

COPYRIGHT NOTICE:

Margot Canaday: The Straight State

is published by Princeton University Press and copyrighted, © 2009, by Princeton University Press. All rights reserved. No part of this book may be reproduced in any form by any electronic or mechanical means (including photocopying, recording, or information storage and retrieval) without permission in writing from the publisher, except for reading and browsing via the World Wide Web. Users are not permitted to mount this file on any network servers.

Follow links for Class Use and other Permissions. For more information send email to: permissions@press.princeton.edu

Introduction

For all orderly processes, we must in some way
classify man.

—Dr. Dahlgren, surgeon, U.S. Public Health Service,
testifying in *Rosenberg v. Fleuti*



Measured against other Western democracies at the dawn of the twentieth century, the American state—slow to develop, small in size, and limited in capability—stood out as distinctive.¹ Fifty years later, a period of expansion had produced a state that was finally European in its heft, but still exceptional in another way: in terms of its homophobia. “There appears to be no other major culture in the world,” Alfred Kinsey wrote in 1953, in which homosexual relationships were “so severely penalized.”² Not only was the United States “the only major power in

¹See, for example, many of the essays in, and especially the introduction to, Margaret Weir, Ann Shola Orloff, and Theda Skocpol, eds., *The Politics of Social Policy in the United States* (Princeton, NJ: Princeton University Press, 1988); Brian Balogh, “The State of the State among Historians,” *Social Science History* 27 (Fall 2003): 456; Meg Jacobs and Julian E. Zelizer, “The Democratic Experiment: New Directions in American Political History,” in *The Democratic Experiment: New Directions in American Political History*, ed. Meg Jacobs, William J. Novak, and Julian E. Zelizer (Princeton, NJ: Princeton University Press, 2003), 2. My representation of the early twentieth-century state as a fledgling bureaucracy refers to the federal state. William Novak has argued convincingly that state and local governments were quite vigorous in nineteenth-century America. See William J. Novak, *The People’s Welfare: Law and Regulation in 19th Century America* (Chapel Hill: University of North Carolina Press, 1996). I do not find Novak’s more recent article applying this notion of a vigorous state more broadly (across all levels of government) as persuasive. William J. Novak, “The Myth of the ‘Weak’ American State,” *American Historical Review* 113 (June 2008): 752–72. Several scholars (Richard John, Jerry Mashaw, and Richard White, among others) have identified pockets of federal authority throughout American history. Yet relative to what existed in Europe at that moment, as well as to what came later, the tools and resources available to the federal state in 1900 were limited.

²Alfred C. Kinsey, *Sexual Behavior in the Human Female* (Philadelphia: Saunders, 1953), 483. Kinsey’s observation was not unique: “In contrast to England and the United States, the majority of European states do not proscribe homosexual acts between consenting adults. Austria, Germany, and Norway are the only European countries that do so, but in

the world” that excluded homosexuals from its armed services and government employment, the sociologist Donald Webster Cory wrote a decade later, “but the homosexual is the only individual who is punished in this manner, not only for any activities that may be indulged in, but for harboring the desire to perform such activities.”³ Those suspected of homosexuality were purged from the civil service and military in astounding numbers at midcentury. They were also barred from certain federal benefits, faced increased FBI and Post Office surveillance and explicit immigration and naturalization exclusions, as well as the stain of alleged political subversion.⁴ It seems a paradox. How did a state that was so late in coming construct such a vast apparatus for policing homosexuality, and why?

Unlike comparable European states, which were well established *before* sexologists “discovered” the homosexual in the late nineteenth century, the American bureaucracy matured during the same years that scientific and popular awareness of the pervert exploded on the American continent. This study examines three of the “engines” of the twentieth-century state—the Bureau of Immigration, the military, and the federal agencies that administered welfare benefits—to demonstrate how federal interest in homosexuality developed in tandem with the growth of the bureaucratic state. In emphasizing the relationship between state formation and homosexual identity, I not only seek to put the history of sexuality into closer dialogue with political and legal history, but to complicate what has now become a standard interpretation within the field of gay and lesbian history as well. Namely, that extreme state repression of sex and gender nonconformity in the mid-twentieth century was a result of the sudden visibility of gays and lesbians during and after World War II.

That explanation is not exactly wrong, but it is incomplete. World War II was a watershed moment in the state’s relationship to homosex-

Norway the law is not enforced. In Belgium, homosexual conduct is punishable only if there is an assault, if the sexual object is a minor, or if there is a violation of public decency. Similar situations obtain in Denmark, Greece, Italy, the Netherlands, Sweden, and Switzerland. In France, homosexuality between consenting adults has not been a crime since the *Code Napoléon* went into force in 1810” (Thomas S. Szasz, “Legal and Moral Aspects of Homosexuality,” in *Sexual Inversion: The Multiple Roots of Homosexuality*, ed. Judd Marmor [New York: Basic Books, 1965], 127–28). See also Institute for Sex Research, “The Challenges and Progress of Homosexual Law Reform,” 10–11, vertical file, “Legal Aspects of Homosexuality,” Kinsey Institute, Indiana University, Bloomington.

³Donald Webster Cory, *The Lesbian in America* (New York: MacFadden-Bartell, 1965), 221.

⁴The earliest study of state homophobia at midcentury was John D’Emilio’s *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940–1970* (Chicago: University of Chicago Press, 1983). For a recent study that looks exclusively at the civil service purge, see David K. Johnson, *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* (Chicago: University of Chicago Press, 2004).

uality, yet homosexuality was not a new phenomenon for state officials during and after the Second World War. Rather, federal bureaucrats had been aware of traits and behaviors that were coming to be associated with homosexuality for at least half a century. The regulatory response to this knowledge before the war, however, was fairly anemic. Viewing this period through the McCarthyist lens of what came after, it is hard to understand how federal officials could be both so aware and yet seemingly so indifferent to perversion during these years.

This sluggish federal response loses some of its mystery if we center the processes of twentieth-century state-building, and the way that states must “puzzle before they power.”⁵ Federal officials were confronted with evidence of sex and gender nonconformity as they did the things that bureaucrats do—whether keeping undesirables out of the country, peopling an army, or distributing resources among the citizenry. But they initially encountered this evidence without a clear conceptual framework to analyze the problem. Even so, they worried about those whose bodies or behaviors seemed perverse to them. Over time, they worked toward an understanding of what this phenomenon was and why it might be significant, and they made some minimal attempts at regulation. Yet when perversion was policed in this early period (treated in part I of this book), it was often through regulatory devices aimed at broader problems: poverty, disorder, violence, or crime, for example.

As the state expanded, however, it increasingly developed conceptual mastery over what it sought to regulate. This itself was part of the work of state-building, part of a longer process of the state coming to know and care about homosexuality. After the Second World War, an increasingly powerful state wrote this new knowledge into federal policy, helping to produce the category of homosexuality through regulation. From the mid-1940s into the late 1960s (the years explored in part II), the state crafted tools to overtly target homosexuality. In contrast to the earlier period, policies were enacted that *explicitly* used homosexuality to define who could enter the country and be naturalized, who could serve in the military, and who could collect state benefits. A homosexual-heterosexual binary, in other words, was being inscribed in federal citizenship policy during these years. Indeed, this study’s examination of three of the arenas where the meaning of American citizenship was most sharply articulated over the course of the twentieth century—in immigration, the military, and welfare—reveals the emergence of that binary as one of the organizing categories of federal policy in the postwar United States.

⁵Hugh Hecló, *Modern Social Politics in Britain and Sweden: From Relief to Income Maintenance* (New Haven, CT: Yale University Press, 1974), 305.

Regulation, of course, changed what was regulated. The state did not, I argue, simply encounter homosexual citizens, fully formed and waiting to be counted, classified, administered, or disciplined. This was not, as political theorist Jacqueline Stevens has written in a slightly different context, simply a matter of “pre-constituted groups” either coming into or being blocked from the public sphere.⁶ Rather, the state’s identification of certain sexual behaviors, gender traits, and emotional ties as grounds for exclusion (from entering the country, serving in the military, or collecting benefits) was a catalyst in the formation of homosexual identity.⁷ The state, in other words, did not merely implicate but also *constituted* homosexuality in the construction of a stratified citizenry.

Homosexuality is thus a legal category as much as a medical or psychiatric one. This study not only sets the federal regulation of homosexuality in longer historical view, but also offers an account of the *bureaucratization* of homosexuality—something forged, in short, through legal and administrative processes. To uncover those processes is to challenge the law’s own tendency to authorize homosexuality as somehow pre-given or even natural in its constitution. “The power exerted by a legal regime consists less in the force that it can bring to bear against violators of its rules,” writes the legal historian Robert Gordon, “than in its capacity to persuade that the world described in its image and categories is the only attainable world.”⁸

Before laying out the argument in greater detail, a fuller discussion of three of the main terms that frame this study will be necessary.

The State

The state is notoriously difficult to conceptualize and write about.⁹ “The domain we call the state is not a thing, a system, or a subject,” political theorist Wendy Brown writes, “but a significantly unbounded terrain of powers and techniques, an ensemble of discourses, rules, and practices, cohabiting in limited, tension-ridden, often contradictory relation with one another.”¹⁰ While I appreciate Brown’s conception, this is hardly a

⁶Jacqueline Stevens, *Reproducing the State* (Princeton, NJ: Princeton University Press, 1999), 56.

⁷On the state’s role as an agent that identifies (and a related critique of the concept of identity), see Rogers Brubaker and Frederick Cooper, “Beyond ‘Identity,’” *Theory and Society* 29 (2000): 1–47.

⁸Robert W. Gordon, “Critical Legal Histories,” *Stanford Law Review* 36 (January 1984): 109.

⁹Stevens, *Reproducing the State*, 57.

¹⁰Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton, NJ: Princeton University Press, 1995), 174–75.

clear recipe for historical research. Historians, for their part, have responded to the vastness and complexity of the state (until fairly recently) by not writing about the state at all. Indeed, it is remarkable how limited the historiography on the U.S. state still is, given the lengthy period of time for which American history *was* political history and vice versa.¹¹ Yet ignoring the state is less of an option than it once was, largely because social scientists working outside of history have made the case for its significance so powerfully. The state was a “central actor in its own right,” historian Brian Balogh observes in his discussion of the work of Theda Skocpol and Steven Skowronek, “an autonomous force and one that had to be reckoned with in writing the nation’s history.” While those social scientists who advocate “bringing the state back in” have stirred historians’ interest, historians have generally not adopted their approach wholesale.¹² The best work on the state by historians takes state institutions seriously, but incorporates rather than jettisons the “society” or “culture” side of the binary, blending social and cultural with legal and political history.¹³

This study, accordingly, takes a “state-building from the bottom up” or “social history of the state” approach. We can see the state through its practices; the state is “what officials do.”¹⁴ And by officials, I mean not only top decision-makers but bureaucrats at all levels. This is, moreover, not only a “people” but a “places” approach to the state. In

¹¹Despite that long reign, political historian Morton Keller could lament to his colleague William Leuchtenburg in 1986 that there was still “close to *everything* to be learned about the State.” William E. Leuchtenburg, “The Pertinence of Political History: Reflections on the Significance of the State in America,” *Journal of American History* 73 (December 1986): 594. Of course, it depends who you talk to—where, for example, Brian Balogh saw a paucity of historical scholarship on the U.S. state, William Novak saw an abundance. Both assessments were made in articles written in 2003. In part, these disparate assessments might reflect differences between political (Balogh) and legal (Novak) history. Balogh, “The State of the State among Historians,” 455–63; William J. Novak, “The Legal Origins of the Modern American State,” in *Looking Back at Law’s Century*, ed. Austin Sarat, Bryant Garth, and Robert A. Kagan (Ithaca, NY: Cornell University Press, 2002), 250.

¹²Balogh, “The State of the State among Historians,” 458–59. The works that Balogh discusses include Theda Skocpol, “Bringing the State Back In,” in *Bringing the State Back In*, ed. Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol (New York: Cambridge University Press, 1985), 3–37; Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877–1920* (New York: Cambridge University Press, 1982). See also Julian E. Zelizer, “Stephen Skowronek’s *Building a New American State* and the Origins of American Political Development,” *Social Science History* 27 (Fall 2003): 425–41.

¹³William Novak’s *The People’s Welfare* is an excellent example of this, as are many of the essays in Jacobs, Novak, and Zelizer, *The Democratic Experiment*. Note, however, that almost no attention is paid in this volume to sexuality, the full significance of which I think political history has yet to appreciate. See also George Steinmetz, ed., *State/Culture: State Formation after the Cultural Turn* (Ithaca, NY: Cornell University Press, 1999).

¹⁴John R. Commons, quoted in Novak, *The People’s Welfare*, 8.

locating the places of the state, my method similarly hovers close to the ground. I am as likely to find the state at a Veterans Administration (VA) office in Florida or in an immigration inspector's booth on the border, as in the halls of Congress or before the bar of the Supreme Court. Focusing on these kinds of spaces provides an opportunity to think about the state as not only "intervening" in, but as "intervened" by sexuality as well. The state does not just direct policy at its subjects; various state arenas are themselves sites of contest over sex/gender norms, and therefore structured by those norms.¹⁵ This is, in large measure, what it means to say that we have a "straight state."

In contrast to numerous historical studies that examine one modality of state power over time (the growth of the welfare state or the national security state, for example), my study looks at the state's regulation of one issue (homosexuality) across several venues of federal authority. While I undoubtedly sacrifice some depth for breadth, this broad cross-sectional view illuminates the gradual construction of a legal apparatus to deal with same-sex erotic behavior and gender inversion across state institutions. But despite broad convergence over time, the state is not a monolith, and officials created and implemented policies in ways that were generally sensitive to the needs of the agencies they represented. For instance, an alien discovered to have defective genitalia in the early years of the twentieth century most likely would have been excluded at the border as perverse. The same condition, though, might not have prevented a would-be soldier from being inducted into the army. Across the bureaucracy, sex and gender nonconformity figured in different ways.

An alternative approach might look vertically at local-state-federal interaction rather than horizontally, as I do, across several institutions of the federal state. At a historiographical moment when political and legal historians are turning their attention especially to governance at state and local levels, why shouldn't this be my approach?¹⁶ I focus on the federal government for a simple reason. Numerous commentators at midcentury noted that there was "no crime against being homosex-

¹⁵For a related argument about race, see Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s* (New York: Routledge, 1994), 82.

¹⁶Scholarship exemplifying this approach includes Novak, *The People's Welfare*; Thomas J. Sugrue, "All Politics Is Local: The Persistence of Localism in Twentieth-Century America," in *The Democratic Experiment: New Directions in American Political History*, ed. Meg Jacobs, William J. Novak, and Julian E. Zelizer (Princeton, NJ: Princeton University Press, 2003), 301-26; Laura Edwards, "Status without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South," *American Historical Review* 112 (April 2007): 365-93. Localism has long been the dominant paradigm in LGBT history. See Marc Stein, "Theoretical Politics, Local Communities: The Making of U.S. LGBT History," *GLQ* 11 (2005): 605-24.

ual.”¹⁷ This is true. There was no crime. But there was a policy against being homosexual, and it was federal in nature. States and localities generally policed homosexual acts; sometimes the feds did as well. Yet in addition, it was the federal government that gradually developed the tools to target homosexual personhood or status, the condition of *being* a homosexual.¹⁸ The federal government, moreover, never defined homosexual status in the abstract, but always as a part of defining citizenship. Indeed, it is most likely that because citizenship is (since Reconstruction) a national category, the federal government played such an important role in shaping homosexual identity. Now, to take each of the two categories that the federal state filled with meaning in turn:

Citizenship

In contrast to American historical writing on the state, there has been an explosion of historical work on citizenship in recent years.¹⁹ That work—which complements a booming industry in citizenship studies throughout the academy—uses citizenship in a myriad of ways. Citizenship has been long understood as a set of rights, a tradition exempli-

¹⁷ Alfred A. Gross, *Strangers in Our Midst: Problems of the Homosexual in American Society* (Washington, DC: Public Affairs Press, 1962), 93; Edward H. Knight, “Overt Male Homosexuality,” in *Sexual Behavior and the Law*, ed. Ralph Slovenko (Springfield, IL: Charles C. Thomas Publishers, 1965), 434.

¹⁸ “The Consenting Adult Homosexual and the Law: An Empirical Study of Enforcement and Administration in Los Angeles County,” *UCLA Law Review* 13 (1966): 658.

¹⁹ A sampling of that work includes Linda Gordon, *Pitied But Not Entitled: Single Mothers and the History of Welfare, 1890–1935* (Cambridge, MA: Harvard University Press, 1994); Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, CT: Yale University Press, 1997); Candace Lewis Bredbenner, *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (Berkeley: University of California Press, 1998); Nancy F. Cott, “Marriage and Women’s Citizenship in the United States,” *American Historical Review* 103 (December 1998): 1440–74; Katherine Franke, “Becoming a Citizen: Reconstruction Era Regulation of African American Marriages,” *Yale Journal of Law and the Humanities* 11 (1999): 251–309; Linda K. Kerber, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* (New York: Hill and Wang, 1999); Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton, NJ: Princeton University Press, 2000); Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000); Alice Kessler-Harris, *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th Century America* (Oxford: Oxford University Press, 2001); Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2002); Evelyn Nakano Glenn, *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor* (Cambridge, MA: Harvard University Press, 2002); Lizabeth Cohen, *A Consumers’ Republic: The Politics of Mass Consumption in Postwar America* (New York: Knopf, 2003); Erika Lee, *At America’s Gates: Chinese Immigration during the Exclusion Era, 1882–1943* (Chapel Hill: University of

fied by the work of British sociologist T. H. Marshall.²⁰ More recent work emphasizes citizenship as obligation.²¹ In addition to liberal and republican paradigms, contemporary scholarship on citizenship also includes communitarian, social democratic, feminist, and multicultural critiques.²² Sociologists Will Kymlicka and Wayne Norman have usefully pointed out that this vast scholarship can be broken down into two broad categories. Some accounts describe citizenship as practice, with the emphasis on the activity of being a citizen. Other accounts treat citizenship as status, whether defined legally or culturally. Scholarship in this vein concerns citizenship as identity, seeks to identify the attributes of good citizens, and to determine the way in which individuals are incorporated into the status of citizenship.²³ While each of my chapters necessarily touches on the practices of citizenship—soldiering, immigrating, or the act of claiming benefits—this project takes its driving questions from the literature on citizenship as status.

In the American tradition, the legal status of citizenship is simple. According to Linda Kerber, one either is or is not a citizen. In contrast to some European nations, there are no formal categories here of first- and second-class citizenship. But the preoccupation of historians in recent years, including Kerber, has been to examine the “distinctions that were historically experienced”—how, in Nancy Cott’s words, citizenship “can be delivered in different degrees of permanence or strength.”²⁴ This study adds sexuality to the ascriptive tradition of American citizenship that Rogers Smith lays out, and makes the case that the trajectory of American citizenship in the twentieth century has not been one of continual expansion, but is defined rather by the persistent “nexus of exclusion and inclusion.”²⁵ As the state moved to enfranchise women

North Carolina Press, 2003); Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton, NJ: Princeton University Press, 2003); Meg Jacobs, *Pocketbook Politics: Economic Citizenship in Twentieth-Century America* (Princeton, NJ: Princeton University Press, 2004); Nancy MacLean, *Freedom Is Not Enough: The Opening of the American Workplace* (Cambridge, MA: Harvard University Press, 2006).

²⁰ Marshall’s classic work is “Citizenship and Social Class,” in *The Citizenship Debates: A Reader*, ed. Gershon Shafir (Minneapolis: University of Minnesota Press, 1998), 93–112.

²¹ Kerber, *No Constitutional Right to Be Ladies*.

²² For examples of these various approaches, see Gershon Shafir, ed., *The Citizenship Debates: A Reader* (Minneapolis: University of Minnesota Press, 1998).

²³ Will Kymlicka and Wayne Norman, “Return of the Citizen: A Survey of Recent Work on Citizenship Theory,” in *Theorizing Citizenship*, ed. Ronald Beiner (Albany: State University of New York, 1995): 283–322.

²⁴ Linda K. Kerber, “The Meanings of Citizenship,” *Journal of American History* 84 (December 1997): 834, 837; Cott, “Marriage and Women’s Citizenship,” 1441.

²⁵ Ursula Vogel, “Marriage and the Boundaries of Citizenship,” in *The Condition of Citizenship*, ed. Bart van Steenbergen (Thousand Oaks, CA: Sage 1994), 77; Smith, *Civic Ideals*.

and dismantle Jim Crow, it was gradually working to construct a boundary in law and policy that by midcentury explicitly defined the homosexual as the anticitizen.²⁶ What was an inchoate and vague sort of opposition between citizenship and perversion in the early twentieth century became a hard and clear line by midcentury.

Sometimes, as in the case of aliens who were deported because they engaged in homoerotic behavior, homosexuality was defined as outside of citizenship through formal legal expulsion. More often, those suspected of sexual perversion were not formally excluded from citizenship status. One who was denied the right to serve in the military or access to state benefits, for example, would (if not an alien) retain the right to reside in the country.²⁷ Citizenship is thus best understood through an approach that considers “threshold questions” regarding access to the nation-state (i.e., immigration) alongside, as legal scholar Linda Bosniak writes, “questions about the nature and quality of citizenship as practiced within the political community” (in this study, access to welfare benefits or military employment). Just as few historical studies of the state treat multiple modalities of state power simultaneously, few studies of citizenship consider immigration and naturalization policy in tandem with other aspects of citizenship. In analyzing them together, I hope to show, in Bosniak’s formulation, that “citizenship’s threshold and its substantive character are interwoven,” and to highlight that “political communities exist in a wider world.”²⁸ Indeed, while cer-

This is a way of thinking about citizenship historically that has been well articulated by scholars of race and gender.

²⁶I am not suggesting here that state-sponsored racism and sexism were eliminated in the twentieth century—only that citizenship expanded to formally include certain groups at precisely the same moments that it contracted to formally exclude others. Moreover, I argue that past exclusions continue to shape the way that those who are newly included experience citizenship.

²⁷The right to serve in the military is more accurately understood as *the right to fulfill the obligation* to serve in the military. But fulfilling that obligation is a way to obtain the entitlements (i.e., rights) of full citizenship. So, for instance, military service is a prerequisite for certain government benefits (see chapter 4 on the GI Bill). On the way that the obligations and rights of citizenship are necessarily linked, see Kerber, *No Constitutional Right to Be Ladies*, xxi–xxiii.

²⁸Linda Bosniak describes a “division of labor” between immigration scholars who take up the “threshold” issue of access to national citizenship, and political and constitutional theorists who are more interested in the quality and experience of citizenship for those who are already members of the nation-state. “Most political and constitutional theorists presume a bounded citizenry and devote themselves to asking what the nature of relations should be among the already recognized citizens. In contrast, alienage as a category raises questions about the way in which the citizenry’s boundaries are constituted in the first instance.” See Linda Bosniak, “Universal Citizenship and the Problem of Alienage,” *Northwestern University Law Review* 94 (Spring 2000): 964–65, 971. Bosniak’s division

tainly not transnational in scope, this study suggests a flow of people, practices, and ideas about sexuality across borders that impacted national belonging for aliens and citizens alike.

Yet whether talking about “threshold” questions of membership or “internal” questions about the way that already-existing citizens actually experienced their citizenship, it is critical to note that many of those who engaged in same-sex erotic practices or expressed gender nonconformity were never vetted by the state at all.²⁹ Indeed, state policies directed at sex/gender nonconformists have generally not operated by targeting large numbers—and this was especially true for the earlier period. As important as documenting the legal construction of a barrier for sexual minorities in terms of who would be able to immigrate, soldier, and collect benefits, then, is to determine the terms of inclusion within citizenship. The historical evolution of the policies that have over time configured citizenship in relation to homosexuality reveals that, in the words of political theorist Lisa J. Disch, “otherness is immanent to citizenship.” Citizenship fosters “internal differentiation and hierarchy,” Disch writes, by incorporating some into citizenship in a way that highlights their subordination or “degraded status.”³⁰ And citizenship’s mode of incorporation—whether formally inclusionary or exclusionary at any given moment—was not only productive of difference, I argue, but also identity. Over the course of the early to mid-twentieth century, the state crafted citizenship policies that crystallized homosexual identity, fostering a process by which certain individuals began to think of their sexuality in political terms, as mediating and mediated by their relationship to the state.

Homosexuality

Homosexuality is perhaps the most vexing of all, because its meaning changed so much in the years that this study covers, and that change, as I have already suggested, was itself in part a result of the processes of state formation I write about here. Historians of sexuality—critiquing Michel Foucault’s assertion that the homosexual had emerged as a “species” by the turn of the century—have argued that the appearance of the

of labor generally holds true for American historians, although some gender historians have bridged the gap. See, for example, Cott, *Public Vows*.

²⁹Bosniak, “Universal Citizenship and the Problem of Alienage,” 971.

³⁰Lisa J. Disch, review of *Being Political: Genealogies of Citizenship*, by Engin F. Isin, *Environment and Planning D: Society and Space* 21 (June 2003): 380–82. Disch asks, “How can inclusion emancipate if those groups who imagine themselves to be outsiders are already necessary to and presupposed by the citizen body—but in a degraded status?”

homosexual as a personality type in medical literature was, in George Chauncey's words, but "one of several powerful (and competing) sexual ideologies."³¹ Alongside the medical ideologies were popular frameworks (which Chauncey writes about), and the ideologies of state officials regarding the sexual cultures and types they encountered as their various bureaucracies expanded. Whatever the extent to which Foucault was correct about the invention of homosexuality during these years, Progressive-era officials used the word homosexuality somewhat interchangeably with "pervert," "degenerate," "pederast," and "sodomite." Moreover, these labels generally did not refer to a kind of person who engaged in sexual activity with a member of the same sex. The homosexual was instead a perverted type whose perversion was defined primarily by gender inversion (mannishness in women and effeminacy in men) rather than by sexual behavior per se.³² And perversion was a fuzzy category, loosely associated with degeneracy, and sometimes manifested as well through morphology (for example, defective genitalia or "poor physique"). Most state authorities in the early twentieth century shared with the populations they policed a notion that men who had sex with perverts (as long as they were masculine and took the "active" role in sexual relations) engaged in immoral behavior (like stealing or whoring), but were not themselves perverse. There was not yet a clear moral axis that cleaved the population into homosexuals and heterosexuals. Rather, a hazier divide existed—something more akin to perverts and normals.

Although "normal" individuals who engaged in sexual relations with persons of the same sex fell outside the moral economy of perversity in early twentieth-century America, they do not fall outside the purview of this history of homosexuality and federal policy. For this is not, actually, a history of federal interest in what homosexuality is at any given moment, but rather a history of federal interest in *what becomes* homosexuality by midcentury. In short, I am writing about a process more than a thing. My approach is, following David Halperin, genealogical. Halperin writes that homosexuality signifies "the effect of a cumulative process of overlay and accretion," in which a variety of "pre-homosexual discourses" are held together in an "unstable convergence."³³ Conceptually, I begin with that convergence—homosexuality at midcentury—and follow it backward in time. I follow the threads

³¹Michel Foucault, *The History of Sexuality: An Introduction, Vol 1* (New York: Vintage Books, 1978), 48; George Chauncey Jr., *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890–1930* (New York: Basic Books, 1994), 27.

³²It was that perverts wanted to be penetrated *like women*, rather than the fact that they had sex with men, that made them perverse.

³³David Halperin, "How to Do the History of Male Homosexuality," *GLQ* 6 (2000): 90–91.

as they separate; as long as they remain subject to federal policing, they remain part of the story. Or, to put this in another way that follows the chronological movement of this study, I am tracing the “accretion” that over time results in the modern notion of homosexuality as defined by sexual object choice. This was a broadening of the early twentieth-century paradigm—the “normal” man, for example, who was masculine and had sex with other men became a homosexual by midcentury, but the gender invert didn’t stop being one. Government policy played a critical role in widening the definitional parameters of what made one homosexual; policing this broader configuration required, in turn, a greater investment of state resources.

The regulation of homosexuality in women was also affected by the overall broadening of homosexuality that state policies had helped to bring about. In the early years of the twentieth century, the emphasis placed on gender difference in defining sexual normativity meant that same-sex eroticism among men and same-sex eroticism among women were seen as distinct kinds of things. As a result, men and women were subject to different forms of policing. Indeed, the federal regulation of male and female sexual deviance occurred on two separate tracks during the first part of the twentieth century, such that state policing of women was almost entirely focused on deviant *heterosexuality*.³⁴ The new understanding of homosexuality that began to crystallize as mid-century approached was characterized by a binarism between heterosexuality and homosexuality. Everyone was either one or the other, and the defining feature of homosexuality was same-sex sexual activity (whether the act in question concerned two men or two women). In minimizing the definitional importance of gender, this new framework treated sex between men and sex between women as similar acts, and thus subjected women to regulation as *homosexuals*.

Yet it wasn’t only that homosexuality came to be seen as pertaining to women as well as men that led to increased policing among women as midcentury approached. Federal officials also had to decide that homosexuality among women was a problem that deserved federal attention. Their slowness to do so (even as government resources for policing expanded) reflects the way that state policies configured citizenship and homosexuality in relation to one another. Gendered ideologies of citizenship, in other words, shaped the gendered regulation of perver-

³⁴See Estelle Freedman, “The Prison Lesbian: Race, Class, and the Construction of the Aggressive Female Homosexual, 1915–1965,” *Feminist Studies* 22 (Summer 1996): 397–415. For a related point about the development of psychiatry, see Elizabeth Lunbeck, *The Psychiatric Persuasion: Knowledge, Gender, and Power in Modern America* (Princeton, NJ: Princeton University Press, 1994).

sion—male perverts mattered so much to the state because male citizens did.³⁵ Until almost midcentury, a relatively small regulatory apparatus and genuine state indifference to female perversion meant that women were rarely targeted by legal instruments that were used to vet those who engaged in same-sex sexual behavior or manifested gender inversion. Such tools were deployed against women only as they were more fully incorporated into the arena of first-class citizenship—most visibly, when they were permanently integrated into the military during the early years of the cold war. As women were more completely drawn into citizenship, then, state officials became more focused on lesbianism.

Moving Forward

This study is comprised of two chapters on each of three cases: immigration, the military, and welfare. Thematically, the project is layered. The outer layer, chapters 1 and 6, is immigration. Moving inward, the next layer, chapters 2 and 5, is the military. Finally, the nucleus of the study, chapters 3 and 4, focuses on welfare. The organization of part I of the book (immigration-military-welfare) is mirrored in part II (welfare-military-immigration). The three cases, moreover, each serve two functions in the structure of the project: immigration, military service, and welfare represent major components of citizenship; and, the Bureau of Immigration, the military establishment, and the federal agencies that administered welfare programs all played a major role in the rise of the twentieth-century state. Across several state arenas and over time, then, the six chapters reveal a variety of federal institutions all engaged (but at different stages) in the same enterprise: defining homosexuality and citizenship in relation to one another through the construction of policies that established individuals who exhibited gender inversion or engaged in homoerotic behavior as either outside of or degraded within citizenship.

I proceed throughout by keeping my finger on the arenas where the state was experiencing growth more generally, because the process of state-building itself drew the regulatory eye to sexual/gender deviance. So, for example, I begin with immigration, one of the earliest federal

³⁵Despite women's suffrage, citizenship policies defined the typical citizen as male. Women were excluded from military service; naturalization cases from the 1870s through the 1920s concerned men; women's citizenship could be gained or lost based on the alienage or native birth of their husbands; single women were effectively excluded from the 1870s on by immigration provisions barring prostitutes and public charges; and welfare state provision channeled resources toward men as breadwinners. See Cott, "Marriage and Women's Citizenship"; Kessler-Harris, *In Pursuit of Equity*.

bureaucracies, and the first to leave substantial documentation of its response to sexual perversion. The military's adoption of psychiatric and other forms of screening for recruits during World War I led to a growing awareness of sexual "abnormalities" among the troops, so I shift my focus from immigration to the military during this period. (Actual bureaucrats followed this same trajectory, as for example, a Dr. Thomas Salmon, who began his career by inspecting immigrants for the Public Health Service [PHS], and then went on to be the head of psychiatry for the American Expeditionary Forces during the First World War.)³⁶ The crisis of the Depression inaugurated new experiments with government social provision, and I next examine how New Dealers dealt with rumored and actual homosexuality in work camps for single male transients—the "runaway boys and men." The subsequent chapter focuses on the denial of GI Bill benefits to soldiers discharged for homosexuality during and after World War II. With the dawn of the McCarthy era, I take advantage of the unique opportunity that the 1950s' military provides to examine federal policies on homosexuality that were derived from the regulation of women. My last chapter circles back to immigration policy because it allows me to follow the story from where I began with the Bureau of Immigration to the Immigration and Naturalization Service (INS) and the federal courts. Here especially, I "bring the law back in," as William Novak writes, to political history, considering the courts alongside the administrative agency as just another venue through which the modern state is created.³⁷

Readers should be forewarned that in organizing my study by these cases, I do not claim complete coverage of every federal arena where the state acted to define homosexuality. I do not, for example, look at the federal civil service's antihomosexual purge at midcentury because of the comprehensive way this story has been told elsewhere.³⁸ I also deliberately (if somewhat gingerly) step over World War II.³⁹ I do not ignore the war but neither do I make it the hub, preferring to engage this

³⁶Earl Bond, *Thomas W. Salmon: Psychiatrist* (New York: W. W. Norton, 1950).

³⁷Novak, "The Legal Origins of the Modern American State," 272. On the relationship between the courts and the administrative state, see also Reuel Schiller, "'Saint George and the Dragon': Courts and the Development of the Administrative State in Twentieth-Century America," *Journal of Policy History* 17 (2005): 110–24. This point is not meant to suggest that *only* my last chapter involving federal court cases falls within the purview of legal history. The emphasis of the preceding chapters is on the realm of administrative law—for example, the Bureau of Immigration's Boards of Special Inquiry, adjudicative boards within the Veterans Administration, or the investigative arm of the cold war military. Law is, as Robert Gordon notes, "the work of anyone . . . whose task is the administration of public policy" ("Critical Legal Histories," 66).

³⁸See especially Johnson, *The Lavender Scare*.

³⁹Two extremely skillful accounts that deal with homosexuality and World War II are

story through the World War II-era VA bureaucracy and its implementation of benefits (and hence the welfare-warfare state). I do so because I think welfare has been incredibly understudied in its relationship to sexuality, and because the state was as concerned with using its resources to *settle men down* after wartime (think marriage, home, and reproduction) as it was with anything they may have done “over there.” Indeed, mobility was a central problematic for the state’s regulation of sexuality—the subjects of regulation in this study are all, in one way or another, people on the move. So GI Bill benefits aimed to domesticate men after World War II, but were also a reaction to the memory of so many single men out drifting and “on the bum” during the preceding decade. This inchoate opposition between mobility and settlement evolved into an explicit differentiation between homosexuals and heterosexuals across the temporal span of World War II, and we can see the homosexual-heterosexual binary emerging out of federal welfare policy in this key moment of American state-building. For all these reasons, the state’s welfare function makes most sense at the center of this study.

Finally, a note about my semantic choices for the years before homosexuality became a hegemonic term: whenever possible, I try to use the language that federal officials used. Officials not only used a variety of terms, they adopted new terminologies at different rates, depending on the labels they heard used by the sexual cultures with which they came into contact, and on how “up” they were on the current medical literature. State officials also made up terms for bureaucratic usage. So, for instance, immigrants were excluded for a “lack of sexual development,” which was closely associated with sexual perversion. “I would first observe that this term in exactly these words will . . . not be found in any of the standard works of medicine,” Surgeon General H. S. Cumming wrote to Commissioner-General of Immigration W. W. Husband in 1922. “These words were used by the medical officers [involved] in order to make plain to the non-medical examiners what the condition was which they were certifying.”⁴⁰ The surgeon general’s concern, like that of many of the state officials who will appear in the following chapters, was less technical precision than to find the words and concepts with which to navigate a sex and gender terrain still coming into view.

Allan Bérubé, *Coming Out Under Fire: The History of Gay Men and Women in World War II* (New York: Plume, 1991); Leisa D. Meyer, *Creating G.I. Jane: Sexuality and Power in the Women’s Army Corps* (New York: Columbia University Press, 1996).

⁴⁰File no. 55255/070, box 1815, Records of the Immigration and Naturalization Service, RG 85, National Archives, Washington, DC.