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Public Sex

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Since its inception, the American gay liberation movement has demanded that all sex acts performed in private between consenting adults be decriminalized. This is no surprise given the well-documented determination of the state to invade our bedrooms and regulate what goes on there. In fact, for some this single demand is the total content of gay liberation, and if that demand were met they would dismantle the movement and trot home to do you-know-what behind locked doors.

Such a reform of sex law would be a definite improvement over what we have now. But we have to be wary of making unwise concessions or being forced into too narrow an interpretation of our demands. If we restrict ourselves to protecting the rights of consenting adults, we leave young gay men and lesbians and their adult friends and lovers vulnerable to persecution. While pressing for social change, we could easily be trapped into becoming guardians of the "morals" of our nation's youth in exchange for protection of consenting adults. Similarly, we need to be careful how the term "sex in private" gets defined. Too narrow a definition of privacy could leave us with little or no right to be visibly gay, meet each other in public places, or participate in sex outside of monogamous, closeted relationships.

The law is the context within which the issue of public sex is defined and debated. The Supreme Court has used the nebulous "right to privacy" to give people the right to use contraceptives, get

abortions, read pornography, and talk on pay telephones without sharing their conversations with Uncle Sam. But our highest court has refused to use the right to privacy to strike down state sodomy laws that regulate private sexual behavior (although it will allow a lower court's liberal ruling to stand). This means that your right to read about oral or anal sex in your own bedroom is protected but not your right to actually do these things.

The Supreme Court's passivity leaves sexual minorities vulnerable to state and local sex codes, where the bulk of control over sex in America rests. Clark Norton, author of "Sex in America: An Outlaw's Guide," describes this situation with accuracy and anger.

In state after state across the country, a variety of archaic sex laws ranging from the repressive to the absurd remain in force...Many sex laws are blatantly discriminatory against various minorities—gays, young people, the handicapped—but they are often so vague and generalized that they could apply to virtually anyone. Most are only selectively enforced...And they vary so widely from state to state that a moment's innocent pleasure in one state could lead to life in prison in the state next door.¹

Despite the fact that the vice squads and the courts limit or protect our privacy, some gay men and lesbians seem to feel that the men who engage in public sex are actually responsible for attacks on the civil liberties of homosexuals. Tearoom cruisers are frequently described as enemies of the gay movement, and public sex is portrayed as a major obstacle to winning some modicum of protection for gay people.

This position is aptly summarized in an enraged commentary by Eric Jay which appeared in the *Washington Blade* shortly after the Hinson scandal broke on Capitol Hill. According to Jay, public sex is responsible for "the tension between us and our Gay sisters." He denies that public sex has any validity because "we are not living any longer in the 1950s" when police raids on gay bars and the impossibility of coming out made "furtive encounters in public places" excusable. He chastises gay activists who protest police

harassment of men in cruising areas and “bemoan the plight of Gays who get brutalized by redneck thugs” for “squandering their limited resources on those who refuse to accept responsibility for themselves and whose behavior threatens to deflect public attention from the basic...goals and principles of the Gay human rights movement.”

Instead, Jay claims, “Campaigns should be conducted within the gay community both to warn against and to condemn behavior that, in short, is indefensible.” Such campaigns would apparently include seeking “cooperation with the police in confronting issues of vital importance to the Gay community rather than mindlessly decrying ‘police brutality.’ ” Jay believes that “the overwhelming majority of Gay people do indeed reflect the general moral code of our society”; besides, he says, we all “know the location of a Gay bath house.” He asks “our responsible spokespersons” to “totally disavow the practice of public sex by Gay men and definitely disassociate the Gay rights movement from such behavior.”²

I believe that this very common position is based on false stereotypes about the nature of public sex; misinformation about how this offense is handled by police and the courts; embarrassment about our own sexuality; premature optimism about our safety from police harassment in bars, bathhouses, and our own homes; and a short-sighted view of gay liberation’s potential to alter the place of sex in our society.

We don’t need to rely on speculation to discover what our lives would be like if private gay sex between consenting adults were legalized. England passed legislation to this effect in 1967 at the recommendation of the Wolfenden Committee. British gay historian Jeffrey Weeks explains why this recommendation was made:

The paradox at the heart of the Wolfenden Committee’s work...can be partly grasped if we see its roots in [a] search for a more effective regulation of sexual deviance...The problem the Committee was established to consider was not how to liberalize the law...but whether the law was the most effective means of control...What they proposed therefore

was a partial retreat of the law from the regulation of individual behavior...so male homosexuality in private should be decriminalized...But the logic of the distinction between private and public behavior was that the legal penalties for public displays of sexuality could be strengthened at the same time as private behavior was decriminalized...The key point is that privatization did not necessarily involve a diminution of control.³

In fact, this so-called law reform actually made it easier for the state to penalize male homosexuality. (Lesbian sex has never been illegal in England.) According to Weeks:

The Sexual Offenses Act of 1967 decriminalized male homosexual activities in private for adults over the age of 21. But its restrictions were harsh from the start...It tightened up the law with regard to offenses with “minors” and to male importuning. And it absurdly restricted the meaning of “private”: for the sake of the Act, “public” was defined as meaning not only a public lavatory but anywhere where a third person was likely to be present...And in the next few years [after decriminalization] the number of prosecutions actually increased. [Emphasis added].⁴

We have yet another good example of what happens when the state decriminalizes private sex between consenting adults. Canada’s sex laws closely resemble England’s, and Toronto’s gay community can give bitter testimony to the great freedom they enjoy under this “liberal” law. Toronto police have relentlessly raided bathhouses, which are not considered to be private places because people theoretically can witness each other having sex in them. The presence of a third party makes sex an indecent rather than a protected, private act. The police have even charged gay men with operating “bawdy houses” in their own homes because they had advertised for sex partners, thus forfeiting (in the eyes of the police) their right to privacy.

This is an important lesson. Just when we think we are gaining more freedom from government interference in our private lives, we

have to be careful that a change in the law is not used as an excuse to set up an elaborate bureaucracy to enforce more stringently defined standards for acceptable sexual behavior. We have to be careful not to create another group of stigmatized people and make them vulnerable to punishment. We have to make sure we are getting more than we are giving up.

Gay men and lesbians have not learned so much from the history of sex law as they should. Most people who condemn public sex do not seem to know that the legal difference between public and private sex is not a simple matter of choosing either the bushes or your bedroom. There are many zones in between—a motel room, a bathhouse, a bar, an adult bookstore, a car, a public toilet, a dark and deserted alley—that are contested territory where police battle with perverts for control.

The problem is that the state always wishes the zone of privacy to be as narrow as possible. Eric Jay assumes that if we relegated all casual sex to the gay bathhouse, the police would leave us alone. That simply isn't true. American sex laws resemble British law in that a bawdy house, disorderly house, or other legal euphemism for a brothel, is not just a place where sex is exchanged for money. Most state and local laws define such establishments as places where "lewd," "indecent," or "unnatural" acts take place.

Many cops don't like bathhouses any more than they like tearooms. The mayor and the liberal police chief of Minneapolis got into hot water when they called a halt to raids on gay bathhouses late in 1981. One Minneapolis vice squad officer told the press:

We have a chief [of police] who thinks homosexuals should be kept in the bathhouses so they don't spread it around. When they get out of those bathhouses they are hardcore. They do leather in there. Then they show up in the bathrooms at places like Powers and Penney's. The sick part is that they are involving young kids.⁵

This is a revealing glimpse into what the police think of your right to privacy in a bathhouse (as well as a novel theory of the development of sexual preference). This attitude has sparked a bitter

war between vice police and any publicly identifiable place where homosexuals gather. From reading local gay papers, it seems to me that nearly every town large enough to have an adult bookstore is currently experiencing a wave of police surveillance and public pressure to drive the queers, pornographers, and prostitutes out of town.

In San Jose, California, at least 300 men were arrested in a crackdown on adult bookstores that began in September, 1981. Most of those arrested pleaded guilty and received fifteen-day jail sentences and \$300 to \$500 fines. Other, smaller crackdowns on adult bookstores occurred in Silver Spring, Maryland; San Diego, California; Raleigh, North Carolina; Portland, Oregon; Harrisburg, Pennsylvania; and Houston, Texas (where about 140 men were arrested).

The usual scenario in adult bookstore arrests is a proposition by an undercover vice officer to leave the bookstore and have sex in a private location elsewhere. In Minneapolis police made about 102 arrests in February, 1981, at the Locker Room. No commercial sex was taking place. Nevertheless the Locker Room was charged with being "a disorderly house." This is the most notable of a series of raids on baths and bookstores in Minneapolis. Defense attorney Jeff Anderson said flatly, "The issue in the trial was not whether there were sexual acts. They [the defendants] admitted there were. The issue was whether the Locker Room was a public or private place." On May 30, 1981, at the Capital Club in Albany, New York, twenty men were cited for soliciting deviate sexual intercourse and public lewdness—despite the fact that cops had to climb over partitions of private cubicles to arrest people. The police claimed they raided the club because sex was spilling out of the bathhouse and into nearby streets, a parking lot, and a park. However, no arrests were made in any of these more public locations.

Hot Delivery in Denver, Colorado, has repeatedly been harassed for "operating without a license." The owners have been unable to determine what kind of license is required to operate a bathhouse. This is such a "public" place that a vice cop had to join the club to get in and conduct an investigation. The Finlandia Health Spa in Milwaukee, Wisconsin, got busted on October 2, 1981, and seven

men were charged with sexual perversion, fourth degree sexual assault, or indecent touching. Club Tampa, a member of the Club Baths chain, was raided on May 12, and sixty-nine customers were cited. Three employees were charged with running a house of ill repute. And—shades of Toronto—the police report focused on the orgy room. Since the raid, the group sex room has been closed. Many more raids have taken place than I have room to describe.

Most gay men and many lesbians would probably agree that bars and bathhouses must be defended during campaigns against public sex. Some people can even stretch that to include adult bookstores. But what about clear-cut cases where the sex is, in fact, public? Is tearoom cruising defensible?

Laud Humphreys's *Tearoom Trade: Impersonal Sex in Public Places* is required reading for anybody who wants to know the answer to that question. Humphreys beautifully documents the sociology of looking for sex in so-called public places, and he demonstrates again and again that public sex is not a free-for-all. It doesn't take place any time, anywhere, where anyone can see it. Like any other sexual minority, tearoom cruisers comprise a subculture with its own mores and codes of behavior. There is almost always some kind of physical barrier—some bushes, a bathroom door, or a car—between the participants in public sex and the outside world. This barrier screens out the uninitiated. If more than two people are present, one of them usually acts as a lookout. Thus, this behavior is more properly called "quasi-public sex."

People sitting behind the closed door of a bathroom or of a movie booth in an adult bookstore can reasonably assume they have privacy. You could make the same assumption if you were sitting in your car in a deserted location late at night. All of these are favored locations for so-called public sex. If people are going to see what is going on in these places, they must intrude. They must actively look for things that will offend them, either by penetrating physical barriers, by setting up covert surveillance, or by posing as potential participants.

At one time, the California courts recognized this problem and put some limits on entrapment arrests for public sex. In *Pryor v.*

Municipal Court, Division Two of the Second Appellate District of the State Court of Appeals ruled that the state's lewd conduct law (647a) applied only if a sex act took place when other people were present who might be offended or if an individual explicitly stated she or he wanted to perform sex in a place where other people were present. These limits dramatically reduced arrests for solicitation and indecent acts in tearooms. However, the ruling was later contradicted by the same court. On April 14, 1981, in *People v. McConville*, the judges ruled that 647a applies "where it is likely that members of the public may enter a restroom even though the only witness in the restroom at the time of the conduct acts as if he is not offended." Arrests for public sex seem to be increasing since this ruling. In January, 1981, about seventy-six men were arrested for "soliciting lewd conduct" in San Francisco alone. The average number of such arrests per month had reportedly been sixteen.

The technology of electronic snooping has become so sophisticated that intimate information can be gathered anywhere, including your bedroom. So the question really isn't, "Can people see sexual activity going on?" The question is, "Who has a right to intrude and take a look?"

The police assume that they do. They have several favorite techniques for invading arenas where quasi-public sexual encounters take place. One technique is to alter or disrupt the physical space so as to make protective, camouflaging behavior difficult or impossible. They cut down underbrush or trees that provide a screen, or they put up bright lights. In Indianapolis the vice squad and the local chapter of the Moral Majority got an ordinance passed that required adult bookstores to cut the doors on their movie booths in half. In Los Angeles the bookstores must remove the doors entirely. This has been done deliberately to transform private places into public ones. Police officers set up hidden cameras, climb on the roofs of public toilets and peek through skylights, or secrete themselves in broom closets. Cops pretend they are available for sex, then arrest the luckless and gullible. Dignified, isn't it? And to think that many vice cops are volunteers...

Despite the lengths that police must go to entrap men engaged in "public" sex, they justify these raids and crackdowns by claiming that families, children, and uninterested heterosexual men are stumbling into group gropes or being harassed by gangs of hostile faggots.

Humphreys's study and my own conversations with tearoom cruisers indicate that it is highly improbable that a family would encounter public sex at, say, a highway rest stop unless they chose to picnic in a urinal. Sex probably is not happening all over the rest stop, park, or beach. It's happening behind the bathroom door. The people behind that door usually keep out a sharp eye for intruders; I can't imagine anything more likely to cause everyone to abdicate the throne than a nuclear family plus hamper, thermos, folding lawn chairs, Polaroid camera, and large, nosy dog.

Vice cops' claims that innocent straight men are getting hustled by aggressive queers just don't ring true. San Francisco attorney Matt Coles says, "In four years of practicing law, I've *never* seen a [public sex] case based on the complaint of a citizen (not a cop) who got propositioned when he didn't want to be."⁶

I'm sure that from time to time heterosexual males receive unwanted sexual attention from other men in public places. Who cares? The priorities in this situation should be spelled out: Society will not tolerate the possibility that a straight man might be propositioned if he walks past a group of gay men on his way to use a public john. Yet society will tolerate the possibility that a gay man could be beaten or murdered if he walks past a group of heterosexuals. And no vice squad has ever embarked on a massive campaign to prevent groups of straight men from harassing women and denying us our right to use many public facilities, like public transit late at night and even—oh, horrors—johns in parks. Furthermore, verbal propositions can serve as protective barriers, preventing the truly uninterested from seeing or doing things they don't wish to. The spectacle of some frightened straight boy trying to keep his knees together doesn't fill me with pity. Maybe it will teach him to think twice before he grabs my tits or calls me a dyke.

The threat that children might see men having sex with each other is far and away the most popular excuse for surveillance and

arrests. I have yet to see a documented instance of such an incident. However, I am sure that it's happened occasionally—probably by accident. And it's possible that a child or a teenager who saw such an act could be frightened, disgusted, or upset. However, that's not because sex is inherently toxic or traumatic to children. It's because young people are denied information about sexuality and are kept especially ignorant on the subject of gay and lesbian sex. Children aren't damaged for life by seeing naked bodies or by touching. They are damaged by the adults who scare the daylights out of them if they are caught masturbating, who react with hostility or embarrassment to questions about sex, and who withhold information about birth control, abortion, and venereal disease.

Kids who hang around cruising areas are either deliberately spying (remember hiding out by Lover's Lane and shining flashlights into the parked cars?), waiting to bash faggots, or they are gay boys who have discovered this chancy way to meet gay men. Young faggots do need a more supportive, broader-based milieu in which to explore their sexuality, but closing down this fragile form of male-to-male contact won't help them.

Police capitalize on negative attitudes in the gay community toward public sex. When raiding toilets, adult bookstores, bathhouses, or back-room bars, they usually deny that they are conducting antigay crackdowns. Instead they claim that they are responding (perhaps reluctantly) to public pressure. However, they usually decline to specify which individuals or groups brought that pressure to bear (unless the complainants are gay). The hypocrisy of the police is astonishing. They are capable of conducting full-scale street sweeps in gay neighborhoods (in New Orleans, Houston, San Francisco, and other cities within the last year) and denying that they are conducting antigay campaigns, even as the paddy wagons roll in, filled with hundreds of queens and dykes.

The police even claim that they conduct these anti-vice campaigns on our behalf, for our own good. Here's Los Angeles police chief Daryl Gates, responding to questions about police/gay relations posed by the Gay and Lesbian Community Services Center:

Our efforts aimed at controlling street hustling and other public homosexual conduct serve, at least indirectly, to reduce the victimization rate of gays who are too often victims of robbery, violent assaults and even murder because of their street activity.⁷

I wonder if Gates would also curtail women who work late at night, go out alone, and wear flashy clothing, so as to “indirectly” reduce rape statistics. Why can’t the police use the laws against assault, robbery, and murder to prosecute the criminals who commit these violent acts? Gates is essentially saying that the very nature of the sexual activity of prostitutes and tearoom cruisers attracts violence and therefore absolves the police of any responsibility for their protection. His statement also implies that police care more about getting prostitutes and gays off the street than they do about putting away muggers, rapists, and murderers.

This is a lousy way to deal with antigay violence. Can you imagine the police making as many arrests for queerbashing as they do for solicitation? Wouldn’t *that* make you feel safer?

Even if you believe that public sex is politically or morally objectionable, do you think that the police should be in charge of regulating it? Is it worth the expense or the time? And do you think the penalties—a fine, time in jail, registration as a sex offender—are just or equitable? Do you like the idea of the police being allowed to gather that much information about known or suspected homosexuals? During a crackdown, police copy down the license numbers of cars parked outside popular tearooms, gay bars, and baths. They stop “suspicious” people walking around in these areas and demand identification. What do you think they do with that information? Put it under their pillows to help them sleep better at night? Police departments in New York, Chicago, Los Angeles, and the state of Michigan have been ordered by the courts to stop spying and keeping files on communists, homosexuals, and other people considered to be potentially dangerous to society. But in California, as in five other states, it is legal to require convicted sex offenders to register with police. According to E. H. Duncan Donovan, vice president of the American Civil Liberties Union of Southern California,

“The bulk of registrations are for...sexual activity, or solicitation of sexual activity, in more-or-less public places.”⁸ So the cops don’t have to be covert about it; they just feed you to the computer.

This logic may not make a dent in the prejudice many gay people harbor against devotees of public sex. I’m still not sure I understand the rage I’ve heard many gay men express about ostensibly heterosexual, married, respectable men who carry on in public johns. Some of this anger seems to stem from the belief that these men get the rewards of gay sex without the penalties of coming out and accepting a full-time, stigmatized gay identity.

Before “being gay” became a political identity as much as a sexual one, anyone arrested in a tearoom was considered just as queer as a drag queen or a hustler. Oddly enough, it is the burgeoning gay movement with its demand for confrontation and the concomitant demand that everybody choose a side which has left these men without a gay or a straight identity, vulnerable to the contempt of both cops and activists.

The gay community has less and less tolerance for folks whose sexuality cannot be clearly defined as heterosexual or homosexual or who have eroticized something other than gender. Some tearoom cruisers identify primarily as fathers and husbands and don’t place much significance on their sexual proclivities. It’s possible that many gay men would make similar choices if society permitted it. Some men prefer oral sex, and given the reluctance of many straight women to perform this act they resort to male partners in tearooms. (Or they may enjoy quick encounters with multiple partners and use the tearooms because this sexual pattern is not readily available to heterosexuals. Some of them may be tentatively and awkwardly forming gay identities, preparing themselves to come out. Whatever pleasure these “heterosexual” men receive from quickie, casual public sex, it’s no compensation for the double lives they lead or the devastating consequences of being discovered.

And not everybody who cruises public johns is a closet case. It still isn’t so easy for gay people to meet each other as it is for their heterosexual counterparts. Gay men who live in small towns may not be able to get to gay bars or bathhouses often enough to satisfy

their desires for companionship and sex. Some men couldn't get into a bathhouse even if they lived next door. The baths are notorious for discrimination based on age, weight, race, and other aspects of personal appearance. Besides, nobody charges admission to a tearoom. It's free. Tearooms offer a different type of sex and a different range of men. One guy told me, "You go to the baths to have sex with gays. You go to the tearooms to have sex with men. You know what I've learned in toilets? I've learned that there's no such thing as a heterosexual. They can all be had."

This is a devastating piece of information that cops have taken charge of suppressing. The prevalence of public sex makes it very, very clear that gay sex is attractive to many men, that heterosexuality is neither monolithic nor inevitable, and that no amount of repression or abuse will prevent people from seeking pleasure.

Why is sex supposed to be invisible? Other pleasurable acts or acts of communication are routinely performed in public—eating, drinking, talking, watching movies, writing letters, studying or teaching, telling jokes and laughing, appreciating fine art. Is sex so deadly, hateful, and horrific that we can't permit it to be seen? Are naked bodies so ugly or so shameful that we can't survive the sight of bare tushes or genitals without withering away?

My own experiences with public sex have been instructive and liberating. I've been going to sex parties for five or six years now, and I've seen the complete range of naked male and female bodies. I no longer find nudity frightening or repulsive (nor has my erotic response to partially clothed or unclothed people disappeared). Instead I have become much more accepting of my own unadorned, vulnerable, imperfect flesh. I no longer postpone pleasure until the day when I will be thinner, more muscular, and physically perfect, nor do I torment my partners with this silly snobbery.

Seeing other people having sex is reassuring and enlightening. It calmed the panic I've been carrying around ever since I first heard my parents fucking and thought they must be murdering each other. I like the way other people look when they're getting turned on or coming. That means I must look good, too. That means it's okay for me to relax and let myself enjoy my body. Watching gay

men, heterosexual couples, lesbians, and clusters of people of various genders getting off together has taught me more about sexual technique than any sex manual. It's a direct and easy way to learn about sexuality, and I wish it were more accessible, especially to women.

Personally, I wish all the cops hiding in bushes and sneaking around public restrooms would get out there and prevent more serious crimes like littering and dogs' pooping on sidewalks. If they have to spend so much time in the johns, I wish they would go into the ladies' room and make sure there's plenty of toilet paper and paper towels. They could also repair the water fountains and the Tampax machines. These public-toilet problems are the ones I'd like my tax dollars to solve. Public sex is not.

NOTES

1. Norton, Clark. "Sex in America: An Outlaw's Guide." *Inquiry*, October 5, 1981, 2.
2. Jay, Eric. "Public Sex and Community Standards: The Real Issue in the Hinson Affair." *Washington Blade*, February 20, 1981, A19.
3. Weeks, Jeffrey. *Sex, Politics and Society: The Regulation of Sexuality Since 1800*. London and New York: Longman Group Ltd., 1981, 242-244.
4. Weeks, Jeffrey. *Coming Out: Homosexual Politics in Britain, from the Nineteenth Century to the Present*. London, Melbourne and New York: Quartet Books, 1977, 177.
5. "Policy on Gays has Fraser, Police Battling on Beaches." *Minneapolis Star*, October 14, 1981.
6. Coles, Matt. "Pryor Restraint: What Every Gay Man Should Know About Public Sex." *The Sentinel*, April 1, 1981, 5.
7. "Reassurances but no Promises from LA Police Chief Gates." *The Advocate*, Issue 318, 10 and 12.
8. "Scarlet Letter Still Brands 'Sex Offenders.'" *Los Angeles Times*, March 11, 1982, 6.