especially those who deviate from socially mandated gender and sex ual norms. This book is a wake-up call for the LGBT movement as well as for every person who wants to make America a better and safer place for everyone.

— MICHAEL BRO \ SKI
Series Editor

INTRODUCTION

A Spanish conquistador throws dozens of Indigenous people accused of engaging in sodomy to his hunting dogs. Almost five centuries later, a South Asian migrant worker is convicted of engaging in sodomy with a white man, who goes free. In 2006, seven Black lesbian friends, walking home one night through a well-known "gayborhood," are as
saulted by a man who threatens to rape one of them "straight." They defend themselves, only to be characterized by the media as a "lesbian wolf pack" and sentenced to up to eleven years in prison. An innocent Latino man spends eleven years behind bars for what police describe as a "homosexual murder" in 1988. Ten years later a Latina woman ends up on death row after the prosecutor argues she is a "hardcore lesbian." At the turn of the twenty-first century, a white gay man is put to death after a prosecutor urges a jury to consider that they are sitting in judgment of an "avowed homosexual." A Black gay man who is repeatedly raped in prison is denied protection from prison officials because he is thought to enjoy it. A club frequented primarily by African American LGBT people is raided; 350 people are hand cuffed and detained for up to twelve hours, only to be charged with
loitering inside a building." In 2008, a Black transgender woman is profiled as engaging in sex work, arrested, called "faggot" and "he/she," and savagely beaten by police officers in a public booking area, in full view

of a video camera. Her subsequent murder remains unsolved. These are but a few of the many faces of queer injustice in the United States. Their stories are central to our understandings of crime, safety, and punishment, and to struggles for queer liberation.

Crime has become a national obsession in America. The number of people in state and federal prisons skyrocketed from less than

200,000 in 1970 to 7.5 times that number within four decades. At the end of 2008 there were a total of 2.3 million,people behind bars, and over 5 million under the supervision of the criminal legal system. Nearly two-thirds are serving time for nonviolent offenses.[1]

This explosive growth in imprisonment—increasingly understood as a policy of mass incarceration—has not resulted in significant re ductions in crime rates, nor has it produced safety. As a resu !:. there is increasing recognition across the political spectrum of the need to rethink current approaches.[2]

Mass incarceration is neither a reflection of violence run an k, nor an indication that certain populations are naturally prone to c- 'me. It is deeply rooted in the history and maintenance of racial power rela tions, and its racially disproportionate impacts are profound. The furor sparked by the 2009 arrest of Harvard professor Henry Louis Gates, Jr., on suspicion of breaking into his own home in a wealthy neighborhood in Cambridge, Massachusetts, prompted acknowledg ment of just how extensive racial profiling is. More than *60* percent of prisoners, and two-thirds of people serving life sentences, are peo ple of color. Women are now being incarcerated at almost twice the rate of men; Black and Latina women are approximately three times more likely to be incarcerated than white women. Native won 1 also experience disproportionate rates of incarceration: for exar pie, in Montana in 2008, Native women made up slightly more than 17 per cent of women incarcerated in state prison, but only 7 percent of the population.[3] Poverty also plays a critical role in determining access to justice.

Although there is currently no data on incarcerated LGBT neople, what information is available suggests that transgender and gender nonconforming people are disproportionately ensnared in the crimi nal legal system. A 1997 San Francisco Department of Public Health study found that 67 percent of

transgender women and 30 percent of transgender men had a history of incarceration.[4] At the same time, LGBT people have increasingly demanded recognition of high levels of homophobic and transphobic violence in the United States. Yet be yond the efforts of mainstream LGBT organizations to frame LGBT people as victims of crime entitled to the full protection of the law, and to strike down sodomy laws, queers have largely been absent from national debates around policing and punishment.

This book turns a queer lens on the criminal legal system in the United States, exposing how the policing of sexual and gender "devi ance" is central to notions of crime, and serves both as a tool of race based law enforcement and as an independent basis for punishment. By bringing queer experiences—particularly those of LGBT people of color, immigrants, sex workers, youth, and low-income people—to the center, we gain a more complete understanding of the ways in which race, national origin, class, gender, ability, and immigration status drive constructions of crime, safety, and justice.

THE CRISIS OF MASS INCARCERATION

The rapid and far-reaching growth of relationships between govern ment and private interests is known as the prison industrial complex (PIC), a system that promotes prisons as "solutions" to social, po litical, and economic problems while reaping political and economic benefits from incarceration.[5] The costs of imprisoning such massive numbers of people have severely stressed government budgets, leading to cost-cutting measures and extreme overcrowding. This has pro duced violent and inhumane conditions, notably in supermax prisons where people are held in solitary confinement twenty-three hours a day, causing severe mental deterioration. The concept of "rehabili tation" has ceased to have any conceptual or practical meaning, as prison and postrelease educational and vocational programs have been eviscerated. Prisons have become, in Sasha Abramsky's memo rable phrase, "storehouses of the living dead."[6] Prisoners are released back into society with few or no skills and little access to good jobs, education, affordable housing, and decent health care. It's little won der that these policies and conditions produce, for many, a never ending cycle of incarceration.

The failed 1964 presidential campaign of Senator Barry Goldwa ter, an

extremist, right-wing Arizona Republican, helped propel the United States along this horrific path. Goldwater's success in pushing crime to the top of the national agenda was based in large part on a strategic conflation of racial equality and crime.[7] Both echoing and amplifying growing white anxiety and resentment about the bour geoning civil rights movement, the ideologies underlying "law and order" and "get tough on crime" measures were racially coded from the start.

Introduction

Mounting casualties in the Vietnam War, the return of disillu sioned Black GIs, ongoing police violence, and economic injustice sparked a series of uprisings in Black neighborhoods of many major cities, fueling racialized calls to clamp down on urban unrcs- By the late 1960s and early 1970s, increasingly militant liberation move ments such as the Black Panthers demanded fundamental social and economic change. They were met with deadly violence and govern mental efforts to disrupt and discredit them, including the infamous FBI Counterintelligence Program (COINTELPRO), and increasing suppression of dissent.[8]

This was the moment when Richard Nixon stepped into the presi dency, vowing to "get tough on crime." The suppression and crimi nalization of growing demands for social and economic justice were framed in racially coded ways, in the name of reinstituting "law and order." These messages would resonate not only with Republi cans, right-wing ideologues, and conservative Democrats, but also with many moderates and liberals. During his first presidential term, Nixon, with Congressional support, famously declared a "war on drugs." That same year, the State of New York enacted the Rock efeller Drug Laws, the first to prescribe harsh mandatory minimum prison sentences for the possession or sale of even small amounts of drugs.[9] Other states and the federal government followed suit, and law enforcement authorities in many communities establishes! "drop a dime" campaigns urging residents to anonymously report one an other for alleged drug offenses using telephone "tip" lines.

While the wording of drug laws is neutral with regard to race, the impact of their enforcement is not. Research confirms that while the majority of drug users and sellers in New York are white, 90 per cent of the people incarcerated under the Rockefeller Drug Laws are African American and Latina/o. The same is true across the country: while two-thirds of regular crack cocaine users in the United States are either white or Latina/o, 82

percent of those sentenced in federal court for a crack cocaine offense are African American.[10] Ultimately, the criminalization of the possession and sale of an expanding list of drugs, combined with new federal support for more aggressive enforcement, has been a primary driver of mass incarceration, and of the racial disparities inherent in it.[11] "Get tough on crime" policies and "mandatory minimum" sen-

tencing proliferated in other arenas as well, including (i) "truth-in sentencing" laws, which require people to serve 85 to 100 percent of their sentences, thereby eliminating possibilities for parole, a reduc tion in a sentence for "good behavior," or any other incentives for "rehabilitation," and (2) "three strikes" laws, requiring state courts to apply mandatory, minimum prison terms—including in some cases a life sentence—to people who are convicted of three felony offenses, even if the third offense is nonviolent and as minor as shoplifting.[12] By 1994, with support from both Republicans and Democrats, all fifty states and the federal government had adopted at least one manda tory minimum sentencing provision, fueling the growth of the prison population.[13]

The early 1990s heralded the advent of "zero tolerance," which brooked no consideration of extenuating circumstances surrounding criminal activity. It also brought widespread adoption of the "bro ken windows" theory of policing, which posited that intensified po licing, prosecution, and punishment of minor offenses would stave off more serious crimes. The explosion of "quality of life" offenses, criminalizing everyday activities such as eating, sleeping, standing, and congregating in public spaces, swept an even greater number of people into the machinery of the criminal legal system.[14] A central aspect of this trend—gang policing—in many instances frames the mere presence of people of color identified as "gang members" as "domestic subjects of terror" to be met with suppression, exclusion, and mass incarceration.[15] Though alleged immigration violations are civil, not criminal offenses, increased arrests, detentions, and depor tations of immigrants have also contributed significantly to the ex plosion in the population of people in some form of incarceration.[16] The "war on terror" declared after the tragic events of 9/11 has also led to even further and more draconian surveillance, discriminatory law enforcement, and criminalization of communities of color. The harmful consequences do not

cease with arrest or imprisonment; the collateral consequences of incarceration in many cases amount to life sentences in terms of loss of parental rights and access to housing, welfare, employment, and education. Moreover, by 2008, with state laws temporarily or permanently denying the right to vote to cur rent and former prisoners, more than five million people have been disenfranchised.[17]

"CRIME" AS A SOCIAL CONSTRUCTION

Laws typically define crime in ways that many people take to be neu tral, unambiguous, and reflective of widespread*' social consensus. While it may be comforting to believe that evenhanded enforcement of criminal laws will ultimately produce safety*and justice, such be liefs are not grounded in current or historical realities. The very defi nition of crime is socially constructed, the result of inherently political processes that reflect consensus only among those who control or wield significant influence. It often has more to do with preservation of existing social orders than with the safety of the larger populace. As critical race theorist Mari Matsuda argues, "Legal ideas are ma nipulable," and the "law serves to legitimate existing maldistributions of wealth and power."[18] For example, many people believe that theft, murder, violent assault, and rape are clear examples of criminal con duct. Yet state-sponsored violence is seldom named and prosecuted as criminal, though it may involve killing large numbers of people, torture, massive theft, and use of sexual violence, and its effects are no less harmful than when those acts are performed by individuals or small groups. The same is true of the actions of corporations that destroy not only the lives and futures of individuals but also entire communities, nations, and ecosystems.

In reality, crime is never evenhandedly policed and punished. In the United States, as Angela Y. Davis observes, "race has always played a central role in constructing presumptions of criminality."[19] Laws surrounding the abolition of slavery illuminate the ways in which pe
nal provisions purportedly enacted to provide for public safety were no more than thinly veiled efforts to designate particular groups of people as presumptively criminal. In the 1860s, immediately follow ing the abolition of slavery, former slaveholding states produced new sets of laws, known collectively as the Black Codes, which crimi nalized Black people for engaging in a host of ordinary actions that were legal for white people. Upon conviction, thousands of African descended people were imprisoned and

required to perform forced labor for white business owners.[211] Early seeds of the prison industrial complex were thus sown.

The prosecution of sexual abuse and rape was also "part of the ongoing production of racial ideologies" around crime." White men were assumed to have unlimited access to African women's bodies for

purposes of domination and reproduction. Accordingly, the rape of a Black woman was not a crime under most slave codes, or common law. Conversely, the rape of a white woman by a Black man could be punishable by castration or death, while commission of the same crime by a white man could lead to incarceration for ten to twenty years, a whipping, or both.[22]

As Salish sociologist Luana Ross argues, the construction of crime was also a tool of colonization and control of Native Ameri can peoples. For example, a mid-nineteenth-century California law provided that any Indian who loitered or "strolled about" could be arrested on the complaint of any white citizen. Within twenty-four hours the court was required to hire out those arrested to the high est bidder for a period of up to four months, providing free labor to private interests. In 1883, an extensive listing of offenses by the U.S. Commissioner of Indian Affairs criminalized the practices of tradi tional medicine people and Native dances that might stir "the warlike passions of the young members of the tribes."[23]

The process of criminalization extends far beyond processes of lawmaking, policing, court proceedings, and punishment. The influ ence of cultural and mass media—newspapers and magazines, books, broadcast and new media, movies, and theater—in constructing and interpreting crime is considerable. Sensational, alarming, and dehu manized cultural representations of presumptively criminalized in dividuals and groups often fuel "get tough on crime" crusades and establish the targets for them—a process known as cultural crimi nalization. Criminologist Jeff Ferrell argues that "in some cases . . . cultural criminalization stands as an end in itself, successfully dehumanizing or delegitimating those targeted, though no formal legal charges are brought against them. In other cases, cultural criminalization helps construct a perceptual context in which direct criminal charges can more easily follow. In either scenario, though, media dynamics drive and define the criminalization."[24]

Markers of race, class, gender, and relationship to the nation state[2'] have

long served to identify who is and who is not a presump tive "criminal." Normative sexualities and gender expressions, alone or in combination with markers of race and class, have also informed the manner in which different instances of similar conduct are inter preted. The responses of police, politicians, judges, religious leaders,

and the media are too often determined by already-existing cultural ideas about who is intrinsically "innocent" and who is blameworthy; who is "trouble" and who is respectable.

QUEERING DEBATES ABOUT CRIME AND PUNISHMENT /

Criminologist Beth E. Richie argues that in order to bring queers into the public debate about crime, policing, prosecution, and punishment in a meaningful way, it is critical to "take as a starting point the need to interrogate the ways that gender, sexuality, race, and class collide with harsh penal policy and aggressive law enforcement."[2]"

This requires discarding the facile notion that all queers experi ence the stigma of criminalization and the criminal legal system in the same ways. Queer engagement with law enforcement cannot be accurately described, much less analyzed, as a stand-alone, generic gay experience because race, class, and gender are crucial factors in determining how and which queers will bear the brunt of violence at the hands of the criminal legal system.

Race, class, immigration status, and gender also shape the priori ties and strategic choices of the mainstream movement. Since the late 1970s the growing constellation of national nonprofit LGBT advocacy organizations, as well as many of their state and local counterparts have been dominated by white, middle-class leadership and member ship, and have also relied heavily on the financial support of affluent, white gays. As a result, their agendas tend to favor assimilation into the racial and economic status quo over challenges to the systemic violence and oppressions it produces. The contemporary mainstream gay discourse only sporadically addresses systemic abuses within the criminal legal system; the most notable exceptions to this relative in difference have focused on the repeal of sodomy laws and the passage of hate crime laws. Messages are crafted to emphasize reassuring im ages of

LGBT normalcy and friendliness, not to embrace and highlight the struggles of segments of the LGBT population that continue to be criminalized. While quick to adopt the more mainstream "equality" r etonc of the civil rights movement, the LGBT movement has also embraced or at least not explicitly challenged, the themes of "law and order and getting tough on crime." These themes not only under mine the very meaning of racial justice and civil rights but also ensure

the continuing abandonment of entire segments of communities of color to the criminal legal system.

This book is an effort to bring queer experiences of the criminal legal system to the center of LGBT discourse and of broader con versations around crime and punishment. To build a historical and theoretical framework, we begin by examining the ways the policing of sex and gender has been a foundational part of American history before exploring the evolution of culturally constructed archetypes that inform the criminalization of queers. We then cover queer experi ences of policing; examine the use of homophobia and transphobia to influence judges and juries; enter our prisons to address how and why sexual abuse, harassment, and the denial of necessary medical care is rampant; and query the experiences of LGBT victims of crime. We offer practical suggestions for where to go from here, highlighting in
novative work that is already underway in a variety of communities to develop multi-issue organizing strategies and build and strengthen national progressive movements. While by no means exhaustive or all-inclusive, our intention is to bring together and amplify strands of discussion happening in multiple spaces, to counter the erasure of queer experiences, and to propose a framework for expanding con
versations about violence, crime, and safety that reflects the complex ity of LGBT people and communities.

Throughout, the term *transgender* is used as an umbrella term to describe people whose gender identity or expression is different from what society expects based on the gender assigned to them at birth. It "includes a wide range of people with different experiences—those who change from one gender to another, as well as those who some
times express different characteristics, or whose gender expression is not

clearly definable as masculine or feminine."[2-] The term *gender binary* refers to the complex interplay of cultural and institutional ideas and practices that divide people into two rigidly defined genders (male and female). *Queer* is used to refer to lesbian, gay, bisexual, and transgender (LGBT) people, people questioning their sexual and gender identities, and anyone who is presumed to be LGB or T.

The term *criminal legal system* is used as shorthand for the laby rinthine maze of public law enforcement agencies—including munici pal and county police; sheriffs and state troopers; federal officials of

the Immigration and Customs Enforcement (ICE), Drug Enforcement Administration (DEA), Customs and Border Protection (CBP), and Federal Bureau of Investigation (FBI); and prosecutors, judges, and prison officials. It also includes private security officers who possess limited policing authority. The conscious choice to'avoid the more common phrase "criminal justice system" reflects an acknowledgment of the reality that this system has not produced anything remotely approximating justice for the vast majority of people in the United States—particularly for people of color, poor people, immigrants, and queers—rsince its inception, but rather bears major responsibility for the continuing institutionalization of severe, persistent, and seem ingly intractable forms of violence and inequality.

· In describing the systemic violence and injustice of the criminal legal system, all individuals who work within it are not painted with one brush, nor is it assumed that everyone in the system intentionally sets out to do violence. Clearly, there are people in law enforcement who go about their duties with good intentions, and who display hu
manity toward people caught up in the system. Many who work in the criminal legal system—including people of color, working-class people, and queers—experience oppression from that system them selves, even as they navigate their responsibilities within it. At the same time, far too many people in law enforcement speak and behave in ways that are openly racist, homophobic, transphobic, misogynist, and anti-immigrant, and do not hesitate to misuse and abuse their power over others. The bad apple ' theory—the idea that a few rogue individuals are responsible for poisoning the barrel, and their identi
fication and removal is the simple cure—cannot account for the his torically

pervasive, consistent, and persistent systemic violence that characterizes the criminal legal system. The barrel itself is rotten— that is to say, foundational^ and systemically violent and unjust. Ul timately, regardless of our intentions, all of us are accountable for the roles we play in reinforcing or dismantling the violence endemic to policing and punishment systems. This book is an invitation-not only to LGBT people but to all people concerned about social and economic justice—to accept that responsibility.

1

SETTING THE HISTORICAL STAGE

Colonial Legacies

The great force of history comes from the fact that we carry it within us, are unconsciously controlled by it in many ways, and history is literally present *in all that we do.*

— JAMES BALDWIN[1]

In 1513, Spanish conquistador Vasco Nunez de Balboa, traveling across the area now known as Panama on his way to the Pacific Ocean, encountered the Indigenous people of Quaraca. Upon dis covering that some of the men "dressed as women" and engaged in sexual relations with each other, he ordered forty of them thrown to his hunting dogs, to be dismembered to their death. Memorialized in a contemporaneous painting, this incident is reported to be the first recorded Spanish punishment of sodomy on the American continent.- It certainly wasn't the last.

Policing and punishment of sexual and gender "deviance' have ex isted for centuries in what is now known as the United States.' From the first point of contact with European colonizers—long before modern lesbian, gay, bisexual, transgender, or queer identities were formed and vilified—Indigenous peoples, enslaved Africans, and im migrants, particularly immigrants of color, were systematically po liced and punished

based on actual or projected "deviant" sexualities and gender expressions, as an integral part of colonization, genocide, and enslavement.

Although an in-depth exploration of this history is beyond the scope of this book, a brief examination is helpful to understanding the role played by policing of sex and gender in maintaining systems

of domination. Violence such as that visited by Balboa on the people of Quaraca was neither a reflection of Indigenous traditions nor a mere byproduct of old-time European moralities brought across the Atlantic. It was foundational to the birth of the United States, and its echoes can be heard throughout the current criminal legal system.

SODOMY AND CONQUEST

The construction of gender hierarchies and their violent, sexualized enforcement was central to the colonization of this continent. As Na tive Studies scholar Andrea Smith states in *Conquest: Sexual Vio lence and American Indian Genocide,* the colonialism itself, along with the relationships it requires, is inherently raced, gendered, and sexualized.[4]

Instrumental to the rape of the North American continent and the peoples indigenous to it was the notion that Indigenous peoples were polluted with sexual sin.'" In fact, religious authorities—essen tial partners in the colonization of the Americas and the genocide of Indigenous peoples—promoted the "queering" of Native Americans throughout the sixteenth and seventeenth centuries. Some sixteenth century Christian historians went so far as to depict mythologies of peoples indigenous to the area now known as Peru and Ecuador—in which the race of giants that preceded them and, among other things, engaged in sexual relations among males, died off—as reminiscern of the biblical tale of Sodom and Gomorrah. Several centuries later a historian described the destruction of the peoples' mythical ancestors "as at Sodom and other places."[6] This "queering" of Native peoples was not limited to the allegorical; deviant sexualit.es were projected wholesale onto Indigenous peoples.

Less than a century after Columbus first landed on American shores, Bernard,no de Minaya, a Dominican cleric, condemned Na tive Americans by stating, "They are idolatrous, libidinous, and commit sodomy."[7]

Colonial authorities joined the cry of their eccle siastical counterparts. In the mid-eighteenth century a French colo nizer described the members of one Indigenous nation as "morally quite perverted, and . . . addicted to sodomy." Almost one hundred years later, another, English this time, wrote, "Sodomy is a crime not uncommonly committed [among Indigenous peoples] . . . Among their vices may be enumerated sodomy, onanism [masturbation], &

various other unclean and disgusting practices."[8] Similar notions of intrinsic sexual deviance were advanced by Spanish and Portuguese colonizers with respect to Indigenous peoples of Central and South America and the Caribbean. In 1519, Cortes described his impression of the Aztecs: "We have learned and have been informed, that they are doubtless all sodomites and engage in that abominable sin."[9] A missionary claimed, in response to a 1525 revolt among Indigenous youth he sought to convert, that Caribs were "sodomites more than any other race."[10]

Historian Byrne Fone cautions that "it can hardly be said that colonization was primarily a battle against sodomy," but notes that "sodomy . . . very often became a useful pretext for demonizing— and eliminating—those whose real crime was to possess what Euro peans desired."[11] Indeed, antisodomitical zeal frequently served as justification for sexualized violence used to seize Indigenous lands and eradicate or expel its inhabitants.

The imposition of the gender binary was also essential to the for mation of the U.S. nation state on Indigenous land. As Smith explains, "In order to colonize a people whose society was not hierarchical, colonizers must first naturalize hierarchy through instituting patri archy." Although Indigenous societies are widely reported to have allowed for a range of gender identities and expressions, colonization required the violent suppression of gender fluidity in order to facilitate the establishment of hierarchal relations between two rigidly defined genders, and, by extension, between colonizer and colonized.[12]

Accounts of missionaries and colonists alike are replete with alter nately voyeuristic and derogatory references to Indigenous "men" who take on the appearance, mannerisms, duties, and roles of "women," and who are simultaneously described or assumed to be engaging in sexual conduct with

members of the "same" sex. Such sexual rela tionships were generally described as degrading, involving "servile" positions and being "used" by men, although in some instances, they are characterized as special and valued friendships. Tales of women who dressed and acted as if they were men (according to Western ideas) while Concealing their "true" nature (assumed to be female), often accompanied by derisive descriptions of sexual relations with women, were also recorded, albeit far less frequently.[13]

Policing and punishment of perceived sexual and gender deviance

among Indigenous peoples was often explicit and harsh. In one in stance, Chief Justice Juan de Olmos "burned great numbers of these perverse Indians" in the early sixteenth century in what is now known as Ecuador.[14] In 1530, conquistador Nuno de Guzmaji is reported to have described the last person captured in a battle against Indigenous resisters as a person who had "fought most couragqbusly, was a man in the habit of a woman, which confessed that from a child he had got

ten his living by that filthiness, which I caused him to be burned."[15] Much of the early policing of nonconforming genders and sexuali ties was undertaken by Christian clergy and other religious authori ties—for example, questions concerning whether a penitent had taken part in deviate sexual activity were featured in confessionals used by missionaries to Native peoples as early as 1565. In some cases collabo ration between the church and state was more explicit. Gay historian Jonathan Katz cites one missionary's eighteenth-century account of the arrival of two Native people at a mission in San Antonio, Califor nia, one of whom was described as "dressed like a woman." The head of the mission went to investigate, accompanied by a soldier and a sentry. When this religious and military coterie caught the Natives "in the act of committing the nefarious sin," they were "duly punished." Churches continued to play an active role well into the nineteenth and early part of the twentieth centuries; Indian residential schools, the majority of which were run by Christian churches on behalf of the state, also served as locations of punishment of alleged gender nonconformity.[16] An article from the *New York Medical Journal* re counts how "one little fellow while in the Agency Boarding School was found frequently surreptitiously wearing female attire. He was punished."[17]

In other cases such policing was chrectly at the hands of mili tary and

government agents. At the turn of the twentieth century, "Indian agents" "endeavored to compel these people, under threai of punishment, to wear men's clothing," although their efforts met with resistance on the part of the individuals in question and their communities.'* One particular Indian agent assigned to the Apsaa Natlon (Crow Tribe> is reported to have incarcerated gender nonconforming Indigenous men and forced them to cut their hair and wear "men's" clothing.[19]

Punishment of gender nonconformity and sexual deviance was also accomplished by more indirect means—including laws specifi cally prohibiting "immorality" among Native peoples enforced in the Court of Indian Offenses, established in 1883. Additionally, repres sion of Indigenous spiritual and cultural practices, central to the sub jugation of Native peoples, was premised at least in part on the notion that "these dances and feasts are simply subterfuges to cover degrad ing acts and to disguise immoral purposes," thereby justifying agents of the Bureau of Indian Affairs' best efforts at suppression.[20]

At times modern lesbian and gay scholars appear to have adopted the colonial notion that peoples Indigenous to the Americas are some how inherently, culturally, or traditionally "queer," and claimed Na tive Americans to be members of "homosexual" cultures destroyed by wrong-minded colonists.[21] But traditional Indigenous cultures cannot be understood by placing them into existing templates of homosexu ality, transgender identity, or inflexible definitions of gender. As queer historian Martin Duberman cautions, "Glib analogies ('Oh, so the Hopis had drag queens too!') cannot be responsibly drawn; nor can Hopi 'cross gender' behavior be understood by simply linking and equating it to our own cultural reference points and definitions."[22] The powerful temptation to subsume Indigenous sexual and gender expressions within modern LGBT identities is no doubt driven at least in part by a desire to be visible throughout human history, to claim a connection with Native peoples, and to frame homosexuality and gender nonconformity as naturally present in peoples uninfected by homophobia and transphobia. However, the interpretation of Indig enous cultures through a white, European, gay, or even queer lens, based on sodomy-soaked European writing and observation

driven by larger agendas, is itself a colonizing act that must be challenged. Such recolonization of Indigenous histories in service of a larger mod ern gay agenda is not our purpose here. Rather, we seek to illuminate the ways in which the policing of gender and sexuality are important tools for enforcement of other systems of domination.

More comprehensive inquiries into colonial policing of Indigenous sex and gender systems, centering the knowledge and perspectives of Indigenous peoples themselves, exist and remain to be written. Nevertheless, it is clear from the glimpse offered here that the gen-

dered and sexualized policing and punishment of Native peoples by European colonizers served as a foundation for laws, cultural norms, and practices that have criminalized people of color deemed sexu ally and gender deviant for the next three centuries in the United States.

HYPERSEXUALITY AMONG AFRICANS

Deviant sexualities were similarly ascribed to Africans as a necessary tool of the colonization of Africa, the transatlantic slave trade, and chattel slavery.[2.] As noted by legal scholar Dorothy Roberts, "Even before the African slave trade began, Europeans explained the need to control Africans by mythologizing the voracious 'sexual appetites' of Blacks."[24]

To the extent sub-Saharan Africans' sexualities were slotted into a homosexual/heterosexual framework, it appears they were often characterized as excessive and deranged heterosexualities. Across the Atlantic the quintessential myth of the Black male rapist preying on "pure" white women was used to justify countless acts of torture and murder by lynching—which, in reality, served to punish economically successful or nonsubmissive free Blacks. No less visceral, pervasive, and instrumental to the institution of slavery is the "jezebel" arche

type, which frames African-descended women as sexually aggressive, insatiable, and even predatory toward white men, who were charac terized as powerless to resist their advances. This controlling image of Black women was developed to cover the disfavored practice of miscegenation by slavers who sought to increase their wealth by forc ing enslaved African women to reproduce through systemic rape.[25] Sociologist Patricia Hill Collins points out that over time the jezebel image has framed Black women as

> the freak on the border demarking heterosexuality from homosexuality. … On this border, the hoochie participates in a cluster of "deviant female sexualities," some associated with the materialistic ambitions where she sells sex for money, others associated with so-called deviant sexual practices such as sleeping with other women, and still others attached to "freaky" sexual practices such as engaging in oral and anal sex.[26]

She goes on to suggest that the projection of oversexualization onto Black women also contributes to "masculinizing" them,[2] thereby removing them from the protection of the law.

Africans, enslaved and free, were by no means immune from sug gestions of homosexuality in colonial times. North African cultures in particular were characterized by European Christians as permis sive of sodomy.[28] Moreover, scientific racism, which projected physi cal differences as representations of racialized sexualities, played a significant role in justifying domination of sub-Saharan Africa by Europeans.[29] As Collins remarks in a discussion of Sarah Baartje, a Xhosa woman kidnapped and displayed throughout Europe as the "Venus Hottentot," "European audiences thought that Africans had deviant sexual practices and searched for physiological differences, such as enlarged penises and malformed female genitalia, as indica tions of deviant sexuality."[30]

The perception of allegedly abnormally enlarged genitalia, partic ularly overdeveloped clitorises, of African women was used to suggest that they were capable of and engaged in sexual activities with other women. A standard mid-nineteenth-century handbook on gynecology asserted that such anomalies were inherent, and led to the "excesses" known as "lesbian love."[31] Siobhan Somerville reports in *Queering the Color Line* that "as late as 1921, medical journals contained ar ticles declaring that 'a physical examination of [female homosexuals] will in practically every instance disclose an abnormally prominent clitoris,'" and that "'this is particularly so in colored women.'"[32] In a Scottish case from the early nineteenth century explored at length by historian Lillian Faderman, one jurist refused to credit allegations that two teachers, Marianne Woods and Jane Pirie, engaged in

sex with one another in part because he did not believe lesbians existed among white, middle-class, educated Christian women and because they did not have exaggerated physical features (enlarged clitorises) assumed to be solely possessed by African women.[33]

Where Blacks who are, or who are perceived to be, queer, are con cerned, perceptions of African people as primitively and deviantly hypersexual that developed during the colonial period amplify images of lesbians, gay men, and transgender people as psychotically sexu ally insatiable and sexually predatory. The continued vitality of these

historical narratives are evidenced by the framing of Black women as sexual predators of white women in prison settings, and the pervasive profiling of women of color, particularly transgender women of color, as sex workers.

IMMIGRANT SEXUALITIES AS THREATS TO THE NATION

The sexualities of successive waves of immigrants to the newly formed United States, beginning with Spanish, British, French, and Dutch col onizers, followed by northern and southern European immigrants in the mid-nineteenth and early twentieth centuries, and more recently migrants from Latin America and Asia, were similarly pathologized in the service of building a raced national identity, excluding undesir ables, and maintaining classed power relations. The notion of homo sexuality as a foreign threat justifying both exclusion and repression has a long history, dating from the time of the Crusades, "Moorish" invasions, and the Ottoman Empire.[34] It has been reflected through out U.S. history in immigration laws that, until 1990, excluded "ho mosexuals," and, until 2009, HIV-positive people, and in aggressive policing of immigrant sexualities.

Asian men who came to the United States in the nineteenth cen tury were particularly framed as "importers of 'unnatural' sexual practices and pernicious morality" as justification for both their sur veillance within the United States and their exclusion from it. Asian women were similarly characterized as inherently sexually deviant, albeit in a slightly different fashion. For instance, Chinese women were so widely perceived as "prostitutes," and barred from entry on that basis, that Congress saw no reason to make specific reference to them in the Chinese exclusion laws. Asian populations in the United States were similarly subject to presumptions

of involvement in pros titution and targeted policing of sex work.[33] Arab and Middle East ern immigrants who began to arrive in the United States in greater numbers in the early twentieth century were also, as Joseph Massad points out in *Desiring Arabs,* historically and culturally depicted as sexually deviant."[36]

Even British and French immigrants were not immune to exclusion- •st allegations of homosexual tendencies, although the consequences were not as serious as they were for immigrants of color. Katz de scribes an early sort of "homosexual panic" in New York City in the

nineteenth century during which newspapers promoting "sporting culture"—another form of "deviant" sexuality involving heterosexual promiscuity and patronizing houses of prostitution—described "sod omites" as foreign threats. One such publication claimed that among sodomites "we find no Americans, as yet—they are all Englishmen or French," and maintained that homosexuality was neither native nor natural to America, emphatically stating, "These horrible offences [are] foreign to our shores—to our nature they certainly are—yet they are growing a pace in New York."[3]

COLONIAL POLICING OF SODOMY

Sodomy laws, widely perceived as the cornerstone of criminalization of homosexuality, arose in the colonies against this backdrop of sex ual and gender deviance unevenly projected onto certain populations. The declaration of such laws as unconstitutional in 2003 by the U.S. Supreme Court is widely heralded as signaling the end of queer crim inality in the United States. But colonial sodomy laws represented neither the beginning nor the end of policing sexual deviance. Such laws were in fact selectively enforced, often in a manner designed to reinforce hierarchies based on race, gender, and class. They were frequently accompanied by formal and informal policing, at times completely outside the legal framework of buggery and sodomy law enforcement. Nevertheless, given its central role in the LGBT imagi nation of queer relationships to the criminal legal system, the history of sodomy laws bears examination.

Complex historical realities are often minimized or lost alto gether in a conventional, generic "gay" story about sodomy laws and their impacts.

The story, loosely told by some gay activists, follows a relatively straightforward trajectory that goes something like this: *Sodomy laws, promulgated by puritanical, homophobic religious leaders, once served as the primary means of oppressing and stigma tizing gay people. Just as people were discriminated against on the basis of race or gender, LGBT people were criminalized just for being persons who loved people of the same sex, or cross-dressing. The re peal of sodomy laws is essential to ensure that LGBT people will no longer be criminalized; while it does not completely erase the stigma of homosexuality, it diminishes it considerably.*

Many scholars seek to tell more nuanced and complex tales of sex-

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ualities and law in the colonial period, emphasizing the role systems of sexual regulation played in reinforcing other forms of social regu lation based on race, class, and gender. Others explore the broader cultural meaning of the laws and the symbolic representatior of "the sodomite."[38] Yet the conventional story still holds a firm place in the popular imagination of many, both queer and straight. Perhaps its appeal lies in its seductive simplicity, the ease with which it allows us to blame antiquated laws for homophobic oppression, thereby reliev
ing individuals, communities, and institutions of any responsibility, not only for their own actions and prejudices, but also for systemic criminal legal persecution that continues beyond the passage or repeal of any single law.

Still, the horrific impacts of sodomy laws on queer lives should not be underestimated. Over the centuries these laws have been used not only to arrest and punish people in criminal legal proceedings, but also as a central justification for demonizing LGBT people in many secular and religious arenas. Enforced or not, sodomy laws have accu
mulated a cultural force that extends far beyond their now technically defunct legal reach.

It is equally true that much of the policing of sexual and gender nonconformity did not take place through the prism of

sodomy laws. Race, gender nonconformity, class, culture, and relationship to the nation-state are permitted only occasional guest appearances in the conventional story—and then only in supporting roles. Those whose lives don't fit into the template of the "white, gay male with a fair degree of economic privilege persecuted under sodomy laws" are slotted into a static framework as historically diverse add-ons whose purpose is to give anecdotal texture and representational vari
ety without fundamentally altering the story itself.
A narrow telling of the story of sodomy laws also creates mutu ally exclus.ve categories of "people who are discriminated against on the basis of race" and "people who suffer oppression as queers " It then proceeds to set up a false dichotomy between the two in such a way as to erase the experiences of LGBT people of color persecuted through sodomy laws, as well as those of people punished for gender and sexual deviance under other laws. It inappropriately analogizes two historically distinct experiences: one is rooted in the designation

of entire peoples as property or subjects of elimination or exclusion, while the other is rooted in the selective policing of individuals and individual acts. In so doing it obscures how the latter is used in service of the former[39] and conveys the message that a change here and there in law can produce justice. Simply put, the conventional story of sod omy laws in the United States is reductive, misleading, and, in certain respects, a colonizing story in its own right.

THE ADVENT OF SODOMY LAWS

Sodomy laws did not spring from whole cloth on American shores. Homosexual and nonprocreative sexual acts have been punishable by death since at least the time of the early Israelites, in 400 BCE—al though who suffered this fate was largely determined by economic, gendered, racial, and political factors. Jewish law, recorded in the Hebrew Bible, famously states in Leviticus 20:13, "If a man also lie with man, as he lieth with a woman,

both of them have committed an abomination: they shall surely be put to death; their blood *shall* be upon them."[40] According to Plato, thought by many to have had sexual relations with men himself, "The crime of male with male, or female with female, is an outrage on nature and a capital surrender to lust of pleasure."[41] In ancient Rome, a married woman who engaged in any sexual activity with another woman, even mutual caressing, could be tried for adultery, and if found guilty, executed by her hus band. Sixth-century Roman law, which forms the basis of Roman Catholic and Protestant law and civil law, provided that adulterers or those guilty of "giving themselves up to 'works of lewdness with their own sex'" were to be sentenced to death.[42] Seventh-century Visigoth law imposed a sentence of castration on men who "kept" "male concubines," and Charlemagne warned that he would punish all "sodomites."[43]

In *The Invention of Sodomy in Christian Theology,* Mark Jordan credits eleventh-century theologian Peter Damian with coining the abstract concept of sodomy. Jordan traces its evolution from the mis reading of the story of Sodom and Gomorrah, now generally under stood to be a cautionary tale on hospitality to strangers, as well as a demonstration of the power of the deity in the Hebrew Bible to wreak destruction as punishment for generalized excesses of the flesh. While

Damian's polemic against "the Sodomitic vice" was largely a call for the removal from office of clergy found to have engaged in it, he as serted that it was a crime deserving of death among common people as well, thereby building a foundation for subsequent cultural and legal constructions of "sodomy."[44]

The century preceding Columbus' fateful voyage saw reinforce ment and consolidation of laws against homosexual acts. A 1348 Spanish law imposed a sentence of castration followed by stoning of individuals found to have voluntarily engaged in sodomy. The Por tuguese king issued a 1446 edict that sodomites were to be burned, consistent with the punishment meted out on Sodom and Gomorrah. Such punishments were most often carried out against "outsiders" to Iberian society: "Moors," Jews, and Catalans. In 1497 the Spanish monarchy reaffirmed the death penalty for sodomy, changing only the method, from stoning to hanging, and eliminating castration as a precursor to death by torture.[45] The first civil English sodomy law was

enacted in 1533, prohibiting "the detestable and abominable Vice of Buggery committed with mankind or beast," and imposing punishment by death and forfeiture of all property belonging to the executed person.[46]

Several scholars have dispelled the myth that lesbianism was not punished by law to the same extent as male homosexuality.[4-] In Spain and Italy the degree of punishment depended on the "severity" of the crime. Use of a "material instrument" was cause for death; if no instrument was used, a sentence less than death, such as beating or imprisonment, was imposed. Mere overtures led only to public de nouncement.[48] According to Faderman, several women—generally of lower classes and gender nonconforming—were prosecuted and punished in Britain for "possession or use of such an instrument."[49] Lesbian scholar Ruthann Robson describes one instance in France in which "a transvestite [was] burned for 'counterfeiting the office of husband.'" She also cites research that uncovered 119 cases of women who "dressed as men" in the Netherlands between 1550 and 1839 in which sentences of death, lifetime exile, whipping, and, where sexual relations with a woman were involved, enforced separation were imposed. The increased severity of punishment associated with the assumption of male social and sexual roles is indicative of the role policing of homosexuality played in upholding patriarchal gender re-

lations. As Bernadette Brooten concludes, "Gender role transgres sion emerges as the single most central reason" for the regulation of relationships among women.[51] These laws and practices were brought by English, French, Dutch, and Spanish colonial governments to the Americas, forming the basis of sodomy laws in the United States. Throughout the seventeenth and eighteenth centuries, the terms *buggery* and *sodomy* were sometimes, but not always, used inter changeably. Both of these legal constructions were notoriously im precise, but both terms proscribed nonprocreative sexual acts and included "carnal copulation" between males, otherwise known as anal penetration. Copulation with an animal (bestiality) was usu ally prosecuted as buggery.[52] Colonial sodomy laws typically did not specifically address sexual activity involving two women, with one exception: the 1656 New Haven sodomy law prohibited female sex that "is against nature," citing Romans 1:26 as its basis.-[15] Each of the colonies had its own criminal legal

code, but sodomy and buggery were capital crimes in all of them, on par with murder, treason, and adultery.

However, it cannot be presumed that a monolithic population of "gay" people in the colonial era shared an equal risk of being ac cused of sodomy, convicted, and executed. Historians generally agree that the policing and enforcement of buggery and sodomy laws were sporadic and highly selective. There were fewer than ten documented executions for buggery/sodomy—including bestiality—in the seven teenth century, still fewer in the hundred years that followed.-[14] While many more people were known to have relationships or sexual en counters with people of the same sex and to transgress gender norms, not all were punished equally.

RACE. CLASS. AND SODOMY POLICING

The best candidates for trial and execution were men charged with bestiality, along with the animals with which they were alleged to have sex. Sodomy prosecutions beyond those involving alleged besti ality do not appear to have involved consensual sexual relationships or encounters. Writing of Massachusetts in the eighteenth century, historian Thomas A. Foster concludes that there were no criminal prosecutions of consensual sexual encounters or relationships be tween men, only of incidents of forcible sodomy. Where forcible

sodomy was alleged, those targeted for prosecution appear to have engaged in behavior that upset "orderly hierarchies of race, age, and status among men."[55] While both Black and white men accused of sodomy faced possible execution, swift imposition of a death sentence appears to have been more likely for Black men. In 1646, Jan Creoli, a man described only as "a negro," was executed—"choked to death and then burnt to ashes"—for what was said to be his second sodomy offense in the Dutch colony of New Netherland. According to Katz, Manuel Congo, the ten-year-old Black boy who was allegedly sodom

ized by Creoli, was also sentenced to death by being tied to a stake, flogged, and burned.[56]

Decades later, in 1712, a Black man named Mingo (also known as Cocho) was convicted of the charge of forcible buggery and, in accordance with Massachusetts law, was sentenced to be hanged. Colonial records describe Mingo as a servant in the household of Captain Jonathan Dowse, a

Charlestown mariner. His alleged crime was forcible buggery of the white captain's young teenage daughter, or "Lying with & Entering her Body not after the Natural [use?] of a Woman, but in a detestable & abominable Way of Sodomy a Sin Among Christians not to be Named."[57] In addition to highlighting the potential application of sodomy statutes to heterosexual conduct, Mingo's case raises the specter of America's long history of harshly penalizing sexual relations between white women and men of African descent. According to Katz, such interracial sexual relations were considered "a practice worse, by far, than sodomy."[58]

The Massachusetts Superior Court heard only three sodomy cases, including Mingo's, during the entire eighteenth century, illustrating how infrequently sodomy prosecutions were brought, even in colo nial times. Sweeping generalizations cannot be made based on such a small number of cases, but their outcomes nevertheless suggest the possibility of a broader pattern. Foster points out that "of the three men accused of sodomy in the Superior Court-a black servant, a white servant, and a [white] gentleman-only the black servant was executed." The other two cases, both alleging some form of forcible
sexual intercourse between men, were dropped.

White men who were influential enjoyed a more protected status even when they were widely perceived to engage in coercive sexual practices with unwilling subordinates such as indentured servants

and younger men of lesser social and economic standing. In one case a prominent seventeenth-century colonial gentleman, Nicholas Sen sion of Windsor, Connecticut, was accorded a second and even third chance to reform his behavior before facing formal charges in court thirty years after town elders first addressed his sodomitical behavior. In the late 1640s Sension, a wealthy, white, married member of his community, was first investigated by town elders who had received complaints about his aggressive and coercive sexual approaches to a number of younger men. Sension received an informal reprimand. A similar inquiry followed in the late 1660s when a sodomy complaint was made by one of Sension's indentured servants. No formal criminal action was taken, though Sension was ordered to reduce the servant's period of indenture by a year and pay the young man modest compen sation for abuse. A decade later, in 1677, Sension

appeared on charges of sodomy in General Court. According to colonial historian Richard Godbeer, "The frank and detailed testimony presented to the court by neighbors and acquaintances left no room for doubt that Sension had made sexual advances to many younger men—often indentured servants in his and other households—in his community over a period of three decades. These advances, deponents claimed, had often taken the form of attempted assault" and, on some occasions, involved of fers by Sension to pay for sex. However, "Legal prosecution became possible only when the social disruption brought about by Sension's advances seemed to outweigh his worth as a citizen." Accordingly, "The citizens of Windsor allowed Nicholas Sension to avoid prosecu tion for over thirty years and to live as a respected member of his community, despite his 'sodomitical actings.'" Sension was convicted of the noncapital offense of attempted sodomy and penalized for it.[60]

Similarly, in 1726, charges of same-sex activity leveled against New London, Connecticut, minister Steven Gorton were dropped for lack of evidence. Thirty years later, the General Meeting of Bap tist Churches punished Gorton for his long history of "offensive and unchaste behaviour, frequently repeated for a long space of time," by barring him from communion for less than a year. The evidence suggests that however stringent the laws were, respected community members were not eager to send white neighbors—particularly those who were wealthy—to face formal charges, much less to be sentenced to death. Robert F. Oaks states, "Despite the harsh penalties for sod-

omy and buggery, Puritan leaders often refused to apply them, espe cially for homosexual activity." In a number of recorded instances, some men were convicted of "lude behavior and uncleane carriage" or other, lesser charges carrying a sentence of corporal punishment and, in some instances, banishment, but not death.[61]

This does not mean that white men were wholly exempt from capi tal convictions. In 1624, Richard Cornish, a ship's captain, was found guilty of buggery involving a sexual attack on his (white) indentured servant and steward in Virginia Colony and sentenced to death. The execution did not, however, produce justice for the servant, who was ordered by the court to secure another master "who would then help compensate the government for

the costs of prosecuting and execut ing Cornish. In effect. . . [the servant's] labor helped defray the cost of his master's execution."[62]

Two other sodomy-related executions of white men were recorded in New England in the seventeenth century, but according to God beer, in neither case was the route to conviction straightforward" nor exclusively driven by clear-cut cases of sodomy.[63] The story of colonial enforcement of sodomy and buggery laws tracks the narra tive of criminal injustice in the United States—of profound racial and class disparities in policing and punishment from charging to pros ecution to conviction to sentencing. It is not that "just as other people were persecuted based on race, queers were punished for being gay." It is that sodomy statutes were used, like other criminal statutes, to enforce existing race, class, and gender power structures.

WHERE ARE THE WOMEN?

Historian William Eskridge, Jr., asserts that women did not become responsible actors in the theater of perverted sexuality" until the late nineteenth century, when oral sex was added to sodomy laws and police also began to arrest women, primarily for fellatio performed on men.[64] His attempt at inserting women into the conventional nar rative of sodomy law enforcement only underscores the inadequacy of r e frame itself. Women have always packed the stage of the theater of the sexually perverse, doing one criminalized star turn after an other. But the policing of female sexual and gender nonconformity often proceeds along different paths, escaping mainstream gay notice. The definition of sodomy in the colonies was male-centric from the

beginning; only one exception exists. However, no women were pros ecuted under the New Haven law, or in any of the other colonies, on direct charges of sodomitical "actings" with other women—although trials and punishment of "witches" often raised allegations of deviant sexuality, including copulation with other women in orgiastic gather ings of witches' covens.[65] There are two recorded instances in which white women appear to have been charged with colonial offenses re lating to same-sex intimacy. In 164Z, a servant, Elizabeth Johnson, was sentenced in Massachusetts Bay Colony to be whipped and fined for "unseemly practices betwixt her and another maid," as well as for other acts of insubordination, including being

rude and stubborn in the presence of her mistress, covering her ears to avoid hearing the "Word of God," and killing and burying a pig. Seven years later, two women from Yarmouth, Plymouth Colony, were charged with "leude behavior with each other upon a bed."[66]

Obviously, female sexual and gender nonconformity were never centered in sodomy law; no amount of trying to shoehorn women into a generic gay story will produce an accurate picture. The harsh polic ing and punishment of Native and enslaved women did not require formal legal proceedings; that was simply colonial business as usual.[67] Poor white women, free women of color, and immigrant women of low status and few financial means who transgressed sexual and gen der norms were usually swept into the multipurpose, criminal legal archipelagos of fornication, prostitution, vagrancy, disorderly con duct, and "lewd, lascivious, and unseemly" behavior. Penalties would involve public shaming, combined with corporal punishments com mon to the day, such as whipping and branding, as well as fines.

While well-to-do white women might be charged with fornica tion or adultery, few actually appeared in court. It is likely that their sexual policing and punishment was more often privatized, that they were dealt with by their own religious communities or bundled off for indeterminate periods of forced confinement in homes or other places that were situated safely away from public view.[68]

THE BEGINNING OF "BEFOBM"

Eventually—and over a long period of time—the death penalty for sodomy was abolished. Pennsylvania was the first colony to do so, at the beginning of the eighteenth century. Quaker lawmakers replaced

capital punishment for those convicted of sodomy or bestiality with life imprisonment, but only for whites. A separate law ensured that Black people convicted of buggery, burglary, murder, or the rape of a white woman could still be put to death, though the law was silent on the rape of Black women. This humanitarian "reform" marked an early explicit attribution of inferior legal status to Blacks under colonial sodomy laws.[69] As the effort to reduce the use of capital punishment for sodomy gained momentum, Thomas Jefferson unsuc

cessfully recommended that Virginia require male rapists and "sod omists" to be castrated, and that women convicted of sodomy have a hole at least a half inch in diameter drilled through the cartilage of their noses."[0]

The temptation is to imagine that sodomy laws and the troubling history that attends them are now mere historical artifacts whose cultural shadows will eventually disappear. It simplifies things to de scribe those laws as the result of religious rigidity and repression, ignorance, and psychological prejudice, and to cast the contemporary Religious Right in the role of dour Puritans, as the primary produc ers of queer oppression. Yet complexity muddies the reductive waters. Even in the colonial period, not everyone possessed the same frenzied, antisodomitic zeal that characterized some notable religious and civic leaders. And even progressive religious groups, such as the Quakers, were complicit in strengthening racism and other institutional forms of violence in their own policing of sodomy.

From the colonial period on, sodomy laws would continue to evolve, and their enforcement would begin to escalate by the late nineteenth century. The very existence of those laws would be used by the late twentieth century to help fuel initiatives seeking to limit and, where possible, roll back gains made by gay and lesbian people. That story, sometimes taken to be the foundational story of LGBT oppres
sion, is told elsewhere.

This discussion does not attempt an original interpretation of the evolution of sodomy law and its policing. Rather, the focus is broadened to include the policing and punishment of queer people and lives that go forward under *many* legal premises, often outside of any recognizable legal framework. It is commonly believed that only certain, proscribed sexual *acts* were punished in the seventeenth and eighteenth centuries; that sexual *identities* as we now know them did

not take hold until the early twentieth century.[71] As Somerville puts it, "Michel Foucault and other historians of sexuality have argued, although sexual acts between two people of the same sex had been punishable during earlier periods through legal and religious sanc
tions, these sexual practices did not necessarily define individuals as homosexual per se. Only in the late nineteenth century did a new understanding of sexuality emerge, in which sexual acts and desires became

constitutive of identity." Foucault himself characterizes the shift as follows: "The sodomite had been a temporary aberration, the homosexual was now a species." [2]

By the latter part of the nineteenth century, so-called scientific efforts to classify and control normal and abnormal sexualities were well underway. Despite critiques of Foucault's analytical limitations, his description of the shift in Western classification of sexuality holds. ' As queer identities substituted for individual perverse acts, the process of criminalizing sexual and gender nonconformity was fa
cilitated through the construction of ever-shifting and evolving arche typal narratives. Rooted in historical representations of Indigenous peoples, people of color, and poor people as intrinsically deviant, fueled and deployed by mass media and cultural institutions, these narratives now permeate virtually every aspect of the criminal legal system.

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GLEEFUL GAY KILLERS, LETHAL LESBIANS, AND DECEPTIVE GENDER BENDERS

Queer Criminal Archetypes

Our different notions of monstrosity affect both our notions of punishment and of what should be policed.

- RICHARD TITHECOTT, *Of Men and Monsters*[1]

In 1924, Nathan "Babe" Leopold and Richard "Dickie" Loeb, Uni versity of Chicago students in their late teens from wealthy, white Chicago families—young men who sometimes had sex with one an other set out to commit the perfect crime.

They convinced fourteen-year-old Bobby Franks to get in their car before beating him on the head with a chisel. When that failed to kill him, they stuffed a rag down his throat and taped his mouth shut, ensuring death by suffocation. They then wedged his naked body into a culvert, splashing his genitals, mouth, and abdomen with hydro
chloric acid. Before the boy's parents knew he was dead, Leopold and oeb contacted them with a demand for a $10,000 ransom, but the Transaction was never completed.

The next day, Franks' body was found. A pair of eyeglasses ac cidentally dropped on the ground nearby eventually led the police to Leopold—and then to Loeb. The young men confessed, and their families quickly secured counsel to argue their case in court, hop mg, at least, to spare their lives,* The trial of Leopold and Loeb pit Clarence Darrow, a relentless opponent of the death penalty, against prosecutor Robert Crowe. Crowe, an ambitious man who hoped to

Its H yor' rf" h3d 3 rePUtatIon for Smdi"S 'o the g Hows. He intended to crush the anticipated insanity defense. But,

unexpectedly, Darrow changed his clients' pleas to guilty. The "trial" was now transformed into a hearing that would consider evidence relevant to sentencing, and Judge John R. Caverly would soon decide the two men's fates.

Even before arrests were made, police and journalists were already suggesting that, because the boy's body was found nude, with acid marks at his mouth and genitals, the murder was likely the product of (homo)sexually perverted desire. Early in the investigation, a teacher at Franks' school, "an effeminate man, whom the police suspected of homosexual tendencies," was considered the prime suspect. The legal proceedings against Leopold and Loeb unfolded amid press coverage that reinforced the sensationalized theme. Defense psychiatrists, then known as alienists, described at length the many factors they believed contributed to Leopold and Loeb's criminality, but it was their de scription of a symbiotic sexualized relationship between the young men that drew press and prosecutorial attention. Dr. William Healy,
for example, explained that "Leopold was to have the privilege of inserting

his penis between Loeb's legs at special dates … if they con tinued their criminalistic activities together."[3] Reporters compared the defendants to British playwright, author, and poet Oscar Wilde, who, a few years earlier, had been the subject of a highly sensational ized trial on charges of "gross indecency" (homosexual acts) and sen tenced to two years of hard labor. Newspapers also translated staid psychiatric assessments of Leopold and Loeb's alleged dominant/ submissive relationship into screaming banner headlines: "SLAYERS 'KING' AND 'SLAVE'—Loeb 'Master' of Leopold Under Solemn Pact Made: Sex Inferiority Is Factor."[4] In widely reported testimony, Dr. Healy described Leopold's cavalier attitude: making up his mind whether to commit murder was practically the same as making up his mind whether to have pie for supper. The question was whether it would give him pleasure.[J] The overall image conveyed by the press was one of arrogant and privileged young, white "degenerates" who felt entitled to take anything they wanted, including a young boy's life.

This was exactly the image the prosecutor wanted the media to promote; it supported his efforts to mine the rich vein of homophobic imagery to secure death sentences. Repeatedly referring to the young men as "perverts" and emphasizing their "vile and unnatural prac-

tices, Crowe painted a chilling picture of homicidal queer hedonism. "If the glasses had never been found, if the State's Attorney had not fastened the crime upon these two defendants," Crowe claimed, "Na than Leopold would be over in Paris or some other of the gay capitals of Europe, indulging his unnatural lust with the $5000 he had wrung from Jacob Franks."[6]

But Darrow's arguments—that Leopold and Loeb were young and severely mentally troubled, and their deaths would neither serve jus tice nor restore Franks' life—prevailed. Also citing the absence of evidence of sexual abuse in the case, the judge sentenced them to life plus ninety-nine years in prison. Leopold was eventually released in 1958. Loeb was killed in prison; in 1936 a

fellow inmate, James Day, approached him from behind in the prison shower and slashed his throat. Day stood trial for murder, contending, in a precursor to the contemporary "homosexual panic" defense, that, despite the lack of any evidence of struggle, he had only done what was necessary to defend himself against Loeb's alleged sexual advances. The jury delib
erated less than an hour before acquitting Day. Courtroom observers broke into applause.[7]

In the ensuing decades, the story of Leopold and Loeb was popu anzed in a plethora of magazines, journals, newspapers, books, and eb sites. More than one narrative was at play; as David S. Churchill notes "The discourses of anti-Semitism, anti-intellectualism, homo sexuality, and class privilege play[ed] out in distinctive ways "[8] But the sexuality of the murderers would frame lasting fascina tion with the case. The story inspired an award-winning, fictionalized documentary" novel, films, stage plays, and at least one musical.' Its appeal is rooted in something deeper than public fascination with lu rid, sexualized true crime stories. Prosecutorial and media depictions elped to fix a compelling representation of the unrepentant gleeful gay killer in the cultural imagination, feeding the perception that there is such a thing as a "homosexual murder" committed by depraved gay men who can only truly feel sexually alive through senseless killing, t is hardly surprising that, whenever possible, prosecutors continue to deploy such powerful images in order to increase the possibility of winning capital convictions.

kilk V Th™6 ^ h3Ve emered the Pantheon of the 8leeful g»y killer. They include John Wayne Gacy, white and gay, who raped

and murdered at least thirty-three boys and young men before being caught, convicted, and executed, and Jeffrey

Dahmer, white and gay, who murdered, dismembered, and purportedly cannibalized seven teen young men, primarily of Asian and African descent. Another is Andrew Cunanan, the biracial (white and Asian) gay man, falsely characterized by some as HIV-positive, who killed at least five men, including gay fashion designer Gianni Versace. At times, as in the case of Leopold and Loeb, the gleeful gay killer turns his murder ous instincts on random strangers. At others, his victims are sex ual partners, lovers or other intimates, the killing an expression of twisted erotic desires or the product of immature responses to actual or perceived slights. But the gleeful gay killer is only one version of an enduring series of macabre representations that define queers as intrinsically criminal.

CRIMINALIZING QUEERS

The specter of criminality moves ceaselessly through the lives of LGBT people in the United States. It is the enduring product of persis tent melding of homosexuality and gender nonconformity with con
cepts of *danger, degeneracy, disorder, deception, disease, contagion, sexual predation, depravity, subversion, encroachment, treachery,* and *violence.* It is so deeply rooted in U.S. society that the term *ste reotype* does not begin to convey its social and political force. The narratives it produces are so vivid, compelling, and entrenched that they are more properly characterized as *archetypes*—recurring, cul turally ingrained representations that evoke strong, often subterra nean emotional associations or responses. In the realm of criminal archetypes, anxiety, fear, and dread prevail—potent emotions that can easily overpower reason.

Over time, within broader notions of criminality informed by race, class, and gender, a number of closely related and mutually reinforc ing "queer criminal archetypes" have evolved that directly influence the many manifestations

and locations of policing and punishment of people identified as queer or living outside of "appropriately gen dered" heterosexual norms. These archetypes serve to establish com pelling, ultimately controlling, narratives, or predetermined story lines that shape how a person's appearance and behavior will be inter preted—regardless of individual circumstances or realities. Written

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and rewritten across time, space, and the evolution of queer identi ties, these archetypal narratives may be best understood as means to criminalize queerness. Based on these established criminalizing nar ratives or scripts, queer people are targeted for policing and punish ment regardless of whether they have actually committed any crime or done any harm. Queer criminal archetypes rarely operate in isola tion, frequently intersecting and overlapping with other controlling narratives that frame people of color, immigrants, and poor people as inherently criminal.

This understanding shifts the focus away from the concept of generic antigay prejudice held by bigoted individuals to *systemic* patterns of raced, gendered, classed, and sexual policing that, with a few cosmetic adjustments and innovations, have operated in this country for over five hundred years, predetermining who is intrinsi cally "innocent" and who is blameworthy. It is important to recog nize that queer criminalizing scripts have never focused exclusively on the policing and punishment of LGBT people. As political scien tist Cathy J. Cohen points out in her groundbreaking essay *Punks, Bulldaggers, and Welfare Queens,* gender conforming heterosexuals can also be policed and punished for exhibiting behavior or indulg ing sexual desires that run contrary to the vast array of punitive rules, norms, practices, and institutions that "legitimize and privi lege heterosexuahty." Cohen uses the phrase "heteronormativity" to describe this system of framing

> heterosexuality—constrained within a nuclear family structure and shaped by raced, classed, and rigidly dichotomous constructions of gender-as fundamental to society, and as the only "natural" and accepted form of sexual and gender expression.[10]
>
> Thus women who may be heterosexual, but not heteronormative, are also subject to sex and gender policing. The "cult of true [white] womanhood," one of the foundations of heteronormativity, has served as an important tool for policing the behavior of even the most privileged among women. Importantly, it has placed women of color by definition outside the bounds of heteronormativity and therefore in erently subject to gender policing and punishment.[11] For instance, Black feminists have consistently highlighted the development of a number of controlling narratives casting Black women as dangerous, gender deviant, "castrating matriarchs," or as sexually aggressive,

promiscuous, and depraved, to justify their regulation as both inher ently criminal and as "breeders" of criminals.[12] Cohen also points to the use of heteronormativity to exclude single mothers on welfare, predominantly perceived to be almost exclusively women of color, and sex workers, from those deemed "normal, moral, or worthy of state support" or legal recognition.[13] In brief, *every* identity, relation ship, and household configuration that does not slot neatly into the heteronormative framework can be defined as unworthy, a threat to the moral order, and ultimately criminal.

As the Leopold and Loeb story demonstrates, criminalizing scripts are at once political and cultural creations, taking hold in the public imagination through symbiotic relationships between law enforce ment and mass media. In his study of crime reporting by American news outlets, Steven M. Chermak confirmed that more than half the crime stories he examined utilized police and court records as pri mary sources. This means that the primary narratives about crime and criminality come directly from law enforcement, in the form of arrest and police reports and from quick conversations between reporters and police or prosecutors that may contain

incomplete, misleading, or false information. Most criminalized people, by con trast, have little or no regular access to mainstream media and find it difficult—if not impossible—to disseminate compelling counter narratives that shatter dehumanizing representations. Not surpris ingly, since sensational stories boost media profitability by attracting a wider audience, the media favors incidents involving murder, vio lence, sex, and drugs.[14] In this sense, crime is also a media commod ity—the more lurid and shocking, the better. Politicians, religious leaders, and advocacy groups with a self-interested stake in criminal izing discourses also play critical roles in reinforcing and amplifying fear-inducing images and narratives.

Queer criminal archetypes promulgated through the media spread quickly through channels of pop culture, community gos sip, and schoolyard banter. Their presence is often revealed by the use of particular words and phrases that promote paranoia-inducing images: *web, ring, network, recruitment, infiltration, takeover, un derworld, nest, infestation, contagion, gang, and wolf pack.* They do not describe human beings; rather, they promote cold, terrify ing abstractions that are the stuff of cultural nightmare: *perverts,*

predators, deviates, psychopaths, child molesters, bull daggers and bull dykes, pansies, girlie-men, monsters, he-shes, and *freak shows.*

The archetypes and their accompanying scripts are remarkably powerful in directing not only the initial gaze, but also subsequent interpretations and actions, of police, prosecutors, judges, juries, and prison authorities. It is almost impossible to overestimate the societal clout of these symbolic representations. According to cognitive lin

guist George Lakoff, the constant institutional and cultural repetition of an image or idea—that is, a mental structure for organizing and interpreting information—can literally produce changes in the brain. In a 2008 radio interview, Lakoff succinctly described the process in layperson's terms: "The more you repeat the language for a frame or a metaphor, every time that happens, that frame or metaphor is activated in the brain, the synapses of the brain get stronger, and that becomes part of your brain."[15] Moreover, Lakoff says, not only do neuroscience and cognitive science show that most of our reasoning occurs at an unconscious level, they also demonstrate that emotion is a remarkably powerful part of the "objective" reasoning process. This research suggests that criminalizing frames for understand

ing perceived departures from (white supremacist, colonial, patriar chal, gendered, and heterosexual) norms, reinforced in infinite ways, consciously and unconsciously over hundreds of years, can literally change *how* we are able to think about these issues.

THE ARCHETYPES

Scrutiny of such images and narratives helps to illustrate how these representations become so thoroughly embedded in public thought, policy, and institutional practice that they remain all but immune to effective political challenge. The images and examples presented here, while not intended to be exhaustive or definitive, are among those readily detected when reviewing patterns of policing and punishment of queers, as well as accompanying mass media coverage.

Like all archetypes, the queer criminal versions have an underlying structure and resonance that remains coherent and travels easily across generations. At the same time, Carl Jung reminds us that they never re main static: "No archetype can be reduced to a simple formula … It persists throughout the ages and requires interpreting ever anew.

The archetypes . . . change their shape continually."[16] Chameleon like, they rearrange themselves into fluid and always-adaptable cul tural prods, regardless of changing social and economic conditions.

THE QUEEH KILLER

This archetype, at work and reinforced in the case of Leopold and Loeb, frames queers as people who torture, kill, and consume lives, not only for the sheer erotic thrill of it, but also to annihilate hetero sexual enemies, lovers who disappoint, and anyone else who thwarts the fulfillment of their unnatural, immature desires or seems like a useful stand-in for self-hating, symbolic suicide. When faced with an emotional dilemma, murder is the predictable "queer" response. Several variations on the archetypal theme stand out. Gay men, as previously noted, are typically cast as gleeful gay killers. They may turn their murderous sights on strangers, sexual partners, lovers, or women they simultaneously hate and secretly want to emulate. Women are portrayed as homicidal lesbians *(Killer Dyke,* screams the cover of a 1960s pulp novel[1]) either of the

"man-hating" variety or "manlike" abusers of other women, or some combination of the two. Gender nonconformity, characterized as intrinsically confused and deceptive, adds another layer of perceived murderousness, creating the lethal gender bender.

The homicidal lesbian, according to historian Lisa Duggan, made an appearance in cultural narrative at the end of the nineteenth century, under the lurid theme of lesbian love murder. In 1892, in Memphis, Tennessee, nineteen-year-old Alice Mitchell, white and respectably middle class, murdered her lover, Freda Ward, by slash ing her throat. Mitchell was eventually declared insane in criminal proceedings and committed to an asylum, as were so many women framed as sexual or gender deviants throughout the nineteenth and twentieth centuries. She died four years later, either of tuberculosis or suicide.

This was a case of "disappointment in love" writ large: Mitchell had hoped to elope with Ward and, with Mitchell "passing" as a man, live in St. Louis as a happily married couple. Ward, however, dashed Mitchell's hops by accepting a proposal from a male suitor. Focused on the purported insanity and intrinsic violence of Mitchell's gender nonconformity, her trial attracted the fevered interest of U.S. and in-

ternational media, as well as scientific and medical publications. Dug gan locates the homicidal lesbian narrative in this period as a threat to "white masculinity and to the stability of the white home as fulcrum of political and economic hierarchies."[18]

A century later a different version of the homicidal lesbian at tracted notoriety. Immortalized in the 2003 feature film *Monster,* Aileen Wuornos, a sex worker executed in 2002 for shooting to death six white men who picked her up along Florida highways, has been made to stand for the low-rent, explosively angry, man-hating lesbian version of the queer killer.

The magazine *Mirabella* referred to Wuornos as a "Hooker-From Hell" who pled guilty to "John-Icide."[19] Journalist Peter Vronsky de scribes Aileen Wuornos as a haggard "roadside ho" who appealed to men looking for "underclass" women because they liked their sex quick, dirty, and degraded. He goes on to say, in a characterization typical of much media coverage of the time, that "she was not the pretty and feminine L *Word* lipstick-lesbian, but a hard-edged dyke type, oozing a beefy, drunken-stoned, sloppy kind of

muscular knuck lehead violence we typically associate with males. As a serial killer, it is easier to correlate Wuornos' violence with an overabundance of the masculine rather than with any intrinsic femininity gone awry."[20]

Art historian Miriam Basilio takes particular note of the influ ence of class and appearance in representations of Wuornos, stating, "Continual references have been made to her working-class family background and physical traits as evidence of her capacity for crime. Underlying descriptions of Wuornos as predatory prostitute and ag gressive man-hater is the assumption that sex workers and lesbians can be identified by their physiognomy and dress." Basilio and others were particularly struck by written evidence of initial police profil ing of both Wuornos and her girlfriend, Tyria Moore, as lesbians based only on appearance and clothing: "Two W/F's who appeared to be lesbians were seen exiting the vehicle . . . Subject #1 wearing blue jeans with some type of chain hanging from front belt loop. Subject #2: Very overweight and masculine-looking."[21] Yet once Moore co operated with the police, she was characterized in the media as the submissive, more stereotypically feminine partner in a relationship alleged to be dominated by the masculinized Wuornos.

Wuornos claimed to have acted in self-defense when she killed the men, and in at least one instance she may have done so. She stated that the first man she killed, Richard Mallory, tried to rape her. The prosecution not only denied that Mallory had any record of past sex ual violence, but moved quickly to discredit Wuornos, dragging out the old trope that women who voluntarily engage in sex work can not possibly be raped: "She is not a victim in any sense of the word. She's not a victim because she's a prostitute. She has chosen to be a prostitute."[22]

Crucial evidence that would have lent support to Wuornos' claim of self-defense was located through the FBI database by an NBC *Dateline* reporter, but not until Wuornos was already on death row. In fact, Mallory had been convicted of violent rape and served a ten year sentence in another state. The discovery changed nothing. Wuor nos' own attorneys failed to locate the records, and if prosecutors had this information, they did not disclose it.[23] Potentially mitigating evidence of Wuornos' horrifically abusive childhood also failed to win any sympathy or save her from a sentence of death. In the eyes of the court, Wuornos'

perceived depravity was so great that any vio lence that she experienced, whether recently or in childhood, was not enough to justify an exercise of mercy.

A deluge of documentary films and books, magazine articles, and talk show segments accompanied both her trial and execution. Rep resentations of Aileen Wuornos as a butch lesbian prostitute on a rampage transformed a tragic story into a media gold mine—and simultaneously reprised and re-entrenched conceptions of working class women, lesbians, and sex workers as inherently criminal and "fallen" beyond redemption. In fact, Wuornos' story was so poten tially lucrative that three sheriff's investigators and her lover, Tyria Moore—who secretly recorded telephone conversations with Wuor nos for police that were critical to her arrest and conviction—engaged legal representation to help them secure movie deals.[24] Even as the archetypal assembly line turned Wuornos into one kind of gender de fector—the manlike, violent lesbian—it also turned men into another kind.

Mild-mannered Norman Bates, the motel owner in Alfred Hitch cock's *Psycho* and "transsexual" serial killer Jame "Buffalo Bill" Gumb in the film *Silence of the Lambs* are terrifying representations of men in the grips of pathological gender confusion who go to mur-

derous lengths to become women. For Bates, his late mother is still at hand, in both an ossified sense and through his ability to dress up in her clothing when he kills. Buffalo Bill kidnaps and murders women, then removes sections of their skin to create an outfit that he will wear as he constructs his new, female self. Both Norman Bates and Buf

falo Bill are emblematic of the archetype of the lethal gender bender, which emphasizes male gender anguish, deception, disguise, and the homicidal destruction of normal others as essential to a twisted gen der transgression.

Both are based on a real-life murderer, Edward Theodore Gein, of Plainfield, Wisconsin. An unassuming farmhand and handyman, Gein lived alone in the family home after his exceedingly religious, domi nating mother died. In November 1957, Bernice Worden, a middle aged hardware store proprietor who bore a slight resemblance to Gein's late mother, went missing. A great deal of blood was found in the store. This was the most distressing occurrence in Plainfield since Mary Hogan, also a middle-aged businesswoman,

disappeared three years earlier. Worden, shot to death, decapitated, and butchered, was found hanging upside down in Ed Gein's shed. Subsequent searches of Gein's property revealed a nightmarish collection of skulls and items made from human skin and body parts, including female vulvae that had been salted and oiled to prevent cracking. Of special note were items made from human skin that were clearly meant to be worn, including leggings and a vest. Police also found a collection of masks' made from the facial skin of middle-aged women, lips intact, with hair still attached to the scalps; one of them was, literally, the face of Mary Hogan. Gein acknowledged that he enjoyed wearing these things from time to time, but insisted that he had never had sex with any of the bodies. He also claimed that he did not actually murder all the women, and that many of them came from graves that he robbed, a fact confirmed by examination of selected gravesites. Gein said that he had, on occasion, considered having a sex change operation. Psy chiatrists and reporters from the major news services had a field day with the case, treating the public to "a crash course in sexual psy chopathology." Gein was ultimately found guilty of murder, judged legally insane, and remanded to a hospital until his death in 1984 [25]

The queer killer archetype, in all of its permutations, embodies the assumption that sexual- and gender-nonconforming people do

so *because* they are queer. No other motivation or interpretation of lethal events is possible. Of course, no such equivalence is suggested in the case of white heterosexual men who kill.[26] Ted Bundy, for in stance, who confessed to thirty-six murders of women before he was executed, and was suspected of committing many more, was never presumed by police, prosecutors, or the media to have killed *because* he was heterosexual. Nor was his desire to have sex with corpses of the women he'd murdered considered evidence of depravity in trinsic to heterosexuality—despite his boasting to a police detective that "I'm the most cold-blooded son of a bitch you will ever meet."[2] Rather, he was viewed, realistically, as an exceptionally violent man who killed in sexually aggressive ways, without remorse. Gary Ridg way, the notorious (married) Green River Killer in Washington State who pled guilty to strangling forty-eight girls and young women— many of whom were actually or perceived to be sex workers—and who confessed to killing

countless others who were never found, was not characterized as pathological by virtue of his heterosexuality. Nor was the heterosexuality of the BTK Killer (for his methodology of "blind, torture, kill") criminalized, though Dennis Rader was a mar ried man with children, a Cub Scout leader, and a respected member of his church. Yet prosecutors and the media seldom hesitate to in terpret cases in which individual queers have killed into larger-than life archetypal representations of the purported murderous nature of queer people as a whole.

THE SEXUALLY 0EGHA0E0 PHEOATOH

In 1977, Anita Bryant, titular head of the "Save Our Children" campaign that successfully fought to repeal Dade County, Florida's, inclusion of sexual orientation in its nondiscrimination ordinance, proclaimed, "Since homosexuals cannot reproduce, they must re cruit, must freshen their ranks."[28] The parade of incarnations of this archetype reads like a bad pulp fiction novel: the male child molester, the gay prison rapist, the sexually aggressive Black lesbian, the pro miscuous gay man, the degenerate transgender woman using the bait of gender impersonation to reel in one panicked heterosexual male after another. It also constructs anal sex—often conflated with besti ality—as an inherently depraved sexual practice specific to gay men. While its present-day use against schoolteachers, Boy Scout lead-

ers, and gay parents is *de rigeur,* an earlier construction and deploy ment of this archetype unfolded in the agricultural valleys of central California in the early twentieth century. A stream of seasonal work ers, many of them migrants, arrived in the area seeking employment. Patterns of migration and mobility like this provided new opportuni ties for interracial, cross-class sexual encounters among men of differ ent ages. Law enforcement authorities in California during this period routinely characterized South Asian and Chinese men as importers of perverse, dangerous, and "unnatural" sexual practices—phrases such as "Hindu sodomites" and "disgusting Oriental depravity" were common.[29] Historian Nayan Shah reports that police turned an es pecially harsh gaze on consensual sexual encounters between older foreign migrant men and younger, white "American" men, seeking to prevent and punish them through sweeps for vagrancy as well as for prostitution,

public disturbance, "lewdness," and property offenses.

In 1926, police officers found South Asian migrant Rola Singh sleeping in a parked car not far from a residential area. One of the of ficers later said that Singh "looked like a Mexican." Regardless of his actual ethnicity, in the eyes of the police, Singh was a dark-skinned person who was considered unlikely to own an automobile, be a citi zen of the United States, or belong in this area even though it was pub lic space. Opening the car door, the police discovered a young, white man, partially undressed and unconscious, with his head allegedly m Singh's lap. Harvey Carstenbrook was twenty-eight years old and a member of a longtime local small business family." Carstenbrook said that he picked Singh up to give him a ride, parked the car because both men were drunk, and they passed out. Despite his age, Carsten brook was continually referred to in court as a boy, and the judge decided that he was entitled to the protections of a minor because he was unconscious when police found him with Singh.

The reputation of an older man, primarily determined by race, was the basis on which turned the "difference between 'natural' intergen erational male friendship and 'unnatural' sexual predation." That is w y in 1913 a California court considered an appeal of the convic tion of Samuel Robbins, a middle-aged, white bookkeeper charged with trying to anally penetrate a sixteen-year-old white youth while keeping h.m locked in a bathroom. Their overarching concern was

the defendant's reputation, and they chose to dismiss the testimony of the youth and a servant woman in Robbins' house in favor of interpreting his actions as wholesome, friendly, and civic minded, part of an effort by middle-class white men in this era to "impart moral development" to younger lads in need of mentoring by repu
table elders. Shah concludes: "Robbins's defense succeeded because his white racial identity and respectable middle-class status overrode suspicions and accusation of sexual assault." "Hindus" did not ben efit from such favorable presumptions.[30]

Almost three decades later, in the 1950s, a number of communities experienced outbreaks of antihomosexual hysteria that demonized gay men as child predators. The best known of these took place in Boise, Idaho, where local media, police, businessmen, and other civic leaders ginned up

fear about a purported predatory "homosexual un
derworld" said to be corrupting the city's youth. The resulting wave of arrests and sentences—from probation to life imprisonment—echoed and amplified the antihomosexual fervor already marking the era, linking it to broader national efforts to purge gays and lesbians from public life and government service. But they also served political and economic interests of the accusers, as John Gerassi documents in *The Boys of Boise: Furor, Vice and Folly in an American City.*[31]

That same year, a lesser-known but equally important "sex crime scandal" erupted in Iowa when, in Sioux City, a boy and a girl were sexually assaulted and brutally murdered in two separate incidents. A frenzy of outrage and panic ensued, fueled by sensational media coverage. Under intense political pressure to solve the murders, po
l.ce arrested the most readily available "sexual deviates" in the area, twenty-two white men—including a dance teacher, three men who operated hair salons, two cosmetology students, and a department store window dresser—identified primarily through police sting op
erations in which the men were coerced into "naming names" of other homosexuals. Journalist Neil Miller, whose account of these events lays bare the antigay hysteria mobilized around accusations of child molestation and murder, emphasizes, "These men had nothing to do with those crimes; the authorities never claimed they did."[32]

Threatened with felony sodomy charges that could send them to prison for years, the men pled guilty to lesser charges of conspiracy to commit sodomy or, in one case, "lewd and lascivious" acts with

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a minor (who may or may not have existed). But rather than sending them to prison, prosecutors asked the courts to utilize a state law to declare them all to be criminal psychopaths.[33] *Sexual deviancy (homosexuality*): these diagnostic words were sufficient to sentence twenty of the men to indefinite confinement in a locked ward in a mental hospital. They remained there for some months until, one by one, with lives shattered, they were quietly released.

The conflation of homosexuality and child predation remains strikingly evident in the response of the Roman Catholic Church to the still-evolving story of the sexual abuse of minors by both het erosexual and gay priests.

Between 1950 and 2006, almost fourteen thousand sexual abuse claims were filed against Catholic clergy and deacons. But rather than viewing this as abuse of power by men in a rigidly hierarchical institution, when the scandal broke pub licly in 2002, Church authorities, already steeped in homophobia, scapegoated gay men in the priesthood and seminary.[34] In 2005, the Vatican instituted a search for "evidence of homosexuality" in more than two hundred seminaries and theological schools, declaring that "deep-seated homosexual tendencies," as well as homosexual acts could constitute "disturbances of a sexual nature, which are incom patible with the priesthood." In 2009, researchers from the John Jay College of Criminal Justice reported to the United States Conference of Catholic Bishops (USCCB) their preliminary finding in a study on the causes and context" of the sexual abuse crisis that there was no evidence to support the premise that gay priests were more likely than heterosexual clergy to sexually abuse minors.[35]

The .mage of the sexually degraded predator continues to resur face with a regularity that would be banal were it not for the dev astate wrought on the LGBT lives it touches. Queers are cast as a perpetual threat not only to children and innocent adults, but to the normalcy, promising futures, and rigidly gendered, raced, and classed
social order that those innocent lives represent.

THE DISEASE SPHEADER

A military officer in the Cold War era* lecturing to troops on the sub ject of hygiene and homosexuality distilled this archetype in a single sentence: Practicing homosexuals are notoriously promiscuous and not very particular in whom they pick up, infected or otherwise.'-

The archetype is most apparent in the context of the HIV/AIDS epidemic. In 1987, gay journalist Randy Shilts vilified Gaetan Dugas, a French Canadian (read, "foreign") flight attendant as the infamous "Patient Zero" alleged to be at the epicenter of disease transmission in North America. Shilts' *And the Band Played On,* a seminal account of the first years of what would become the AIDS pandemic, and a savage indictment of the responses of the medical establishment, politicians, and the LGBT community, stopped short of openly accus

ing Dugas of being the first person to bring AIDS to this continent. In Shilts' telling, Dugas was emblematic of gay "promiscuity," now clearly marked not only as criminal but also homicidal. The market ing campaign for the book centered this inflammatory representation:
a half-page ad ran in the *New York Times,* stating, "The AIDS epi

demic in America wasn't spread by a virus, it was spread by a single man … a Canadian flight attendant named Gaetan Dugas."[38] Shilts based his representation of Dugas on a 1984 epidemiological study conducted by the Centers for Disease Control (CDC), setting forth a hypothetical "rapid transmission" scenario in which Patient "O"—misinterpreted by the press as "Patient Zero"—would transmit the virus to multiple sexual partners who would in turn spread it to others, setting off a spiral of infection beginning with a cluster of gay men linked by sexual contact within a particular time frame.[39] The study was subsequently thoroughly debunked by epidemiologist Andrew R. Moss, who called upon the CDC researchers and Shilts to repudiate the Patient Zero story.[40]

By the 1990s, the story of HIV transmission morphed into a sen sational, media-driven narrative that attributed high rates of HIV among Black heterosexual women in the United States[41] to an emerg ing variation of the hyper-heterosexually degraded Black male preda tor. This time, the source of the infection was a growing population of deceptive Black men "on the DL" ("on the down low") who have sexual relationships with women, identify as straight—or at least not as gay—and engage in masculine gender expression but secretly have sex with other men. This notion, popularized by J. L. King, who char acterized himself as on the DL, draws deeply on queer criminalizing concepts—double lives, deceit, deviance, promiscuity, hypersexuality (of both Black people and gays), immorality, and indifference to the spread of disease to unwitting and innocent others.[42] By capitalizing

on complementary images of people of color as purveyors of disorder and disease, the DL narrative extends policing of queerness beyond those identified as LGBT. J

Writing in the *Journal of African American Studies,* psychologist Layli Phillips observes that the narrative also serves to blame Black men who have sex with men—now marked as duplicitous, disease spreading

homosexuals—for pathologizing not only Black women, but entire Black communities.[43] Despite powerful cultural and medi cal critiques of this depiction by epidemiologists, scholars, and com mentators, it continues to hold sway in popular culture, thanks, in large part, to its promotion by media personalities.[44]

Seen through the lens of this archetype, queers not only spread disease; they *are* a sexually transmitted disease. Their very presence contaminates, both literally and figuratively. At the core of all dis ease-spreader archetypes lies fear and loathing of the bodies of the infected"—much like that displayed toward Biblical lepers. In the United States these bodies constitute a roll call of the usual sus pects. The queer disease spreader archetype is not separate from, but incorporates, strengthens, and expands disease-spreader representa tions of people of color (Indigenous, U.S. born, and immigrant), "for eigners," poor people, and "prostitutes."[43] The outbreak of disease, which often cannot be attributed solely, or even primarily, to one particular individual or group, provides new and chilling opportuni ties for "erecting barriers between the acceptable and the deviant."[46]

THE QUEER SECURITY THREAT

This archetype embodies the notion that queers pose a fundamental threat to the integrity and security of the family, the community, and the nation. Its animating force is fear that boundaries (racial, gen dered sexual, and economic) that should be impenetrable are being reached This, in turn, generates an angry determination to make orders (geographic, ideological, religious, and cultural) ever more secure in order to keep subversive forces at bay.

The U.S.-Mexico border has increasingly served as a locus of anti-immigrant anx.et.es in recent decades. In r960, as ethnic stud ies scholar E.thne Lmbheid explains, it marked a point of no entry for Sara Harb Qu.roz, a mother and domestic worker. Having years earlier acqu.red permanent U.S. residency, Quiroz attempted to re-

turn from Juarez, Mexico, to El Paso, Texas. She was stopped for questioning by a U.S. immigration officer with a reputation for de tecting so-called sexual deviates and ensuring that they were denied entry into, or

expelled from, the United States. According to Albert Armendariz, Quiroz' attorney, she was stopped because, based on her appearance, the immigration inspector perceived her to be a lesbian. Quiroz was subsequently subjected to deportation proceedings to de termine whether she was, as until 1990, U.S. immigration laws ex plicitly allowed for exclusion of homosexuals. The officer's conclusion that Quiroz was a lesbian was based on his visual assessment, which was supplemented in Immigration and Naturalization Service (INS) legal proceedings by testimony from her employer, who explained that she often wore "trousers and a shirt when she came to work, and that her hair was cut shorter than some other women's." Govern ment interrogators hammered at her sexual life, basing their assault on racial and gendered archetypes.[4]~

From the moment she was stopped at the border, Quiroz was caught in a vortex of swirling, mutually reinforcing currents of rac ism, pathologizing medical opinions about homosexuality, classifi cation of the bodies of women of color and lesbians as dangerously abnormal and oversexed, and damning beliefs about gender-role defi ance—all under the guise of preserving national security. Her body, sexuality, reproductive status, dress, and behavior were invasively scrutinized in the course of a rigidly bureaucratic (and surreal) le gal process controlled by officials for whom she was marked as "not white," "dangerously deviant," and low-income. Writing in 1993, Venson Davis, a U.S. Border Patrol agent not implicated in the Quiroz case, articulates this reasoning: "Sexual deviancy and sex-related criminal activities are not foreign to the morally weakened American society, and when undocumented aliens bring with them their ad ditional measure of sexual and criminal misconduct, it furthers the deterioration of our quality of life."[48]

At the border, Quiroz represented every quality the United States sought to exclude in order to stabilize and protect its white, hetero sexual identity from those who would subvert it. Ultimately, Quiroz was repatriated, though she had caused no harm to anyone. Despite some "liberalizing" changes in laws, border crossers and immigrants of color who are suspected of being queer or gender nonconforming

in any regard continue to be targeted for exclusion, abusive policing, and detention by way of demeaning strip searches, hostile interroga tion, and

physical and sexual violence.

During the early part of the Cold War, from the late 1940s into the early 1960s, the phrase "security threat" was code for many groups and individuals whose lives, political beliefs, and work was consid ered a presumptive challenge to the status quo—including "homosex uals." Closeted by necessity, lesbians and gay men were presumed not only to be morally and criminally compromised, but also especially susceptible to sexual seduction, extortion, or both by enemy agents. Antigay witch hunts and purges conducted by local, state, and federal government agencies were inextricably entwined with the hunt for Communists and other allegedly dangerous subversives in schools and universities, the publishing, film, and broadcast industries, and countless other public and private institutions. David K. Johnson's account of that time in *The Lavender Scare* reveals the chillingly systemic nature of efforts to eliminate queers from government ser vice.[49] Yet the LGBT movement should guard against reducing this complex story to a simplistic, stand-alone tale of how predominantly white, middle-class gays were wrongly accused of being dangerous radicals during the McCarthy era. The more accurate story is that the weapons of Cold War persecution were wielded to multiple ends and against a diversity of targets, often in simultaneous and mutually reinforcing ways.

For example, in the wake of the *Brown v. Board of Education* school desegregation rulings in r954, the Florida Legislative Inves tigative Committee (FLIC), spearheaded by State Senator Charles Johns, and popularly known as the Johns Comm.tree, was estab lished. FLIC blended Cold War zealotry with opposition to the civil rights movement, initially seeking to destabilize the Florida affiliate f SSodati0n for the Advancement of Colored People (NAACP) by linking its members to Communist subversion. Despite purges of integration,sts from university campuses and attempts to seize NAACP membership records, the FLIC could not prove its allegations of Communist affiliation, and the NAACP obtained a court injunction prohibiting further committee action against the organization.

The FLIC then selected a new and vulnerable target: homosexuals

in schools and universities who could be linked both to Communist subversion and "race agitation." With an initial focus on the Uni versity of Florida, a committee investigator and former vice squad detective were dispatched to collect information from various paid informants, both Black and white, regarding "sexual deviancy" on campus. Surveillance and entrapment schemes brought a growing number of students and teachers under the committee's gaze. The investigation quickly spread to Florida Agricultural and Me chanical University (FAMU), a historically Black postsecondary in stitution. Intimidating interrogation of several students produced the highly questionable estimate that no less than 25 percent of all FAMU faculty were engaged in homosexual activity. This allegation was lev eraged to try to gain white control of FAMU. Black educators at other institutions were hounded with questions about homosexuality and other possible criminal activity. FLIC chief inspector R. J. Strickland, a former vice squad detective, used his position to direct authorities to revoke teaching licenses of some Black educators who were accused of being gay.

White educators too, both male and female, who were suspected of being homosexual, became targets of FLIC zealotry. Investigators pressed female prison informants, incarcerated for "crimes against nature," to implicate female teachers who were alleged to be in a position to recruit impressionable young students into lives of sexual deviancy. An unsigned letter sent to the committee invoked the im age of knife-carrying lesbian school girls, corrupted by teachers, who forced others "to submit to their desires," concluding, "Certainly this is not only fertile ground in which to breed communism, but it's also against the very grain of marriage, normal life, and man hood." In 1964, FLIC released a pamphlet titled "Homosexuality and Citizenship in Florida," representing homosexuals as carriers of a degenerative disease posing "a greater menace to society than child molesters." The committee's own excesses triggered its dissolution in 1965.[50]

The security threat archetype is rooted in an embattled and apoc alyptic worldview organized entirely around war against external enemies. Safety can only be achieved through aggressive policies of containment, exclusion, and punishment. In a broad sense, deploy ment of this archetype encourages people to agree to heightened

surveillance and policing in exchange for the illusion of safety, utiliz ing fear to consolidate power.

But this archetype also resonates powerfully in ways that ai^ en tirely queer specific. Alarming antigay representations populate the rhetoric and campaigns of the Right. LGBT people are fraijled as sleeper cells of domestic terrorists who plan not only to take over, but also to take out anyone who gets in the way of the steadily advancing "homosexual agenda." Queers continue to be represented as hell-bent on terrorizing heterosexual students in schools, taking over the bath rooms as well as the curriculum in order to promote "the homosexual lifestyle," and as perverts determined to pillage and plunder the in stitution of marriage. The Right deploys many queer criminalizing archetypes, but the queer security threat archetype is at the center of every anti-LGBT campaign.

DANGER COMES TO TOWN: YOUNG, QUEER CRIMINAL INTRUDERS In 2007, during a ratings sweeps week, a Memphis, Tennessee, tele vision station broadcast a news segment called "Gays Taking Over/ Violent Femmes." Alleging the existence of Black lesbian gangs that sexually prey on young, heterosexual women, the story featured a staged dramatization of fictitious bathroom assaults. The source for this otherwise baseless report was a Shelby County, Tennessee, gang unit officer, who claimed lesbian gang members were anally raping heterosexual girls with sex toys, were more violent than any boys she had encountered, and were in "all our schools." Later, underpres sure from local LGBT activists, the station acknowledged that their reporting was based on unsubstantiated allegations and that no proof of such widespread violence in the schools existed.[51]

ĸ IWV TT year' The o'Rei"y Factor• a Fo X News show hosted by Bill O Redly, broadcast a segment called "V.olent Lesbian Gangs: A Growing Problem." O'Reilly's guest "expert," pa.d Fox News con sultant and former pohce officer Rod Wheeler, described "a national underground network" of Glock-toting lesbians who rape young girls, attack heterosexual men without provocation, and forcibly in ornate children as young as ten into "the homosexual lifestyle." Wheeler s alarming allegations were later completely discredited. Eventually, both O'Reilly and Wheeler conceded "inaccuracies" in their reports.[52]

Within the constellation of queer criminal archetypes, the represen tation of young, queer criminal intruders embodies the presumption that groups of queer youth of color are predatory, dangerous, and determined to enter and occupy areas where they are not wanted and do not belong. The youth represented are predominantly poor and working class, including many who are homeless. Some engage in "survival sex" or other informal economies. Often, their gender nonconformity, in behavior, appearance, or both, defies het eronormative expectations, and is perceived as hostile, arrogant, and signaling criminal intention; they are always framed as "up to no good."

These menacing young queers do not actually have to *do* anything harmful or violent to warrant intensified police scrutiny, harassment, and other measures intended to keep youthful intruders at bay. The fact that they exist, moving into and through public spaces, is reason enough to fear and contain them.

This archetypal representation fuses demonizing images of young gays who congregate in major urban areas—often represented as "hustlers"[53]—with an expansion of longstanding criminal representa tions of youth of color as violent, hypersexual, and predatory. Frank lin E. Zimring, a prominent researcher on crime in the United States, identified three themes that were heavily promoted by politicians, law enforcement, and the media in the 1970s and 1990s. These in cluded the appearance of a new vicious kind of youthful offender, inadequacy of the juvenile justice system to respond effectively to this threat, and the politically expedient option of treating youth as adults in the criminal legal system.[54]

Even though youth crime rates had not risen in quite some time, these vilifying images and narratives gained momentum. New policy initiatives, including "quality of life" policing in the streets and "zero tolerance" policing in the schools, accompanied the fear-driven dis
course. In 1995, scholar John Dilulio, utilizing a now debunked sta tistical model, predicted a forthcoming tidal wave of violent crime perpetrated by brutal "juvenile superpredators" from the "inner cit ies."" Although that tidal wave never materialized, new definitions of gang-related crime were created, expanding law enforcement author ity to detain, arrest, and prosecute anyone who fit within broad cat egories—essentially boiling down

to young, poor, and of color. By the

late 1990s, according to Zimring, every state had enacted at least one measure, making it easier to try and sentence youth as adults. In 2007, the Justice Policy Institute reported an explosion of youth incarcefation in adult prisons and jails, primarily for nonviolent crimes, and con cluded, "Incarcerating youth as adults does not reduce crime and disproportionately impacts youth of color."[56]

This, along with the increasing gentrification of New York City's West Village, is backdrop to a story that unfolded in 2006. A group of seven Black lesbian friends from New Jersey were walking down a street when a Black man, Dwayne Buckle, sexually propositioned one of them. When told she wasn't interested, he followed the women down the street, shouting, "I'll fuck you straight, sweetheart!" He then proceeded to spit in another woman's face and throw his lit cigarette at her. This, and subsequent events, were caught on vid eotape by a camera in a nearby store. Buckle became increasingly physically abusive, pulling one woman's hair and choking another. The women attempted to defend themselves, and at some point two men, unknown to the women, ran over to help and began to hit Buckle, who was eventually stabbed. The women were walk ing away from the situation when they were stopped by police, while the two unknown men who fought with Buckle had left the scene.

The women were subsequently arrested and charged by police of ficers who immediately framed the Black, working-class, gender-non conforming women as perpetrators rather than targets of violence, characterizing the incident as one of "gang violence" by a group of Black lesbians. Archetypal representations of the violent, man-hating lesbian drove law enforcement perceptions, which also likely reflected an increasing trend toward framing girls and young women of color w o wear thuggish (read, hip-hop, gender-nonconforming, or both) clothing as gang members.

From" that point forward, the investigation was stacked against the women. Police refused to credit their statements or those of other witnesses and ultimately Buckle himself, that the two unknown men were, in fact, responsible for stabbing him. The videotape was never used to try to find the men, and no forensic tests were conducted on f u *A* u ^ t0 Be ^ 3SSault

weaP°n- The prosecutions un
o ded within a media circus, in which the press framed the women

as "killer lesbians," "a seething Sapphic septet," and a "lesbian wolf pack."- Three of the women plea-bargained, receiving sentences of probation and a criminal record that will follow them for the rest of their lives. Four of the seven women, known in circles of support as the NJ4 (Venice Brown, Terrain Dandridge, Patreese Johnson, and Renata Hill), went to trial, were found guilty, and received sentences ranging from 3.5 to 11 years in prison."[8]

In 2007, FIERCE (Fabulous Independent Educated Radicals for Community Empowerment), an organization of LGBT youth of color in the West Village, and the Bay Area NJ4 Solidarity Committee, a grassroots group of queer people of color, criticized the deployment of this queer criminal archetype while raising community aware ness and supporting the women and their families at trial and during their incarceration through letter-writing campaigns and courthouse demonstrations.

* * *

Several themes run through each of the major archetypes, serving as unifying threads among them. To varying degrees, and in different ways, these build upon early pathologizing, medical, and scientific as sessments of homosexuality from the late nineteenth to mid-twentieth centuries.

First, queers are cast as intrinsically mentally unstable. For ex ample, in 1950, a government document asserted that "psychiatric physicians generally agree that indulgence in sexually perverted prac tices indicates a personality which has failed to reach sexual matu rity . . . Perverts lack the emotional stability of normal persons."[59] Under the right circumstances, ever-present neurotic queer compul sion, gender confusion, unnatural desire, immaturity, deviousness, and emotional unpredictability can escalate into full-blown, vio lent insanity. A second unifying theme focuses on the danger, de ception, and dishonesty allegedly embedded in sexual and gender nonconformity. Focusing on the employment of "unnatural means of reproducing [queer] selves,"[60] another theme asserts that LGBT people

are perpetually engaged in nefarious efforts to lure innocent heterosexuals into same-gender sexual enthrallment or gender transgression—characterized as simultaneously unimaginably depraved

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and fantastically enticing. A final narrative thread running through each of the archetypes asserts that violence is an inherent part of queer erotic desire, sexual expression, tragic despair, and antisocial predisposition.

The examples presented here only begin to suggest the extraordinary power of queer criminalizing archetypes to influence individual lives, policy, and the distribution of privilege and rights. To more fully understand their operation in the criminal legal system, it is necessary to further examine how these archetypes and their unifying narrative threads routinely inform policing, judgment, punishment, responses to violence against queers, and ultimately perceptions of LGBT people in all aspects of society.

3

THE GHOSTS OF STONEWALL

Policing Gender, Policing Sex

Our entire movement started from fighting police violence, and we're still fighting police violence. In many ways, it's gotten worse.

—IMANI HENRY, founder of Transjustice[1]

On a hot August night in 1966, "drag queens" and gay "hustlers" at the Compton Cafeteria in the Tenderloin District of San Francisco rose up and fought back when police tried to arrest them for doing nothing more than being out.[2] The late 1960s saw frequent police raids, often accompanied by brutality, on gay establishments across the country, which were meeting with increasing resistance. The pre

vious five years had also seen uprisings in Watts, Detroit, Chicago, and Newark and dozens of other cities, in many cases sparked by incidents of widespread racial profiling and abuse of people of color by police.[3]

It was against this backdrop that, in the early morning hours of Saturday, June 28, 1969, police raided the Stonewall Inn in New York City. Claiming to be enforcing liquor laws, they began arresting em ployees and patrons of the private lesbian and gay establishment. Po lice action, which included striking patrons with billy clubs while spewing homophobic abuse, sparked outrage among those present. Led by people described by many as drag queens and butch lesbians, bar patrons, joined by street people, began yelling "Gay Power!" and throwing shoes, coins, and bricks at the officers. Over the next several nights, police and queers clashed repeatedly in the streets of the West

Village. One report described the impacts of the police response to the uprising as follows:

1

> At one point, Seventh Avenue . . . looked like a battlefield in Vietnam. Young people, many of them queens, were lying on the sidewalk bleeding from the head, face, mouth, and even the eyes. Others were nursing bruised and often bleeding arms, legs, backs, and necks.[4]

The Stonewall Uprising, as the rebellion against the raids came to be known, has been mythically cast as the "birthplace" of the mod ern LGBT rights movement in the United States, although in reality it was but one of its primary catalysts. In the weeks that followed, the Gay Liberation Front, inspired by contemporaneous movements such as the women's liberation movement, the Black Panthers, and the Young Lords, was formed. ' Spontaneous resistance to police raids on gay bars and bathhouses blossomed in the ensuing decade. The 1970 protest march commemorating the one-year anniversary of the raid on the Stonewall Inn grew into an annual worldwide celebration of gay pride.

Fast forward three decades to March 2003, when the Power Plant, a private

club in the Highland Park area of Detroit, frequented primar ily by African American gay men, lesbians, and transgender women, was filled to capacity. Around 3:00 a.m., between 50 and 100 officers from the Wayne County Sheriff's Department dressed in black cloth ing, with guns drawn and laser sights on, suddenly cut the lights and stormed the premises, shouting orders for everyone to "hit the floor." Over 350 people in the club at that time were handcuffed, forced to he face down on the floor, and detained for up to twelve hours, left to "sit in their own and others' urine and waste." Some were kicked in the head and back, slammed into walls, and verbally abused. Of ficers on the scene were heard saying things like "it's a bunch of fags" and "those fags in here make me sick." As at Stonewall, the officers c aimed to be enforcing building and liquor codes. The sheriff's de partment said they were responding to complaints from neighbors and concerns for public safety. They had obtained a warrant to search t e premises, but rather than execute it during the daytime against only the owner of the establishment, they chose to wait until the club

was full, and then unjustifiably arrested over 300 people, citing them for "loitering inside a building," an offense carrying a maximum fine of $500. Vehicles within a three-block radius of the club were also ticketed and towed, despite the fact that some of the car owners had never even entered the club that night.[6]

The policing of queer sexualities has been arguably the most vis ible and recognized point of contact between LGBT people and the criminal legal system. From the images that form the opening se quence of *Milk*—the 2008 biopic about gay San Francisco supervisor Harvey Milk—of groups of white gay men hiding from cameras as they are rounded up by police in the 1950s, to the historic clashes with police of the late 1960s and early 1970s, police repression and resistance to it are central themes of gay life in the United States. Groundbreaking gay rights organizations such as the Mattachine So ciety and the Daughters of Bilitis have expressed strong concern about bar raids and police harassment. A study conducted by the National Gay Task Force (now the NGLTF) in the mid-eighties found that 23 percent of gay men and 13 percent of lesbians reported having been harassed, threatened with violence, or physically attacked by police because of their sexual orientation.[8] It remains a daily occurrence for large numbers of LGBT

people. According to reports made to the National Coalition of Anti-Violence Programs (NCAVP) in 2008, law enforcement officers were the third-largest category of perpetrators of anti-LGBT violence.[9] Incidences of reported police violence against LGBT people increased by 150 percent between 2007 and 2008, and the number of law enforcement officers reported to have engaged in abusive treatment of LGBT people increased by n percent.[10] In 2000, the NCAVP stated that 50 percent of bias-related violence reported by transgender women in San Francisco was committed by police and private security officers.[11]

As demonstrated by the Power Plant incident, in many ways, po licing of queers has not changed significantly since the days when it sparked outrage and resistance from LGBT communities, although its focus has narrowed to some degree. According to the New York City Anti-Violence Project, "Young queer people of color, transgen der youth, homeless and street involved youth are more vulnerable to police violence . . . AVP's data analysis also reveals that transgen der individuals are at a greater risk of experiencing police violence

and misconduct than non trans people."[12] The National Center for Lesbian Rights (NCLR) and Transgender Law Center reported in 2003 that one in four transgender people in San Francisco had been[i] harassed or abused by the police.[13] Far from fading into the annals of LGBT history, police violence against queers is alive and well. <

Yet with the exception of sodomy law enforcement, since the mid 1970s resistance to abusive policing of LGBT people has largely been absent from the agendas of national mainstream LGBT organiza tions, particularly as police have increasingly narrowed their focus to segments of LGBT communities with little power or voice inside and outside such groups. Similarly, while mainstream police accountabil
ity and civil rights organizations have called for accountability in a limited number of cases involving LGBT individuals, policing of gen der and queer sexualities has not been central to their analysis of the issue. It is essential to bring the persistent police violence experienced by LGBT people to the fore of these movements to ensure the ghosts of Stonewall do not continue to haunt for years to come.

In order to better understand the roots and forms of policing of LGBT communities, it is important to consider the power police possess and the role they play in society. Police and other law enforcement agents do not merely objectively enforce the letter of the law. Practically speaking, they also function as lawmakers in their own right. They are given considerable latitude in deciding which laws to enforce, how to enforce them, and which people to target for enforcement. And they often consciously and unconsciously exercise that broad discre

tion in ways that are anything but neutral. Far from being passive players just doing a job, law enforcement agents play a crucial role in manufacturing, acting on, and enforcing criminalizing archetypes.

The advent of "quality of life" policing in the 1990s further facili tated this process. This now predominant law enforcement paradigm is premised on maintaining social order through aggressive enforce ment of quality of life regulations, rooted in age-old vagrancy laws, w ich prohibit an expanding spectrum of activities in public spaces, including standing (loitering), sitting, sleeping, eating, drinking, urinating, making noise, and approaching strangers. It is based on the theory that minor indications of "disorder"—a broken window,

youth hanging out on the corner, public drinking—ultimately lead to more serious criminal activity. While such regulations may ap pear innocent at first blush, in reality, by criminalizing ordinary and otherwise lawful activities, this new paradigm has given police ad ditional tools to stop, ticket, and arrest increasing numbers of people, most notably youth and homeless people.[14] In 2006 alone, the NYPD stopped, questioned and/or frisked over half a million people, a 500 percent increase over the previous year. Over 80 percent were Black or Latina/o, even though these groups make up only 53.6 percent of the NYC population, while only approximately 10 percent were white, compared to 44 percent of the population.[1'] Quality of life stops also create additional opportunities for police officers to use force.[16] While "quality of life" offenses are often low-level misdemeanors or viola tions (the equivalent of a speeding ticket), an accumulation of tickets or failure to appear in court often leads to more serious consequences.

Given their extensive reach and the common occurrence of the types of conduct they prohibit, it is virtually impossible to enforce all quality of life regulations against all people at all times and in all places. As Yale law professor Charles Reich notes, "Laws that are widely violated . . . especially lend themselves to selective and ar
bitrary enforcement."[1-] Additionally, the language of quality of life regulations, such as those prohibiting "disorderly" or lewd conduct or loitering, is often vague and subject to multiple interpretations when determining what kinds of conduct to punish, and by whom. Ultimately, "zero tolerance" for quality of life violations means zero tolerance for undesirables, and quality of life can mean quality of life for property and business owners at the expense of quality of life for countless others.

Social constructions of deviance and criminality pervade the myriad routine practices and procedures through which law enforce ment agents decide whom to stop on the streets or highways, whom to question, search, and arrest, and whom to subject to brutal force. The statistics reflecting persistent and pervasive racial profiling are as familiar as they are dizzying.[18] Behind the numbers are the stories of daily harassment and arbitrary police action premised on presump tions of criminality that attach to some, but not others.

A Black gay man peacefully walking in a park in New York City was confronted by an officer pointing a gun at him, saying, "If you

move, I'll shoot you." He was then taken to a police van where oth ers were detained. The officers made gay jokes, used the word "fag," and talked about Black people. The man received tickets for loitering, trespassing, and being in the park after dark. An African American gay youth was standing outside an arcade with friends in a gay neigh borhood in Chicago when an officer passing by in a police car yelled at the young people to "move their ass." The officer then pulled over to stop and search them, calling the young man a "nigger faggot" while telling him his "ass is not big enough to fuck." The young man was arrested and charged with disorderly conduct. The charges were later dismissed.[u] Driving such seemingly routine incidents are un dercurrents of archetypal narratives framing Black men as inherently up to no good, and gay men as individuals whose sexuality must be
informally controlled, even where they have broken no law. In addition to

possessing the power to stop and arrest, police also have the ability to utilize force as a tool of order maintenance. Crimi nalizing archetypes framing particular individuals and groups as in herently dangerous, violent, mentally unstable, or disposable fuel and justify physical abuse by police. Statistics pointing to the dispropor tionate use of force against people of color—including LGBT people of color-abound, and there is no shortage of illustrations bringing the numbers to life.[20]

A gay Latino man stopped for a traffic offense in Oakland, Cali fornia, in zooi was arrested and-placed in a patrol car—but not until an officer who noticed his pink socks called them "faggot socks" and slammed his ankle in the car door so hard the man required medical treatment. Freddie Mason, a thirty-one-year-old Black gay nurse's assistant with no prior criminal record, was arrested following a ver bal altercation with his landlord and anally raped with a billy club covered in cleaning liquid by a Chicago police officer who called him a nigger fag" and told him "I'm tired of you faggot … you sick mother fucker."[21] Two lesbians of color arrested outside a club host ing a women's night in Brooklyn, New York, in 2009 were beaten by officers who called one a "bitch ass dyke."[22] In each of these cases, under the gu.se of responding to alleged minor, nonviolent offenses, of cers used brute force to maintain raced, gendered, and hetero sexual "order."

Unfortunately, such incidents are not solely the product of police

officers acting alone, based on their personal prejudices. The problem of police misconduct is both systemic and commonplace. It has never been limited to rogue officers and a few "bad apples." While individual officers may or may not harbor individual prejudices against LGBT people, they are part of hierarchical institutions, and are expected to fit in with law enforcement culture. In many cases, law enforce ment agents are trained to act on racialized presumptions of deviance and criminality. They then engage in institutionalized surveillance and control of communities deemed dangerous, through a variety of practices ranging from profiling and selective law enforcement to saturation of particular areas with street patrols to deployment of tar geted squads and task forces—such as the vice squad—charged with

policing particular communities.

Such institutional practices have deep historical roots. Slave pa trols were among the first state-sponsored police forces in the United States, with the express purpose of maintaining the social order by closely monitoring the movements and activities of both enslaved and free Africans. Militarized policing of Indigenous peoples was like wise a central function of law enforcement institutions in the United States. Northern police forces grew in the 1800s in large part to ad dress a perceived need to control growing immigrant and migrant working-class populations thought to pose a threat to society. While many police forces have evolved into sophisticated, professionalized institutions, in some ways, their purpose, targets, and tactics have remained much the same.[23]

Theories and scholarship of policing have focused almost exclu sively on the disproportionate and selective policing of racial "minor ity" communities, premised on a belief that these communities are monolithic when it comes to class, gender, and sexuality. However, the role of policing in upholding systems of gendered power relations, conventional notions of morality, and sexual conformity cannot be overlooked. Gender and sex policing are not only important weapons of policing race and class, but also critical independent functions of law enforcement. In the words of the Audre Lorde Project, "Failure to recognize and affirm the intersections of race, gender, sexuality, and . . . class erases the experiences of LGBTST [lesbian, gay, bisex ual, Two Spirit, and transgender] people of color from the discourse around police brutality."[24] Not only does this erasure hamper efforts

to challenge race-based policing by producing a cramped and incom plete understanding of the mechanisms through which policing and punishment of people of color takes place, but it also excludes the voices and experiences of significant segments of LGBT communiiies from struggles for queer liberation.

For instance, although largely absent from the discussion, queers of color are firmly within the sights of enforcement of quality of life regulations, which provide police with powerful tools to target public manifestations of perceived deviance and disorder embodied in queer sexualities and gender identities. As Eva Pendleton points out, "The systematic repression of queers who congregate in public has histori cally

operated … to punish them for their very deviance from hetero sexual, monogamous norms and render the public sphere 'safe' from non-normative sexuality."" In its 2005 publication *Stonewalled:*
Police *Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S.,* Amnesty International reported a pattern of discriminatory application of quality of life regulations against LGBT people, particularly queer youth, LGBT people of color and the significant proportion of queer youth and transgender people who are homeless or precariously housed. Gabriel Martinez
a member of FIERCE, explains, "If there is a group of queer youth of color hanging out in front of the subway station on Christopher Street the police will tell them they are loitering, but if it's a group of w ite tourists blocking the subway entrance they don't say anything." A 2003 FIERCE survey of LGBT youth in the West Village and Chelsea, gay neighborhoods in New York City, found that 98 percent o respondents had experienced police harassment or violence."

This, then is the framework for the literal policing of "deviant" sexualities and gender identities and expressions.

POLICING SEX

Public sexual culture spans a broad spectrum from back rooms and bathhouses, to sex clubs and sex parties, to adult bookstores, peep hows, porn theaters, and strip clubs. It encompasses street-based nub|[W]°d r TT°[a] neWSStands' d^ve-ins, lovers' lanes, public displays of affection, and ten-story Calvin Klein billboard ad vertisements. And queers by no means have a monopoly on it " Yet the existence, or perceived existence, of so-called deviant sexualities

in public spaces is aggressively policed and punished, while the nor mative sexuality that permeates almost every aspect of society goes virtually unnoticed.

Gay men and transgender women are among the most visible targets of sex policing. Gender nonconformity in conduct or appear ance among men,

or transgender women perceived to be "men in drag," appears to be highly sexualized by law enforcement officers, creating presumptions that gender-nonconforming individuals are en gaged, or about to engage, in sexual activity. This in turn justifies preemptive arrest before any sexual act can occur. Such presumptions derive from the reduction of queers to wholly sexual beings, as well as conflation of gender nonconformity with sexual deviance. Control ling narratives of "sexually degraded predators" casting gay men and transgender women as highly sexualized beings possessing insatiable sexual appetites inform policing of queer sexualities in public spaces. This intractable archetype is further amplified where gay men and transgender women of color are concerned by the superimposition of images of threatening, hypersexualized men of color.

Such perceptions drive the highly discretionary policing of a par ticular subset of quality of life offenses including "lewd conduct," "public indecency," and "loitering with the intent to solicit." Along with raids of lesbian and gay establishments and targeted policing of sex work, these are the primary contemporary means by which queer sexualities are policed.[28] Rationales offered for policing queer sex and consensual commercial sexual exchanges among adults vary. In some cases police appear to act on their own notions of ordered society. In others, they are, or claim to be, responding to public complaints and enforcing community standards, which are in turn often driven by the notion of gays and sex workers as disease spreaders, precursors of violence, and polluters of the nation's morality. Either way, public expressions of nonnormative sexualities are perceived as threats to community security, and as markers of individual and societal degra dation that must be rooted out.

RAIDS

According to historian Allan Berube, "Since they were first discov ered by city officials in the United States, gay bathhouses and bars have been kept under surveillance and raided by undercover police

officers . . . state liquor agents, district attorneys, military police, and arsonists." Resistance was never far behind; for instance two les bians fought back during a 1943 raid of a gay bar in San Francisco's Chinatown, leading to what Berube describes as a "small riot," dur ing which dozens were

arrested. By the 1950s and early 19605^ the virulent homophobia that accompanied the rise of McCarthyism led many state legislatures to pass new laws against gay bars, leadjng to the arrests of thousands every year in some cities.[29] According to one scholar, "The police crackdown was so comprehensive [during this era] that in a survey of gay men conducted by the Institute for Sex Research, twenty percent reported encounters with law enforcement officers."[30] The practice of publishing the names of those arrested in bar raids at that time constituted, in Berube's words, a "war on ho mosexuals," in which patrons were subjected not only to fines, police brutality, and imprisonment, but also divorce, loss of child custodv loss of employment, beatings and murders by private citizens, isola tion, humiliation, and suicide.[31]

Despite widespread resistance, the raids continued through the late 1960s and 1970s. In i979, a dozen San Francisco riot police raided a gay bar, shouting "Bonza," and indiscriminately swtng.ng riot sticks at patrons hiding under tables while yelling, "Motherfucking faggots sick.cocksuckers!" On September z9, r98l, over twenty '

NYPD officers raided Blue's, a Black lesbian and gay working-class bar in New York City. Activists reported that "this raid was not for e purpose of arrest or mere harassment, but was a violently rac ist, homophobic attack on Blue's and the people there. The bar was WreC Vi ?• eS SmaShed, S0Und eqUipmeM destro Y ed- The Black gay men andlesbians at the bar were savagely beaten: blood spattered the Ta dfT f h" H m POo,S on ^ floor , , , At P oiM * »P *rew a handful of bullets saying, These are fag suppositories. Next time I'll put em up your ass the right way.'"[32]

Flyers distributed by members of a group calling itself the Lesbian and Gay Community Meeting pointed out that the raid on Blue's was

bknT N M V de nt, bUt C3me 3t 3 time Whm popular les b.an bars in New York City had lost then liquor licenses and "street transvestttes and transsexuals in the Village [were] coming under in leasing harassment."[33] Writing about that period of time, lesbian historian Joan Nestle also described police attacks on Black lesbians

in Washington Square Park and renewed arrests of "men wearing women's

clothing" on Long Island.[34] Framing these incidents as "part of increasing right-wing violence and police abuse directed at Black, Latin, Asian and Native peoples, women, unionists, undocumented workers and political activists," activists solidly placed them within a larger analysis of state violence, stating, "Your race, class, sex and sexual identification all affect how police treat you."[33]

In early days of the AIDS epidemic, the specter of bathhouses teeming with AIDS-infected gay men was raised to justify police raids aimed at shutting establishments down. This latest incarnation of the gleeful gay killer and disease spreader archetypes fed perceptions of queer sex outside of monogamous, private spheres as dangerous, even murderous, polluting, immature, self-hating, and contrary to the in
terests of "respectable" queers. Not only did such measures succeed in pushing public sex back underground, away from safer sex educa tion and peer accountability, they also contributed to a resurgence of police violence against queers.[36] Berube suggests a broader agenda driving policing of queer establishments in the mid-1980s: "More recently, attacks on gay bars and baths have kept the rhetoric of sin, disease and crime, but have also become part of a more overt strategy
to attack the gay community's growing political power."[J] Far from being a relic of the days before police sensitivity train ing and enlightenment, raids continue to play a central role in the policing of LGBT communities. Forty years to the day after Stone wall, Forth Worth, Texas, police, accompanied by alcoholic beverage commission agents, raided a gay bar, injuring several patrons, and hospitalizing one gay man alleged to have groped an officer. The po lice chief justified the violence by claiming that men in the bar made sexual advances toward police. The owner quipped in response, 'The groping of the police officer—really? We're gay, but we're not dumb." Syndicated columnist Dan Savage editorialized, "This is exactly the kind of state-sponsored violence that gays and lesbians fought back against at Stonewall . . . We can't allow the chief of police in Fort Worth to use the Gay Panic Defense or exploit stereotypes about gay men—so sexually reckless that they can't even keep their hands off cops during a raid!—to get away with violating the civil rights of gay men in Fort Worth."[38]

While targeting of "mainstream" gay and lesbian establishments

may have diminished somewhat in recent decades, predominantly Black and Latina/o LGBT clubs continue to suffer constant vice sur veillance, building and liquor code enforcement, and aggressive en forcement of driving while intoxicated, jaywalking, and noise codes. For instance, New York City-based People of Color in Crisis (PQCC) reports that Chi Chiz, one of the few gay bars in Manhattan catering to a predominantly African American clientele, has been the s'ubject of "unfair and racially motivated attacks by the local police depart ment . . . [including! unjustified police raids, bogus 'noise violations' and other forms of unjust surveillance." POCC organized a petition
drive highlighting the irony of the ongoing harassment of an estab lishment just around the corner from the Stonewall Inn, noting that "sadly, local residents of the West Village (many of whom claim to be staunch supporters of 'gay rights') have turned their backs on the mostly African American patrons of the bar."[39]

POLICING 'PUBLIC" SEX

Aggressive policing of queer sexualities extends beyond bars and bathhouses to public spaces where gay men and transgender women are known to congregate or engage in sexual activity. The zoo7 ar rest of former U.S. senator Larry Craig (R-ID) in an airport restroom on charges of "lewd conduct" by an undercover police officer (who claimed to know hand and foot gestures aimed at initiating sex with another man) was just the tip of the iceberg.

Sodomy laws may have been declared unconstitutional, but lewd conduct statutes, still on the books in all fifty states and the District ofColumbia continue to be used by law enforcement agents against gay men and transgender people. They allow officers to arrest any person perceived to be engaged in what is alternately described as "in decent exposure," "public sexual indecency," commission of a "lewd obscene or indecent act," "obscen.ty" or "sexual misconduct." The mkvant prov'sions vary by jurisdiction in terms of the specificity with is nroh b td н

k T " deSC,,bed, the ,oCations ln whlch " s prohibited, and whether or not someone who may be offended by the conduct must actually be present. In some states, the statutory language sheds more light on the intended targets

by includ.ng in the definition of prohibited conduct "an act of deviate sexual activity"" In the vast majority, it is simply implied. As a general rule, lewd con-

duct statutes allow individual law enforcement officers and agencies to set the standard for decency, and then decide who violates it. The results are predictable. For instance, the California Supreme Court concluded when ruling that the town of Mountain View en gaged in discriminatory enforcement of lewd conduct statutes against gay men: "The officers' method of operation was designed to ferret out homosexuals . . . without any relation to the alleged problems at that location for which the citizen complaint had initially been lodged."[41] A Los Angeles Sheriffs' Department LGBT liaison admit ted to Amnesty, "When officers are working in areas where people have sex in their cars, if it's a man and a woman, or even two women, the officers usually check to make sure there is not a serious crime occurring [such as rape] and then send them on their way . . . They are told to take it to a hotel or take it home. However, if there are two men consensually involved in the car, officers arrest them more often than not. This is discriminatory enforcement." A San Antonio park ranger who arrested at least five hundred gay men for lewd con duct acknowledged in court that his motivation was to "rid the park of gays."[42]

While no statistics currently exist documenting the number of lewd conduct arrests nationwide or even on a state-by-state basis, what data is available sheds some light on how many lives are forever changed by them. Five hundred and forty men were arrested at a single rest stop in New Jersey over an eighteen-month period in the late 1980s as a result of an undercover operation.[43] According to the Lambda Legal Defense & Education Fund ("Lambda Legal Defense"), close to two thousand gay men a year were arrested for lewd conduct in Los Angeles alone between 1997 and 1999.[44] In San Antonio, Texas, with a population a fraction the size of LA's, over nine hundred men were arrested between 1999 and 2001.[45] Hundreds more were caught up in Michigan state troopers' decade-long "bag a fag" operation targeting truck stops across the state.[46] In 2007, NCAVP reported a dramatic resurgence in undercover police stings in public restrooms and parks in Michigan following the publicity surrounding the Craig incident, in many cases resulting in seizure of vehicles at a recovery cost of $500 to $950.[47]

Massachusetts state troopers engaged in a similar operation until it was brought to a halt by a lawsuit filed by GLAD (Gay & Lesbian Advocates & Defenders), which resulted in issuance

> of guidelines instructing officers that "socializing and expressions of affection" are not sexual conduct, and that public sexual conduct is not illegal unless there is a substantial risk that it could be observed by a casual passerby.[48]
>
> In the summer of 2.000, Chicago police targeted men having sex with men at Montrose Point, otherwise known as the Magic Hedge along the city's lakeshore. Three summers later, seventy men were ar rested there by the Chicago Police Department on charges of public indecency. As recently as 2007, fifty to sixty public indecency arrests were made in the nearby Cook County Forest Preserve.-"
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> As they did in the 1950s, law enforcement agencies continue to use the media to further humiliate those whom they arrest on sex-related charges. For instance, in the late $_{19}$9os, San Antonio, Texas, police were reported to tip off media outlets to lewd conduct operations. Th.s resulted in one local TV station running a regular segment titled
> Perverts in the Park," showing men being led out of bathrooms by police after arrests for indecent exposure. The *San Antonio Express* P nted the names of individuals arrested, stopping the practice only after one man committed suicide following publication of his name n the paper » As recently as 2007, forty men arrested on charges of
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> *f(A* . u$^{V1OT\ dlSOrderl}$y ^{condu}« ^ Johnson City, Tennessee suffered the humiliation of having their names and charges published
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> rr ste o P™rpted one of the men

. r sted to commit suic.de within twenty-four hours of publication b T I'] tHe ,oCatl0n of alfe®ed activity was, trail finl 7 b t 7" admiSSion ∗' good Pa«d trail. . [ln] underbrush that has grown up and resembles a cave " behatrr d«TMd» out "this anti-socill by *tZZT" T diSd oSUre of SCXUal* TM*tion* by law enforcement leads to deadly consequences. In 1997 Marcus Wayman, a high school senior, and a seventeen-year-old compn-
•on were sitting ,n a parked car in M.nersville, Pennsylvania, when out al T C I tWo offiCerS Who '"errogated them with-

ing condoms, they concluded the two were going to have sex. Both were arrested for underage drinking and brought to the police sta tion for further questioning, where one of the officers lectured them on his interpretation of the Bible's views on homosexuality, called them "queers," and threatened to tell Wayman's grandfather that he was gay. Upon hearing this, Wayman told his companion that he would kill himself, and proceeded to do just that after he was released.[52]

Fabrication of evidence to support lewd conduct charges is re ported to be commonplace. In a rare case where it was actually observed by a third party, an investigator for a defense attorney re ported that while in a public bathroom taking measurements to verify the accuracy of police allegations in an unrelated case, he observed a Latino man enter, use a stall, and start to walk out only to be ar rested for lewd conduct upon exiting the bathroom. According to the investigator's sworn testimony, at no time did the man

engage in any wrongful or lewd conduct whatsoever.[53] While the number of lewd conduct arrests is reported to have de clined in some cities in recent years as a result of organizing efforts, legal challenges, and declining law enforcement resources, the im pact on gay men, and increasingly gay men of color and immigrant gay men, continues to be devastating. For instance, in Los Angeles, between 1999 and 2001, 54 percent of lewd conduct arrests were of Black and Latino men. Police targeting of locations where South Asian, Black, Latino, and immigrant gay men are known to congre gate—from the bathrooms of subway stations in Jackson Heights, New York City, to Detroit's Rouge Park to LA's barrios is common place across the country. Latino gay men in LA point out that regard less of where policing of public sex takes place, it has a particular impact on low-income and young gay men who cannot afford to go to clubs or bathhouses—and often cannot afford the costs of mounting a defense to charges that are in many cases baseless. '[4] Disproportion ate numbers of arrests of men of color for lewd conduct offenses are no doubt at least in part a product of saturation of communities of color with police officers in the context of war on drugs and quality of life policies. Additionally, archetypes framing men of color and gay men as highly sexualized and predatory meld to inform heightened policing of gay men of color's sexualities in public spaces. *Queer (Injustice*

Not only are lewd conduct statutes discriminatorily enforced, but policing of queer existences in public spaces is often accompanied by explicitly homophobic verbal and physical abuse and public humili ation. In a case reported by the ACLU of Southern California, a gay man approached by two undercover officers soliciting sex for money was beaten by the officers with a flashlight after he attempted to walk away. The officers subsequently threatened to shoot him in the head, telling him "all

faggots should be killed."[55] LAPD officers hate also been reported to tie up gay men arrested in Griffith Park and display them to bystanders before taking them into custody.[56]

The repeal of lewd conduct statutes alone is unlikely to be enough to stop such practices. Laws may change, but often law enforcement practices simply shift and adjust to achieve the same results. In New York State a zoo$_3$ investigation revealed that 400 people were ar rested over a twenty-year period and charged under a state law pro hibiting consensual sodomy that had been invalidated in 1980. This was not simply a regrettable instance of the news of the change in the law not making it to far-flung areas of the state-296 of the arrests were made in New York City. Officials dismissed the seriousness of the wrongful arrests, claiming that, had they known of the error, most of the charges brought under the invalid law would simply have

- been changed to something else, starkly proving the point that if one law is struck down, another works just as well.[57] Or, when in doubt charges can simply just be made up. For instance, in two separate incidents in Orlando, Florida, men identified by police as gay were simply charged with "walking aimlessly in the park" or engaging in prohibited activity."[58]

Much of the mainstream movement's resistance to policing of queers has focused on these experiences of gay men, to the exclusion of those of other LGBT people and larger communities. The false ar rests of twenty-seven gay men on prostitution charges in New York City m zoos brought the issues into sharp focus. The men maintained their innocence of any crime, and the arrests appeared to be part of a gentnficat.on-dnven scheme to shutter businesses selling pornogra

phy in up-and-coming neighborhoods® Rob Pinter, a white, middle class, licensed massage therapist arrested in late zooS, outraged at being falsely charged with

prostitution, contacted every elected official and community organization he could think of, sparking

widespread community organizing. His conviction was eventually overturned, and, according to the NYPD, the operation that resulted in the arrests was mothballed. By many accounts, justice was done. However, throughout the process, efforts were made to broaden the discussion to address widespread profiling and false arrests of trans gender women on prostitution-related charges in many of the same neighborhoods, as well as abuses of LGBT sex workers in the context of policing prostitution more generally. Although Pinter himself re peatedly expressed solidarity with all queers who experience police misconduct, for the most part, others insisted on narrowly framing the issue to exclude the experiences of queers who are, or are profiled as, sex workers, as well as those of New York City's larger communi ties of color.

SEX WORK

Street-based prostitution is generally considered to be one of the hall marks of social disorder that must be rooted out by quality of life policing. An assumed association between sex work, the drug trade, and violent crime is constantly used to justify sweeps of areas where prostitution is believed to take place.[60] Quality of life regulations such as "loitering with intent to prostitute," as well as a Washington, DC,
statute providing for the establishment of "prostitution free zones currently being promoted nationally as model legislation, serve as important tools for literally rounding up sex workers, and anyone perceived to be one, on a nightly basis.[61]

The policing of sex work ensnares heterosexuals and queers alike. Yet punishment of consensual exchanges of sex for money or some other benefit among adults can be

seen as an extension of polic ing queer, as in nonnormative, sex. Moreover, it particularly pun ishes LGBT sex workers, transgender women—who are endemically profiled as sex workers by police—and LGBT youth.

Transgender women, particularly transgender women of color, are so frequently perceived to be sex workers by police that the term *walking while trans,* derivative of the more commonly known term *driving while Black,* was coined to reflect the reality that transgender women often cannot walk down the street without being stopped, harassed, verbally, sexually and physically abused, and arrested, regardless of what they are doing at the time.[62]

nonconformity is perceived to be enough to signal "intent to prosti tute," regardless of whether any evidence exists to support such an inference. When combined with hailing a cab or carrying more than one condom, it's an open and shut case.

While the gay sexuality of men involved in the sex trades is (at times incorrectly) presumed, the involvement of lesbians and bisexual women in the sex industries is virtually erased. As a speaker at the June 1982 Prostitutes: Our Life—Lesbian and Straight conference in San Francisco explained, "Many prostitute women are Lesbians—yet we have a fight to be visible in the women's and the gay movements. This is partly due to our illegality but also because being out about our profession, we face attitudes that suggest we're either a 'traitor to the women's cause' or not 'a real Lesbian.'"[63]

In her 1987 essay *Lesbians and Prostitutes: A Historical Sister hood,* Joan Nestle highlights the shared history, experiences, and perceptions of lesbians and sex workers. As Nestle points out, "In the early decades of the twentieth century, Lesbians and prostitutes were often confused in the popular and legal imagination." Indeed,

One of the prevailing models for explaining the 'sickness' of prosti tutes in the fifties was that prostitutes were really Lesbians in disguise who suffered from an Oedipus complex and were therefore hostile to men." Lesbians and sex workers not only shared social stigmas, they shared subversive strategies for liberation—Nestle posits that "suc cessful prostitution accomplished for some whores what passing for men did for some Lesbians: it gave them freedom from the rigidly con trolled women's sphere." She also traces the origins of police tactics used to terrorize queer communities to those used to enforce antipros titution laws, concluding that "whore and queer made little difference
when a raid was on." It is unclear how deeply rooted the conflation of lesbianism and prostitution remains in the public imagination. Nev ertheless, what is clear is that both lesbians and sex workers fail to conform to conventional racialized notions of femininity. As "lost women " they are perceived as both sexually available and inviolable, and subject to state control.[6]" Mutually reinforcing archetypes based on race and/or class often bolster these assumptions.

The policing of sex work is highly sexualized and characterized by routine forms of misogynist, homophobic, transphobic, and rac ist abuse.According to a 2003 report by the Sex Workers Project

(SWP) about street-based sex work in New York City, not only is sex ual harassment of sex workers by police endemic, but "transgender women described officers checking their genitals and making com ments about their gender."[66] It is also marked by physical violence, rape, and extortion of sexual acts on threat of arrest—a threat that
is particularly powerful where transgender women are concerned, given that they are frequently subjected to abusive and invasive searches and dangerous placement with male detainees when in police custody.

Often, many of the archetypes swirling in the ether converge in a single incident. In one poignant example, in 2003, a Native American transgender woman was walking down the street at 4:00 a.m. when she was stopped by two Los Angeles police officers and told she was going to be taken to jail for prostitution. The officers handcuffed her and drove her to an alley. One officer then pulled her out of the car, still handcuffed, and hit her across the face, yelling, "You fucking whore, you fucking faggot." He then threw her down over the back of the patrol car, ripped off her miniskirt and underwear, and raped her. The second officer proceeded to do the same. When they were done they threw her on the ground, told her, "That's what you deserve,
and left her there. She ran to the nearest payphone and called 911. The responding paramedics laughed when she told them what had happened. Realizing "nobody gives a shit about me," she just walked away. On another occasion, LAPD officers inquired about the same woman's ethnicity. When she responded that she was Native, they said, "Good, we can do anything we want to you."[6]
Although horrific, her experience is sadly by no means unique. For instance, a 2002 Chicago-based study of women in the sex trades found that 30 percent of erotic dancers and 24 percent of street-based sex workers who had been raped identified a police officer as the rapist. Approximately 20 percent of other acts of sexual violence re
ported by study participants were committed by police.[68] A participa tory research report conducted by young women and girls in the sex trades at Chicago's Young Women's Empowerment Project (YWEP) found that police violence, coercion, and failure to help are by far the most significant forms of institutional violence they experience. The report states, "Many girls said that police sexual misconduct happens frequently while they are being arrested or questioned."[69] Accord-

ing to 2003 and 2005 studies by the SWP, up to 17 percent of sex workers interviewed were sexually harassed, abused, and assaulted by law enforcement officers. One in five actual or perceived sex workers surveyed by Different Avenues in Washington, DC, who had been ap
proached by police indicated that officers asked them for sex. Close to 30 percent of outdoor sex workers and 14 percent of indoor sex workers who participated in the New York City studies reported experiencing physical abuse at the hands of police officers.?"

Accountability for both legal and extralegal policing and punish ment of perceived gender deviance among sex workers is.fiarticularly hard to come by. For instance, dozens of sexual assaults and rapes
y Eugene, Oregon, police officers went unaddressed for almost a decade, despite complaints made to at least half a dozen officers and supervisors. According to police files, the complaints were simply dis missed as the "grumblings of junkies and prostitutes." Many of the women who eventually came forward said they initially did not report the abuse because they feared they would not be believed, and that officers would retaliate against them. One woman reported that one officer put his service weapon against her genitals and threatened to blow her insides out" if she told anyone.[71]

POLICING GENDER

Queer encounters with police are not limited to those driven by efforts to punish deviant sexualit.es. Sylvia Rivera, one of the veterans of the

was.r e\v ,m dra f,<1Ueens were a™«ed, what degradation there

StonewallUpns.ng, described the treatment of transgender women at

was. . We always felt that the police were the real enemy. We were disrespected. A lot of us were beaten up and raped »» Law enforcement officers have fairly consistently and explicitly fhe rlso? h V ^ 8ender binary, Historieally and up until the I9 8OS, such policing took the form of enforcement of sumptu ary laws, which required individuals to wear at least three articles of clothing conventionally associated with the gender they were assigned birth and subjected people to arrest for impersonating another gender. Law professor I. Bennett Capers provides h.stor.cal context for the operation of such laws, which supplemented and replaced laws proscribing enslaved people and people of lower classes from wearing clothing associated with those of ruling classes:

Between 1850 and 1870, just as the abolitionist movement, then the Civil War, and then Reconstruction were disrupting the .subordinate/superordinate balance between blacks and whites,
just as middle class women were demanding social and eco nomic equality, agitating for the right to vote, and quite literally their right to wear pants, and just as lesbian and gay subcul tures were emerging in large cities, jurisdictions began passing sumptuary legislation which had the effect of reifying sex and gender distinctions.

Many of these ordinances, Capers says, explicitly banned cross dressing. [4]
According to sexuality scholar Katherine Franke, "Butch lesbians experienced the weight of these rules every day during the 1950s when police would arrest them if they could not prove that they were wear ing at least three pieces of women's clothing." ' As Leslie Feinberg, author of *Stone Butch Blues,* put it, "The reality of why I was arrested was as cold as the cell's cement floor: I am

considered a masculine female. That's a *gender* violation." [6] Poet and activist Audre Lorde re ported her own experience in New York City in that era: "There were always rumors of plainclothes women circulating among us, looking for gay-girls with fewer than three pieces of female attire.' ' Such practices continued into the 1960s and 1970s, and occasionally make an encore appearance. For instance, in zooz, in Washington, DC, an African American lesbian reported that officers unbuttoned her trou sers during a search on the street, asking her, "Why are you wearing boys' underwear? Are you a dyke? Do you eat pussy?" [8]

Although "official prohibitions against cross dressing have, for the most part, gone the way of other sumptuary laws . . . the effect of these laws—like an imprint—is with us." [9] They contributed to the development of archetypes of gender transgressive people as in herently criminal, and continue to act as unwritten rules, which, when violated, signal disorder and fraud to law enforcement. Franke underscores their enduring impact by noting that persons whose appearance, dress, or behavior conflicts or challenges heteronorma tive expectations about sex/gender conformity "are either punished for trying to get away with something or pathologized as freaks."[80] Currently, gender is often directly policed through arbitrary and

violent arrests of transgender and gender-nonconforming people for using the "wrong" restroom—even though there is generally no law requiring individuals who use bathrooms designated as for men or women to have any particular set of characteristics. As Franke notes, sumptuary laws and bathroom signs serve similar functions, creating and reinforcing an "official symbolic language of gendered identity that rightfully belongs to either sex. 'Real women' and 'real men' con

form to the norms; the rest of us are deviants. Curiouslf, in life and in law, bathrooms seem to be the site where one's sexual authenticity is tested."[81]

For instance, the Esperanza Center in San Antonio, Texas, reported t at in 2003 a female attorney wearing a suit and tie was arrested for using the women's bathroom.[8]* In *Arab American Feminisms,* Huda Jaddallah speaks of being mistaken for a man when she enters the women's restroom-and then being policed as a potential terrorist based on her ethnic,ty and her "disguise."[88] Fear of such abuse and arbitrary arrests leads many transgender and gender-nonconforming people to avoid using bathrooms in public places, often leading to severe and painful health consequences.[84]

Beyond bathrooms, gender policing takes place through routine harassment. Verbal abuse of transgender and gender-nonconforming people is commonplace. According to a Los Angeles study of 244 transgender women, 37 percent of respondents reported experiencing verbal abuse from a police officer on at least one occasion.** It also takes place through arrests of individuals who carry identification reflecting the wrong" gender. Such policing draws on and reinforces the criminalizing archetype of transgender and gender-nonconform
ing people as intrinsically dishonest and deceptive. It often extends to routinely subjecting transgender and gender-nonconforming people to inappropriate, invasive, and unlawful searches conducted for the purpose of viewing or touching individuals' genitals, either to satisfy law enforcement officers' curiosity, or to determine a person's "real" gender. Jeremy Burke, a white transgender man arrested in San Fran
cisco in 2.002., was kicked and beaten, and forcibly strip-searched by several female officers, then placed naked and handcuffed a hold mg tank A dress was later thrown into the cell, which Burke refused to wear. An officer subsequently fotced Burke to display his genitalia,

justifying police actions by saying, "The boss doesn't know whete to

put you," and then taunting him further, stating, "That's the biggest clit I ever saw."[86]

Gender nonconformity is also often punished in and of itself, through physical violence, drawing on a toxic amalgam of queer criminalizing archetypes. Controlling narratives framing women of African descent as masculine and women of color as sexually de
graded are also at play, dictating punishment for failure to conform to racialized gender norms. For instance, Black lesbians frequently report being punched in the chest by officers who justify their violence by saying something along the lines of, "You want to act like a man, I'll treat you like a man."[87] A Latina lesbian arrested at a demonstra tion in New York City in 2003 reported that an officer walked her by cells holding men and told her, "You think you're a man, we'll put you in there and see what happens." A Black lesbian in Atlanta reported being raped by a police officer who told her the world needed "one less dyke."[88]

At other times, gender policing is subtler. Gender nonconformity in appearance or expression gives rise to police presumptions of disor der, violence, and mental instability, among other qualities. Such pre sumptions are heightened when synergistically reinforced by equally powerful stereotypes based on race, class, or both. In routine daily interactions, police can be described as succumbing to "classification anxiety."[89] When officers feel challenged in engaging in the rigid clas sification of individuals as male and female, gay and straight, an indi vidual's mere presence in public spaces is experienced as a disruption of the social order. Queer, transgender, and gender-nonconforming people are threatening because they place in question "identities pre viously conceived as

stable, unchallengeable, grounded and 'known,'" which serve as critical tools of heterosexist culture.[90] As a trans gender woman said, "If people can't put a label on you they get confused . . . people have to know who you are. You categorize in your mind. One of the first things you do is determine sex—if you can't do that, it blows the whole system up."[91] Where law enforce ment officers experience classification anxiety, the consequences are widespread harassment, abuse, and arbitrary arrest.

Queer (In)Justice

In Feinberg s words, "Even where the laws are not written down, po lice are empowered to carry out merciless punishment for sex and gender difference."[92] Beyond the daily violence and humiliation law enforcement officers mete out on the streets, police also serve as a first point of contact with the criminal legal system, thereby playing a critical role in shaping how queers will be treated within it. Alter nately determining whether queers will be seen as victims or suspects, fueling archetype-driven prosecutions, and driving incarceration and punishment, policing of queers continues to warrant concerted attention on the part of LGBT, police accountability, and civil rights movements.

4

OBJECTION!

Treatment of Queers in Criminal Courts

In May 1988, Rene Chinea, a fifty-year-old gay Cuban immigrant, was murdered in Chicago, Illinois. His throat was slashed, his penis and hands cut off, and his legs

partially severed. His decomposing and dismembered body was found in a garbage bag inside his closet. The Chicago police detectives who investigated the homicide determined Chinea was the victim of a "homosexual murder."[1] In so doing, they were not suggesting that Chinea was the victim of violence motivated by his sexual orientation, that is, a hate crime. Rather, they believed that this grisly murder must have been committed by another "homosexual." This belief was based on the premise that gay men who are lovers or roommates are "particularly violent" when they fight, often engaging in "gruesome-type, serious cuttings,"[2] and it shaped the investigation from the moment police responded to the scene. Eight months later, Miguel Castillo, a thirty-seven-year-old Cuban immigrant, was charged with Chinea's murder. Despite overwhelm ing evidence of his innocence—most notably the fact that he was in jail at the time the crime was committed—Castillo was nevertheless convicted on the basis of an alleged "confession" that appears to have been manufactured in its entirety by three Chicago police officers to support their theory. Castillo was sentenced to forty-eight years in prison. He spent eleven and a half years behind bars before he was exonerated on the basis of innocence, and later successfully sued the Chicago Police Department for wrongful conviction. Castillo's case demonstrates how far police perceptions, informed by queer criminal archetypes, can drive investigations and prosecu tions. In this instance, controlling images of queers—and particu