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Affecting legal change: Law and Same-Sex Feelings in West Germany since the 1950s

Benno Gammerl

While working on this chapter, I was – as sometimes happens to historians – overtaken by history. On 30 June 2017 the German parliament introduced gay marriage and put same-sex relationships on a par with those of straight couples. This legal change came somewhat unexpectedly, after Chancellor Angela Merkel had mentioned in an interview with the women's magazine *Brigitte* that she would like to leave the decision for or against same-sex marriage to the individual members of the *Bundestag*. With conservative resistance crumbling and the party whips being safely stored away, marriage equality came surprisingly quickly, in fact only four days after Merkel had indicated her change of mind. Regarding the interplay between feelings and legal change which this chapter sets out to explore, the way Merkel motivated her shift of opinion is particularly interesting. In the interview she said that children who live with gay or lesbian parents might actually grow up in very caring and loving families.¹ So it was ultimately an emotional faculty that paved the way for gay marriage when the chancellor, not without sounding some homophobic undertones, hesitantly conceded the ability to love and care to same-sex couples.

How did specific emotional patterns and practices propel developments in the legal sphere? And how did the law in turn prevent or encourage particular feelings? This chapter examines the German history of homosexualities with these questions in mind. Due to the excitement around gay marriage, another hallmark caesura in the history of legal discrimination against homosexuals in Germany went almost unnoticed. On 22 June 2017, the *Bundestag* revoked the post-1945 verdicts based on paragraph 175 which had criminalized sex between men. Because of West Germany's particular history, then, the chapter not only pinpoints the links between love and marriage, but also the connections between grief, suffering and reparation.

After a long period of denial, legislative and judiciary institutions finally acknowledged their responsibility for the suffering gay men had to endure and admitted to their former involvement in what is today considered a violation of human rights. As in many other countries, consensual intercourse between adult men was illegal in West Germany until the penal code's infamous paragraph 175, which dated back to 1870, was reformed in 1969 and 1973. This history of criminalization is particularly troublesome for the Federal Republic's legal system as it actively enabled the uniquely harsh version of paragraph 175 established by the Nazis to persist well into the post-war era. Until 1969 the penal law

facilitated fierce prosecution by making punishable a wide range of behaviours that could indicate same-sex desire.

Yet while the sentences passed according to this section until 1945 had already been revoked in 2002, the legislature and judiciary were much more hesitant to repeal the verdicts that had been issued after 1945. Their doing so in June 2017 ultimately amounted to the confession that not only the Nazis but also the early Federal Republic had unjustly and fiercely persecuted homosexual men. The legal system obviously found it difficult to adopt such a self-critical stance. Yet following an initiative by Christine Lüders, director of the Federal Anti-Discrimination Agency, later picked up by Heiko Maas, the minister of justice, the debate gained fresh momentum in 2016.² Since the decision of June 2017, at least some of the approximately 45,000 men who were sentenced according to paragraph 175 between 1949 and 1969 may still live long enough to see their verdicts repealed and to receive financial compensation for the unjustified prison terms they had to serve. Together with the institution of same-sex marriage this attempt at reparation shows that legal systems, legislatures and societies are actually able to learn and to adopt new, more accepting ways of dealing with sexual diversity. And one may hope that they will – given that queer emancipatory movements maintain their pressure and their efforts at persuasion – continue to do so.

These developments demonstrate how profoundly the legal treatment of same-sex love and desire has changed during the last five decades. The compensation for men who suffered from prosecution moreover indicates that counting convictions alone does not suffice to redress the harm inflicted. The detrimental consequences of criminalization reached far beyond prison terms and ranged from relationship break-ups to suicides. To trace these wider ramifications of laws regulating homosexuality, this chapter highlights their emotional implications. The focus on feelings brings shame and its interpretation as ‘internalized homophobia’ into view.³ It also shows how fear of exposure could engender strategies that enabled men to have sex with one another in spite (or because) of their dreading the penal consequences. Simultaneously emotions like rage or hope were sparking political activism directed against homonegative measures and were thus decisive triggers of legal change.⁴ An approach to feelings that does not reduce them to ‘internal’ phenomena, but locates them at the threshold between the individual and the social therefore reveals how laws played out on an emotional level, and how feelings at the same time shaped legal developments.⁵

Tracing such interactions allows the chapter to explore the emotional lives of men loving men and women loving women. It reveals how decriminalization and legal recognition were propelled either by the promotion of love and mutual responsibility within partnerships

or by an emphasis on the adventurous and pleasurable lives of queer singles. The analysis simultaneously shows how laws shaped the emotional styles prevalent among gays and lesbians, for example by rendering certain modes of expressing desire and affection particularly hazardous.

Connecting legal and emotional levels widens the scope of research in three respects. Firstly, it brings into view the productive aspects of the law that are often sidelined by an exclusive focus on its prohibitive dimensions. While the analysis does not deny that legal measures at times limited actors' scope for manoeuvre, it simultaneously shows that laws could also promote specific modes of emotional expression. Secondly, the approach highlights the various connections that link legal arenas to other spheres, ranging from the artistic to the educational to the everyday. Thirdly, exploring the interactions between laws and feelings reveals how closely developments in the homosexual context and dynamics in the heterosexual realm were linked. This observation can help to unsettle the often implicit and therefore particularly problematic assumption that it is possible to research different-sex settings without considering same-sex constellations and vice versa. Such views rely either on the dubious supposition that homosexuality was a negligible category when one analyses, as it were, mainstream sexuality, or on the questionable opinion that same-sex phenomena were incommensurable with and completely separated from different-sex realities.

The focus on feelings is moreover particularly fruitful because it reveals the ambivalent effects that the decriminalization or the normalization of homosexualities generated on an everyday level. From a normalization point of view, homosexuals have since the 1970s not only left the pillory of shame as well as the cages of incarceration and pathologization. Rather, they have simultaneously also been caught up in new patterns and expectations as to what a normal and successful gay and lesbian life should look like. The introduction of same-sex marriage is but one example that illustrates this dynamic. Such models enhance the pressure of self-optimization and the potential for failure among those trying to live up to the newly established standards. The new patterns available for gay or lesbian relationships thus no longer appear merely as fortunate side-effects of liberalization, but as at times stressful emotional models which create fear of and shame about falling short of them.⁶

Beyond narratives of liberalization

The post-war decades are usually described as a time of harsh prosecution and cautious hiding that was ended by accelerating liberalization since the 1970s. In West Germany this

development led from the reforms of 1969 and 1973 to the abolition of paragraph 175 in 1994. This repeal of the unequal legal treatment of same-sex-desiring men was actually a consequence of German unification. In the German Democratic Republic penal discriminations against homosexuals had, after a decisive attenuation in 1968, finally been abolished in 1988 by reducing the age of consent for homosexual intercourse from 18 to 16. Since then the same rules applied to homo- and heterosexuals. Six years later the West German penal code was adapted to this model of equal treatment. After the 1990s liberalization continued with affirmative legal measures that promoted the recognition of sexual diversity. The *Lebenspartnerschaftsgesetz* (life-partnership law) of 2001 introduced civil partnership for same-sex couples. In 2006 the *Anti-Diskriminierungs-Gesetz* (anti-discrimination law) followed suit. It penalized the unequal treatment of sexual and other minorities.

If mentioned at all in broader historical accounts, this rapid and dramatic shift in the legal treatment of same-sex desire is mostly framed as resulting from general liberalizing trends.⁷ While not completely wrong, this argument has two flaws. Firstly, like most versions of the modernization paradigm, it implies teleological assumptions that consider the spread of accepting attitudes towards sexual diversity as a quasi-natural development. Homophobic and other adverse forces are accordingly depicted as anachronistic remnants of a bygone era. Secondly, the liberalization narrative tends to overemphasize the new chances and opportunities that open up for same-sex loving people in the post-liberation period, thereby losing sight of the new problems and challenges they have to face simultaneously. The focus on liberalization thus glosses over the at times fierce struggles gays and lesbians were and are involved in. And it disregards the contributions of gay and lesbian activists to establishing wider scopes for individual freedom and agency within society at large.

Highlighting the notion of emancipation instead shifts the perspective in a fruitful way. It brings into view how gay and lesbian movements actively enhanced the acceptance of sexual diversity, thus in crucial ways enabling legal change. Yet the focus on emancipation in turn involves the danger of reproducing heroic narratives of success. Histories of emancipation often tend to lose sight of failures and ambiguities that persisted or arose along the road to freedom and self-assertion, as it were. They are therefore in need of a critical supplement afforded by the notion of normalization. A history of emotions perspective is particularly conducive to exploring ambivalences that accompanied homosexualities' increasing social and legal acceptance. Combining a focus on emancipation with one on normalization can develop more complicated and more appropriate arguments and narratives

that reach beyond oversimplifying oppositions between traditional repression and modern liberality or between closeted shame and emancipated pride.⁸

To enable such multi-layered perspectives, the study draws on a range of materials that allow it to consider interactions between various domains. Besides gay and lesbian publications, the analysis also draws on oral history interviews with men loving men and women loving women who in their biographical narratives frequently refer to their own as well as to others' experiences with different-sex constellations. In addition, the enquiry's source base includes advice books from the 1960s and 1970s that addressed a broad and mainstream readership. Studying diverse materials and employing a history of emotions approach that widens the analytical perspective allows this contribution to devise new and more comprehensive explanations for the changes in the legal treatment of same-sex love and desire which have occurred over the last couple of decades. In doing so, the study places the history of homosexualities within a set of broader developments. This emphasis on the ways in which legal and emotional, straight and queer dynamics interacted with each other ultimately enhances our understanding of why and how same-sex feelings came to be decriminalized and normalized since the 1950s.

De/criminalization: same-sex desire between bodily lust and pristine love

Paragraph 175 of the German penal code constituted the main clause regulating same-sex desire since the 1870s and can serve as a good example of how a legal measure – in this case a prohibitive one – affected the behaviour of same-sex desiring men. In some regions this paragraph discontinued the Napoleonic laissez-faire policy in sexual matters, while it replaced former sodomy laws in others. Partly in an endeavour to lend these older prohibitions more legal clarity, yet partly also in an attempt to ensure that such charges could not be levelled too easily, the proof of coitus-like intercourse – i.e. penetration – between men was made a condition for a sentence according to paragraph 175.⁹ This specific proscription clearly impacted the sexual behaviours of men desiring men. Practices like mutual masturbation or interfemoral intercourse made accusations and convictions less likely than others and were thus in a way advantageous.

The need for proof of coitus-like intercourse was eliminated by the Nazis when they radicalized paragraph 175 in 1935. According to the rules in force since then almost all signs of same-sex desire could be interpreted as proof of a breach of the law.¹⁰ A kiss or a flirting look sufficed to send a person to prison. To highlight the particular ferocity of this homophobic piece of legislation the Berlin memorial to the homosexuals persecuted under the

national socialist regime puts the display of same-sex kisses centre stage. Thus the memorial celebrates the right that gays and lesbians have since won to express their love publicly and fearlessly. Besides memorial practices, biographical narratives also document the fact that same-sex kisses were anything but a matter of course as long as the Nazi version of paragraph 175 was in force in West Germany, that is, until 1969.

Men loving men who came of age in the 1950s and 1960s were often particularly cautious about kissing other men. Mr. Melling, born in 1949 and interviewed in 2008, draws a strict distinction between his same-sex contacts, confined to the domain ‘below the belt’, and the intimacy he experienced with his wife which also comprised kissing and touching the upper parts of the body.¹¹ In a similar vein, Mr. Kuhn, born in 1938, found the mere thought of kissing another man repugnant.¹² While he did not mind engaging in various same-sex practices as an adolescent and young adult – he thought that practices like mutual masturbation were ‘absolutely legal’ – Mr. Kuhn refrained from kissing other men until the late 1960s.¹³ Only then did he stop to consider the kiss as the unmistakable sign of being gay, as the moment of no return, as the ultimate step that he was not willing to take: ‘as I hadn’t come, er, to terms with myself, ... the *kiss was the final thing* that I then did as well in order ... to ... adapt, or to, that I accepted myself’.¹⁴

If having same-sex intercourse without kissing his partners was Mr. Kuhn’s particular way of dealing with legal prohibitions, the majority of his homophile contemporaries in the 1950s and 1960s took to another strategy. They started from the observation that the criminalization of men loving men relied on stereotypes which depicted them as sexually licentious perverts and seducers who continuously sought new erotic adventures. Against this prejudice homophile magazines like *Der Weg* developed a self-image that highlighted pristine love and long-lasting relationships between men.¹⁵ In 1961, an article argued that such ‘durable friendships’ could not be ‘based on sex’, but needed to rely on ‘spiritual aspects’.¹⁶ And another author claimed that ‘if we seriously aspire to win tolerance among normal people, it is high time to bring order to our intimate relationships’.¹⁷ Propagating a new emotional style that highlighted love instead of sex and faithfulness instead of promiscuity was thus seen as a means to promote legal reforms.

This project entailed a characteristic will to adjust to ‘normal’ emotional standards which often overlooked the fact that during the 1960s this ‘normality’ was very much contested within the heterosexual setting. An advice book from the early twentieth century, Friedrich Wilhelm Foerster’s *Lebensführung* (conduct of life) that had seen several revisions and was still widely read in the post-war period requested heterosexual couples in its 1961

edition to resist the allegedly all-pervasive ‘dictatorship of the drives’ in order to allow the delicate flower of ‘true love’ to grow and to blossom.¹⁸ Similar advice was given by Jochen Fischer in 1966 who opposed sex to ‘real love’ and highlighted non-passionate relationship characteristics that ‘actually’ ensured happiness in his eyes, namely ‘security, constancy, durability’.¹⁹

Such parallels between homo- and, as it were, heterophile discourses hint at the fact that intimacies between women and men were also subject to legal scrutiny at the time. Parents or innkeepers who sheltered unmarried couples ran the risk of a conviction for ‘procuration’ until 1969. In light of liberal demands for a general reform of the criminal code of sexual offenses, including those parts that regulated different-sex behaviours, the advice given to young people in the 1960s was most likely intended as a bulwark against what numerous parents considered as the evil consequences of sexual liberation. In other words, if one could not any longer rely exclusively on the law to enforce conservative sex morals, one had to win over young men’s and women’s hearts to the cause of chastity or caution in the name of ‘real love’. From a history of homosexualities perspective one could add yet another interpretation. Maybe such calls for self-imposed restraint, whether intentionally or not, ultimately paved the way for liberal reforms of the law by suggesting that there were other, more promising ways for containing the danger of sexual licentiousness.

In the same-sex context, the homophile emphasis on pristine love and durable friendships clearly and crucially contributed to the reforms of paragraph 175 in 1969 and 1973. These were mainly advocated and propelled by liberally minded jurists like Fritz Bauer. Bauer is mainly known for his role, as Hessian district attorney, in the Frankfurt Auschwitz trials which would not have commenced in 1963 if it had not been for his insistence on prosecuting concentration camp guards and other people who administered the Holocaust. Bauer is less well known for his support of homosexual law reform. Because of this commitment he figured as one of the addressees of a petition for the decriminalization of consensual sex between adult men drafted by the humanitarian Club Elysium in 1961.²⁰

For Bauer and other liberal jurists, arguments about the extent to which the state should be allowed to infringe on individuals’ private lives under the rule of law were paramount. But beyond this, the impression that same-sex love was primarily about relationships that lived up to bourgeois standards also played a decisive role and garnered support for legal reforms. The same can hardly be said for the gay liberation or emancipation movement of the 1970s. Its early manifestations were relatively insignificant for the reforms of 1969 and 1973. And later on it largely failed in achieving further amendments. The gay and

lesbian-feminist movements tended to trigger developments in domains other than the legal sphere. The decriminalization of homosexuality therefore furthered the emergence of emancipatory movements which subsequently changed societal attitudes towards same-sex love and desire.

Beyond hierarchies: equal partnerships and the normalization of homosexualities

After 1969 the crucial difference between the criminal treatment of homo- and heterosexual encounters lay in the different ages of consent. At first men up to the age of 21 were under special legal 'protection'. The second reform of 1973 then drew the line at 18 years for gay male intercourse, while it stood at 14 years for heterosexual sex. This distinction indicates that prohibitions and prosecution no longer focused on male same-sex desire in general, but on encounters between mature men and adolescents in particular. Since the 1970s, the stereotype of the homosexual child molester and seducer of teenagers has served as the pivotal justification for the continued discrimination against same-sex desiring men. On a societal level this homophobic strategy survived well into the twenty-first century. Since 2013, the state of Baden-Württemberg in South-West Germany has witnessed sizable protests against a plan to grant sexual diversity a prominent place in the school curriculum. Parents, teachers and others claim to fear for children's safety and argue that they must be protected from gay and other debauchers who would lure them into the realms of same-sex desire and gender variability.

Yet legally marking out relationships between adults and adolescents has since the 1970s also contributed to the de-legitimization of intergenerational and hierarchical patterns within the homosexual sphere. Homophile circles had held such pairings in high esteem, often referring to ancient Greek models in the post-war decades. The gay publications of the 1970s and 1980s, though, increasingly marginalized pederasty, paedophilia and other relationship patterns that involved large age differences. At the same time they clearly came to favour equality-based models that highlighted the need for partners to be similar to each other in terms of age, standing and education.²¹ Partners were simultaneously expected to engage in fair negotiations whenever disagreements arose.²² This growing emphasis on equality, readily visible in the increasingly mainstream gay press of this period, corroborates the hypothesis that legal prohibitions, in this case of same-sex contact between men of different age groups, could in a decisive fashion promote and help to establish specific emotional patterns and practices.

Yet it was not only the reforms of paragraph 175 that discredited intergenerational love and furthered the emergence of parity-based patterns. These processes were also in line with much broader developments that could be described as a democratization of partnership models. Likewise, the practices of heterosexual couples also came increasingly to rely on equality and fair negotiations. Partners had to acknowledge and to respect each other's characters and wishes, trying 'peacefully and democratically' to reach a compromise, for example when they happened to have different plans for the weekend, as an advice book from 1971 had it.²³ These tendencies towards an approximation between same- and different-sex partnership ideals and practices contributed to a gradual blurring of boundaries between homo- and heterosexuality within the ever broader field of sexual experimentation. Mr. Weber, born in 1943, claims, when interviewed in 2008, that the 1970s were characterized by an over-arching urge to be sexually unconventional. Back then, he says, 'it was embarrassing for straight people to be straight' and 'everybody was a little bit gay'.²⁴

These convergences furthered the increasing normalization of homosexuality since the 1970s and paved the way for the legal reforms that occurred in the 1990s and 2000s. When paragraph 175 was finally removed from the criminal code in 1994, this attracted next to no public attention. One could say that the criminalization of same-sex desire had by then already far outlived the social conditions that had once allowed jurists and politicians to deem it a necessary provision. By 1994 the continuation of this legal discrimination against homosexuals was considered out of the question by representatives of all major parties. This unanimity resulted from numerous reasons, among them the fact that gay, lesbian and straight couples had all come to live by standards which emphasized equality and fairness.

The law introducing same-sex civil partnerships in 2001 faced considerably more opposition. Demands for a legal measure recognizing the bonds between gay or lesbian spouses had been voiced intermittently since the 1980s.²⁵ They had gained public currency in the 1990s with the so-called *Aktion Standesamt* (action civil-registry). This campaign brought dozens of same-sex couples to file requests for marriage with registrar's offices throughout Germany and then publicized the official denials of the right to marry.

In spite of such efforts it was only after a government formed by the Social Democrats and the Greens took over from their Christian Democratic and Liberal predecessors in 1998 that the so-called *Lebenspartnerschaftsgesetz* (life-partnership law) was passed by the German parliament. Some gay and lesbian activists celebrated this piece of legislation as an emancipatory breakthrough; others criticized it as a decisive step in the normalization of homosexuality. The latter interpretation invites a revision of all too linear and optimistic

narratives of liberalization. It refuses to praise the so-called sexual revolution as a catalyst for the acceptance of sexual diversity, reaching its apogee, as it were, in the institution of same-sex marriage. Highlighting normalizing tendencies rather involves critiques of the commercialization and of the neoliberal emphasis on flexibility in sexual and amorous matters which this process entailed.²⁶ Proponents of the normalization paradigm claim that what once was considered against the norm or ‘unnatural’ is now integrated into a dynamic spectrum of normal behaviours.²⁷ This transition, it is argued, generated problematic effects on an individual level as it urged actors to aspire for ever higher levels of pleasure and success in a self-optimizing fashion.²⁸ From this point of view the possibility of same-sex marriage put increasing pressure on gays and lesbians to live up to the ideal of establishing and maintaining an emotionally gratifying long-term partnership.

Such criticisms of same-sex marriage have been voiced since the 1980s.²⁹ In most cases this institution was and is blamed for copying a heterosexual model and for stripping same-sex-desire of its transgressive qualities, fencing in its alleged unruliness. Such arguments fail to acknowledge two important aspects, though. First, heterosexual marriage has itself, not least because of the growing visibility of homosexual couples, been subject to redefinitions since the 1970s. Legal inequalities between husbands and wives have diminished and divorce has become an ever more widespread phenomenon. Simultaneously, concepts like free love or polyamory have also triggered debates about reforming the legal frames that regulated different-sex relationships.³⁰

Second, the argument errs when it exclusively blames same-sex marriage for propelling the normalization of homosexualities, while ascribing anti-normalizing potentials to sex lives that involve frequently changing partners. Quite to the contrary, the appreciation of certain forms of promiscuity, especially within the gay scene, also enhanced the pressure to self-optimize in terms of attractiveness and generated normalizing effects and aspirations for the flexible lifestyle of an economically successful single or for an open relationship.³¹ Normalization is thus not due to the increasing prominence of the marriage model alone, but rather to the combination of this development with a seemingly contradictory one that foregrounded brief affairs and encounters with different partners. This tandem of monogamous and promiscuous expectations and ambitions was in a way also reinforced by the debate about how gay men should react to and protect themselves against the threat of HIV infection. While some experts recommended only having sex with long-term partners, others advocated safer sex that allowed individuals to engage in intercourse with various partners in a responsible fashion.³²

Ultimately it is exactly this twofold standard of a perfect love and sex life with one and with many persons that propelled the normalization of homosexualities and intensified the pressure for self-optimization. This somewhat contradictory juxtaposition made it difficult for individuals to successfully master all the challenges and enjoy all the pleasures a gay or lesbian life had to offer. This in turn increased the likelihood of ‘failure’ and fostered feelings of anxiety and regret. Seen from a normalization point of view, liberalization and emancipation thus not only endowed men loving men and women loving women with new opportunities, but also burdened them with a set of new emotional problems.

Whether the emancipatory benefits outweigh the normalizing downsides of same-sex marriage remains an open question, but there can be no doubt about the favourable effects which the debate had on the public visibility of lesbians. The marriage discussion for the first time granted them a prominent place in arguments about the legal treatment of homosexuality. In West Germany and elsewhere, sex between women was rarely considered during discussions about criminalization or decriminalization. The dominant assumption was that lesbian sexuality did not involve penetration and was thus decisively less ‘dangerous’ than sex between men. In 1957 the *Bundesverfassungsgericht* (the West German constitutional court) relied on this argument when it ruled that the different treatment of male and female homosexuality in the penal code did not violate the constitution’s principle of gender equality.³³ After 1969, the law’s focus on sexual encounters between male adults and adolescents or children continued to further lesbian invisibility, not least because feminists themselves explicitly denied the possibility of female paedophilia.³⁴

Yet the call for same-sex marriage and the debate about queer families brought lesbian couples to the fore. For Mrs. Lehmann, one of my interviewees born in 1954, her wish to gain the right to marry was the trigger that moved her to engage politically as a lesbian in the first place. In 1994 she, her partner and other couples – gay and lesbian alike – founded an organization that demanded legal frameworks which would allow same-sex partners to share property and which would end discrimination against them when it came to inheritance tax and related matters. The *Aktion Standesamt* of 1992 likewise involved gay and lesbian couples on an equal footing, as Mr. Albrecht, born in 1960, remembers.

This shift in visibility also contributed to a decisive change in the emotional style that was publicly associated with men loving men and women loving women. In order to gain popular support for the marriage-for-everyone-claim, the campaign channelled images of gays and lesbians – having breakfast together, kissing each other good night, celebrating with their families etc. – that highlighted tenderness and mutual responsibility. These qualities very

much characterize the emotional landscape within which the debate about same-sex marriage evolved. Its proponents wanted to demonstrate that gay and lesbian couples shared the same joys and sorrows as heterosexual ones and that they therefore deserved the same degree of legal protection and privilege. Equal partners caring for each other were thus at the core of the emotional style that paved the way for the introduction of civil same-sex partnerships in 2001, and ultimately of gay marriage in 2017. And these enabling legal measures in turn shaped the emotional patterns and practices that gays and lesbians employed, either by encouraging couples to buy into the ideal of living happily ever after, or by explicitly refuting this model and stressing their independence – sexually and otherwise.

Retrospect: the ambivalent emotional ramifications of legal change

These observations once more highlight the complexity of the emotional effects that changes in the legal sphere trigger and the intricate ways in which feelings and laws interact with each other. In the history of same-sex relationships in West Germany, emotional patterns proved decisive in propelling developments in the legal sphere, while the law itself both prevented and encouraged particular feelings. Focusing on this interplay allows the analysis to trace the similarities and interdependencies between developments in the homo- and the heterosexual context that are often overlooked. It also enables the argument to detect the ambivalent effects of legal change at an everyday level, where emancipatory opportunities often emerged alongside normalizing pressures.

Ambivalences surface as well when examining the time-related feelings that are triggered by shifts in the legal sphere such as the introduction of civil partnerships and ultimately same-sex marriage. These amendments generated hope and optimism about a happy and harmonious future where sexual diversity would meet with widespread acceptance and recognition. Such positive outlooks can in fact provide fresh impetus to ongoing struggles for queer emancipation.

Retrospectively, these changes also generated regret and melancholia, though, directed towards the past. While some lament the disappearance of spaces and practices that were paramount when same-sex desire was still illegal and illicit, others sadly note that things that today are completely ‘normal’ for young gays and lesbians were unthinkable in the time of their own youth. ‘I’m often a bit envious’, says Mr. Meyer, born in 1943, ‘when I see these young people in those community centres ... holding their hands and snogging ..., I had nobody, when I was 14, 15, 16, 17, 18, 19, 20’.³⁵

This kind of regretful gaze into the past adds another layer of complexity to the history of laws regulating homosexuality. By employing a history of emotions approach this chapter has critiqued and revised the all too linear narratives of liberalization. It extended the purview of legal history by considering the wide-ranging and often ambiguous emotional implications of legal change between love and lust, rage and shame, hope and fear, pleasure and commitment. Mr. Meyer's present-day envy and retrospective grief now ultimately allow for addressing one further dimension that counters the clear-cut linearity of progress.

Queer approaches to temporality have emphasized the untimeliness of sexual alterity and same-sex desire's deviation from the generational linearity implied in heterosexual reproduction.³⁶ In the quoted passage, Mr. Meyer performs a queer narrative twist in exactly this sense that elicits highly confusing temporal as well as emotional patterns. The mutual love others perform in the present coincides with his envy which is in turn linked to memories of his past isolation, thus creating multi-voiced resonances that seem simultaneously to mitigate and exacerbate his current loneliness. This intricate entanglement shows that indignation at bygone injustice and hope for a better future are by no means the only feelings which inform queer history. Consolatory longing for former troubles, pre-emptive contempt for coming achievements, and many other such attitudes play a role as well. Taking this emotional and temporal complexity into account can only benefit past as well as future struggles for affecting legal change.

¹ Bastian Brauns, 'Merkel adoptiert die Ehe für alle', *Zeit online*, 27 June 2017, www.zeit.de/gesellschaft/zeitgeschehen/2017-06/angela-merkel-ehe-fuer-alle-gewissensfrage (accessed 15 May 2018).

² Kate Connolly, 'Germany to quash historical convictions of gay men', *Guardian*, 11 May 2016, www.theguardian.com/world/2016/may/11/germany-quash-historical-convictions-gay-men-criminalised-law (accessed 15 May 2018).

³ On the intricacies of shame see David M. Halperin and Valerie Traub, eds., *Gay Shame* (Chicago: University of Chicago Press, 2009).

⁴ See Deborah B. Gould, *Moving Politics: Emotion and Act Up's Fight against Aids* (Chicago: University of Chicago Press, 2009).

⁵ On emotions as liminal phenomena see Benno Gammerl, 'Emotional Styles – Concepts and Challenges', *Rethinking History* 16, no. 2 (2012): 161–75. On the interplay between law and emotions see the special issue of the *Journal of Social History*, 51 (2017), 219–312.

⁶ On these ambiguities see Benno Gammerl and Volker Woltersdorff, "'Sie ham mir ein Gefühl geklaut...". Queer-feministische Perspektiven auf Bewegungen zwischen Sex und Gefühl', *Freiburger Zeitschrift für Geschlechterstudien* 20, no. 2 (2014): 27–41. Jeffrey Weeks, Brian Heaphy and Catherine Donovan, *Same-sex Intimacies: Families of Choice and other Life Experiments* (London: Routledge, 2001).

⁷ See e.g. Michael Kandora, 'Homosexualität und Sittengesetz', in *Wandlungsprozesse in Westdeutschland. Belastung, Integration, Liberalisierung 1945-1980*, ed. Ulrich Herbert (Göttingen: Wallstein, 2002): 379–401.

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- ⁸ See Craig Griffiths, 'Sex, Shame and West German Gay Liberation', *German History* 34, no. 3 (2016): 445–67.
- ⁹ Jens Dobler, *Wie öffentliche Moral gemacht wird. Die Einführung des § 175 in das Strafgesetzbuch 1871* (Hamburg: Männerschwarm, 2014).
- ¹⁰ Michael Schwartz (ed.), *Homosexuelle im Nationalsozialismus. Neue Forschungsperspektiven zu Lebenssituationen von lesbischen, schwulen, bi-, trans- und intersexuellen Menschen 1933 bis 1945* (München: Oldenbourg, 2014).
- ¹¹ Mr. Melling, int. 1, seq. 24; see also int. 1, seq. 20. Every respondent was interviewed twice (int. 1 and 2). The sequence numbers (seq.) refer to the particular passage of the transcript. All interviewees' names are pseudonyms. See also <https://www.mpib-berlin.mpg.de/en/research/history-of-emotions/project-anders-fuehlen/the-study-and-first-results-in-german> (accessed 15 May 2018). All translations from German sources are by the author.
- ¹² Mr. Kuhn, int. 1, seq. 260.
- ¹³ Mr. Kuhn, int. 1, seq. 272.
- ¹⁴ Mr. Kuhn, int. 1, seq. 266 (emphasis in the original).
- ¹⁵ See Gammerl and Woltersdorff, "'Sie ham mir ein Gefühl geklaut...'"
- ¹⁶ O.Z., 'Eine Antwort auf den Beitrag der Oktobernummer', *Der Weg* 11, no. 11 (1961): 248–9, p. 248.
- ¹⁷ Foltro (pseud.), 'Ist die Erotik unser tägliches Brot?', *Der Weg* 11, no. 10 (1961): 224–5, p. 225.
- ¹⁸ Friedrich Wilhelm Foerster, *Lebensführung. Ein Buch für junge Menschen*, rev. edn. (Mainz: Mathias-Grünwald-Verlag, 1961), pp. 147 and 174.
- ¹⁹ Jochen Fischer, *Nicht Sex sondern Liebe. Eine Orientierungshilfe für junge Menschen* (Hamburg: Furche-Verlag, 1966), p. 12f.
- ²⁰ See Anon., 'Die Bremer Pfingsteingabe', *Der Weg* 11, no. 6 (1961): 133–8.
- ²¹ See for example Hans Daniel, 'Eine feste Freundschaft hat viel für sich', *Don* 3, no. 6 (1972): 32–3.
- ²² See for example Anon., 'Gedanken über die Freundschaft', *Don* 4, no. 4 (1973): 24. For a critique of hierarchical relationship models see also Wolfgang Müller, 'Radikale Emanze', *Don* 10, no. 2 (1979): 24.
- ²³ Kurt Seelmann, *Zwischen 15 und 19. Information über sexuelle und andere Fragen des Erwachsenwerdens* (München and Basel: Ernst Reinhardt Verlag, 1971): 215–16.
- ²⁴ Mr. Weber, int. 1, seq. 111.
- ²⁵ For early requests for same-sex marriage see Anon., 'Homo-Heirat', *Don* 10, no. 1 (1979): 13. Anon., 'Sozialversicherung erkennt erstmals Lesbierinnenpaar an', *Lesbenstich* 4, no. 2 (1983): 34.
- ²⁶ For such critiques see Ilona Bubeck, ed., *Unser Stück vom Kuchen? Zehn Positionen gegen die Homo-Ehe* (Berlin: Querverlag, 2000).
- ²⁷ Peter-Paul Bänziger and Julia Stegmann, 'Politisierungen und Normalisierungen: Sexualitätsgeschichte des zwanzigsten Jahrhunderts im deutschsprachigen Raum', in *H-Soz-u-Kult*, 5 November 2010, <http://hsozkult.geschichte.hu-berlin.de/forum/2010-11-001> (accessed 15 May 2018).
- ²⁸ For similar developments in a heterosexual context see Christiane Reinecke, 'Statistiken der Liebe, oder: Dr. Kinsey fragt die Frauen. Umfrageforschung und ihre mediale Vermarktung in transnationaler Perspektive', *Comparativ* 21, no. 4 (2011): 29–44. Lutz Sauerteig: "'Wie soll ich es nur anstellen, ohne etwas falsch zu machen?'" Der Rat der Bravo in Sachen Sex in den sechziger und siebziger Jahren', in *Fragen Sie Dr. Sex! Beratungskommunikation und die mediale Konstruktion des Sexuellen*, eds. Peter-Paul Bänziger et al. (Frankfurt/Main: Suhrkamp 2010): 123–58.
- ²⁹ See Anon., 'Ist Klappensex was Böses?', *Rosa Flieder* 23 (1981): 46–5. Anon., 'Pro und Contra. Sollen Schwule heiraten?', *Du&Ich* 13, no. 12 (1981): 69. Anon., 'Scene-intern', *Lesbenstich* 7, no. 4 (1986): 1.
- ³⁰ Christian Klesse, 'Polyamory and its "Others": Contesting the Terms of Non-Monogamy', *Sexualities* 9, no. 5 (2006): 565–83. Ingrid Bauer, Christa Hämmerle and Gabriella Hauch (eds.), *Liebe und Widerstand. Ambivalenzen historischer Geschlechterbeziehungen* (Wien: Böhlau 2005).
- ³¹ See for example Anon., 'Rechnen Sie Ihren Sex-Quotienten aus!', *Don* 10, no. 10 (1979): 20–1 and 52. Anon., 'Was ist Klappensexualität?', *Rosa Flieder* 23 (1981): 34–6. Anon., 'Risiko hat seinen Reiz – gemeinsam lieben, getrennt leben', *Don* 15, no. 3 (1984): 52–3.
- ³² Magdalena Beljan, 'Aids-Geschichte als Emotionsgeschichte', *Aus Politik und Zeitgeschichte* 46 (2015): 25–31.

³³ Christiane Leidinger, *Lesbische Existenz 1945-1969* (Berlin: Senatsverwaltung für Arbeit, Integration und Frauen, 2015), pp. 28–9.

³⁴ Alice Schwarzer, 'Wie frei macht Pädophilie? Interview mit Günter Amendt', *Emma* 4, no. 4 (1980): 26–31, p. 29.

³⁵ Mr. Meyer, int. 2, seq. 400.

³⁶ Carolyn Dinshaw, Lee Edelman, Roderick A. Ferguson, Carla Freccero, Elizabeth Freeman, Judith Halberstam, Annamarie Jagose, Christopher Nealon and Nguyen Tan Hoang, 'Theorizing Queer Temporalities: A Roundtable Discussion', *GLQ* 13, no. 2-3 (2007): 177-195.