

**\*\*Work in Progress\*\***

Prepared for the 2016 Western Political Science Association Conference. Please do not cite or circulate without permission.

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**Can The Glory Hole Speak?:  
Public Sex and the Right Not To Have Rights**

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“In dealing with an open-secret structure, it’s only by being shameless about  
risking the obvious that we happen into the vicinity of the transformative”  
Eve Kosofsky Sedgwick

In May 2015, *The New York Times* ran a story entitled “Chelsea’s Risqué Businesses.”<sup>1</sup> The story reports on how parents—many gay and lesbian—on New York’s west side are calling for the closing of Manhattan’s few remaining gay sex stores on 8th Avenue between Eighteenth and Twenty-third Streets that allow for costumers to have sex in the stores’ backroom video booths. The shops are especially well known for their glory holes. Parents, some of whom frequented these same shops before having children, complain that the sex stores represent a public nuisance and an affront to their and their children’s quality of life. The summer of 2015 also saw several well-coordinated police stings in gay cruising areas as well as police raids by the Department of Homeland Security on the New York City headquarters of the popular gay escort website Rentboy.com<sup>2</sup>—which might all come as a surprise to those who witnessed mass celebrations around the so-called “progress” of gay and lesbian rights by key arms of the state (complete with a rainbow-lit White House) prompted by the Supreme Court’s legalization of same-sex marriage that same summer. The systematic policing of queer public sex, contributing to an overall strategy of mass incarceration and the lengthening of sex offender registry lists, seemed to sit comfortably with the banal festivity of gay and lesbian identity and occasional evocations of Stonewall by politicians and mainstream gay and lesbian organizations.

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<sup>1</sup> Michael Winerip, “Chelsea’s Risqué Businesses,” *The New York Times*, May 15, 2015.

<sup>2</sup> Stephanie Clifford, “7 Charged With Promoting Prostitution by Working on Rentboy.com, an Escort Website,” *The New York Times*, August 25, 2015.

Taking cues from Gayatri Spivak's landmark essay "Can the Subaltern Speak?" (1988), this paper seeks to grasp, by perhaps a necessarily circuitous route, why it is so difficult to understand the persistent policing of gay public sex in the post-*Obergefell* era and to understand the pernicious effects of such policing. In doing so, the essay asks: *can the glory hole speak?* And, if the glory hole cannot speak, does it have the right to exist? Does one have a *right* to public sex? Or, does claiming such a right have the perverse effect of "preserving the subject of the West, or the West as subject,"<sup>3</sup> such that it invites more policing?

Further, this essay is an effort to think about the role of public sex in sustaining queer worlds and to put public sex back on the table for thinking about sexual politics. In this essay, I bring together Samuel Delaney, Gayatri Spivak, Michel Foucault, and Hannah Arendt in a polemical fashion to discuss theories of representation, the subject of rights, and the space of the political. I conclude by proposing a "right not to have rights" as a strategy to oppose the policing that accompanies the representation of the Western, rights-bearing, speaking subject and its (queer) others.

## I.

By public sex, I mean erotic encounters that occur in parks, truck stops, bathhouses, bookstores, public restrooms, alleyways, gyms and saunas, beaches, pornographic theaters, and other sites outside the home, usually between strangers. Meetings in these sites are largely unplanned and random but take place through highly socialized rituals of cruising that involve body language and other social cues. The

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<sup>3</sup> Gayatri Spivak, "Can the Subaltern Speak?," in *Marxism and the Interpretation of Culture*, ed. Cary Nelson and Lawrence Grossberg (Urbana: University of Illinois Press 1988), 271.

history of the policing of public sex is also the history of the policing of sex work, as sex workers sometimes use public sex institutions to do business and because various laws and health codes have been used to crack down on both public sex and sex work as common objects of policing.

Public sex between men has been a subject of policing and controversy for long time, although the policing logics and surrounding discourses have shifted throughout the century. From the 1880s to the 1920s, medical, legal, military and newspaper reports document that a number of public locations including public parks, subway toilettes, and YMCAs had become popular meeting places for public sex between “fairies,” “queers,” and “perverts,” in Washington, D.C., New York City, Boston, Chicago, and San Francisco that became subject to policing.<sup>4</sup> The New York Police Department, at the urging of the New York Society for the Suppression of Vice (SSV), raided several bathhouses known for tolerating sexual encounters between men including three well-documented raids on the Lafayette Baths and the Everard Baths between 1916 and 1919.<sup>5</sup> John Sumner, the leader of the SSV, also led raids between 1920 and 1921 on “movie theaters, subway washrooms, and restaurants” where homosexual men congregated.<sup>6</sup> New York Police raided the Lafayette Baths again in 1929 in a citywide crack down.<sup>7</sup>

During World War II, several “openly gay” bathhouses opened across the country, primarily in port cities that stationed soldiers and sailors before going off to war.

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<sup>4</sup> This history is primarily drawn from Allan Bérubé’s excellent 1984 historical study of gay bathhouses. Allan Bérubé, “The History of Gay Bathhouses,” in *Policing Public Sex* (Boston: Southend Press, 1996), 189.

<sup>5</sup> George Chauncey, *Gay New York: Gender, Urban Culture, and the Gay Male World 1890-1940* (New York: Basic Books, 1994), 146.

<sup>6</sup> *Ibid.*, 146.

<sup>7</sup> Bérubé, 194.

Policing lulled during this period, even as public sex between men exploded in port cities, likely because the participants were military service members. However, after World War II and with the rise of McCarthyism, police resumed raiding and closing down the gay bars and baths throughout the 1950s and 60s—targeting nearly any space where gay and lesbian people met, not just places for sexual encounters.

Public sex between men became a topic of national discussion in the United States and Canada after the publication of Laud Humphreys's 1970 sociological study *Tearoom Trade: Impersonal sex in public places* that analyzed sex between men in public toilettes. The study later prompted the creation of institutional review boards within universities due to the study's unethical violation of privacy for research participants, but also ramped up policing, even as the book called for toleration of public sex as a "victimless crime." Although raids on gay bars slightly decreased in the post-Stonewall era, there was a steady increase in vice raids on gay bathhouses, parks, and restrooms in the 1970s as criminal codes were rewritten to explicitly target sex acts done in public rather than target homosexuals explicitly.

Across Canada in the 1970s, there were several large police raids on bathhouses, most notably the 1975 raid on Montreal's Sauna Aquarius, the 1978 raids on the Barracks in Toronto, and the February 5, 1981, raid on four Toronto bathhouses under the name Operation Soap. Operation Soap used 160 cops to arrest 286 men (the largest number of arrests in Canada in a single operation until the 2006 Stanley Cup Playoffs in Alberta) using Canada's "common bawdy house" laws. The arrests sparked mass demonstrations, roadblocks, and riots across Toronto involving over 3000 people—although smaller raids

would continue even after the protests.<sup>8</sup> According to Gary Kinsman, because mass mobilizations and the gay press were successful in pressuring the police to end the use of bawdy-house charges in large-scale raids on bathhouses, police in Canada then turned to policing washrooms and parks that could target individuals in more isolated places: “In 1982-1983 more than 600 men were arrested in Toronto for ‘homosexual’ offenses; more than 600 ‘indecent act’ arrests took place in Toronto in 1985 [alone].”<sup>9</sup>

Public sex again became a topic of large public dispute during the mid-1980s because of the HIV/AIDS crisis. In the name of public health and safety, local boards of public health around the United States and Canada began closing bathhouses, pornographic movie theaters, and bookstores. Police increased surveillance and arrests in areas known for gay public sex fueled by the fear of HIV/AIDS. Gay assimilationists similarly called for the closure of public sex sites and the increased policing of nonmonogamous sex. Activists, often termed gay moralists, sometimes worked in collaboration with public health boards or state legislatures to condemn public sex institutions. Randy Shilts, for example, opens *And The Band Played On*, his best-seller journalistic account of the start of the HIV/AIDS crisis, with a discussion of the commercialization of bathhouses and sex clubs, the “discovery” of rimming, and “a thousand men on any one night having sex in New York baths or parks” inherent in gay liberation practices that seemed to culminate as *the cause* of the HIV/AIDS epidemic,

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<sup>8</sup> Terence McKenna, “The Toronto Bathhouse Raids,” *CBC Radio*. February 15, 1989. URL: <http://www.cbc.ca/archives/entry/the-toronto-bathhouse-raids>.

<sup>9</sup> Gary Kinsman, “Foreword: The Contested Terrains of ‘Public’ Sex” in *Peek: Inside the Private World of Public Sex*, by Joseph Couture, xiv.

rather than HIV/AIDS merely being an unpredictable natural disaster.<sup>10</sup> In 1985, the legendary St. Mark's Baths in New York City was shut down by court order, even as the conservative *New York Times* argued that the baths were an important place for distributing safer sex information.

In the 1990s, increasingly conservative-leaning HIV/AIDS activism intermingled with public sex panics and with real estate and big business interests to the detriment of public sex institutions. In September 1992, state agents charged into three Philadelphia bookstores to pad lock all video booths in order to “prevent anonymous sex” as agents had witnessed both female prostitution and male on male sex in the video booths.<sup>11</sup> In 1995, the New York City Health Department began rigorously enforcing state health codes that prohibited oral, anal, and vaginal sex, with or without condoms, in any commercial space.<sup>12</sup> Many bookstores, theaters, and sex clubs were padlocked shut or harassed out of business. As Michael Warner states, the piers along the Hudson River waterfront, a staple meeting place for queers for decades, increasingly had been fenced off, heavily patrolled, and subject to curfew starting in 1994. The Waterfront later became subject to further policing due to speculation on waterfront development. In 1997, the Anti-Violence Project “reported a dramatic upturn in arrests of gay men for cruising, often on public lewdness charges” made by not just the NYPD but also the Metropolitan Transportation Authority, the Port Authority Police, and the Parks Service

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<sup>10</sup> Randy Shilts, *And the Band Played On: Politics, People, and the AIDS Epidemic* (New York: St. Martin's Press, 1987), 17-18. Shilts also wrote a series of articles in *San Francisco Chronicle* supporting the bathhouse closures.

<sup>11</sup> Associate Press, “Sex Raids Cause Flap,” *Reading Eagle*, September 7, 1992.

<sup>12</sup> This is recounted in the introduction to *Policing Public Sex* (p. 15) and Micheal Warner, *The Trouble With Normal* (Cambridge, MA: Harvard University Press, 1999), 153-155.

Police.<sup>13</sup> Many men were arrested in the Ramble of Central Park for nude sunbathing. The New York City Council also passed Mayor Giuliani's zoning amendment that redefined adult businesses and attempted to virtually zone them out of existence. Zoning laws would subsequently be used to slate pornographic theaters on 42<sup>nd</sup> Street and in Times Square for demolition in order to open the land to large-scale redevelopment corporations and the "Disneyfication" of Midtown.

The 1990s and early 2000s also saw a large number of in arrests smaller towns outside of large urban centers, particularly in the American Midwest, that used plain clothed, undercover cops to entrap and arrest men who were offered sex by cops. In 2003, police at several large state universities across the United States began coordinating policing efforts to halt public sex between men inside classroom and library bathroom facilities.<sup>14</sup> Additionally, a large number of celebrities and public officials were arrested during this wave of individual arrests. Pop star George Michael was arrested by Los Angeles police in a men's restroom inside a public park in 1998. His arrest became the inspiration for the song and music video "Outside"—a dance club hit and cultural rallying cry to end the policing of public sex. In 2008, the ACLU represented Republican Senator Larry Craig who was arrested in the Minneapolis Airport for tapping his foot and reaching under the stall in an effort to engage in public sex.

These individual arrests coincided with the creation of sex offender registry lists in the 1990s and the subsequent mainstreaming and nationalization of sex offender registry lists with the Adam Walsh Child Protection and Child Safety Act of 2006.

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<sup>13</sup> Warner, 155.

<sup>14</sup> Eric Hoover, "Policing Public Sex," *The Chronicle of Higher Education*, January 17, 2003. URL: <http://chronicle.com/article/Policing-Public-Sex/2267>



Persons arrested for public sex charges now face a large array of bureaucratic mechanisms that, to varying degrees, limit where one can live, that force sex offenders to notify neighbors, and require the wearing of electronic monitoring bracelets.

Although police in the 2000s primarily focused on individual arrests by uncover cops and used “nuisance abatement” lawsuits to shut down sex stores, the 2010s had witnessed a return to large-scale police raids on bathhouses that are reminiscent of the 1970s and 80s. In 2010, Texas police raided the bathhouse Club Dallas, arrested eleven people, and threatened more raids in the future.<sup>15</sup> In 2015, Cleveland police raided Flex Spa & Gym, North America’s largest bathhouse, apparently investigating complaints of prostitution. Public sex arrests are increasing in Provincetown as police crack down on sex in both the infamous beach dunes along Herring Cove Beach (which sits on a national park) and the docks underneath Commercial Street which have historically served as a meeting space for public sex after bars close at night. Additionally, the disappearance of local gay press across North America makes documenting arrests, police harassment, and the enforced closing of public sex institutions difficult, if not impossible. No national or statewide gay and lesbian organization keeps track of public sex arrests, nor ever has.<sup>16</sup>

This brings my analysis to the primary impetus for writing this essay: a singular example that can bring into focus a discursive formation and an epistemology. *The Washington Blade* reported on August 4, 2015, that twelve men were arrested at a well-known gay cruising spot in a Delaware state park outside of Rehoboth Beach, a popular

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<sup>15</sup> John Wright, “11 Arrest in Raid at Club Dallas,” *The Dallas Voice*, October 14, 2010. URL: <http://www.dallasvoice.com/11-arrested-raid-club-dallas-1048387.html>

<sup>16</sup> This means that the burden has fallen primarily on historians and activists to gather anecdotal evidence and pull together court, police, or public health records to get a picture of the systematic nature of policing public sex. This also means that gay and lesbian organizations are not actually in the position to help

gay and lesbian vacation destination. According to the report, the men were aged 49 to 82, and they were all charged with an array of criminal violations, including “touching, criminal solicitation, lewdness, indecent exposure and loitering to engage in or solicit sex.”<sup>17</sup> All the men face up to a year in jail time and thousands of dollars in fines.

This particular example to elucidates the more general problem of policing of public sex at our present moment. The overwhelming social media response to these arrests at Rehoboth Beach was not outrage or indignation from the gay community, but a splintered, mutually legitimating response. Either these men rightly deserve to be policed and punished because “progress” on gay and lesbian rights has been made such that gay men can now share an open, public romantic life (and presumably have sex in the safety of a private bedroom), rendering public sex obsolete and backwards. Or, that the men arrested (aged 49 to 82) are “too old” to have known a different way of life that present-day self-actualized “out” gay men lead (which would include a life oriented towards a dyadic, monogamous, publically-recognized romantic relationship).

Such views place public sex within the structure and epistemology of the closet. It assumes that public sex is the product of ignorance, loneliness, and suffering because one’s natural desire for dyadic romantic coupling has been subject to sanction, repression, and taboo. It assumes a sexual desire that is yearning to break free but that can only be channeled through secrecy, shame, and anonymity. It assumes that the “liberated” gay subject would turn away from anonymous sex towards an affirmation of one’s innate, normal desire for coupling (if only given the chance for public recognition and state

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<sup>17</sup> Lou Chibbaro, Jr., “12 arrested in gay cruising area near Rehoboth Beach,” *Washington Blade*, August 4, 2015. URL: <http://www.washingtonblade.com/2015/08/04/12-arrested-in-gay-cruising-area-near-rehoboth-beach/>.

sanction) once the secret of the closet is broken. Those that continue to dwell in those unsanctioned zones of public sex—the park, the bathroom, the bathhouse, the glory hole—are either still subject to the closet of one’s mind or are truly sick.

As Shane Phelan explains, the 1990s produced unprecedented visibility for sexual minorities and, with it, produced a proliferation of different perspectives, practices, venues, and modes of entry into American social and political institutions. Part and parcel of this proliferation of perspectives was what Phelan terms “the new gay discourse,” represented by writers like Andrew Sullivan, Bruce Bower, and Richard Mohr and single-issue advocacy organizations like the Human Rights Campaign. “Rather than confronting dominant understandings of gender, sexuality, and the state, as well as the fears based on those understandings, the new gay discourse rests on a blend of liberal political principles and appeals to empathy.”<sup>18</sup>

Similarly, Lisa Duggan coined the term “the new homonormativity” to explain the sexual politics of neoliberalism whereby “privacy-in-public claims and publicizing strategies of ‘the gay movement’ are rejected in favor of public recognition of a domesticated, depoliticized privacy.”<sup>19</sup> For Duggan and Phelan, gay and lesbian politics have been hijacked by a politics and an ethos that seeks to reengineer queer social formations towards upward wealth distribution, the privatization of care and dependency, and narrowing of freedom and equality to the terms of commercial life. Central to the neoliberal agenda of this brand of sexual politics is the promotion of marriage as central to anchoring gay life in domesticity and consumption while promising a “demobilized

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<sup>18</sup> Phelan, *Sexual Strangers* (Philadelphia: Temple University Press, 2001), 93.

<sup>19</sup> Duggan, “The New Homonormativity,” in *Materializing Democracy: Toward a Revived Cultural Politics* (Durham: Duke University Press, 2002), 190.

gay constituency.”<sup>20</sup> This brand of politics also does nothing to challenge what feminist legal scholar Martha Albertson Fineman has called the “sexual family,” that is, the dyadic sexual affiliation between a man and a woman as the ideological foundation to society itself.<sup>21</sup> Nontraditional unions or non-heterosexual relationships must, by analogy, be equated with the paradigmatic kinship structure of the dyadic heterosexual couple in order to obtain state recognition, the conference of rights, and the protections of privacy.

Polyamory and/or open relationships are often offered as an ethical practice to challenge monogamy and the naturalization of the dyadic couple. Yet, polyamory does little to challenge the *sexual* family and justifies its sexual practices through a denigration of public sex. Polyamory proponents like legal scholar Elizabeth Emens point to the sexual ethics of polyamory, drawn from polyamorous self-help literature as “self-knowledge, radical honesty, consent, self-possession, and privileging love and sex.”<sup>22</sup> Not only does this ethical program reiterate notions of the self-knowing, self-same, self-directed, sovereign liberal subject but maintains private sexual intimacy as its core. As Fineman notes, “the new versions of the family merely reformulate basic assumptions about the nature of intimacy. They reflect the dyadic nature of the old (sexual) family story, updating and modifying it to accommodate new family ‘alternatives’ while *retaining the centrality of sexual affiliation to the organization and understanding of intimacy.*”<sup>23</sup> At the same time, as Haritaworn, et. al., argue, “polyamorists further manage

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<sup>20</sup> Duggan, 179.

<sup>21</sup> Martha Albertson Fineman, *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies* (New York: Routledge, 1995), 145-176.

<sup>22</sup> Elizabeth Emens, "Monogamy's Law: Compulsory Monogamy and Polyamorous Existence" (University of Chicago Public Law & Legal Theory Working Paper No. 58, 2004).

<sup>23</sup> Fineman, 147.

to present themselves as representatives of an advanced ethic that is far beyond a banal hedonism of simple pleasure-seeking.”<sup>24</sup> To justify polyamory as an ethical project, it has to separate itself from anonymous public sex by the sheer verbosity and recognition of the ethical commitments to one’s hierarchy of primary and secondary sexual partners.

What I have attempted to show up to this point is that: 1) Although there exists a common narrative that America has “progressed” on gay and lesbian issues, the broad history of the policing of queer public up to this moment shows very little has changed in terms of policing and that the policing of public sex may, in fact, be intensifying. 2) Various discursive and institutional practices have restructured the logic of public sex while carrying through older policing logics, such that public sex is presently understood to be backwards and antithetical to the self-actualized gay subject. 3) New non-monogamous familial forms often entrench the policing of public sex through their logics of self-justification and practices of governmentality.

## II.

In an interview entitled “Friendship as a Way of Life” for the French magazine *Gai Pied*, Michel Foucault elaborates on the concept of “a way of life” in connection with his turn to the care of the self:

Another thing is to distrust is the tendency to relate the question of homosexuality to the problem of “Who am I?” and “What is the secret of my desire?” Perhaps it would be better to ask oneself, “What relations, through homosexuality, can be established, invented, multiplied, and modulated?” The problem is not to discover in oneself the truth of one’s

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<sup>24</sup> Haritaworn, et. al., “Poly/logue: A Critical Introduction to Polyamory,” *Sexualities* 9.5 (2006), 521.

sex, but, rather, to use one's sexuality henceforth to arrive at a multiplicity of relationships... not necessarily in the form of a couple but as a matter of existence: how is it possible for men to be together?<sup>25</sup>

Foucault explains that gay men “must escape and help others to escape the two readymade formulas of the pure sexual encounter and the lovers’ fusion of identities” in order to find new ways of being together in the world.<sup>26</sup> A gay “way of life” for Foucault would not be grounded in romantic coupling nor in a fleeting anonymous sexual encounter, what Foucault unsympathetically described as “a kind of immediate pleasure, of two young men meeting in the street, seducing each other with a look, grabbing each other’s asses and getting each other off in a quarter of an hour.”<sup>27</sup> Rather, Foucault states that the problem of sexuality has tended to be a problem of friendship. A blowjob in a public restroom or park is not what is disquieting or creates unease about male homosexuality. Gay male sexual encounters are comprehensible for Foucault if they correspond to a pre-established understanding of male homosexuality as unbridled sexual passion, a “concession” to dominant forms that provides a “neat image” of homosexuality. Far more “troubling,” according to Foucault, is “affection, tenderness, friendship, fidelity, camaraderie, and companionship” that can forge “new alliances and [...] unforeseen lines of force” because of ambiguity of these unforeseen relationships.

Foucault suggests homosexuality as a kind of asceticism: “a homosexual ascesis that would make us work on ourselves and invent—I do not say discover—a manner of being that is still improbable.” Foucault says homosexuality, through the friendships it

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<sup>25</sup> Foucault, “Friendship as a Way of Life,” *Ethics: Subjectivity and Truth*, ed. by Paul Rabinow (New York: The New Press, 1997), 135.

<sup>26</sup> Foucault, 137.

<sup>27</sup> Foucault, 136.

opens up that have no presumed social code or established way of being, can produce inventive, nonprogrammatic ways of life rooted in contingency that always ask the question, “what can be played?”

I am intrigued by Foucault’s invitation to self-cultivation through relationships that cannot be derived from existing norms. And, I am drawn to Foucault’s suggestion that queer culture might provide a collaborative, experimental space for the creation of new forms of friendship. However, I am skeptical that there can be such a neat separation between friendship as a way of life and the pure sexual encounter, as Foucault described them. Not only has public sex indeed created much disquiet and unease to the provocation of vice squads and public morality panics, but Foucault misses precisely the ways in which public sex has facilitated queer friendships *as a way of life* and as a practice of freedom.

*Time Square Red, Times Square Blue* is Samuel Delany’s stunning historical portrait of the Times Square sex industry.<sup>28</sup> Delany provides a provocative discussion of the queer social relationships that the pornographic theaters and similar institutions sustained. In a thick description of the street life around Times Square and of the various public sex institutions, Delaney recounts many of his own sexual rendezvous and the friendships that developed around public sex.<sup>29</sup> Delaney’s main argument is that the porn

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<sup>28</sup> Delany, Samuel R. *Times Square Red, Times Square Blue*. (New York: New York University Press, 1999).

<sup>29</sup> Delaney’s book is comprised of two essays. The narrative in the first essay is largely linear, with the occasional historical reference, which elaborates on his wide range sexual-social experiences and encounters in and around the porn movie houses. The first essay also includes photographs of the fronts of the porn theaters and various businesses and people neighboring the theaters. The second essay is decidedly more theoretical and reflects back on this own experiences.

houses furnished subsystems of “interclass contact” that made for a richer and more “pleasant” life for participants and for a safer, more pleasant city.

Delaney juxtaposes “contact” with “networking.” Networking, according to Delaney, is “what people have to do when those with like interests live too far apart to be thrown together in public spaces through chance and propinquity” (128). Networking is often professional and motive-driven, and is primarily used for the exchange of information (129). Conversely, contact is random, broadly social, and unplanned: “Contact is the conversation that starts in the line at the grocery counter with the person behind you while the clerk is changing the paper roll in the cash register. It is the pleasantries exchanged with a neighbor who has brought her chair out to take some air on the stoop. It is the discussion that begins with the person next to you at the bar ... it can be two men watching each other masturbating together in adjacent urinals of a public john—an encounter that, later, may or may not become a conversation” (123). Importantly, contact encounters are often cross-class: contact allows for people from different communities who would not have relations otherwise to have social intercourse. Today, most people rely on networking in order to obtain benefits that only contact can bring.<sup>30</sup>

Delaney provides numerous examples of the material benefits produced through contact encounters in the porn houses: a reprieve from loneliness and alienation, a sandwich given to stranger in the porn house that one would not otherwise be able to

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<sup>30</sup> Delaney, giving the example of a writing conference, states that many young writers attend writing conferences with the hopes that they will be discovered or make some kind of professional contact that will open the doors to having their novel published. However, as Delaney illustrates through numerous examples, this rarely happens. Instead, doors are more likely to be opened through informal contact: a chance meeting in a bookstore or a conversation with a stranger that turns out to be in the publishing industry.



afford, free advice on how to go to college, blowjobs that turned into friendships, a place for a person outside the psychiatric norm to express oneself without fear of violence or institutionalization. The Times Square porn house was a rare space where men of different races and ethnicities and of different class backgrounds communed together in practices of mutual care. Contact sustains a queer way of life for Delaney in a field where knowledge, power, and desire all function together and in opposition. Alas, for Delaney, the chances for contact encounters are diminishing as neighborhoods are redeveloped to the detriment of the diversity of small businesses, sex shops, and street life.

Although Delaney predicted that the violent demolition of the porn houses and the changing of zoning laws to place sex shops at the desolate edges of the city would severely inhibit the interlocking systems and subsystems of cross-class contact which made life livable in New York, he did not predict the ways in which networking logics would come to colonize nearly every aspect of queer life. Whether it be the rise of social networking websites like Facebook that function through delimited networks of “friends” or through the rise of hookup smartphone applications like Grindr and Tindr (coupled with the mass closure of gay and lesbian bars and gay and lesbian bookshops), networking systems are now the primary vehicle through which queers meet each other and interact with each other. If we take Delaney seriously, perhaps it is the loss of contact systems—more so than the valorization of marriage and the couple, although these are linked to such loss—that most threatens a queer way of life and practices of freedom rooted in inventiveness and friendship.

## III.

As the opening of this essay illustrated, the present threat of closure of the last of Chelsea's gay sex shops coincides with the legalization of same-sex marriage, whose justification articulates marriage as the highest form of intimacy and belonging. The United States Supreme Court's grandly proclaims that "no union is more profound than marriage" and that marriage promises the hope "not to be condemned to live in loneliness."<sup>31</sup> To return to the Spivakian question that drives this essay, one can ask whether a claim can be made on behalf of a practice or a way of life that occupies a space that can barely be intelligible given the constellation of discourses available.

This is not a question of the Lacanian Real, i.e., whether sexuality can be put into speech or representation. Sexuality, in this analysis, is not the proverbial "bone in the throat" of signification. Rather, in asking this question, I seek to make a small and humble point about the connection of speech to the sovereign subject of rights and why the discourse of rights will not suffice to terminate the policing of public sex. In light of the long history of the policing of public sex, one is tempted to call for the expansion of the domain of rights to public sex.<sup>32</sup> Such a view assumes that public sex can emerge as a practice self-evident and visible according to readily recognized norms of privacy and speech. And, although most literature on public sex uses public sex as an example to trouble the public/private distinction, I would suggest that public sex is an example of that which cannot speak against the norms of speakability, undergirded by asymmetrical power relations that are endemic to the emergence of the speaking subject of rights and

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<sup>31</sup> *Obergefell v. Hodges*. 576 U.S. \_\_\_\_ (2015).

<sup>32</sup> Legal scholars often call for the right to public sex under the domain of privacy rights. See Carlos Ball, "Privacy, Property, and Public Sex." Available at SSRN: <http://ssrn.com/abstract=1091526>

representation by the state. In the face of these asymmetries of power, to make the glory hole speak is a violent erasure of the practice of freedom internal to public sex.

In a well-trodden passage from *Origins of Totalitarianism*, Hannah Arendt remarks that, with the amassment of stateless people due to Europe's imperial wars, "The Rights of Man, supposedly inalienable, proved to be unenforceable—even in countries whose constitutions were based upon them—whenever people appeared who were no longer citizens of any sovereign state."<sup>33</sup> This was a perverse consequence of the history of nation-state, Balibar tells us, because the nation-state always presented the rights of citizen as a "secondary construction" to the rights of man. Instead, history showed the opposite to be true: the rights of man/human rights are a secondary construction to the rights of citizen, guaranteed and enforced by the nation-state. Thus, Arendt is understood to be saying that once a state takes away the rights of citizen or if one finds oneself in a position of statelessness, one's human rights are destroyed as well.<sup>34</sup>

However, Balibar does not read Arendt as simply a legal positivist (in the sense that only institutions can institute and guarantee rights).<sup>35</sup> Nor does Balibar read Arendt as advocating for a return to the ancient ideal of ζῶον πολιτικόν. Instead, he claims that Arendt holds the view that outside of a community (not an organic community but "in the sense of the reciprocity of actions") there is no human being. Arendt thus *reinforces* the

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<sup>33</sup> Arendt, *Origins of Totalitarianism* (Orlando, FL: Harcourt Press, 1976), 293.

<sup>34</sup> Rights are supreme and yet also contingent: "The fact that, on the universalistic (and thus humanist) conception of citizenship claims by nation-states, there was at bottom no means of excluding someone (or some category) for the enjoyment of civic rights than excluding them from humanity itself." (Balibar, 172). And, Balibar notes, we are not talking merely about foreigners and refugees but "the ongoing production of the excluded within the state itself... [culminating] in industrialized mass murder that destroys individuality, or the 'human face,' as such." (Balibar, 172).

<sup>35</sup> Etienne Balibar, *Equaliberty: Political Essays*, trans. James Ingram (Durham: Duke University Press, 2014).

association of rights and humanity and rearticulates human rights as “the right to have rights.” Arendt also defines the “right to have rights” as “the right of every individual to belong to humanity,” i.e., the right to appear, speak, and act in a “common world” as equals.<sup>36</sup> Arendt would expand this notion of this common world in *The Human Condition* to be the space of appearances and action: “the political” proper.

While I sympathize with Arendt’s treatment of the fragile practice of world making that can forge human togetherness and friendship, I am suspicious of the status of speech in the construction of the common world. Arendt says:

Without the accompaniment of speech, at any rate, action would not only lose its revelatory character, but, and by the same token, it would lose its subject, as it were; not acting men but performing robots would achieve what, humanly speaking, would remain incomprehensible. Speechless action would no longer be action because there would no long be an actor, and the actor, the doer of deeds, is possible only if he is at the same time the speaker of words.<sup>37</sup>

Without speech, action loses all its meaning and the deed is perceived as simply brute physical appearance. Speech is what institutes the subject, the human as human, the speaking subject of the right to have rights.

Can the glory hole speak? No it cannot. Against the asymmetries of power that govern the political field of language and norms of speakability, the glory hole cannot speak in an idiom in which its agency would be fully heard or understood. Nor would we want it to. Perhaps, against Arendt and in light of Foucault, we can appreciate the sexual

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<sup>36</sup> Arendt, *Origins of Totalitarianism*, 298.

<sup>37</sup> Arendt, *Human Condition* (Chicago: University of Chicago Press, 1998), 178-179.

act done in silence and anonymity, an act that privileges the deed over the doer, that risks the self in an encounter with the unknown and in an unpredictable fashion. I can imagine no better example of friendship as a way of life than the contact situations that Delaney so elegantly describes. As a desubjugative practice of freedom, public sex should call for the right *not* to have rights, to have a space set aside, to not have to speak for itself and within itself, that does not ask for assimilation into the existing norms of dominance.