

Engaging Tradition **Preliminary Background**

1. Overview

When President Barack Obama sat down with ABC reporter Robin Roberts in May of 2012, he explained his previous reluctance to support gay marriage not by reference to law, policy or research but by something buried much more deeply in parts of the American imagination: tradition. “I was sensitive”, he said, “to the fact that for a lot of people, the word marriage was something that invokes very powerful traditions” (Calmes and Baker 2012). Operating as a kind of ideological ‘glue’ that coheres in the structures of society, traditions continue to exert their influence long after their invention. They can be celebrated or attacked, challenged or reinforced, built-on, re-framed or re-interpreted, but traditions can rarely be ignored. But why is tradition so effective in conditioning *contemporary* change, especially with regard to gender and sexuality? Under what circumstances are tradition-based arguments effective or ineffective, and progressive or retrogressive in their effects? And what role does tradition play in strengthening or weakening movements for LGBTQ and gender justice? These are the questions the Engaging Tradition Project aims to answer. The project has three main objectives:

- To unpack and understand the complex issues surrounding the encounter between tradition, gender and sexuality
- To explore the political meaning, social utility and practical impact of tradition as it affects movements for sexual, gender, and social justice; and
- To identify the mechanisms that social movements use to enlist, transcend or overcome tradition-based barriers in their work

Through research, case studies, and a focus on the concrete encounters of practitioners who are working for LGBTQ and women’s rights, the Engaging Tradition Project produces frames, analysis and strategies for use by social movements and other activists. The project is interdisciplinary and starts from one simple hypothesis: that tradition can be both a resource and an obstacle to fundamental change. The quest to transform obstacles into resources is one of the project’s aspirations.

This is the first of several Working Papers the Project will produce. The goal of this paper is to provide an overview of the concept of tradition, and to identify key questions to be addressed. Written by Michael Edwards with input from the Project team,¹ the paper is intended as a discussion-starter rather than as a manifesto from the Project overall. All comments, reactions and suggestions are welcome.

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2. *The meaning of tradition*

The Oxford English Dictionary defines tradition as “custom, belief or opinion handed down to posterity especially orally or by practice.” Traditions aim to inculcate certain norms, values and behaviors in a given population, and are strengthened by the continuation of those behaviors in return. Tradition is both generated and transmitted, “a source of knowledge” and a mutating practice that is derived from people’s ever-changing archive of lived experience (Brown, 2003: 178). Groups and individuals, law and customary practice may all initiate traditions, but their perpetuation is intimately tied to the structures and institutions that transmit knowledge and norms such as law, religion, identity, economic systems, schools, the family and the media. For the purposes of this project, tradition is defined as *any custom, belief or practice that orders social norms and behavior on a significant scale, whether handed down through generations or invented at particular points in time.*

Edward Shils (1981:22) describes tradition as “tacit knowledge,” meaning a set of “rules and practices acquired by intimate association and empathy” that define membership in a given community. As such, tradition owes its power to what McKeon (2003:173) calls “tacit veneration: its taken-for-granted-ness, its deep embeddedness within customary social practice.” It is this hegemonic nature that gives tradition its force. “Infusing the past into the present, traditions ensure that social practices persist and ideational systems endure – that the mass will be said week in and week out in the same way, and that the family stories will be told as we remember them, or, at least, appear so. No powerful ideational system can endure without traditions” (Rodgers 2003: 205).

What defines tradition?

How old or established does an idea have to be to qualify as tradition? Among Black churches in New York City, a whole series of themes, frames, stories and ideologies have been developed that condition

For Shils, knowledge must be handed down over at least three generations in order to qualify as a tradition, though there is no general agreement on this timescale. What makes something a tradition is less its age or longevity than the fact that it is transmitted and given authority in the present. Traditions are handed down and maintained through repetition, re-enactments and rituals of various kinds, all of which are intended to reinforce their “natural” authority. Both written and oral transmission mechanisms can be powerful vehicles for these repetitions and re-enactments, but there seems little reason to privilege these mechanisms in an era in which social media are expanding exponentially and more and more communication is taking place online. Whatever form they take, these transmission mechanisms help to consolidate feedback loops between norms and traditions, and between traditions and public reasoning - the ways in which societies think about social and moral questions and decide which arguments are considered acceptable or convincing at different points in time.

In the conceptual sense, therefore, tradition is always normative, but it is neutral with respect to competing claims of justice and can be either progressive or retrogressive in its effects. “There are traditions of hate, just as there are traditions of tolerance, traditions of repression just as there are traditions of liberation, and traditions of deprivation and exclusion just as there are traditions of social justice” (Pillay 2012). For example, the Iowa Supreme Court cited a local tradition of honoring “the absolute equality of all” as a value that trumped discriminatory claims

based in tradition such as those that underlie slavery, racial segregation, and the notion that women's proper role was in the home (Varnum 2009). As an empirical matter, of course, the effects of tradition may weigh much more heavily on one side of this equation than the other.

Although in popular thinking tradition is associated with the handing down of religious teachings or practices of various kinds, many secular traditions also exist, including human rights norms and the institution of the family as the primary structure to order social life, along with a wide range of cultural traditions that may or may not be entangled with religious underpinnings. Cultural traditions are especially strong in governing gender relations, gender roles, norms about family and the regulation of sexuality, and often all of these together, as seen, for example, in traditions that assign child-rearing primarily to women. In this sense, gender itself has a tradition. Tradition's cultural power lies in its function as an ideological glue that binds the social order through the transmission and authorization of knowledge, practices, histories, and values, but also of our collective cultural sense of what is the normal, natural and optimal way of organizing our worlds.

3. The elements of tradition

Martin Krygier (1986: 240) suggests that every tradition has three elements, namely "pastness, an authoritative present, and transmission." A tradition is inherently something that originated in a past (real or imagined), but this does not mean that it is fixed in time or limited to the meaning given at origination. As Krygier (ibid: 242) notes, "the past speaks with many voices." For this reason, *interpretation* is integral to any understanding of tradition, providing one of many mechanisms by which traditions can be contested and reframed. "Etymologically, tradition is a 'handing down' or 'over' from the past to the present, but it *functions* as a 'reaching back' from the present to the – perhaps better thought of as *a – past*" (Phillips and Schochet 2004: 296).

What differentiates tradition from an historical event is the second element in Krygier's typology – the fact of an authorizing presence. Tradition differs from history because it is lived in the present and requires some form of authorization to survive. Such authorization can come from a tradition's pervasiveness, the intensity of attachment it inspires, and/or the role that its re-enactment plays in legitimizing particular practices, beliefs and norms – generating a sense that something is 'definitive' or 'given.' Such legitimization is often backed by strong temporal authority, whether organized by religious or other forces such as the law, through the institutions that order economic and social life, or through government practices. For the past to aggregate into a tradition it must be "put to use" in some important way in the present. Therefore, the broader social context and the present utility of the past are critical to the influence of particular traditions at particular times.

The third element of tradition concerns transmission, which differentiates traditions from mere actions. Traditions must have some conscious 'handing over' through human intermediation, so all traditions are 'negotiated' since they pass through many pairs of hands which shape their expression along the way to posterity. Traditions surrounding sexuality and gender are especially subject to negotiation in this way since they are embedded in a set of power-distributing assumptions of the norm. Going further, Hobsbawm et al (1983:2) give numerous examples of traditions that have been "invented" in particular times and places to

serve specific interests, “not expressing historical fact but the balance of forces in a constant struggle, including the traditions of Aryan nationhood that buttressed the rise of the Nazi Party in 1930s Germany.

Inventing traditions

What happens when claims of sex discrimination are judged only according to biological concepts of sex and gender? Except in a small number of cases such as the sixth circuit in 2004 which ruled that gender non-conforming behavior is also covered under Title VII, the results will obviously count against LGBTQ complainants. Yet because there were so few complaints of this kind in the past, the only ‘tradition’ accepted by the courts in these arguments has been based around biology. In effect, sex discrimination jurisprudence in the U.S. has invented a tradition in order to authorize a set of assumptions by the Supreme Court about the proper social roles for men and women (Franklin 2012).

Such inventions are deliberately made to seem much older than they are in order to strengthen their authority. Given that words like “heterosexual” and “homosexual” are comparatively recent entries into the lexicon in any language, one should expect that similar forces may be at work in attaching particular meanings to the traditions that now surround them – a conclusion reached by David Newheiser (2011) and others in relation to the development of Christian teaching on gay and lesbian relationships, for example. As Michel Foucault (1998) and Monique Wittig (1992) note, heterosexuality is a totalizing norm that for centuries permitted no discourse that could imagine its non-being, thereby presenting itself as natural, essential to survival, good and right, but maintained in these assumptions by regimes of control and regimens of behavior.

Although some scholars exclude sentiments, customs, symbols and practices “whose functions are technical rather than ideological” from the definition of tradition (Hobsbawm op. cit: 3), these exclusions are problematic for two reasons. First, because so

many practices and ways of knowing are significantly infused with prior assumptions about gender, race and sexuality – as exposed, for example, by feminist questioning of the universal linguistic usage of “man” in the 1970s. Second, because social attitudes and other informal mechanisms for the transmission of ideas and values such as gossip, popular culture, and peer-group beliefs are important elements in creating and maintaining the social order, they cannot be dismissed as lacking in political or ideological significance. The same conclusion applies to “memes,” defined as “a unit for carrying cultural ideas, symbols or practices from one mind to another through writing, speech, gestures, rituals or other imitable phenomena” (Gordon 2002:196). These different elements of tradition inter-mingle, cohere, and intertwine with one-another and with formal, legal and institutional mechanisms to transmit tradition in many different ways. There are few impermeable boundaries.

4. *The functions of tradition*

All reasoning takes place within the context of one tradition or another (even science), though the influence of tradition in this sense is often unacknowledged (Pieper op. cit). Tradition is an integral part of who we are, how we function, and how we situate ourselves in a world that always includes a rich legacy of predecessors and precedents, as the writings of conservative thinkers like Shils but also radicals like Walter Benjamin make clear (Rauch 2000). A world without tradition may be desirable for some, but it may also be impossible to attain since patterns from the past form such an integral component of our mental and emotional apparatus. “To be cut off from the past of one’s society is as disordering to the individual and to the society as being cut off in the present” says Shils (op.cit:126), which is why tradition is potentially so powerful.

In addition, tradition plays a range of more specific social roles. Hobsbawm (1983:9) describes three overlapping purposes:

- to increase social cohesion (citing traditions such as community and nation)
- to legitimize authority or human institutions (especially common in religion)
- and to aid in processes of socialization by inculcating values, beliefs and conventions of behavior (as in the traditions of clubs and societies)

Tradition plays a critical role in creating and reinforcing identities both individual and social. It knits disparate people together through a shared sense of meaning, belonging and continuity. Indeed tradition plays a key role even in making individuals intelligible to one another: “one becomes a viable and culturally intelligible subject only to the extent that one conforms one’s gender performance to commonly accepted social norms. Given this, it is not surprising that antidiscrimination laws provide little protection for gender outlaws [such as] transgendered people.” (Franke 1995: 99). Hence, it is no accident that attachment to tradition, and the invention of new traditions, are most common during periods of rapid social change when old patterns are challenged and ‘new’ traditions are brought into play to give society more structure and stability, or to privilege certain social forces in these efforts (Hobsbawm op. cit).

Tradition as legitimization: same-sex marriage

Time and again, the U.S courts have turned to tradition to deny gay couples the right to marry. “The institution of marriage as a union of man and woman, uniquely involving the procreation and rearing of children within a family, is as old as the book of Genesis” (Baker v Nelson 1971). “Same-sex marriage is not a “fundamental right” protected by the due process clause, because that kind of relationship is not “deeply rooted in this Nation’s history and tradition” (Dean v. District of Columbia 1995). Yet as Cass Sunstein has argued, “to say that discrimination is “traditional” is to say only that the discrimination has existed for a long time.” “Whereas the due process clause reinforces tradition, the equal protection clause is forward-looking; it is intended to invalidate traditions, however longstanding, that become invidiously discriminatory as times change and disadvantaged groups call attention to their treatment” (Dean v. District of Columbia 1995).

The legitimizing role of tradition is especially apparent in the law, where resorts to arguments citing the relevance and authority of tradition are quite common, especially in gender and sexuality cases (Goldberg 2009; Franklin 2012). “[T]radition is an especially attractive justification to those defending laws that burden groups toward whom there has been a cultural shift from societal disapproval in the past to a substantial degree of public tolerance today. The result is that tradition tends to emerge as a justification when other potential justifications are either unacceptable, such as outmoded prejudice or stereotype, or unpersuasive, such as justifications based on purported empirical facts or risks that turn out to be erroneous or unsubstantiated” (Forde-Mazrui 2011: 291).

5. *The making of tradition*

Given that enduring influence is one of tradition’s defining characteristics, it may seem strange to ask whether tradition can be re-interpreted over time. Yet many scholars conclude that

Who decides on traditional values?

When the UN Human Rights Council Advisory Committee met to consider a report on “traditional values” in February 2012, it probably expected a fair amount of consensus, since the role of custom and culture in

such negotiations are an inescapable aspect of tradition and one of the keys to tradition’s continued utility as circumstances change. Clearly, this is a crucial question from a social justice perspective, because the possibility of challenge and re-evaluation opens up more routes to action by social movements, governments and civil society groups. Who decides what constitutes tradition, which ideas become traditions, and how they evolve through time are all subject to negotiation, and all negotiations can be analyzed using discourse ethics and

other tools to reveal whose voices and authority are dominating the conversation. These are also, therefore, questions of social justice, and they are especially important because traditions help to define what kinds of reasoning are acceptable in society, and which arguments are found to be persuasive. Traditions – because they affect reasoning and not just the particular act they try to regulate – can therefore limit the pool of arguments that might be effective in forcing societies to re-think those acts or their regulation over time. The experience of gender and sexual justice movements in such negotiations is therefore a vital aspect of ensuring that selective traditions are not translated into public norms. Faced by such questions, some traditions take a very hard line, permitting no or very little possibility of re-negotiation. Religious fundamentalists, for example (or at least those who are textual literalists), would say that the Word of God is absolute and unchanging. Hence, “an act of tradition is not a conversation” as Pieper puts it (op.cit:11). But most religious traditions adopt a slightly softer and more flexible approach in order to remain relevant and persuasive, albeit one that is heavily constrained in any democratic sense. In Islam and large parts of Christianity, traditions can be “translated but not reformulated” (ibid:11) under the strict supervision of a chosen group of experts, like the Islamic “Tafseer” or the Catholic “Congregation for the Doctrine of the Faith” which is in charge of “stigmatizing errors and defining revealed truths as they become clear to the believing church” (Congar 1964:x). It was this body that removed self-governing powers from the Leadership Conference of Women Religious in April 2012, the body that represents most nuns in the USA, for making statements in support of the tradition of the “social gospel” (Wills 2012). The Jewish tradition itself is built on the interpretation and application of religious texts and laws to the conditions people experience in each generation. (Jacobs: 2009).

The transformation of religious traditions and processes is continuously underway through acts of religious practice, interpretation and discussion. Examples of such shifts in practice can be seen in the dissonance between the attitudes of Catholics on homosexuality and the teachings of the Vatican (Jones, et. al 2011). Shifts in interpretation include attempts by Women Living Under Muslim Laws to re-interpret Islamic doctrine on women's rights and sexual conduct (Sunder 2003); efforts by other NGOs to create a dialogue between western feminists, international human rights law and the views of African women who have experienced female genital mutilation (Lewis 1995); recent efforts to shift policies of mainline Protestant denominations (Episcopal, Methodist, Lutheran) on homosexuality; and the San Francisco Council on Religion and the Homosexual in 1964, which sought to re-evaluate Christian teaching on the basis of equal rights to freedom from discrimination, though not by re-opening the debate on the moral desirability of homosexuality (D'Emilio 1983a:214). Tradition is always "a partial and selective map of the past," as White (2012) puts it, so "the prevalence of past practices is itself no argument (for maintaining tradition): any conclusion ought to follow careful reflection, for fidelity requires creative engagement with a tradition that rarely speaks to contemporary questions with an unambiguous voice...fidelity to tradition sometimes calls for new ways of thinking" (Newheiser 2012:22). Hence, 'the Christian tradition' on same-sex marriage and other key issues of justice is both plural and negotiable.

*Honoring **and** addressing tradition*

On May 31st 2012 the first circuit court of appeals ruled unanimously that DOMA, the Defense of Marriage Act, was unconstitutional. Citing DOMA's claim that "heterosexuality better comports with traditional

dialogue between western feminists, international human rights law and the views of African women who have experienced female genital mutilation (Lewis 1995); recent efforts to shift policies of mainline Protestant denominations (Episcopal, Methodist, Lutheran) on homosexuality; and the San Francisco Council on Religion and the Homosexual in 1964, which sought to re-evaluate Christian teaching on the basis of equal rights to freedom from discrimination, though not by re-opening the debate on the moral desirability of homosexuality (D'Emilio 1983a:214). Tradition is always "a partial and selective map of the past," as White (2012) puts it, so "the prevalence of past practices is itself no argument (for maintaining tradition): any conclusion ought to follow careful reflection, for fidelity requires creative engagement with a tradition that rarely speaks to contemporary questions with an unambiguous voice...fidelity to tradition sometimes calls for new ways of thinking" (Newheiser 2012:22). Hence, 'the Christian tradition' on same-sex marriage and other key issues of justice is both plural and negotiable.

The most important point to note is that traditions are related to social justice in substantive, normative and *procedural* terms i.e. through their content, the broader norms they carry, and how both are reinterpreted in just or unjust ways. These three dimensions are intimately connected, since the norms governing processes of renegotiation are vital in ensuring a just or unjust set of outcomes.

6. The power of tradition

Although modern societies like to think of themselves as dominated by rationalist, forward-looking forces, traditions continue to assert and maintain their power in many implicit and explicit ways. Implicitly, tradition acts as a half-hidden influence within and between different institutions and layers of society – powerful precisely because it is more difficult to surface and hold accountable. Explicitly, tradition becomes attached to the formal structures of law and public policy as one powerful referent in decision-making. In both senses, tradition connects at the deepest levels of consciousness and emotion (often unrecognized), and can therefore be a highly-effective tool in mobilizing action and reaction. Hence, it is vital to find ways of working both with and against tradition to address LGBTQ injustice and oppression. Studying the positive as well as the negative examples opens up a wider range of options and more routes to success.

Tradition is often asserted to be self-authorizing, but in reality its power derives from specific characteristics, circumstances and support

The power of tradition

In many early sexual harassment cases in the 1970s, judges used the argument that 'men cannot help themselves' in situations where they work closely together with women – 'that's just the way it's always been'

mechanisms that come together at particular moments in time. Hence, power lies less in traditions themselves than in tradition *plus* elements of these other influences that turn them in one direction or another. The first of these influences consists of external or structural factors, such as the *material conditions* that set the stage for the appeal or disappearance of a particular tradition. The impact of external conditions can be seen quite clearly, for example, in the relationship between technological change and employment. Forms and patterns of work have changed dramatically over the last fifty years, and the traditions of a job for life or the nature of work itself have been transformed into something much more contingent, flexible, impermanent and mobile. Traditions are constantly mutating in response to changes in economic and political opportunity structures, environmental and technological conditions, and the shifting influence of different agents of social construction such as government, law, education, business, civil society and the media. These structural realities give enormous power to certain traditions and erode the influence of others. So, for example, John D’Emilio (1983b) shows how changes in labor markets which sparked greater mobility, and the emergence of urban centers where people lived far from their communities of origin, have contributed to the emergence of a “gay” identity in the USA.

Secondly, *individual attachments* are crucial in imbuing traditions with power and authority, and in facilitating their survival. For example, women are often the reproducers of the very traditions that may disable them politically or sexually, as in childbirth or marriage as an imperative. “What historians call gender systems....are sustained not by ideas of masculinity and femininity themselves, nor by re-readings of Sigmund Freud or Carol Gilligan. They are sustained in child rearing expectations, courtship rituals, and marriage roles – practices so intensely ideational, so overflowing with ideas and assumptions that the common sense line between intellect and behavior disappear altogether” (Rodgers op.cit:204).

Third, *practices and re-enactments* exemplify and reinforce tradition over time whenever they are deployed by religions, social movements or other actors for tactical or strategic purposes. Adherence to these practices is enforced as a condition of belonging by any number of legal, social, political and economic institutions. Adherence and repetition enact and affirm the experience of identity and community, and in turn may create new traditions along the way.

7. *The relevance of tradition*

These different elements of the power of tradition cohere as important influences for and against the achievement of social justice for the LGBTQ community and beyond. The goal of this project is to unpack and understand these relationships, but this requires some clarity on the meaning of social justice itself. All theories of justice contain assumptions about values, morality and the shape of the good society, and there are no definitions that travel uncontested across different geographies, cultures and identities. Nevertheless, it is useful to distinguish between two strands of thought that wind their way through discussions about justice, gender and sexuality: equality of rights and the deeper possibilities of structural transformation.

Liberal rights activists argue that emancipation from “the laws, public policies and attitudes that have consigned them to an inferior position in society” is the baseline of social justice for the LGBTQ community (D’Emilio 1983a:1). Vaid (1995:376) provides a good account of this agenda, outlining a framework of civil and political rights that include the right to

live and work free from discrimination, to be free from violence and harassment, to privacy and control over one's sexual and reproductive lives without criminal sanction or the dictates of government, to family (by legalizing gay marriage and relationships), to health care, and to live openly and in peace. Franke (1995) also questions a civil rights agenda that leaves traditional notions of sex (male and female) and gender (masculinity and femininity) undisturbed, urging instead an approach to combating sex discrimination that challenges the settled traditions of what it means to be male (masculine) and female (feminine).

Traditions of various kinds have certainly held back these elements of social justice, but even if they could be overcome they would fail to address the structural conditions that produce exclusion for some and privilege for others. Even though middle-class and white gay men and lesbians have achieved significant results on many criteria including non-discrimination in the workforce, political empowerment, and increased representation in mainstream culture, these advances have been unevenly distributed across LGBTQ populations and generally have been achieved when they do not threaten the core interests of the heterosexual majority. The condition of "virtual equality" which Vaid (1995: xvi) described fifteen years ago – "a state of conditional equality based more on the appearance of acceptance by straight America than a genuine civic parity" remains largely in force today. "Capitalism no longer seeks to exclude gays and lesbians – it seeks to incorporate them into its own structures" (Nair 2010:6).

The experience of women's rights is even starker. Legal reform has not resulted in either economic power or the full autonomy of women. Traditions surrounding care-giving by women inside families, motherhood as an institution and male and female roles more generally continue to bind women to child-rearing, enforce certain norms of behavior, and entrench economic dependency. Culture, custom, family structure, religious traditions, racism, bodily exploitation, limited access to birth control, and economic conditions may all perpetuate injustice even when outlawed. In this sense, gender discrimination is remarkably persistent, and tradition may be particularly powerful in making it so.

Until recently, the interlocking nature of injustice has not been the focus of movements that seek social change. Feminism, critical race theory, and queer theory have proposed myriad ways to understand the intersection and interaction of gender, race, sex, class, ability, and difference. Nonetheless much of this debate at the macro-political level of state policy, and even the level of LGBTQ and feminist movement objectives, is constructed from the viewpoint and experience of a white, middle class, and male subject who is universalized to stand-in for the group as a whole.

By contrast, Dean Spade (2011: 32) and others have articulated a more expansive account of justice in the goals of the LGBTQ movement by urging a shift in focus away from "recognition and inclusion" (i.e. formal legal equality, or changing what the law *says*), to "intervention and redistributive impact" i.e. focusing on the ways in which law, administration, economic and social policies affect *actual* survival and life-chances for different groups. Criticizing liberal equal protection strategies, Spade (ibid: 110) suggests that "power is not primarily operating through prohibition or permission but rather through the arrangement and distribution of security and insecurity," so it is these arrangements that must be changed, not by incorporating more individuals into an unjust social order but by transforming that order itself.

Spade questions the meaning of equality in the context of neoliberal economies that are built on inequalities of various kinds, and challenges the relevance of policy frameworks that claim to deliver universal human rights from a universality that is contested.

A structural transformation framework for analyzing the relationships between tradition and social justice encourages us to question *all* systems of dominance, and to ask how the goal of inclusion in institutions that may uphold injustice can contribute to, and collaborate with, settler colonialism, white supremacy and patriarchy. The focus then turns to how justice can be achieved for *all* members of society *including* the LGBTQ community, and how all can share in bringing these transformations to fruition, an invitation to build on ideas in gay, lesbian and queer cultures that are “deeply transformational and redemptive to the political, moral and social order now in place” (Vaid op.cit:180). The full acceptance of variant sexual orientations and gender identities as well as the full grant of agency and power to women necessitates much broader changes in the roles and status of both LGBTQ people and women. It calls into question structures that perpetuate certain forms of intimacy and explains, for example, why marriage will not “liberate” LGBTQ people, just as the legal right to abortion did not translate into sexual autonomy for women. These ideas are vital to building a broad and inclusive vision of justice for all that can animate successful movement building and organizational development in the LGBTQ community, and they call us to consider the role of tradition at a much deeper level.

Both of these approaches are important for this project’s understanding of social justice. Anchoring full and equal citizenship rights in law provides one essential defense against tradition-based discrimination, but the underlying structures of power in society determine how laws and other elements of authority are used to privilege or disadvantage certain groups. Whether phrased in terms of “legislation versus liberation”, “reform versus revolution” or “equality versus transformation,” each approach is intimately connected to the power of tradition (Engel 2001).

8. *Engaging with tradition*

The relationships between tradition and social justice are obviously complex. This project seeks to unpack this complexity and understand when and how tradition acts as a barrier and a resource for positive change. Our next working paper will lay out a conceptual framework for analyzing these relationships, but from the preceding analysis it is clear that three sets of questions already present themselves for further exploration: legal reform and public policy, social movements and structural transformation, and the particular role that is played by religion.

8.1 *Law, public policy and tradition*

The role of law in enacting norms and policing traditions of gender and sexual behavior is indisputable. Despite a strong libertarian trend over the last thirty years that has dramatically loosened the regulation of economic markets, the state’s power to regulate reproduction and sexuality remains intact, and indeed in some areas has been enhanced – for example around abortion, parenting and sex education. Appeals to tradition are used both to free the market from public responsibility for children and family support and to constrain women, especially women of color and low-income women, in a web of publically-mandated regulations. At the same time, lesbians and gay men, especially those who are more affluent, are enjoying new sexual freedoms

in areas like adoption and same-sex marriage, in some states at least. These gains have also been won by reference to tradition, but only in the sense that majoritarian values and the interests of the established social order are best served by expanding the sexual rights of previously-marginalized individuals. Hence, the US stands a critical juncture of three fundamental dynamics:

- A period of enormous legislative activism resulting in expansive new laws that control and restrict sexual and reproductive freedoms
- Increasingly limited legal means by which to challenge these laws in court, and
- An expansion in the forms of sexual and reproductive freedoms available to some sexual minorities gained using arguments that may diminish the same freedoms for other groups

A number of key questions arise from this analysis:

- How are law and tradition inter-twined both negatively and positively?
- How are traditions around gender and sexuality informed and enforced by law and policy?
- How can advocates use law and public policy to challenge the negative aspects of tradition and reinforce the positives?

8.2 LGBT movements and tradition

Social movements both organize against and find inspiration in traditions, including the traditions of the ‘social gospel,’ non-violent resistance and self-defense, radical equality and prefigurative politics. These positive traditions are especially important in movements that aim to transform the deep structures of society. LGBTQ movements have often rooted themselves in similar norms and values, yet many critiques have found them lacking in this respect, elitist, undemocratic and increasingly-reliant on foundation funding and corporate modes of behavior. These weaknesses may impair the ability of movements to nurture change that is genuinely transformative. Against this background, key questions include the following:

- How do social movements and other civil society organizations use tradition and other elements of culture in their work?
- Does an attachment to tradition lead to more conservative forms of action or even to co-optation, or can shared opposition to traditions become a source of solidarity in social movements across the lines of identity, economic status, nationality and religion?
- Have social movements overcome or re-framed traditional ways of thinking about power, difference, gender, intimacy, family, democracy and economic power in their own work, structure and operations? If so, do these changes lead to greater impact on social justice and social transformation? Which strategies have been most effective in different contexts – legal advocacy and reform, constituency-building and public education, direct protest and opposition, and so on?

- What can LGBTQ movements learn from these experiences, and what do they have to teach the broader processes of social movement building and social transformation in other areas of life?

8.3 Religious traditions, gender, sexuality, and social justice

The role played by certain religious traditions in denying full and equal rights to the LGBTQ community has been explored by many authors (Vaid op.cit; Clendinnen and Nagourney 1999). “Sacred scripture condemns homosexual acts as a serious depravity” as the Vatican put it in 2003 (cited by Newheiser, op.cit:20). Such traditions have regularly been used by secular authorities to justify discrimination, including in the landmark Supreme Court judgment in *Bowers v. Hardwick* in 1986 which cited “millennia of moral teaching against sodomy” (Vaid op.cit:14). In this role they have proven to be remarkably persistent, especially in contexts where conservatism dominates the expression of religious sensibilities such as the US South. In getting to grips with this situation key questions include the following:

- What factors - internal to a particular religious context and in the external environment - condition relationships between religion and tradition that are negative, neutral and positive? Can these factors be codified into more general patterns and eventually, into a comprehensive, comparative theory?
- Where some flexibility exists in tradition-making processes, which strategies are most effective in facilitating positive change (such as shaming, re-framing and the use of progressive counter-traditions)? Is it actually possible to transform tradition in these ways?

Religious and other traditions are powerful because they can change the ways in which people think about an issue at a fundamental level – their understanding of what is normal and legitimate and right, their attachments to values and priorities of different kinds, and their willingness to put these shifting convictions into practice. Therefore, engaging with tradition is a vital part of the process of social transformation.

9. References

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