

## Sexual Minorities in Legal Academia: A Retrospection on Community, Action, Remembrance, and Liberation

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By the late 1980s and early 1990s, pioneering members of the U.S. legal academy finally were able to activate, within the structures of our profession, that self-liberating sense of individual and collective consciousness that had fueled a (conflicted) understanding of sexual minority-hood among women and men with same-sex orientations in the U.S. throughout the twentieth century,<sup>1</sup> but especially after the 1969 Stonewall Riots.<sup>2</sup>

During these decades, lesbian and gay pioneers in the U.S. legal professoriate educated and agitated for equality and recognition not only in law and policy, but also in legal education specifically, including in the operations of the Association of American Law Schools (AALS). As outlined below, a small group of these pioneers (and allies) had managed by 1983–84 to establish formally and functionally a “section” of the AALS, and by 1990 this Section on Gay and Lesbian Legal Issues (and allies) in turn had nudged the AALS into adopting a nondiscrimination policy specifying coverage of

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1. For background readings, see JOHN D’EMILIO, *SEXUAL POLITICS, SEXUAL COMMUNITIES: THE MAKING OF A HOMOSEXUAL MINORITY IN THE UNITED STATES, 1940–1970* (1983) (outlining the basic social history); *CREATING A PLACE FOR OURSELVES: LESBIAN, GAY, AND BISEXUAL COMMUNITY HISTORIES* (Brett Beemyn ed., 2013) (presenting a collection of essays focused on pre-Stonewall and Gay Liberation Front times); see also Elvia R. Arriola, *Faeries, Marimachas, Queens, and Lezzies: The Construction of Homosexuality Before the 1969 Stonewall Riots*, 5 COLUM. J. GENDER & L. 33 (1995) (emphasizing the intersections of sex, gender, and sexuality with race, ethnicity, and class).
2. See generally Eloise Salholz et al., *Stonewall*, NEWSWEEK, July 3, 1989, at 56 (providing a historical retrospective); William Rubenstein, *The Stonewall Anniversary: 25 Years of Gay Rights*, HUM. RTS., Summer 1994, at 18 (providing a legal and social retrospective); Francisco Valdes, *Queer Margins, Queer Ethics: A Call to Account for Race and Ethnicity in the Law, Theory, and Politics of “Sexual Orientation,”* 48 HASTINGS L.J. 1293 (1997) (recounting the emergence of sexual orientation in legal culture and academia through doctrine and scholarship).

sexual orientation.<sup>3</sup> Both were historic firsts in U.S. legal culture, and each established new baselines for the future configuration and administration of legal education in the U.S.

By the mid-1990s, Stonewall and the nation's legal academy finally had met.

Crucially, in the years since, this section has continued serving as crucible, spearhead and vehicle for sexual minority faculty and friends to conduct academic and community-building programs in the continuing pursuit of equal justice in the legal academy and throughout society. As the history outlined below shows, this section provided the means by which sexual minorities in legal education mobilized for collective *political* action, affecting both our particular workplace environments and profession and our basic normative positions in society. Despite the remarkable and tangible progress during the late twentieth century, these were times of acute political conflict and cultural backlash, oftentimes focused on the inclusion or exclusion of sexual minorities from social and legal frameworks.

By century's turn, the intensifying cultural clashes and political polarization that had gripped and split the nation—the so-called “culture wars”—had spilled over into the nation's legal academy.<sup>4</sup> Those dynamics increasingly set the zeitgeist, and basic terms of engagement, for our work as a section during those acutely conflicted times. Those dynamics have not changed fundamentally today, and perhaps have grown worse.

Thus, like so many others before and since, 1997–98 was a year that brought with it the best—but also among the worst—of times.

In many ways, 1997–98 simply continued the pioneering work of earlier generations and section members across the U.S. legal academy in pursuing sexual orientation justice across legal education generally, and within the legal professoriate specifically. But that year we broke new ground in the Annual Program, held in January 1998, centered on cutting-edge issues focused on sexual minorities and in racial and ethnic communities. Yet, high moments were met with historically unprecedented lows: legislative and administrative attacks specifically and viciously targeting our pro-equality efforts, which (surprisingly to us) came directly from very senior levels of the U.S. government. Like so many others, this year was indeed one of high highs and low lows.

3. For more detailed accounts, see the Cain & Love (*Cincinnati: Before and After*, 66 J. LEGAL EDUC. 460 (2017)), Cox (*Time for a Change: 20 Years after the “Working Group Principles*, 66 J. LEGAL EDUC. 531 (2017)), and Leonard (*Fortuitously Present at the Creation*, 66 J. LEGAL EDUC. 473 (2017)) essays in this mini-symposium; see also *infra* notes 20–21 and accompanying text (on early sexual minority activism within the legal professorate). In later years, the section name was modified to today's name: Section on Sexual Orientation and Gender Identity Issues.
4. See *infra* note 6 and sources cited therein (on the backlash politics of the culture wars); see also Sylvia R. Lazos Vargas, “Kulturkampf[s]” or “fit[s] of spite”?: Taking the Academic Culture Wars Seriously, 35 SETON HALL L. REV. 1309, 1310–48 (2005) (focusing specifically on the culture wars' impact on academia).

Recalling our Section activities in 1997–98 thus presents both a history of and one model for current and future legal academics to pursue an activist agenda promoting or protecting equality in the profession.

That year was a period of culture wars, not unlike many since then, including right now. It was a period of conflict and debate in the legal academy as well, particularly about the significance of diversity and sameness-difference. Despite those turbulent crosscurrents, in that year the section succeeded in building principled solidarity across difference and in vindicating normative principles about equal justice among our multiply diverse ranks, by focusing on the intersections of race, ethnicity, and orientation in law and society. Now, two decades on—and as many of the sexual minority pioneers who broke the barriers of entry for the rest of us are beginning, or approaching, retirement from our shared profession—is a timely occasion to reflect, critically and self-critically, on the forward-looking insights and lessons that might be drawn from our recent and continuing histories with social, professional, institutional, and systemic forms of privilege and prejudice.

In 1997–98, for the first time ever, the section decided to devote its main annual event to the variegated interplay of race, ethnicity, and sexual orientation in contemporary U.S. law and society. Presenting a diverse panel of prominent scholars,<sup>5</sup> this program signified a substantive intervention in the then-developing fields of critical race theory, LatCrit theory, and gay/lesbian legal scholarship. As a knowledge production exercise, this multifaceted intervention was designed to nudge orientation into the discourses on race and ethnicity, as well as to nudge race and ethnicity into the emergent legal scholarship focused on the socio-legal condition of U.S. sexual minorities.

But more than to “build bridges” among “different” minorities, the point was to highlight how we already constitute overlapping multiple communities. Because at the time sexual orientation was coded white while race and ethnicity were coded straight, this program was designed to showcase in substantive and symbolic terms how race, ethnicity, gender, orientation and similar identity constructs already and concurrently populate “different” U.S. communities and lives—and to do so precisely in a time of rising anti-equality backlash

5. Titled “*Race, Ethnicity and Sexual Orientation: Crossing New Intersections in Law and Scholarship*,” our program was co-sponsored by the Section on Minority Groups and featured Angela Gilmore of Nova Southeastern as moderator; Elvia R. Arriola of the University of Texas, Barbara J. Cox of California Western School of Law, Clark J. Freshman of the University of Miami, Peter Kar Yu Kwan of Santa Clara University, Kendall Thomas of Columbia University, and Robert S. Westley of Tulane University. Reflecting our goals that year, the program description stated: “Legal scholarship on sexual orientation has proliferated during the past several years, while race and ethnicity scholarship continues to develop in the form of critical race theory and, more recently, LatCrit theory. However, existing legal discourses about race and ethnicity and about sexual orientation sometimes seem unduly unconnected, even though each probably can help to illuminate issues of importance to the others. This panel brings together a diverse group of scholars to consider the intersection of race, ethnicity and sexual orientation, thereby helping to initiate a broader conversation about the interplay of these constructs in law and society, and also within queer legal theory and critical race theory.”

using similar ways and means against us all.<sup>6</sup> In broad terms, the ultimate aim of our 1997–98 section program was to help cultivate a mutual sense of substantive, informed, and principled solidarity based on shared values and aspirations, and across multiple vectors of difference based on history, identity, or circumstance, to provide fuel and glue for social justice activism as diverse academics facing times marked by intensifying social reaction and legal regression.

Consequently, timing was equally key.

This intervention—if one recalls that historic moment specifically within the U.S. legal academy—took place during a time when notions and questions of “difference” and “sameness” preoccupied much of the progressive wing within the legal professoriate, generating doubts about substantive solidarity among “different” identity groups across varied social justice issues, which stymied coalitional action and, ultimately, social justice progress. During that time, within the legal academy the similarly “different” genres of flourishing scholarship—each focusing chiefly either on gender, or race, or ethnicity, or sexual orientation—oftentimes seemed likewise preoccupied with sameness-difference questions.<sup>7</sup> These parallel discursive efforts oftentimes yielded incisive texts relating to one or another identity category, but rarely had our respective labors led up to collaborative initiatives to tackle professional, institutional, or social injustice.<sup>8</sup> It took us the better part of a zigzagging decade to begin transcending those paralyzing intergroup dynamics.<sup>9</sup>

This program was but part of that long, multifaceted, still-ongoing group effort.

This academic status quo reflected the prevailing zeitgeist of the “culture wars” during that (and this) time.

6. To recall a sense of those times, see Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Kenneth L. Karst, *Religion, Sex, and Politics: Cultural Counterrevolution in Constitutional Perspective*, 24 U.C. DAVIS L. REV. 677 (1991); Keith Aoki, *The Scholarship of Reconstruction and the Politics of Backlash*, 81 IOWA L. REV. 1467 (1996).
7. For a sampling, see MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW* (1990); Regina Austin, *Black Women, Sisterhood, and the Difference/Deviance Divide*, 26 NEW ENG. L. REV. 877 (1992); Martha Albertson Fineman, *Feminist Theory in Law: The Difference It Makes*, 2 COLUM. J. GENDER & L. 1 (1992); Joan C. Williams, *Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist and Critical Race Theory*, 1991 DUKE L.J. 296; Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585–616 (1990); Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 UCLA ASIAN PAC. AM. L.J. 33 (1995); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 CHICANO-LATINO L. REV. 1 (1998).
8. See, e.g., Darren Lenard Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Antiracist Politics*, 47 BUFF. L. REV. 1 (1999) (on race and sexuality).
9. For an overview, see Francisco Valdes, *Theorizing “OutCrit” Theories: Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits and LatCrits*, 53 U. MIAMI L. REV. 1265 (1999).

All around us, the politics of reaction against “liberal” legal gains of the past century—including those of the Square Deal, New Deal, Fair Deal, Great Society and second Reconstruction—seemed to run rampant with ever-greater vengeance to resurrect pre-civil rights America, both formally and normatively. The result was a contraction of lived justice specifically within and among communities that traditionally had been excluded from the academy, and subordinated across society. Within the legal academy, these politics belittled and attacked the very diversification of legal education that, finally, had allowed so many members of this section an opportunity to practice the profession after generations of de jure and de facto exclusions based intersectionally on gender, race, ethnicity, sexual orientation, and other similar identitarian constructs.<sup>10</sup>

Equally important, therefore, this program endeavored to help facilitate coalitional networks across and among multiply diverse, queer, critical, and outsider scholars with a common interest in equal justice. This program was designed not only to reflect but also to project the growing multidimensional diversification of the U.S. legal academy generally in terms of gender, race, ethnicity, and orientation. More particularly, it also was designed to underscore and embrace the homegrown diversification of *our* section membership specifically in terms of race and ethnicity that had occurred in the prior years.

Perhaps most especially, then, this program aimed to recognize and build on the pipelining work of earlier section leaders, who proactively had recruited section members of color for service on the Executive Committee—myself included. It is no coincidence that, starting in the 1990s, the section increasingly elected more chairs of color.<sup>11</sup> Building on this record, in 1997–98 the section also established a mentoring program, an effort driven by the hope that sexual minorities newly entering the legal professoriate over time would help to make a difference for the better in the publications, classrooms, and institutions of the legal academia.<sup>12</sup>

During that time, however, the tensions, gaps, and disorganizing uncertainties resulting from the prevalent politics of reaction and our own “sameness/difference dilemma”<sup>13</sup> seemed to inhibit in untold ways the

10. For an informative historical account of the identity politics shaping legal education’s formalization in the U.S. during the nineteenth century and since, including the systemic exclusion of blacks, women, Jews, immigrants, and poor persons in favor of “white males”, see ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, 81–102 (1983).
11. Before 1997–1998, the first and only section chair of color had been Robert P. Wasson of Suffolk University Law School, in 1993–94.
12. This section effort was spearheaded initially by Kellye Testy, whose later career personified the vision motivating this program. Just last year, Dean Testy became president-elect of the Association of American Law Schools. See Kellye Y. Testy, *Presidential Address: Why Law Matters*, AALS NEWS (Ass’n of Am. Law Schs., Washington D.C.), Feb. 2016, at 1; Kellye Y. Testy, *2016 AALS Annual Meeting Presidential Address: Why Law Matters*, 65 J. LEGAL EDUC. 707 (2016).
13. See Williams and other sources cited *supra* note 7 (on law, difference, identity, and equality).

potential for coalitional enterprise among various outsider communities, both within and beyond the academy. During that time, we were more likely to read about conflict than cooperation among out-group communities in various social, political, and economic settings.<sup>14</sup> Time and again—as with the steady judicial rollback and demonization of affirmative action in opinions ranging from *Regents of the University of California v. Bakke*<sup>15</sup> two decades earlier to *Adarand Constructors, Inc. v. Peña*<sup>16</sup> only two years earlier—we had seen the raw might of legal reaction but had no ready levers of power with which to counteract effectively, despite all our training and knowledge and privilege; more often than not, we had been reduced to mutual exchanges of academic outrage while unjust retrenchment marched on in the streets, schools, and squares of the country.

In myriad ways, the powerful combination of reaction and difference had impeded our capacity as legally trained professionals to act collectively—collaboratively as a community—in favor of social justice, whether within or beyond our own workplace: the legal academy.

And then, not so suddenly, 1997–98 put the stakes and consequences of those dynamics and impediments squarely in front of us—as a profession and, even more particularly, as a section—when federal policy in the form of the so-called Solomon Amendments specifically targeted us, and our students, with classically invidious lawmaking.

It was, recall, a time of great flux: the best and worst of times.

After all, 1997 also had begun on the heels of the 1996 Supreme Court opinion in *Romer v. Evans*,<sup>17</sup> and with that historic text still fresh on everyone's minds. *Romer*, the first progay opinion of the U.S. Supreme Court since the cruel year of 1986, had struck down the recently enacted Amendment 2 to the Colorado Constitution, which had prohibited any state entity from adopting antidiscrimination legal protections covering sexual orientation. Colorado's constitutional ban on the prohibition of homophobia in turn was an expression of the more general state of affairs prevalent during that era, which then was still ruled by the *Bowers* regime; exactly a decade earlier, in *Bowers v. Hardwick*,<sup>18</sup> a bare majority of the Supreme Court had upheld a general antisodomy statute as applied to same-sex couplings in ringingly laudatory terms. Invoking everything from God and Civilization to Democracy and Morality, their opining had ushered an era of homophobic license to discriminate, and even criminalize, gay people and life with virtual impunity.

14. For one example, see Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CALIF. L. REV. 1395 (1997).

15. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

16. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

17. *Romer v. Evans*, 517 U.S. 620 (1996).

18. *Bowers v. Hardwick*, 478 U.S. 186 (1986).

In effect, if not intent, *Bowers* had instituted a new open season of homophobia across the U.S. social landscape. A decade later, *Romer* had left *Bowers* intact, but concluded that Colorado had gone too far. For good reason, the section's previous annual program had been devoted to *Romer*.<sup>19</sup>

However, the Colorado legislature was not the only institution taking advantage of *Bowers*' invitation to bash gays under color of law. Congress too had gotten into the act, and avidly so: That same decade, Congress had decided to retaliate against us, the legal education profession, for endeavoring to end sexual orientation discrimination on law school campuses. Enacting legislation targeting law schools and law students, the federal government now demanded that our profession become complicit in the practice of discrimination in our very workplaces. It was effectively a demand that we reintroduce rank de jure discrimination onto law school campuses. What would we do?

What *could* we do?

Driven by shared conviction and collective umbrage, that same year the section stepped up to the plate, organizing an unprecedented coalitional campaign undertaken with and by the AALS, the Society of American Law Teachers (SALT) and other groups or individuals, to neutralize or repeal these invidious measures. Our aim was to change an act of Congress. Our goal was to protect our profession and students from the personal and systemic consequences of compelled participation in de jure bigotry. Our means was loosely coordinated community action. Despite the flashes of tension and periods of tedium entailed by this work, the tenacity and teamwork of so many "different" actors halted the wholesale betrayal of equal justice then being demanded by federal law.

That campaign entailed a year of public fora, private meetings, lobbying, and similar activities that put a premium both on individual initiative and responsibility as well as on mutual cooperation and accommodation. During the span of that year, many acts by many persons slowly but surely made the positive, incremental difference—acts ranging from letter writing to public protests and discrete behind-the-scenes politicking—undertaken personally, yet collectively, by untold numbers of diversely situated individuals. Indeed, perhaps the most magical part of those days was the sustained willingness of so many "different" folks to collaborate patiently and against all odds to undo an unjust law.

That our motley efforts succeeded at all was crucial for that pivotal moment in the history of our profession. That we succeeded, even in this limited and fragile way, shows the latent power of individuals, acting collectively through responsive institutions, that always is ours. That we remember those unlikely efforts and imperfect gains today—and learn self-critically from the experience for tomorrow—is most important now, and going forward.

19. Titled "Evans v. Romer and Beyond," that program was organized by 1996-97 section Chair Jane Dolkart of Southern Methodist University Law School.

At issue in 1997–98 was our core normative commitment to equal treatment regardless of identity.<sup>20</sup> This commitment had found expression as formal institutional policy less than a decade before: With this section again leading the way, and following the example of over 150 localities with policies prohibiting sexual orientation discrimination, the House of Representatives of the AALS had voted unanimously in 1990 to amend AALS Bylaw 6–4, adding sexual orientation to its nondiscrimination policy.<sup>21</sup> Subsequently, the AALS Executive Committee enacted Regulation 6.19, mandating that schools receive written employer assurances of nondiscrimination before allowing them on-campus access. Given the times, of course, these policies had attracted traditionalist backlash, including the military’s adamant refusal to abide by the bylaw regulation. Like any other discriminatory employer, the military therefore was barred from recruiting on most law school campuses on the basis of its *de jure* discrimination regarding sexual orientation *and* gender.

In response, Congress in the 1990s passed two Solomon Amendments—so named after their principal sponsoring lawmaker—that threatened various types of federal funding to law schools and their parent universities, including, most notably, student financial aid. “Solomon I” affected Defense Department funds, while “Solomon II” affected various grant funds from various other federal departments, including Education, Labor, and the like. Most significantly, Solomon II affected financial aid funds that targeted the most economically vulnerable law students from coast to coast.

From our perspective, this legislation’s coercive effects directly threatened two interests crucial to legal education: first, the bias-free environment that is the normative ideal in legal education and, second, the availability of federal assistance for deserving students who need financial aid to secure a formal legal education. Moreover, this legislation was invidious because it effectively compelled the legal education profession to “choose” between two (sometimes overlapping) classes of students—those who needed to finance their education and those who needed protection from orientation or gender discrimination. Considering neither class of student expendable, we chose to resist this false, destructive, and arbitrary forced choice. In 1997, neither result was acceptable to us because both were unjust to our students—and a stain on our profession.

Nonetheless, given the importance of federal student financial aid funds, the AALS reluctantly amended its nondiscrimination policy to “excuse” on-campus access specifically for the military, only as required by law, and only if law schools also concurrently satisfied an affirmative “duty to ameliorate” the effects of the military’s on-campus discriminatory practices. Taken by surprise, and resistant to change in general, law schools around the country had a decidedly mixed record of “amelioration” during the early stages of this struggle. Objecting strongly to this misuse of students as policy pawns and

20. This account is based on personal experience and the two section reports of 1997–98 referenced below. *See infra* notes 22–23.

21. For further background on this historic AALS step, see Barbara J. Cox, *Time for a Change: Twenty Years After the “Working Group” Principles*, 66 J. LEGAL EDUC. 531 (2017).



seeking to avoid law school divisions, the section, together with SALT and other groups and individuals, mounted a resistance and repeal campaign. We began with information gathering, collectively improvising and developing strategies for community action, both locally and nationally, that culminated with organized public advocacy to achieve legislative repeal. Along the way, in an early example of social media activism, we mounted sustained email and Internet-based efforts to accentuate nimble actions locally while remaining in concert nationally.

It took time, but this loose and diverse combination of labors worked.

Two years later, in 1999, our campaign successfully removed student financial aid from the Solomon Amendments. Our campaign had ensured, at least, that our students would not be vulnerable to federal retaliation due to our profession's nondiscrimination commitments. The rest would still be up to us.<sup>22</sup> Across the country, section members and our many allies celebrated our modest gains.

But the proverbial empire promptly struck back, and hard.

After repeal of the financial aid restrictions, the AALS quickly had reinstated its full nondiscrimination policy, but the Defense Department then amended the administrative rules implementing the remainder of the legislation in a way that effectively re-targeted student aid funds specifically in law schools.<sup>23</sup> Through this Orwellian administrative maneuver, the legal situation had reverted to the status quo ante. The AALS then suspended its reinstatement of the full nondiscrimination policy pending further legislative, administrative, or judicial action. This uneasy stalemate remained the institutional status quo until final, complete, and unequivocal legislative repeal of the military's discriminatory policy more than a decade later. In the interim, we sustained multiple tactics and strategies to avoid the divisions on law campuses incited by Solomon, and to make equality work in legal education despite this insistent, intrusive federal interference.

We then knew, much to our collective chagrin, that we had to dig in for the long and indefinite haul.

To this end, the Section spearheaded the drafting of two major reports designed to organize effective resistance to these congressional and administrative actions for the longer term. The strategy was to isolate, highlight and contain the offending employer's every on-campus act. The first report, dated September 15, 1998, addressed the initial impact of the Solomon

22. Indeed, our annual program the following year, organized by 1998-99 section Chair Sharon Rush of the University of Florida was devoted to "Solomon II: Progressive Resistance" and was designed to help continue the execution and expansion of multifaceted amelioration policies and practices by law schools from coast to coast in everyday circumstances and for the longer term. This panel featured Clark J. Freshman of the University of Miami (moderator), Matt Coles of the ACLU, Barbara J. Cox of California Western, Arthur S. Leonard of New York Law School, and Francisco Valdes of the University of Miami.

23. See 32 C.F.R. 216.4 (1997); see also Francisco Valdes, *Solomon's Shames: Law as Might and Inequality*, 23 T. MARSHALL L. REV. 351 (1998) (reviewing the regulations).

II amendment on law schools across the country. The supplemental report, dated December 15, 1998, analyzed the final federal regulations governing the implementation of the legislation and provided a detailed legal analysis for law schools to implement with locally-designed actions that avoided risking student aid or other funding.<sup>24</sup>

Reflecting the mixed bottom lines we had reached, the initial report on amelioration concluded with the observations:

As this Report makes clear, this issue is not likely to disappear next year. Law schools therefore must respond to this issue with a recognition that it likely will require careful attention indefinitely. All decisions made now should include a careful consideration of their long-term effects and sustainability. In particular, schools need to devise and then institutionalize the means and mechanisms by which access will in fact be regulated and by which amelioration will in fact be maximized from year to year.

Finally . . . law schools need to collaborate with each other and with the AALS to develop alternative strategies to overturn Solomon II. These strategies range from the legislative to the litigative, but the bottom-line point is that the current situation is likely to remain in place until and unless Solomon II is modified or rescinded.<sup>25</sup>

This bottom line encapsulated our basic situation as the twenty-first century was dawning.

This uneasy anti-gay status quo then prevailed for the next full decade, through the *Bowers*-era policy farce for military recruitment and employment commonly called “Don’t Ask, Don’t Tell”—that is, until President Obama finally signed its formal repeal into law, after so much injury to so many, in 2010.<sup>26</sup>

At that point, at last, the U.S. military no longer was an offending employer. For the first time in more than a decade, military employers on campus no longer menaced in blatantly conspicuous ways the policy mandate and formal promise of “equal opportunity” in our professional workplaces specifically, and the legal profession generally. The Solomon stalemate of 1997–98 finally had come to its legal end.

These two reports not only culminated a yearlong process of collaboration among section members, other academics, and organizations like SALT and AALS on the issue of sexual orientation employment equality, but they also served more generally to ready faculty and students for frontline social justice controversy—and for action as a community—on policy issues especially

24. See Valdes, *supra* note 23, at 388–90 (publishing the two reports together with some additional information).

25. *Id.* at 383.

26. See, e.g., Sheryl Gay Stolberg, *Obama Signs Away ‘Don’t Ask, Don’t Tell,’* N.Y. TIMES (Dec. 22, 2010), [http://www.nytimes.com/2010/12/23/us/politics/23military.html?\\_r=0#](http://www.nytimes.com/2010/12/23/us/politics/23military.html?_r=0#). See also, Remarks on Signing the Don’t Ask, Don’t Tell Repeal Act of 2010, 2010–2 PUB. PAPERS. 1938 (Dec. 22, 2010).

germane to law schools nationwide. The diverse coalitional resistance campaign that emerged from these actions was part of, and in turn helped to set the stage for, future similar responses to social justice issues involving race and ethnicity, including our collective professional responses to anti-affirmative action opinions that were just starting to come down the judicial pike during those times.<sup>27</sup> The experience of that year illustrates in substance and process that our capacity for solidarity in community action sometimes can produce results that atomized efforts alone likely never will.

Those two reports also were the most tangible expression of the many activities comprising our repeal and amelioration campaigns and, as such, they embodied the results of the many institutional fault lines that our efforts had to navigate in order to succeed at all.

As an organ of the AALS, our section was bound by the many rules, regulations, customs, norms, and politics that comprised the larger organization as a whole—an organization with constituent schools that, institutionally, did not stand with us then. Although the individuals participating in our efforts were free as such to act according to conscience, whether or not the section could act in this or that way institutionally always was a point of much delicate deliberation within the AALS. And while the executive ranks of the AALS were decidedly cooperative with our section's campaign, they also vigorously guarded the limits that mattered to them—or to elements of the academy important to the AALS and supportive of the Solomon Amendments as federal policy.

For instance, under AALS rules and customs, the section itself could not directly publicize the reports, nor could we list the section as their author. Similarly, the AALS prohibited the section from conducting any campaign activities, such as distributing buttons and stickers, during the AALS annual meeting and related events. Nor, importantly, could the section work publicly or “officially” with other professional groups, like SALT, to conduct our advocacy campaign more closely and as a coalition. On the whole, the AALS vigilantly policed our efforts, and intervened to stop our planned advocacy or actions more than once, even though the association was actually sympathetic to the substance of our campaigns.

Crucially, the AALS executive ranks, then led by Carl Monk, often educated us on the formal limits of the situation by hinting at ways that we might accomplish our tactical, strategic, or substantive goals while remaining in technical compliance. It was a consequential choice of individuals acting within and for institutions: While enforcing what the AALS formally prohibited as a matter of policy or practice, the AALS oftentimes simultaneously suggested ways of doing justice despite entrenched systemic inequities that operated, in

27. For example, only a few years later organizations like SALT, as well as the legal academy in general, were relatively ready for actions that, over time, would influence outcomes in cases such as *Grutter v. Bollinger*, 539 U.S. 306 (2003) (upholding race-based affirmative action policies in legal education). SALT, in particular, organized a *Grutter*-related march in San Francisco during the annual meeting of the AALS that exemplifies those efforts and times.

this instance, as roadblocks to equality. In this way, the individuals staffing the section and the AALS cooperated, both institutionally and personally, and sometimes uneasily, in bridging during those tumultuous years the systemic divergence of politically unchangeable policies and sexual orientation equities.

Under these mixed circumstances, the section became the fulcrum for, rather than the instrument of, our coordinated individual actions, including the drafting of our reports. The section's preexisting administrative structure quickly and organically became the *de facto* logistical and informational hub for the coordination of local actions at varied schools across the country. We became the point of contact and coordination not only for nationwide efforts from within the academy, but also with Congress (through the offices of Congressman Barney Frank and Senator Arlen Specter) and with the White House (through the office of John Podesta). And, as the substantive program for that year illustrates, the section's formally permitted activities were designed consciously to support our coalitional campaign efforts synergistically.<sup>28</sup> Indeed, our section annual business meetings during that time were devoted, first and foremost, to open and continuing discussion of our ongoing campaigns to ensure both repeal and, in the interim, effective amelioration.

Thus, although the section itself could not act as such in many circumstances, the institutional infrastructure of the section, and of the larger AALS, provided both an incubator and a platform for our advocacy to drive the campaigns for repeal and amelioration. In this context, the institutional distinction between the formal and the actual took center stage. Because of these dynamic complexities, and as elaborated further below, our 1997-98 experience with Solomon underscored enduring and urgent lessons for today and, significantly, for tomorrow—lessons both on the power and on the limits of individual and collective action through institutional platforms or channels.<sup>29</sup>

And so we actually orchestrated the (eventual) repeal of an act of Congress. Yes, we did. Despite the postrepeal stalemate that muted somewhat our sense of substantive success, our timely solidarity had fended off compelled complicity in on-campus discrimination. And, again, our 1997-98 annual program, dedicated to the interplay of race, ethnicity, and sexual orientation, both underscored and propelled the ethics and pragmatics of this kind of coalitional work.<sup>30</sup> These two moments in our section's rich and continuing history should not be forgotten as we look ahead, for they demonstrated at a key moment in the broader history of sexual minorities in legal academia that organized academic activism can and does make a difference, especially

28. See *supra* note 5 and accompanying text (on the 1997-98 section program).

29. See *infra* notes 31-44 and accompanying text (on lessons to be drawn from 1997-98).

30. See *supra* notes 5-9 and accompanying text (on the section program of that year) and *supra* notes 20-27 and accompanying text (on Solomon repeal campaign); see also Valdes, *supra* note 2 (on the politics and practice of coalition in legal culture and academia across race-orientation "difference").

when we take personal initiative *and* act collectively in principled, proactive, persistent ways.

During a time of extended reaction and cultural warfare, when legislation and adjudication increasingly again had become chiefly instruments of oppression and subordination, this grass-roots academic activism provided a moment of uplift, both immediate and lasting. Though our formal success was a solitary, limited, even ephemeral gain, our coalitional struggles cleaved new cracks into the edifice of legal reaction and its complete entrenchment: Our local and national efforts during and since 1997–98 denied complacent stability and mainstream normalcy to the military’s policies and practices against the employment of sexual minorities. And this resistance, in turn, helped to keep the fires of queer justice burning within the legal academy during another long and cold decade of reaction and bias against our profession and students. In our own imperfect and inadequate yet diligent ways, this section and our allies were able to mark and help hold the anti-gay equality line, within our profession at least, during this difficult decade. Though at best a stop-gap measure, our solidarity on this one issue contested retrenchment and discrimination in our profession until the nation finally began to awake from its homophobic torpor, and stirred itself enough to repudiate its own knee-jerk prejudice years later. More broadly, and as current events put on regular display, that same shamefully belated stirring continues, fitfully to this day, in the unfolding context of formal marriage equality. Most importantly, this tectonic legal shift was established against all odds, chiefly, by the social courage, commitment and activism of sexual minorities from coast to coast during these very same times.<sup>31</sup>

This act of remembrance thus brings an important point to the fore: Normatively, as well as politically, our stance in 1997–98 finally has prevailed, even if not yet as a matter of federal law. Even though sexual minorities of all stripes *still* can suffer subordinating discrimination in employment and other systems across the country, no longer can we be dismissed wholesale, and casually, as self-evidently deformed, perverse, or diseased. As events and headlines within and beyond our profession subsequently have made plain, no longer does heteronormative privilege enjoy a smug hegemony over matters of life and policy ranging from privacy and intimacy, to formal marriage equality, to hate crimes protection, to nondiscriminatory military service, and beyond.<sup>32</sup>

31. For illuminating analyses, see Douglas Nejaime, *Winning Through Losing*, 96 IOWA L. REV. 941 (2011); Gwendolyn M. Leachman, *From Protest to Perry: How Litigation Shaped the LGBT Movement’s Agenda*, 47 U.C. DAVIS L. REV. 1667 (2014); Michael Boucai, *Glorious Precedents: When Gay Marriage Was Radical*, 27 YALE J. L. & HUMAN. 1 (2015).

32. In fact, formal and cultural changes regarding sexual minorities have been experienced by U.S. society as so sweeping and rapid that this limited, incomplete progress repeatedly has been denominated a “sea change” in legal, social, academic, political, and other contemporary discourses. See, e.g., Transcript of Oral Argument at 107–13, *United States v. Windsor*, 133 S. Ct. 2675 (2013) (No. 12–307), 2013 WL 2337935; John Harwood, *A Sea Change in Less Than 50 Years as Gay Rights Gain Momentum*, N.Y. TIMES, Mar. 16, 2013, at A16; Thomas Tillery, *Sea Change: Planning for Same-Sex Married Couples and the DOMA Decision*, 44 TAX ADVISER

Our choices and actions as a section and community were not only right on principle, but also on the right side of history. But the efforts and events of 1997-98 were not unique or singular moments in our ongoing group history. Our organized and personal resistance to coerced bigotry in that specific instance was but one episode in the turning of larger tides, both socially and legally. Yet it was an important and instructive episode: Ideally, this forward-minded retrospection will help embolden us, and future generations of law professors, administrators, students, and allies, to embrace antistatist academic activism whenever and wherever we may find ourselves tested by similar challenges—as no doubt we still are today, all around us.

This act of remembrance thereby brings into sharp relief perennial lessons about law and social change, and about the making of progress through collective and personal praxis. This remembrance highlights the distinction between—and sometimes the divergence of—legal action and social impact, or the lived difference between legal reform and social equity. In this way, 1997-98 recalls and re-centers the social importance of the distinction between the formal and the actual.<sup>33</sup>

1997-98 thereby highlights a bottom line never to be obscured: that formal change need not amount to social progress, and that, indeed, too often formal legal reform has not amounted, and does not amount, to lived social progress—or, if so, only marginally, precariously, insufficiently so.<sup>34</sup> This remembrance shows that normative progress, even if incremental, is what counts—enduring culture shifts that produce ever-greater lived justice for multiply diverse groups and, especially, for traditionally subordinated communities. This lesson underscores that legal reform is a means, that normative progress is the constant goal, and that a postsubordination social order must be the shared ultimate end of diverse individuals who believe in equal justice for *all*.

Therefore, this remembrance also should remind us all that progress is always, in itself, in process—an incomplete, imperfect, precarious, and infinite process; after all, change, *per se*, is not progress, and history is never linear. As the gyrations of equality's history in the U.S. make plain, much can change legally without any social transformation, or cultural progress, in the long

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642 (2013); Lauren Markoe, *Election 2012 Shows a Social Sea Change on Gay Marriage*, HUFFINGTON POST (Nov. 8, 2012, 7:38 AM), [http://www.huffingtonpost.com/2012/11/08/election-2012-gay-marriage-sea-change\\_n\\_2090106.html](http://www.huffingtonpost.com/2012/11/08/election-2012-gay-marriage-sea-change_n_2090106.html) [<https://perma.cc/FH5U-A933>].

33. See *supra* notes 27-29 and accompanying text (on this distinction in the Solomon context of 1997-98).

34. For insightful analyses, see Reva B. Siegel, “*The Rule of Love*”: *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2178-87 (1996); Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111 (1997); John O. Calmore, *Social Justice Advocacy in the Third Dimension: Addressing the Problem of “Preservation-Through-Transformation,”* 16 FLA. J. INT’L L. 615 (2004).

term.<sup>35</sup> As we know both from history and news, systems of social injustice are entrenched, and adaptable to legal reform; moments of change can be illusory and increments of progress, if any, remain perpetually contingent.<sup>36</sup>

As 1997–98 timely underscored, the purpose of our actions must stay focused on *social impact* in the form of progress toward lived justice. We cannot forget the law is but the means to an end—a highly contingent and contested end: lived justice, across multiple forms of difference, for all in a thoroughly Euroheteropatriarchal society.

This lesson is of urgent and enduring importance going forward.

As ongoing history, including our own, demonstrates, the culture wars of today—like the colonial systems of conquest, enslavement, exclusion, and apartheid of yesterday—target for oppression the multiply diverse “Others” constructed through the traditionalist identity politics of systemic Euroheteropatriarchy; this ideology simultaneously yet selectively privileges or subjugates persons and groups consistently to stratify society structurally and materially.<sup>37</sup> Although Euroheteropatriarchy conjures and maintains colonial and neocolonial hierarchies that produce differences and particularities, so do they create and maintain commonalities and patterns that co-construct identities and hierarchies based on mutually reinforcing notions of race and gender, as well as of orientation; despite all particularities, these patterns of systematic stratification matter today in systemic, material, and everyday terms to the lives and destinies of all Others.

This continuing history underscores, on a daily basis, the bottom-line message of our 1997–98 section program, as described earlier: Sexual minorities, in addition to appreciating our multiple internal diversities, must recognize that history, aspiration, and struggle connect our prospects for justice to the continuing historical quests of “other” or “different” groups categorized chiefly by race or gender grasping for a freer future, and, equally important, vice versa.<sup>38</sup>

Therefore, as the neocolonial identity politics of the continuing culture wars confirms daily across the country, U.S. sexual minorities are not the only traditionally subordinated group to ignore the critical takeaways of 1997–98 to their own peril. During the past century and a half, groups categorized mainly

35. See *supra* notes 2, 6, 31, and 34 and sources cited therein (on the vexed dynamics of change, progress, backlash, and retrenchment); see also *infra* notes 39, 41, and 42 and sources cited therein (on same).

36. *Id.*

37. For a detailed and substantive discussion of Euroheteropatriarchy, see Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of “Sex,” “Gender,” and “Sexual Orientation” in Euro-American Law and Society*, 83 CAL. L. REV. 1, 324, n. 1148 (1995) (citing sources for further readings on Euroheteropatriarchy as identity ideology in law and society; see also Angela P. Harris, *Heteropatriarchy Kills: Challenging Gender Violence in a Prison Nation*, 37 WASH. U. J. L. & POL’Y 13, 21–23 (2011).

38. See *supra* note 5 and accompanying text (on that year’s section program).

by race, ethnicity, or gender have posted basic equality gains that today's socio-legal landscape makes increasingly plain are in clear, present, and ever-growing danger.<sup>39</sup> This remembrance should, and must, help all advocates of lived justice to recall, mutually, that we *really* do need each other, as well as the precious few institutional resources at our disposal, if we are to preserve—much less advance—the tentative gains of past and continuing struggles in the U.S. for social equity in the hard and harder times to come.

And no one should doubt the coming of harder times, for the culture wars of the past several decades show no sign of abatement.<sup>40</sup>

As we all surely have learned by now, reaction, backlash, and retrenchment are the collateral consequences of (even the most modest) social progress through legal reform. As our Solomon experience made plain then, 1997–98 was no different and, as news reports make plain now, neither is today, specifically for U.S. sexual minorities; and as history in general teaches, neither, likely, will be tomorrow. These lessons should teach us—each and all—that social progress through legal reform, if not vigilantly and robustly protected, is likely to be ephemeral at best. The lessons of this moment in our history should thus remind us to constantly question the metrics of progress, and to be—to stay—critically “real” in our assessments of power, injustice, identity, groups, institutions, and systems in U.S. law and society.<sup>41</sup>

Moreover, as the skirmish over the Solomon Amendments recounted above also serves to illustrate, mainstream institutions that deign to address our longstanding justice claims—institutions like, in this instance, academia—are, themselves, then targeted for reactionary attack precisely on that basis.<sup>42</sup>

39. On race, today's activist judges have shown unrestrained industry in their undoing of voting rights and affirmative action. *See, e.g.,* *Shelby Cty. v. Holder*, 133 S. Ct. 2612 (2013) (on voting rights); *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411 (2013) (on affirmative action). On gender, the pervasive socio-legal “war against women” speaks for itself. *See, e.g.,* Michele Estrin Gilman, *Feminism, Democracy, and the “War on Women,”* 32 L. & INEQUALITY 1 (2014); Abby McCloskey & Aparna Mathur, Opinion, *The Real War on Women*, U.S. NEWS & WORLD REP. (June 30, 2014, 8:00 AM), <http://www.usnews.com/opinion/economic-intelligence/2014/06/30/the-real-war-on-women-washington-regulation-and-taxes> [https://perma.cc/N9M6-76T5]; Beth Baker, *Fighting the War on Women*, Ms., Spring/Summer 2012, at 27.
40. *See supra* notes 4 and 6 and sources cited therein (on backlash and retrenchment in society and academy).
41. *See generally* Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363 (1992) (arguing that “racial realism” compels both resistance to white supremacy and critical recognition that racial hierarchy is socially and structurally “permanent”); *see also supra* note 35 and sources cited therein (on legal reform, social progress, and backlash against change).
42. Modern U.S. history traces this basic line of reaction and attack to backlash against the increments of racial or gender justice registered by *Brown v. Board of Education* (on race), *Roe v. Wade* (on gender) and, now, *Obergefell* (on orientation). For some mixed personal reflections on the dialectics of legal progress and social backlash, see Ruth Bader Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N.C. L. REV. 375 (1985); *see also supra* note 29 and sources cited therein (on notions of progress).



Over the past several decades, this increasingly politicized correlation between emergent social outgroups and responsive social institutions has fueled the relentless rollback of formal equality gains toward racial justice and gender justice that until recently had been thought secure; it has also fueled the persistent co-optation, or subversion, of civil society itself as a force for, or guardian of, social progress—a co-optation and subversion illustrated, attempted, and turned back in the Solomon contestations of 1997–98.<sup>43</sup> At a time when institutions like our section inevitably and continually are beleaguered by reactionary national trends, this remembrance should bring one key takeaway into sharp relief: It is up to *us*—collectively and individually—to make the difference, both in sustaining the progressive potential of established institutions and in advancing lived justice socially through them. In this extended historical moment, when responsive mainstream institutions, as well as traditionally subordinated groups, are under intensified reactionary assault, both—the vulnerable outgroups and the established institutions—overlook moments and lessons, like those from 1997–98, only at their (or, our) own peril.

Without doubt, then, the decades immediately before and after 1997–98 increasingly have put a multifaceted premium on our sustained capacity to act, or react, personally, collectively, and as a coalition—an essential capacity that is exceedingly elusive for traditionally subordinated groups without access to established or mainstream institutional platforms and channels.

As we know from this remembrance, none of the limited, tentative progress recounted above would have been possible absent a motley combination of individuals improvising together, as a loose-knit group, across time and space. But, importantly, these efforts emerged and were orchestrated within (and across) established professional institutional frameworks to catalyze social impacts through formal legal reforms rooted in shared principles, values, and goals. As we saw during our Solomon experience, access to institutional platforms or channels—like the section specifically and the AALS or SALT generally—repeatedly allowed us to leverage the impact of our individuated or collective efforts beyond what our capacities otherwise permitted.

1997–98 shows that responsive institutional entities not only can leverage our capacity to be heard, but also amplify our capacity to endure through the ups and downs of contestation, as during the controversy over the Solomon Amendments.

This act of remembrance thereby brings to the fore in a timely way the importance of institutional frameworks as effective platforms, or channels, for varied forms of praxis that are both collective and personal. We've long known that individuals alone can accomplish much, and that individuals working in

43. As the back-and-forth contestation recounted above illustrates, legal academia was intentionally targeted in the 1990s for retaliatory legislation simply for having acted as an independent social force, to deprive it of that capacity, and with the specific purpose of forcing it to enforce bigoted federal policy no matter what. *See supra* notes 20–26 and accompanying text (on the Solomon campaign and outcome).

concert even more, but experiences like ours in 1997–98 confirm specifically that individuals who can leverage personal initiative and collective action through institutional structures are best-positioned to catalyze increments of effective social progress that, cumulatively, stick culturally. This remembrance demonstrates the synergistic potential of all three levels of action—personal, collective, and institutional—in loose but intentional tandem, during one contested moment in reforming, not only homophobic policymaking nationally, but also the legal academy of the U.S normatively.

This remembrance beckons more of the same in the hard and harder times before us.

In the end, then, this remembrance foregrounds the *combined* importance of individuals, groups, and institutions in the making of professional and social progress; in the end, all three—individuals, groups, and institutions—are necessary, as the twists and turns of 1997–98 only help to confirm. Going forward, this bottom line thereby calls on each of us, from our respective positions of limited capacity, to daily practice coalition-building and institution-building as professional and personal projects of lifelong praxis. Going forward, this critical and self-critical remembrance should prompt us all, as teachers, scholars, administrators, students, and colleagues, to be always alert and proactive in cultivating principled relationships of coalition—as well as coalitional institutions—much as our section proved to be in the crucial contestations of 1997–98.

The ongoing and actionable lessons of 1997–98 thus serve to remind us, perhaps mundanely, that both individuals and groups—as well as *responsive* established institutions—matter to the prospects of systemic and normative progress through legal reform. The convergence of the three—individuals, groups, and institutions—can maximize not only our capacity for timely social impact but also our capacity for longer-term lived progress. As the coming years approach, this leveraging of collective personal action through institutional platforms and channels to achieve a principled substantive result provides a recipe that should never be far from our minds and plans. This remembrance underscores that what *we* do in this continual contestation over persistent legacies and contingent aspirations can help determine what comes next, normatively, formally, and systemically—what “we” do as individuals, as sexual minorities, as a section, as the AALS, as a self-critical profession of diverse educators. Looking ahead, the charged and consequential experience of those years should remind us to nurture, through thick and thin, the section as one unique instrument of self-empowerment and justice praxis for the hard, and harder, times to come.

As other essays in this mini-symposium recall and document, the very existence of our section is, itself, the result of individual and collective action within institutional frameworks.<sup>44</sup> As those essays remind us, sexual minorities had no recognition, no standing, no section—no formal institutional site, or

44. See *supra* notes 3 and 21 and sources cited therein (referencing the essays).

“safe space” of our own—just a few short years before we needed and mounted the sustained organized activism recounted above. As those essays should make eternally plain, the existence and viability of our section is not a given, an inevitable, functional, and secure feature of the academic landscape.

It thus takes but little imagination to speculate, now, on how we might have fared in 1997–98 without the section’s infrastructure and networks at our ready disposal then. Of course, we never can know for sure. Yet given conditions of geographic diffusion and institutional atomization that characterize our situations as individuals, how else would—could—we have timely mobilized, organized, and sustained our personal *and* collective capacity to act effectively? What source or center of infrastructure, communication, and coordination would—could—we have invoked and counted on? It takes no imagination, at least for me, to conclude that the pioneering and preceding efforts to create the section, and to secure AALS acceptance of it, established the necessary institutional predicate for our professional efforts and collective gains—as multiply diverse sexual minorities within U.S. legal academia—ever since then.

The ready use of the section allowed us to quickly come together under a known and familiar organizational rubric, with preexisting schedules of meetings and programs, and thereby to focus on actions rather than on basics. The ready resort to the existing resources of the section allowed us to quickly seize the substantive and discursive initiative in framing the issues and advocacy. Although we had to navigate the institutional limits and politics of the AALS, the section served as a spearhead for successful legal reform, and a shield for vulnerable constituencies in the interim. From the experience of 1997–98 we can and should draw a clear understanding that the section is a key and necessary—and necessarily limited and insufficient—site of struggle that nevertheless merits our constant, and self-critical, care.

Perhaps most specifically, this remembrance therefore highlights the potential—even if mixed—social justice utilities of institutional sites, like the section, during a critical moment in the history of sexual minorities in U.S. legal education, and as part of the dynamics of broader social progress. In 1997–98, the section served as *the* indispensable crucible to help incubate and coalesce the individual actions that helped to generate institutional change with continuing social repercussions. And, ideally, increments of formal legal change like this one, over time, accumulate to foment larger culture shifts, which, in turn, can continue to bend the arc of history toward equal justice for all. This is the hope, the plan, the demand, of our history.

It thus bears emphasis, in closing, that these forward-looking lessons apply not only to sexual minorities and other vulnerable groups under sustained socio-legal attack; going forward, these lessons should be noted as well by established institutions, and those responsible for their choices and in/actions.

We, as a section and community, must use this experience to appreciate the value of institutional platforms in ongoing social justice struggles; likewise, large systemic institutions, like the AALS and those who control it from year to

year and decade to decade, also must take note of the value that sections, and efforts, like ours contribute continually to the profession's self-stated mission and much-vaunted values—and, in broader historical terms, to the march of progress itself. As the essays of this symposium illustrate only in part, not only must we “from below” take special care to nurture our section and similar safe institutional spaces to protect and advance shared values of social justice across difference, but so too must the AALS itself, and its entities or agents “from above.” Not only must we build institutional platforms, like the section, from below, but we also must work to hold the AALS and profession to its professed social values and institutional commitments.<sup>45</sup>

If “we” are to benefit—as an academy and society—from the critical lessons of the recent past, we must each and all, from our respective institutional, professional, and social positions, take heed of history—and take personal responsibility for informed, timely, dynamic and sustained actions that protect or advance expressly shared values, such as equal justice.

Recalling 1997-98 today—as the same furies of backlash continue to envelop U.S. law and society without abatement—we consequently, and finally, also should mark the important, sometimes overlooked, linkage of action to remembrance, and of both to liberation. Remembering together the modest, fragile gains of 1997-98 today should help make evermore clear to all of us why social justice advocates must know and learn from the lessons of the past in order to make enduring progress toward a less deranged future. Linking remembrance to action should keep us all alert to the synergies of individual, collective, and institutional action in the promotion and protection of frail, imperfect—yet important—equality gains that establish the baselines for a better tomorrow.

The lessons and experiences of 1997-98 do not, and cannot, guarantee that individuals acting collectively within institutions can bring about formal change that results in social progress. But those lessons and experiences do show that the possibilities for advancement remain always perennial; from the perspective of back then, the prospects of success were daunting. Still, we acted as if not—even though we knew full well they really were.

As we mark the passage of twenty years since then, the forward-looking insights and bedrock lessons to be drawn from our recent and continuing experience with social and legal homophobia consequently urge us to be mindful of the basics that shape and sustain incremental social progress.

Individuals, and relationships of solidarity built mutually, deliberately, and slowly across and among them from day to day, *always* matter. These fluid, ongoing relations across multiple sources of difference provide the necessary cornerstone, and glue, for collective action when the need for it may suddenly arise. As 1997-98 put on full display, it is through the resulting, ongoing

45. This two-part effort is made even more important, and difficult, by the corporatization of education generally. *See generally* EDUCATION, INC.: TURNING LEARNING INTO A BUSINESS (Alfie Kohn & Patrick Shannon eds., rev. ed. 2002).

networks of interrelated individuals that, acting in principled concert, we can best make established institutions substantively responsive, and thereby can enlist them, and their resources, to amplify our presence professionally and politically, and to leverage our impact systemically and culturally.

As tomorrow's challenges press on today's generation of multiply diverse sexual minority law professors with ever-greater urgency, those 365 days of 1997-98, with all their trials and tribulations, and through all their highs and lows, can and should serve as a salutary reminder of the manifold reasons that (and sometimes how) we do this work, qua law professors, still and always.<sup>46</sup>

46. See generally Francisco Valdes & Sumi Cho, *Critical Race Materialism: Theorizing Justice in the Wake of Global Neo-liberalism*, 43 CONN. L. REV. 1513 (2011) (setting forth a forward-looking U.S.-based but global framework for antistatutory legal work).