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# **GAY AND LESBIAN ELDERS: HISTORY, LAW, AND IDENTITY POLITICS IN THE UNITED STATES**

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## **Introduction**

On June 16, 2008, Del Martin and Phyllis Lyon, longtime lesbian activists who were both well into their eighties, became the first same-sex couple to marry legally in California (McKinley 2008). Widely covered in the press, their wedding ceremony was presided over by San Francisco Mayor Gavin Newsom, as a jubilant crowd of supporters and a scattering of protestors waited outside City Hall (McKinley 2008). The elderly couple had been together for fifty-five years (McKinley 2008). They started the first lesbian organization in the United States and jointly authored the groundbreaking book, *Lesbian/Woman* in 1972—when homosexuality was still classified as a mental illness by the American Psychiatric Association. The couple’s long-standing commitment to the movement for gay and lesbian equality, and to each other, made them the obvious choice for this historic first.

Phyllis later commented that when she met Del in the 1950s, she “never imagined there would be a day that we would actually be able to get married” (Gordon 2008). The *New York Times* described Del and Phyllis’ wedding ceremony as a “landmark,” but the couple’s married life together was fleeting, as was legally recognized same-sex marriage in the state of California (McKinley 2008). Del, who had been in declining health, passed

away a little over two months after the wedding at the age of eighty-seven (Gordon 2008). When Dell died, Phyllis noted that she “took some solace in knowing we were able to enjoy the ultimate rite of love and commitment before [Del] passed” (Gordon 2008).

Del and Phyllis’ marriage had been made possible by a 2008 California Supreme Court decision, *In re Marriage Cases*, which invalidated California’s prohibition against same-sex marriage on the grounds that it violated a fundamental right guaranteed by the state constitution. The decision proved highly controversial, and, by the time Del and Phyllis exchanged their wedding vows, efforts were already underway to amend the state constitution through a ballot initiative, known as Proposition 8, and restrict marriage to one man and one woman. Consistent with their life of public activism, Del and Phyllis allowed their wedding video to be used by organizations working to secure marriage equality and defeat Proposition 8 (Martin and Lyon Wedding Video 2008). Less than four months after their wedding, the voters narrowly approved Proposition 8 and brought an end to legally sanctioned same-sex marriages in California. A subsequent court case preserved the validity of the approximately 18,000 same-sex marriages that occurred prior to the enactment of Proposition 8 (Strauss v. Horton 2009), and the Proposition remains the focus of a high profile federal lawsuit, *Perry v. Schwarzenegger*.

As the events in California were unfolding, I was working on an article about same-sex marriage and federalism, and I thought that the media attention surrounding Del and Phyllis’ wedding provided an excellent illustration of how easily the personal can become politicized when dealing with matters of sexual orientation. I had earlier noted this phenomenon in the context of surviving same-sex partners who are forced to go to court to

preserve their rights. These reluctant litigants often find themselves thrust into the spotlight and labeled “gay activists” when they are simply trying to do any number of things that grieving spouses are permitted to do as a matter of course, such as retrieving a partner’s body from the morgue (Edgar 2009). There is no question that heterosexual marriage carries significant social meaning, but, when Del and Phyllis exchanged vows, their ceremony also conveyed a distinctly political message. Del’s many obituaries and memorials characterized her marriage to Phyllis as a political milestone, referring to the wedding as Del’s “last public political act” or “last act of activism” (Rothaus 2008, Gordon 2008).

My intention was to include the story of Del and Phyllis’ wedding as an epilogue to the marriage and federalism piece. I thought it offered an inspiring narrative of resilience and progressive social change. The media accounts of the wedding firmly established Del and Phyllis as the public face of the gay and lesbian members of the Greatest Generation – the generation who served the United States during World War II, weathered the storms of the McCarthy Era, witnessed the birth of Gay Liberation, and lived long enough to see the fall of repressive sodomy laws and the legalization of same-sex marriage. To me, the image of a frail white-haired Del Martin, resplendent in a lavender suit, rising slowly from her wheelchair to exchange marriage vows with her long-time partner symbolized the ultimate triumph of her generation (Martin and Lyon Wedding Video 2008).

The notoriety accompanying Del and Phyllis’ wedding seemed to signal a happy ending for the generation of gay men and lesbians who came of age long before the Stonewall riots and Gay Liberation. I wanted to believe that this pre-Stonewall generation

would now be able to enjoy their twilight years in relative peace, secure in their identities and their equal standing in society. Although Proposition 8 and the continuing cultural skirmishes remind us that legal inequities and anti-gay bias remain, I thought that the years of overt homophobia and violence were, thankfully, in the past. In my mind, Del and Phyllis' joyful nuptials validated the decades of struggle and, in a symbolic way, rectified some of the innumerable past wrongs. The wedding also reaffirmed my core liberal belief that progressive social change is inevitable in a free society, and I found it intensely gratifying to imagine a bunch of elderly newlywed same-sex couples playing canasta at the Rainbow Retirement Village while swapping stories about being "in the life" back in the day.

As I started to gather more information on the pre-Stonewall generation of gay and lesbian elders, however, it became clear that the triumphant narrative arc that I had constructed bore little resemblance to the day-to-day lives of many of the estimated 1.2 to 3.2 million gay and lesbian seniors. Unlike Del and Phyllis, who were celebrated by the gay community and remained close to biological family members, many gay and lesbian elders face the daily challenges of aging isolated from family, detached from the larger gay and lesbian community, and ignored by mainstream aging initiatives. They lead lives that are solitary and closeted, plagued by fear of disclosure and financial insecurity. I was shocked to learn that the brave souls who came out in the 1950s and 1960s, when homosexuality was still a crime *and* a mental disorder, were spending their final years locked in an anxious silence, denied the basic dignity of sharing the memories of a life well lived.

The disconnect between the advances made in gay and lesbian civil rights and the conditions endured by many gay and lesbian seniors was jarring. Raised by my grandmother, seniors have always been a big part of my life. It was simply untenable to me that our gay and lesbian elders were so vulnerable and friendless. As a legal scholar, my immediate impulse was normative – I would describe the problem and propose a series of broad-based reforms designed to insure equity (and dignity) in aging regardless of sexual orientation. Not surprisingly, my initial prescription centered on expanded legislative and market-based anti-discrimination measures. For example, gay and lesbian elders report that they face hostility and prejudice from health care providers and feel silenced and unwelcome in institutional settings, such as assisted living facilities, nursing homes, and senior centers. They find the nursing home environment especially difficult to navigate, and some nursing homes will banish gay residents to Alzheimer or “memory” wards in order to mollify the prejudices of the other residents (Gross 2007). In this context, it is easy to see how an already vulnerable nursing home resident could be harassed, abused, and neglected on account of his or her sexual orientation. And, I have to say, it was equally easy to propose a series of top-down anti-discrimination protections and “anti-bullying” measures to address this problem.

The seemingly quick fix of anti-discrimination protections, however, belied the complexity of the problem, not to mention the numerous obstacles to successful implementation. Beyond the pressing question of “what can be done to alleviate the suffering of gay and lesbian elders,” there was a host of difficult and thorny follow up questions. Why have gay and lesbian elders remained largely silent? Why has the gay and

lesbian community failed to prioritize aging issues in its advocacy agenda? Why has the senior community ignored the needs of its gay and lesbian peers? And, the most puzzling of all -- how can this happen at a time when gay men and lesbians enjoy an unprecedented level of legal and societal acceptance? Our gay and lesbian elders had been the vanguard of the contemporary gay and lesbian civil rights movement, but somehow they had been left behind.

Considering these questions, I quickly realized that the challenges facing gay and lesbian elders could not be attributed solely to the usual culprits of anti-gay bias and homophobia, although they both had important roles to play. The current crisis experienced by gay and lesbian elders involves a complicated interplay of historical forces, identity politics, and the failure of our heteronormative aging initiatives. In my attempt to address the concerns of gay and lesbian elders, I found myself confronting the corrosive legacy of the pre-Stonewall views of homosexuality, as well as the pervasive pattern of ageism within both the larger community and the gay and lesbian community. Positioning myself as an advocate for gay and lesbian elders, it became clear to me that the prevailing identity or ethnic model of sexual orientation is not equipped to champion their concerns because it has failed to incorporate a much needed theory of difference. I also recognized that there is an inherent generational component to gay and lesbian identity because identity formation for the homosexual subject is uniquely the product of his or her historical context.

These were big thoughts to add to what had started as a modest set of policy proposals. Each observation seemed to have the potential to advance our understanding of

the contemporary construction of sexuality and identity in exciting new ways, and each one seemed to deserve its own book-length exposition. Take for example my last assertion that gay men and lesbians are historically contingent subjects. With this observation, I am not referring to the type of cultural “generation gap” that captivated the U.S. during the Vietnam years, even though the gay and lesbian community has more than its fair share of inter-generational miscommunication. According to sociologists, the gay and lesbian community actually suffers from a multiplicity of generation gaps because it is comprised of highly compressed age cohorts delimited by relatively narrow social and political periods (Russell and Bohan 2005). Instead, I am suggesting a type of historical contingency that is deeply ontological and goes to the core of an individual’s understanding of self and his or her right to exist in the world.

Since the late nineteenth century, an individual who experiences same-sex desire has been viewed as a distinct and identifiable type of person. Over the course of the next 100 years, the medical profession classified such individuals as invertes, homosexuals, and, finally, gay. Each theory of same-sex desire presented a different view of causation, the efficacy of therapeutic intervention, and the prospect or desirability of a “cure.” The beliefs and behaviors of gay and lesbian elders show that the pre-Stonewall generation differs from its post-Stonewall progeny in fundamental ways that, I would argue, rival those more typically associated with the great epochal shifts in intellectual thought, such as transition from the enlightenment to post-modernity.

Despite the appeal of this rather grand observation, it is important for us to remember that its foundation rests on the daily struggles of gay and lesbian elders.

Throughout this book, I have endeavored to foreground these real life challenges while, at the same time, engaging related issues of sexuality and identity. My goal in this regard is not simply to strike a “balance” between questions of practical application and theory, but to show the inescapable connectedness of practice and theory. In the legal academy, there is an ongoing debate concerning the appropriate emphasis to be given to practical training versus theoretical inquiry, but I have always believed that the practice/theory debate presents a false dichotomy. Practice necessarily informs theory, and theory necessarily elucidates practice. For example, I discovered that any discussion of gay and lesbian elders must incorporate an appreciation for the pre-Stonewall views of homosexuality because these views are at the root of certain fears and anxieties expressed by gay and lesbian seniors that otherwise would be quite inexplicable. Thus, theoretical considerations of the social (and historical) construction of identity can help policy makers decipher the behavior of gay and lesbian elders. Likewise, the manner in which gay and lesbian elders construct and live their lives directly informs theories of identity formation. Their modes of dealing with the medical profession, internalized homophobia, and the closet all illustrate the historically contingent nature of gay and lesbian identity. More importantly, though, it is their daily struggles that give the notion of historical contingency a sense of meaning and urgency. From this perspective, I think it is evident that practice and theory are not in tension with one another, but rather they are two sides of the same coin.

I hope that others who are grappling with social issues regarding sexual orientation (and gender identity) will also try to reject the trap of the practice/theory either/or. An

overly practical approach to the problems of gay and lesbian elders could misapprehend the underlying cause of the problem and thereby produce ineffective or incomplete policy proposals. It would also miss an opportunity to engage a number of important concepts dealing with sexuality and identity formation. Similarly, a book ostensibly about gay and lesbian elders that primarily focused on issues of social theory would run the risk of losing sight of the original reason for the inquiry and relegating the needs of lesbian and gay elders to a footnote. For this reason, although I believe that theory can help direct our practice, I feel strongly that practice should *always* drive our theory.

Following this advice, I have divided the book into three parts, broadly designated as history, identity, and advocacy. The organizational structure reflects my conviction that our past informs the present and, in so doing, it can help us plan for the future. The first section of the book provides an introduction to the current generation of gay and lesbian elders by summarizing existing demographic data and providing a historical overview of pre-Stonewall views regarding homosexuality. As noted, I believe that an understanding of the pre-Stonewall views of homosexuality is essential to diagnosing many of the problems facing gay and lesbian elders today. The history of homosexuality as a mental disorder that demands therapeutic intervention greatly complicates the relationships gay and lesbian seniors have with medical professionals. It also makes them wary when pursuing relationships with younger people for fear of invoking the sexual predator stereotype popularized by the American Freudians in the 1940s and 1950s (Terry 1999). Above all, it normalizes the closet as a coping mechanism.

Sadly, the closet is a defining feature in the lives of many gay and lesbian elders. Some elders have never ventured very far out of the closet, but even those who have lived openly in the past retreat to the closet as they age in order to avoid dangerous and debilitating anti-gay bias. Whenever I am asked to give a presentation on gay and lesbian elders, I always travel with a Powerpoint slideshow of vintage photos of same-sex couples that I run toward the end of my talk. I like to think that they represent all the pictures of happier times that are not displayed on the night stands and bureaus of gay and lesbian elders who live in nursing homes and assisted living facilities or the pictures that are turned over in advance of a visit from a home health aide. In addition to the human costs involved, the closet is one of the greatest stumbling blocks encountered in the development and implementation of effective policy reforms for gay and lesbian elders (Kanapaux 2003). When they remain silent, gay and lesbian elders are attempting to avoid anti-gay bias and prejudice, but their silence also insures that their concerns remain unnoticed and unaddressed. Thus, the closet's promise of safety will always fall short, because, to paraphrase Audre Lorde, your silence will never protect you (Lorde 1984: 41).

I suspect that many people, particularly those who are not gay or lesbian, underestimate the human toll exacted by the closet – what it means for seniors to disavow or permanently silence their memories. Thinking about my own family for a moment, I can't imagine what it would be like if my grandmother could not tell her stories. To me, the act of telling and retelling her stories is one of the things that constitutes us as a family. It simultaneously establishes her past and secures her rightful place in the present. At family gatherings, we request the stories by name. One of my cousins will inevitably say,

“Tell the story about the first time you danced with grandfather.” As if on cue, my grandmother will chuckle and lean a little closer as she explains the obvious physics of an Italian strapless dress and how she once warned a dashing stranger, who later became her husband, to step lightly or risk certain embarrassment. Through this familiar process of repetition and appreciation, we invite our grandmother to touch the past, and she reminds us, with a mischievous wink, that in 1939 she was young and desirable and in charge.

I am certain that our gay and lesbian elders have similar tales of derring do, as well as riveting tales of romance and heart-wrenching tales of great loss. It is unlikely, however, that we will find gay and lesbian elders sitting at the kitchen table holding court before a multi-generational audience. In the first instance, gay and lesbian elders are less likely to be partnered and considerably less likely to have children. They rely, instead, on single-generational “chosen families.” Secondly, when interacting with people outside their chosen family, gay and lesbian elders will routinely edit their past to avoid anticipated rejection and reprisals. Sometimes the demands of the closet may require only a slight modification to a story, and a same-sex partner can easily become a best friend or a sibling. Other times, a more drastic rewrite might be required in order for the story to make sense. Eventually, the story may cease to exist entirely because there is simply no one left to tell.

In the second part of the book, I address the invisibility of gay and lesbian seniors and examine the multiple double binds central to their identity formation. Gay and lesbian elders currently exist at an unenviable intersection of identity bounded by ageism and homophobia. In the popular imagination, a powerful combination of ageism and homophobia has rendered the lives of gay and lesbian elders all but unthinkable. It is easy

to do the math. If seniors are perceived to be asexual (or at least no longer sexual), and gay men and lesbians are primarily defined by their sexuality, then seniors, by definition, cannot be gay or lesbian. Additionally, pervasive ageism within the gay and lesbian community and homophobia within the mainstream senior community work in tandem to alienate gay and lesbian elders from their two natural constituencies. The result is that closeted gay and lesbian elders are afraid to speak for themselves and their most likely allies are unwilling to speak on their behalf.

In other venues, I have argued that the contemporary ethnic model of gay and lesbian identity is inadequate to theorize the multivalent nature of identity and, to the contrary, it exhibits a strong essentializing tendency that elides intersecting identities. Queer theory, critical race theory, and feminist theory have all produced sustained critiques of this essentializing quality, and its resulting construction of a minority group comprised of stable gay subjects who, by default, are coded white, heteronormative, middle class, and largely male. When I initially approached the topic of gay and lesbian elders, I assumed that age presented another example of an intersecting identity to be added to a growing list that already included race, gender, ethnicity, and disability. However, in light of my observations regarding the importance of historical context to gay and lesbian identity formation, I now see that the study of gay and lesbian elders adds another *dimension* to the critique – not merely another category of intersection. The existing ethnic model of gay and lesbian identity obscures a crucial longitudinal component. The pre-Stonewall generation is not the same as their “out and proud” post-Stonewall progeny. Their identities were formed at different times and under dramatically different circumstances.

Thus, gay and lesbian identity, as it is lived and experienced, is not only multivalent, as I have previously asserted, but it is also historically contingent.

In the third part of the book, I look forward and outline a number of advocacy points and practical reforms that further my original goal, namely to insure equity (and dignity) in aging for gay and lesbian elders. Here, I examine the shortcomings of the ethnic model of identity from a slightly different vantage point. In addition to influencing identity formation on the individual level, the ethnic model has been instrumental in legal and political advocacy efforts to normalize homosexuality and advance the rights of gay men and lesbians. These advocacy efforts generally employ a two-part argument of shared identity and equivalence. Using the ethnic model of identity, the first part of the argument asserts that gay men and lesbians represent an identifiable and cohesive minority group. The second part then maintains that, as a deserving minority, gay men and lesbians are entitled to equal treatment. Not surprisingly, this argument tends to highlight the heteronormative aspects of gay and lesbian lives because it is based on the conviction that gay men and lesbians are *the same as* non-gay and lesbian individuals. Although this strategy has met with considerable success, I have argued elsewhere that it does a disservice to the larger gay and lesbian community by imposing a heteronormative ideal that does not necessarily reflect the diversity of gay and lesbian lives. This has the effect of excluding non-heteronormative gay men and lesbians, and it also directly ignores the more problematic aspects of some gay and lesbian lives, such as relationship dissolution and same-sex domestic violence

This overwhelmingly positive and traditional emphasis is reflected in the three signature issues of the contemporary movement for gay and lesbian equality – marriage equality, anti-discrimination protection in employment, and repeal of the military’s Don’t Ask, Don’t Tell (DADT) policy. Viewed together, they send the clear message that gay and lesbian people are just like everyone else. They want to marry, have children, go to work, and serve their country. The problem with this formulation is not that it is necessarily untrue, but that it is necessarily underinclusive. The current needs of gay and lesbian elders are not reflected in this heteronormative, white, middle class, thirty-something version of the American Dream because it is based on an identity model that does not include them.

To illustrate this point, I address the three signature issues from the perspective of gay and lesbian elders and consider the ways in which each issue fails to encompass their unique needs. For example, gay and lesbians elders frequently rely on single-generational “chosen families” for care and support, in lieu of more conventional multi-generational families of origin (Weston 1997). The concept of chosen family has obvious legal implications in terms of relationship recognition and aging policies, but gay and lesbian advocacy efforts to secure relationship recognition have focused exclusively on partners and children. Although same-sex marriage would doubtless help many partnered gay and lesbian elders, it does not address the legal fragility of their chosen families.

In a brief conclusion, I call for a more holistic and nuanced model of gay and lesbian identity -- one that extends over an individual’s lifespan, incorporates pre-Stonewall gay and lesbian history, and confronts difficult issues, such as ageism and

internalized homophobia. Central to this model would be a robust theory of difference designed to resist the pull of heteronormativity. Advocacy claims based on this model would emphasize equity, rather than equivalence. They would acknowledge that gay and lesbian elders are indeed different from their non-gay peers and assert that it is precisely because of this difference that they are vulnerable and underserved. Accordingly, gay and lesbian elders would be constituted as a deserving minority not because of their sameness or their approximation to a heteronormative ideal, but because of their difference.

