

UC Irvine

UC Irvine Previously Published Works

Title

Sex Laws and Sexuality Rights in Comparative and Global Perspectives

Permalink

<https://escholarship.org/uc/item/8xh4f857>

Journal

Annual Review of Law and Social Science, 9(1)

ISSN

1550-3585

Authors

Frank, David John
Phillips, Nolan Edward

Publication Date

2013-11-03

DOI

10.1146/annurev-lawsocsci-102612-134007

Peer reviewed

Sex Laws and Sexuality Rights in Comparative and Global Perspectives

David John Frank and Nolan Edward Phillips

Department of Sociology, University of California, Irvine, California 92697;
email: frankd@uci.edu

Annu. Rev. Law Soc. Sci. 2013. 9:249–67

First published online as a Review in Advance on August 19, 2013

The *Annual Review of Law and Social Science* is online at <http://lawsocsci.annualreviews.org>

This article's doi:
10.1146/annurev-lawsocsci-102612-134007

Copyright © 2013 by Annual Reviews.
All rights reserved

Keywords

sexuality, law, human rights, globalization

Abstract

This article seeks to explain the emergence of a new field of study oriented toward sex laws and sexuality rights in comparative and global perspectives. We argue that this field comes into focus because of three changes in the social context: the introductions of sexuality into sex, of human rights into national laws, and of global into comparative perspectives. Each turn of the social kaleidoscope generates new objects of and rationales for scholarly analysis, along with new ways and reasons to think about existing objects of analysis. Together, these contextual changes inaugurate the global study of sexuality rights and invigorate the comparative study of sex laws. Theoretical shifts accompany the empirical developments. Phenomenological approaches arise alongside their realist counterparts. The consolidation of this new field of study is important not only on academic grounds: It suggests the dynamics of a wider field of policy and practice.

INTRODUCTION

The past decade has witnessed a sharp rise in scholarship on sex laws and sexuality rights in comparative and global perspectives. Matters once unspeakable, and even inconceivable, have entered the ivory tower. One may now, for example, publish a history of bestiality laws in Sweden (Rydström 2003) or write an article on the legal implications of Southeast Asian gonzo porn (Shimizu 2010). This was not always the case and reflects broader shifts in the social context.

In this article, we analyze and review the constitution of this new field of study, paying particular attention to its social foundations—that is, the conditions giving rise to its imagination and institutionalization—and the consequences thereof for the body of scholarship. Our core arguments are threefold, and we assert the following:

1. This is a field that was blocked and is only now emerging. There is still not much of an established literature, in any strict sense, to review.
2. This is a field that is emerging in response to interrelated changes in the wider social context: the infusions of sexuality into sex, of human rights into laws, and of global into comparative perspectives.
3. This is a field that reflects its social foundations. Each turn of the wheel reveals new objects and objectives of study and enlivens old objects and objectives. Thus emerge two overlapping empirical literatures: studies of sexuality rights in global perspective and studies of sex laws in comparative perspective, with loosely corresponding phenomenological and realist theoretical approaches.

Accordingly, our main contributions are to explain the rise and articulate the features of this new field of study. Along the way, we perform the conventional tasks of a review, assessing the existing literature and identifying its shortcomings and future possibilities.

BACKGROUND: AN INCIPIENT FIELD

Our first main argument is that the study of sex laws and sexuality rights in comparative and global perspectives was for a long time blocked and is only now coalescing into a coherent field of study. Indeed, we were surprised by the extent to which this was the case. When we began our review of the literature, we expected to find an old comparative literature on sex laws and a new global literature on sexuality rights. We were wrong. Both legs of the literature are quite new.

This owes to the fact that sex was off-limits to mainstream social scientists for most of the twentieth century, as it involved matters too prosaic, too private, and too taboo to warrant serious scholarly attention. One could analyze phenomena such as sex in the social structure (Parsons 1942) or sex in small groups (Kanter 1977), but the references were overwhelmingly to biological sex—a naturalized opposition between male and female—rather than to sex *per se*. When the scholarly spotlight did shine on sex, as in the work of Malinowski and Freud, it was kept at a safe distance, located in a far-away tribe or in the nether regions of the infant subconscious. Scholarly pursuits thus were hamstrung.

The small literature that flouted these general conventions focused far more on personal than legal issues, as seen in the landmark—and inflammatory—studies by Kinsey et al. (1948, 1953).¹ Unless the subject were deviants or psychopaths (Goldstein & Kant 1973, Sutherland 1950), sex and sexuality remained sequestered in private spaces—in bedrooms, under covers, and at confessionals (Giddens 1993). They hardly breached the sociolegal consciousness. Hence, the literature remained limited.

¹The Kinsey et al. books rank among the most controversial of the twentieth century. They caused public outrage and were widely denounced and banned. Reflecting back on the storm, Edward Laumann said, “People took their reputations in their hands if they attempted to pursue [sex research]” (quoted in CBS 2009). Even 40 years later, Laumann et al.’s (1994) follow-up study ignited a firestorm.

As the social strictures began to lift in the late 1960s and early 1970s, sex research stirred. But the early work tended overwhelmingly to have a domestic focus (e.g., Gagnon & Simon 1968). Comparative and global perspectives on sex or sexuality—much less on sex laws or sexuality rights—remained scarce. The data for such studies were difficult to collect, but more importantly, the rationales for conducting them were thin [see Hirschfeld 2000 (1914) for a dramatic early exception]. A handful of comparative studies broke the mold, but even these rarely extended their gazes beyond developed Western democracies (but see Findlay 1974, Smith 1974). The rest of the world remained shrouded.

From these obstructed beginnings, a field is now beginning to emerge. In the article that follows, we review the growing literature on sex laws and sexuality rights in comparative and global perspectives. As a first order of business, we define our terms to demarcate the boundaries around this developing field. We then seek to explain the emergence of the field in terms of the evolving social context. This helps us account for the literature's empirical and theoretical proclivities, and it suggests future research opportunities.

BOUNDING THE INCIPIENT FIELD

Given its emergent quality, the field of sex laws and sexuality rights in comparative and global perspectives is difficult to approach without articulating some working boundaries around it. We intend for our boundaries to be flexible enough to accommodate historical changes, yet firm enough to serve as useful heuristics. Although not everyone will agree with all our choices, most will agree that boundaries are necessary in order to proceed.

Sex and Sexuality

We focus on sexual acts and sexual identities—both what people do and who people are. We sidestep important and related matters.

In particular, we touch only lightly on the territories of reproduction and population. They encompass abortion laws (long associated with women's rights and sexual liberation), China's single-child and other population-control plans, the eugenics movement, and the antimiscegenation policies of various countries (see, e.g., Ramirez & McEneaney 1997, Mattar 2008 on abortion; Robinson 2011 on population). We also skirt the vast territory of gender, despite the close sociohistorical association between gender and sexuality (Richardson 2007). Thus, legal issues encompassing masculinity, femininity, and gender identity, whether they are conceived in traditional or contemporary terms, fall outside our domain despite their obvious importance and salience (see, e.g., Boyle 2002 on female genital cutting; Robson 2007 on transgender marriage).

Law and Rights

We concentrate our discussion on laws and rights guaranteed by the nation-state system. This means we largely exclude regulations emanating from other entities, including communities (e.g., customary law), religious bodies (e.g., canon law and sharia²), and organizations (e.g., workplace regulations). It also means we exclude a variety of informal social controls, such as stigmatization, ostracism, and wife burning. These auxiliary forms of regulation are powerful and significant (e.g., Allman et al. 2007), and we suspect they respond to the same societal transformations affecting laws guaranteed by the nation-state system (see, e.g., Ndulo 2011 on recent changes in customary law). But for the sake of manageability, we mostly bypass them in this article.

Comparative and Global Perspectives

For our purposes, comparative and global perspectives encompass everything from case

²See Mir-Hosseini's (2011) examination of the revival of *zina* laws, prohibiting nonmarital sex, with the resurgence of Islamic law, which articulates an approach to unify Islamic and human rights principles.

studies conducted outside of the United States to regional and cross-national analyses to studies focused on international law and global legal institutions. Although we include a few case studies of developed Western democracies, we do our best to counterbalance these with case studies that focus on other types of countries.³ We also include studies that embed sex laws and sexuality rights in regional and world economic processes (e.g., the role of global capitalism in facilitating sex tourism), regional and world political processes (e.g., the role of intergovernmental organizations in reforming prostitution laws), and regional and world cultural processes (e.g., the role of human rights in abolishing adultery regulations).

The emerging and expanding nature of the field has yet to produce firm boundaries. Therefore, we intend for those articulated above to help in our approach. We do not intend for them to set limits in stone: Alternative demarcations are certainly defensible.

THE EVOLVING CONTEXT: THE SOCIAL DETERMINANTS OF THE INCIPIENT FIELD

Following our first main argument that the study of sex laws and sexuality rights in comparative and global perspectives is only now coalescing into a coherent field of study, our second main argument is that the field emerges as a result of changes in the wider social context. Although a deep history of the causal factors involved is beyond the scope of this article, we see the changes as following from the reconstitution of society spurred by World War II. The war delegitimated models of society built around the particularistic blueprints of nation-state and family and legitimated models of society built around the universalistic blueprints of humankind and individual. We discuss the associated changes in terms of three simple pairings: sex and sexuality, laws and human rights, and

³We are limited in our ability to gather non-English sources, but we include multilingual works when possible.

comparative and global perspectives. Our general claim is that the construction of the second element in each pair fundamentally altered and energized the first. The attendant transformations established the social foundations of the emergent field. Below we contrast the act of sodomy with the gay identity to illustrate key differences between the twin elements.

Sex and Sexuality

Over the past half century, sexuality infused the realm of sex. Sexuality raced into public consciousness in the 1960s and 1970s as individuals replaced families as the compositional elements of imagined society. On the strength of sexuality's coattails, sex emerged from sequestration.

The differences between the two are stark. Sex is an act, typically conducted in private. It is evanescent, tied to a specific time and place. Traditionally, sex is defined in concrete relationship terms: What it is depends on whom it conjoins. For instance, vaginal intercourse between husband and wife is conjugal sex. The same act is fornication between the same persons before marriage. The same act is incest between the same husband and his sister, adultery between the same husband and his neighbor's wife, and statutory rape between the same husband and his neighbor's underage daughter. The selfsame act is defined in fundamentally different terms depending on the parties involved.⁴

Sexuality, by contrast, is an identity rather than an act, typically asserted in public rather than private. Sexuality is conceived to be an enduring characteristic of the individual self,

⁴The significance of relationship status in defining sex acts and laws has declined in recent years. It used to be true that a husband who coerced his wife into intercourse had not committed the crime of rape in many jurisdictions. This is the infamous marital-exclusion clause, which today applies in fewer and fewer jurisdictions (Adamo 1989). Similarly, it used to be true that an adult sister who had consensual intercourse with her adult brother had committed the crime of incest in many jurisdictions. This, too, is decreasingly true, although the trend is less striking than in the previous example (McDonnell 2004).

transcending the bounds of time and space, requiring neither action nor expression whatsoever. The heterosexual virgin, unrealized and aspirational, is no less a heterosexual.

The distinction between sex and sexuality is manifest in the distinction between the act of sodomy and the gay identity (Altman 2002, Boellstorff 2005). Although the two are associated in the public imagination, the terms of their association vary culturally and historically (Phua 2010), and neither is essential to the other. Their differences are highly salient in public health circles. Public health experts use the behaviorally determined category of MSM (men who have sex with men) in order to focus on acts rather than identities. HIV risk, obviously, depends on what one does rather than whom one is. But the effort to shift the focus from identity to act meets resistance. Other researchers criticize the MSM term for “obscur[ing] social dimensions of sexuality” and “undermin[ing] the self-labeling of lesbian, gay, and bisexual people” (Young & Meyer 2005, p. 1144). Hence, even the labeling of action is discredited because it denies individuals the opportunity to exercise agency over the definition of their own sexuality.

The expansion of sexuality in society is self-reinforcing. The legitimation of each new identity engenders others. Thus, the old gay center on campus morphs into the lesbian and gay center, and then the LGB center, and then the LGBT center, and then the LGBTQ center, and at some point the LGBTQI center, and now even the LGBTQQIAAP center (lesbian, gay, bisexual, transgendered, queer, questioning, intersex, asexual, allies, and pansexual) (Davis & Kennedy 1986, Grabham 2007, Hines 2009, Monro 2003, Scherrer 2008).

The dynamics of the domain extend legitimacy not only to new sexualities, but also to sex itself as private activities become associated with public identities (Foucault 1976).⁵ The advent of sexualities provides new ways and

new reasons to talk about sex, endowing them with public relevance. Thus a wide range of sexual matters long forbidden from polite conversation gain entrée into civic discourse. Gradually, the public discussion of sex rises above lewdness and prurience: Sex becomes publicly relevant in sexuality’s wake.

The social context, of course, shifts with these changes. The infusion of sexuality into sex both expands and animates the domain, establishing a requisite condition for the emergence of the literature on sex laws and sexuality rights in comparative and global perspectives.

Law and Human Rights

During roughly the same period, human rights bloomed alongside national laws, calling attention to both. Beginning with the 1948 Universal Declaration of Human Rights, the ascendant legal regime embodied the exploding legitimacy of universalistic and individuated models of human personhood in global institutions (Meyer et al. 2010, Somers & Roberts 2008).

Conventionally, laws are national in scope—both established and enforced by the nation-state. They are rooted in citizenship and establish rules and guidelines to regulate conduct. Many laws, especially criminal laws, set unwavering prohibitions. They delineate state controls over citizens’ bodies and behaviors. Laws, like sexual acts, are context specific. An act that is punishable by death in one jurisdiction (such as adultery in Saudi Arabia) may be altogether legal in another (such as adultery in Turkey).⁶

Human rights, by contrast, are global (or universal) in scope—both recognized and enforced by intergovernmental bodies. Human rights are rooted in nature, or the very fabric of personhood, rather than in citizenship. They

gay, sodomy laws come under attack because they putatively violate gay rights (Kane 2003, Waites 2010).

⁶There are also some big differences among the sex laws of the 50 US states. See, for example, Bienen (1998) on the treatment of incest and Decker & Baroni (2011) on the issue of consent in US rape laws.

⁵The process is well illustrated by the association of sodomy with gays. Despite the fact, stressed above, that there is no inherent relationship between committing sodomy and being

articulate principles of individual freedom and entitlement. Instead of setting prohibitions, they provide protections. Instead of being imposed by states, they are bestowed upon individuals and granted regardless of citizenship. Human rights weave a comprehensive legal cocoon around individuals, protecting them from persecution and guaranteeing them just treatment on an encompassing basis (Donnelly 2003). Human rights, like sexual identities, transcend context.

As above, the relationship between national laws and human rights can be illustrated by contrasting the act of sodomy with the gay identity. Sodomy laws exist within the prohibitive legal structure of the nation-state, which historically criminalizes acts of unnatural (i.e., nonvaginal) intercourse for violating the procreation imperative (Frank et al. 2010). Gay rights, by contrast, are embedded within the validating legal structure of the global human-rights regime, which authorizes sexualities because they are housed within the institutionalized structure of the individual person (Lopes 2005). As gay rights are recognized and sodomy laws repealed, the confining dimensions of law—its national limits and orientation on social control—are questioned by the legitimizing and distinctly global dimensions of human rights (Donnelly 2003, Ripoll 2009, Tsutsui 2006).

Like sexual identities, human rights tend to be self-propagating, with the institutionalization of one leading to the imagination of others. Consider the expansive language of Article 26 of the International Covenant on Civil and Political Rights:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (UNGA 1966, emphasis added)

Once it is established, for example, that individuals have a human right to asylum based on their political or religious convictions, it is only a short distance to claiming that individuals also have a human right to asylum based on their sexual identities (Frank 2012a, Goodman 2012, Hathaway & Pobjoy 2012). Expansionist tendencies are built into the system.

The key point in all of this is that the emergence of human rights—their imagination and institutionalization—galvanizes the realm of national laws, for scholars and the wider society alike. Long-standing nation-state prohibitions come alive under the new yardstick of universal freedom and justice as the national prohibitions confront the international protections (Boyle & Meyer 1998, Halliday & Osinsky 2006). Even the groups fighting for national recognition do so in universalistic terms with direct reference to their fundamental human rights.

Naturally, the social context shifts with these changes. A new domain of human rights arises and stirs life into the old domain of national (and subnational) laws, establishing a critical condition for the emergence of the field of sex laws and sexuality rights in comparative and global perspectives.

Comparative and Global Perspectives

As sexuality permeated and quickened the realm of sex and as human rights did the same to national laws, so also did global perspectives permeate and quicken comparative perspectives. The seemingly natural association between society and the nation-state increasingly gave way to more unified conceptions of humankind in the wake of cataclysms such as World War II and breakthroughs such as the lunar landing (Robertson 1992, Wimmer & Schiller 2002). The increasing density of global interrelations and the increasing ease of interactions helped attenuate the seemingly intractable boundaries around the nation-state and helped engender a vastly enriched sense of humankind. In the process, the constituent units of comparative

studies—nation-states—hardly lost their relevance, but they found themselves rooted in worldwide soils.

Comparative perspectives typically highlight differences between two or more discrete countries. They tend to assume that each given nation-state is a natural and autonomous object, independent of wider sociocultural embeddings. They typically set out to explain distinctions between rather than similarities among.

Global perspectives, by contrast, typically highlight the shared attributes of nation-states. They tend to assume that any given country is deeply ingrained in broader contexts, affected by global processes or even constituted around global models (Meyer et al. 1997). They typically set out to explain similarities among rather than distinctions between.

As above, key differences between the comparative and global perspectives may be highlighted by contrasting the transitory act of sodomy with the lasting gay identity. The regulatory framework for sodomy consists of domestic laws, which may or may not criminalize the deed (BBC 2012, Cheney 2012, Frederick 2002, Sadgrove et al. 2012). The differences are critical. A comparative perspective directly addresses them. The regulatory framework for gay consists of international rights, which may or may not be respected (Franke 2013). The common standard—protected by intergovernmental and international nongovernmental organizations, such as the United Nations Human Rights Council and the International Lesbian and Gay Association—is critical. A global perspective directly addresses it.

Like sexuality and human rights, global perspectives have self-fortifying properties. As each brick is added to the edifice, other bricks are forged in the fire. For example, the construction of a global gaze (and associated surveillance system) on child pornography (Akdeniz 2008) leads rather naturally, if not always convincingly, to a global gaze on sex trafficking (Dillon 2008, Smith-Cannoy & Smith 2012, Van der Pijl et al. 2011). Organizationally and culturally, one begets another.

The important point here is that the realization of global perspectives breathes life into comparative perspectives. As the former arise—extending historically anachronistic claims of nation-state correspondence and shared human community—the value of comparisons rises accordingly. Global perspectives supply new and compelling rationales for conducting comparative studies, and thus the global energizes the comparative.

The vitalization of comparative perspectives with global perspectives represents a culminating turn of the social kaleidoscope that catalyzes the nascent literature on sex and sexuality in comparative and global perspectives. Changes in the social context bring about changes in scholarly texts. We now spell out the implications of these shifts for the research literature.

FROM CONTEXT TO TEXT: CONSEQUENCES FOR SCHOLARSHIP

Our first two arguments assert that the field of sex laws and sexuality rights in comparative and global perspectives was previously blocked and is only now materializing due to broader societal transformations that were ushered in by the advent of individualism and universalism. Our third major argument is that these contextual changes give rise to the field. Each turn of the social wheel reveals new objects and objectives of study, while at the same time enlivening old ones.

Sexuality and Sex

The rise of sexuality and the reconstitution of sex supplied scholars with new objects of study and new rationales for studying them. Thus, the changing social context spurred the rise of new and rapidly expanding literatures.

The rise of sexuality involves an initial process of ontological elaboration—the constitution of new social objects. One thinks most obviously of the parade of sexual orientations

from the closet.⁷ The march is not always smooth, but it proceeds apace, most recently adding questioning, ally, and pansexual, among others, to the sexualities acronym, LGBTQIAAP (Bell & Binnie 2000, Richardson 2000, Stychin 2001b, Stychin 2004). Once-unacknowledged groups, buried in the social fabric, burst forth into scholarly consciousness.

Cycles of rationalization—establishing reasoned interconnection—follow thereafter. The first spins out interrelationships among the new social objects—the sexualities. This cycle calls attention, for example, to hate crimes (Wells & Polders 2006, Willis 2004) and school bullying (Smith et al. 1999) on the basis of sexual orientation.⁸ These behaviors—for a long time routine in social relations—suddenly acquire deeply problematic connotations, as the oppression of minority by majority groups. They call for academic analysis.

A second cycle of rationalization draws interconnections among the new social objects and existing social structures. This calls attention, for example, to sexuality in the workplace, including employment discrimination (Waldijk & Bonini-Baraldi 2006) and sexual harassment, which emerged in the mid-1970s to refer to unwelcome sexual advances, requests for favors, and other verbal or physical bullying or coercion of a sexual nature. Sexual harassment usually involves a superior's behaviors toward a subordinate (Saguy 2000, Zippel 2004). Of course, the idea of sexual harassment remained for centuries submerged in patterns of patriarchy and culture. The rationalization of sexuality brought such matters into view.

A final cycle of rationalization reveals how the new social objects relate to existing objects

in their host territory—in this case, the territory of sex. We argued above that sexuality reconstitutes sex, providing new ways and new reasons to think about sexual activities. Strikingly, for example, sexuality transforms sex from a procreative activity, tied to the family, into an expressive activity, tied to the individual self (Rye & Meaney 2007), which in turn generates a cascade of reforms in criminal sex laws (Frank et al. 2010). All of this cultural work spikes interest among scholars.

The core point here is that the infusion of sexuality into sex generates new objects and objectives of study. It spurs the opening of scholarly fields.

Rights and Laws

Entwined with the processes above, the ascent of human rights and the subsequent reimagination of national laws opened rich, new scholarly fields. The changing social context animated the literature.

The ascent of human rights, like that of sexuality, begins with ontological elaboration. A new class of moral principles is envisioned and consecrated: “the equal and inalienable rights of all members of the human family” (UNGA 1948). These principles formalize and legitimate many everyday standards of fairness and goodness and also institute new ones, and in so doing, they invite scholarly scrutiny.

Thereafter follows the tripartite rationalization. First, the new moral principles are interrelated. When the right to freedom from discrimination meets the right to equality before the law, for example, a protoright to freedom from discrimination on the grounds of sexual orientation arises. When the right to security of person meets the right to asylum for persons who would be threatened if they returned home because of their membership in a special group, a protoright to asylum on the basis of sexual orientation is born (Fullerton 1993, UN High Comm. 2011). The new interconnections open new social and scholarly spaces.

Second, the new moral principles are then appended to existing social structures. When

⁷The imagery of the closet overessentializes sexual identities and disregards the extent to which they are contingent features of space and time. For example, in the South Korean context, “homosexuality is intertwined with the complex historical contexts of Korean sexuality, which has not been the subject of widespread conscious exploration and reflection” (Dong-Jin 2001, p. 66).

⁸According to the watchdog organization Bully Police, 49 of the 50 US states have passed antibullying legislation since 1999.

new human rights standards encounter the old institution of marriage, for instance, their union suggests a right to same-sex marriage (Kollman 2007, Stychin 2001a, Waaldijk 2005). When new human rights standards encounter established family reunification policies, their union suggests a right to same-sex family reunification (Simmons 2008, Stychin 2000). The process generates new scholarly vistas.

Third, and finally, the new moral principles are conjoined with objects in their host territory—in this case, national laws. Through the lens of human rights, for example, sodomy laws may be reimagined as violations of gay rights (Hollander 2009, Kane 2003). Through the lens of human rights, age-of-consent laws—intended to protect children from sexual exploitation—may be reinterpreted as violations of youth rights to sexual freedom (Graupner 2005). Through the lens of human rights, prostitution laws may be reconceived as interfering with women’s (and men’s) right to work (Bernstein 2007, McCarthy et al. 2012, Outshoorn 2004, Wojcicki 2003). Each intersection between new human rights and old national laws produces opportunities for scholarly analysis.

The essential point here is that the proliferation and institutionalization of human rights and the subsequent reconstitution of national laws transform the scholarly landscape. Thus, societal transformations produce new possibilities for academic work.

Global and Comparative Perspectives

Combined with the foregoing changes, the intensification of global perspectives and the subsequent reformation of comparative perspectives produced new issues and justifications for scholarly analyses. The evolving social context revealed pathways to new scholarly fields.

At the outset, the rise of global perspectives involves ontological elaboration—the social construction of new entities and processes. The world itself is imagined as a unified entity, and the people who inhabit it are imagined in universalistic terms, as representing a single species

and inhabiting a shared moral community (Robertson 1992). A world culture, polity, and economy all surge into being (Boli & Thomas 1999). Global flows of humans come to light, along with global flows of sexually transmitted diseases (Fidler 1996). Previously unrecognized realities take form and demand scholarly notice.

Three rounds of rationalization follow ontological elaboration. The first unwinds interrelationships among the newly constituted global entities and processes. When global capitalism meets global migration and travel, for example, one finds human trafficking for sexual purposes (Cree 2008, Smith 2011) and international sex tourism (Cabezas 2004, Pruitt & LaFont 1995, Taylor 2006). When migrant sex workers meet the shared moral community, one finds, for example, international sex worker’s rights (Ditmore & Saunders 1998, Kempadoo 2004). These intersections produce materials for academic examination.

The next round of rationalization sees the new global perspectives tied into existing social structures. It is at these junctures that one observes the productive clash of global and local institutions, for instance regarding so-called sex work (Piscitelli 2007, Swidler & Watkins 2007) or so-called gays and lesbians. In regards to the latter, Massad (2002, p. 363) argues that in the Arab context, “it is the discourse of the Gay International that both produces homosexuals, as well as gays and lesbians, where they do not exist, and represses same-sex desires and practices that refuse to be assimilated into its sexual epistemology.” These are fruitful junctures for scholarly picking.

Finally, the third round of rationalization intertwines the new global perspectives with their comparative hosts. Comparative studies retain their richness and detail, but they gain broader resonance—as instances of more general processes. Placed on a global platform, a comparative study of wartime rape in Bosnia and Rwanda, for example, reverberates with general repercussions for the study of sexual violence during war (Smith & Smith 2011, Vito et al. 2009, Weitsman 2008). Likewise, set in a global

echo chamber, a comparative study of mandatory reporting laws in Australia, the United Kingdom, and the United States carries wide-ranging implications for the study of policies requiring specified persons to inform authorities of suspected child abuse (Bell & Tooman 1994). The global reenvisioning of comparative studies unlocks the door to scholarly treasures.

The key argument here is that the infusion of global into comparative perspectives constitutes new objects and objectives of study. Thus, transformations in the wider social context spur the opening of new scholarly possibilities that examine the construction of new social possibilities.

Empirical Bodies

Taken together, the changes described above generate two overlapping bodies of empirical literature: one focused on sexuality rights in global perspective and the other focused on sex laws in comparative perspective. We review these in turn.

The advent of sexual identities spurs a plethora of studies to examine the localized constructions of those sexualities. These studies frequently find disconnects in how sexualities are conceived (Phua 2010), stemming from the fact that global, or Western, conceptualizations do not align with all local conceptualizations (Altman 1997).⁹ The disconnections that emerge from the divergent constructions have real consequences for groups claiming rights. For example, De la Dehesa (2010) performs a deep analysis of LGBT activists in Mexico and Brazil and finds that groups in each country utilize different tactics and form different coalitions to appeal for similar sexual rights,

for example, antidiscrimination laws and the recognition of same-sex partnerships.

The cases of Brazil and Mexico speak to the difficulties of and differences that manifest in extending sexual rights. Some scholars posit that the more global legal norms intersect with local legal institutions and cultural beliefs, the greater the potential for conflict between the two (Halliday & Osinsky 2006). According to Saiz (2004), the potential for conflict leads to the bracketing of sexuality from particular UN forums despite the large strides made overall on issues linked with sexuality. Moreover, these potential conflicts and the resulting disparate extensions of sexuality rights cultivate a fertile field for academic inquiries.

However, this field is still emerging as more and more rights extend to extant and nascent sexualities. Richardson (2000, p. 128) succinctly describes the inchoate nature of the field by stating, "There is no common or universal agreement about what the term 'sexual rights' might mean." Thus, scholars examine sexual rights as they emerge, such as in the contexts of same-sex unions and marriages (Kollman 2007), asylum and refugee status (Fullerton 1993), citizenship (Bell & Binnie 2000), people living with disabilities (Schaaf 2011), and parental rights (Polikoff 2000). A key point for all these studies is that their objects of analysis did not exist until recently: They were only recently constituted by transformations in society.

The field is replete with studies on same-sex unions or marriages. Some researchers focus on the impact of religious influence (or secularization) and global cultural linkages on the legal status that countries confer to same-sex unions (Fernandez & Lutter 2013, Kollman 2007). Others find urbanism, wealth, and education level to be significant factors in explaining the adoption of same-sex union or marriage rights in the European Union (Barnett & Saitta 2011). A case study on the adoption of a same-sex marriage bill in Canada asserts that a "normalizing love discourse" alters the view of marriage, such that heterosexual and homosexual love are treated as legal equals (Osterlund 2009). Focusing on the other side of the conflict,

⁹In a similar vein, researchers examine the historical developments of localized sexualities and related issues in reference to the global. For example, Findlay (1999) analyzes the shifts in these aspects for Puerto Rico through the transition from Spanish to American colonialism, and Tamang (2002) examines constructions of citizenship and gender in Nepal under the influence of modernization.

Soule (2004) finds that prior policy environments, citizen ideology, and the presence of interest groups from both sides influence the enactment of same-sex marriage bans in the United States.

Similarly, scholars pay great attention to sexual citizenship, both independent of and together with same-sex unions. Following prior examinations of sexual citizenship for gays and the subsequent extensions of rights to more sexualities, scholars scrutinize the expansion and construction of citizenship rights to transgender (Sharpe 2002) and intersex (Grabham 2007) persons. The enactment of family unification policies for same-sex couples creates another topic for scholarly investigation (Simmons 2008). Moreover, the legitimization of same-sex unions produces an explosion of familial rights that academics quickly seek to understand. Now research can examine a wide range of issues that include access to and experiences with health care systems (McNair et al. 2008, Shields et al. 2012), transgender family rights (Sabatello 2011), and inheritance along with custody rights (Robson 2007).

In short, one big segment of the empirical literature follows, and attempts to explicate, the elaboration of sexuality rights in global perspective. A companion segment studies sex laws in comparative perspective, though increasingly through the lens of global sexuality rights, which indicates and represents the transformations in society. Searches using Google Scholar for terms within the comparative sex-laws literature find that about 30% of the articles refer to “rape” and 20% to “prostitution,” whereas “adultery” and “fornication” appear in only approximately 14% and 4% of the articles, respectively.¹⁰ Moreover, signaling the shifting foci in the literature, “sodomy” appears in merely 7% of the literature, whereas “gay” and “homosexual” appear 35% and 30% of the time. The percentages indicate the

¹⁰These percentages are not mutually exclusive, so an article or book may refer to more than one relevant topic.

literature’s concentration on issues imbued with or examined through human rights.

The recent development of more comprehensive data sets enables broader approaches to sex-law analyses. The dearth and difficulty in collecting the requisite data previously impeded the development of the literature and narrowed the countries available for comparative studies primarily to developed democracies (Frank 2012b, Mackay 2001).¹¹ Interest in such studies is elevated with the reconstitution of the subject matter and the ability for broader comparisons.

Sex laws are reanimated as they are viewed through the socially constructed kaleidoscope of sexuality rights in global perspective. The kaleidoscope uncovers women’s rights in rape laws (Ajzenstadt & Steinberg 2001, Frank et al. 2009), adultery regulations (Al-Hibri 2000), and restrictions of sex work and sex trafficking (Ditmore & Saunders 1998). Children’s rights reconstruct our understandings of statutory rape and age of consent laws (Graupner 2000). Gay rights transform our views of sodomy bans (Asal et al. 2013, Frank & McEneaney 1999) and persons living with HIV¹² (Altman 2008). None of the issues are new per se; rather, global human rights offers new approaches to preexisting subjects.

The “discovery” of prostitutes’ rights positions sex work and sex trafficking in diametrical opposition. From one side, sex work strips the latent moral judgments from prostitution and confers agency on sex workers by stressing their freedom of choice and autonomy over their

¹¹Just as there are now broad considerations of laws and rights, so also are there broad considerations of behaviors and attitudes. Researchers examine sexual behaviors cross-nationally (Wellings et al. 2006) and in previously closed settings, such as Iran (Mahdavi 2009). Moreover, scholars analyze cross-national attitudes toward premarital, extramarital, teen, and homosexual sex (Widmer et al. 1998); countries’ divergent perspectives on adolescent behaviors in relation to sex (Nieto 2004); and even the subjective sexual well-being of older men and women cross-nationally (Laumann et al. 2006).

¹²The establishment of individuals’ right to health now requires countries to provide antiretroviral treatment for refugees and migrants (Amon & Todrys 2009).

bodies (Kempadoo & Doezema 1998). In fact, the human rights framework is used to justify the decriminalization of sex work (Wojcicki 2003). Research from this perspective focuses on how the workers view and interpret their own participation in the sex trade (Agustín 2005, Piscitelli 2007). From the other side, sex trafficking views prostitution as a contemporary form of slavery, violating women's rights and requiring greater international efforts toward eradication (Androff 2010, Cree 2008, Hubbard et al. 2008). There are unequivocal differences in the voluntary versus coerced participation between the two. However, the fact that both constructs arise from the same process demonstrates that the reexamination of older issues does not necessarily create congruent constructions.¹³

Furthermore, countries' policies for curbing the spread of HIV/AIDS come under scrutiny after people living with HIV are conferred human rights. Travel restrictions on entry, stay, and residence for HIV-positive individuals are no longer viewed as effective or responsible public health measures; they have become human rights violations (Amon & Todrys 2008). The same is true of laws requiring people infected with HIV to disclose their HIV-positive status to their sexual partners (Hoppe 2013). Thus, the human rights lens fundamentally alters the accepted practice to the point of delegitimacy, and new ways to study HIV policies emerge.

The rise of sexuality rights in global perspective invigorates the study of sex laws in comparative perspective by establishing new approaches to the raw materials and new rationales for studying them. Thus, the shifts in society produce a plethora of possibilities for schol-

ars to pursue by examining established topics as well as nascent ones.

Corresponding Theoretical Bodies

Just as the literature coalesces into two overlapping empirical bodies, so also does it coalesce into two overlapping theoretical bodies, and the two roughly—though we stress only roughly—correspond. Global studies of sexuality rights tend to fall nearer to the phenomenological end of the theoretical spectrum, and comparative studies of sex laws tend to fall nearer to the realist end (Meyer et al. 1997). We explain below.

Studies of sexuality rights in global perspective generally lean in the phenomenological direction, prioritizing meanings and models over actors and interests. They approach “actors” and “interests”—or in our case, “sexualities” and “rights”—as socially constructed phenomena, dependent on cultural and organizational structures for their very existence. The phenomenological tendency derives, at least in part, from the fact that sexualities and human rights are exploding into social consciousness before our eyes. Thus, the author of a 2005 study entitles his piece, “Is zoophilia a sexual orientation?” (Miletski 2005). The question is not settled; the answer is not known. Likewise, the author of a 2008 piece highlights sharp dissensus over the implications of international human rights law for sexual freedoms and sexual identities. Although some matters are fairly settled (such as the right to consensual, adult, private intercourse), other matters are certainly not (such as equal rights to nondiscrimination in employment) (Fellmeth 2008). Amid such cultural ferment, a hard-line realist theoretical approach is itself unrealistic because it is unable to account for the interpretive constituting processes.

To illustrate the inclination of global studies of sexuality rights toward the phenomenological, consider a characteristic piece that analyzes the diffusion of same-sex union rights in Europe between 1988 and 2009 (Fernandez & Lutter 2013; see also Sáez 2011). The authors

¹³The advent of female sex tourism blurs the distinctions, as research focuses on the meaning men attach to the sex work (Herold et al. 2001, Pruitt & LaFont 1995, Taylor 2006). The fundamental distinction of coercion remains salient, but economic inequality receives greater attention because patriarchy is no longer relevant. Overall, male sex work is an understudied phenomenon in the literature and garners far less attention than female sex work.

approach sexual rights not as natural or established facts—they clearly are neither—but as cultural claims or models. The question at the heart of the piece concerns the adoption of the model. One key factor is the ever-expanding global human rights regime (Risse et al. 1999).

Of course as models are more widely adopted, they grow increasingly institutionalized—built into cultural and organizational landscapes. Apparatuses of law (such as the 2006 Yogyakarta Principles, which apply international human rights law to sexual orientation), structures of medicine (such as the discovery of the so-called gay gene), and machineries of commerce (such as the multibillion dollar pornography industry) all are made and assembled. As it all happens, gelatinous models harden into everyday facts. “Actors” and “interests” become actors and interests. “Sexualities” and “rights” become sexualities and rights. The elaborating social fabric enables the recognition of previously unnoticed discriminations and inequalities (Higdon 2008). Realist theoretical accounts begin to make sense because they explain the operation of socially constructed facts.

The processes give rise to a loose body of comparative studies of sex laws with a realist edge. They feature actors, such as social movements, that pursue their interests, such as legislative reforms. One characteristic study, of the so-called gay rights clause in the South African Constitution, is drenched in realist imageries (though not comparative). The study features a movement with strategic alliances, mobilization, master narratives, and effective lobbying during the constitution-making process (Cock 2003; see also Caballero 2011, De la Dehesa 2010). Such accounts imagine real people making real differences in the real world, ignoring their socially constructed origins.

To summarize, we see the current literature falling into two loose theoretical camps, which roughly correspond with its two empirical camps, although there is substantial blending. Global studies of sexuality rights tend to be more phenomenological—focusing on the

rules of the game. Comparative studies of sex laws tend to be more realist—focusing on the winners and the losers.

CONCLUSION

The surprising finding here—surprising to us, at least—is the following. When we set out to examine the literature on sex laws and sexuality rights in comparative and global perspectives, we expected to find an older and established literature consisting of comparative studies of sex laws and a newer and emergent literature consisting of global studies of sexuality rights. We were wrong. The older literature does not exist. There never were (many) comparative studies of sex laws until global studies of sexuality rights offered them legitimacy and salience. Our expectations thus were overturned: They took for granted the legitimacy sexualities have achieved.

The extension of this legitimacy remains to be explored fully. The current literature largely clusters on hot topics such as human trafficking or sex work, same sex unions or marriages, and sexual citizenship. The field would benefit from scholarly work pursuing the topics that receive less attention—because they are taken for granted (straight rights), because they are stigmatized (pedophile rights), or because they are not ontologically elaborated (intersex rights). This would illuminate the current limits of the human rights regime. As the scope of human rights expands, our academic pursuits must follow.

One implicit theme in much of the foregoing warrants explicit mention. The changes in social context that we deem central are not only relevant for the rise of a scholarly field; they are also highly relevant for the rise of new models for state policy and individual practice (e.g., González-López 2005, Kalra & Bhugra 2010, Wellings et al. 2006, Widmer et al. 1998). The global versus local constructions of sexualities and their appended rights generate problems analogous to fitting square pegs into round holes. For example, an individual may be denied

asylum for failing to match a Western template of a particular sexuality (Millbank 2009). The construction of homonormative models should be as circumspect as heteronormative models because the global experiences exhibit and engender expansive differences.

Of course, this is still an emerging field. Huge numbers of issues remain to be “discovered” so that they can then be examined. The social kaleidoscope continues turning, after all, revealing new patterns and sequences. We expect that the literature will follow the turns.

DISCLOSURE STATEMENT

The authors are not aware of any affiliations, memberships, funding, or financial holdings that might be perceived as affecting the objectivity of this review.

ACKNOWLEDGMENTS

We thank the editors and reviewers of the *Annual Review of Law and Social Science*, John W. Meyer, and participants in the Irvine Comparative Sociology Workshop for assistance and advice.

LITERATURE CITED

- Adamo SA. 1989. The injustice of the marital rape exemption: a survey of common law countries. *Am. Univ. Int. Law Rev.* 4:555–89
- Agustín LM. 2005. New research directions: the cultural study of commercial sex. *Sexualities* 8:618–31
- Ajzenstadt M, Steinberg O. 2001. Never mind the law: legal discourse and rape reform in Israel. *Affilia: J. Women Soc. Work* 16:337–59
- Akdeniz Y. 2008. *Internet Child Pornography and the Law: National and International Responses*. Aldershot, UK: Ashgate
- Al-Hibri AY. 2000. Muslim women’s rights in the global village: challenges and opportunities. *J. Law Religion* 15:37–66
- Allman D, Adebajo S, Myers T, Odumuye O, Ogunsola S. 2007. Challenges for the sexual health and social acceptance of men who have sex with men in Nigeria. *Cult. Health Sex.* 9:153–68
- Altman D. 1997. Global gaze/global gays. *Gay Lesbian Q.* 3:417–36
- Altman D. 2002. *Global Sex*. Chicago: Univ. Chicago Press
- Altman D. 2008. AIDS and the globalization of sexuality. *Soc. Identities* 14:145–60
- Amon JJ, Todrys KW. 2008. Fear of foreigners: HIV-related restrictions on entry, stay, and residence. *J. Int. AIDS Soc.* 11:154–77
- Amon JJ, Todrys KW. 2009. Access to antiretroviral treatment for migrant populations in the Global South. *SUR: Int. J. Hum. Rights* 6(10):162–87
- Androff DK. 2010. The problems of contemporary slavery: an international human rights challenge for social work. *Int. Soc. Work* 54:209–22
- Asal V, Sommer U, Harwood PG. 2013. Original sin: a cross-national study of the legality of homosexual acts. *Comp. Polit. Stud.* 46:320–51
- Barnett LD, Saitta P. 2011. Societal properties and law on same-sex non-marital partnerships and same-sex marriage in European Union nations. *J. Civil Rights Econ. Dev.* 25:625–72
- BBC (Br. Broadcast. Corp.). 2012. Uganda to pass anti-gay law as “Christmas gift.” *BBC News*, Nov. 13. <http://www.bbc.co.uk/news/world-africa-20318436>
- Bell D, Binnie J. 2000. *The Sexual Citizen: Queer Politics and Beyond*. Cambridge, UK: Polity
- Bell L, Tooman P. 1994. Mandatory reporting laws: a critical overview. *Int. J. Law Policy Fam.* 8:337–56
- Bernstein E. 2007. *Temporarily Yours: Intimacy, Authenticity, and the Commerce of Sex*. Chicago: Univ. Chicago Press

- Bienen L. 1998. Defining incest. *Northwest. Univ. Law Rev.* 92:1501–640
- Boellstorff T. 2005. *The Gay Archipelago: Sexuality and Nation in Indonesia*. Princeton, NJ: Princeton Univ. Press
- Boli J, Thomas G, eds. 1999. *Constructing World Culture: International Nongovernmental Organizations Since 1875*. Stanford, CA: Stanford Univ. Press
- Boyle EH. 2002. *Female Genital Cutting: Cultural Conflict in Global Community*. Baltimore, MD: Johns Hopkins Univ. Press
- Boyle EH, Meyer JW. 1998. Modern law as a secularized and global model: implications for the sociology of law. *Soziale Welt* 49:275–94
- Caballero MA. 2011. Social movements and the Constitutional Court: legal recognition of the rights of same-sex couples in Colombia. *SUR: Int. J. Hum. Rights* 8(14):7–31
- Cabezas AL. 2004. Between love and money: sex, tourism, and citizenship in Cuba and the Dominican Republic. *Signs* 29:987–1015
- CBS. 2009. 50 years after the Kinsey Report. *CBSNews*, Feb. 11. http://www.cbsnews.com/2100-511_162-538117.html
- Cheney K. 2012. Locating neocolonialism, “tradition,” and human rights in Uganda’s “gay death penalty.” *Afr. Stud. Rev.* 55:77–95
- Cock J. 2003. Engendering gay and lesbian rights: the equality clause in the South African constitution. *Women’s Stud. Int. Forum* 26:35–45
- Cree VE. 2008. Confronting sex trafficking: lessons from history. *Int. Soc. Works* 51:763–76
- Davis M, Kennedy EL. 1986. Oral history and the study of sexuality in the lesbian community: Buffalo, New York, 1940–1960. *Fem. Stud.* 12:7–26
- Decker JF, Baroni PG. 2011. No still means yes: the failure of the non-consent reform movement in American rape and sexual assault law. *J. Crim. Law Criminol.* 101:1081–169
- De la Dehesa R. 2010. *Queering the Public Sphere in Mexico and Brazil: Sexual Rights Movements in Emerging Democracies*. Durham, NC: Duke Univ. Press
- Dillon SA. 2008. What human rights law obscures: global sex trafficking and the demand for children. *UCLA Women’s Law J.* 17:121–86
- Ditmore M, Saunders P. 1998. Sex work and sex trafficking. *Sex. Health Exch.* (1):15
- Dong-Jin S. 2001. Mapping the vicissitudes of homosexual identities in South Korea. *J. Homosex.* 40:65–78
- Donnelly J. 2003. *Universal Human Rights in Theory and Practice*. Ithaca, NY: Cornell Univ. Press. 2nd ed.
- Fellmeth AX. 2008. State regulation of sexuality in human rights law and theory. *William Mary Law Rev.* 50:797–936
- Fernandez JJ, Lutter M. 2013. Supranational cultural norms, domestic value orientations, and the diffusion of same-sex union rights in Europe, 1988–2009. *Int. Sociol.* 28:102–20
- Fidler DP. 1996. Globalization, international law, and emerging infectious diseases. *Perspectives* 2:77–84
- Findlay B. 1974. The cultural context of rape. *Women’s Law J.* 60:199–207
- Findlay EJS. 1999. *Imposing Decency: The Politics of Sexuality and Race in Puerto Rico, 1870–1920*. Durham, NC: Duke Univ. Press
- Foucault M. 1998 (1976). *The History of Sexuality*, Vol. 1: *The Will to Knowledge*. London: Penguin
- Frank DJ. 2012a. Making sense of LGBT asylum claims: change and variation in institutional contexts. *J. Int. Law Polit.* 44:485–96
- Frank DJ. 2012b. Sex. In *The Wiley-Blackwell Encyclopedia of Globalization*, ed. G Ritzer, pp. 1843–46. New York: Wiley-Blackwell
- Frank DJ, Camp BJ, Boutcher SA. 2010. Worldwide trends in the criminal regulation of sex, 1945 to 2005. *Am. Sociol. Rev.* 75:867–93
- Frank DJ, Hardinge T, Wosick-Correa K. 2009. The global dimensions of rape-law reform: a cross-national study of policy outcomes. *Am. Sociol. Rev.* 74:272–90
- Frank DJ, McEneaney EH. 1999. The individualization of society and the liberalization of state policies on same-sex sexual relations, 1984–1995. *Soc. Forces* 77:911–44
- Franke K. 2013. Dating the state: the moral hazards of winning gay rights. *Columbia Hum. Rights Law Rev.* 44: In press. <http://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/Dating%20the%20State.pdf>

- Frederick PA. 2002. *Sexing the nation: state regulation of prostitution and homosexuality in Britain and the Netherlands in the nineteenth and early twentieth centuries*. PhD Thesis, Dep. Sociol., Harvard Univ., Cambridge, MA
- Fullerton M. 1993. A comparative look at refugee status based on persecution due to membership in a particular social group. *Cornell Int. Law J.* 26:505–64
- Gagnon JH, Simon W. 1968. Sexual deviance in contemporary America. *Ann. Am. Acad. Polit. Soc. Sci.* 376:106–22
- Giddens A. 1993. *The Transformation of Intimacy: Sexuality, Love, and Eroticism in Modern Societies*. Stanford, CA: Stanford Univ. Press
- Goldstein MJ, Kant HS. 1973. *Pornography and Sexual Deviance: A Report of the Legal and Behavioral Institute, Beverly Hills, California*. Berkeley: Univ. Calif. Press
- González-López G. 2005. *Erotic Journeys: Mexican Immigrants and Their Sex Lives*. Berkeley: Univ. Calif. Press
- Goodman R. 2012. Asylum and the concealment of sexual orientation: where not to draw the line. *J. Int. Law Polit.* 44:407–46
- Grabham E. 2007. Citizen bodies, intersex citizenship. *Sexualities* 10:29–48
- Graupner H. 2000. Sexual consent: the criminal law in Europe and overseas. *Arch. Sex. Behav.* 29:415–61
- Graupner H. 2005. The 17-year-old child. *J. Psychol. Hum. Sex.* 16:7–24
- Halliday TC, Osinsky P. 2006. Globalization of law. *Annu. Rev. Sociol.* 32:447–70
- Hathaway JC, Pobjoy J. 2012. Queer cases make bad law. *J. Int. Law Polit.* 44:315–90
- Herold E, Garcia R, DeMoya T. 2001. Female tourists and beach boys: romance or sex tourism? *Ann. Tour. Res.* 28:978–97
- Higdon M. 2008. Queer teens and legislative bullies: the cruel and invidious discrimination behind heterosexist statutory rape laws. *Univ. Calif. Davis Law Rev.* 42:195–254
- Hines S. 2009. A pathway to diversity? Human rights, citizenship and the politics of transgender. In *The Global Politics of LGBT Human Rights, Special Issue, Contemp. Polit.* 15:87–102
- Hirschfeld M. 2000 (1914). *The Homosexuality of Men and Women*, transl. MA Lombardi-Nash. Amherst, NY: Prometheus
- Hollander M. 2009. Gay rights in Uganda: seeking to overturn Uganda’s anti-sodomy laws. *Va. J. Int. Law* 50:219–66
- Hoppe T. 2013. Controlling sex in the name of “public health”: social control and Michigan HIV law. *Soc. Probl.* 60:27–49
- Hubbard P, Matthews R, Scoular J. 2008. Regulating sex work in the EU: prostitute women and the new spaces of exclusion. *Gender Place Cult.* 15:137–52
- Kalra G, Bhugra D. 2010. Migration and sexuality. *Int. J. Cult. Mental Health* 3:117–25
- Kane M. 2003. Social movement policy success: decriminalizing state sodomy laws, 1969–1998. *Mobilization: Int. Q.* 8:313–34
- Kanter RM. 1977. Some effects of proportions on group life: skewed sex ratios and responses to token women. *Am. J. Sociol.* 82:965–90
- Kempadoo K. 2004. *Sexing the Caribbean: Gender, Race and Sexual Labor*. New York: Routledge
- Kempadoo K, Doezema J, eds. 1998. *Global Sex Workers: Rights, Resistance, and Redefinition*. New York: Routledge
- Kinsey AC, Pomeroy WB, Martin CE. 1948. *Sexual Behavior in the Human Male*. Philadelphia: W.B. Saunders
- Kinsey AC, Pomeroy WB, Martin CE, Gebhard PH. 1953. *Sexual Behavior in the Human Female*. Philadelphia: W.B. Saunders
- Kollman K. 2007. Same-sex unions: the globalization of an idea. *Int. Stud. Q.* 5:329–57
- Laumann EO, Gagnon JH, Michael RT, Michaels S. 1994. *The Social Organization of Sexuality: Sexual Practices in the United States*. Chicago: Univ. Chicago Press
- Laumann EO, Paik A, Glasser DB, Kang JH, Wang T, et al. 2006. A cross-national study of subjective sexual well-being among older women and men: findings from the global study of sexual attitudes and behaviors. *Arch. Sex. Behav.* 35:145–61
- Lopes JRDL. 2005. Right to recognition for gays and lesbians. *SUR: Int. J. Hum. Rights* 2(2):61–92
- Mackay J. 2001. Global sex: sexuality and sexual practices around the world. *Sex. Relatsh. Ther.* 16:71–82

- Mahdavi P. 2009. *Passionate Uprisings: Iran's Sexual Revolution*. Stanford, CA: Stanford Univ. Press
- Massad J. 2002. Re-orienting desire: the gay international and the Arab world. *Public Cult.* 14:361–85
- Mattar LD. 2008. Legal recognition of sexual rights: a comparative analysis with reproductive rights. *SUR: Int. J. Hum. Rights* 5(8):60–83
- McCarthy B, Benoit C, Jansson M, Kolar K. 2012. Regulating sex work: heterogeneity in legal strategies. *Annu. Rev. Law Soc. Sci.* 8:255–71
- McDonnell B. 2004. Is incest next? *Cardozo Women's Law J.* 10:337–61
- McNair R, Brown R, Perlesz A, Lindsay J, De Vaus D, Pitts M. 2008. Lesbian parents negotiating the health care system in Australia. *Health Care Women Int.* 29:91–114
- Meyer JW, Boli J, Thomas GM, Ramirez FO. 1997. World society and the nation-state. *Am. J. Sociol.* 103:144–81
- Meyer JW, Bromley P, Ramirez FO. 2010. Human rights in social science textbooks: cross-national analyses, 1970–2008. *Sociol. Educ.* 83:111–34
- Miletski H. 2005. Is zoophilia a sexual orientation? A study. In *Bestiality and Zoophilia: Sexual Relations with Animals*, ed. AM Beetz, AL Podberscek, pp. 82–97. Lafayette, IN: Purdue Univ. Press
- Millbank J. 2009. From discretion to disbelief: recent trends in refugee determinations on the basis of sexual orientation in Australia and the United Kingdom. *Int. J. Hum. Rights* 13:391–414
- Mir-Hosseini Z. 2011. Criminalizing sexuality: *zina* laws as violence against women in Muslim contexts. *SUR: Int. J. Hum. Rights* 8(15):7–32
- Monro S. 2003. Transgender politics in the UK. *Crit. Soc. Policy* 23:433–52
- Ndulo M. 2011. African customary law, customs, and women's rights. *Indiana J. Glob. Leg. Stud.* 18:87–120
- Nieto JA. 2004. Children and adolescents as sexual beings: cross-cultural perspectives. *Child Adolesc. Psychiatr. Clin. North Am.* 13:461–77
- Osterlund K. 2009. Love, freedom and governance: same-sex marriage in Canada. *Soc. Leg. Stud.* 18:93–109
- Outshoorn J, ed. 2004. *The Politics of Prostitution: Women's Movements, Democratic States and the Globalisation of Sex Commerce*. Cambridge, UK: Cambridge Univ. Press
- Parsons T. 1942. Age and sex in the social structure of the United States. *Am. Sociol. Rev.* 7:604–16
- Phua VC. 2010. Shifting sexual boundaries: comparing gay-identified and non-gay-identified men who have sex with men in Brazil and in the USA. *Sexualities* 13:583–98
- Piscitelli A. 2007. Shifting boundaries: sex and money in the north-east of Brazil. *Sexualities* 10:489–500
- Polikoff ND. 2000. Recognizing partners but not parents/recognizing parents but not partners: gay and lesbian family law in Europe and the United States. *N.Y. Law Sch. J. Hum. Rights* 17:711–52
- Pruitt D, LaFont S. 1995. For love and money: romance tourism in Jamaica. *Ann. Tour. Res.* 22:422–40
- Ramirez FO, McEneaney EH. 1997. From women's suffrage to reproduction rights? Cross-national considerations. *Int. J. Comp. Sociol.* 38:6–24
- Richardson D. 2000. Constructing sexual citizenship: theorising sexual rights. *Crit. Soc. Policy* 61:105–35
- Richardson D. 2007. Patterned fluidities: (re)imagining the relationship between gender and sexuality. *Sociology* 43:457–73
- Ripoll JL. 2009. Love in the time of cholera: LGBT rights in Colombia. *SUR: Int. J. Hum. Rights* 6(11): 73–90
- Risse T, Ropp SC, Sikkink K, eds. 1999. *The Power of Human Rights: International Norms and Domestic Change*. Cambridge, UK: Cambridge Univ. Press
- Robertson R. 1992. *Globalization: Social Theory and Global Culture*. London: Sage
- Robinson RS. 2011. From population to HIV: the organizational and structural determinants of HIV outcomes in sub-Saharan Africa. *J. Int. AIDS Soc.* 14(Suppl. 2):S6
- Robson R. 2007. A mere switch or fundamental change? Theorizing transgender marriage. *Hypatia* 2:58–70
- Rydström J. 2003. *Sinners and Citizens: Bestiality and Homosexuality in Sweden, 1880–1950*. Chicago: Univ. Chicago Press
- Rye BJ, Meaney GJ. 2007. The pursuit of sexual pleasure. *Sex. Cult.* 11:28–51
- Sabatello M. 2011. Advancing transgender family rights through science: a proposal for an alternative framework. *Hum. Rights Q.* 33:43–75
- Sadgrove J, Vanderbeck RM, Andersson J, Valentine G, Ward K. 2012. Morality plays and money matters: towards a situated understanding of the politics of homosexuality in Uganda. *J. Mod. Afr. Stud.* 50:103–29

- Sáez M. 2011. Same-sex marriage, same-sex cohabitation, and same-sex families around the world: why “same” is so different. *Am. Univ. J. Gender Soc. Policy Law* 19:1–56
- Saiz I. 2004. Bracketing sexuality: human rights and sexual orientation: a decade of development and denial at the UN. *Health Hum. Rights* 7:48–80
- Saguy AC. 2000. Employment discrimination or sexual violence? Defining sexual harassment in American and French law. *Law Soc. Rev.* 34:1091–128
- Schaaf M. 2011. Negotiating sexuality in the Convention on the Rights of Persons with Disabilities. *SUR: Int. J. Hum. Rights* 8(14):113–32
- Scherrer KS. 2008. Coming to an asexual identity: negotiating identity, negotiating desire. *Sexualities* 11:621–41
- Sharpe AN. 2002. *Transgender Jurisprudence: Dysphoric Bodies of Law*. London: Cavendish
- Shields L, Zappia T, Blackwood D, Watkins R, Wardrop J, Chapman R. 2012. Lesbian, gay, bisexual, and transgender parents seeking health care for their children: a systematic review of the literature. *Worldviews Evid.-Based Nurs.* 9:200–9
- Shimizu CP. 2010. Screening sexual slavery? Southeast Asian gonzo porn and US anti-trafficking law. *Sexualities* 13:161–70
- Simmons T. 2008. Sexuality and immigration: UK family reunion policy and the regulation of sexual citizens in the European Union. *Polit. Geogr.* 27:213–30
- Smith CA, Smith HM. 2011. Human trafficking: the unintended effects of United Nations intervention. *Int. Polit. Sci. Rev.* 32:125–45
- Smith CJ. 1974. History of rape and rape laws. *Women’s Law J.* 60:188–91
- Smith HM. 2011. Sex trafficking: trends, challenges, and the limitations of international law. *Hum. Rights Rev.* 12:271–86
- Smith PK, Morita YE, Junger-Tas JE, Olweus DE, Catalano RF, Slee PE. 1999. *The Nature of School Bullying: A Cross-National Perspective*. London: Routledge
- Smith–Cannoy HM, Smith CA. 2012. Human trafficking and international cheap talk: the Dutch government and the island territories. *J. Hum. Rights* 11:51–65
- Somers MR, Roberts CN. 2008. Toward a new sociology of rights: a genealogy of “buried bodies” of citizenship and human rights. *Annu. Rev. Law Soc. Sci.* 4:385–425
- Soule S. 2004. Going to the chapel? Same-sex marriage bans in the United States, 1973–2000. *Soc. Probl.* 51:453–77
- Stychin CF. 2000. A stranger to its laws, sovereign bodies, global sexualities, and transnational citizens. *J. Law Soc.* 27:601–25
- Stychin CF. 2001a. Civil solidarity or fragmented identities? The politics of sexuality and citizenship in France. *Soc. Leg. Stud.* 10:347–75
- Stychin CF. 2001b. Sexual citizenship in the European Union. *Citizensh. Stud.* 5:285–320
- Stychin CF. 2004. Same-sex sexualities and the globalization of human rights discourse. *McGill Law J.* 49:951–68
- Sutherland EH. 1950. The diffusion of sexual psychopath laws. *Am. J. Sociol.* 56:142–48
- Swidler A, Watkins SC. 2007. Ties of dependence: AIDS and transactional sex in rural Malawi. *Stud. Fam. Plan.* 38:147–62
- Tamang S. 2002. Disembedding the sexual/social contract: citizenship and gender in Nepal. *Citizensh. Stud.* 6:309–24
- Taylor JS. 2006. Female sex tourism: a contradiction in terms? *Fem. Rev.* 83:42–59
- Tsutsui K. 2006. Redressing past human rights violations: global dimensions of contemporary social movements. *Soc. Forces* 85:331–54
- UNGA [UN Gen. Assem. Resolut. 217 A (III)]. 1948. *Universal declaration of human rights*. UN Doc. A/810, United Nations, Paris, Dec. 10. <http://www.un.org/en/documents/udhr/>
- UNGA [UN Gen. Assem. Resolut. 2200A (XXI)]. 1966. *International covenant on civil and political rights*. UN Doc. A/6316, United Nations, New York, Dec. 16. <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

- UN High Comm. (UN High Comm. Human Rights). 2011. *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*. Annu. Rep., UN Doc. A/HRC/19/41, United Nations, Geneva, Nov. 17
- Van der Pijl Y, Oude Breuil BC, Siegel D. 2011. Is there such thing as “global sex trafficking”? A patchwork tale on useful (mis)understandings. *Crime Law Soc. Change* 56:567–82
- Vito DD, Gill A, Short D. 2009. Rape characterised as genocide. *SUR: Int. J. Hum. Rights* 6(10):28–51
- Waldijk K, ed. 2005. *More or Less Together: Levels of Legal Consequence of Marriage, Cohabitation and Registered Partnership for Different-Sex and Same-Sex Partners*. Paris: Inst. Nat. d'études Démog.
- Waldijk K, Bonini-Baraldi M. 2006. *Sexual Orientation Discrimination in the European Union: National Laws and the Employment Equality Directive*. The Hague, Neth.: Assoc. Press
- Waites M. 2010. Human rights, sexual orientation and the generation of childhoods: analysing the partial decriminalisation of “unnatural offences” in India. *Int. J. Hum. Rights* 14:971–93
- Weitsman PA. 2008. The politics of identity and sexual violence: a review of Bosnia and Rwanda. *Hum. Rights Q.* 30:561–78
- Wellings K, Collumbien M, Slaymaker E, Singh S, Hodges Z, et al. 2006. Sexual behavior in context: a global perspective. *Lancet* 368:1706–28
- Wells H, Polders L. 2006. Anti-gay hate crimes in South Africa: prevalence, reporting practices and experiences of the police. *Agenda* 67:20–28
- Widmer ED, Treas J, Newcomb R. 1998. Attitudes toward nonmarital sex in 24 countries. *J. Sex Res.* 35:349–58
- Willis D. 2004. Hate crimes against gay males: an overview. *Issues Mental Health Nurs.* 25:115–32
- Wimmer A, Schiller NG. 2002. Methodological nationalism and beyond: nation-state building migration and the social sciences. *Glob. Netw.* 2:301–34
- Wojcicki JM. 2003. The movement to decriminalize sex work in Gauteng Province, South Africa, 1994–2002. *Afr. Stud. Rev.* 46:83–109
- Young RM, Meyer IH. 2005. The trouble with “MSM” and “WSW”: erasure of the sexual-minority person in public health discourse. *Am. J. Public Health* 95:1144–49
- Zippel K. 2004. Transnational advocacy networks and policy cycles in the European Union: the case of sexual harassment. *Soc. Polit.* 11:57–85



Contents

Growing Up in Law and Society: The Pulls of Policy and Methods <i>Richard Lempert</i>	1
Integrating Law and Health Policy <i>Sandra R. Levitsky</i>	33
The Legal and Political Legacy of Jeremy Bentham <i>Philip Schofield</i>	51
The Political Psychology of Counterterrorism <i>Aziz Z. Huq</i>	71
Legal Regulation of Health-Related Behavior: A Half Century of Public Health Law Research <i>Scott Burris and Evan Anderson</i>	95
The Adoption of Transparency Policies in Global Governance Institutions: Justifications, Effects, and Implications <i>Megan Donaldson and Benedict Kingsbury</i>	119
Law, Race, and Biotechnology: Toward a Biopolitical and Transdisciplinary Paradigm <i>Dorothy E. Roberts</i>	149
Niklas Luhmann's Theory of Autopoietic Legal Systems <i>Hugh Baxter</i>	167
Special Interests After <i>Citizens United</i> : Access, Replacement, and Interest Group Response to Legal Change <i>Samuel Issacharoff and Jeremy Peterman</i>	185
Militant Democracy: The Institutional Bases of Democratic Self-Preservation <i>Giovanni Capoccia</i>	207
The Regulation of Environmental Space <i>Steve Herbert, Brandon Derman, and Tiffany Grobelski</i>	227
Sex Laws and Sexuality Rights in Comparative and Global Perspectives <i>David John Frank and Nolan Edward Phillips</i>	249

The Justice Cascade: the Origins and Effectiveness of Prosecutions of Human Rights Violations <i>Katbryn Sikkink and Hun Joon Kim</i>	269
Is There a Canon of Law and Society? <i>Carroll Seron, Susan Bibler Coutin, and Pauline White Meeusen</i>	287
Motivated Cognition in Legal Judgments—An Analytic Review <i>Avani Mehta Sood</i>	307
Reproductive Justice <i>Zakiya Luna and Kristin Luker</i>	327
Sentenced to Life: Penal Reform and the Most Severe Sanctions <i>Marie Gottschalk</i>	353
Contextualizing Mass Atrocity Crimes: Moving Toward a Relational Approach <i>Susanne Karstedt</i>	383
Middle Eastern Law <i>Chibli Mallat and Mara Revkin</i>	405

Indexes

Cumulative Index of Contributing Authors, Volumes 1–9	435
Cumulative Index of Article Titles, Volumes 1–9	438

Errata

An online log of corrections to *Annual Review of Law and Social Science* articles may be found at <http://lawsocsci.annualreviews.org>