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Falling Through the Cracks: Two Understudied Populations in the
Criminal Justice System

by

Ashley Hum

A Capstone Project Submitted in Partial Fulfillment of the Requirements for the Degree
of Master of Science in Criminal Justice

Department of Criminal Justice

College of Liberal Arts

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System**

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Abstract

This capstone project aims to identify gaps in the criminal justice literature by examining how the criminal justice system interacts with demographic groups that have been historically overlooked in traditional criminal justice studies, specifically Asian Americans as a racial/ethnic group and LGBTQIA+ individuals of any race or gender identity.

An overarching narrative and finding in the first two sections of the following project is how constructed identities construct narratives and policies. Importantly, the constructed identities are most often *assigned* by those in power to Asian Americans or LGBTQIA+ people, rather than *created* for themselves by in-group members, and then become a shorthand lens through which those in power view those groups. Some constructed identities examined here are the stereotypes of Asian Americans as simultaneously “model minority” and “yellow peril”, and the uniquely queer criminalizing archetypes that follow LGBTQIA+ community.

The third section of the project examines how the current state laws and policies regarding criminal justice, nondiscrimination, and healthcare affect LGBTQIA+ individuals, and how their ability to exist as a member of society may be curtailed simply by the state in which they reside. .

This project found that these two groups face issues unique to their demographic that are often lost under the aggregate “other” category so often seen in criminal justice studies. There are many areas left unexplored, such as the pathways to crime for LGBTQIA+ people, and the role that the pressure of the model minority stereotype plays on Asian American criminality. By studying these demographics and understanding the full picture of the impact of the criminal justice system, more comprehensive and inclusive reforms can be made to benefit the whole of both the system and society.

**Between Black and White: Asian American Complicity and Erasure in the Criminalized
Racial Identities and Hierarchies of the United States**

Introduction

Asian Americans did not exist until 1968 (Kambhampaty 2020). Prior to this, the racial group had been referred to as “yellow” (similarly to “white” and “black”), Orientals, or other racialized names. During the 1960s, the term emerged as a way to bring together different ethnicities under one label for the purposes of civil rights. Since then, the racial identity around “Asian American” has been carefully constructed in a way that upholds white supremacy and furthers conflict between minority groups, a structural difference that filters through all of society, with the criminal justice system being no exception.

In this paper, we will discuss stereotypes, theories, and application. The first section will identify the various stereotypes associated with Asian Americans, namely yellow peril and model minority, and examine the subsequent repercussions thereof, such as the construction of racial identities and the need to disaggregate the groups subsumed under dominant stereotypes. This section will finish with an analysis of a recent criminal justice case that appeared to rely on stereotype instead of fact to imprison a young Asian American. The second section will discuss the main theories used by previous studies of Asian American offenders, mainly focal concerns, and address the need for intersectionality when theorizing. The third section will incorporate the previous two sections in its analysis of Asian Americans as offenders and as U.S. citizens, exploring their place within the United States’ racial hierarchy and what that place represents.

This paper aims to synthesize the work of previous studies into a literature review that identifies avenues for future studies within this chronically understudied subsection of the criminal justice field. Though Asian Americans are fewer in number within the criminal justice system, they still represent a crucial area of study, because as a group, they represent a missing piece in America’s race puzzle. In order to fully understand the criminal justice system specifically (even

American society generally), and the effects of race on it, future studies must include all racial groups, beyond the default white, Black, and Hispanic.

Stereotypes

To be Asian in the United States is to be seen through a series of lenses, also known as stereotypes. These stereotypes may apply to a wide range of Asian Americans with an equally wide range of backgrounds and experiences, since Asian Americans tend to be seen as a homogenous group, though as will be discussed, nothing could be farther from reality. As a racial group, Asian Americans walk a fine line between two ostensibly opposite stereotypes. As the *yellow peril*, they are seen as a corrupting, foreign force, come to steal American jobs and destroy American democracy. As a *model minority*, they are seen as a people who, despite all obstacles, have come to this country and flourished in it, setting the example and standard for other minorities to follow. These stereotypes are tied together by *perpetual foreignness*, the idea that Asian Americans can never be fully assimilated. This perpetual foreignness is what allows Asian Americans to be seen as either stereotype, at the convenience of dominant white America.

Yellow Peril: 1800s - 1960s (ostensibly)

Johnson and Betsinger (2009) write, “For most of American history, Asian Americans have endured similar racial subordinations as blacks and other minority groups, serving as targets of racial violence, segregation, and discrimination in housing, employment, education, and the justice system.” This racial subordination began almost as soon as the first Asian immigrants hit America’s shores.

The first Asian immigrants were Chinese laborers, working dirty jobs in mines and railroads. Americans regarded these early Chinese immigrants as a wholly foreign people, who were morally corrupt and physically inferior. They were considered dirty and uneducated, circus

freaks at most, criminals and sub-humans at worst (Yen 2000). Not only were these the opinions of the layman, but also of the courts: in 1876, a California state senate committee declared that “the Chinese are inferior to any race God ever made” (Saito 1997). They posed an immediate threat to white racial purity and American democracy (Magsaysay 2021). Morality aside, these men also represented unwanted economic competition. On all fronts, they were considered a threat. Quickly, laws were passed to curtail the immigration of Chinese laborers in order to protect white jobs.

Such laws began in 1800, ramped up in the mid- to late 1800s, and continued into the 1900s (Chanhatasilpa 2000, Johnson and Betsinger 2009, Saito 1997). The most explicit and relevant ones are listed below, to establish an American history of Asian exclusion, of which the WWII internment of Japanese Americans was a natural conclusion (Saito 1997).

- 1800 an ostensibly race-neutral but really Asian-targeting miner’s tax
- 1854 *People v. Hall* ruled that Chinese immigrants should be treated as legally black and barred from testifying in court
- 1862 “Act to protect Free White Labor against competition with Chinese Coolie Labor and to discourage the Immigration of the Chinese into the State of California”
- 1878 *In re Ah Yup* and 1894 *In re Saito* in which the Supreme Court decided that Chinese and Japanese respectively should be excluded from naturalization laws on the basis of their race and its dictionary/encyclopedic distinction from the white and Black races
- 1882 Chinese Exclusion Act outlawed future Chinese labor immigration and denying citizenship to those present, extended indefinitely in 1902 and only repealed in 1943
- 1908 “Gentlemen’s Agreement” excluded Japanese immigrants

- 1913 California law prevented “aliens ineligible to citizenship from owning property or leasing agricultural lands for more than 3 years
- 1927 *Gong Lum v. Rice* ruled that Chinese immigrants are still treated as legally black and placed in segregated schools
- WWII creation Japanese-American internment camps despite the Justice Department not considering them a major security concern (a fact which the War Department concealed, according to the 1980s coram nobis petitions)

There would be no reprieve until the 1965 Immigration Act finally relaxed the quotas on Asian immigration, allowing full Asian immigration for the first time since 1882, and prioritizing well-educated, intellectual and professional Asians over the laborers who had made up previous waves of Asian immigration. This Act would play an integral part in the formation of the next Asian American stereotype: the model minority.

Model Minority: 1960s - present

The model minority stereotype holds that Asian Americans were able to pull themselves up by their bootstraps and achieve social and economic success in the United States despite the challenges that they faced, and do it all as a result of some innate racial characteristics that allowed them to “succeed” where others had “failed”. In essence, they are seen as being as close to the white middle-class as one can get without actually being white. However, this is an inaccurate portrayal that deliberately ignores the structural forces that enabled them to succeed so visibly, and has led to some scholars relabeling the model minority *stereotype* as the model minority *myth*, or the myth of the model minority.

The concept of Asian Americans as a model minority came about largely as a result of media publications in 1966, namely William Petersen’s *New York Times Magazine* article

“Success Story, Japanese American style” (Magsaysay 2021), and a similar article in the *U.S. News and World Report* that wrote, “Still being taught in Chinatown is the old idea that people should depend on their own efforts — not a welfare check — in order to reach America’s “promised land” (Rodriguez 2005, Wong et al 1998)). The emergence of a model minority was specifically timed to coincide with the Civil Rights Movement in order to pit minorities against each other and create an unproblematic minority group that White Americans could point to as proof of the United States as a colorblind, post-racialized meritocracy (Magsaysay 2021). The model minority myth continues to be a source of animosity between minorities and a way to ignore the struggles of Black, Brown, and even less-successful Asian people. This narrative has been pushed by politicians and media ever since its inception.

Under the myth, “Asian parents place high value on education, self-improvement, family honor, and hard work. Asian children respond by being obedient, disciplined, uncomplaining hard workers, and overachievers. This diligence leads to economic prosperity for economic prosperity for Asian families through academic and professional achievement” (Chanhataasilpa 2000). In short, modern model minority Asian Americans meet the standards of middle-class whiteness (Wong et al 1998), and as such have essentially become “elevated...to the status of honorary whites” (Johnson and Betsinger 2009, quoting Ancheta 2006). While they remain a subordinate racial group, they have been labeled a social and economic success story (Johnson and Betsinger 2009).

Because the above characteristics — to which the model minority myth are attributed — are assumed to be innate, it’s easy to ignore how the myth was constructed — by prioritizing the immigration of well-educated professionals and intellectuals after the 1965 Immigration Act, and by intentionally only publicizing aggregate data in order to obscure those lower socioeconomic

classes of Asian Americans who don't fit the model minority mold (Saito 1997, Magsaysay 2021). However, the success of fourth generation Japanese Americans has little to do with recent South Asian refugees (Saito 1997). This sort of structured inequality becomes hidden, burying issues and preventing their solutions.

Wong et al (1998) conducted a study on the perception of Asian Americans in terms of education and career readiness across white, Black, Hispanic, Native Americans, and Asian American, and found that all racial groups perceived Asian Americans as better prepared and higher achieving, including Asian Americans themselves. Asian Americans were perceived as having better academic performance, higher motivation to do well in college, more likely to succeed in their careers, and generally looked up to on campus. However, the authors also found that perception is not reality, as Asian Americans did not actually perform better, nor were they more prepared than any other racial group, either minority or white. This points to both a perceived and internalized perception of betterness that is simply not true. However, with the widespread perception of this myth, it's important to note the existence of cognitive biases in favor of Asian American superiority.

Finally, the model minority myth also appeals to early yellow peril fears. With Asian American success comes a perceived Asian American threat. Asian Americans who become too successful domestically are stealing jobs, while Asian industry outpaces American industry and threatens American supremacy. Asian Americans are thus both an economic threat and an economic scapegoat to blame when American industry falters (Chanhataasilpa 2000). In addition, recent conflicts on the Asian continent have conflated economic competition with military threat (Chanhataasilpa 2000), and justified the American imperialist agenda abroad (Magsaysay 2021).

The dark side of the model minority myth is multifaceted, beginning with a toll on mental health. The immense pressure caused by the weight and internalization of the model minority myth can cause “threats to cultural identity, powerlessness, feelings of marginality, loneliness, hostility and perceived alienation and discrimination” (Yen 2000, quoting Sandhu from *Counseling Today*) in adults, and self-esteem issues tied to grades and overall academic performance in students (Wong et al 1998). These social and psychological pressures to conform to the model minority mold are both external, from others’ perceptions, and internal, from one’s own expectations.

In addition, the model minority myth hides an ugly history of yellow peril perception — people only see the current success of Asian Americans, conveniently forgetting the violence and discrimination that underscored the lives of the first Asian American immigrants and continues to this day. It also hides the less successful Asian Americans and may indeed perpetuate their own invisibility because they have internalized the model minority myth and feel the pressure to conform and not speak out.

In short, as Wong et al (1998) writes, “[the] “model minority” label serves (1) to control minority groups in society, (2) to validate and reinforce the values of the white majority, and (3) to inform other minority groups that they too could achieve success if they conform to the values and norms of the middle class.”

Perpetual Foreigners: The Tie That Binds

These stereotypes may seem like the polar opposites of each other, but as Saito (1997) writes, what ties them together is the concept of “perpetual foreignness”: “It is striking that the negative images almost invariably involve the same traits. Hardworking and industrious become un-fairly competitive; family-oriented becomes clannish; mysterious becomes dangerously inscrutable”. Under yellow peril, Asian Americans steal jobs and corrupt dominant White

American culture, while under model minority, their success makes them a different social and economic threat. The perception of Asian Americans as a threat in turn justifies any harsh action taken against them in the name of protecting the United States. As Chanhatisilpa (2000) writes, “Asians, probably more than any other minority group, are perceived as “foreigners” who compete for and take resources from white Americans”.

Foreignness, as citizenship before it, has been conflated with race and used as an excuse for egregious civil rights violations, such as the internment of Japanese Americans during WWII. It enables the easy flip between yellow peril and model minority stereotypes, according to the convenience of the observer. This foreignness is essential to the construction of the racialized Asian American identity, according to Gotanda (1985) (as cited by Saito (1997): “One of the critical features of legal treatment of [non-Black racial minorities---"Other non-Whites"--] has been the inclusion of a notion of "foreignness" in considering their racial identity and legal status”.

This foreignness has taken on many faces, beginning with cheap labor in an effort to undermine unions, morphing into the yellow peril stereotype when that labor proliferated, and again morphing into model minority in order to pit minorities against each other and avoid real social change. Overall, foreignness serves to maintain the subordinate status quo for all minorities, and perpetuate the white agenda by pitting minorities against each other in order to prevent any sort of inter-racial collaboration.

Foreignness has often meant “less than” and been used as an excuse to provide less protection and rights to Asians and Asian Americans than to “real” Americans. Foreignness is often assumed. Those who are seen as foreign are told, “If you don’t like it here, go back to where you came from!”, ignoring the fact that many of the people at whom this is directed may very well be fourth- or fifth-generation Americans. There is also accent discrimination, wherein someone

with a “foreign” accent is seen as less smart than those who speak American English, or a related phenomenon, wherein someone with a “foreign” face is assumed to have an accent to match.

In addition, this foreignness is simply a construct, one that at the time of its construction forced together disparate groups and cultures, some of whom were actively at war with each other, such as the Koreans and Japanese or Tibetans and Chinese (Saito 1997). Under the concept of foreignness, Asians are assumed to be all the same, of one “race”, and usually an enemy one at that.

The recent conflicts in Asian countries, such as the Vietnam and Korean Wars have served to dovetail military and economic threats together, posing Asian Americans as possible enemies on any front. This in turn assists Asian Americans in becoming racial scapegoats, “instant outsiders against whom “real Americans” (Black and white) can unite in times of crisis” (Saito 1997). For example, in 1940 the Chinese were allied with the United States against the Japanese, so efforts were made to distinguish the two ethnicities. However, in 1949 Mao Zedong and his army won the Chinese Civil war and the Chinese became part of the Red Scare and became enemies again. As a result of this switching back and forth, Asian Americans were made painfully aware that stereotypes could be turned against them and their ethnic group could, at any time, be cast as the enemy.

Again, all Asians, either as an ethnic group or a panethnic group were assumed to be the same, making no distinction between individual and government or between individuals. The Vietnamese who fled the Viet Cong because they supported the United States were called anti-American because they were still Vietnamese, and Senator Jesse Holms argued in 1988 that reparations should only be paid to Japanese Americans once the Japanese government compensated the families of Americans killed at Pearl Harbor.

Similarly, non-Asians have trouble distinguishing both Asian ethnicities and Asian individuals apart, leading to the concept of a “racial uniform”, a term used by Robert Park (as cited by Saito 1997). These racial uniforms, along with politics and anti-Black racism, play an important part in the construction of an Asian American identity.

Constructed Racial Identities Within the Criminal Justice Context

The Asian American racial identity was constructed as the antithesis of the one constructed for Black people and later Hispanics. Where Asian Americans represented the minority version of the white middle class, Black people represented crime and danger.

The Black racial identity as a subordinate racial group has existed since the first slaves arrived on America’s shores. However, their conflation with crime wasn’t solidified until Barry Goldwater’s 1964 presidential campaign that intentionally appealed to white Americans by conflating poor urban Black and Brown people with criminalization, declaring them as an imminent threat to dominant White American interests, and advocating for their militarized social control, lest the United States disintegrate into mob violence (Rodriguez 2005).

The concept of “law and order” as a stand-in for race began in politics with Goldwater and Nixon, but quickly made its way into criminal justice practice. Racialized conceptions of criminality provided the justification for militarizing police forces, and allowed Black and Brown bodies which had previously been exploited for labor to be locked up and essentially thrown away in order to make room for new middle-class Asian intellectuals who were being welcomed under new immigration laws. The 1965 Immigration Act prioritized professionals and intellectuals, creating a “state selected model minority” population: the educated, upwardly mobile, property owning, and petit bourgeoisie” (Prashad 2001, as quoted by Rodriguez 2005, Rodriguez 2005).

By criminalizing Black and Brown people but not targeting Asians, a tacit White-Asian partnership was established by virtue of Asian Americans as a group not being criminalized. Though certainly Asian Americans have been and are being locked up, their communities are not often the target for law enforcement in the way Black and Brown communities are. While Black and Brown bodies were being locked up as a result of their constructed identity, Asian Americans were flourishing under their own culturally constructed identity.

In short, Asian Americans have been given the unique opportunity to flourish in this country in a way that other minorities have not as a result of deliberate policy decisions and in order to present the appearance of an accepting, multicultural, and meritocratic American society, while at the same time pushing the struggles of other minorities out of the spotlight so as to avoid any real social change. As Chang (1993) writes. “To the extent that Asian Americans accept the model minority myth, we are complicitous in the oppression of other racial minorities and poor whites” (as quoted in Rodriguez 2005).

Chang (1993) draws attention to poor whites because the Asian American racial identity also has an anti-union element to its background. The first Asian immigrants to the United States were Chinese laborers, who were brought in as a form of cheap labor. Their existence kept unions at bay and American workers in line by driving down wages and preventing the working class from unifying. By having Asian workers, white workers, and Black workers, companies had ready made labor groups to pit off of each other in competition for work and wages, and if they’re busy fighting, there’s no way for them to collaborate and unionize. In addition, by importing and deporting Asian workers at will, companies could easily match supply to demand. In this way, Asian lives were devalued and seen as cheap and disposable, less worthy of care or human kindness.

Overall, the constructed Asian American racial identity is one of competition and domination, wielded as a weapon by those in power against those without it, beginning with Asian immigrants being used as competition to drive down wages, and continuing in the present day where Asian Americans are held up as the minority to which all other minorities should aspire to. While this identity mainly applies to Eastern Asians such as Chinese, Japanese, and Korean, as it is based on their historical experiences in the United States, in practice this identity affects all who are placed under the Asian American umbrella, because of the way the group has been lumped together on paper.

The Necessity of Disaggregation

Since 1965, enough Asian immigrants have come to the United States to give birth to the rise of distinctly Asian American civic life, including such initiatives as academic programs and community-based nonprofits, legal advocacy groups and student movements, and overall signifying the emergence of an ostensibly unified front to protect panethnic interests (Rodriguez 2005). This panethnicity poses some unique challenges, because each individual ethnic group has its own historical context and its own contemporary needs, and trying to appeal to all inevitably results in erasing some.

According to Magsaysay (2021), the label Asian American/Pacific Islander encompasses “over sixty-seven cultural, ethnic, religious, and national communities” ranging from Bangladesh to Vietnam, including Samoans and Tahitians, Sri Lankans and Filipinos, Hmong and Cambodians, and many many more. In addition, the AAPI label includes some Arab, Middle Eastern, Muslim and South Asian (AMEMSA) communities as well, which present their own unique challenges in today’s political climate. Chanhata Silpa (2000), citing the U.S. Census Bureau, writes that the six largest groups are Chinese, Filipino, Japanese, Korean, Asian Indian,

and Vietnamese. Even using the term Asian American or Asian American/Pacific Islander (AAPI) leads to the erasure of certain communities and issues, most often Southeast Asians, Pacific Islanders, and the poverty therein. There is even the question of whether Asian Americans and Pacific Islanders should even be considered in the same category. While such questions are beyond the scope of this paper, they nonetheless provide interesting lines of thought for future research.

Each ethnicity under the Asian American umbrella has its own story — what drove its people away from their countries, how they immigrated, what inter-Asian conflicts existed and what pressures those exerted, not to mention the religious and linguistic differences. There is a pressing need to disaggregate the Asian American community, even on such rudimentary regional subgroup levels as separating East Asians from Southeast Asians from Asian Indians from Pacific Islanders, and understanding each group's histories and needs. Those who came as laborers and meet the model minority standard will have different needs than those who came as refugees and are struggling economically.

For example, Southeast Asians and Pacific Islanders are in reality often are not at the higher socioeconomic status of East Asians, yet are still expected to be, and as a result are passed over for public assistance programs and academic help under the model minority stereotype that Asian Americans are all doing great (Wong et al 1998). According to Wong et al (1998), the model minority myth creates a “silent minority” of middle class Asian Americans and a “invisible minority” of lower class Southeast Asians and Pacific Islanders, wherein “the widely publicized success of some students [and people generally] overshadows the struggle of other Asian Americans”.

The issues around lumping Asian Americans together, and the individual challenges that each ethnicity faces cannot be fixed without first acknowledging that they exist. The current

reforms for anti-racism or fixing the prison industrial complex don't address the issues facing Asian Americans, such as racist stereotypes and unfairly heightened expectations, or racialized bullying in schools. Ignoring Asian American struggles only perpetuates the system by concealing the problem itself as well as its underlying causes. A salient example of this is the Wayne Lo case, which drew upon both the model minority and yellow peril stereotypes, and showcased how easily an Asian defendant's race can be overlooked.

The Wayne Lo Case

"On December 14, 1992, 19-year-old Wayne Lo stormed the campus of Simon's Rock College of Bard, an elite private institution for gifted students, and began a twenty-minute shooting spree that left two people dead and four wounded." (Yen, 2000). Lo's case provides an excellent case study for the real-life ramifications of the preceding stereotypes on the Asian American experience within the criminal justice system.

The media initially portrayed Lo as the perfect model minority, emphasizing his academic and musical ability along with upbringing and family status. "As an ideal candidate for the model minority stereotype, Wayne was treated just as if he had been white" (Yen, 2000). As a result, Lo's race was viewed as a non-issue during the pre-trial period, and the jury was subsequently filled with white jurors; not a single one was of Asian descent. The complete lack of Asian jurors was problematic because jurors were unable to relate to Lo on a fundamental level, and they may have viewed him -- consciously or unconsciously -- as a future threat in the job market. The concept of model minority was also wielded in the courtroom by the prosecution, in order to hurt his insanity plea. The prosecution downplayed his documented mental illness in favor of playing up the public perception of him as a calculated killer, rather than the mentally ill young man that the defense,

and his medical record, portrayed. How were jurors supposed to believe that this successful young man was mentally impaired? If anything, the prosecution argued, Lo was a narcissist.

The prosecution's case relied on the yellow peril stereotype as well, though it was less explicitly mentioned and more implicitly relied on. The fact that Lo was an Asian American student at a prestigious and majority-white college may have contributed to the jurors' perception of him as an outsider, an invader. The prosecution also showed him to be a neo-Nazi, in light of his tastes in music, media, and dress, as well as his own stated opinions. These facts taken together and combined with fears about Asian criminality tilted the jury in favor of Lo's guilt rather than his insanity.

For their part, the defense tried to build a case for Lo's insanity by presenting evidence from clinical psychologists that "strongly suggested that Wayne, in fact, suffered from a classic case of paranoid schizophrenia" (Yen, 2000). Further examination by clinical psychologists established that, as a result of his mental illness, he did not understand the consequences of his actions. In counter to the prosecution's portrayal of him as a dangerous neo-Nazi, despite his stated neo-Nazi ideologies, he had never acted upon them, or was anything less than polite to the Black, Jewish, and gay people with whom he was known to interact. The internal inconsistencies in the prosecution's story, as established by the defense, lent credence to his defense.

Despite the strong case made by the defense, Wayne Lo was found guilty, and is currently serving a life sentence in Massachusetts. Yen (2000) summarizes, "At the trial and in the media, Wayne's race was not only ignored such that he was equated with being a white, neo-Nazi, but he was simultaneously characterized as being a despicable outsider to be feared".

Theories

In addition to the stereotypes discussed above, another factor influencing the treatment of Asian American offenders within the criminal justice system are criminal justice theories, particularly ones about blame attribution and the function of law in society.

Focal Concerns

Focal concerns theory was conceptualized by Steffensmeier, Ulmer, and Kramer (1998) in their article “The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male”. The theory posits that judges and other criminal justice actors base their decisions off of three focal concerns, namely (1) offender blameworthiness and degree of harm caused to the victim, (2) protection of the community, and (3) practical implications, also known as constraints and consequences, of sentencing decisions.

Offender blameworthiness focuses on retribution, and is written into law, “such that the defendant’s potential punishment increases depending on the offender’s culpability and the degree of injury caused” (Steffensmeier et al 1998). The first half of this focal concern - blameworthiness - is determined by factors such as criminal history (increases), previous victimization (decreases), and offender’s role in the offense (depends). According to previous sentencing research, the second half of this focal concern, namely the seriousness of the offense, typically exerts the most influence during sentencing.

Protection of the community focuses on deterrence and relies on predicting an offender’s risk of future violence and recidivism. These predictions are typically based on the nature of the current offense, facts of the crime and of the offender, and some characteristics of the offender such as education and employment or lack thereof, family history, and drug dependency.

Practical constraints and consequences refer to both organizational and individual concerns. Organizational concerns may concern working relationships between courtroom actors as well as availability or scarcity of local resources, while individual concerns have to do with the specific defendant and their ability to serve their time, the costs associated with incarcerating them, and the personal cost to them in terms of disrupting family and community ties.

In their study, Steffensmeier et al (1998) found that judges do rely on the three focal concerns listed above, and do so by making attributions thereon mostly through legally relevant pieces of information, “but also partly on the basis of attributions based on such defendant characteristics as race, gender, or age as they relate to the focal concerns of sentencing”. Importantly, perceiving is believing in the criminal justice system. Steffensmeier et al (1998) write, “The perception of criminal behavior may involve processes of attribution and perceptions of punishment”; i.e. if a defendant appears to be inherently dangerous or violent, prior research has shown that they will be punished harsher as a result of this perception than if they had been perceived to be a victim of their circumstances or acting outside their normal character.

Focal concerns theory is at heart an intersectional theory, exploring the relationship between race, gender, and age, as well as exploring which has the most effect on any given offender sitting at any given intersection of those identities. “Our research demonstrates the existence of important independent and interactive effects of race, gender, and age in the sentencing of criminal defendants” (Steffensmeier et al 1998). The authors emphasize “the importance of considering the joint effects of race, gender, and age on sentencing, and of using interactive rather than additive models” (Steffensmeier et al 1998). Under this theory, Asian Americans are not perceived as a threat, due to their attributed characteristics such as “a strong work ethic, high achievement

motivation, patience, discipline, respect for authority, and conformity” (Wong et al 1998), characteristics which are recognized by the American middle class as their own.

Organizational Attribution, Conflict, and Consensus Theories

Previous studies focusing on Asian Americans in the criminal justice system have mainly relied on focal concerns theory, though a few others bear mentioning.

Organizational attribution theory, also known as uncertainty avoidance or causal attribution, was established by Albonetti (1991), and posits that judges, as organizational actors, must make decisions with limited time and information. These limits create a “bounded rationality” wherein organizational actors make the best decisions they can with what they have. In so doing, they rely on “perceptual shorthands” that draw on stereotypes to attribute offender blameworthiness and recidivism. Organizational attribution ties closely with focal concerns theory, as they both deal with perceptions translating into real decisions. Under both, Asian Americans are not seen as a threat.

Conflict theory posits that the criminal justice system acts in defense of the dominant ruling class interests, values, and norms, which in the United States are white, middle-class, and usually patriarchal. Anything that threatens these interests, values, and norms, is punished more harshly. For example, under this theory, a black man committing sexual assault against a white women would be punished more harshly than a black man committing sexual assault against a black woman. The least powerful are the most punished, because they are seen as a threat. Law therefore is created to protect dominant class interests, and punishment therefore is political and state-sanctioned oppression of those who did not conform to dominant class standards. According to conflict theory, Asian Americans would pose a social and economic threat by virtue of being a minority (Chanhatasilpa 2000), and an ostensibly successful one at that.

Consensus theory is antithesis to conflict theory, positing instead that law reflects society as a whole, both dominant and subordinate alike. Punishment therefore is reliant on legal considerations such as severity of offense, rather than on power dynamics. Under this theory, everybody who commits a sexual assault on somebody else would be punished similarly, since our society agrees that sexual assault is a crime. According to consensus theory, Asian Americans pose no more threat than any other racial group.

Intersectionality

Intersectionality is a term coined by Professor Kimberlé Crenshaw that refers to intersecting oppressions such as race and gender or sexuality and nation. These intersections are not static nor strictly additive — just because a person has more marginal identities than their peers (for example, a Black lesbian versus a white gay man) doesn't mean that the person will always be more disadvantaged, across all contexts. Oppression and identity are dynamic and heavily reliant on context. (Magsaysay 2021, citing Carbado 2013).

Intersectionality is especially important in discussions around criminality — who is criminalized, during which era, and for what behaviors. Currently, as discussed in the previous section about constructed identities, Black and Hispanic people are criminalized and associated with drugs and violence. However, in the past, Asian Americans were criminalized as well, but for different “crimes” — South Asian laborers in California in the 20th century were punished for living together against the conventions of normative American masculinity, but also punished for dancing with working class white women in clubs (Magsaysay 2021). This represented an interplay between criminalization, immigration, capitalism, and colonialism, as well as the classic categories of race, class, gender, and sexuality.

Unfortunately, in contemporary times, Asian criminalization is overshadowed by the model minority myth that focuses only on Asian American achievement and ignores the long history of anti-Asian violence and discrimination. The myth casts long shadows that extend far into the academic realm, preventing even the acknowledgement, much less study of the past, and ultimately preventing a full understanding of how Asian criminalization and anti-Asian oppression may have shaped or continues to shape today's criminal justice system and the concept of criminalization. Without that understanding, we cannot understand "the actual scope, history, and impact of the criminal justice system" (Magsaysay 2021).

Magsaysay (2021) goes on to theorize, "It follows that the criminalization of AAPIs (or the supposed lack thereof) is similarly interlocked with the hypercriminalization of Black communities, just as constructs like race, gender, class, sexuality, and disability also all simultaneously shape processes and ideas of criminality". In short, the model minority myth interacts with anti-Blackness to create the current racial hierarchy within society in general and the criminal justice system in particular.

In many ways, criminalization is not just about crime, but also school and discipline, and is comprised of "a constellation of individual, interpersonal, institutional, and ideological forces", and imposed by "an imperialist, white supremacist, heteropatriarchal, classist, and ableist structure" (Magsaysay 2021).

Asian Americans and the Criminal Justice System

The culmination of the background stereotypes and theories about Asian Americans generally and Asian American offenders specifically, is the processing of the racial group through the criminal justice system. The results of that then speak to the wider race relations in the United

States, and the complex interplay of historical and contemporary racism, racial alliances, and complicity.

Effects on Criminal Justice Processing

To begin with Asian Americans as an offender group, Asian Americans are processed differently than other minority groups, potentially as a result of differential constructed racial identities and subsequent judicial perceptions, as discussed in previous sections. Several studies have found evidence of this across jurisdictions and levels; i.e. state vs. federal, with and without federal sentencing guidelines.

Johnson and Betsinger (2009) found that Asians receive more substantial assistance departures, have a lower incarceration rate, and receive shorter sentences as compared to the other racial groups (not just minority groups), in a study that explored sentencing disparities in federal district courts for White, Asian, Black, and Hispanic offenders in order to explicitly include Asian Americans in a type of study usually restricted to the black/white dichotomy. Their findings agree with a previous study by Everett and Wojkiewicz (2002) which found the same, with the exception of immigration, wherein Asian Americans were punished slightly more harshly.

Chanhataasilpa (2000) studied the sentencing of Asian American defendants under federal sentencing guidelines and found that while being Asian American did not affect the in/out incarceration decision, there was some evidence Asians had a different experience from other minority defendants, and that their sentence length are longer than white defendants but shorter than black defendants.

Franklin and Fearn (2010) found that Asians are incarcerated less than other racial groups (white as well as Black and Hispanic), but sentence length did not find the same leniency. Incarceration leniency applies to state (current study) as well as federal (Johnson and Betsinger

2009, Chanhataasilpa 2000, Everett and Wojtkiewicz 2002, and others), and controlling for legal factors did not eliminate this. Sentence length found Asians only slightly favored above Hispanics, no different from whites or Blacks.

As theorized by Albonetti (1991), judges and other criminal justice actors rely on perceptual shorthands, which are usually just stereotypes that have been internalized and are therefore utilized. These perceptual shorthands are most often used in atypical cases, to curb recidivism, and in response to atypical behavior (acting out of one's anticipated character) (Chanhataasilpa 2000).

Judges, like any other person, are affected by the media, and so their perceptual shorthand for Asian Americans may include the model minority myth, through which Asian Americans are expected to be better connected to society as well as less threatening and less in need of formal control (Franklin and Fearn 2010). On the other hand, cultural differences *either real or perceived* exert real, and often negative, effects in the courtroom (Chanhataasilpa 2000); Asian signs of respect such as demurring eye contact may be seen as disrespect in a United States courtroom, and those who have or are expected to have language barriers may be seen as less smart and easier to take advantage of in the courtroom.

In addition, under the yellow peril/perpetual foreigner stereotype, cultural defenses can be raised for Asian American defendants in order to absolve or at least mitigate defendants "for acts that are criminal in the United States but may be commonly practiced in their native countries" (Yen 2000), such as spousal abuse and filicide. While the concept of a cultural defense seems to leverage a negative stereotype in a positive way, in reality it does more harm than good by perpetuating the concept of Asian American individuals as uncivilized and morally inferior, and Asian cultures as perpetually backwards and incapable of progression into modern ways of

thinking. It does not allow Asian Americans to take responsibility for their actions, as would be expected of a defendant of any other race, and does not allow for progression of Asian American cultures because the defense does not address the underlying issues such as sexism that led to the crimes in the first place. It's this kind of thinking that justified American imperialist policy overseas, the popular conception that Americans were "saving" Asians, from themselves and from communism.

Asian Americans comprise a unique offender group whose treatment by the criminal justice system is unlike other minorities or whites, which is unsurprising given the history of the Asian American constructed racial identity. That identity has also placed Asian Americans in a unique space within United States race relations.

Political Exacerbations and Implications for United States Race Relations

The differential treatment of Asian Americans as compared to other minority groups is unsurprising, given the history of the Asian American constructed racial identity, as discussed in previous sections. To summarize, Magsaysay (2021) writes, "In short, the "positive stereotype" of the model minority myth is a racist, xenophobic, anti-Black white supremacist project"; and to the extent that it has been inserted in the public consciousness, a "public identity" or "public imagination".

The model minority myth emerged amidst the civil rights movement of the 1960s, a period of time during which Black people began to agitate for their rights. "It served an instrumental function to "discredit the protests and demands for social justice of other minority groups" in the mid-1960s" (Wong et al 1998, quoting Suzuki 1989). It is held up as evidence of an American meritocracy, with the implied question being, "*If this minority group can make it without welfare or special programs, why cannot other groups?*" (Wong et al 1998, emphasis in original).

In this way, the model minority myth serves to blame Black people for their own socioeconomic status and pit the Black and Asian communities against each other. A study conducted by Thornton and Taylor (1988, as paraphrased by Wong et al 1998) found that overall black Americans did not generally feel close to Asian Americans. Prashad (2001, as cited in Rodriguez 2005) writes, as a member of the Asian Indian community, “I am to be a weapon in the war against black America”. Saito (1997, paraphrasing Gotanda (1985) adds that placing Asians and Latinos in between Black and white makes the gap between Black and white seem like a natural socioeconomic progression, rather than an intentionally constructed racial hierarchy.

Asian Americans as a model minority was simply a salve for white people, a success story to be told in order to absolve themselves of racism in the face of the Civil Rights Movement, which they perceived as an “attack” (Rodriguez 2005). Particularly alarming were the phrases “Black liberation” and “Indian sovereignty”, which shook up every civil comfort that White Americans took for granted (Rodriguez 2005), and to which Asian Americans were the solution.

Despite this, Asian Americans still hit a glass ceiling within academia and industry, as a derivation of the perception that Asian Americans are content with their lot in life, and that their calm dispositions are unsuited for executive position, while college admission policies limit the admission of Asian students in a kind of opposite affirmative action (Wong et al 1998).

Due to the prevalence of the model minority myth, criminalized and incarcerated Asian Americans are largely hidden from view, in order to continue peddling the myth. The relatively small population of incarcerated Asian Americans makes this task easier. They are intentionally subsumed under the dominant stereotype in order to maintain the illusion. What limited discussion occurs is usually “limited to issues of immigration, citizenship, gangs, culture, or victimhood” (Magsaysay 2021). Both media and academia are largely silent on the subject, for different reasons.

One of those reasons is the denial of Asian American racism, despite the fact that it is alive and well in the 21st century, as evidenced by anti-Asian attacks on elderly Asians during the COVID-19 pandemic, and the anti-Asian rhetoric — such as “Kung Flu” and “China Plague” — espoused by former President Donald Trump while in office (Lee 200, Yam 2020). Despite this, as Wu (2002, paraphrased in Magsaysay 2021) writes, hardly anybody mentions civil rights and Asian Americans in the same sentence. This is potentially because the various ways that Asian Americans are visually conspicuous and seen as foreign have resulted in Asian Americans becoming “focused on getting or staying in. The goal becomes being part of American society, often translated as assimilation” (Saito 1997) rather than agitating for a change in that society, as other minorities have done. This in turn has created a phenomenon wherein major Asian advocacy — such as the #StopAsianHate movement during the COVID-19 pandemic — almost always begins from within the community rather than without, and doesn't seem to gain as much traction with other racial groups as movements such as Black Lives Matter, potentially because of the continual denial that Asian Americans face racism. Similarly, over the course of researching the current paper, the author has found that many criminal justice studies that focus on Asian Americans are written by other Asian Americans. An unintended consequence of this may be that Asian American studies are seen as too niche for a wider audience and further ostracize the subject matter from mainstream criminal justice literature.

In sum, racism of all stripes is alive and well in America, and in order to understand it and combat it, its history and intersections must first be understood beyond the context of Black and white. The model minority myth is one example of this, having been carefully constructed by balancing tensions between Asians/Asian Americans, Black people, and white people. By existing, the myth is part of the war itself. To confront it on only the anti-Asian basis previously discussed—

that it is inaccurate, deceptive, and belies the struggles of poor Asian populations —is to ignore its fundamentally anti-Black history and purpose. Those same forces that are pro-Asian on the basis of model minority are also anti-Black/Brown by its opposite (in order to be pro something, one must also be anti-something else, and a model minority must have a non-model minority). Asian-Black solidarity is necessary to overcome the intentionally constructed animosity (Magsaysay 2021) and challenge white supremacy. However, to do this will require facing uncomfortable truths about Asian American complicity in the racial structure of the United States.

Asian American Implication in Mass Incarceration

Mass incarceration is a system that interplays with other systems, but that interplay is usually obscured in the way that the interplay of intersectionality is obscured. People prefer to think of social justice issues as discrete entities, rather than as the web of interaction they really are. Professors Angela Davis and Dorothy Roberts (as paraphrased in Magsaysay 2021) theorize that “mass incarceration is not merely about criminal punishment but also of unequal economic, social, and political systems, all of which form the “prison industrial complex””. In this way, the prison industrial complex is not confined to literal physical institutions such as jails, prisons, or parole offices, but is rather a “logic and method of dominance” (Roberts 2019, cited in Magsaysay 2021).

To discuss Asian American implication in the current carceral system of mass incarceration (Rodriguez 2005), one must first recall how Asian Americans have been a part of the “anti-Black racial project” that is the model minority myth (Magsaysay 2021), as discussed in the preceding sections. One must also understand the difference between *being mass incarcerated*, and *being caught up in the web of mass incarceration*. Proportionally speaking, Black people make up the former category, and Asian Americans the latter.

Due to the lack of Asian American-centered studies in the criminal justice literature, theoretical and otherwise, scholars remain unsure of the true impact of Asian American history on the current mass incarceration, but there are some big issues that stick out as fruitful avenues for future research.

For example, the White-Asian alliance mentioned in the previous section about constructed identities often prevents Asian American scholars from conducting a critical analysis of their history and social justice conceptions, because there seems to be an aversion in the field to discussing issues of criminality and wrongdoing (Magsaysay 2021). This may be a result of the internalization of the model minority myth — not wishing to acknowledge that Asian Americans are not as perfect as are socially constructed and perceived. However, by doing this, the model minority myth is inadvertently reinforced and entrenched, and anti-Blackness (if there are “good”, aka model, minorities, the natural conclusion is that there are also “bad”, aka criminal, minorities) is perpetuated.

In that vein, Magsaysay (2021) also calls for an examination of Asian American complicity in the prison-industrial complex as a whole, such as the community’s silence around the George Floyd killing and other police-involved deaths that involved Asian American officers. There’s a view within Asian American communities and academia that incarceration is a “Black issue”. Such a view is unhelpful and perpetuates historical efforts to divide minority groups from each other and create tension.

School to Prison Pipeline

An important part of the mass incarceration system is the school to prison pipeline, from which Asian Americans are not exempt. Criminalization of “troublemakers” begins early. The model minority myth is currently being reinforced in schools as a weapon wielded against Black

and Brown students, but it also hurts Asian American students. The intersection of immigration, language access, mental health, poverty, and educational issues place certain groups of Asian American students at a specific junction of being overlooked. Being a small population within the pool of American students only compounds the problem and increases the likelihood of a double jeopardy of being overlooked.

The model minority myth, in the form of the “whiz kid” stereotype, hangs heavy over Asian American students who are expected by their teachers to automatically do well. These students are subject to higher expectations with lower engagement — teachers assume that Asian students don’t require academic support, and that they have a supportive home environment, so there is less access to resources and less calls home to parents. Nobody notices struggling Asian American students, and nobody tells them how to get help. In addition, there may be an internalized stigma about asking for help, due to internalization of the model minority myth and fears of letting their teachers down. Those who struggle tend to either fail or drop out, and dropping out of school has been shown to increase the likelihood of contact and entrance into the criminal justice system.

For certain sections of Asian American students, especially ones who fall under the AMEMSA (Arab, Middle Eastern, Muslim, South Asian) umbrella, the “whiz kid” stereotype morphs into the “terrorist” stereotype. Writing about the Ahmed Mohamed case, wherein a student’s homemade clock was mistaken for a bomb, the Associated Press opined, “if you’re a student of color, experimenting and tinkering is seen as dangerous; for white students, it means you’re a genius.”

Finally, a big part of youth criminalization, especially for Asian Americans, is youth gangs (the few studies that focus on Asian American criminalization specifically often focus on youth

gangs). What goes unnoticed, however, is the fact that many students join youth gangs just to feel supported and protected, to feel like they belong somewhere (Magsaysay 2021, Saito 1997).

Though Asian American youth are not criminalized to the extent that Black and Brown youth are, their experiences still serve to further illustrate the effects of mass incarceration on every minority group and American society at large, and as such are deserving of study.

Conclusion

The history of Asian Americans in the United States is inextricably intertwined in the history of the American criminal justice system and American racism. The construction of racial identities — Asians as model minorities, Black and Brown people as less-than-model minorities — has been central to the development of a racial hierarchy in the United States. To this end, Asian stereotypes have been rewritten and popularized in an effort to create a tacit White-Asian alliance that perpetuates white supremacy and creates Asian American complicity. Armed with that knowledge, there is an urgent need to explore beyond the main narrative and rediscover the criminalized history of Asian Americans, as well as the contemporary stories of criminalized Asian Americans, in order to fully understand the lasting implications of Asian American inclusion and exclusion in American society.

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**Difference is Not Deviance: Examining the Experiences of Queer People in the Criminal
Justice System**

Introduction

This paper will follow the development of queer visibility in the criminal justice system, beginning with defining the term “queer” itself as both an identity and a way of thinking. The second section will focus on historical criminology theory, some of which addressed “homosexuals” directly and usually derogatorily. The third section explores how this historical thinking solidified in the public consciousness and transformed into queer criminal archetypes. These archetypes are narratives constructed around queer offenders and victims alike in order to tell a specific type of story, regardless of that story’s accuracy to actual events. This section will name each archetype and provide real-life examples thereof. The fourth section will examine how these archetypes have woven their way into society in general and the criminal justice system specifically, translating into more real-life experiences. Finally, the paper ends with a look towards a more visible, intersectional, and activism-driven queer future.

Defining “Queer”

Queer has always been a political and activism-related term, having started as a slur and been reclaimed in the late 1980s and early 1990s in order to “break through what they took to be the limitations and failures of gay and lesbian politics of the time in order to produce new political futures” (Ball, 2016). These limitations and failures included essentialism, exclusion of people of color or trans people, and seeking gay liberation and assimilation of gay and lesbian people into mainstream straight society, as though simply coming out would fix unequal power dynamics in a heterosexual society. Overall, contemporary gay and lesbian politics centered around the experiences and goals of well-off gay white men, and to an extent, lesbians, rather than the full, diverse spectrum of queer people. In contrast, queer politics wanted to address the above, avoiding essentialism, analyzing heteronormativity and gender binaries in order to gain a more nuanced

understanding of the aforementioned power dynamics, and overall challenge and resist normativity in re sexuality, gender, and the general assumptions of society and the ways of existing in the world.

There are two main usages of the word “queer”: identity-based and deconstructive. Queer in the first sense identifies anybody under the LGBTQ umbrella, while queer in the second sense challenges those same identity categories as well as the traditional social science concepts, methods, and assumptions. To strictly enforce queer as a set of rigid identity categories “risks neglecting the criminologically-relevant experiences of a diversity of LGBTQ people” (Woods, 2014a), such as people who actively avoid gay subcultures or are otherwise marginalized from the queer community. On the other hand, to challenge and deconstruct the notion of these sexual identity and gender identity-based categories altogether risks losing the much-needed criminological focus on these categories, especially as rooted in homo- and transphobia.

Woods (2014a) suggests a carefully-balanced intersectional approach that considers sexual orientation and gender identity as “relational, historically-situated concepts” (Woods, 2014a) in order to understand how these differences may interact with other differences such as race and class to shape experiences of discrimination, marginalization, and violence. Similarly, Ball (2016) offers a “catch all” concept of queer, recognizing a main similarity in the word’s usage as, “a desire to challenge heteronormativity, gender binaries, and their impacts, not to mention an interest in expanding the spaces in which such work can be pursued”.

Criminology: A History of Homophobia and Heterosexism

Criminology has historically been unkind to queer populations. Woods (2014a, 2014b, 2015) proposes a *homosexual deviancy thesis*, comprised of the *deviance-centered* element and the *invisibility* element. The thesis posits that prior to the 1970s, queer people in Western society

were negatively stereotyped as criminals, perverts, sinners, and psychopaths. The deviance-centered element argues that Western criminologists perpetuated these stereotypes, intentionally or unintentionally, by focusing their exploration of sexual orientation and gender identity as they relate to crime mainly around whether or not they are themselves a form of deviance. The invisibility element posits that after the 1970s, even that limited discussion of queer people within the field of criminology disappeared, with the exception of hate crimes, bullying, and intimate partner violence.

The stigmatization of specifically homosexual men and women goes back to the days of Cesare Lombroso (Woods 2015). His involvement in the differential treatment of the queer population is significant because it was his theory of crime that went on to become influential, his writing helps to understand the patterns of thought of his time, and the works which first called for queer criminology appeal to him in their titles, since his early theories included discussions of sexuality.

Lombroso began by theorizing about biological sex, using biological determinism and Darwin's concept of "atavism". By using these concepts, Lombroso conceptualized the homosexual man as "a distinct class of criminals marked by biological inferiority and perversion" (Woods 2015). Lesbians were not characterized as a distinct class of criminals, possibly reflecting thoughts about biological sex differences and subsequent criminal involvement. Sexual orientation and gender identity were conflated at the time of Lombroso's writing, leading to the conceptualization of gender-nonconforming people as an "extreme type of homosexual" (Woods 2015).

After Lombroso, theorists such as Lemert (1951) drew upon societal reaction/labeling theory to represent queer people - specifically gay men, as the terminology "homosexual" suggests

- as sexual deviants. Lemert described how primary deviant acts, unattached to the way offenders viewed themselves or the way society viewed them, when followed up with negative societal reactions could lead to secondary deviant acts, with society ascribing and offenders acting in accordance with the deviant label. In addition, he used homosexuality to illustrate his view that group association played a central role in sustaining certain types of deviance; in other words, that a queer person hanging out with other queer people would continue to be queer and have no motivation to engage in non-queer activities.

Up until the mid-1970s, criminologists framed homosexuality as a form of social and sexual deviance, rather than a non-deviant difference that was relevant to social organization, such as race or class (Woods 2017). In addition, the classical theories criminology tended to draw on, such as those by Durkheim, Weber, and Marx, broadly neglected gender and sexuality to begin with. As a result, homophobia and transphobia were rarely conceptualized as “structural-social conditions that might facilitate criminal offending or victimization” (Woods, 2014a). On a macro level, sexual orientation or gender identity differences were neglected in early criminological perspectives. Examples for this include Quinney, one of the first radical theorists during the counterculture movement of the 1960s and 70s whose writings began in 1970. His initial radical theory, drawing upon social conflict, initially acknowledged homosexuality as a form of sexual deviance, arguing that it was a learned social role, but then proceeded to slowly disengage from the concept altogether in his later scholarship, omitting it altogether from his second radical theory of crime, drawing upon Marxism.

Another popular theorist, Chambliss, explored vagrancy laws in his 1964 “A Sociological Analysis of the Law of Vagrancy”, but neglected to note their enforcement against gender and sexual minorities such as gay men, lesbians, cross-dressers, and other non-conforming people.

Other scholars have since noted the discrepancy. Chambliss' analysis focused on vagrancy laws as economic tools to bolster the workforce, but neglected to look at it from a social and moral control perspective, as Adler (1989) after him did. Chambliss' body of radical writings largely omits discussion of sexual orientation and gender identity, but when he does engage with the concepts, he focuses his discussion squarely and only on the criminalization of homosexuality.

During the mid-1970s, there was a push to decriminalize sodomy and discuss antidiscrimination principles within the context of queer people, which changed the conversation around queer people from one of sexually deviant offender to "innocent and nondeviant hate crime victims" (Woods 2017). However, this once again leaves a gap in knowledge because queer people are not one-sided as *only* offenders or *only* victims. Recent studies suggest that queer people disproportionately experience struggles that scholars already know increase the risk of both victimization and offending, such as youth homelessness, being in foster care, and poverty (Woods 2017). While those struggles have been well documented as increasing risk of criminal offending and victimization as a whole, it's unclear how the unique situations of queer people — who may be kicked out for being queer, experience discrimination in housing or homeless shelters, and may be at heightened risk for police contact by being visibly gender nonconforming — interact with those known risk factors, as well as other non-queer differences such as race, ethnicity, gender, and age (Woods 2017). As will be repeated throughout this paper, intersectionality is crucial for understanding the whole picture for any given group.

The historically narrow focus of criminology on sexual orientation and gender identity only as forms of sexual deviance reflect a one-dimensional viewpoint that could not conceive of queerness being anything but sexual deviance. Sexual orientation and gender identity were overlooked time and time again, prompting the development of queer criminology, which is a

subfield of critical criminology specifically to look at these categories. Queer criminology developed shortly after and alongside feminist criminology, which demands criminologists take gender into consideration.

The field of criminology remains lacking in discussion of gender identity and sexual orientation, with focus limited to whether homosexuality is sexual deviance, victimology of hate crimes motivated by sexual orientation (and to a lesser extent gender identity) (Woods 2017), and the need to integrate queer perspectives and deconstruct the traditional heterosexist societal order. However, critical gaps include the victimology of queer people unrelated to hate crimes, and queer offenders (Woods 2014a). Studies of queer prisoners typically don't focus on how those offenders got there, and that lack of research leads to misleading dominant narratives that pose gay offenders as sexual offenders, and transgender offenders as sex workers, lacking nuance and perpetuating stereotypes. By ignoring queer offenders and their respective paths to crime, the opportunity to examine the effects of homophobia and transphobia within criminal justice contexts is lost. These are structural conditions that may affect the everyday operation of the criminal justice system, from unjust policing to unjust societal determinations of guilt or blameworthiness. Finally, efforts to deconstruct the traditional heterosexist societal order seem to be focused around the heterosexual male offender, such as the feminist criminological trend towards exploring masculinity and the societal construction of gender. Though insightful, it still serves to reinforce the dominant social order, and fails to consider intersectionality.

Queer Criminal Archetypes

With criminology's background of homophobia and considering queerness itself as a crime, it's unsurprising that criminal justice has developed its own way of viewing queer people as separate in nature from their heterosexual counterparts. Historical trends become modern

patterns of thought and play out into real life experiences of everyday queer people, whether offender, victim, or random bystander, in the form of archetypes.

Archetypes are similar to stereotypes, but with distinct differences. Stereotypes are generalized characteristics applied to specific groups of people, and individuals belonging to those groups, such as thinking all Asian Americans are good at math. Archetypes, on the other hand, are pre-existing representations of groups or figures associated with strong emotional responses, and culturally ingrained, such as the White Knight archetype, wherein said knight comes in to save the princess from the dragon, whether literally in a fairytale or metaphorically in a romcom movie. Mogul et al (2012) write that criminal archetypes typically elicit “anxiety, fear, and dread...potent emotions that can easily overpower reason”.

Queer criminal archetypes specifically establish narratives, regardless of their veracity to a particular case, that shape the way a queer defendant’s appearance and behavior is understood by their non-queer peers, and ultimately serve to criminalize their queerness as its own crime, citing the deception of sexual and gender nonconformity, violence as inherent to queer sexuality, and queer people as “intrinsically mentally unstable” (Mogul et al 2012). Mogul et al (2012) also points out that queer criminal archetypes draw upon the “persistent melding of homosexuality and gender nonconformity with concepts of *danger, degeneracy, disorder, deception, disease, contagion, sexual predation, depravity, subversion, encroachment, treachery, and violence*” (emphasis in original).

Gleeful Gay Killer/Homicidal Lesbian

This archetype holds that queer people are people “who torture, kill, and consume lives, not only for the sheer erotic thrill of it” but also as a form of revenge against enemies, lovers, and

any who oppose their lifestyle, and a form of “symbolic suicide” borne of self-hatred. In summary, queer people kill because of their queerness.

Within this archetype, there is a distinction made between gay men and lesbians. Gay men are gleeful gay killers who kill strangers and partners alike, either hating women or wanting to emulate them, while women are homicidal lesbians who hate men, abuse women, or both. Butch lesbians often have the added layer of gender nonconformity, a sub-archetype of *lethal gender bender*, which posits that gender nonconformity must inherently include “deception, disguise, and homicidal destruction of normal others” (Mogul et al 2012).

In 1924, college students Nathan “Babe” Leopold and Richard “Dickie” Loeb killed young teenager Bobby Franks in a gruesome example of overkill, including a chisel to the head, a rag stuffed down his throat, and hydrochloric acid thrown over his mouth, genitals, and abdomen. Due to the nature of the crime, police and media already imagined the killer as a homosexual pervert, and began to look at an effeminate teacher at Franks’ school. After arresting Leopold and Loeb, the media and later the prosecutor emphasized their homosexuality and the horrific nature of the crime as inextricably intertwined — in short, positing that these privileged, arrogant, young white degenerates killed because it was in their homosexual nature to do so. The young men sat at an interesting intersection of class, sexuality, and religion, being affluent college students from Jewish families, and David S. Churchill (2003) writes that as a result of this, “The discourses of anti-Semitism, anti-intellectualism, homosexuality, and class privilege play[ed] out in distinctive ways” in this case.

Beyond these young men specifically, the Leopold and Loeb case is quintessential because “[both p]rosecutorial and media depictions helped to fix a compelling representation of the unrepentant gleeful gay killer in the cultural imagination, feeding the perception that there is such

a thing as a “homosexual murder” committed by a depraved gay man who can only truly feel sexually alive through senseless killing” (Mogul et al 2012).

As for the homicidal lesbian trope, Aileen Wuornos’ case exemplifies it. She too sits at an interesting intersection of class and sexuality, being a working-class sex worker who shot six white men who picked her up alongside Florida highways. She alleges that they tried to sexually assault her and that she killed in self defense. Lending credence to her version of events is that at least one of them had previously been convicted of violent rape. Regardless, the media masculinized and demonized her on the basis of her lesbianism, butch appearance, and larger stature, playing on the trope that lesbians hate men, sex workers can’t be raped, and ignoring the effects of the horrific abuse that she suffered as a child. As a woman who did not fit the typical mold of femininity, she was no longer a woman, but a threat.

Sexually Degraded Predator

This archetype draws on the flawed concept that queer people are unable to reproduce sexually within their relationships, as a result must recruit new people into the community. This fundamentally misunderstands the nature of sexuality but nonetheless has taken hold in public imagination as “the male child molester, the gay prison rapist, the sexually aggressive Black lesbian, the promiscuous gay man, the degenerate transgender woman using...gender impersonation” (Mogul et al 2012). Race and class play a particularly influential role here in determining how behaviors are interpreted, as in the cases discussed below.

In 1926, South Asian immigrant Rola Singh, an older man, was found asleep in a parked car with white 28 year old Harvey Carstenbrook who allegedly had his head in Singh’s lap. Singh was sentenced to prison, and Carstenbrook shielded from scrutiny by the court’s consideration of

him as a minor, despite his age (Mogul et al 2012). This is in contrast to Samuel Robbins' earlier 1913 case wherein the white, middle-aged bookkeeper was charged with attempted anal penetration of a sixteen year old boy in a bathroom, but was ultimately acquitted against the testimony of both the boy himself and the servant woman who interrupted the act on the grounds that Robbins was simply trying to "impart moral development" to the next generation of young men in need of mentors. Robbins' whiteness allowed him to rise above suspicions in a way that Singh's brown skin did not (Shah 2005, as quoted in Mogul et al 2012).

This narrative in particular also influences discussions about whether the discussion of homosexuality is "age-appropriate", the extreme and restrictive side of which debate can be seen in the pending Florida bill popularly known as the Don't Say Gay bill, which would ban all discussion of sexual orientation and gender identity in kindergarten to third grade classrooms, and allows parents to sue their district should such teaching occur (Izaguirre 2022).

Disease Spreader

This archetype employs two narratives - one, that queer people are unclean, and two, that queer people are promiscuous and not too picky about whom they sleep with. These two narratives operate in a cycle - because they're promiscuous, queer people get diseases, and they get diseases because they're promiscuous. The idea of queer people as vectors of disease particularly play off of HIV/AIDS fears and prejudices, calling to mind similar 1980s narratives that posited HIV/AIDS was God's way of killing off queer people.

Such disease-ridden narratives are inextricably intertwined with racist narratives, particular the idea that Black men who secretly have sex with other men (usually in prison) get HIV/AIDS that way, and then spread it to heterosexual Black women on the outside, thereby infecting whole

Black neighborhoods, pathologizing them and contributing to the racist narrative of people of color being vectors of disease themselves, as well as hypersexual predators.

Another prominent example of this stereotype at work is the vilification of French Canadian flight attendant Gaetan Dugas as HIV patient zero, popularly believed to be the disease vector that brought HIV to the United States as the result of a Centers for Disease Control epidemiological study hypothetically positing a “rapid transmission” scenario. This study has since been “thoroughly debunked” (Mogul et al 2012) by Andrew R. Moss, with Dugas’ name cleared, but the damage had already been done.

Security Threat

Queer existence is often perceived as “a fundamental threat to the integrity and security of the family, the community, and the nation” (Mogul et al 2012), particularly during times of war (particularly during the Cold War, when any lifestyle, political belief, or line of work that challenged the status quo was seen as a weak link in white, conservative, heterosexual American society) where any deviation from the norm is seen as suspicious and a potential security breach. People get scared when certain boundaries of race, gender, sexual orientation, and economy appear in danger, and in response tend to redouble efforts to secure them by cracking down on enforcement of societal norms.

In 1960, Sara Harb Quiroz, a permanent U.S. resident experienced profiling under this archetype when she was perceived as a lesbian at the border after trying to return to the United States from Mexico. As a result, she was stopped, detained, and subject to deportation proceedings as an investigation into her personal life, behavior, and appearance were underway. This investigation employed racist and homophobic beliefs about women of color and lesbians being

abnormal, as well as strict notions of femininity. Ultimately she was deported under U.S. immigration laws that explicitly allowed for the exclusion of homosexuals.

Intruders

One of the most threatening demographic groups in the criminal justice system sits at the precarious intersection of race, age, and sexual orientation — queer youth of color. For these youths, their presence in public spaces is viewed through a specific lens, one that “presum[es] that groups of queer youth of color are predatory, dangerous, and determined to enter and occupy areas where they are not wanted and do not belong” (Mogul et al 2012). This follows the trend of youth of color generally being seen as a nuisance at best, and active threat at worst, just for daring to exist in public spaces, a viewpoint reflected in laws against loitering, unaccompanied minors at the mall, and other such prohibitions.

This narrative is exemplified in this next case from 2006. A group of seven Black lesbian friends harassed and then attacked on a New Jersey street by a Black, presumably heterosexual man named Dwayne Buckle. The women fought back in self-defense, and were aided by two unknown men who ultimately stabbed Buckle. After these men had left the scene, the women were following suit when they were arrested and charged by police officers who immediately began controlling the narrative, positing that these women were the perpetrators of violence, rather than the victims. Ignoring all physical and video evidence, as well as a statement by Buckle himself that the men and not the women had stabbed him, the women were prosecuted and made into a media circus as “killer lesbians”, “a seething Sapphic septet” and a “lesbian wolf pack” (Mogul et al 2012). Three of the seven plea-bargained, while the remaining four were sentenced to prison.

Archetypes in Context

These archetypes above seem to split into two different categories — viewing queerness as a crime, and viewing crime through the lens of queerness. In the case of the Gleeful Gay Killer/Homicidal Lesbian as well as the Intruder archetypes, crime is viewed through the lens of queerness, as a part of the queer identity, whereas in the Sexually Degraded Predator, Disease Spreader, and Security Threat archetypes, the act of being queer in and of itself is vilified as criminal.

In addition, as seen above, these criminalizing queer archetypes are rarely applied on their own, and are usually deployed in tandem with other archetypes and narratives that criminalize people of color, immigrants, and poor people, creating an intersectional attack. Later, we will discuss the importance of an intersectional approach to understanding. These issues of race, gender, class, and sexuality are systemic, with a long history, and should be understood as such.

Overall, the end effect of these archetypes is to “direct...not only the initial gaze, but also the subsequent interpretations and actions, of police, prosecutors, judges, juries, and prison authorities” (Mogul et al 2012). By repeating these narratives, we restrict our ability to think beyond the narrative, and reinforce it in our brains and others’.

The primary authors of these and other narratives about crime and criminality are law enforcement officers, whose jobs revolve around filing reports and working closely with prosecutors who then create their own narratives in court. In contrast, those who are criminalized have less opportunity and access to publish their counternarratives, and have the extra hurdle of their criminalized status to deal with to get their voice out there in the first place.

Criminal Justice: A Brief Overview of Queer Experiences

Much like the history of criminology led to popular narrative archetypes being developed in the public consciousness, these archetypes necessarily become the lenses through which the criminal justice system views queer people as a whole, regardless of their role, because the criminal justice system does not exist in a vacuum. This section will explore how queer people navigate contact with the criminal justice triad of cops, courts, and corrections.

Police Contact

Compton Cafeteria, 1966. Stonewall Inn, 1969. Power Plant, 2003. Bar raids are probably the first thing people think about when they hear “gay people” and “police” in the same sentence. The breakdown of a bar raid is as follows: (1) a bar exists that caters to mainly to some flavor of queer and/or gender non-conforming individuals; (2) police catch wind of the bar and raid it under some pretense such as enforcing liquor laws or being above fire code capacity; (3) they detain and arrest both employees and patrons, usually while verbally and/or physically abusing them. Bar raids have existed for as long as gay bars have existed, and were fueled by homophobia, particularly during the 1950s and 1960s era of McCarthyism, during which the names of those arrested were published in the paper, leading to humiliation, legal issues, and even murder (Mogul et al 2012). The raids continued during the civil rights movement of the late 1960s and early 1970s, being particularly frequent and brutal and ultimately culminating in the two most well-known raids on Compton Cafeteria and Stonewall Inn. Despite the high-profile cases, the practice continued into the 21st century, as shown by the Power Plant in Detroit. Bar raids are an excellent of police invading queer spaces in order to enforce a social order.

If bar raids are police entering into queer spaces, does the dynamic change when queer people enter police spaces? Not necessarily, because the police remain the party with the power.

As a result, trying to report a crime may almost be as traumatizing as the crime itself. Police are quick to illegitimize queer victimhood, drawing upon popular and problematic ideations that to be queer or trans is to be a sex worker, that sex workers can't be raped and therefore queer people can't be raped. In Eugene Oregon, police dismissed allegations of sexual assault as "the grumblings of junkies and prostitutes" (Mogul et al 2012), and many of the women in question didn't originally come forward for fear of disbelief and retaliation. In addition, police officers have been known to sexually assault queer populations themselves, either on the street or during an arrest or questioning leaving their victims without legal recourse (Mogul et al 2012, citing Raphael and Shapiro 2002, Young Women's Empowerment Project 2009, and The Sex Workers Project 2005 and 2003).

Finally, there are ostensibly neutral public spaces. However, in those spaces too, the police hold the power. In the Intruders archetype, it's assumed that queer youth in public spaces are just asking for trouble by virtue of existence in a public space, and told to move along or else (Mogul et al 2012). Queer Black men are particularly at increased risk of profiling (Mogul et al 2012), given the stigma that surrounds Black men as a group in the first place.

Historically, police have also been notorious for policing gender identity and expression, as exemplified by anti-crossdressing laws and arrests related to bathroom usage, which draw upon notions of gender nonconformity as deceit (Mogul et al 2012). Furthermore, the phenomenon "walking while trans" has been coined to describe the experience of being profiled simply for being gender nonconforming in public — the nonconformity is seen as probable cause for prostitution (Mogul et al 2012). Finally, law enforcement officers also selectively enforce laws such as vagrancy and loitering, under the guise of "quality of life" and "zero tolerance" policing (Mogul et al 2012), a process which is again tied to faulty assumptions about gender expression and

prostitution. This selective enforcement disproportionately harms queer people, particularly queer youth, because queer people and queer youth specifically disproportionately face problems like homelessness. Increased police contact in turn leads to increased opportunities for police to use force.

To be queer in the United States is to expect police harassment. For police contact particularly, the lines between victim and offender can become very blurry very quickly, as it did in the case of the seven Black female friends who were convicted of assaulting the man who sexually harassed them. Police can see queer people as guilty of a crime just for existing in a queer way, and as a result take them less seriously as victims, and build a narrative around offending instead.

Overall, the queer community and the police have had a historically fraught relationship, for the same reason that other marginalized groups have — how the police view themselves, their duties, and their communities. Their motto is to protect and serve, but who they see as worthy of protecting and serving — and from whom — is an important distinction to make.

“Police and other law enforcement agents do not merely objectively enforce the letter of the law. Practically speaking, they also function as lawmakers in their own right. They are given considerable latitude in deciding which laws to enforce, how to enforce them, and which people to target for enforcement. And they often consciously and unconsciously exercise that broad discretion in ways that are anything but neutral. Far from being passive players just doing a job, law enforcement agents play a crucial role in manufacturing, acting on, and enforcing criminalizing archetypes” (Mogul et al 2012).

Court Conduct

Queer people have long been subject to laws that criminalized their very way of being, from anti-crossdressing laws to anti-sodomy laws, and from laws against adoption to laws against immigration. Though both sumptuary (cross-dressing) and vagrancy laws were largely struck down, held unconstitutional, or redrafted by the 1970s and 1980s, the damage was already done in the minds of law enforcement and the courts. Studies from California to New York (cited in Mogul et al 2012) have shown that experiencing derogatory, biased, and offensive remarks and actions are the norm in courtrooms for litigants, court employees, and witnesses alike. These comments are most often made by judges, lawyers, and court employees (Sexual Orientation Fairness Subcommittee 2001, as cited in Mogul et al 2012). This kind of culture creates an access problem when queer and gender non-conforming people are denied competent legal services. Attempts to access legal services are often met with extreme disrespect, outright rejection, and ignorance (Spade 2006, as cited in Mogul et al 2012). If their cases are picked up, their lawyers are often ignorant of their clients' lived realities, and as such do not know how to advocate for their actual needs, leading to a negative outcome even without taking the prosecution into account.

For their part, the prosecution draws upon discriminatory laws in letter and in spirit, coupling with the narratives already used by police to wield sexuality as a weapon against queer defendants (Center for American Progress and Movement Advancement Project 2016). A popular concept used to that end is that being queer makes a person inherently guilty and inherently deceptive. This narrative is particularly salient for transgender defendants, who are, as in other spaces in the criminal justice system, uniquely prosecuted in a way that plays on these fears of deception and dishonesty. Particularly in sex-related crimes, there's an assumption of guilt and a tendency to overcharge (LeGal 1997, Jacobson 1999, as cited in Mogul et al 2012), with the threat

of incarceration looming large over a population already predisposed to be assaulted while in prison, as will be discussed in the next section. In short, “[s]entencing patterns are clearly stricted [for homosexual sex offenders than [for] heterosexual offenders” (New Jersey Supreme Court 2001, as cited in Mogul et al 2012). Sexuality is also used as a vehicle to discredit queer witnesses on the same grounds of deception (Browe 2007, as cited in Mogul et al 2012), especially when put up against the testimony of law enforcement, whose testimony is already given more weight than any civilian testimony. Once again, those in power determine the narrative.

Finally, judges and juries are familiar with the aforementioned criminalizing archetypes around queer people, whether consciously or unconsciously, since all judges and juries are people first, people like everyone else, who are part of the overall culture of the United States.

Life Behind Bars

There are a lot of misconceptions and off-color jokes made about being gay in prison. However, there is some harsh truth to those jokes. According to National Inmate Survey (NIS) from 2011-2012, queer inmates were more likely than their heterosexual peers to be sexually assaulted by staff and other inmates (Meyer et al 2017). These statistics are bolstered by Black and Pink’s 2014 National LGBTQ Prisoner Survey, which found that among its respondents, queer prisoners were more than six times as likely to be sexually assaulted, and that other prisoners are three times more likely to assault someone they know is queer.

Those rates of assault are especially alarming considering that sexual minorities are overrepresented in incarceration. As per the NIS, self-identified lesbian, gay, or bisexual people are incarcerated at a rate of 1,882 per 100,000, more than three times the rate of their strictly heterosexual counterparts (Meyer et al 2017). From another angle, 7.9% state and federal prison inmates and 7.1% of city and county jail inmates identify as lesbian, gay, or bisexual, while Gallup

reports that only 3.8% of all American adults identify as lesbian, gay, or bisexual (Center for American Progress 2016).

To top it all off, the administration either cannot and will not protect these individuals from further harm, and indeed are often complicit in creating it. Referring back to the Black and Pink Survey, 76% of those who reported being sexually assaulted also reported that prison staff intentionally put them in a high risk situation (Lydon et al 2015). The majority of respondents had been discriminated against and verbally harassed by prison staff, and over a third had been physically assaulted by prison staff (Lydon et al 2015). In prison, sex is often used as currency, and the prison administration is often complicit.

The story of Roderick Johnson, as told by Mogul et al (2012) exemplifies this sexual economy. Roderick was a Black gay man convicted of drug possession while on probation for a nonviolent burglary. Originally sentenced to a low-security prison in safe housing on the basis of his sexual orientation and feminine appearance, he was transferred to a maximum security prison for hoarding clothing. Once there, he was denied safe housing on the basis that gay men don't get protected at Allred, and was subject to continued sexual assault and abuse for the next eighteen months, for which he was denied medical care or the possibility of safer housing (safe housing unit, transfer to another institution, protective custody). At least once, a guard let another inmate into Johnson's cell for that inmate to receive sexual favors. The Unit Classification Committee, which oversees Life Endangerment Claims, laughed in his face and verbally abused him as he pleaded for help. His efforts to follow the correct channels by filing complaint after complaint only branded him a snitch and put him in more danger. Finally, the American Civil Liberties Union stepped in, represented him in action against prison officials, and got him transferred, though a

Texas jury still ruled in favor of prison officials, despite evidence of rape and administrative complicity.

On the other end of the spectrum, even consensual sex between inmates is fraught. According to Meyer et al (2017), using data from the NIS, queer inmates are more likely to have had consensual sex with other inmates, but the National Standards to Prevent, Detect, and Respond to Prison Rape under the Prison Rape Elimination Act do not address such situations. Sexual behavior becomes a safety concern when consent cannot be determined, such as when a victimized inmate does not complain out of fear of retribution. On the one hand are the risks to turning a blind eye to all sexual encounters, but on the other hand are the risks of overpolicing, which would punish inmates for nonabusive sexual behavior related to their sexual orientation. In that same vein, studies such as Borchert (2003) shown that queer inmates are more likely than their straight counterparts to be punished for nonsexual behaviors such as gender nonconformity in attire or expression.

On the subject of gender nonconformity, there is one queer population that bears special mention, and that is transgender prisoners. The experiences of incarcerated trans people can and do fill whole other papers, so they are only briefly discussed here. Suffice it to say that trans people are uniquely targeted for discrimination and harassment within the prison system, from invasive strip searches and medical examinations to denial of gender-related medical care and placement within facilities according to genitalia. Once placed, trans prisoners experience regular verbal and physical abuse from staff and inmates alike, and are often further segregated into administrative segregation wings, which creates the assumption that trans prisoners are inherently dangerous (Mogul et al 2012). As an institution, the prison system is designed to enforce the gender binary by segregating men's and women's prisons, and prison administration often takes it upon

themselves to enforce gender norms within their own prisons and jails, such as forcing a trans man confined in a women's prison to wear a dress, when none of the cisgender women were required to do so (Mogul et al. 2012). Male-to-female transgender prisoners are regularly housed in men's units in complete disregard for their safety, despite the knowledge that placing trans women in men's prisons creates "a substantial risk of rape and prolonged sexual abuse at the hands of more aggressive prisoners" (Peek 2004). These abuses are especially horrific in light of the high incarceration rate among transgender individuals. According to the Center for American Progress and the Movement Advancement Project (2016) citing the National Transgender Discrimination Survey, 16% of transgender and gender non-conforming people reported that they have spent time incarcerated, while the Bureau of Justice Statistics projects that only 5% of Americans will spend time incarcerated in their lifetimes.

It should be noted that while the National Inmate Survey 2011-2012 was a probability sample of 106,532 inmates within United States prisons and jails, Black and Pink's National LGBTQ Prisoner Survey was a non-random sample of 1,118 inmates mainly from state and federal prisons who were already part of Black and Pink's readership and voluntarily filled out the survey. Though Black and Pink's data comes from a non-representative sample, it still provides a unique and important insight into the lives of queer people who are incarcerated, as it is "*the only survey on a national level to be created in partnership with LGBTQ prisoners*" (Lydon et al 2015, emphasis in original).

Queer Realities

There are enough stories about queer experiences with the criminal justice system to fill whole books, though the quantitative data is lacking. As such, only the main issues were briefly touched upon here.

In addition, some pathways to crime have been suggested by the NIS and the National Inmate Survey, which include discrimination and stigma at home, at school, and in the workplace, discriminatory enforcement of laws like vagrancy and the criminalization of HIV, and harmful policing strategies and tactics such as crackdowns and police abuse (Center for American Progress and Movement Advancement Project 2016). Criminal justice experiences of queer people are really a continuation and amplification of queer people's experiences in society at large.

An overarching theme in this section is powerlessness and loss of narrative voice. Once the police start to file reports, they get to write the story, and that story is what the prosecutors draw from and flesh out in their prosecutions, and that story is what follows queer offenders to prison and beyond.

Looking Towards a Queer Future

For all the doom and gloom around the experiences of queer people in contact with the criminal justice system, some progress has been made in the last few decades. Literature is being built out that recognizes the deficiencies of current studies and theory; now those holes must be filled. Some methods for doing that are discussed below, centering around the increasing intersectionality of criminal justice theory and research, and queer academia translating into and supporting queer activism.

Intersectionality

Intersectionality is a concept taken from intersectional (also known as multiracial) feminism, the newest theory of feminist thought. The key concepts of multiracial feminism focus on the interplay between systems of gender, race, class, and other identity categories of difference. The main concepts are (1) that gender relations don't exist in a vacuum, but rather within other locations of inequality, (2) that systems of power work on all social-structural levels, and (3) the

concept of relationality, or that “groups of people are socially situated in relation to other groups of people based on their differences” (Burgess-Proctor, 2006, p. 37). Multiracial feminism also focuses on the interplay between social structure and women’s agency, with an emphasis on understandings grounded in lived experiences.

This interplay results in what multiracial feminism terms a “social location”, defined by interlocking systems of inequality including but not limited to race, class, gender, sexuality, age, and physical ability. These social locations define a person’s status within a broader social structure, and such a status is interactive rather than additive. For example, for a young gay man, being gay is more relevant at a blood drive, while being young is more relevant at the club. Though one category may seem more relevant at different times, all systems overlap to create a cumulative effect.

Social locations within wider social structures emphasizes the context within which we live our everyday lives. Current criminological trends also embrace context, with the recent focus on integrated theories. Previously, theories tended to divorce race, class, and gender as autonomous variables for separate analysis, rather than considering them interconnected parts of the same whole. Everyone’s life is framed by their inequalities, and it’s time to explore how that fact leads to differing patterns of crime. Steffensmeier et al started to do this in 1998 with their study “The Intersection of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male”, which found that boys at that particular intersection were punished the most harshly out of any other combination of those variables. However, there are always more variables to explore and plug in to the models.

It bears mentioning that even within the queer community, there are some variables that have traditionally been ignored. The activism and agitation around gay rights has often focused

around middle-class, white, cisgender, gay men. Lesbians have gained more recognition, but again, they're usually middle-class, cisgender, and white. Their concerns are mainly integration and equality in areas like marriage, which makes *Obergefell v. Hodges* feel like the final victory. However, queer people of color, especially trans people, still struggle with issues like homelessness, poverty, and police profiling, issues which have rarely been at the forefront of the gay rights movement. Therefore, even within the movement itself, intersectionality is a must if we are ever to advance the queer community as a whole.

Despite the internal struggles with intersectionality, as previously discussed, queer experiences as a whole are underrepresented in criminology. The field is behind the times in failing to recognize that sexual orientation and gender identity/expression is a non-deviant difference like any other, that in conjunction with other non-deviant differences such as race/ethnicity, class, and religion “may influence victimization, involvement in crime, and experiences in the criminal justice system more broadly” (Woods 2014a). Through a lack of engagement with queer experiences, populations, and theories, it remains largely unknown how sexual orientation and gender identity may shape causes of crime. As a result of this failure, queer criminology as a field is essential, in order to give voice to a historically marginalized population and explore new directions of criminology that previously went unchallenged.

One of the benefits of intersectionality is that it allows for a wide range of methodologies, encompassing qualitative, quantitative, and mixed-method designs in order to get as broad a range of lived experiences as possible. Ethnographies, neighborhood studies, and historical institutionalism for analysis of micro-level social processes can all be included, as can quantitative methods for macro-level social processes. Through a mix of methodologies, queer criminology

can learn from the queer community in as many ways as possible, supplementing qualitative stories with quantitative data.

Criminology, aided by feminist theory, is finally beginning to understand the importance of context and interactivity, rather than considering their variables in a vacuum. Social locations play a role in everyday life and influence how any one person experiences the world and society, whether consciously or not. Though intersectionality is by nature a broad concept and as such may prove to be a difficult lens through which to study, that's the entire point. No one category exists in a vacuum - sexuality does not operate separate from gender does not operate separate from race, and queer criminology must serve to draw attention to that fact.

Queer Activism

Criminal justice institutions have long been a target of political action by queer communities, due to their ongoing history of “unjust social and legal regulation of queer lives, such as through entrapment, anti-gay violence (by police officers) at beats, and illegal raids on LGBTIQ nightclub premises, not to mention the enforcement of laws which criminalised consensual same-sex relations” (Ball, 2016). As a result of the failure of the formal system to protect queer lives, queer political movements such as the Pink Panthers or Bash Back have engaged in direct criminal justice activism by setting up their own night patrols of queer neighborhoods by queer people trained in self-defense techniques to protect their friends and neighbors from homophobic or transphobic attacks. These groups have since disappeared with legal and social progress in terms of protection and police-community relationships, though the changes in question have had varying levels of success. Current queer political activism in regards to criminal justice include protests against the general failure of the criminal justice system and the prison-industrial complex

by Gay Shame San Francisco and a prison abolition movement on the basis of injustice for queer people behind bars.

Building on the history of queer activism and politics inherent in the very concept of “queer”, queer criminology as an academic field is rife with potential for activism. Queer criminology focuses on queer people and their experiences, and as such, its scholarship is often “explicitly driven by a desire to address the significant social and criminal injustices encountered by many LGBTIQ people and communities” (Ball, 2016).

Ball (2016) explores the possibility of activism within academia for two main reasons: (1) because being an academic necessitates the playing of multiple roles and as such offers multiple creative avenues for activism, and (2) because as an emerging field, queer criminology lacks the academic culture necessary to sustain the activism of queer criminologists, and as such that culture must first be built. Ball (2016) specifies that his goals are specifically short-term goals intended to lay the groundwork for future change.

Activist criminological research is research that assists victims and offenders and educates criminal justice actors, in an effort to “impact policy, help victims and offenders, provide agencies with better data, and allow research findings to be reported in ways that are validating to the experiences of those often disadvantaged by criminal justice processes” (Ball, 2016). Queer criminologists are already engaging in this kind of research, by engaging practitioners as well as community and activist groups. Dangers include the loss of objectivity due to researchers’ proximity to the subject matter, but if that’s the case, all queer criminology undertaken by LGBTQ-identifying academics, would be discounted. However, first-hand experiences are valuable, as shown in fields such as convict criminology. Queer criminology may even be considered a subfield of convict criminology, as many older queer people were incarcerated for their gender presentation

or consensual sexual activities. It's important to note that queer people commit non-gender or sexuality related crimes as well, and the concept of a queer offender must be broadened to incorporate these experiences as well.

“Building our research on the offending experiences of LGBTIQ people is clearly an important direction for queer criminological activism, as it helps us to understand the conditions that might lead LGBTIQ people to offend so that we might assist those who seek to alleviate those conditions, identify new targets for action, or respond appropriately to the unique contexts of queer lives” (Ball, 2016)

Queer activism can and should be present in the classroom, in order to shape the professional attitudes and worldviews of future criminal justice professionals. Without a criminal justice curriculum that challenges societal homophobia and anti-LGBTQ biases, the criminal justice actors of tomorrow may perpetuate the historical injustices faced by queer people in the criminal justice system. A curricula that encompasses positive queer views is essential in light of studies such as Ventura et al. (2004) that suggest that criminal justice students in particular have substantial levels of homophobia and other anti-LGBQ biases, moreso than the general population.

The reasons for a lack of queer education in criminology and criminal justice may be structural. Criminology still feels the effects of Woods' homosexual deviancy thesis that poses queer people as sexual deviants, with a continued resounding silence on the issues of sexuality and gender, while criminal justice practice, historically used to problematically regulate queer populations inform representations of queer people within the criminal justice system. These realities then shape the curriculum based upon them. Ways to combat this include establishing a separate critical course for the sake of depth, or else weaving critical viewpoints throughout the whole of the curriculum for the sake of breadth. It may prove easier for queer criminologists to

make use of the word “queer” as a verb, and queer other subjects throughout the curriculum, rather than trying to introduce new queer criminological courses. By so doing, queer perspectives are introduced alongside traditional (straight) ones, normalized, and well-integrated into the course so as to be more relatable and more palatable to students who may otherwise avoid courses on queer topics, and encourage them to take a more critical viewpoint towards themselves and their other material. That being said, there is always the danger of unwilling students, those students possibly creating an unsafe teaching environment for teaching staff, and a misunderstanding of the material through a prejudiced lens. Currently, academia is somewhat risk-averse to broaching these topics at all, beholden as it is to student evaluations and complaints, and queer criminological activism within a teaching context must be carefully employed.

Academic service is the last potential site of queer criminological activism that Ball (2016) covers, a sector which includes service in university administration, in the criminological discipline or profession, and in the community. Inclusion of queer scholars -- scholars who identify themselves as part of the LGBTQ community -- in positions within the discipline itself is a form of activism and challenging the discipline, particularly if those queer scholars hold leadership positions like members of editorial boards, professional association officers, heads of research teams, and grant holders. By integrating queer scholars into the discipline, diversity of the field begins to be embedded, and long-term change has a chance to begin by amplifying the say queer criminologists have in criminal justice policies, and giving queer communities better representation. The hope is that more active queer criminologists beget a more serious consideration of queer criminology, its concerns, and the queer community as a whole constituency, as the viewpoint becomes embedded in the field. It should be noted that the very

presence of criminologists who identify as LGBTQ would achieve this goal, regardless of whether their chosen field of study is queer criminology.

In order to do this, queer criminologists working in queer criminology must be recruited and retained. Many of the scholars who are active in queer criminology now are early in their career, which may serve as a barrier to this developing field because it is not necessarily a “safe” research path that will lead to tenure and job security for these scholars. In addition, queer activism in teaching ties back to the retention of queer criminologists - if potential LGBTQ scholars become discouraged by the perceived lack of future for them in this field, or the lack of positive representation of LGBTQ people, they may leave the field entirely. Queered curriculums that challenge anti-LGBTQ attitudes are necessary for LGBTQ students to finish their education and pursue further study, whether or not they go on to explore queer criminology. Queer criminologists may do well to follow the lead of African American criminologists, who have been taking the time to research the journeys of fellow African American criminologists in publication, representation, and leadership positions, in order to draw attention to where changes for the better could be made.

Ball (2016) cites Belknap (2015), who cites Bryan Stevenson to identify the central components of successful attempts at social and legal justice:

“...*proximity* to what we study, providing *narratives* about crime that are not driven by fear and anger, protecting our *hopefulness* so that we believe change can happen and we can be part of this change, and recognizing that making choices to advocate for justice and fairness often necessitate our own *uncomfortableness* in the process” (emphasis in original)

However, I argue that sometimes anger is necessary - anger at injustice, anger at inaction - and can be a productive motivational tool to get things done. Anger need not paralyze, but may drive instead.

Queer culture has a long history of political activism, and queer criminology should be no different, though their activism may take the form of education rather than protest. It's high time to queer academia in order to combat societal homophobia and bring ever more diverse perspectives into what has traditionally been a field informed by very narrow life experiences.

Conclusions

“Queer” is both an identity and a way of looking at the world, by breaking down conventional boundaries and understanding gender and sexuality in new ways. However, challenging boundaries often leads to the champions of those boundaries doubling down to protect them, a phenomenon exemplified by the way the criminal justice system seeks to police, prosecute, and punish any perceived transgressions of the social order in regards to sexuality and gender expression/identity. This area of criminal justice is understudied and undertheorized, but filling these gaps in the literature would benefit the field's understanding of intersectional concepts — how being queer interacts with other differences such as race, class, and age to produce a criminal or noncriminal outcome. Furthermore, academia can translate into activism, as is the tradition of queer culture. The future of the field is intersectional, and that means exploring all aspects of the human experience, to include gender and sexuality.

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**Political Dominoes: How People Shape the Government, the Government Shapes the Laws,
and the Laws Impact People's Lives**

Introduction

Within the criminal justice system, there are certain demographic groups that get the most attention, for one reason or another. The system was made by and for white men, so they get the first spotlight. In the last few decades, the disparities of the system have come to light, and as a result, Black and Hispanic men, particularly young men (Steffensmeier 1998) get the next spotlight, as do women. However, you'll notice that these categories are not all-encompassing, and with the rise of intersectionality, shining light on the understudied demographic groups and the role they play within the complex web of the system and society becomes more important than ever.

The LGBTQ+ (LGBTQ+ and queer will be used interchangeably in this paper) community is one of those understudied demographic groups for a variety of reasons: data on sexual orientation and gender identity is not typically collected in the same way data on gender, race, and age are, unless for a specific purpose; underreporting due to troubles with self-identification leading to stigma within the system; and a narrow conception of queer people and experiences limiting the research to be performed are just a few of them.

To the extent that LGBTQ+ populations are conceptualized within legal and criminal justice context, often the only research out there pertains to whether or not homosexuality is deviance in and of itself, the existence or repealing of sodomy laws, and hate crime victimization (Woods 2014a, 2014b, 2015, and 2017), three topics which cover only a small slice of the queer experience, and do not consider the intersection of being queer with other socioeconomic factors known to be linked to crime and already uniquely prevalent in the lives of queer people, factors such as being poor, homeless, unemployed, or discriminated against.

One way to study queer people and crime is to examine the legislation passed that specifically addresses LGBTQ+ issues, as the MAP report does (Movement Advancement Project 2021). This paper will analyze two lines of questioning, and how they lead into each other: how do state populations affect state governments, and how do state governments affect state legislation? The analysis will consider the whole picture of the queer experience, going beyond the criminal justice system by examining nondiscrimination laws and healthcare policies as well. By understanding the populace which elects the government and the government which passes laws, one can better understand the state climate and overall quality of life for a queer person in any given state.

Literature Review

In my previous paper on queer people in the criminal justice system, I discussed how historical criminology and criminal justice theories created a public perception of queer people as sexual deviants and predators, and how this public perception solidified into queer criminalizing archetypes, which in turn continue to inform the way criminal justice actors interact with the LGBTQ+ population. As Mogul et al (2012) write in their book *Queer (In)justice*, the effect of queer criminalizing archetypes is to “direct...not only the initial gaze, but also the subsequent interpretations and actions, of police, prosecutors, judges, juries, and prison authorities”.

In this way, individual experiences within the criminal justice system become patterns that are perpetuated at state level, and these patterns create more individual experiences, and perpetuating the queer criminalizing archetypes and going in a circle. The kind of theory that can be built on the experiences of queer people within the criminal justice system employ a form of inductive reasoning, wherein observations become patterns become hypothesis and theory.

One way to break this vicious cycle is to have more LGBTQ+ influence at a higher level, specifically in state legislatures, in order to disrupt the state-level proceedings. Reynolds (2013) explores exactly this concept, looking at a cross-national sample of LGBT legislators and their effects on their respective legislatures. The author found that “the presence of even a small number of openly gay legislators is associated significantly with the future passage of enhanced gay rights”, even after controlling for other factors, and that having openly gay legislators in office exerts a “transformative effect on the views and voting behavior of their straight colleagues”, also known as ‘familiarity through presence’ (Reynolds 2013). He cites previous studies with similar findings, such as Smith and Haider-Markel (2002) and Haider-Markel (2007), which found an association between increased LGBT representation and adoption of policies that benefit LGBTQ people. Though these studies have also found that LGBT people in public office also heighten a legislative backlash *against* gay rights, the studies concluded that the overall result was still net positive (Haider-Markel 2007).

Barring more representation, another angle to look at is existing state and local policies relating to sexual orientation in the United States, identifying trouble areas and working to fix them. Cramer et al (2016) studied sexual orientation nondiscrimination laws across the United States in order to understand the impact on public health, i.e. whether the known poorer health conditions and barriers to healthcare services of LGB (note that this study did not include transgender people, therefore only covering sexual orientation and not gender identity) individuals are a result of discriminatory public policies such as employment, housing, public accommodation, and recognition/prohibition of various forms of partnership (marriage, domestic partnerships, civil unions). They found regional variation in state laws, with the broad trends being the Northeast rating highest in addressing sexual orientation nondiscrimination across multiple

categories (notably prohibiting sexual orientation discrimination by all employers and in housing practices), the West rating highest in recognition of domestic partnerships, the Midwest rating highest in prohibition of same-sex marriage, and the South having the fewest laws about sexual orientation discrimination as a whole. Local governments were less likely than states to have laws prohibiting sexual orientation discrimination. Overall, it appeared that states were either all in - prohibited discrimination *and* recognized same-sex relationships, or did neither of these things.

In short, in order to make the criminal justice system more equitable for LGBTQ+ people, change must come from the inside out. More LGBTQ+ legislators must be voted into office, and more laws that benefit and protect LGBTQ+ people must be passed. The next question is how to make that happen.

Research Questions

The purpose of this paper is to examine how the people affect the government, and in turn how the government affects the legislation, specifically criminal justice, nondiscrimination, and healthcare-related laws. The following hypotheses break down that overarching goal into specific research questions.

Hypotheses

Population on Government:

1. Liberal-leaning states are more likely to have Democrat-controlled state governments.
 - a. Conservative-leaning states are more likely to have Republican-controlled state governments
2. Liberal-leaning states are more likely to have Democratic governors
 - a. Conservative-leaning states are more likely to have Republican governors
3. Liberal-leaning states are more likely to have LGBTQ+ legislators

- a. Conservative-leaning states are less likely to have LGBTQ+ legislators

Underlying Assumption: Populations are likely to elect governments that reflect their own political leanings and personal beliefs.

Government on Legislation:

- 4. Democratic-controlled governments are more likely to pass favorable LGBTQ+ laws
 - a. Republican-controlled governments are more likely to pass unfavorable LGBTQ+ laws
- 5. More LGBTQ+ legislators will correlate with more LGBTQ+ friendly laws (Reynolds 2013)

Underlying Assumption: Governments are likely to pass laws that reflect their own political leanings and personal or party beliefs. (Note: Though governor was included initially, it was determined that trifectas were a better measurement of the government as a whole, a determination which is later reflected in the data.)

Methods

The variables in this section were chosen to describe the two extremes of state governments, conservative and liberal, while intentionally cutting out the middle (moderate), in order to get a clearer picture of which political beliefs result in what kind of state governments and laws. In addition, there are also variables to describe the amount of LGBTQ+ people in the general populace as well as the government, and the extent to which state law protects or discriminates against them. Each variable is identified, described, and cited.

Variables

State (STATE): The following analysis will be conducted on a state level. As a result, the District of Columbia and various United States territories have been excluded from the data because they lack the state level government that is being analyzed in this paper.

Republican trifecta (RTRIFECT): Whether the state has a fully Republican government as of 2022. Government is defined as the governor, the house, and the senate (with the exception of Nebraska, which has a unicameral legislature). Therefore a fully Republican government would look like a Republican governor, backed by a Republican-controlled house, and a Republican-controlled senate. (Ballotpedia, “Partisan Composition of State Legislatures”, 2022)

Democratic trifecta (DTRIFECT): Whether the state has a fully Democratic government as of 2022, as defined in the variable above. (Ballotpedia 2022)

Governor (GOVNR): What party the governor belongs to. Since all states as of 2022 currently have either a Democratic or a Republican governor, no third party option was included. (Note: This variable is removed from later analyses in favor of using trifectas as a measure of overall governmental political leaning.) (Kaiser Family Foundation 2022)

Percent LGBTQ+ Legislators (PCQSTLEG): This figure was calculated by dividing the number of LGBTQ+ legislators (Victory Institute, “Out for America 2020”), by the number of total legislators (Ballotpedia, “Population Represented by State Legislators”, 2022) for each state.

Percent state population conservative (POPCCON): Percent of adults in the state who self-describe as conservative. (PEW Research, “Political Ideology by State 2014”)

Percent state population liberal (POPCLIB): Percent of adults in the state who self-describe as liberal. (PEW Research 2014)

Percent state adults LGBTQ+ (PCTLGBTQ+): Percent of adults in the state who self-describe as lesbian, gay, bisexual, transgender, or otherwise queer. (Movement Advancement Project (MAP), “LGBTQ Policy Spotlight: Mapping LGBTQ Equality 2010-2020”, citing Gallup 2019)

Averaged criminal justice tally (CJTALLY): The original sexual orientation (SO) criminal justice (CJ) tally and the gender identity (GI) criminal justice tally from the MAP report were highly correlated at .911, and statistically significant, so the two were averaged together to create this new variable. The criminal justice tally measured the presence or absence of hate crime laws that specifically apply to sexual orientation or gender identity, the presence or absence of various forms of HIV criminalization on the basis of sexual orientation or gender identity, and the prohibition of the gay or trans panic defense. The tallies could be either positive or negative, with positive meaning the state offers more protective and inclusive laws, and negative meaning the state offers little protection or incursion, and in some cases may be actively harming queer residents.

Averaged nondiscrimination tally (NDTALLY): The original SO nondiscrimination (ND) tally and the GI nondiscrimination tally from the MAP report were also highly correlated at .982 and statistically significant, so the two were averaged together to create a new variable. The nondiscrimination tally measured state laws prohibiting discrimination on the basis of sexual orientation or gender identity in employment, housing, public accommodations, credit, and state employees, as well as whether state law prohibits localities from passing their own nondiscrimination ordinances.

SO health tally (SOHEALTH): The MAP SO health tally was not highly correlated with the GI health tally, so was kept separate. This tally measured the presence or absence of state law prohibiting nondiscrimination on the basis of sexual orientation in private insurance. (MAP)

GI health tally (GIHEALTH): The MAP GI tally was not highly correlated with the SO health tally, and so was kept separate. This tally measured the presence or absence of state law prohibiting nondiscrimination on the basis of gender identity in private insurance, state prohibition of excluding trans-related care in health insurance, whether state Medicaid policy explicitly addresses trans coverage, and whether state employee health benefits explicitly address trans care. (MAP)

Descriptive Statistics

Data is harder to understand out of context, without a conceptualization of what constitutes a high, low, or average measure. In order to establish that context, descriptive statistics were run on both independent and dependent variables, the results of which are included in this section. The results were largely unsurprising, with the independent government- and people-oriented variables falling into the expected regional patterns, and gender identity healthcare being the most controversial dependent variable.

Descriptive Statistics for Independent Variables

	N	Minimum	Maximum	Mean	Std. Deviation
RTRIFECT	50	0	1	.46	.503
DTRIFECT	50	0	1	.28	.454
PCQSTLEG	51	0.0%	7.0%	2.151%	1.9261%
POPCCON	50	23.00%	50.00%	37.3600%	6.61711%
POPCLIB	50	12.00%	36.00%	23.1000%	5.36523%
PCTLGBTQ	50	2.7	5.6	4.102	.7204
Valid N (listwise)	50				

In terms of government, 24 states (46%) reported Republican trifectas, while 14 states (28%) reported Democratic trifectas. The remaining 12 states (26%) had a split government instead, wherein the governor is of a different political party than the majority of the legislature. Regarding the legislature, on one end of extremes were 9 states (17.6%) with no LGBTQ+ state senators. Those states are Alaska, Delaware, Hawaii, Kentucky, Louisiana, Mississippi, New Jersey, South Dakota, and Tennessee. On the other end, Colorado had the highest percentage of LGBTQ+ state senators, with 7% of their state legislators identifying as part of the community. Including Colorado, there were 7 states with 5.0% or more of their state legislators identifying as LGBTQ+: Arizona, California, Colorado, Nevada, Rhode Island, Vermont, and Washington.

As for the people, Massachusetts and Vermont had the highest percentage of citizens reporting liberal political values (35% and 36% respectively), while Alabama and Louisiana were tied for the highest percentage of citizens reporting conservative political values (50% for both). Conversely, the least conservative state was Massachusetts (23%), and the least liberal state was Alabama (12%). LGBTQ+ populations were highest in California, Massachusetts, Nevada, New York, Oregon, Vermont, and Washington, all of which have 5.0% or more of their citizens identifying as LGBTQ+. The lowest percent of the overall state population who identifies as LGBTQ+ is located in North Dakota.

The results of these descriptive statistics are unsurprising because they appear to follow popular conceptions about the political leanings of various regions and certain states. States in the West and Northeast tend to be more liberal, while states in the South and Midwest tend to be more conservative.

Descriptive Statistics for Dependent Variables

	N	Minimum	Maximum	Mean	Std. Deviation
CJTALLY	50	-1.00	2.00	.2825	.89029
NDTALLY	52	-1.00	4.50	2.0104	1.92641
SOHEALTHTALLY	52	.00	2.00	.9108	.63088
GIHEALTHTALLY	51	-1.50	4.50	1.4549	2.03366
Valid N (listwise)	50				

The scores for the Averaged Criminal Justice Tally ranged from -1.0 to +2.0, with 4 states at the low extreme and 5 states at the high extreme. On the low end were Arkansas, Indiana, Ohio, and South Dakota, while Connecticut, Hawaii, Maine, New York, and Rhode Island sat at the high end.

The Averaged Nondiscrimination Tally scores ranged from -1.0 to +4.5, with 2 states at the low extreme and 14 states on the high extreme. Arkansas and Tennessee both had scores of -1.0, while Colorado, Connecticut, Illinois, Iowa, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Rhode Island, Vermont, and Washington all scored a +4.5.

The Sexual Orientation Health Tally scores had the smallest range, running from .00 to +2.0, with no negative scores. Eight states had the lowest score of .00, being Alabama, Alaska, Idaho, Kansas, South Dakota, Tennessee, Utah, and Wyoming, while another 8 balanced them out with the highest score of +2.0, being California, Delaware, Hawaii, Illinois, Nevada, New York, Rhode Island, and Vermont.

The Gender Identity Health Tally scores have the distinction of being the most wide-ranging, from -1.5 to +4.50. Nebraska, Tennessee, and West Virginia had the lowest score of -1.50, while Hawaii, Massachusetts, and Rhode Island had the highest score of +4.50.

Similarly to the descriptive statistics run for the independent variables, the descriptive statistics for the dependent variables seem to run along party lines, with the more progressive states in the Northeast and West scoring higher and the more conservative states in the South and Midwest scoring lower. It's unsurprising that gender identity-related healthcare would have the

largest variation, as that's a highly controversial topic at the moment. Nondiscrimination has the second-largest variation, also unsurprisingly, as the fight for inclusion of sexual orientation and gender identity into nondiscrimination policies in the workplace and elsewhere is also highly controversial and documented. It's interesting that the sexual orientation health tally has the smallest range, and the one without any negative scores. This may be because it's harder to identify what "sexual orientation" healthcare looks like in comparison to trans healthcare, some states may not explicitly provide for it (particularly in a prohibitive or otherwise harmful fashion, referring to the lack of negative scores), or it could simply reflect the larger trend of gender identity improvements lagging behind sexual orientation improvements. Finally, the criminal justice tally seems to sit in the middle in terms of variation, indicating that the penalizing tendencies of low-scoring states (gay and trans panic, HIV criminalization) seem to balance out the more equitable policies (the prohibition of one or both) of the higher-scoring states.

Transformations

Some of the independent variables were so highly correlated, it made more sense to combine and average them than run them as two near-identical variables. The separate sexual orientation and gender identity criminal justice tallies were averaged together, as were the separate sexual orientation and gender identity nondiscrimination tally, creating the variables *averaged criminal justice tally (CJTALLY)* and *averaged nondiscrimination tally (NDTALLY)*.

The percent LGBTQ+ legislators was calculated by dividing the number of LGBTQ+ legislators (a number gleaned from Victory Institute's "Out for America 2020") by the number of total legislators (a number drawn from Ballotpedia's article "Population Represented by State Legislators"), and turning that number into a percent. The calculation was done for each state.

Analysis

This section will cover correlations between variables, and the conclusions that can be drawn from them. The independent variables section found that the political leaning of the state's *population* exerts more influence over the percentage of LGBTQ+ legislators than the political leaning of the state's *government*, queer people are more likely to live in states with Democratic trifectas or Democratic governors, and trifectas have more effect on the amount of LGBTQ+ legislators than governors alone, while the dependent section found that Democratic trifectas are the most consistent significant predictor of LGBTQ+ friendly laws.

Independent Variables

The independent variables analyzed in this paper describe each state in terms of population and government, operating under the assumption that the makeup of the government reflects the makeup of the population, and that the government will pass laws reflective of their own, and by extension the population's, beliefs, along party lines. The independent variables are listed below.

- Republican trifecta
- Democratic trifecta
- Republican governor
- Democratic governor
- Percent LGBTQ+ legislators
- Percent population conservative
- Percent population liberal
- Percent state adults LGBTQ+

Correlations between Independent Variables

Overall, this is a collection of highly-correlated independent variables, and these correlations are by and large unsurprising, as they follow the traditional party lines. For this section of analysis, rather than going through the correlations variable by variable, which would be repetitive due to the highly-correlated nature of the variables, the correlations will be discussed in groups: the people's effect on the government, the government's effect on the people, and inter-governmental effects.

		RTRIFECT	DTRIFECT	Republican Governor	Democratic Governor	PCQSTLEG	POPCCON	POPCLIB	PCTLGBTQ
RTRIFECT	Pearson Correlation	1	-.576**	.726**	-.726**	-.283*	.666**	-.599**	-.498**
	Sig. (2-tailed)		.000	.000	.000	.047	.000	.000	.000
	N	50	50	50	50	50	50	50	50
DTRIFECT	Pearson Correlation	-.576**	1	-.649**	.649**	.319*	-.633**	.483**	.573**
	Sig. (2-tailed)	.000		.000	.000	.024	.000	.000	.000
	N	50	50	50	50	50	50	50	50
Republican Governor	Pearson Correlation	.726**	-.649**	1	-1.000**	-.130	.389**	-.374**	-.323*
	Sig. (2-tailed)	.000	.000		.000	.370	.005	.007	.022
	N	50	50	50	50	50	50	50	50
Democratic Governor	Pearson Correlation	-.726**	.649**	-1.000**	1	.130	-.389**	.374**	.323*
	Sig. (2-tailed)	.000	.000	.000		.370	.005	.007	.022
	N	50	50	50	50	50	50	50	50
PCQSTLEG	Pearson Correlation	-.283*	.319*	-.130	.130	1	-.420**	.476**	.572**
	Sig. (2-tailed)	.047	.024	.370	.370		.002	.000	.000
	N	50	50	50	50	51	50	50	50
POPCCON	Pearson Correlation	.666**	-.633**	.389**	-.389**	-.420**	1	-.848**	-.722**
	Sig. (2-tailed)	.000	.000	.005	.005	.002		.000	.000
	N	50	50	50	50	50	50	50	50
POPCLIB	Pearson Correlation	-.599**	.483**	-.374**	.374**	.476**	-.848**	1	.686**
	Sig. (2-tailed)	.000	.000	.007	.007	.000	.000		.000
	N	50	50	50	50	50	50	50	50
PCTLGBTQ	Pearson Correlation	-.498**	.573**	-.323*	.323*	.572**	-.722**	.686**	1
	Sig. (2-tailed)	.000	.000	.022	.022	.000	.000	.000	
	N	50	50	50	50	50	50	50	50

** . Correlation is significant at the 0.01 level (2-tailed).

* . Correlation is significant at the 0.05 level (2-tailed).

People's Effect on Government. The political leaning of a state's population is moderately correlated with the presence of LGBTQ+ legislators at a statistically significant level. Liberal states have a Pearson's correlation of .686, and a statistical significance of .000, while conservative states have a Pearson's correlation of -.722 and a statistical significance of .000. Therefore, conservative states are slightly more unlikely to have LGBTQ+ legislators than liberal states are likely to have them.

Government's Effect on People. The percent of state adults LGBTQ+ is positively and correlated with Democratic trifectas (.573, moderate), Democratic governors (.323, weak to moderate), and percent LGBTQ+ legislators (.572, moderate) at statistically significant levels (.000, .022, and .000 respectively), while also negatively correlated with Republican trifectas (-.498, moderate) and Republican governors (-.323 weak to moderate), again at statistically significant levels (.000 and .022). Therefore, a state with a Democratic trifecta government or a Democratic governor is likely to have a larger queer population than a state with a Republican trifecta government or Republican governor.

Inter-governmental Effects. There is a correlation between the political leaning of the governor and the presence of a trifecta of either kind, In other words Democratic governors are moderately correlated with Democratic trifectas (.649, with statistical significance .000), and Republican governors are strongly correlated with Republican trifectas (Pearson's correlation of .726, with statistical significance .000). However, only the trifecta variable was correlated with percent of LGBTQ+ legislators to a statistically significant level; positively and in the case of Democratic trifectas (.319, weak to moderate, with a significance of .024), and negatively in the case of Republican trifectas (-.283, weak to moderate, with a significance of .047). The correlation between the governor's political affiliation and LGBTQ+ legislators was neither particularly

strong (Democratic governor has a Pearson's correlation of .130, while Republican governor has a Pearson's correlation of -.130), nor statistically significant (.370 for both).

To summarize, the political leaning of the state's *population* exerts more influence over the percentage of LGBTQ+ legislators than the political leaning of the state's *government*, queer people are more likely to live in states with Democratic trifectas or Democratic governors, and trifectas have more effect on the amount of LGBTQ+ legislators than governors alone. The first finding meets expectations because it follows that a) LGBTQ+ people tend to be more liberal, and that b) a more liberal state would elect more liberal legislators. The second finding is also unsurprising, given that Democratic policies have historically been friendlier towards queer people. The last finding also follows because a trifecta represents the governor and both houses, a sphere of influence that is much wider and more representative of the state's residents than a single governor.

A final note: from this correlation matrix the decision was made that trifectas represent a state's overall political climate better than the political leaning of the governor alone. Therefore, the governor variable was omitted from the dependent variable regression analyses.

Dependent Variables

The dependent variables analyzed in this paper focus on the laws that state governments pass, operating under the assumption that the laws that pass reflect the beliefs of the government, which in turn reflect the beliefs of the people, as described in the independent variables section above. The dependent variables are listed below.

- Averaged criminal justice tally
- Averaged nondiscrimination tally
- Sexual orientation health tally

- Gender identity health tally

Correlations between Dependent Variables

As with the independent variables, the dependent variables are also highly correlated with each other at statistically significant levels; all correlations are .5 or above (minimum .513 and maximum .848) and all significances are .000. This is a predictable correlation following the findings of Cramer and colleagues (2016); both sets of data show that states either have a myriad protections and provisions for LGBTQ+ populations or they have few to none at all.

		CJTALLY	NDTALLY	SOHEALTHTALLY	GIHEALTHTALLY	GIIDTALLY
CJTALLY	Pearson Correlation	1	.739**	.639**	.668**	.513**
	Sig. (2-tailed)		.000	.000	.000	.000
	N	50	50	50	50	50
NDTALLY	Pearson Correlation	.739**	1	.635**	.848**	.652**
	Sig. (2-tailed)	.000		.000	.000	.000
	N	50	52	52	50	50
SOHEALTHTALLY	Pearson Correlation	.639**	.635**	1	.734**	.482**
	Sig. (2-tailed)	.000	.000		.000	.000
	N	50	52	52	50	50
GIHEALTHTALLY	Pearson Correlation	.668**	.848**	.734**	1	.702**
	Sig. (2-tailed)	.000	.000	.000		.000
	N	50	50	50	51	50
GIIDTALLY	Pearson Correlation	.513**	.652**	.482**	.702**	1
	Sig. (2-tailed)	.000	.000	.000	.000	
	N	50	50	50	50	50

** . Correlation is significant at the 0.01 level (2-tailed).

Multivariate Analyses Predicting LGBTQ+ Legislation

Out of all the independent variables, Democratic trifecta was the most consistent predictor of high LGBTQ+ legislative tally scores, though Republican trifecta cropped up once to oppose

gender identity healthcare, and the effect of liberal and queer populations were not to be underestimated either.

Averaged Criminal Justice Tally. With a statistically significant (.000) 64.3% variance explained, the only significant predictor was Democratic trifecta, with a t-score of 4.260 and a significance of .000. Liberal population was approaching significance with a t-score of 1.769 and a significance of .084, but ultimately the government's effects were more important than that of the population.

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.802 ^a	.643	.593	.56763

a. Predictors: (Constant), PCTLGBTQ, RTRIFECT, PCQSTLEG, DTRIFECT, POPCLIB, POPCCON

Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
1 (Constant)	-1.326	1.812		-.732	.468
RTRIFECT	-.054	.226	-.031	-.240	.811
DTRIFECT	1.070	.251	.545	4.260	.000
POPCCON	.001	.028	.007	.035	.972
POPCLIB	.054	.030	.324	1.769	.084
PCQSTLEG	.031	.052	.069	.608	.546
PCTLGBTQ	-.003	.186	-.002	-.016	.987

a. Dependent Variable: CJTALLY

Averaged Nondiscrimination Tally. This variable had 76.7% variance explained, again at a statistically significant (.000) level. Both Democratic trifecta and a liberal population were significant predictors here, the former with a t-score of 3.139 and a significance of .003, and the

latter with a t-score of 3.058 and significance of .004. These predictors reflect the overall political climate of a state inclusive of both the government and the population, in nearly equal measure.

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.876 ^a	.767	.735	1.00506

a. Predictors: (Constant), PCTLGBTQ, RTRIFECT, PCQSTLEG, DTRIFECT, POPCLIB, POPCCON

Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
1 (Constant)	-1.292	3.209		-.403	.689
RTRIFECT	-.430	.401	-.111	-1.073	.289
DTRIFECT	1.396	.445	.324	3.139	.003
POPCCON	-.033	.049	-.112	-.668	.508
POPCLIB	.165	.054	.452	3.058	.004
PCQSTLEG	-.052	.092	-.052	-.567	.574
PCTLGBTQ	.170	.329	.063	.515	.609

a. Dependent Variable: NDTALLY

Sexual Orientation Health Tally. Fifty-five point three percent variance explained here at a statistically significant level (.000), and once again both government and population measures are the two significant predictors. Democratic trifecta has a t-score of 2.046 and a significance of .047, while percent LGBTQ+ has a t-score of 2.557 and significance of .014. This is the first time percent LGBTQ+ is a predictive variable, and it's even slightly more predictive than Democratic trifecta, showing that in this specific category, the minority population is slightly more impactful than the majority government.

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.779 ^a	.607	.553	.42922

a. Predictors: (Constant), PCTLGBTQ, RTRIFECT, PCQSTLEG, DTRIFECT, POPCLIB, POPCCON

Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
1 (Constant)	-.119	1.371		-.087	.931
RTRIFECT	-.071	.171	-.056	-.418	.678
DTRIFECT	.389	.190	.275	2.046	.047
POPCCON	-.013	.021	-.139	-.637	.528
POPCLIB	-.003	.023	-.024	-.123	.903
PCQSTLEG	.026	.039	.079	.664	.510
PCTLGBTQ	.360	.141	.404	2.557	.014

a. Dependent Variable: SOHEALTHTALLY

Gender Identity Health Tally. Despite the two health tallies being more or less similar in terms of political value and practice in the real world, the pattern changes for gender identity health tally in comparison to the sexual orientation health tally. Democratic trifecta is still a predictor, and positively correlated, as expected, with a t-score of -2.853 and a significance of .007, but for the first time the Republican trifecta variable is also a predictor, with a t-score of 2.116 and significance of .040. This is the first time that both of them are predictors, and they're diametrically opposed, which is again to be expected. Another interesting finding for this dependent variable is startling insignificance of the percent LGBTQ variable, with a t-score of .084 and a significance of .934, especially in comparison to the previous sexual orientation health tally. While percent LGBTQ+ was a predictor for the sexual orientation health tally, it exerts no independent effect on the gender identity health tally. However, overall, the findings for the gender identity health tally

are that government political leaning is still the dominant predictor for the legislation that gets passed.

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.851 ^a	.725	.687	1.14850

a. Predictors: (Constant), PCTLGBTQ, RTRIFECT, PCQSTLEG, DTRIFECT, POPCLIB, POPCCON

Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
1 (Constant)	3.627	3.667		.989	.328
RTRIFECT	-1.307	.458	-.321	-2.853	.007
DTRIFECT	1.075	.508	.238	2.116	.040
POPCCON	-.087	.056	-.280	-1.537	.132
POPCLIB	.053	.062	.138	.856	.397
PCQSTLEG	.019	.105	.018	.184	.855
PCTLGBTQ	.032	.376	.011	.084	.934

a. Dependent Variable: GIHEALTHTALLY

Hypotheses

For the most part, the hypotheses posited at the beginning of this paper were supported; these results were unsurprising, given that they follow region, state, and party lines.

Hypothesis 1: Liberal-leaning states are more likely to have Democrat-controlled governments.

Supported: There is a statistically significant and moderate positive correlation between liberal states and Democratic trifecta governments (Pearson correlation .483 with a significance of .000).

Hypothesis 1a: Conservative-leaning states are more likely to have Republican-controlled governments.

Supported: There is a statistically significant and moderate positive correlation between conservative states and Republican trifecta governments (Pearson correlation .666 with a significance of .000).

Hypothesis 2: Liberal-leaning states are more likely to have Democratic governors.

Somewhat Supported: There is a statistically significant yet only weak-to-moderate positive correlation between liberal states and Democratic governors (Pearson correlation .374 with a significance of .007), meaning that liberal states are only *slightly* more likely to have Democratic governors than non-liberal states. This finding lends credence to the assumption taken earlier in this paper that trifectas were a better measure of state government than governors alone.

Hypothesis 2a: Conservative-leaning states are more likely to have Republican governors.

Somewhat Supported: There is a statistically significant yet only weak-to-moderate positive correlation between conservative states and Republican governors (Pearson correlation .389 with a significance of .005), meaning that conservative states are only *slightly* more likely to have Republican governors than non-conservative states. This finding lends credence to the assumption taken earlier in this paper that trifectas were a better measure of state government than governors alone.

Hypothesis 3: Liberal-leaning states are more likely to have LGBTQ+ legislators.

Supported: There is a statistically significant and moderate positive correlation between liberal states and LGBTQ+ legislators (Pearson correlation .476 with a significance of .000).

Hypothesis 3a: Conservative-leaning states are less likely to have LGBTQ+ legislators.

Supported: There is a statistically significant and moderate negative correlation between conservative states and LGBTQ+ legislators (Pearson correlation -.420, with a significance of .002).

Hypothesis 4: Democrat-controlled governments are more likely to pass favorable LGBTQ+ laws.

Supported: The existence of a Democratic trifecta is a consistent predictor of queer-friendly laws across the categories of criminal justice, nondiscrimination, and healthcare, with statistically significant (ranging from .000 to .047) t-scores ranging from 2.046 (Sexual Orientation Health Tally) to 4.260 (Averaged Criminal Justice Tally). Sometimes the variable is the only significant predictor, as it was for criminal justice, but other times it works in tandem with other independent variables such as liberal populations (nondiscrimination), a high percentage of LGBTQ+ residents (sexual orientation health), or Republican trifectas (gender identity health).

Hypothesis 4a: Republican-controlled governments are more likely to pass unfavorable LGBTQ+ laws.

Mostly Refuted: Republican trifectas are only a significant predictor of the Gender Identity Health Tally, with which it is negatively correlated with a t-score of -2.853 and a significance of .007. It seems that the Republican trifecta only has a large influence (which may be read as turnout or rallying together as a group) when it comes to gender identity related healthcare legislation. As a variable, it works directly against the Democratic trifecta variable, which has a t-score of +2.116 and a significance of .040. Because it does not play a large part in any other measure of queer-friendly law, this hypothesis is barely supported and thereby mostly refuted.

Hypothesis 5: More LGBTQ+ legislators will correlate with more LGBTQ+ friendly laws.

Inconclusive: The effect of LGBTQ+ legislators on queer-friendly laws varies widely, with t-scores ranging from -.016 (Averaged Criminal Justice Tally) to 2.557 (Sexual Orientation Health Tally), but for the most part remains statistically insignificant. However, the outlier is for Sexual Orientation Health, with a t-score of 2.557 and a significance of .014. On this variable alone is the

percent of LGBTQ+ legislators significant, working in tandem with the Democratic trifecta variable. This finding refutes the findings of Reynold's (2013) study, the implications of which will be discussed in the next section.

Discussion

For the most part, the conclusions that can be drawn from this data are ones that can be drawn from a basic knowledge of political party viewpoints and regional trends along party lines. States with a higher self-identified liberal population are more likely to have Democratic-controlled governments, LGBTQ+ legislators, and positive or protective laws regarding queer people. States with a higher self-identified conservative population are more likely to have the opposite, Republican-controlled governments, fewer LGBTQ+ legislators, and fewer or actively harmful laws regarding queer people.

There were a few surprising results, however. In opposition to the findings of Reynolds (2013), this analysis found an inconclusive effect of LGBTQ+ legislators on the passage of queer-friendly laws. This may be an issue with measurement, or the effect of this study being limited to the United States while Reynolds (2013) conducted an international study. It would be interesting to see how the effects exerted in the United States compared to the effects exerted in other countries in Reynolds' (2013) study, for example, if the baseline was higher for the United States as compared to other countries, and so the overall net change was smaller. Another surprising result was that the only two times having a Republican trifecta was statistically significant was in opposition to gender identity healthcare, and in having a dearth of LGBTQ+ legislators. It seems that issues of gender identity and sexual orientation provide a rallying point for Republican-controlled governments, and that LGBTQ+ legislators may find a conservative-leaning populace unwelcoming at the polls.

In terms of hypothesis, the fact that trifectas were a more important predictor than the political affiliation of the governors was an interesting but sensible finding -- a trifecta reflects a unified view of a state's government as a whole (including the majority party in the state legislature), rather than the views of one person alone. Finally, it's refreshing to know that people truly do affect their governments at the voting box.

Limitations

These data were not collected over the same time period, but rather in 2014, 2019, 2020, and 2022. However, the trends over those years have appeared to remain the same, with the exception of New Hampshire becoming a Republican trifecta since 2020.

In addition, these data comprise states only and do not include United States territories such as the American Samoa, Guam, Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands. These places would be unable to be analyzed, since they do not possess a state government.

Finally, the data available are based on self identification in terms of political view, sexual orientation, and gender identity which may result in underreporting for safety, privacy, or other concerns.

The author made the informed decision that the above limitations were not sufficient to invalidate the data, analysis, or conclusions presented here.

Conclusion

The results of this analysis were unsurprising given knowledge of political party and regional trends. However, that is not to say that these data are without value just because they are "common sense". The preceding analysis has made the case for future research into LGBTQ+ people and criminal justice, LGBTQ+ people and law, because it has established empirically a real disparity in the way that certain states and types of governments treat LGBTQ+ populations.

LGBTQ+ populations exist throughout the whole of the United States, and so the fact that laws change from state to state is a national problem, not only a regional one. Given recent dialogue agitating for racial equality, it naturally follows that every demographic group should have a chance in the spotlight, for their rights to be recognized and made equal.

This analysis also shows the effects of governmental policy in people's everyday life. A queer person who moves from one state to another may suddenly find their medical care no longer covered under their insurance, or their relationship with their partner no longer recognized in the eyes of the law, further complicating already-fraught family and benefit matters. This is something nobody should ever have to go through when deciding something as simple as where to live.

Now that these disparities have been further brought to light, and the need for future research established, said future research should look into ways to rectify the legal situation, taking into consideration the fact that people exert influence over their own governments. Reynolds (2013) can also be built off of to examine the ways in which the government can change from within. Change *can* happen, and when it does, people will finally be able to live without fear of their rights being taken away if they dare to cross a state line.

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