

SEXUALITY AND SOCIAL POLICY

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Social policies exist at a variety of levels and in a wide-ranging set of circumstances, from local city ordinances, to court cases, to school-based policies, to family-level decisions. Policies create a network of formal and informal rules used to govern individuals and groups of all sizes and can be observed as “system(s) of laws, regulatory measures, courses of action, and funding priorities concerning a given topic” (Kilpatrick, 2000, para. 1). Although policies often are imagined as solely punitive, they also create and support those environments necessary for well-being (Béland, 2010; Dean, 2006). In the sexual domain, some policies aim to regulate and police the expression of sexuality, but other policies seek to distribute resources equitably throughout, for example, a family, neighborhood, state, or nation.

To begin this discussion of sexuality, policy, and U.S. law, three vignettes are presented to demonstrate the range of policies that manage the private sphere of sexual identities, relationships, and behaviors. The three vignettes—varied by history, audience, effect, and scale—demonstrate the wide range of ways that social policies can affect the sexuality of individuals.

In 1947, the city council of Los Angeles proposed a law that would have criminalized two men shaking hands in public. By regulating common gestures like handshakes, public officials argued that they would have authority to maintain order in public spaces, such as bars and theaters,

where gay men in groups were described as disturbing local residents (Strub, 2008).

In 1967, a man was filmed whipping another man in a sadomasochism (S/M) scene and convicted of aggravated assault (*People v. Samuels*, 1967). The court argued that the defendant, even while involved in a consensual sexual act, had committed an assault because the only conditions under which an individual can consent to assault involve “ordinary physical contact or blows incident to sports such as football, boxing, or wrestling” (*People v. Samuels*, 1967; cited in Rubin, 1999, p. 168).

In 1980, Aaron Fricke, a senior at Cumberland High School, wanted to attend the senior reception with a male companion. The federal district court of Rhode Island decided two young men were entitled to attend prom together and that the school must provide enough security at the dance to ensure that the young men were safe while attending the dance (*Fricke v. Lynch*, 1980).

These examples highlight several characteristics of sexuality-related social policies: They are powerful tools to regulate public and private spaces, they are at times implicit in their intentions to regulate sexuality, and they often aim to police some bodies and not others (see Chapters 7, 8, and 9, this volume).

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In the example of the proposed handshake law, city officials imagined using a mundane physical expression to regulate public spaces where gay men congregated. Social policies can exert both proximal social consequences (limiting physical contact between men) and distal social consequences (breaking up crowds with the threat of arrests). Although some policies appear to regulate nonsexual aspects of individuals' lives (such as the handshake in this example), such policies may also implicitly regulate sexuality, even though their intention does not appear to be about sex or sexuality.

In the filmed S/M example, social policies are at times highly attuned to the sexual nature of interactions and use different logics to judge right and wrong because of the addition of (real or imagined) sexual arousal or desire. In this case, the court determined that the sexual nature of the S/M interaction created a categorical difference between being physically assaulted by another man during a football game and being assaulted by a man during a sexual encounter. Although football players are within their rights to assault another man for pleasure, outside of sports scenarios, male-on-male aggression was determined to be violence and punishable by law—regardless of individual consent.

Last, the high school prom example highlights the role of social policies that aim to distribute rights across all citizens. In this case, the two young men won the right to attend the prom, but the policy also ensured that they, like their heterosexual peers, would have the right to safety while at the dance. This characteristic of ensuring the equitable distribution of resources is an often-overlooked quality of policies (especially those related to sexuality), yet it is essential to remember when considering the scope and potential impact of policies in this area.

POLICIES AND PEOPLE: AN ENTRY POINTS FRAMEWORK

This chapter examines social policies as they relate to five qualities of sexuality: sexual knowledge, sexual behavior, reproduction and family formation, the sexual body, and institutional infrastructures designed to address sexuality issues. These *entry*

points represent sites of leverage where social policies enter the intimate space. These five entry points are not exhaustive, nor are they mutually exclusive. By distinguishing these five entry points, however, it is possible to focus on specific ways that governance and bodies relate—that is, by regulating what individuals know about sex, how they behave, mate, reproduce, and how infrastructures are supported or dismantled through social policies. The metaphor of entry points directs us to look beyond a specific policy and look, instead, at how policies aim to lodge inside the body (see Volume 1, Chapter 25, this handbook). Resisting the urge to describe social policies as primarily social (and existing only on the outside of the individual), the metaphor of entry points compels us to investigate psychological consequences, effects, and outcomes at the juncture of where the person and their environments meet (Lewin, 1935).

An entry points framework does not assume a passive body that simply is entered or acted on by policies, but rather it highlights *how* and *where* policies intervene in the sexual sphere. For example, policies that determine what children learn about sex in school are one method of governing and ensuring the circulation of sexual knowledge, whereas policies legislating which types of couples are allowed to marry govern family formation and, for some, reproduction. Each entry point comes with its own set of logics, concerns, and rationales. A critical analysis of the mechanics and impacts of policies becomes possible with greater insight into how a policy moves into the sphere of sexuality, even as the details of specific policies change over time.

In addition to highlighting the *how* and *where* a policy enters the sexual sphere, the framework of entry points provides information about *who* and *what* is the object of policy. In other words, who or what needs to be distributed, protected, changed, watched, or resourced through the use of policy. For example, young people are often the object of policies that aim to regulate sexual knowledge, in part, because young people are imagined to be the most needy of and the most vulnerable to sexual information. It is partly because of this paradox between neediness and vulnerability that policy steps in to govern the distribution and resourcing of sexuality education.

Entry Points and Sexual Justice

An analysis of entry points highlights the role of government in the “private sphere.” Perhaps most important, it enables an analysis of the ways that sexuality has become a public space within the imagined private space of the body (see Berlant & Warner, 1998; Broom, 2001; Cossman, 2007; Gal, 2002). Through an analysis of the various points at which social policies “enter” the body, we are able to examine ways that the intimate body is imagined publicly. As a result, it is possible to observe how bodies and sexualities marked as non-normative, pathological, and suspect (and, as a result, never granted full access to the public sphere) experience surveillance and punishment for violating social policies (Appadurai, Berlant, Breckenridge, & Diawara, 1994; Cossman, 2007; Geronimus & Thompson, 2004; Luttrell, 2011). This examination of entry points sits within a platform for sexual justice that articulates how U.S. state and federal policies can and should support sexuality for individuals of all ages (Fine & McClelland, 2006, 2007; McClelland, 2010, 2011; McClelland & Fine, 2008a). A sexual justice framework is required to advocate for keen awareness of how individuals, groups, and communities are affected by public policy. This requires an analytic frame that enables the clearer articulation of how, when, and for whom specific policies are influential.

Given the framing metaphor of entry points, it is essential to state that this analysis is not a plea for the removal of public supports in the sexual sphere. This examination does not present an argument for privatizing the sexual sphere, but rather it is a closer examination of how public policies and bodies interact. This raises crucial questions about how, if, for whom, and under what conditions government interventions in and around sexual bodies are supportive—and for whom they are punishing (Fine & McClelland, 2007).

Although *entry* as a metaphor commonly is read as intrusive, often with reference to Foucault’s (1975) critical articulation of how bodies are disciplined in public spaces, entry is not solely a form of intrusion, but rather it contains the potential for support and sustainability as well. Fine and McClelland (2006) argued that public support is of particular importance, especially for young people who

often depend on public-supported structures and programs. Young people, poor, and working-class people, as well as many others, are vulnerable to the removal of publicly supported infrastructures that enable the fair distribution of information and resources regardless of status or ability to pay for support, unlike the private sector. In these and other ways, public policies are essential to support individuals’ sexual lives. It is vital that scholars, advocates, and policy makers consider the ways that individuals are affected by the enactment of and dissolution of public policies related to sexuality. With this in mind, each entry point can be read through multiple lenses; the metaphor of *entry points* is meant to enable this complex interplay between infringement, surveillance, and support that is exemplified in any discussion of sexuality and public policy.

Analysis Questions

Within the overarching framework of entry points, several questions help guide the discussion of social policies and sexuality: (a) What rationales are used to describe sexuality policies? (b) How do policies concerning sexuality operate? (c) Who commonly is represented in sexuality policies? (d) Which parts of the person are imagined as changed, controlled, or protected in sexuality policies? and (e) What are the psychological consequences of the presence and absence of sexuality policies? These questions offer ways of reading across the entry points introduced in this chapter and the policies presented in the following sections that exemplify each entry point. These critical questions invite the reader to look for patterns and omissions when assessing the relationship between the intimate sphere of the individual and the public sphere of social policy. These questions help to guide the analysis of policies discussed in this chapter.

Inclusion and Exclusion Decisions

As the boundaries of sexuality shrink and swell depending on the definition of “sex” in use, countless policies are relevant when discussing the social regulation of sexuality. To remain relevant regardless of which policies are current, this chapter is organized around the five entry points that provide an analysis of the rationales and desired implications of social policies related to sexuality. Even as policies

change over time by becoming repealed or overturned, these rationales and implications often remain salient and influential long after the actual policy has faded.

A small selection of policies is discussed in this chapter to provide examples of social policies that aim to influence sexuality-related phenomenon. These examples represent a range of methods and rationales used to regulate sexuality. Some policies have or are about to be repealed as of this writing (e.g., “Don’t Ask, Don’t Tell”). Others are being proposed and passed during the writing of this chapter (e.g., ultrasound requirements for abortion). This discussion focuses exclusively on U.S. policies as a means to focus on a single set of national concerns, but it is important to remember that U.S. policies often become international policies, particularly when international organizations are funded by U.S. organizations and U.S. foreign policy initiatives (Bendavid, Avila, & Miller, 2011; Population Action International, 2011; see Chapter 9, this volume).

Formal policies at various levels within the United States are integrated into the chapter, including federal and state policies as well as family, school, and community policies that regulate sexuality at smaller and local, yet important, ways. This attention to both micro and macro levels illustrates how smaller groups organize and regulate themselves in addition to the larger and more commonly considered federal policies that circulate widely. This distinction also allows psychologists interested in studying the effects of policies on individuals’ sexualities to locate critical opportunities for research and intervention at the interface between structural, interpersonal, and individual factors (Frost & Ouellette, 2011; I. Meyer & Frost, 2013; Pettigrew, 1998).

Other categories of policies are not included in the current discussion. One of the most important ways that sexuality has been regulated has been through censorship; although censorship and sexuality are mentioned in this chapter, fuller discussions of the historical and powerful relationship between the two are available elsewhere (e.g., see Duggan & Hunter, 2006; Heins, 2001). On a related note, the policies surrounding pornography, its production, circulation, and concerns about censorship (Tourk, 1993; see Chapter 1, this volume) and the

politically charged issue of child pornography laws (see Adler, 2001; Kimpel, 2010) are not included in the current discussion.

Joining other feminist scholars who have underscored how rape is a form of violence, not a form of sex (see Brownmiller, 1975; cf. MacKinnon, 1987), rape and related issues of sexual violence are not included in the current discussion. Forms of sexual violence and the policies that protect against sexualized violence are not discussed at length in this chapter (for discussion, see Bonnar-Kidd, 2010; Campbell, 2008; Campbell & Wasco, 2005; Spindelman, 2004; see Volume 1, Chapter 12, this handbook). In addition, policies that regulate and protect against domestic violence (Sack, 2004; Suk, 2006), marital rape (Frieze, 1983; West, 1990), or sexual aggression (Lichty, Campbell, & Schuiteman, 2008; Spindelman, 2004; Wasco et al., 2004) are not discussed. This chapter does discuss policies that regulate sexuality under conditions in which consensual sex is implied. Of note, the use of the term *consensual* acknowledges that consent is complex and should never be read as simple or as uncontested (see Impett & Peplau, 2003; Muehlenhard & Peterson, 2005). In short, this chapter focuses on discussions of sexuality that involve consensual sexual acts as a means to focus on the nuances of policies that aim to regulate sexuality, rather than policies that aim to prevent violence or abuse.

Lastly, there is also an important history and discussion of the role of psychology in the development of sexual norms and their resultant sexual policies. Many have long argued that psychology plays an important role in the policing of sexuality through the articulation and enforcement of pathological categories of sexuality, including the *Diagnostic and Statistical Manual of Mental Disorders* (DSM’s) history of defining homosexuality as a disease until 1973 (American Psychiatric Association, 1974; Hegarty, 1997, 2007a, 2007b; Rubin, 1999) and continuing with discussions concerning the definition of gender identities and expression (Cohen-Kettenis & Pfäfflin, 2010; see Volume 1, Chapter 24, this handbook) as well as definitions of sexual dysfunction that rely on heteronormative notions of proper sexual behavior (McClelland, 2012; Ussher, 1993; see Volume 1, Chapter 8, this handbook). We acknowledge

the complicated role psychology and psychologists have played in both advising and critiquing social policies aimed at regulating sexuality. Hopefully, this chapter will provide psychologists interested in the study of sexuality and social policy with a framework to use in ongoing critical analysis.¹

ENTRY POINTS ANALYSIS

This section is organized by five entry points: sexual knowledge, sexual behavior, reproduction and family formation, the sexual body, and sexual infrastructures. The multilevel structure of entry points reveals patterns in what can appear to be a random set of interventions by policy makers into the sexual lives of individuals. When available, research on the effects of individual policies is discussed. Those areas without research on the effects of policies offer ideas for future research development.

Sexual Knowledge

The sexual knowledge policy entry point is distinguished by its interest in regulating and standardizing knowledge about sexuality. Policies concerning sexual knowledge aim to standardize what individuals learn about sex from their families, schools, and beyond. These policies also have interests in regulating how an individual imagines sexual scenarios (e.g., who they desire to have sex with, where that sex will take place, what behaviors they will engage in). In these cases, it is the intent and imagination of the individual that is regulated, regardless of whether any sexual behavior actually has occurred.

Policies concerning sexual knowledge often are organized around age and consider the child or minor as needing education or protection from the sexual knowledge of adults (Bay-Cheng, 2013; Tobin, 1997). This speaks to the notion that sex, per se, is harmful to the young and policies in this category are designed to insulate minors from sexual knowledge and experience

(Fine & McClelland, 2007; Rubin, 1999; see Volume 1, Chapters 14 and 15, this handbook). Among the most commonly researched forms of sexual knowledge circulation are federal, state, and community sex education policies (Fields, 2008; Fields & Tolman, 2006; Fortenberry, 2005). Although many different types of policies concern what can be taught in schools about sexuality, two examples include U.S. federal policies regarding abstinence-only-until-marriage (AOUM) sex education and policies concerning what teachers are permitted to say about sexual orientation in schools. Both of these policies concern what can and cannot be taught to youth in school contexts concerning sexuality.

Policy example: AOUM sex education. Starting in the 1980s, the boundaries of what could and could not be taught in a sex education class became the interest of policy makers at state and federal levels. This interest translated into a shift from teaching about sexuality comprehensively (i.e., various forms of age-appropriate sexual expression, contraception, disease prevention, and healthy sexual development), to teaching about abstinence from all sexual activity until marriage (Fine & McClelland, 2007). The 1981 passage of the Adolescent Family Life Act (AFLA) marked the first federal law expressly funding sex education “to promote self-discipline and other prudent approaches” (AFLA, cited in Kelly, 2005). In 1996, with the congressional passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), AOUM education funds gained an additional funding source through the approval of Title V of the Social Security Act. Under Title V, the U.S. Department of Health and Human Services allocated \$50 million annually in federal funds to the states (Trenholm et al., 2007). Since 1982, when funding was first earmarked for AOUM education, more than \$1.5 billion dollars have been spent through federally sponsored programs (including AFLA, Title V, and Community-Based Abstinence

¹For further discussion of many issues related to sexuality, gender, and the law, see (a) journals, such as the *Law and Sexuality Journal*, the legal journal of the national LGBT Bar Association; dedicated journals, such as *Feminist Legal Studies*; and special issues of sexuality-focused journals, such as *Sexualities* (e.g., Ashford, 2011); (b) books and book series, such as the *Library of Essays on Sexuality and Law* (Robson, 2011), *Sexuality, Gender, and the Law* (Eskridge & Hunter, 2004), *The World We Have Won* (Weeks, 2007), *Gender, Law and Sexualities* (Jones, Grear, Stevenson, & Fenton, 2011), and *Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives* (Harding, 2010); (c) blogs, including the Columbia Law School Gender & Sexuality Law Blog at <http://blogs.law.columbia.edu/genderandsexualitylawblog>; and (d) websites that include details on sex laws around the world, including <http://www2.lib.uchicago.edu/llo/sexlaw.html>.

Education; Sexuality Information and Education Council of the United States [SIECUS], 2011).

With this set of policies, federal policies have dictated what programs that receive funding can teach young people about contraception or safer-sex practices; this includes even those organizations that might use nonfederal funds to do so (SIECUS, 2004). Federally funded AOUM programs are required to adhere to a series eight central tenets (referred to as A–H) that impose a strict set of criteria on educators as to what they can and cannot teach in classrooms that have received federal funding. These eight tenants emphasize various aspects of the abstinence philosophy, including the “harmful psychological effects” of nonmarital sexual activity and that children born “out of wedlock” pose a threat to society (see Fine & McClelland, 2007). This restriction has resulted in a silence around the subject of contraception along with a lack of information about the correct usage of contraception (Santelli et al., 2006). Furthermore, it emphasizes that the only appropriate context for sexual behavior is within a marriage between a man and a woman. Schools and communities in impoverished areas that rely more heavily on federal support, in turn, are the most likely to be miseducated through these curricula (for full discussion, see Fine & McClelland, 2006, 2007). In other words, students who have the greatest education and health need—poor urban and rural students—are the least supported by this set of policies (see Volume 1, Chapter 23, this handbook; Chapter 11, this volume).

Policy example: sexual orientation “neutrality” policies. So-called neutrality policies prohibit teachers from expressing any mention of lesbian, gay, bisexual, or transgender (LGBT) topics in the classroom. Stemming from an interest to curb what students learn about sex and sexuality in school settings, this set of policies argues that sexual topics “are best explained and discussed in the home” (Campfield, 2011, p. 1). For example, bills such as SB 49 passed in Tennessee in 2011, disallowed any “instruction or material that discusses sexual orientation other than heterosexuality” in elementary and middle schools (Campfield, 2011, p. 1). The Centers for Disease Control and Prevention (CDC) reports that less than

half (48%) of high schools and about one third (37%) of middle schools teach about sexual orientation in sexual education classes (Kann, Telljohann, & Wooley, 2007). Researchers have demonstrated the detrimental consequences of these silences: Schools with neutrality policies have increased rates of homophobic language, less effective action upon the report of harassment, and fewer LGBT clubs (Kosciw, Greytak, Diaz, & Bartkiewicz, 2010).

Research, however, has demonstrated just how important the circulation of sexuality knowledge can be. When schools included positive representations of LGBT figures in their curricula, LGBT youth were less likely to hear homophobic language, feel unsafe at school, be victimized because of their gender or sexual orientation identity, and say that other students were not accepting of LGBT people (Kosciw et al., 2010; see Volume 1, Chapters 19 and 22, this handbook). In fact, both heterosexual and LGBT students reported feeling safer and experiencing less victimization at school when their schools’ curricula included LGBT issues (S. Russell, McGuire, Laub, & Manke, 2006).

Forcing teachers to remain “neutral” regarding nonheterosexual sexual orientations and identities implicitly promotes harassment and bullying of LGBT students. This can occur via the prevention of teachers and other school authorities to intervene to stop such mistreatment of sexual minority students. In a Minnesota district that implemented a neutrality policy, the effects of the policy were felt by teachers throughout the district:

Teachers are constantly asking, “Do you think I could get in trouble for this?” “Could I get fired for that?” . . . English teachers worried they’d get in trouble for teaching books by gay authors, or books with gay characters. Social-studies teachers wondered what to do if a student wrote a term paper on gay rights, or how to address current events like “don’t ask, don’t tell.” Health teachers were faced with the impossible task of teaching about AIDS awareness and safe sex without mentioning homosexuality. Many teachers decided once again to keep gay

issues from the curriculum altogether, rather than chance saying something that could be interpreted as anything other than neutral. (Erdely, 2012, p. 3)

As seen in these examples, policies that aim to restrict sexual knowledge often can have the greatest effect when those who are required to abide by the policy are unsure of when they might be out of step with a policy that can affect their jobs. This can have a chilling effect on what adults can do and say in schools when trying to support young people in a variety of ways (Fine & McClelland, 2007).

Although these two examples highlight restrictions about what kinds of sexual information can circulate in publicly supported spaces, underlying this entry point is the larger consideration of the role of knowing about sex, sexuality, and sexual information more broadly. This entry point directs us to consider how powerful information is and can be—which is why it is debated vigorously as to its free or regulated circulation. Local and state communities invest in the free circulation of information concerning such topics as math, history, and literature via public schooling. In the case of information concerning sex and sexuality, however, information is more keenly monitored, restricted, and seen as private. Communities and parents often argue that this information does not belong in schools and that families, not schools, should circulate information regarding sex and sexuality. Sexual knowledge in these moments becomes marked as inexorably a different kind of information, a “private” matter, and removed from the category of what we imagine as necessary to become an informed public citizen. The sexual knowledge entry point highlights that what people know about sex and sexuality is one of the most important ways that public policies become integrated into people’s lives. Moving from what people know about sex, to how people enact sex and sexuality, we move from sexual knowledge to sexual behaviors.

Sexual Behaviors

Policies that concern sexual behaviors most frequently concern what one does with their (or another’s) body, with or without a partner, which may or

may not include one’s genitals. Policies concerning sexual behaviors often are able to send a message, such as the denigration of nonheterosexual behaviors, which have a negative effect on what people imagine as possible within their intimate lives. As Rubin has argued (pre-*Lawrence v. Texas*, 2003), “the only adult sexual behavior that is legal in every state is the placement of the penis in the vagina in wedlock” (Rubin, 1999, p. 167). Policies aimed at sexual behaviors have included sodomy laws that regulated oral and anal sexual behaviors and that concern the sexual behaviors of individuals of all ages (Gay and Lesbian Archives of the Pacific Northwest, 2007; Reiheimer, 2008). These policies frequently have been applied to sexual behaviors regardless of the context in which they occur. Thus, consensual acts between adults in the privacy of their home or hotel room potentially become subject to legal control. To criminalize such behaviors, individuals’ privacy must be violated, further complicating expectations around sexual privacy and when sexual bodies are public or private matters of concern.

Policy example: sodomy laws. Before 2003, many U.S. states had laws in place that criminalized specific sexual behaviors and practices, which were thought to be “unnatural” and thus categorized as “sodomy.” Although ruled unconstitutional within the United States (see discussion of *Lawrence v. Texas*, 2003), sodomy laws exist in many countries worldwide, mostly outside of North America and Europe. The term *sodomy* has been used to describe a multitude of behaviors other than penile–vaginal intercourse, most frequently oral sex and anal sex. Although sodomy laws often are not discriminatory in their application to heterosexual versus same-sex sex, the enforcement of sodomy laws most often has criminalized sexual behaviors between men.

In the U.S. context, sodomy laws could be enforced legally until as recently as 2003, although many states’ sodomy laws were overturned before that date. One high-profile challenge to U.S. state sodomy laws came in the 1986 case of *Bowers v. Hardwick*. A police officer had entered the home of a Georgia man, Michael Hardwick, to serve a warrant stemming

from a ticket issued for a prior offense of public drinking. The officer was let into the home by a guest of Hardwick's, who had been sleeping on the couch. The officer then made his way into Hardwick's bedroom, wherein Hardwick was engaged in oral sex with another man. Both men were arrested and charged with sodomy. Lower court rulings were challenged, which ultimately led to the case being heard by the U.S. Supreme Court. The court overruled the challenge to Georgia's sodomy laws stating that the right to privacy within the Due Process Clause of the Fourteenth Amendment did not extend to homosexual sex (for an analysis, see Spindelman, 2001).

In his concurring decision, Chief Justice Burger wrote, "there is no such thing as a fundamental right to commit homosexual sodomy" (Burger, C.J., Concurring Opinion). The court declined to take a position on the law's application to heterosexual sex. This decision was overturned by a later challenge in the case of *Lawrence v. Texas* (2003), which involved a police officer's discovery of John Geddes Lawrence involved in consensual anal sex with another man upon entering Lawrence's home on what was later determined to be a fraudulent weapons disturbance complaint by a neighbor. Lawrence and his copetitioner, Tyron Garner, through a series of appeals, had their case heard by the U.S. Supreme Court. In a landmark decision, the Texas antisodomy law was struck down because it was ruled to (a) violate rights to privacy surrounding consensual sex between adults in one's home implied by the Due Process Clause of the Fourteenth Amendment; and (b) violate the expectation of equal protection under the law, given the Texas antisodomy law applied to "homosexual" sex only. This ruling invalidated the prior decision in *Bowers v. Hardwick* (1986) as well as sodomy laws in 13 other states, essentially decriminalizing homosexual sex.

In addition to the fact that sodomy laws are discriminatory (in their framing or enforcement) and violate rights to privacy in contexts in which such rights exist, they also can inflict social and psychological harm on the individuals to which they apply. Specifically, by criminalizing sex between individuals of the same sex, sodomy laws deprive gay and les-

bian individuals access to sexual intimacy, which is a key component to psychological health and the development of close relationships (Prager, 1995; Ryan & Deci, 2000; see Volume 1, Chapter 10, this handbook). Thus, such laws exclude gay and lesbian individuals from attaining fundamental aspects of the human experience. Also, by criminalizing only certain kinds of sexual behaviors, sodomy laws are thought to further promote discrimination of and violence against sexual minorities. These harmful effects of sodomy laws are outlined in an amicus brief filed on behalf of the American Psychological Association (APA) and other related organizations in the *Lawrence* decision (APA et al., 2003). These harmful consequences are likely to result from all policies criminalizing sexual behaviors and same-sex sexualities, many of which continue to exist and be enforced throughout the world.

Reproduction and Family Formation

Policies concerning how an individual reproduces or forms a family have remained a powerful point of entry into the sexual domain over the past century. With a history ranging from miscegenation laws that regulated which races could marry (*Loving v. Virginia*, 1967), to contemporary policies concerning same-sex and single-parent adoption (Gates, Lee Badgett, Macomber, & Chambers, 2007), to the legal age requirements to buy emergency contraception (Fine & McClelland, 2007), social policies have aimed consistently to regulate how, when, and with whom individuals could legally marry, biologically reproduce with, and legally adopt as well as the conditions and means to avoid pregnancy and reproduction, including contraception and sterilization.

Although reproduction and family formation often are discussed as gendered, with the bulk of responsibility for the achievement or avoidance of pregnancy as the responsibility of women, reproduction is paired with family formation to examine how this entry point is not only gendered but also dramatically marked by class differences, racial stereotypes, assumptions about age, religious ideologies, and heteronormativity. All of these characteristics should be front and center when considering how social policies determine who is supported when making decisions about when and with whom to

reproduce and how and whether to control reproduction, parent, mate, marry, or partner. In the United States, reproduction and family formation have been and remain highly managed by social policies. For example, in the first 3 months of 2012, state legislators introduced 944 provisions related to reproductive health and rights (Guttmacher Institute, 2012). Although not all of these provisions will become policies, this is a useful indicator of the state's interest in protecting "family tradition," including regulation and oversight of reproduction, marriage, child rearing, and sexual activity (Borten, 2002; Hamilton, 2004; for a discussion of interests in limiting rights to heterosexual couples, also see Duncan, 2004).

One of the most explicit policies aimed at family formation in recent years has been federal and state welfare policies that encourage "the formation and maintenance of two-parent families." The 1996 PRWORA authorized the Temporary Assistance for Needy Families (TANF) program, which on one hand, aimed to "provide assistance to needy families," but on the other hand, aimed to "prevent and reduce . . . out-of-wedlock pregnancies" and explicitly linked welfare dependence and (heterosexual) marriage by providing monetary incentives for unwed mothers to marry (Gardiner, Fishman, Nikolov, Glosser, & Laud, 2002; Toner & Pear, 2002; Wetzstein, 2001).

Interestingly, alongside these policies, several states made public proclamations about the importance of marriage; Louisiana and Utah proclaimed National Marriage Day and Marriage Awareness Week, respectively (Gardiner et al., 2002). But this policy support was not targeted to all Americans or even to all unwed mothers. In fact, these policies were aimed at poor women and primarily African American women who were assumed to benefit from marital relationships, when in fact, research had shown the opposite (Johnson, 2012). For example, researchers have found that women who were avoiding marriage in many cases were making smarter choices for themselves and their children—for example, sometimes by avoiding drug and alcohol abuse in male partners (O'Leary et al., 1989), escaping domestic violence (O'Leary et al., 1989), or providing homes that supported education gains ahead

of their peers (Battle, 1998; Cooksey, 1997). Financial incentives to encourage unwed mothers to marry men have assumed incorrectly that their failure to marry—rather than unemployment, poor education, and lack of affordable child care—were the primary cause of child poverty (Trail & Karney, 2012). As seen in this example, policies that aim to regulate reproduction and family formation, as well as their intersection, are some of the most widely discussed and most hotly debated.

Policy example: access to contraception. Of the 62 million American women in their childbearing years (ages 15–44), more than 99% of them who have had sexual intercourse have used at least one contraceptive method: "The typical U.S. woman wants only two children. To achieve this goal, she must use contraceptives for *roughly three decades* [emphasis added]" (Guttmacher Institute, 2010, p. 1). Without contraception, a woman would have between 12 and 15 pregnancies throughout her lifetime and be governed largely by her reproduction. In addition, early availability and use of contraception has been linked with positive outcomes, such as avoiding unintended pregnancies. For example, young women (15–19) who use a contraceptive at first intercourse are half as likely to become teen mothers as are teenagers who do not use a method of contraception (Guttmacher Institute, 2010). The cost of contraception, however, is a major reason why some women cannot use contraception consistently or at all (NARAL Pro-Choice America Foundation, 2010). Policy decisions that limit the type and availability of financial assistance affect the reproductive choices of poor women the most (Sonfield, 2011).

As of 2010, 27 states required health insurance plans that cover prescription drugs to include contraception coverage (NARAL Pro-Choice America Foundation, 2010). The Federal Equal Employment Opportunity Commission (in 2000) and federal courts have argued that refusing to cover contraceptives when covering other prescription drugs is a form of sex discrimination. In a contraceptive equity lawsuit, *Erikson v. Bartell Drug Co.* (2000), Erikson sued her employer to include contraceptives in its prescription plan (NARAL Pro-Choice America

Foundation, 2010, p. 4, 5). Similar cases have been brought and won by or settled in favor of plaintiffs (e.g., Walmart, Dow Jones, DaimlerChrysler, and UPS as well as a student victory in a case against George Washington University [NARAL Pro-Choice America Foundation, 2010]).

In 2012, President Obama's decision to announce a policy requiring all employers to include coverage for contraceptives in their employee health plans was met with harsh resistance by many Catholic Hospitals and Universities, given the Catholic Church does not condone the use of many forms of birth control (D. Brown, 2012; Pear, 2012). In this instance, a policy aimed at providing equal distribution of resources clashed with a fundamental tenant of the U.S. constitution: freedom of religion. This conflict raised important questions as to whose freedom of religion was considered worthy of protection by public policy—the freedom of Catholic organizations to not provide coverage, or the individual's right to access contraception and to have this cost covered by their employer. This policy debate brought a compelling tension to the forefront of whether an organization's right to their religious doctrine trumped an individual employee's rights if he or she desires access to contraceptives.

Title X of the Public Health Services Act is the only federal program exclusively dedicated to family planning and reproductive health services. Signed in 1970 by President Nixon with bipartisan support, funds provide contraceptive services, pap smears, screening and testing, prenatal and postpartum care, and educational services. Serving approximately 5 million people each year, most patients are low-income women who are uninsured and ineligible for Medicaid (NARAL Pro-Choice America Foundation, 2011). Although Title X provides valuable services to all women, lawmakers continue to try to defund it and restrict minors' access (i.e., Rep. Mike Pence's [R-IN] 2010 attempt to disqualify Planned Parenthood from receiving funds; NARAL Pro-Choice America Foundation, 2011). Low-income women, women of color, and young women are most affected by these policies as they already face several barriers to accessing health care services.

Policy example: the Defense of Marriage Act.

Marriage and the policies designed to regulate marriage, enforced through public policies at state and federal levels, are designed to regulate several aspects of sexuality. In the United States, marriage is a civil matter, meaning that although religious institutions can recognize marriages, public policies at the state and federal levels determine who is entitled to marry, on the basis of gender, age, mental competence, and citizenship. Beyond the specific and changing legal avenues through which the right to marry currently is being debated in and out of the courts, at its most basic level, marriage policies regulate the types of people with whom an individual can form a legally recognized family or union.

The Defense of Marriage Act (DOMA, 1996) was the first policy ever passed to regulate marriage at the federal level (Sustein, 2004). Marriage and family policies had been the province of individual states; DOMA has been an attempt to remove this state-level oversight and enact, instead, a federal ban on same-sex marriages: "the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife" (DOMA, 1996). A majority of U.S. states have restricted state recognition of marriage to unions of one man and one woman either by statute law or an amendment to their state constitution (Warbelow, 2011).

Numerous studies have examined the psychological costs of being denied legal recognition and marital rights (Gay and Lesbian Medical Association [GLMA] Marriage Equality Initiative, 2008; Herek, 2006; Patterson, 2001; Peplau & Beals, 2004; Rostosky, Riggle, Horne, & Miller, 2009). Researchers theorize that the psychological mechanisms underlying these negative effects are attributable to stigma and discrimination (e.g., Frost, 2011; GLMA Marriage Equality Initiative, 2008; I. Meyer, 2003; I. Meyer & Frost, 2013; Riggle, Thomas, & Rostosky, 2005). The lack of support for equal marriage rights illustrates a societal expectation that same-sex relationships are lesser than heterosexual relationships on political, legal, and moral levels. Exposure to this social discourse of devaluation of same-sex relationships likely has an effect on gay men and lesbians in

relationships above and beyond their denial of marriage (Herdt & Kertzner, 2006; Herek, 2006). The denial of marriage and equal rights associated with partnership establishes same-sex couples as second-class citizens (for discussion, see Spindelman, 2005). Thus, the act of denying same-sex partners the right to marry, and their accompanying exclusion from the rights of other (heterosexual) citizens, likely diminishes LGBT individuals' social and psychological well-being (GLMA Marriage Equality Initiative, 2008; Herdt & Kertzner, 2006; King & Bartlett, 2006).

In addition to actual restrictions on the right to marry, same-sex couples live amid social and cultural messages that consistently exclude them. Having the recognition of one's relationships up for vote by the public constitutes what has been termed "minority stress" (Frost, 2011; I. Meyer, 2003; Riggle et al., 2005; G. Russell & Richards, 2003). A study by Rostosky et al. (2009) demonstrated the psychological toll that anti-same-sex marriage ballot initiatives and legal policies exert on LGB individuals. They sampled U.S. LGB individuals in 2006 before and after the general election. When compared with individuals living in states with no marriage-related ballot initiatives, individuals in states that passed amendments banning same-sex marriages reported significantly more exposure to stigma related to the negative public discourse around same-sex marriages, as well as significantly more psychological distress. In a study using data from National Epidemiologic Survey on Alcohol and Related Conditions, Hatzenbuehler (2011) also found that LGB individuals living in states that enacted bans on same-sex marriage in 2004 and 2005 elections demonstrated higher rates of DSM-diagnosable mental disorders (i.e., mood and anxiety disorders) after the bans were passed relative to observed disorder rates before the elections. No increases in mental disorders were observed among LGB individuals in states that did not enact same-sex marriage bans or among heterosexuals regardless of state of residence. Although causality cannot be inferred from these findings, they nonetheless bolster claims that same-sex marriage bans can be detrimental to the health of LGB individuals, regardless of their relationship status.

Some states allow for civil unions and domestic partnerships for same-sex couples; however, the rights afforded by these mechanisms are rarely equal to those afforded by marriage. Even when civil partnership provides equal legal affordances to marriage, the separateness of the mechanisms continues to marginalize same-sex couples and bars them from full societal inclusion. In addition to social and psychological rewards for the individual and couple, in the United States, marriage licenses provide 1,138 essential institutional rights and rewards within the federal system that are not available at the state level (U.S. Government Accountability Office, 2004). These include health insurance and employment benefits for spouses of federal employees, veteran and military benefits for spouses, and immigration rights, as well as transferability of social security, Medicare, and disability benefits to spouses. Thus, although a minority of states have passed same-sex marriage policies, those same-sex couples who were married legally in states like Massachusetts and New York remain legally less than heterosexual married couples.

The Sexual Body

We move now to what might be the most obvious of the entry points: the sexual body. Although many in the social sciences often refer to sexual health, disease, orgasm, or even desire, we often ignore any discussion of the actual sexual body (see Volume 1, Chapter 25, this handbook). As Plummer (2007) reminded us, "There has been an exaggeration of the symbolic at the expense of the corporeal being . . . Sexuality is most certainly a hugely symbolic, social affair . . . But it is also (and not contradictorily) a lusty, bodily, fleshy affair" (p. 24). We turn here to the sexual body to examine the embodied aspects of social policies. As opposed to the previously discussed entry points, such as sexual knowledge and sexual behaviors, the sexual body is the material body—the flesh, blood, and genitals of the person who has sexual experiences. The sexual body often is imagined as a vulnerable space that needs protection from harm and, therefore, is the location of several primary types of policies, including sexual health, safety, and well-being.

The body is often the central character in sexuality policy design. The sexual body, although often

imagined as private, can be public in the sense that it moves around and has the potential to affect other sexual bodies through infection, reproduction, and relationality. Bodies often have been the marker of devaluation—corporeality historically has been associated with labor, with disgust, and with pathology (Grosz, 1994; McClelland & Fine, 2008b). Feminist scholars (Grosz, 1994; Spillers, 1992) have argued that this devaluation has marked specific bodies—often women or people of color—as pathological or deviant. Another result has been that marginalized bodies are imagined as needing the guidance and protection of policy, resulting in the surveillance of certain bodies and not others (Fine & McClelland, 2007).

Those who live at the nexus of where several policies converge—immigrant and gay, transgender and prisoner, young and female, single and pregnant, to name a few—are, perhaps, the most important to examine when considering the effects of policies on sexual bodies. It is at these intersections that individuals are always imagined or never imagined as sexual bodies. At these intersections we can see how moments of transgression become important vectors for analysis when evaluating public policy and sexuality.

For example, in 1982, Crystal Chambers, an unmarried Black woman in her early twenties, worked for the Girls Club of Omaha as an arts and crafts instructor. After becoming pregnant, she was fired from her job for offering a “negative role model” to the young girls in the club when she became a single, pregnant, working woman (Austin, 1989). Chambers sued and lost—the court ruled that was in violation of the club’s Negative Role Model Policy, which stated that “single persons who become pregnant or cause a pregnancy would no longer be permitted to continue employment at the Girls Club” (*Chambers v. Omaha Girls Club*, 1986, p. 929). In this example, we see a policy aimed at regulating the visibility and spectatorship of specific sexual bodies, in this case, pregnant while unmarried was seen to carry with it the danger that others (young girls) would follow suit. Although the Girls Club policy states that men would be held responsible for causing a pregnancy while unmarried, the important role that visibility of the sexual body plays in

public policies is highlighted. It is female bodies that often pay the price for being visibly pregnant, visibly sexual, and positioned as poor role models.

In her analysis of this case, Austin (1989) articulated the logic that connected single adult mothers with the conduct of their teenage counterparts and argued, “the motherhood of unmarried adult Black women is being treated as if it were a social problem inextricably linked with, if not causally responsible for, teenage pregnancy” (p. 565). It is through Austin’s analysis that we are able to see how the multiple and loaded categories that Chambers— young, single, sexually active, fertile, Black, and female—converged such that her body became dangerous to simply be around. This serves as an example of how sexual bodies are a form of “circulation and publicmaking” (Appadurai et al., 1994, p. xiii), highlighting how meanings, ethics, and morality come to rest too often on Black bodies who are required to carry the weight of national anxieties. As Appadurai et al. argued, “The effects of this in the dominant political public sphere are to turn Black life into spectacles of violence and exaggerated sexualized performance” (1994, p. xiii).

Policy example: HIV and sexually transmitted disease mandatory reporting policies. There are a number of policies that standardize regular surveillance of the sexual body. These include notifying local- and federal-level institutions when an individual has been diagnosed with specific sexually transmitted diseases (STDs). Chlamydia, gonorrhea, HIV, human papillomavirus, syphilis, and hepatitis A and B must be reported to state health departments and the CDC (Fan, 2012). As of 2009, 17 states required notification of positive HIV tests to sexual partners (National HIV/AIDS Clinician’s Consultation, 2009). Eight U.S. states have a legal prohibition of anonymous testing, thus requiring named reporting of HIV testing results to a public authority (National Alliance of State and Territorial AIDS Directors & Kaiser Family Foundation, 2009). In all 50 U.S. states, minors may consent to STD testing, however, there are age requirements in 14 states, which require the minor be at least 12 years old to consent. In addition to circulating information about HIV and STDs, some federal policies, until very recently,

have regulated the circulation of actual bodies. After 22 years, President Obama lifted a ban that denied HIV-positive people from entering the United States (Preston, 2009) and individuals applying to become U.S. residents no longer have to take an HIV test. As a result, immigrants and individuals without documentation may feel more encouraged to seek out HIV testing and treatment.

Other policies aim to criminalize specific bodies and deem certain bodies inherently dangerous, regardless of whether they are ill or contagious. A majority of U.S. states have criminalized HIV exposure through sex, shared needles, and even exposure to “bodily fluids,” including saliva—regardless of intent or actual transmission (Center for HIV Law & Policy, 2010). As of 2010, more than 600 people had been convicted of criminal HIV exposure or transmission (Bernard, 2010). Spitting and biting have been used as proof to arrest individuals, even though HIV was not transmitted. Similarly, men who have sex with men are excluded automatically from donating blood, semen, or organs by the CDC, regardless of their HIV status or relationship history. For example, in 2007, the Food and Drug Administration (FDA) established a ban on self-identified gay men donating sperm to sperm banks, requiring them to abstain from same-sex activities for 5 years before anonymous donation (FDA, 2007).

As policies governing bodies of HIV-positive individuals continue to take shape and change along with the HIV/AIDS epidemic, the same key policy dilemmas persist. How can policy makers most effectively balance the rights and freedoms of those living with HIV along with those who are uninfected but potentially at risk? For example, mandatory reporting and surveillance laws, at least in part, are designed to document and track epidemiological trends in the spread of HIV. These data therefore are useful in communitywide efforts to curtail the epidemic, but, as shown, they come with an incredible cost to those who continue to be most affected by the disease (González-Guarda, Florom-Smith, & Thomas, 2011; Raj & Bowleg, 2012; Wolitski & Fenton, 2011).

Sexual Infrastructures

The entry point of sexual infrastructures is perhaps more diffuse than the four other entry points.

Although the other entry points describe specific aspects of individuals (their knowledge, behavior, reproduction, relationships, and physical bodies), sexual infrastructures are included to highlight a set of institutional structures surrounding the individual and the policies that develop to address the social environment in which people live and develop.

The role of infrastructure cannot be overstated and often is undertheorized in terms of sexuality. Fine and McClelland (2006) proposed the concept of *thick desire* as a theoretical frame to help researchers and policy makers attend to the infrastructures surrounding an individual and his or her sexual desires. Thick desire, McClelland and Fine (2008c) argued, “encourages researchers and activists to thread the sexual experiences and wants of young people to the ideologies, policies, power relations, institutions, families, and schools in which they live and develop” (p. 244). Thick desire highlights the need for a set of publicly funded *enabling conditions* that link a person’s capacity to desire and engage sexually, with a set of necessary sexual infrastructures. These include the opportunity to

- (a) develop intellectually, emotionally, economically, and culturally;
- (b) imagine themselves as sexual beings capable of pleasure and cautious about danger without carrying the undue burden of social, medical, and reproductive consequences;
- (c) have access to information and health-care resources;
- (d) be protected from structural and intimate violence and abuse; and
- (e) rely on a public safety net of resources to support youth, families, and community. (Fine & McClelland, 2006, pp. 300–301).

In short, a framework of thick desire locates sexual well-being within structural contexts that enable and disable individuals’ economic, educational, social, and psychological rights. We highlight thick desire here as a way to make clear the links among sexuality, policy, and the larger infrastructures in which both exist.

Thick desire, at its root, challenges researchers and advocates to address not only the federal and

state policies legislating sex education but also the often-unseen roles that larger infrastructural issues play, including poverty, family, and community access to information and exposure to stigma. This directs our attention to considerations of how the social conditions of individuals and groups are an important entry point for how policies shape sexuality. In short, infrastructures might be imagined as the structures that hold up a system, community, or organization. Infrastructures do not materialize automatically, but rather they are built up (or torn down) over time.

Policy example: school bullying policies and LGBT students. Although it generally is agreed that schools need to be safe places where students can go without fear of bullying and harassment, there is debate about whether schools should enact policies to prevent bullying and whether these should focus on LGBT students (Blow, 2009; Sher, 2012). As reviewed in the discussion of neutrality policies, what teachers can say about LGBT issues is debated heavily (Shih, 2011). There is considerable overlap between these two issues of neutrality in the classroom and bullying policies, but we separate them to more fully examine how bullying policies focus on the regulation of stigmatizing environments. Less about the regulation of what people can say in a classroom, these policies aim to intervene at a larger structural level, influencing how social institutions organize themselves and determine agreed-upon social norms.

Bullying policies are important because stigmatizing environments for LGBT and gender nonconforming students are related to higher rates of attempted suicide, depression, binge drinking, physical abuse, and school victimization (Hatzenbuehler, 2011). The Gay, Lesbian, and Straight Education Network examined school environments for LGBT and gender nonconforming youth in its National School Climate Survey. The 2011 survey included responses from 8,584 students, ages 13–20. Students were surveyed from all 50 U.S. states and the District of Columbia and represented more than 3,000 school districts (Kosciw, Greytak, Bartkiewicz, Boesen, & Palmer, 2012). Overall, the findings showed that a majority of

LGBT youth face verbal harassment (e.g., called names or threatened) because of their sexual orientation (81.9%) or gender expression (63.9%; Kosciw et al., 2012). A third of respondents reported missing at least 1 day of school in the past month because they felt unsafe or uncomfortable (Kosciw et al., 2012, p. xv). Although the focus often has been on bullying from peers, a less acknowledged form of harassment comes from adults and teachers. A majority (56.9%) of LGBT students reported hearing homophobic remarks and negative comments about gender expression from their teachers or other school staff (Kosciw et al., 2012, p. 14). Environmental structures such as gender-neutral bathrooms, Gay-Straight Alliances (GSAs), and clothing policies in schools work to create environments for all students to engage with their own processes of sexuality and gender development.

A string of highly publicized LGBT suicides in 2010 brought the issue of bullying related to sexuality and gender into the national spotlight (Erdely, 2012; Parker, 2012). Several grassroots movements have been working to increase awareness of bullying of LGBT students, to increase acceptance of LGBT students by their peers and communities, and to offer counseling to LGBT students in crisis, including the It Gets Better Project, a movement working to create videos offering LGBT youth visions for the future through stories of other LGBT and allied individuals (It Gets Better Project, 2010; Savage & Miller, 2011); the Trevor Project, an organization providing crisis intervention and suicide prevention services to LGBTQ youth (Trevor Project, 2007), and Day of Silence—a movement sponsored by the Gay, Lesbian, and Straight Education Network in which students take a vow of silence for a day to call attention to LGBT harassment and bullying (Day of Silence, 2011).

Although no current federal laws specifically target bullying of LGBT youth, two antibullying bills were proposed in Congress in 2011–2012, both of which specifically mentioned gender identity and sexual orientation as characteristics for which bullying victims have been singled out: the Student Non-Discrimination Act (SNDA; 2011) and the Safe Schools Improvement Act (SSIA; 2011). As

of July 2011, all but three states (Michigan, Montana, and South Dakota) had enacted antibullying laws that required school districts to adopt an antibullying policy (Stuart-Cassel, Bell, & Springer, 2011). Some states have lists of specific behaviors—such as Florida’s list, which includes teasing, social exclusion, threat, and stalking—and other states, such as Delaware and Mississippi, have a bullying policy that refers more generally to “any intentional written, electronic, verbal or physical act or actions against another student, school volunteer, or school employee” (Stuart-Cassel et al., 2011, p. 135). Further still, some states such as Tennessee have policies that refer simply to bullying in terms of its consequences (i.e., interfering with students’ educational benefits) without elucidating specific behaviors (Stuart-Cassel et al., 2011).

Comprehensive bullying policies specifically protecting sexual orientation and gender identity, for example, have been found to be more effective than generic policies (or no policy at all) in decreasing victimization because of sexual orientation or gender identity, increasing reporting of and staff response to bullying, and decreasing homophobic language (Kosciw et al., 2012). This pattern held true for both school and state policies, yet only 15 U.S. states plus the District of Columbia have comprehensive laws that include sexual orientation and gender identity (Kosciw et al., 2012). These improvements are essential because victimization at school has been linked to numerous negative psychological outcomes, including depression, loneliness, anxiety, and low self-esteem (Loosier & Dittus, 2010) as well as alcohol and tobacco use, poor academic achievement, and poorer relationships with classmates (Lindley, Walsemann, & Carter, 2012; McCabe, Hughes, Bostwick, & Boyd, 2005).

We turn now from school bullying policies to another set of infrastructures that are highly dependent on federal support—and policies that ensure this support—the funding of art and artists. Both of these examples demonstrate how sex and sexuality depend on a wide variety of sexual infrastructures that provide ongoing support to individuals, groups, and ideas.

Policy example: the Helms Amendment. Some of the most important, and yet invisible, social policies concern funding to support artists and the production and circulation of artists’ work. Policies about the public funding of artists contain within them important information about social norms and norms about how sexuality can be represented when supported by federal funding. One of the most famous examples in the United States was the 1989 Helms Amendment, which was designed to guide funding decisions for the National Endowment for the Arts (NEA). This amendment and its implications for the funding of artists gained notoriety through the Supreme Court case known as the NEA Four (*National Endowment for the Arts v. Finley*, 1998). The NEA Four were four artists who had received NEA funding were later stripped of their funding over objections to their work, which included images of sex, sexuality, bodies, and varieties of gender expression (Anft, 2000).

In this example, we see examples of public policies that support and restrict aspects of sexuality and sexual expression. The NEA was established by President Johnson in 1965 with the following mission:

The practice of art and the study of the humanities requires constant dedication . . . [1]t is necessary and appropriate for the Federal Government to help create and sustain not only a climate encouraging freedom of thought, imagination, and inquiry but also the material conditions facilitating the release of this creative talent. (National Foundation on the Arts and the Humanities Act, 1965)

This mission statement highlights the important role that infrastructures play in determining the overall climate and imagination in which people develop and interact with one another. The NEA and federal funding of the arts and humanities are an excellent example of how infrastructures are essential to the sustaining and development of ideas as well as the public imagination, and often are invisible to the naked eye.

In 1989, the Helms Amendment was proposed as a means to prohibit the NEA from using its funds to support,

obscene or indecent materials, including but not limited to depictions of sadomasochism, homo-eroticism, the exploitation of children, or individuals engaged in sex acts and which, when taken as a whole, do not have serious literary, artistic, political, or scientific value. (Congressional Record, “Helms Amendment No. 420,” July 26, 1989, S8862; cited in R. Meyer, 2000, p. 549).

In short, the amendment required that artists’ work must adhere to several guidelines to ensure that it would not be considered obscene. The Helms Amendment ultimately was altered to ensure that the NEA remain “sensitive to the general standards of decency and respect for the diverse beliefs of the American public” (NEA, 1990) when funding artists. The final wording of the policy, however, left open for interpretation what would count as indecent. This openness, many have argued, has led to an ever-widening interpretation of how any and all sexual content may be considered indecent by the funding agency (R. Meyer, 2000; Nea, 1993). Creating a policy that implicitly limits the production of ideas and materials that are feared to be controversial, in turn, creates an environment in which artists self-police. It becomes impossible to track the implications of this kind of policy: How do you evaluate what is not produced? This example of a policy that shapes the infrastructures in which information about sexuality is formed in small and perhaps unobservable ways is a marker of a sexual infrastructure. Similar to the sexual knowledge entry point, the sexual infrastructures entry point is more subtle in the embedded nature of infrastructure in people’s lives.

Multiple Entry Points

In addition to considering each entry point on its own, the entry point framework becomes more useful when the points are considered as interacting with one another. It is in the synergy among entry points that we can see when public concern rises or when differing views develop. We explore one such example of a topic that has garnered perhaps some

of the most public concern—the right to safe, legal, and accessible abortion.

Policy example: abortion. One possible explanation why the topic of abortion has become and remained controversial in the United States might be that abortion can be read simultaneously as having a number of competing entry points. It may be that abortion rights can be seen simultaneously as an intervention about knowledge, behavior, reproduction, sexual body, and infrastructure. For example, although abortion could be framed as a medical procedure that pertains to the sexual body, it could be read alternatively as relevant to how and whether women are given the rights to determine their own reproduction. There are also aspects of the sexual knowledge entry point because information about abortion sometimes is controlled, rather than the actual abortion procedure, as seen in legislation restricting when and whether women can be told about the option of abortion (Levey, 2009). Additionally, it could be argued that abortion is most relevant to infrastructural issues, affecting women who are more dependent on the state for support. The cross-entry point analysis of abortion is not to make a claim as to why abortion is controversial (for discussion, see Luker, 1984), but instead it offers an additional way to analyze how the idea of abortion circulates in the public and policy domains.

Both *Roe v. Wade* (1973), the Supreme Court decision that legalized abortion, and the Hyde Amendment (1976/2011), which prohibited federal funds from being used for abortion (except in cases of rape, incest, or where a mother’s life is in danger because of pregnancy), provided two important federal interventions in the legal status of safe, legal, and affordable abortions. On the state level, however, laws vary widely. Some states provide money for medically necessary abortions, whereas others have enacted laws that make it difficult to obtain an abortion (i.e., South Dakota). In addition, on a local level, hospitals and health care facilities often have their own policies and regulations concerning abortion.

A wide range of federal and state-level policies have been implemented to restrict or reduce access to abortion, ranging from timing of the abortion (i.e., the Partial-Birth Abortion Ban enacted in

2008), to restrictions using public and private insurance funds to pay for abortion care (i.e., the Hyde Amendment, 1976/2011), to state-mandated counseling and ultrasounds before having the legal medical procedure, to waiting periods between consultations and actual procedure, to parental involvement laws for minors that mandate minors must either have parental notification or approval from one or two parents. Restrictions such as these have been part of the reason the number of abortion providers has dropped 37% since 1982, to a current total of about 1,800 providers (Bazelon, 2010). These examples of restrictions and consequences of policy decisions highlight several aspects of why abortion may be a useful example of how entry points converge—and how issues can be better understood when considered using an entry points framework. To understand how policies inform sex and sexuality, we turn now to a series of questions that emerge from a framework of entry points.

ANALYSIS OF ENTRY POINTS

The five entry points selected for analysis throughout this chapter—sexual knowledge, sexual behav-

ior, reproduction/family formation, the sexual body, and sexual infrastructures—offer a series of windows into the complex and knotty intimacy between law and sex. Table 10.1 summarizes the five entry points, their definitions, and examples of policies within each of the categories.

This final section looks across the five entry points to explore the often-blurry lines drawn between person and state, body and law, protection and punishment. Rather than assessing those policies that affect a particular demographic group (e.g., adolescent sexuality, same-sex relationships) or analyzing a singular category of policies (e.g., sodomy laws, sex education), an examination of entry points highlights several *points of leverage*—locations where the state intersects with the individual in an effort to govern the “private” space of the intimate and the sexual. This series of entry points, when seen in relationship with one another, illuminates a phenomenon that we refer to as *embodied governance*: a phenomenon wherein the state becomes embodied and the body becomes a site of governance.

This idea of embodied governance is important because it highlights the internalized nature of

TABLE 10.1

Five Entry Points, Their Definitions, and Examples of Policies Within Each Category

Entry Point	Definition	Policy examples
Sexual knowledge	What a person can learn, think, or imagine about their own or another person’s sex and sexuality	Abstinence-only-until-marriage sex education; sexual orientation “neutrality” policies
Sexual behavior	What one does with their (or another’s) body, with or without a partner, which may or may not include one’s genitals	Sodomy laws
Reproduction and family formation	How, when, and with whom individuals can legally marry, biologically reproduce, and legally adopt as well as the conditions and means to avoid pregnancy and reproduction, including contraception and sterilization	Access to contraception; Defense of Marriage Act
Sexual body	The material body—the flesh, blood, and genitals of the person who has sexual experiences	HIV/STD mandatory reporting policies
Sexual infrastructures	Institutional structures surrounding the individual which create the social environment in which people live and develop	Sexuality- and gender-related bullying policies; Helms Amendment

Note. STD = sexually transmitted disease.

governance in a neoliberal context (W. Brown, 2003). When governance becomes embodied, it is evidence of how regulation is expected to be absorbed by the individual; similarly, costs associated with protection and education are expected to be absorbed by the market rather than publicly supported. This distribution of support from the public sphere to the market sphere comes at a great cost as the market has no moral or social obligation to serve those who cannot pay. Embodied governance limits what we can come to expect in terms of public resources because the social regulation of one's own body becomes described as natural, and regulatory behaviors are reframed as individual choice (e.g., Braun, 2005).

Within this dynamic relationship between the state on the one hand, and individuals' embodied experiences of sexuality on the other, we come to understand the nuances within sexuality social policies and in particular, why it is essential to analyze policies regulating sexuality. The framework of entry points provides perspective on the unique qualities of sexuality policies, which move inside, circulate around, and are resisted by bodies—often depending on the circumstances surrounding the individual body. Thus, we must recognize how policies aim to distribute resources, intervene, regulate, protect, silence, and punish individuals at different moments in their lives, in a variety of social conditions, and with several different policy modalities.

Looking Across Sexuality-Focused Policies

We turn now to the analysis questions posed earlier in the chapter that address several aspects of sexuality-focused policies, including how they are structured, how they function, who and what is represented, and the ways that researchers have understood the consequences of sexuality policies—including those policies that are present and those that are absent.

Attempting to answer these basic questions provides important insights into variations and trends among sexuality-focused social policies. Although we discuss each question separately, their answers often are interrelated; therefore, these questions should not be considered in isolation from each

other. Rather, these specific questions provide an opportunity for a closer analysis of how public policies are developed and enacted differently depending on individuals' social position, race, sexual identity, immigration status, gender, age, ability, and access to public and private resources.

What rationales are used to describe why sexuality policies are necessary? From the policies described throughout this chapter, several themes emerged as salient. These included the danger posed by sexual information in the lives of young people, potentially contaminating their sexualities without proper surveillance. Same-sex relationships and same-sex sexual behaviors were frequent objects of policy for reasons of limiting rights and underlying concerns of the social and moral value of same-sex sexualities. Furthermore, several policies were based on rationales surrounding perceived need for control of women's sexuality and reproductive decision-making abilities.

Other rationales are based on a desire to “protect” the larger society from what policy makers consider “morally corrupt” sexual behaviors, bodies, and actors. These rationales are most clearly present in policies directed at same-sex sexualities and HIV. Even abortion policies implicitly represent a desire to protect the unborn (i.e., when envisioned as yet to be members of society). This protection discourse provides the avenue and resources for policy makers to determine what and who is seen as dangerous, as well as who is seen as vulnerable. In essence, this aspect of policy making defines specific bodies, groups, and individuals as worthy of protection and others as needing surveillance, control, and punishment to diminish their influence (see Fields & Hirschman, 2007).

At the heart of the many policies aimed at regulating sexuality are notions of being a good, healthy, sexual citizen (Bell & Binnie, 2000; Richardson, 2000; Seidman, 2005; Weeks, 1998). Policies in this domain rely on assumptions about health, normative sexuality, and proper citizenry. As Waligora-Davis (2004) argued, “The collective preservation of national/the nation's health consequently becomes a preeminent civil obligation” (p. 186). Sexuality as a public health concern sits at the intersections of

fears over contamination, morality, hygiene, reproduction, and religion. As Waligora-Davis (2004) argued, what is important to notice is when these rationales become fused with civic obligation: To be a good citizen is to be a sexually healthy person. This equation, unfortunately, too easily can become a means to enforce sexuality policies aimed at punishing those who become ill for failing in their duties as good citizens, rather than helping people remain healthy (see W. Brown, 2003). This subtle reversal of obligations has implications that are far reaching both socially and psychologically and must remain on the radar of those studying issues related to health, sexuality, and policy.

How do policies concerning sexuality operate? Social policies function using several different modalities, including distribution of resources, distribution of rights, surveillance, and enforcement of what must (or must not) be done, said, or heard. This chapter has focused on five entry points to highlight the variety of methods through which social policies become embodied or, rather, attempt to become embodied. Different strategies can be used to regulate what people learn about sex, as seen in (a) the abstinence-only policies concerning what can be taught in public school sex education classrooms; (b) strategies of silencing adults in schools who work within a neutrality policy environment in which one in fact is not allowed to speak about same-sex relationships; (c) legal strategies used to restrict the types of intercourse that are considered legal; (d) financial strategies to support and encourage heterosexual marriage for unmarried teens; and (e) surveillance strategies to enforce mandatory reporting of specific STDs, including HIV, to circulate names of infected individuals in the name of public health. These are just a few examples of how policies function.

For policies to regulate the aspects of sexuality they seek to prevent or promote, sexuality must be subject to oversight and surveillance—at times subtle, other times overt. This is problematic given most aspects of sexuality occur within private interpersonal and intrapersonal domains. Thus, most policies can and are enforced when aspects of sexuality move from private to public domains. The

“Don’t Ask, Don’t Tell” policy of the U.S. military is an example in which sexual identities are not regulated or policed when they are kept psychologically concealed. When one engages in the public act of “coming out” about being LGBT, however, the individual’s sexual identity then becomes policeable.

Thus, for the majority of the policies discussed in this chapter, the ability of sexual policies to enforce their desired outcomes hinges on the movement of sexuality from the private to public domain. This movement does not always come via individuals’ own accord. As in the case of the sodomy laws discussed previously, sexual behaviors occurring in what were considered to be private spaces (one’s own bedroom) became public—and thus policeable—when public authorities were able to move into the private sexual space of individuals. Although this particular attempt at public surveillance and enforcement was deemed unconstitutional, the boundaries that define sexual privacy are unclear and change from one domain to the next.

The ability for sexual policies to be enforced in regulating sexuality is sometimes enhanced by an intentional silence surrounding sexuality in the policy language. Although this seems counterintuitive, it is in fact strategic. Given the restrictions on policing acts that occur in private domains, policies can be targeted at regulating proxies and precursors for sexual behavior and, therefore, may have enhanced efficacy. The proposed Los Angeles public handshake law mentioned in the introduction of this chapter is an example of how the prevention of a public act via arrest in a specific public context (e.g., a gay bar) would prevent private acts assumed to stem from such behavior (sex between men). These examples demonstrate that some policies that have the most profound impact on sexuality include no mention of sexuality at all, although their intention is to limit its expression.

Surveillance is also necessary to enforce those laws designed to protect and promote aspects of sexuality. This is evident in the school-based antibullying policies discussed previously. Drawing from the vignette presented at the opening of this chapter that illustrated a school’s response to same-sex couples attending prom, policy dictated that extra

efforts be made to ensure that same-sex couples were safe in the public space of a school dance. Because the policy language reified difference by pointing out that same-sex couples are expected to be unsafe, the school thus was required to be more attuned to safety. An unintended consequence of this policy and its surveillance requirements was that it reified difference and potentially increased feelings of danger on the part of same-sex couples, even though its intention was exactly the opposite.

Who is commonly represented in sexuality policies? Throughout the policies discussed in this chapter, the protection of young people is central, as seen in policies regulating sex education, contraception, and bullying in schools. The object of protection is varied, however, and includes protection from specific types of sexual knowledge, protection from specific sexual identities, protection from peers, and protection from health concerns related to sex. Additionally, individuals with same-sex desires and those in same-sex relationships are frequently the target of policies aimed at regulating their sexual lives. Less evident, yet equally important to recognize, groups and individuals are those who implicitly are targeted in sexuality policies. Abstinence-only sex education and marriage bonus policies target largely African American youth, federal funding restrictions like the Helms Amendment target queer artists, and contraception and abortion policies target poor women who are reliant on public support. These groups are not named specifically in the language of the policy, but rather they are the implicit targets of a policy as it is enacted.

Which parts of the person are imagined as changed, controlled, or protected in sexuality policies? This chapter used the framework of entry points in part to answer and explore this question at length. It became increasingly evident in the analysis that many policies, in fact, targeted specific parts of the individual: Some policies specified a person's mind, as in sex education; others specified a person's genitals, as in sodomy laws; other targeted the ejaculate of gay men, as seen in sperm donation policies; others targeted what people could say in public spaces, as in school-based neutrality policies and "Don't Ask, Don't Tell"; and some policies

targeted what other people heard about a person's sexuality, as seen in mandatory reporting laws and policies concerning the restricted funding of the arts. These are all examples of parts of a body that are imagined as separate and in isolation not only from the rest of the body but also from the circumstances in which that body exists. It is only by looking across examples of sexuality policies that it is possible to assess which fragments of the individual are considered important, which are ignored, and what the consequences of these policy decisions might be.

What are the psychological consequences of the presence and absence of sexuality policies? Research on the consequences of sexuality policies is essential as is the recognition that there are consequences for the presence of policies as well as consequences for their absence. This complex relationship between psychology and social mechanisms requires that psychologists work with legal scholars and with knowledge of the current political environment. It also requires that psychologists remain attentive to multiple levels of analysis and even expand their definition of "social" outward to contain the landscape of policies, policy makers, and legal scholarship. Pre-post research designs allow for observation of changes in individuals, dyads, families, and communities to changes in policy (e.g., Kirby, 2008a, 2008b), and retrospective designs allow for individuals to reflect on policy changes and the effects in their own lives (e.g., Horne, Rostosky, & Riggle, 2011).

Although policy rationales often are focused on protecting the "greater good" of society, many individuals experience direct and indirect forms of psychological and physical harm through policies' restrictions of sexual knowledge, bodies, practices, families, and infrastructures. Many of these instances were highlighted in this chapter, including youths' increased likelihood of contracting HIV/STIs or unintentionally becoming pregnant as a result of being deprived of sexual knowledge as well as same-sex couples' risk for mental health problems when denied full participation in society via marriage.

In the majority of the policies discussed in this chapter, the unintended harmful consequences are

not distributed equally. In almost all cases discussed, the harm of policies falls on those with low social status (e.g., women, sexual minorities) and low power (e.g., youth). Given high-status individuals (e.g., heterosexual men) more frequently hold policy-making positions, policies that pose a threat to or do not match the ideologies of high-status groups rarely are put into place. Also, sexual policies are rare that aim to protect the health and well-being of low-status groups. An interesting exception to this observation is antibullying policies that are designed to protect sexual minority and gender non-conforming youth. It remains to be seen, however, whether these policies are able to counteract or stand up in the face of other institutional or governmental policies, which contradict these policies.

Summary. This chapter takes a complex position regarding the relationship between sexuality and public policy. In an attempt to move past arguments that see policy either as wholly intrusive (an unwelcome visitor in the private sphere), or alternatively, as a blunt instrument that is necessary to maintain order, health, and security, we call for an end to this distinction between intrusion and support. We call for a critically engaged relationship with public policy. We believe that this framework of entry points provides a tool for critically engaged researchers and advocates to use when working with, on, and for policy changes and policy development in the politically charged domain of sexuality.

This call for critical engagement sits amid generations of scholars who have made similar arguments regarding psychologists' engagement with public policy and sexuality (e.g., Fine, 2012; Herek, 2011; Weis & Fine, 2012). This chapter serves as a piece of this larger puzzle. It is an effort to articulate a framework for analyzing public policy in sexuality. Rather than walking away from the state—even with its long history of discrimination, punishment, and pathologizing sexuality—we must remain engaged and articulate what kinds of support are required to best support all forms of sex and sexuality. As psychologists, we have the tools and theories to evaluate the consequences when these supportive public policies are present and when they are absent. We need many forms of public support to provide

environments for sexual health, sexual pleasure, and sex free from discrimination; we need policies that ensure that this support does not waiver. This means that we need to look beyond what we have considered to be the limits of state support and continue to point to places in which policies are infringing on rights and in which they are necessary to maintain rights.

CONCLUSION

Within the sexual body, governance often is seen as normal, expected, and justified. For these reasons, and many others, an analysis of entry points brings to the surface ways that sexuality is imagined paradoxically as both deeply private and necessarily political. Through the framework of entry points, we have been able to observe five distinct ways that policies work—indeed, how they become embodied—by distilling several aspects of policies in the sexual domain. Although the entry points discussed in this chapter are more similar than different and overlap considerably (e.g., sexual knowledge often is considered integral to sexual behavior), when examined individually, each entry point offers insight into the mechanisms, prejudices, and assumptions on which policies rely. Thus, the entry points framework can be useful for psychologists and other social and policy scientists in further attempts to gauge the impact of sexuality policies—both positive and negative—and thereby provide evidence for policy reform in the areas highlighted in this chapter.

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