

1983

Book Review of Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States 1940–1970, by John D’Emilio

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Recommended Citation

1 *New York Law School Human Rights Annual* 305–309 (1983).

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BOOK REVIEWS

SEXUAL POLITICS, SEXUAL COMMUNITIES: THE MAKING OF A HOMOSEXUAL MINORITY IN THE UNITED STATES 1940-1970. By John D'Emilio.* Chicago: University of Chicago Press, 1983. Pp. x, 257. \$20.00.

Reviewed by Arthur S. Leonard**

Do gay men and lesbians constitute a "minority group" entitled to special consideration from the courts under the Equal Protection Clause of the Constitution,¹ or to special consideration from legislatures enacting civil rights laws banning discrimination on the basis of "minority group" membership?² This question is becoming increasingly important as challenges to differential, and usually disadvantageous, treatment of gay people by individuals or the government work their way through the law-making and law-deciding processes.³ In recent years, attempts have been made by proponents of equal civil rights for gays to add "sexual orientation" or "affectional preference" to the list of group-defining characteristics contained in city, state, and federal civil rights laws,⁴ and to assert "minority group" sta-

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1. U.S. CONST. amend. XIV, § 1.
2. *E.g.*, Civil Rights Act of 1964, 78 Stat. 253 (codified at 42 U.S.C. §§ 2000e-2000e-17 (1976 & Supp. V 1981)).
3. On the significance of group identification, see Garet, *Communitarity and Existence: The Rights of Groups*, 56 S. CAL. L. REV. 1001 (1983), especially at 1023-28.
4. *See, e.g.*, New York City Council Intro 1 (1983); New York Legislature Bill No. S.1928/A.2480 (1983), and their counterparts at the federal level and in other states. For an example of such a statute enacted by a municipal government, see Minneapolis Code of Ordinances relating to Civil Rights, § 945.010 (*reproduced in* E.C. BOGGAN, M. HAFT, C. LISTER, J. RUFF & T. STODDARD, *THE RIGHTS OF GAY PEOPLE* at 171-75 (rev. ed. 1983)). *See also* J.M. Hedgpeth, *Employment Discrimination Law and the Rights of Gay Persons*, 5 J. HOMOSEXUALITY 67 (Fall-Winter 1979/80).

tus in litigation involving state action, such as enforcement of sodomy and sexual solicitation laws,⁵ exclusionary provisions of immigration and naturalization laws,⁶ application of state rules governing child custody and visitation rights,⁷ and discrimination in employment or access to government services.⁸ In some cases, gay activists and litigants have been successful in persuading legislators and courts that such a group status exists and deserves recognition, but such successes have not yet become the rule.

Although the Supreme Court has not addressed the issue directly, the grant of certiorari in *People v. Uplinger*⁹ and the recent split of circuit authority on immigration law issues¹⁰ make it likely that the question of minority group status, as a matter of law, will have to be decided sooner or later, at least in the realm of Equal Protection doctrine. Fundamental to the Court's consideration will be the question whether a group defined primarily by the sexual orientation of its members comes within the definitional ambit of the "discrete and insular minority"¹¹ which requires protection from oppression by the gov-

5. *E.g.*, *People v. Onofre*, 51 N.Y.2d 476, 415 N.E.2d 936, 434 N.Y.S.2d 514 (1980), *cert. denied*, 451 U.S. 937 (1981) (consensual sodomy law held unconstitutional as invasion of privacy rights and equal protection rights); *People v. Uplinger*, 58 N.Y.2d 936, 447 N.E.2d 62, 460 N.Y.S.2d 514 (1983), *cert. granted*, 52 U.S.L.W. 3261 (Oct. 3, 1983) (law outlawing loitering for purpose of soliciting deviate sexual intercourse unconstitutional where consensual sodomy law previously held unconstitutional). *See Richards, Homosexual Acts and the Constitutional Right to Privacy*, 5 J. HOMOSEXUALITY 43, 51-63 (Fall/Winter 1979/80).

6. *E.g.*, *In re Longstaff*, 52 U.S.L.W. 2237 (5th Cir. 1983); *Hill v. INS*, 714 F.2d 1470 (9th Cir. 1983) (Immigration Service may not exclude homosexual aliens in absence of Public Health Service certification required by statute); *Nemetz v. INS*, 647 F.2d 432 (4th Cir. 1981) (naturalization of homosexual alien ordered). *See Reynolds, The Immigration and Nationality Act and the Rights of Homosexual Aliens*, 5 J. HOMOSEXUALITY 79 (Fall-Winter 1979/80).

7. *E.g.*, *Doe v. Doe*, 9 FAM. L. REP. (BNA) 2662 (Mass. App. Ct. 1983) (lesbian mother awarded joint custody of minor male child). *See Hitchens, Social Attitudes, Legal Standards, and Personal Trauma in Child Custody Cases*, 5 J. HOMOSEXUALITY 89 (Fall-Winter 1979/80); *Note, The Avowed Lesbian Mother and the Right to Child Custody: A Constitutional Challenge That Can No Longer Be Denied*, 12 SAN DIEGO L. REV. (1975).

8. *E.g.*, *Acanfora v. Bd. of Educ. of Montgomery Co.*, 491 F.2d 498 (4th Cir. 1974) (school board may take action against homosexual teacher who concealed gay associations in employment application). *See Hedgpeth, supra* note 4.

9. *See* note 5, *supra*.

10. *See* note 6, *supra*.

11. *United States v. Carolene Products Co.*, 304 U.S. 144, 152-53 n.4 (1938).

erning political and social coalitions of society from which that minority is normally excluded. John D'Emilio's useful new book, *Sexual Politics, Sexual Communities*,¹² provides an eloquent and exhaustively documented argument for the proposition that minority group status does indeed exist for gay people, and that the self-definition by gay people as a "minority group" means much more than commonality of sexual orientation.

D'Emilio's approach is that of the professional historian. He attempts to discern social trends and to describe the evolution of homosexual identity from an individual quirk linked to specific sexual practices characterized by the majority society as "deviant," to a collective ethos generating an infrastructure for a community defined by the common sexual orientation of its members. D'Emilio centers his approach upon examining historical evidence of what gay people thought about themselves at different times both as individuals and as members of a definable "group." This differs from most past attempts to write "gay history," which were usually occupied either with sexual gossip and speculation about the famous,¹³ or narrowly focused upon the resolutions, demonstrations, and accomplishments of social and political activists.¹⁴ While D'Emilio does not slight the latter, his focused concern with exploring the question of group identity sheds new light on the subject.

D'Emilio structures his presentation in four parts. In the first, titled "Identity, Community, and Oppression: A Sexual Minority in the Making," he presents a detailed picture of the social place of the "homosexual" in American society from colonial times until the immediate post-World War II years. The focus of this section is upon how the evolution of American society and "scientific" thought on sexuality resulted in the development of a feeling of individual identity on the part of gay people, the development of the rudiments of a "minority" community (especially during the years immediately surrounding and including World War II), and the impact on that community of the harsh, anti-gay environment of the early 1950's, the period of the anti-

12. J. D'EMILIO, *SEXUAL POLITICS, SEXUAL COMMUNITIES* (1983).

13. *E.g.*, A.L. ROWSE, *HOMOSEXUALS IN HISTORY* (1977).

14. *E.g.*, K. TOBIN & R. WICKER, *THE GAY CRUSADERS* (1972); A. BELL, *DANCING THE GAY LIB BLUES* (1971). This characterization does not hold true of all past attempts to write gay history. See notes 16-17, *infra*.

Communist witch-hunt which had especially severe consequences for gays.

In the second part, "The 1950s: Radical Visions and Conformist Pressures," D'Emilio explores the ways in which the anti-gay oppression of the period inspired a small group of radicals to form gay rights organizations, and then pressured those organizations into much less radical programs than their founders had envisioned. Running throughout this part is an examination of how the creation of such organizations affected the identities not only of their members but also of non-affiliated gay people in society at large.

In the third part, "The 1960s: Civil Rights and the Pursuit of Equality," D'Emilio documents the new, more militant approach taken by the infant gay civil rights organizations in the wake of a new societal preoccupation with issues of group rights, as exemplified by the black and women's rights movements, in which many gay people participated.

Part 4, "The Liberation Impulse," describes the internalization of a "minority group" ethos among gays, culminating in the seemingly spontaneous eruption of a gay liberation movement, espousing militant tactics along the lines previously advocated by the black and women's movements. D'Emilio also provides a brief follow-up on what has happened since the outburst of gay liberation activity in 1969, although for all practical purposes, the birth of the "modern" gay rights "movement" in that year marks the end of his main inquiry.

D'Emilio's book provides an important source for arguments that proponents of a "minority group" status for gays will have to make in the continuing legislative and judicial battles over gay rights. The most important of these, with respect to constitutional equal protection claims, are that gay people, as a group, suffer oppression based on stereotypes and prejudice, and that gays are politically isolated to the extent that they require intervention by the courts to prevent political majorities from abridging their basic human rights. With respect to claims for statutory protection, perhaps the most important arguments have to do with the nature of discrimination encountered by gay people and the legitimacy of their identity as a distinct group deserving

minority group protection.¹⁵ D'Emilio's skillful assembly and collation of a wide variety of sources, some never before available to academic researchers, and his wide-ranging interviews with key figures who participated in the events of the period central to his inquiry (1940-1970), make his book indispensable for those advancing such arguments, an immediate classic on the order of Jonathan Katz's *Gay American History*¹⁶ and Toby Marotta's *The Politics of Homosexuality*.¹⁷

If there be a weakness, it may be that D'Emilio is overly optimistic about the degree to which the gay liberation movement has achieved its original goal of creating social acceptance of gays as a legitimate "minority group," and this occasionally leads him to overstate the social and political accomplishments of the "movement."¹⁸ As D'Emilio points out, however, self-identification in group terms is the first important step in such a process, and is a necessary predicate to the achievement of those broader social goals which were the professed aims not only of the liberationists of 1969 but also of the radical visionaries who dared to dream in the early 1950's that gays could "come out of the closet" and win acceptance on their own terms.

15. See Garet, *supra* note 3. In this regard, D'Emilio shows most convincingly that the modern gay community which emerged during the 1970s has concerns and unifying forces which go beyond a mere common sexual orientation. D'Emilio, *supra* note 12, at 238-39.

16. J. KATZ, *GAY AMERICAN HISTORY* (1976).

17. T. MAROTTA, *THE POLITICS OF HOMOSEXUALITY* (1981).

18. See, e.g., D'Emilio, *supra* note 12, at 247-48.