An Institutional Account of Law and Marginalization within the LGBT Movement

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Abstract: Several recent critiques have been leveled against the mainstream LGBT movement, and the movement’s lawyers in particular, for pursuing strategies that alienate or have limited significance for communities of color. While the substance of these critiques is correct, I argue that the attribution of blame to individual movement actors overemphasizes those actors’ agency and undertheorizes the role of systemic, structural factors that generate marginalization within identity movements. This Article combines findings from empirical research on social movements with the insights of Critical Race Theory and Queer Theory to expand on current understandings in each of these fields about the relationship between law and intra-movement marginalization. Empirical research, particularly organizational sociology, suggests that tactics such as lobbying and litigation—political strategies that take place within institutionalized channels for law reform—tend to dominate other forms of political action like protest and grassroots organizing. These strategies simultaneously require activists to frame movement claims in ways that resonate with liberal legal discourse, which privileges a single-axis, rights-based framing of the movement’s substantive goals. I argue that the dominance of legal strategies and their identity/rights-based framework in the LGBT movement may be partially responsible for the marginalization of not only LGBT people of color, but also the marginalization of queer politics and the pursuit of multi-issue political advocacy in the mainstream LGBT movement. Issues such as intersectional discrimination or the deconstruction of binary gender and sexuality categories evade legal translation, and thus remain underrepresented by the law-focused mainstream LGBT movement. Exploring the largely inadvertent processes that produce marginalization within movements will help lawyers in the LGBT movement and other civil rights movements to provide more effective representation of marginalized communities. The Article concludes by considering strategies to reverse marginalization within the LGBT movement, and how other movements may resist similar patterns of internal marginalization.