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steppin' out



PHOTO BY LINDA KLEWER

guest editorial

Back to basics

Sodomy law repeal may seem like a tired issue, but 21 states still criminalize homosexual sex

by John D'Emilio

As our movement grows stronger, as more of us come out earlier and stay out for decades, our vision of equality for gay, lesbian, bisexual and trans people expands. We can see farther than we could a generation ago, and we expect more.

Viewed from that perspective, what could be less interesting or more tired than sodomy law repeal? The police, after all, are not regularly barging into our bedrooms and leading us away in handcuffs. Aren't the remaining sodomy laws merely relics of a distant past, technically enforceable but meaningless in practical terms?

Don't kid yourself. Getting rid of sodomy laws has to be a top priority.

The movement for sodomy law repeal got started in the 1950s. In 1961, eight years before the Stonewall Rebellion, Illinois became the first state to repeal. A couple of other states did so during the 1960s; the repeal movement accelerated in the 1970s; and then it slowed considerably in the 1980s. Today, 29 states and the District of Columbia are "free" states without sodomy laws; the remaining 21 states still criminalize all homosexual sex.

As the extremist right got organized in the 1980s, it became harder to repeal these statutes legislatively. Then in 1986, in the infamous case of *Bowers vs. Hardwick*, the U.S. Supreme Court upheld the constitutionality of sodomy statutes. Since then, sodomy laws have fallen not through legislative repeal but because energetic queer lawyers have challenged them based on the provisions of state constitutions.

Even though the remaining laws are not often enforced, they

function as an excuse for other oppressive measures, such as denying custody to parents or restricting public monies for the benefit of gay men or lesbians.

Whether or not a state has a sodomy law also seems to affect how far it goes in other areas of concern to us. For instance, one out of five "free" states include sexual orientation in their civil rights statutes, but only one out of seven sodomy states do. One out of five free states have executive orders from the governor banning sexual orientation discrimination, but only one out of 10 sodomy states do. Almost half of the free states punish hate crimes based on sexual orientation, in contrast to only one-quarter of the sodomy states. And the contrast is most dramatic in the area of child custody. The National Center for Lesbian Rights found courts supportive of granting us custody rights in more than one out of four free states, in comparison to only one out of 20 sodomy states.

The existence of a sodomy law in a state tends to be a good marker of a hostile climate. It also serves as a barrier making other kinds of change more difficult to achieve. Until we eliminate such laws entirely, we run the very real risk of a right-wing effort to recriminalize homosexual acts in today's free states. And as long as these laws exist anywhere in the United States, the stigma of criminality remains heavy in our culture, hanging like an albatross around our necks.

John D'Emilio is a historian, author and former director of the Policy Institute of the National Gay and Lesbian Task Force. He is currently working on a biography of civil rights leader Bayard Rustin.

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