

Article

## Identity/Time

Nancy J. Knauer

Beasley School of Law, Temple University, Klein Hall, 1719 North Broad Street, Philadelphia, PA 19122, USA; E-Mail: [nknauer@temple.edu](mailto:nknauer@temple.edu); Tel.: +1-215-204-1688

*Received: 15 August 2013; in revised form: 12 September 2013 / Accepted: 12 September 2013 /*

*Published: 23 September 2013*

---

**Abstract:** This paper engages the unspoken fourth dimension of intersectionality—time. Using the construction of lesbian, gay, bisexual, and transgender (LGBT) identities as an example, it establishes that identity, as it is lived and experienced, is not only multivalent, but also historically contingent. It then raises a number of points regarding the temporal locality of identity—the influence of time on issues of identity and understanding, its implications for legal interventions, social movement building, and paradigms of progressive change. As the title suggests, the paper asks us to consider the frame of identity over time.

**Keywords:** LGBT; identity; intersectionality; historical contingency; homosexuality; gay; lesbian; transgender; gender variance; identity

---

### 1. Introduction

For over twenty years, the prism of intersectionality has enhanced our understanding of identity; allowing us to visualize and untangle multiple double binds, as we begin to “map the margins” [1]. The compelling three-dimensional metaphor of a traffic intersection successfully reduces even the most complex iteration of self to a common everyday experience. It not only carves out a sense of place for those on the margin, but makes that location—that sense of place—accessible to others. As the traffic swooshes by us in every direction, the metaphor of the intersection invites us to feel the confusion, fragmentation, and power of contemporary identity categories as they collide and coalesce. Numerous commentators have proposed ways to rework and refine the metaphor, but its core observations regarding the multivalent nature of identity continue to inform our social theory, legal reforms, and progressive agendas for social change [2].

In the case of lesbian, gay, bisexual, and transgender (LGBT) identities, however, the rapid pace of social, political and legal change has demonstrated a second truism about identity that adds a fourth dimension to the intersection. Identity, as lived and experienced, it is not only multivalent—it is also historically contingent. In a matter of decades, individuals whom we would now recognize as LGBT have traversed the boundaries of degeneracy, mental illness, criminality, and religious condemnation. Our present articulation of intersectionality fails to capture this longitudinal component that is essential to both identity formation and the interlocking matrices of subordination and privilege. Whether conceptualized as crossroads, a roundabout, or a cloverleaf, every point of intersection represents a position in space that is also a snapshot of a discrete point in time—past, present, or future. The traffic in the intersection may seem like it is coming at us from all directions, but it only moves in one direction through time. By focusing on location and place, the explanatory power of the metaphorical intersection becomes constrained by the very spatial properties that make the image so effective and accessible.

This paper uses the construction of contemporary LGBT identities to explore the concept of historical contingency and the unspoken temporality that exists at the intersection of all identity. Take for example, a man who has sex with men. Although he may stand at the intersection of multiple and potentially conflicting identities, he also occupies a specific moment in time—the fourth dimension of intersectionality. How he will be seen (or not) by others will vary greatly depending on whether the time stamp on the intersection reads 1953, or 1973 or 2013. Encountering him in the present, we would most likely recognize him as LGBT or gay, but he may not self-identify in that way for a variety of reasons. The temporality of identity is a bit more complicated and multi-layered. Studies have shown that some older men who have sex with men prefer the term “homosexual,” whereas younger men may reject the term “gay” entirely, in favor of the more expansive term “queer” [3]. The temporal nature of identity is more than a series a freeze frames that lead inexorably and sequentially to the present. We do not reinvent ourselves anew each day nor do outdated modes of subordination disappear completely. To some degree, we are all out of sequence and traces of historic modes of subordination can be found securely embedded in new and emerging power structures.

The first part of this article paper briefly reviews the seismic shifts that have occurred in the area of LGBT acceptance and equality in the U.S., recognizing, of course, that the very concept of the homosexual is an invention of modernity. The second part then discusses the effect of this rapid pace of change on different generational cohorts of individuals within the LGBT communities, specifically focusing on older LGBT individuals or the pre-Stonewall generation. Part three engages the fourth dimension of intersectionality through a series of examples that illustrate the concept of identity/time. The final section discusses the ways in which historical contingency can both enhance and complicate our understanding of identity, subordination, social movements, and progressive change.

## **2. The Rapid Pace of Social Change**

The last twenty years have seen a remarkable shift in public opinion regarding LGBT civil rights. There has also been a steady dismantling of the legal disabilities imposed on LGBT individuals and growing political empowerment. Although these changes have been significant by any measure, they also reflect a larger redefinition that has taken place with regard to our scientific and popular

understanding of sexuality and gender identity. This redefinition has unfolded over the course of many decades and arguably set the stage for some of the more tangible progress in the areas of political and civil rights. As discussed in Section 3, these periodic definitional shifts have led to differences among LGBT generational cohorts that are deeply ontological in terms of world view and sense of self. Beginning with a snapshot of the more recent advancements in the area of LGBT civil rights, this section then discusses the declassification of homosexuality as a mental illness and the broader historical changes that have informed both the regulation and construction of LGBT identities.

### 2.1. The Short View

In the U.S., LGBT individuals currently enjoy an unprecedented level of social and political acceptance. A series of high profile U.S. Supreme Court cases have greatly advanced the legal rights of LGBT individuals, as have a number of largely state-level legislative initiatives. Despite these advancements, it is important to remember that same-sex couples do not enjoy full marriage equality, transgender individuals face numerous obstacles on basic questions of legibility and inclusion, and LGBT individuals, as a class, are not covered by any federal anti-discrimination protections. Although some commentators have already declared victory in the LGBT civil rights struggle, it might be more accurate to say that LGBT individuals in the US are currently living on the *edge* of equality [4].

Just twenty years ago, it would have been difficult to imagine obtaining the current level of success, especially with regard to the legal recognition of same-sex relationships. In 1993 the Culture Wars were at their height, and gay sexuality was vilified and demonized by powerful forces for political advantage. The HIV/AIDS epidemic was still unmediated by protease inhibitors and the number of AIDS-related deaths in the US for that year exceeded 45,000 [5]. Congressional hearings on “Don’t Ask, Don’t Tell” documented the threat that openly gay service members exposing the “Gay Agenda” would pose to national security [6]. There were no recurring gay characters on television, and sixty-six percent of Americans believed that sexual relations between persons of the same sex were “always wrong” [7].

It was also the year that the LGBT civil rights movement began to concentrate on the legal recognition of same-sex relationships. The HIV/AIDS epidemic had underscored the legal fragility of same-sex relationships and chosen family structures, and an unexpected ruling from the Hawaii state supreme court in *Baehr v. Lewin* made marriage equality seem suddenly attainable [8]. For defenders of traditional values, *Baehr* represented a direct threat to the very moral foundations of society. Traditional values advocates mobilized on both the state and federal level [9]. Three years after the initial ruling in *Baehr*, Congress enacted the Defense of Marriage Act (DOMA) in 1996 to stem the potential tide of marriage equality and ensure that federal benefits would be restricted to opposite-sex married couples [10]. DOMA created a federal definition of marriage as a union between one man and one woman and provided that states could refuse to recognize same-sex marriages performed in sister states. The law was purely prophylactic at the time, and it would take ten years before Massachusetts became the first state to recognize same-sex marriages. Even though there was no immediate need for DOMA, it was well timed to coincide with the 1996 Presidential election cycle. DOMA enjoyed broad bipartisan support as members of Congress warned that the “flames of hedonism” were threatening to consume the nation [11].

The same year that Congress enacted DOMA, the U.S. Supreme Court decided *Romer v. Evans* and declared that the popularly enacted Amendment 2 to the Colorado state constitution violated the Equal Protection Clause of the 14th Amendment [12]. Ruling that a “state cannot so deem a class of persons a stranger to its laws” ([12], p. 635) *Romer* signaled the end to the spate of citizens initiatives designed to disenfranchise gay men and lesbians from the political system and repeal the “special rights” supposedly afforded by anti-discrimination protections [9].

The ongoing debate over DOMA increased the public profile of same-sex marriage and the major opinion polls began to include questions on marriage equality [7]. In 1996 only twenty-seven percent of Americans thought that same-sex marriages should be legal [7]. The attention devoted to marriage equality intensified after 1996, sometimes eclipsing other issues and leading to disagreements within the LGBT political movement regarding priorities [13]. Beginning in 1997, some states began adopting alternative forms of recognition, such as civil unions and reciprocal beneficiaries, that granted some or all of the benefits of marriage [14]. In 2003, Massachusetts became the first state to recognize same-sex marriage [15]. Although other states followed suit, the vast majority of states took another route, enacting laws or amending their state constitutions to prohibit same-sex marriages. The result was an odd patchwork of state and federal laws where a same-sex couple might be legally married in their state of domicile, but not in a sister state or for any federal purposes.

The same year that the Massachusetts state supreme court mandated marriage equality, the U.S. Supreme Court decided *Lawrence v. Texas* holding that that criminal sodomy statutes violated the concept of liberty guaranteed under the 14th Amendment [16]. *Lawrence* expressly overruled the Court’s 1986 decision in *Bowers v. Hardwick* and recognized that criminal sodomy laws had been used to justify a host of additional legal and social disabilities. As Justice Scalia had argued in his blistering dissent in *Romer*, if a state could still criminalize the behavior that defined the class, it was logical that the state could also disfavor the class in other instances ([12], pp. 641–42). At the time of the *Lawrence* decision consensual sodomy was still a crime in thirteen states.

Despite the favorable court rulings in 2003, opinion polls showed that only thirty-seven percent of Americans believed that same-sex marriage should be legal, and a majority of Americans still considered homosexuality to be “always wrong” [7]. In the years following *Lawrence*, there have been many positive advancements, including state-level anti-discrimination protections, the repeal of Don’t Ask, Don’t Tell, both federal and state-level hate crimes legislation, and anti-bullying and safe schools initiatives. Transgender issues have increased in visibility and a growing number of states now include “gender identity” in the list of protected classes. There are numerous gay and lesbian characters on television, as well as movies. Openly gay politicians are no longer the exception and a majority of Americans say that they would vote for an openly gay presidential candidate [7]. When the U.S. Supreme Court decided *U.S. v. Windsor* in 2013 and declared the definitional portion of DOMA unconstitutional [17], twelve states recognized same-sex marriage, fifty-eight percent of Americans were in favor of marriage equality, and pollsters had stopped asking the question of whether homosexuality was “always wrong” [7].

## 2.2. The Longer View

Although the achievements of the last twenty years have been nothing short of remarkable, it is important to understand that the regulation of same-sex attraction and gender variance has been accomplished through mutually reinforcing and overlapping prohibitions sounding in religion, law, and science. Although religion and law had long imposed proscriptions on specific behavior, it was science that first identified individuals who experienced same-sex attraction as a distinct type of individual. Beginning in that latter half of the 19th century, men of science set out to create elaborate taxonomies of human sexual behavior. The sexologists singled out individuals who exhibited “contrary sexual feelings” as inverts and ascribed to them a set of clearly defined characteristic, traits, and failings [18]. The result was to create an identity that was more than simply the sum of an individual’s sex acts. As Foucault has famously observed “The sodomite had been a temporary aberration; the homosexual was now a species.” ([19], p. 43).

Over the course of the next 100 years, the medical profession classified and re-classified individuals experiencing same-sex attraction as inverts, 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.” Each theory has also provoked distinct legal responses. But beyond the medical and legal communities, it is important to remember that each theory resonated, at least to some degree, with the subjects themselves—individuals who sought explanations for their feelings of difference. Generations of inverts, homosexuals, gays and lesbians, and now the umbrella LGBT coalition group have all embraced scientific explanations at one time or another. They have tried to harness these theories for their inherent liberatory value—whether it be to find a “cure” or to argue for legal and social reforms [18].

The understanding of homosexuality advanced by the American Freudians beginning in the 1940s prompted some of the most draconian legal responses, and its influence continues to be felt in a number of areas despite the fact that the theory has long been repudiated. The American Freudians theorized that homosexuality was a severe sociopathic personality disorder that was often predicated by a sexual encounter with an older predatory homosexual [20]. This theory popularized a twisted lifecycle view of homosexuality where older homosexuals indoctrinate young children who then grow up to be sexual predators themselves. It also prompted a wide range of criminal laws that were designed to disrupt this cycle and isolate homosexuals. Many of the laws placed a special emphasis on keeping homosexuals away from children.

The psychoanalytic understanding of homosexuality as a mental disorder also led to the development of various medical interventions to “cure” homosexuality, including involuntary commitment, electro-shock therapy, aversion conditioning, and even lobotomy [21]. Under this model of homosexuality, an individual was not born gay or lesbian, but rather became homosexual due to early psychosexual trauma. This understanding of homosexuality differed radically from that of the early sexologists who considered inversion a naturally occurring variation. Although they considered homosexuality to be suboptimal, they also believed that it was very difficult, if not impossible, to change. Rather than seek to “cure” inverts, many of the sexologists had argued in favor of more lenient laws, including the decriminalization of sodomy [18].

From the beginning of the Gay Liberation movement in the late 1960s, gay rights activists had identified the classification of homosexuality as a mental illness to be a major obstacle to achieving equal rights and full acceptance. Armed with empirical evidence showing no difference between homosexual and non-homosexual test subjects, activists began lobbying the American Psychiatric Association to declassify homosexuality as a mental illness and delete it from the *Diagnostic and Statistical Manual* [22]. The eventual declassification of homosexuality in 1973 was a watershed moment for the nascent gay rights movement. As one newspaper declared, “20 Million Gain Instant Cure” [23]. Despite high expectations, the declassification of homosexuality did not lead to many immediate legal or political gains. In fact, the initial declassification of homosexuality was partial, and the category of “ego dystonic homosexuality” stayed in the Diagnostic and Statistical Manual until 1989 ([22], pp. 209–14.). Although the declassification of homosexuality as a mental illness had been a necessary step in order to ensure “liberation,” it was in no way sufficient.

In terms of our understanding of same-sex attraction, the declassification of homosexuality marked the beginning of a renewed belief that same-sex attraction was an innate human characteristic—that individuals are, to quote Lady Gaga, simply “Born That Way” [24]. Both the American Freudians and Gay Liberationists had believed that individuals either became gay or chose to be gay, as opposed to the sexologists whose theories of inversion looked to nature rather than nurture. The emphasis that the early gay rights movement placed on agency is clear from its rhetoric that stressed freedom of choice and sexual liberty [25]. It is even reflected in the wording of first anti-discrimination protections that routinely used the term sexual *preference*. Later protections used the term sexual *orientation*, in order to signal something more than a mere preference that was either immutable or difficult to change [26].

While scientists began the search for the ever-elusive gay gene, this shift from nurture to nature better positioned gay rights advocates to advance Equal Protections arguments that hinged on questions of “immutability.” To the contrary, anti-gay advocates roundly reject the notion that homosexuality is inborn, and instead argue that the “gay lifestyle” is a choice. Taking the argument one step further, they argue that it is possible to “come out” of homosexuality. Their stated goal is to not only destabilize LGBT identities, but to eradicate them completely. In terms of public opinion, the question of whether one is born gay or chooses to be gay has experienced the greatest shift. In 1977 only thirteen percent of those surveyed reported that gay men and lesbians were born that way, compared with forty percent in 2010 [7].

### 3. The Historical Contingency of Identity

Existing identity theory tacitly acknowledges historical contingency whenever it refers to identity constructs as provisional, fluid, or multivalent. Our socially constructed identities are, of course, historically contingent, as evidenced by the original “naming” of the homosexual in the latter part of the 19th century. The continuing re-evaluation of same-sex attraction provides a dynamic example of historical contingency and the temporal locality of identity. We have seen the initial naturalism of the sexologists give way to the psychoanalytic insight of the American Freudians, which was then challenged by liberation ideology, and eventually replaced with our contemporary and inconclusive genetic explanations.

Over the last several decades, LGBT individuals have experienced a world where their visibility has increased, and their opportunities, as LGBT individuals, have expanded in terms of anti-discrimination, relationship recognition, and social acceptance. But, these tangible and concrete gains have arguably been eclipsed by the tremendous shifts that have occurred in our understanding of same-sex attraction and gender variance. The shifts in understanding have the potential to produce differences among cohorts that are deeply ontological in nature and go to the core of an individual's understanding of self and his or her right to exist in the world. Some of the most pronounced differences can be found between the individuals who came of age prior to the existence of a public pro-gay narrative and those who came of age after the advent of gay liberation and benefited from the new dialogue of openness and pride [27]. This section focuses primarily on the major divide between the pre- and post-Stonewall generations, although its observations are equally applicable to other LGBT cohorts, as well as identity categories more generally.

Recognizing the rapid pace of social change in this area, sociologists have suggested that the LGBT communities are actually comprised of highly compressed age cohorts delimited by relatively narrow social and political periods [28]. These cohorts are defined by different milestone political and media events that, in turn, influence the worldview of individuals in the cohort and their self-development. The result is narrow generational bands that may span only several years. The experience of the teenager who has grown up watching *Glee*, *Normal Family*, and *The Fosters* may seem worlds away from the teenager who waited with much anticipation to see whether Ellen DeGeneres' character would really come out in 1996 on the "Puppy Episode" [29]. If we expand our frame, it is easy to see the potential gaps and differences grow even more pronounced. Consider the teenager who came of age during the early 1980s and the first wave of the HIV/AIDS epidemic when a majority of Americans favored quarantine [30]. How does he compare to the teenager who watched Anita Bryant tirelessly campaign to "Save Our Children" in the late 1970s while simultaneously witnessing periodic displays of "gay pride" and the election of Harvey Milk [31]?

If we look much beyond the 1970s, however, the picture changes dramatically because there simply was no public pro-gay narrative. Memoirs of those who grew up during this time often tell of not having a name for their sense of difference and their fear that they "were the only one" [32]. To the extent that they went in search of explanations, the card catalogue at the local library might reveal very little or point them to abnormal psychology texts. The Motion Picture Production Code or Hays Code prohibited, among other things, the portrayal of "sex perversion" in the movies [33]. Criminal obscenity laws were used to silence discussions or depictions of homosexuality. Although paperback titles sometimes broached the subject and there were veiled references to homosexuality in movies and literature, the price of visibility typically required an unhappy demise for the homosexual protagonist, often by her own hand [34].

For individuals who came of age during this period, there was no concept of "coming out" to family and friends because disclosure could risk institutionalization [35]. Homosexuals were disqualified from most employment, and they were considered unfit parents. Gender variance was strictly policed and "cross-dressing" was a criminal offense. For this generation, concealing one's difference—being "closeted"—was simply a way of life, a matter of survival. As one researcher observed, they were "the last generation to have lived their adolescence and young adulthood in hiding" ([36], p. 14).

Historians often point to the 1969 Stonewall Riots as the beginning of the contemporary gay rights movement—as the event that helped usher in a new way of talking and thinking about sexuality [37]. It can also serve as a natural dividing line when attempting to map LGBT generational shifts. By the early 1970s, it was possible to find a public, albeit contested, pro-gay narrative. The notion that “Gay is Good” ([21], p. 91) had been circulating since the last days of the small homophile movement, but it gained traction with the advent of Gay Liberation and periodically would appear in living rooms whenever gay liberationists “zapped” the evening news or other media event [38]. When *Time Magazine* chose to put the first openly gay person on its cover in 1975, the issue was subtitled “The Gay Drive for Acceptance” [39]. The declassification of homosexuality as a mental illness was also enormously helpful in bringing about this change. As it turned out, however, the much ballyhooed “instant cure” was not necessarily effective or immediate for everyone.

Over the years, many members of this pre-Stonewall generation responded to increasing social and legal acceptance by living more openly, but others remained deeply closeted. Some have never identified as homosexual or gay—let alone LGBT. For example, one study found a strong correlation between age and self-identification as gay, reporting that that “19.8% of the men in their 60 s self-identify as homosexual, and 51.3% of individuals 70 years of age and older think of themselves as homosexual, rather than as gay” ([3], p. 126). Simply put, the members of the pre-Stonewall generation are not necessarily the same as their “out and proud” post-Stonewall progeny because their identities and worldviews were formed in a different time and under dramatically different circumstances.

For these reasons, older LGBT adults may find themselves “out of synch” with contemporary iterations of identity and experience a level of disconnect that is far more fundamental than what we typically think of as a “generation gap.” Take for example, a woman with a longtime female partner who celebrates her 70th birthday in 2013. At the time of the Stonewall Riots, she would have been twenty-six years old. By the time her sociopathic personality disorder was miraculously cured, she was turning thirty. Her young adulthood would have been spent without the benefit of a public pro-gay narrative, as she labored under the weight of diagnosis. What passed as scientific knowledge during that period would now be understood as homophobic, as well as potentially misogynist and racist.

Like many individuals of her age, she might have sought professional help to control her “homosexual tendencies” [40] or perhaps she was involuntarily committed by her parents when they grew concerned over her refusal to stay within the well-defined gender roles. Coming of age before the promise of Title VII and Second Wave feminism, she would have encountered limited opportunities in terms of education and career at a time when sex roles were much more rigid than they are today. Even the Help Wanted Ads were segregated by sex, such that positions were expressly gendered. Lesbian stereotypes emphasized cross-gender performance and the notion of the so-called “mannish” lesbian would have posed a direct challenge to the mid-century dictates of gender, as well as those of sexuality.

If our subject were a lesbian of color, she would have encountered multiple vectors of oppression and discrimination throughout her lifetime. Her identity would have been formed not only during a time of officially mandated homophobia, but also during a period of government-imposed segregation and wide-spread racism. Experiencing her homosexuality within the larger context of race and ethnicity, she would have spent her formative years in a climate that sanctioned extra-legal violence against persons of color, prescribed very narrow gender roles, and classified her unnamed difference as a mental illness.

During the pre-Stonewall era, official accounts largely conflated transgender concerns with homosexuality. The history and formation of transgender identity, however, presents a distinct and singular story about gender and embodiment in twentieth century America. Although homosexuals and transgender individuals shared common cultural space and were subject to similar and inter-related forms of bias and harassment, it is important to remember that the transgender members of the pre-Stonewall generation would have confronted a distinct set of challenges. Even though anti-gay bias has long been associated with hostility towards gender variant behavior ([18], p. 43), issues related to gender identity are not necessarily congruent with those related to sexual orientation. Unlike homosexuality, gender identity disorder remains classified as a mental disorder that is subject to medical intervention [41].

#### **4. The Fourth Dimension of Intersectionality**

As applied to questions of identity formation, the notion of historical contingency demonstrates how our worldview and sense of self are uniquely products of our historical context. When we say that identities are provisional or fluid or socially constructed, we must also acknowledge their inherent temporal qualities. Along the axis of time—the necessary 4th dimension of intersectionality—existing identity categories will change and evolve, as will modes of bias and subordination. The prior section charted this evolution in the case of LGBT identities, with the progression from inversion to homosexuality to gay liberation to identity politics. It also illustrated the many ways that an individual's sense of self and worldview may not be entirely in synch with the broader pace of social and political change.

In this way, the temporal nature of identity implies a two-force model. On a macro level, every intersection of identity has a fixed temporal location, but, on the individual level, things are more complicated. We bring to any intersection the sum of our experience—our temporal parts—a series of snapshots of identity. We do not continually reconstitute ourselves anew with each approaching moment, even though our identity will continue to be read and reinterpreted in ever evolving contexts under ever evolving circumstances. We may currently exist in what William James referred to as the “specious present” [42], but we all come with baggage, trailing our temporal parts [43]. Some of us might be “ahead of our time,” whereas others might be decidedly “old school.”

When applying this two-force model, it is important to start with the recognition that every intersection of identity is necessarily located within time, as well as space. The coordinates of this fourth dimension may seem frustratingly fleeting, as the present quickly becomes the past, as does the future. But, the indelible “time stamp” that exists on every rendering of intersecting identities carries significant explanatory value. A seventy-five year old white woman in a long-term relationship with another woman stands at a complex intersection of race, gender, age, and sexual orientation. It goes without saying that our analysis (as well as her experience) would differ considerably if the snapshot of identity captured the intersection in 1963, 1983, or 2013. Along the axis of time, existing identity categories change and evolve, as do modes of bias, subordination, and recognition. Our subject's sense of self and worldview may have also changed, although not necessarily in a manner that is congruent with broader social and political developments.

In 2013, our subject may not identify as homosexual, lesbian, gay or LGBT for a variety of reasons both historical and personal. The persistent irony of identity is that this fact will be lost on the traffic gunning for her in the intersection. Despite her internal (dis)identifications, she may nonetheless be read as LGBT and vulnerable to anti-LGBT bias, revealing a conceit of presentism that is discussed at greater length in the following section. It is also important to note that not all of the traffic in the intersection will be late model cars. The overlapping and mutually reinforcing nature of the historical prohibitions on same-sex attraction and gender variance will mean that a classic car or two may zoom by fueled by the American Freudians' belief in therapeutic intervention or their conviction that homosexuals prey on children. As explained in Section 2 above, new scientific understandings of sexual orientation and gender variance have never fully displaced some of the older views that continue to inform law and public policy, as well as shape the contours of anti-LGBT bias. For example, the discredited conviction that homosexuals are sexual predators who recruit children into the homosexual lifestyle still lives on in the Boy Scouts' policy prohibiting openly gay Scout Masters [44]. It also informs much of the anxiety over same-sex parenting that has surfaced in the context of the debate over marriage equality [45]. And, unfortunately, it still appears, from time to time, in family court decisions when children are involved [46].

## 5. Conclusions

Historical contingency requires many backwards glances, but it can also inform our understanding of the present and our plans for the future. Although this article has focused primarily on the construction of LGBT identities, the temporal locality of identity has broader applicability beyond this particularized retelling of the history of sexual orientation and gender variance in the U.S. The insight that identity is multivalent *and* historically contingent has implications for our social theory, movement building, and legal reforms.

For example, to the extent that identity is necessarily in the act of becoming, social movements based on tightly defined identity politics run the risk of becoming restrictive and exclusionary projects, unless they acknowledge the inevitable ebb and flow of identity. A movement that responds to emerging and related identities by attempting to police and shore up its initial boundaries will exhibit strong essentializing tendencies, often resulting in the production of an "official" movement identity. The endorsement of an official (and likely static) version of identity will simultaneously marginalize and exclude emerging identities, notwithstanding their uncanny family resemblance. A contemporary example of this dynamic would be the tension that has sometimes existed over the incorporation of lesbian and gay civil rights and transgender rights within a single civil rights agenda [47]. An appreciation for temporality of identity would urge social movements to accommodate new iterations of related identities, rather than cling to an official and most likely outmoded rendition of identity.

The arrow of time may dictate that identities will emerge and evolve over time, but there will still be a large number of individuals who will always be out of "synch" with the prevailing wind of change. This observation presents a challenge to the central premise of all progressive programs for change, namely that conditions and opportunities will improve over time. Although the promise of reform may invite us to engage in continual reinterpretation to keep pace with social change and other developments, what does it say about individuals who do not exist in a continual state of renewal? Do

they suffer from false consciousness or is any claim of false consciousness merely an error of presentism—a form of temporal chauvinism? In the case of historical and literary analysis, the term presentism would typically refer to a past event, but it seems appropriate to use it in reference to members of the pre-Stonewall generation because they are living examples of the historical contingency of identity. How then do progressive movements speak to individuals who thus span time?

The historical contingency of identity suggests, at least on the macro level, a process of identity formation that involves constant reinterpretation and reinvention. The law is one area that is especially resistant to continual renewal. To the contrary, the enactment or recognition of equality-based non-discrimination protections are often the result of lengthy and hard-fought civil rights battles. Any attempt to name or describe a particular category will necessarily capture no more than a singular temporal snapshot. A striking example of this is the fact the courts still look to the footnote of a 1938 U.S. Supreme Court decision when deciding whether a group qualifies as a “discrete and insular” minority and, therefore, warrants the highest level of protection under our Equal Protection guarantees [48].

Historical contingency suggests that by the time an identity category has been recognized in law, it is entirely possible that its parameters have already changed. As noted in the Section 2, the early non-discrimination laws protected individuals based on their “sexual or affectional preference,” but such protections quickly gave way to “sexual orientation,” as the popular understanding of same-sex attraction shifted from one based on concepts of autonomy and liberation ideology to one based on claims of immutability and genetics. Accordingly, historical contingency should sound a cautionary note when attempting to secure class-based protections because identity categories necessarily provide an unstable foundation for civil rights claims and protections. The shifting sands of identity have the potential to render any policy based on the existing identity model both obsolete and incomplete before it is ever enacted or even proposed.

### Conflicts of Interest

The author declares no conflict of interest.

### References

1. Kimberle Crenshaw. “Mapping the margins: Intersectionality, identity politics, and violence against women of color.” *Stanford Law Review* 43 (1991): 1241–99.
2. Jennifer C. Nash. “Home truths in intersectionality.” *Yale Journal of Law and Feminism* 23 (2011): 455–70.
3. Todd W. Rawls. “Disclosure and Depression among Older Gay and Homosexual Men: Findings from the Urban Men’s Health Study.” In *Gay and Lesbian Aging: Research and Future Directions*. Edited by Gilbert Herdt and Brian de Vries. New York: Springer Publishing Co., 2004, p. 126.
4. Linda Hirshman. *Victory: The Triumphant Gay Revolution*. New York: HarperCollins Publishers 2013.
5. Dennis H. Osmond. “Epidemiology of HIV/AIDS in the United States.” March 2003. Available online: <http://hivinsite.ucsf.edu/InSite-KB-ref.jsp?page=kb-01-03&ref=kb-01-03-tb-03&no=3> (accessed on 18 September 2013).

6. Janet E. Halley. *Don't: A Reader's Guide to the Military's Anti-Gay Policy*. Durham, NC: Duke Univ. Press, 1991.
7. Karlyn Bowman, Andrew Rugg, and Jennifer Marsico. "Polls on Attitudes on Homosexuality and Gay Marriage." March 2013. Available online: <http://www.scribd.com/doc/131666438/Polls-on-Attitudes-on-Homosexuality-Gay-Marriage#page=4> (accessed on 18 September 2013).
8. Baehr v. Lewin, 74 Hawaii 530 (HI S. Ct. 1993).
9. Didi Herman. *The Anti-Gay Agenda: Orthodox Vision and the Christian Right*. Chicago: Univ. of Chicago Press, 1997.
10. The Defense of Marriage Act, Pub. L 104 – 199, 110 Stat. 2419, enacted September 21, 1996.
11. William N. Eskridge, and Darren R. Spedale. *Gay Marriage for Better or Worse? What We Have Learned From the Evidence*. New York: Oxford Univ. Press, 2006, pp. 29–30.
12. Romer v. Evans, 517 U.S. 620 (U.S.S.Ct. 1996).
13. George Chauncey. *Why Marriage? The History Shaping Today's Debate over Gay Equality*. Cambridge, MA: Basic Books, 2005.
14. Yuval Merin. *Equality for Same-Sex Couples: The Legal Recognition of Gay Partnerships in Europe and the United States*. Chicago: Chicago Univ. Press, 2002, p. 215.
15. Goodridge v. Department of Public Health, 440 Mass. 309 (MA S.Ct. 2003).
16. Lawrence v. Texas, 539 U.S. 558 (U.S. S.Ct. 2003).
17. United States v. Windsor, 570 U.S. (U.S. S.Ct. 2013).
18. Nancy J. Knauer. "Science, identity, and the construction of the gay political narrative." *Law & Sexuality* 12 (2003): 12–22.
19. Michel Foucault. *The History of Sexuality: An Introduction*. New York: Vintage Books, 1990, p. 43.
20. Jennifer Terry. *An American Obsession: Science, Medicine, and Homosexuality in Modern Society*. Chicago: Univ. Of Chicago Press, 1999.
21. William N. Eskridge, Jr. *Gaylaw: Challenging the Apartheid of the Closet*. Cambridge, MA: Harvard Univ. Press, 1999, p. 62.
22. Ronald Bayer. *Homosexuality and American Psychiatry: the Politics of Diagnosis*. Princeton: Princeton Univ. Press, 1987.
23. Simon LeVay. *Queer Science: The Use and Abuse of Research into Homosexuality*. Cambridge, MA: MIT Press, 1996.
24. Autumn Edwards, Chad Edwards, Shawn T. Wahl, and Scott A. Myers. *The Communication Age: Connecting and Engaging*. Thousand Oaks, CA: Sage Publications, 2013, p. 154.
25. Annamarie Jagose. *Queer Theory: An Introduction*. New York: NYU Press, 1996.
26. Chai R. Feldblum. "The Federal Gay Rights Bill: From Bella to ENDA." In *Creating Change: Sexuality, Public Policy, and Civil Rights*. Edited by John D'Emilio, et al. New York: St. Martin's Press, 2002, p. 149.
27. Nancy J. Knauer. *Gay and Lesbian Elders: Law, History, and Identity Politics in the United States*. Burlington, VT: Ashgate Publishing, 2011.

28. Glenda M. Russell, and Janis S. Bohan. "The gay generation gap: Communicating across the LGBT generational divide." *Policy Journal of the Institute for Gay & Lesbian Strategic Studies* 8 (2005): 2–3. Available online: [http://www.iglss.org/media/files/Angles\\_81.pdf](http://www.iglss.org/media/files/Angles_81.pdf) (accessed on 18 September 2013).
29. John J. O'Connor. "Coming out party: The closet opens, finally." *New York Times*, 30 April 1997. <http://www.nytimes.com/1997/04/30/arts/coming-out-party-the-closet-opens-finally.html>.
30. Lawrence O. Gostin. "The politics of AIDS: Compulsory state power, public health, and civil liberties." *Ohio State Law Journal* 49 (1989): 1017–54.
31. Randy Shilts. *The Mayor of Castro Street: The Life and Times of Harvey Milk*. New York: St. Martin's, 1982.
32. Marcia M. Gallo. *Different Daughters: The History of the Daughters of Bilitis and the Lesbian Rights Movement*. Emeryville, CA: Seal Press, 2007.
33. Richard Barrios. *Screened Out: Playing Gay in Hollywood From Edison to Stonewall*. New York: Routledge, 2003, p. 125.
34. *Lesbian Pulp Fiction: The Intrepid World of Lesbian Paperback Novels 1950–1965*. Edited by Katherine V. Forrest. San Francisco: Cleis Press, 2005, pp. ix–xix.
35. Kath Weston. *Families We Choose: Lesbians, Gays, Kinship*. New York: Columbia Univ. Press, 1997, p. 44.
36. Ski Hunter. *Midlife and Older LGBT Adults: Knowledge and Affirmative Practices for the Social Services*. Philadelphia: Haworth Press, 2005, p.14.
37. Leila J. Rupp. *A Desired Past: A Short History of Same-Sex Love in America*. Chicago: Univ. of Chicago Press, 2002, pp. 176–77.
38. Marc Stein. *The City of Brotherly and Sisterly Love: Lesbian and Gay Philadelphia 1945–1972*. Chicago: Univ. of Chicago Press, 2000.
39. "I Am a Homosexual: The gay drive for acceptance." *Time Magazine*, 8 September 1975.
40. Martin Duberman. *Cures: A Gay Man's Odyssey*. Boulder, Co: Westview Press, 2002.
41. Dean Spade. "Mutilating Gender." In *The Transgender Studies Reader*. Edited by Susan Stryker and Stephen Whittle. New York: Routledge, 2006, pp. 315–32.
42. William James. *The Principles of Psychology, Volume 1*. New York: Henry Holt and Co., 1918, p. 638.
43. Eric T. Olson. *What Are We? A Study in Personal Ontology*. Oxford: Oxford Univ. Press, 2007, p. 102.
44. Erik Eckholm. "Boy scouts end longtime ban on openly gay scouts." *New York Times*, 23 May 2013. Available online: <http://www.nytimes.com/2013/05/24/us/boy-scouts-to-admit-openly-gay-youths-as-members.html> (accessed on 18 September 2013).
45. Carlos A. Ball. "Social science studies and the children of lesbians and gay men: The rational basis perspective." *William and Mary Bill of Rights Journal* 21 (2013): 691–764.
46. Clifford J. Rosky. "Like father, like son: Homosexuality, parenthood and the gender of homophobia." *Yale Journal of Law & Feminism* 20 (2009): 257–351.

47. Julie A. Greenberg. *Intersexuality and the Law: Why Sex Matters*. New York: NYU Press, 2012, pp. 104–06.
48. United States v. Carolene Products, 304 U.S. 144, 152 (U.S. S.Ct.. 1938).

© 2013 by the author; licensee MDPI, Basel, Switzerland. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/3.0/>).