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QUEER (IN)JUSTICE

The Criminalization of LGBT People in the United States

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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 TransJustice¹

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 previous 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 employees and patrons of the private lesbian and gay establishment. Police 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:

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 modern 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.⁵ 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 primarily 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 clothing, 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 lie 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. Officers 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 claimed to be enforcing building and liquor codes. The sheriff’s department said they were responding to complaints from neighbors and concerns for public safety. They had obtained a warrant to search the 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 visible and recognized point of contact between LGBT people and the criminal legal system. From the images that form the opening sequence 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 Society and the Daughters of Bilitis have expressed strong concern about bar raids and police harassment.⁷ 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 11 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, policing 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, transgender youth, homeless and street involved youth are more vulnerable to police violence . . . AVP’s data analysis also reveals that transgender 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 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 organizations, 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 accountability and civil rights organizations have called for accountability in a limited number of cases involving LGBT individuals, policing of gender 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.

POLICING SOCIAL ORDER

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 discretion 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 facilitated this process. This now predominant law enforcement paradigm is premised on maintaining social order through aggressive enforcement of quality of life regulations, rooted in age-old vagrancy laws, which 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 appear innocent at first blush, in reality, by criminalizing ordinary and otherwise lawful activities, this new paradigm has given police additional 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.¹⁵ 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 violations (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 arbitrary enforcement.”¹⁷ 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 enforcement 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 presumptions 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 others 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 neighborhood 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.¹⁹ Driving such seemingly routine incidents are undercurrents 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. Criminalizing archetypes framing particular individuals and groups as inherently dangerous, violent, mentally unstable, or disposable fuel and justify physical abuse by police. Statistics pointing to the disproportionate 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, California, in 2001 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 verbal 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 hosting 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 guise of responding to alleged minor, nonviolent offenses, officers used brute force to maintain raced, gendered, and heterosexual "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 enforcement 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 targeted squads and task forces—such as the vice squad—charged with policing particular communities.

Such institutional practices have deep historical roots. Slave patrols 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 likewise a central function of law enforcement institutions in the United States. Northern police forces grew in the 1800s in large part to address 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 exclusively on the disproportionate and selective policing of racial "minority" 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, bisexual, 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 incomplete 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 communities 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 historically operated . . . to punish them for their very deviance from heterosexual, monogamous norms and render the public sphere 'safe' from non-normative sexuality."²⁵ 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 white 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 of respondents had experienced police harassment or violence.²⁶

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 shows, porn theaters, and strip clubs. It encompasses street-based sex work, porn magazines on newsstands, drive-ins, lovers' lanes, public displays of affection, and ten-story Calvin Klein billboard advertisements. And queers by no means have a monopoly on it.²⁷ Yet the existence, or perceived existence, of so-called deviant sexualities

in public spaces is aggressively policed and punished, while the normative 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 appearance 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 engaged, 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. Controlling 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 particular 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 degradation that must be rooted out.

RAIDS

According to historian Allan Bérubé, "Since they were first discovered 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 lesbians fought back during a 1943 raid of a gay bar in San Francisco's Chinatown, leading to what Bérubé describes as a "small riot," during which dozens were arrested. By the 1950s and early 1960s, the virulent homophobia that accompanied the rise of McCarthyism led many state legislatures to pass new laws against gay bars, leading 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 Bérubé's words, a "war on homosexuals," in which patrons were subjected not only to fines, police brutality, and imprisonment, but also divorce, loss of child custody, loss of employment, beatings and murders by private citizens, isolation, humiliation, and suicide.³¹

Despite widespread resistance, the raids continued through the late 1960s and 1970s. In 1979, a dozen San Francisco riot police raided a gay bar, shouting "Bonzai" and indiscriminately swinging riot sticks at patrons hiding under tables while yelling, "Motherfucking faggots, sick cocksuckers!" On September 29, 1982, over twenty uniformed 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 the purpose of arrest or mere harassment, but was a violently racist, homophobic attack on Blue's and the people there. The bar was wrecked: bottles smashed, sound equipment destroyed. The Black gay men and lesbians at the bar were savagely beaten: blood spattered the walls and dried in pools on the floor . . . At one point a cop threw 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 not an isolated incident, but came at a time when two popular lesbian bars in New York City had lost their liquor licenses and "street transvestites and transsexuals in the Village [were] coming under increasing 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."³⁵

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 interests of "respectable" queers. Not only did such measures succeed in pushing public sex back underground, away from safer sex education and peer accountability, they also contributed to a resurgence of police violence against queers.³⁶ Bérubé 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."³⁷

Far from being a relic of the days before police sensitivity training and enlightenment, raids continue to play a central role in the policing of LGBT communities. Forty years to the day after Stonewall, Fort 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 police 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 surveillance, building and liquor code enforcement, and aggressive enforcement of driving while intoxicated, jaywalking, and noise codes. For instance, New York City-based People of Color in Crisis (POCC) reports that Chi Chiz, one of the few gay bars in Manhattan catering to a predominantly African American clientele, has been the subject of “unfair and racially motivated attacks by the local police department . . . [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 establishment 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 2007 arrest 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 of Columbia, 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 “indecent exposure,” “public sexual indecency,” commission of a “lewd, obscene or indecent act,” “obscenity” or “sexual misconduct.” The relevant provisions vary by jurisdiction in terms of the specificity with which the prohibited conduct is described, the locations in which it is 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 including in the definition of prohibited conduct “an act of deviate sexual activity.”⁴⁰ 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 engaged 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 admitted 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 conduct 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 2000, 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 arrested 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.⁴⁹

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 1990s, San Antonio, Texas, police were reported to tip off media outlets to lewd conduct operations. This 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* printed the names of individuals arrested, stopping the practice only after one man committed suicide following publication of his name in the paper.⁵⁰ As recently as 2007, forty men arrested on charges of indecent behavior and disorderly conduct in Johnson City, Tennessee, suffered the humiliation of having their names and charges published in the local newspaper. This apparently prompted one of the men arrested to commit suicide within twenty-four hours of publication of his name. Although the location of alleged sexual activity was, by the local police chief’s own admission, “a good way off the paved trail . . . [in] underbrush that has grown up and resembles a cave,” officials were nevertheless determined to root out “this anti-social behavior.”⁵¹

In some cases the mere threat of disclosure of sexual orientation by law enforcement leads to deadly consequences. In 1997, Marcus Wayman, a high school senior, and a seventeen-year-old companion were sitting in a parked car in Minersville, Pennsylvania, when they were approached by two officers who interrogated them without any evidence that they were engaged in unlawful activity. The officers proceeded to search the car on the pretext that the young men were in possession of marijuana, demanding that the boys empty their pockets. When the officers discovered that the boys were carry-

ing condoms, they concluded the two were going to have sex. Both were arrested for underage drinking and brought to the police station 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 reported to be commonplace. In a rare case where it was actually observed by a third party, an investigator for a defense attorney reported 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 arrested 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 declined in some cities in recent years as a result of organizing efforts, legal challenges, and declining law enforcement resources, the impact 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 congregate—from the bathrooms of subway stations in Jackson Heights, New York City, to Detroit’s Rouge Park to LA’s barrios—is commonplace across the country. Latino gay men in LA point out that regardless 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.⁵⁴ Disproportionate 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.

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 humiliation. 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 have 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 2003 investigation revealed that 400 people were arrested over a twenty-year period and charged under a state law prohibiting 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 arrests of twenty-seven gay men on prostitution charges in New York City in 2008 brought the issues into sharp focus. The men maintained their innocence of any crime, and the arrests appeared to be part of a gentrification-driven scheme to shutter businesses selling pornography in up-and-coming neighborhoods.⁵⁹ Rob Pinter, a white, middle-class, licensed massage therapist arrested in late 2008, 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 transgender 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 repeatedly 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 communities of color.

SEX WORK

Street-based prostitution is generally considered to be one of the hallmarks 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 policing queer, as in nonnormative, sex. Moreover, it particularly punishes 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 Gender

nonconformity is perceived to be enough to signal “intent to prostitute,” 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 Sisterhood*, 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 prostitutes 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 “successful prostitution accomplished for some whores what passing for men did for some Lesbians: it gave them freedom from the rigidly controlled women’s sphere.” She also traces the origins of police tactics used to terrorize queer communities to those used to enforce antiprostitution 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. Nevertheless, 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.⁶⁴ 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 racist abuse.⁶⁵ According to a 2003 report by the Sex Workers Project

(SWP) about street-based sex work in New York City, not only is sexual harassment of sex workers by police endemic, but “transgender women described officers checking their genitals and making comments 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.”⁶⁷

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 reported by study participants were committed by police.⁶⁸ A participatory 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 approached 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.⁷⁰

Accountability for both legal and extralegal policing and punishment of perceived gender deviance among sex workers is particularly hard to come by. For instance, dozens of sexual assaults and rapes by 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 dismissed as the “grumbings 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 sexualities. Sylvia Rivera, one of the veterans of the Stonewall Uprising, described the treatment of transgender women at the time: “When drag queens were arrested, what degradation there was! . . . We always felt that the police were the real enemy. . . . We were disrespected. A lot of us were beaten up and raped.”⁷²

Law enforcement officers have fairly consistently and explicitly policed the borders of the gender binary. Historically and up until the 1980s, such policing took the form of enforcement of sumptuary laws, which required individuals to wear at least three articles of clothing conventionally associated with the gender they were assigned at birth, and subjected people to arrest for impersonating another gender.⁷³ Law professor I. Bennett Capers provides historical 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 economic equality, agitating for the right to vote, and quite literally their right to wear pants, and just as lesbian and gay subcultures 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.⁷⁴

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 wearing at least three pieces of women’s clothing.”⁷⁵ 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.”⁷⁶ Poet and activist Audre Lorde reported 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.”⁷⁷ Such practices continued into the 1960s and 1970s, and occasionally make an encore appearance. For instance, in 2002, in Washington, DC, an African American lesbian reported that officers unbuttoned her trousers during a search on the street, asking her, “Why are you wearing boys’ underwear? Are you a dyke? Do you eat pussy?”⁷⁸

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.”⁷⁹ They contributed to the development of archetypes of gender transgressive people as inherently 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 heteronormative 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’ conform to the norms; the rest of us are deviants. Curiously, 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 that in 2003 a female attorney wearing a suit and tie was arrested for using the women’s bathroom.⁸² 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 ethnicity and her “disguise.”⁸³ 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.⁸⁵ 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-nonconforming 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 Francisco in 2002, was kicked and beaten, and forcibly strip-searched by several female officers, then placed naked and handcuffed in a holding tank. A dress was later thrown into the cell, which Burke refused to wear. An officer subsequently forced Burke to display his genitalia, justifying police actions by saying, “The boss doesn’t know where 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 degraded 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 demonstration 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 disorder, violence, and mental instability, among other qualities. Such presumptions 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 classification of individuals as male and female, gay and straight, an individual’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 previously conceived as stable, unchallengeable, grounded and ‘known,’” which serve as critical tools of heterosexist culture.⁹⁰ As a transgender 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 enforcement officers experience classification anxiety, the consequences are widespread harassment, abuse, and arbitrary arrest.

* * *

In Feinberg's words, "Even where the laws are not written down, police 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. Alternately 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.