useful from this perspective; however, his writing in this particular instance is not scholarly or peer-

insight as to how the sexuality of gays and lesbians appeared as part of what Foucault called the “specification of individuals” (1978, 43) and its consequences for learning a “discoverable truth” about sexuality and subjectivity.

What is male homosociality in the military context and what is its relationship to how gay and lesbian sexuality is cast? The military environment relies on a sustained commitment to “unit cohesion” and “troop morale” and, moreover, the presence of “open” homosexuals undermines that commitment. Defense Department Directive 1332.14 assures us that homosexuality threatens and endangers the very fabric of military success. The available possibilities for same sex interaction must then be regulated. Regulation, in this manner, takes the form of a precise demarcation of these boundaries. These relationships are compulsory in the military context, especially as described by Owens, and so regulated interactions assume a homophobic posture. Owens himself says that “[t]he presence of open homosexuals in the close confines of ships or military units opens the possibility that *eros* will be unleashed into an environment based on *philia*, creating friction and corroding the very source of military excellence itself” (2000). He defends his position by claiming that gays and lesbians undermine the non-sexual aspects of

reviewed. Be that as it may, his views are indicative of the attitudes of those opposed to gay and lesbian military service and are appropriately engaged in that context. His assertion as to what “most research shows” is, to say the least, arguable. While I do not take Owens to task for that assertion here, I do address and rebut the general claims of what research on gay and lesbian service indicates (though not his specifically) later.

bonding because "...unlike *philia*, *eros* is sexual, and therefore individual and exclusive. *Eros* manifests itself as sexual competition, protectiveness, and favoritism, all of which undermine order, discipline, and morale" (2000). This description by Owens of what he thinks it means to be gay levies a false understanding of the consequences of homosexuality to homosociality.

The belief that the durability of the homosocial bond is disturbed by the existence of gay and lesbian military personnel is emblematic of an improper understanding of the connection between homophobia and ideas about masculinity. Gay men, for example, are scapegoated as the culprits for introducing *eros* into an environment of *philia*; the panic associated with potentially permeable and uncertain boundaries between homosexuality and heterosexuality is better understood from the "problems" it presents to heterosexuality rather than homosexuality. The panic is experienced as a pre-condition to the prerogative of male heterosexual relationships. Sedgwick offers the following assessment:

[i]f such compulsory relationships as male friendship, mentorship, admiring identification, bureaucratic subordination, and heterosexual rivalry all involve forms of investment that force men into the arbitrarily mapped, self-contradictory, and anathema-riddled quicksands of the middle distance of male homosocial desire, then it appears that men enter into adult masculine entitlement only through acceding to the permanent threat that the small space they have cleared for themselves on this terrain may always, just as arbitrarily and with just as much justification, be foreclosed (1990, 186).

It is the arbitrary nature of the possible range of permitted interactions between men that fuel the panic. The uncertainty associated with this kind of potential for sudden change leaves one with no ability to make sense of his interactions, making them devoid of intelligible meaning. The consequence of this, then, is the development of clear rules of behavior that govern male heterosexual relationships which must be by definition actively, aggressively, and publicly anti-homosexual. What we can glean from this is that homophobia is less about animus toward gays *as such*, but because homosexuality represents a threat to the heterosexual homosocial bond that would be indistinguishable from homosexuality. Heterosexual men could not have homosocial relationships without the looming specter of an alleged homosexual desire. And, because the homosocial relationship is the basis for the structure of male heterosexual interaction in the military, Sedgwick argues that the *prescription* of the most intimate male bonding and the *proscription* of homosexuality are stronger than in civilian society, perhaps even closer to absolute (1990, 186).

I have argued, then, the deployment of masculinity in the military manufactures a false description of gays and lesbians. Though the military is clear in its prohibition of gays *and* lesbians, much of the rhetoric surrounds gay men specifically. There are several reasons for the noticeable insufficiency of lesbian inclusion in these discussions, even though lesbians are disproportionately affected

by the “Don’t Ask, Don’t Tell” policy.¹⁴ Women account for between six percent and nineteen percent of the total number of personnel in the individual branches of the military; the numerical minority status of women might offer a partial explanation for why women are generally less included as part of the conversation. More importantly, however, are the ways in which women, and lesbians in particular, are framed by the discourse of masculinity. The male-centered military rhetoric focuses on the regulation of gay male sexuality because the debate has been framed through a crisis of masculinity that only gay men present; Leisa Meyer suggests that this “...misses the extent to which the issue of female masculinity or ‘mannishness’ became one of the major informal means through which issues of lesbianism were addressed and lesbian soldiers themselves were ‘regulated’” (2001, 272). The masculinity discourse arranges gay men as “sissies” or “fairies,” which makes them unsuitable for the “manly” exercise of successful military performance. This is a particularly interesting way of casting gay men as the sole threat to masculinity given that women in the military are typified as “masculinized” who prey on the virtue of their heterosexual “feminine” counterparts (Meyer 2001, 272).

¹⁴ For FY 2009, Army discharges under “Don’t Ask, Don’t Tell” totaled 195, 91 of whom were lesbians; this accounts for 47% of the discharges even though women are only 13.5% of Army personnel. Navy discharges totaled 81, 22 of whom were lesbians; this accounts for 27% of the discharges even though women are only 15.5% of Navy personnel. Marine Corps discharges totaled 75, 17 of whom were lesbians; this accounts for 23% of the discharges even though women are only 6.4% of Marine personnel. Air Force discharges totaled 77, 39 of whom were lesbians; this accounts for 51% of the discharges even though women are only 19.5% of Air Force personnel. These data come from The Palm Center and from Women In Military Service For American Memorial Foundation, Inc.

While gay men must assert a masculinity to be “one of the boys,” lesbians bear the unique burden of having to be homosexuals *and* women; masculinity, to be sure, exerts its power as explicitly homophobic, but it also relies on gendered discourse to derive its meaning. For example,

[t]he military capitalizes on young men’s insecurities during basic training. Recruiters promise to “make a man” of new recruits through the tasks demanded in training, and drill instructors label recruits “ladies” or “girls” until they prove themselves deserving enough to be called “men.” A male recruit who has internalized the military’s message may feel his masculinity threatened by seeing women accomplish the same tasks that are supposedly proof of his manhood. The military both promotes and relies on the maintenance of these dynamics to such an extent that during the period that basic training in the Army was integrated by gender, officials feared they would have trouble recruiting young men if it looked like military service “has become something a ‘girl can do’” (Benecke and Dodge 1996, 82).

Masculinity, then, is manifested as a disdain for femininity because the military environment persists in a constant state of masculinizing men. Women are purposely excluded from certain practices, by way of safeguarding protected zones of homosocial masculinity, or they represent a disruption to the *heterosocially* gendered dynamics of male-female interaction, by way of breaching the distinction between feminine as it is understood to be the opposite of masculine.

The ban on openly gay service is about prejudice – it is about the reification of a homophobic heterosexual homosociality. I draw this conclusion from the internal logic of the ban itself. Earlier, I showed how the Department of Defense held discharges in abeyance during times of international conflict. The lack of wartime

dismissals is indicative of prioritizing the need for an available pool of personnel over anti-gay animus; not that anti-gay sentiment is not present, it is just not as important during war.¹⁵ I also recounted the reports commissioned by the military on the assumed link between homosexuality and competence; the Crittenden Report found no evidence of such a link nor did it find that gays or lesbians constituted a threat to national security. In spite of this, the Department of Defense still declared homosexuals to be ill-suited for military service. This is a remarkable reaction in the face of evidence, or lack thereof, clearing the way, if you will, for gay and lesbian service – particularly “...at the very moment when our major allies were ending the ban on gay and lesbian troops and finding that the move helped, rather than harmed, their militaries” (Frank 2009, xxi).¹⁶

Finally, I alluded previously to the irony and hypocrisy of “Don’t Ask, Don’t Tell.” What I mean by this is that the policy, though the result of a brokered compromise, explicitly acknowledges, and tacitly permits, the presence of gays and

¹⁵ Gary Lehring (1993) makes an interesting observation about the “selective objections” to gay and lesbian service during wartime; he claims that discretionary enforcement of the prohibition makes a lie of the military’s assertion that the presence of gays and lesbians in the service has an injurious effect on the armed services. Lehring asks: “...why in times of war, when the stakes of mission failure are so much higher, would gay men and lesbians be allowed to serve” (3 – 4)?

¹⁶ Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Ireland, Italy, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Slovenia, Spain, Sweden, Switzerland, United Kingdom all permit gays and lesbians to serve openly. Israel and South Africa also do not ban gay and lesbian service, but did not have troops in Iraq or Afghanistan. <http://www.palmcenter.org>

lesbians. "Don't Ask, Don't Tell" permits gay and lesbian service, just not "open" gay and lesbian service. Because exclusion from the military is based more on the distaste for proximity to gays and lesbians and less about concerns over whether gays and lesbians are competent to perform in ways that do not compromise the integrity of the military, I argue this indicates that the ban is rooted in an aversion to the discursively produced descriptions of gays and lesbians. In the next section, I turn back to Foucault to illuminate the consequences of, and remedy for, endlessly produced "truths" in which sexual meanings shift from behaviors or activities into a category of knowledge graphed onto the personhood of the subject.

RESISTANT SUBJECTIVITY – GAYS AS SOLDIERS

Sexuality, as described by Foucault, is not something that exists in conflict with power; it is not something that serves to defy power (1978, 103). Sexuality is instead best viewed as a site where power is linked to its objects or targets; according to this analysis, sexuality is the locus wherein we join otherwise unrelated concepts. He offers the year 1870 as the appearance of the "homosexual." Prior to this date, the "homosexual" was not a personage so much as the "sodomite" was a juridical subject of forbidden acts (1978, 43). Sodomy was a category of certain sexual behaviors and did not explain anything about the personhood of those who engaged in it; it was only descriptive of the activity. At the end of the nineteenth

century, however, the “homosexual” became coterminous with his behavior. Foucault argues that “[n]othing that went into his total composition was unaffected by his sexuality. It was everywhere present in him: at the root of all his actions...” (1978, 43). With the emergence of the “homosexual,” we see the development of something more extraordinary:

...the psychological, psychiatric, medical category of homosexuality was constituted from the moment it was characterized... less by a type of sexual relations than by a certain quality of sexual sensibility... Homosexuality appeared as one of the forms of sexuality when it was transposed from the practice of sodomy onto a kind of interior androgyny, a hermaphroditism of the soul. The sodomite had been a temporary aberration; the homosexual was now a species (Foucault 1978, 43).

The homosexual was put into discourse as a basic unit of knowledge and, perhaps more importantly, as a *source* of knowledge. The significance of the “homosexual” as an instrument of analyzable facts and truths is, in one way, about specifying and naming in order to control. However, in another way, the importance of the category “homosexual” comes not only from its regulatory properties, but from “...its potential for giving whoever wields it a structuring definitional leverage over the whole range of male bonds that shape the social constitution” (Sedgwick 1985, 86).

In *Discipline and Punish*, Foucault argues that the disciplines generated a new economy of power by creating docile bodies. The disciplinary mechanisms operate to guarantee the submission of bodies by working through, and behind, a formal egalitarian structure. He argues that the disciplines “...continued to work in depth

on the juridical structures of society, in order to make the effective mechanisms of power function in opposition to the formal framework that it had acquired" (1977, 222). In appearance, the disciplines seem to operate separately and apart from the formal legal structures of society; the knowledge produced by the disciplines of medicine, psychiatry, the prison system, or the military appear to be disconnected from those things that govern our behavior ranging from rules of social etiquette to our formal code of written laws. In actuality,

...whereas the juridical systems define juridical subjects according to universal norms, the disciplines characterize, classify, specialize; they distribute along a scale, around a norm, hierarchize individuals in relation to one another and, if necessary, disqualify and invalidate. In any case, in the space and during the time in which they exercise their control and bring into play the asymmetries of their power, they effect a suspension of the law that is never total, but is never annulled either... And, although the universal juridicism of modern society seems to fix limits on the exercise of power, its universally widespread panopticism enables it to operate, on the underside of the law... which supports, reinforces, multiplies the asymmetry of power and undermines the limits that are traced around the law" (1977, 223).

This apparatus of power is ideal in a military machinery composed of bodies which have been made docile. The military culture is given its rules and regulations and traditions under the authority of the disciplines. New techniques of power control the body by naming and classifying the "homosexual" until he becomes anathema to military order, cohesion, and morale due to his unsuitability discovered by knowledges produced within the medical and psychiatric disciplines.

In order to get at the “truth” of homosexuality, the medical sciences endeavored to explain and describe it. The disciplinary knowledge produced the homosexual as an aberration, as something which threatened the foundations of society; this definition soon became reflected in official military policy (Lehring 2003, 80). Lehring recounts the invention of a device believed to detect homosexuality by measuring levels of naturally occurring radioactivity that emanated from men’s testicles. The device would be used to record the levels of radiation from “normal” men; homosexuals could then be detected from the difference. Although the device was never used during pre-induction screenings, the very existence of the device and its intended application to root out homosexuals from the military reveal the means by which the disciplinary technology of power operates. We see how the creation of such a device is the result of the medical discipline’s effort to define the homosexual; the device is also illustrative of how the medicalization of homosexuality was put into discourse. The device is the very manifestation of the medical discipline’s “expertise” on the knowledge of the “truth” about homosexuality.

The disciplinary “expertise” generated from these new techniques of power, typified by a device to detect homosexuality, put into discourse a “knowledge” that “...homosexuals were the product of physiological degeneration. Characteristics that deviated from white, heterosexual, male norms were considered a product of a

constitutional disorder. Feminine characteristics were among the tell-tale signs of 'degeneration' that made a man unfit for military service" (Lehring 2003, 82). The medicalization of homosexuality also both informs and reflects the discursive cultural models of masculinity whereby the "feminine" serves as a marker of distinction for masculinity and male heterosexuality. Lesbians do not escape the reach of the discursive power of "femininity" either. The operation of the masculine/feminine discourse produces lesbians as more aggressive than "feminine" women (and observe the way in which "aggressive" and "feminine" are in contradistinction) which then characterizes them as ill-suited for the military even though the same aggressive disposition in men is required (Lehring 2003, 84). This is the link between "knowledge" and the operation of several technologies of power on the subjectivity of gay men and lesbians.

The discipline of psychiatry also endeavored to get at the "truth" of homosexuality by explaining and describing it. In the lead-up to the American entrance into World War II, and because of the impending increase of personnel into the armed services, the military became fixated with homosexuality. Prior to this, the military had no system for screening recruits; however, when more than sixteen million men registered for the draft in October 1940, military officials felt unencumbered to set strict standards on the qualifications for service (Bérubé 1990, 2). During this time, the burgeoning field of psychiatry sought to expand its

influence and increase its level of respectability by helping the military to detect “undesirables” through psychological and psychiatric screening (Lehring 2003, 84); or, if you like, through the knowledges known to them by their disciplinary practices. On the advice of psychiatrists, homosexuals were disqualified from service because the military “...believed that they made poor combat soldiers, their presence in units would threaten morale and discipline, and their integration would turn the military into a testing ground for radical social experimentation rather than a strong fighting force” (Bérubé 1990, 2).

Foucault tells us that one of the strategies for forming mechanisms of knowledge and power centering on sex is the psychiatrization of perverse pleasure; he says that “...the sexual instinct was isolated as a separate biological and psychical instinct; a clinical analysis was made of all the forms of anomalies by which it could be afflicted; it was assigned a role of normalization or pathologization with respect to all behavior; and finally, a corrective technology was sought for these anomalies” (1978, 103; 105). The primary framework for classifying homosexuals under these “corrective technologies” was the brain-disease model of insanity which “...classified various mental, moral, and emotional abnormalities, including homosexuality, as symptoms of brain lesions and neurological disorders” (Lehring 2003, 85; see also Bérubé 1990, 12). The disciplinary power of psychiatry labeled homosexuals as diseased and therefore unfit for service. Homosexuals were

separated from the military not because of behavior, as in the past, but because of a prescribed identity discovered through the disciplinary technique of examination. The acquired “knowledge” from the psychiatric examination produced a shift from homosexual-as-pervert to a medical explanation of homosexual-as-diseased. The shift is important to recognize because the “truth” of the homosexual permits regulation once those truths become embedded with discursive practices. The shift allows judgments to be made, concomitant with justifications, about what it means to be gay – determinations about what constitutes homosexuality and who constitutes a homosexual.

In the military context, disclosure of one’s same-sex desire creates a subject who is by definition stunted from the processes of creating and re-creating the self. In *The History of Sexuality, Volume 1*, Foucault undergirds my argument that specificities of institutions are of less concern in an analysis of gay and lesbian subjectivity than the larger issues at stake. Like marriage, such is the case for an examination of the military and the institutional discursive practices associated with it. Foucault argues that we should not worry about who has power but rather focus on who is *deprived* of it. Similarly, we should not attend to those who have the right to know, but to those who are required to remain ignorant (1978, 99). His reminder properly aims analysis at the destructive power of absence rather than presence. I have argued that the “Don’t Ask, Don’t Tell” barrier to military service restricts the

ability of gays and lesbians to articulate a self-described and meaningful subjectivity (thus they lack or suffer an *absence* of that ability). Such barriers (including the barrier to marriage) should lead us to seek "...the pattern of the modifications which the relationships of force imply by their very nature of their process" (Foucault 1978, 99). The erection of barriers to meaningful gay subjectivity renders gays and lesbians particularly vulnerable to consistent and repeated abuse with our current system of practices. Foucaultian analysis allows for the description of imposed subjectivity and its relation to the byproducts of power.

What it means to be composed of discursive properties of masculinity and femininity is observable in the ripples of perception which move through the national imaginary. These ripples are put into motion by policies like "Don't Ask, Don't Tell." The habitual practice of creating and re-creating a self which is possessed of political and social equality requires the full range of possibilities available in the relational spectrum. In order for this habitual practice to be effective, gay men and lesbians engage in the subversion of the masculine and the feminine. Blasius suggests that gay men are capable of paradoxically desiring the signs and symbols of masculinity while also undermining it as men who desire men (1994, 127). Because masculinity obtains meaning from an oppressive superiority over femininity, gay men and lesbians who create and re-create the self through same-sex erotics, subversion of the disciplinary power of masculinity becomes

accomplished through choice and equality. These choices bring equality as gay men and lesbians refuse the imposition of heterosexuality on their subjectivity.

Gays and lesbians create relational possibilities through ethical self-creation. Because the goal of an ethics of erotic choice is to free gay and lesbian subjectivity from heteronormativity, it is precisely the dismantling of the discursive power of "Don't Ask, Don't Tell" that is required. Dismantling the legal policies which give support for the discursive practices that result from them facilitates the fulfillment of the gay and lesbian capacity to engage in a meaningful ethics of self-creation and re-creation. The recasting of the categories of "masculine" and "feminine" is accomplished through the habitual practicing of the self by the Foucaultian subject.

CHAPTER 6

WHAT KIND OF SUBJECTIVITY SHOULD BE EMBRACED?

Throughout the dissertation, I have offered evidence of the destructive power of discursive heteronormative practices that operate on gay and lesbian sexuality. What does it mean to be gay? Moreover, how does the answer to this question tell us what kind of subjectivity should be embraced by gays and lesbians? In chapter one, I explained that to be gay begins as an exploration of the ontological possibilities of descriptions available for self-understanding which also allow narrative coherence for an individual who can be part of a larger community. It is a search for place and context in an environment where understandings of desire and sexuality are heterosexual by default, and consequently superior to same-sex desire. Chapter two describes what it means to be gay in the context of political activism; what it means to be gay is, in part, a search for the relationship between the self and communities of choice. An examination of the essentialism – constructivism debate reveals that part of that relationship has been explained by strategic essentialism and the disagreements over “normality.” Chapter three positions gay subjectivity as “included-yet-excluded,” an experience marked by the operation of heteronormative

discursive practices which deny gays and lesbians intelligibility for place or context. To be gay is to then develop, take part in, or make use of existing strategies of resistance to interrupt the operation of heteronormativity on same-sex desire and sexuality. Chapters four and five outline sites of resistance in marriage equality and military service. I have argued that marriage opens up a space for gays and lesbians to define their relationships in ways that are not discursively separate from heterosexual relationships; military service, without the caveat of concealing same-sex desire, also serves to recast gay and lesbian subjectivity by disentangling sexuality, and specifically heterosexuality, from its connection to military service.

I do not offer marriage or military service as *the* way to emancipate gays and lesbians from a distorted subjectivity – that is to say, I do not argue that marriage or military service would be the only way for gays to exercise more meaningful subjectivity. I also, by extension, do not argue that unmarried gays or gays who do not join the military cannot have meaningful ways of expressing the kind of subjectivity I have described in these pages. What I do offer is the idea that marriage and military service are two of the ways that gays and lesbians can reject an imposed “included-yet-excluded” heteronormatively-based subjectivity that has defined what it means to be gay or lesbian. The kind of subjectivity that should be embraced is one in which the gay or lesbian person is not described through comparison with

heterosexuality – this would entail a discursive switch from “gay soldier” and “same-sex marriage” to simply “soldier” and “marriage.”

The essentialism – constructivism debate positions gay and lesbian identity in one of these two camps. Essentialism requires casting same-sex desire as trans-historically and cross-culturally stable thereby providing the same meaning for the entire epistemic spectrum of “homosexuality” or “gays and lesbians.” This has no coherence or intelligibility when accounting for the different ways individual gays and lesbians have engaged self-description nor does it have coherence when examining the ways groups of gays and lesbians have articulated group descriptions over time. Moreover, this does nothing by way of explaining whether same-sex desire and same-sex sexual activity are the same (as compared with each other) or whether these categories are translatable in any consistent way since antiquity. Mark Blasius has theorized an ethos of gay and lesbian existence which would allow gays and lesbians a particular discursive clarity in determining the relationship they have to cultures of choice. He suggests the resultant knowledge produced from this ethos is a form of resistance. I have theorized that marriage and military service are specific locations of a viewable and unambiguous site of resistance which is in harmony with Blasius’ ethos. He has described a general way one may produce a kind of description of the self and I have built on that by giving his ethos more depth and providing specific pathways of resistance.

Blasius describes the outcome of his ethos as "...the creation of a way of life – understood as a primary means of creating one's own self in and through one's relations with others" (1992, 649). The ethos is responsible for producing knowledge of an anti-homophobic discourse that operates *internally* on gays and lesbians. Furthermore, understanding the gay and lesbian existence as an ethos is to envision "...the possibility of a lesbian and gay way of life that maps out the contemporary battle grounds for lesbian and gay existence: the right to make one's own erotic choices, the freeing of a space for a lesbian and gay relational culture that arises out of such erotic choices, and the objectification of these as value in the order of truth and their institutionalization as knowledge" (Blasius 1992, 649). Ethos then, presents "coming out" as political exercise of *becoming*, a continual practice of the self; it is to engage in a collective problematization of the self as a technique for disrupting the ways in which gays and lesbians experience the homophobia that colors self-description and self-interpretation. Building from this, I have advanced a model of resistance which fractures the homophobia that operates *externally* on descriptions of gays and lesbians, those that color how others describe gay people, as well as a resistance which is faithful to Blasius' ethos.

Resistance has been the form by which engagement of a faithful exercise of the self takes place. I have used the prom, marriage, and military service as examples which prove this point. I would like now to turn to some recent items of interest

that bring relevance to the everyday strategies of resistance undertaken by gays and lesbians as well as to my theory of subjectivity. First, the cases of Constance McMillen and Derrick Martin, two gay teenagers who wanted to bring same-sex dates to their respective proms. Next, I update the on-going progress of gay and lesbian resistance to the termination of marital equality in California. And finally, I discuss the federal court cases regarding the constitutionality of the Defense of Marriage Act and the “Don’t Ask, Don’t Tell” military policy, as well as the pending legislation regarding the latter.

Early in 2010, national media attention surrounded Itawamba Agricultural High School senior Constance McMillen’s decision to bring her girlfriend to the prom. The school had specified in a memo that, among other rules, dates must be of the opposite sex and the women could not wear tuxedos (Sheridan 2010). The American Civil Liberties Union of Mississippi became aware of Constance’s case and quickly responded claiming that the school had violated McMillen’s First Amendments rights. A US District Court judge recognized McMillen’s right to free speech which entitled her to communicate a message by attending the prom with a same-sex date and to wear a tuxedo, finding “...this expression and communication falls squarely within the purview of the First Amendment” (*McMillen v. Itawamba County School District* 2010). As a result of this decision, the school board cancelled the event. Although the majority of her graduating class organized a private prom

to which Constance was not invited, the ACLU rightly considered McMillen's case a victory. Derrick Martin, on the other hand, was given permission to bring his boyfriend to his senior prom without incident. Those on hand reported that "...a few parents whispered but many in the crowd gave him a loud cheer. No one yelled out in protest" (Hubbard 2010). Although these two cases resulted in different outcomes, the tenor of successful resistance rings loud in both instances. While resistance to the operation of heteronormativity may not always result in clear or direct "victory," measureable success comes not from immediacy, but from the rejection of heteronormative values which attempted to govern prom participation. For Constance, it was legal; for Derrick, it was school policy.

After the November 4, 2008 passage of California's Proposition 8, marriage equality advocates filed suit in federal court claiming Prop 8 was unconstitutional. On August 4, 2010, Chief Judge Vaughn Walker delivered his opinion in *Perry v. Schwarzenegger*. He considered three questions: whether the evidence supports California's refusal to grant marriages because of sex; whether California has an interest in differentiating between same-sex couples and opposite-sex couples; and whether Proposition 8 enacted a private moral view without advancing a legitimate government interest (*Perry v. Schwarzenegger* 2010). The language in Judge Walker's opinion signals the kind of necessary dismantling of the heteronormative constructs

of marriage that I discussed in chapter four. Regarding the first question, Walker held that

[m]arriage in the United States has always been a civil matter. Civil authorities may permit religious leaders to solemnize marriages but not to determine who may enter or leave a civil marriage. Religious leaders may determine independently whether to recognize a civil marriage or divorce but that recognition or lack thereof has no effect on the relationship under state law (*Perry v. Schwarzenegger* 2010).

Judge Walker separates religious authority from civil authority with respect to how gays and lesbians may be treated under state law. As to the second question, Judge Walker's opinion addresses the core of this dissertation when he wrote that

[t]here is a significant symbolic disparity between marriage and domestic partnerships; a domestic partnership is 'not something that is necessarily understood or recognized by other people in your environment; [moreover,] as a result of the different social meanings of a marriage and a domestic partnership, there is a greater degree of an enforceable trust in a marriage than a domestic partnership (*Perry v. Schwarzenegger* 2010).

This part of his ruling directly echoes both Shapiro (2004) and Wolfson (2004) that the separation of recognized relationships into domestic partnerships and marriages withholds the emotional context of marriage from gays and lesbians. Perhaps the most damaging to heteronormative descriptions of same-sex couples is Judge Walker's finding that "...like opposite-sex couples, same-sex couples have happy, satisfying relationships and form deep emotional bonds and strong commitments to their partners. Standardized measures of relationship satisfaction, relationship

adjustment and love do not differ depending on whether a couple is same-sex or opposite-sex” (*Perry v. Schwarzenegger* 2010).

As to the third question, Judge Walker emphatically rejects the legitimate interest Californians have in enacting private moral views without a legitimate interest; he holds that “Proposition 8 places the force of law behind stigmas against gays and lesbians, including: gays and lesbians do not have intimate relationships similar to heterosexual couples; gays and lesbians are not as good as heterosexuals; and gay and lesbian relationships do not deserve the full recognition of society” (*Perry v. Schwarzenegger* 2010). Heteronormative definitions of gay and lesbians cannot have the force of law. Under Proposition 8, gays and lesbians are singled out for unequal treatment which only serves to perpetuate heteronormative stereotypes about gay and lesbian relationships being unequal and inferior to heterosexual relationships (*Perry v. Schwarzenegger* 2010).

For those reasons, which rupture heteronormative constructs of marriage embedded in the law, Judge Walker’s ruling legitimates the gay and lesbian project of resistance. Though his ruling issued an injunction enjoining the enforcement of Proposition 8, Judge Walker stayed his decision pending appeal to the US Court of Appeals for the Ninth Circuit. Proposition 8 does bring marriage equality one step closer to being a reality; however, it is unlikely the issue will be resolved by the *Perry* case alone. Two companion cases were heard in federal court in the District of

Massachusetts challenging the constitutionality of the Defense of Marriage Act. In *Commonwealth of Massachusetts v. United States Department of Health and Human Services* (2010) and *Gill v. Office of Personnel Management* (2010) a federal judge ruled that the Defense of Marriage Act was unconstitutional on both Tenth Amendment and Fifth Amendment grounds, respectively. In Massachusetts, gays and lesbians enjoy state-wide marital equality. In the *Commonwealth* case, the Massachusetts Attorney General claimed that DOMA violates the Tenth Amendment by "... intruding on areas of exclusive state authority, as well as the Spending Clause, by forcing the Commonwealth to engage in invidious discrimination against its own citizens in order to receive and retain federal funds...." In *Gill*, the same judge ruled that because irrational prejudice can never be a legitimate government interest, same-sex couples who are married in Massachusetts, and denied federal marriage benefits, have been deprived of the equal protection principles embodied in Fifth Amendment rights."

In a constitutional challenge to "Don't Ask, Don't Tell," the non-profit gay rights group Log Cabin Republicans brought suit in federal court alleging the military policy violates its members' rights to substantive due process guaranteed by the Fifth Amendment and its members' rights of free speech, association, and to petition the government, guaranteed by the First Amendment (*Log Cabin Republicans v. US* 2010). While this decision's judicial language does not speak directly to the

specific problems of heteronormativity set out in this dissertation, the court held that “Don’t Ask, Don’t Tell” intrudes upon the personal and private lives of homosexuals and is therefore subject to heightened scrutiny (*Log Cabin Republicans v. US* 2010). The impact of elevating the level of judicial scrutiny applied to gays and lesbians is indicative of a rejection of the military’s insistence on the continued heteronormative discursive practices that define gays and lesbians as a matter of law, particularly if heightened scrutiny were sustained on appeal. In addition to the court challenge, and impending appeal, “Don’t Ask, Don’t Tell” is currently under review in Congress to rescind the policy legislatively.

The common thread between Constance McMillen, Derrick Martin, and the court challenges to marital equality and access to military service is the refusal of gays and lesbians (and heterosexual equality advocates, particularly the attorneys in the *Perry v. Schwarzenegger* case) to acquiesce to an imposed subjectivity of heteronormative definitions of the self. These instances of resistance demonstrate the engagement of strategies consistent with the wholesale rejection of the invidious discursive violence of “included-yet-excluded.”

This dissertation project has yielded some areas for future investigations. There are several issue domains which fit my criteria for exercises of meaningful gay subjectivity, in addition to marital equality and military service; these include adoption laws, employment non-discrimination, faith-based activism, immigration,

and hate crimes legislation. The nature of inquiry along these issue domains include how the gay and lesbian search for place and context is enriched by a comprehensive and permanent removal of heteronormative standards as they impinge on the exercise of gay and lesbian subjectivity in these respective areas. Moreover, an analysis of the effects of how heteronormative definitions of gays and lesbians operate on gays and lesbians themselves would prove theoretically rich. This dissertation has engaged the problem of heteronormativity mostly on the relationship between heterosexuals and gays and lesbians, with specific and inferred implications of the effects on gays and lesbians themselves. However, a thorough treatment of my theoretical framework with analysis geared exclusively toward gays and lesbians could illuminate how additional strategies of resistance could prescribe and foster further accounts of meaningful subjectivity.

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