

Six years after the demonstrations for equal civil rights in New York, known as the Stonewall Riots, this pamphlet was published in 1975 by the Chicago Libertarian Association, in affiliation with the Libertarian Party.

**Reprinted 2007  
Stonewall Libertarians, Arizona.**

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# **Gay Rights: A Libertarian Approach By Ralph Raico**

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**“The Party’s slogan, ‘Legalize Freedom,’ gives Libertarians a unique appeal on both the right and the left.”**  
**---Newsweek**

## I. Human Sexuality vs. State Power

now, as we have seen, the mortal enemy of homosexuals and of the gay in all of us has been the State. To have been savaged by the state and its agents for so long, and yet to have come this far, should tell us that we can and should make the last part of the road on our own, without calling in that old blood-stained Hangman now to do the job on anti-gays. This much perhaps we owe to those fine old pederasts burned at the stake in Paris by the French State, to that barber who had his brains shot out by the Chinese State, and to all the others.

Finally, this fact also should not be forgotten: gay people are not only naturally concerned with legal acceptance and toleration of alternative sexual lifestyles. They share with all Americans an interest in other important issues as well. They have an interest in curbing taxes, which have by now gotten completely out of control; in compelling the government to stop inflating the currency; in increasing the sum of material enjoyments our disposal (if we wish them and have earned them) by freeing private enterprise from counterproductive government regulation; in ending the ominously accelerating curtailment of our political liberties, by abolishing the FBI and the CIA; and in having the government adopt a sane foreign policy, by opting for non-intervention in the affairs of other countries, and rejecting the role of global policeman.

On all these issues—and on many others—the Libertarian Party has adopted positions designed to move us toward a substantially freer society than the one we now have. And in our commitment to a world where gay people will have the same opportunity for meaning and dignity in their lives as all human beings, no other political party can touch us.

The possible forms of human sexual expression based on voluntary choice are very much greater than those sanctioned by any contemporary society. In particular, our own Western culture has tended to restrict human sexuality even more than most other cultures (although, naturally, there have been variations among national and regional subgroups). One major form of sexual sensibility and activity that has especially suffered from this restrictive attitude has been homosexuality. Judeo-Christian civilization is characterized, when compared to other great civilizations—for instance, those of classical antiquity, of some of the Oriental peoples, or of Islam—by a special repugnance and hatred towards homosexual acts.

Official Western norms, in fact, have tended to polarize individuals into a majority of individuals self-identified as strictly “heterosexual” (with frequent “lapses” from both categories). This polarization as well as the extraordinary antagonism to gay love, are in large part traceable to the general antisexual bias of early Christianity. As the Libertarian psychiatrist, Thomas Szasz, has said: “The Church opposed homosexuality not only, or even primarily, because it was ‘abnormal’ or ‘unnatural,’ but rather because it satisfied carnal lust and yielded bodily pleasure.”

But the opposition of the Church to conduct which had been an accepted part of the way of life of many peoples in the Mediterranean area and elsewhere, would probably have meant little, except for one circumstance. This was the fateful linking of Church and State from the fourth century on, the alliance between “Throne and Altar.” By the time of Constantine, Christians had forgotten that the good they had achieved up to then had all been gained *without* the State and *against* the State. Now the ecclesiastical authorities struck a bargain with the political power—destined to last for more than a thousand years—whereby each would render the other all possible assistance in planting their feet on the necks of the people. The Church would mystify and exalt the State, and, in return, the State, and, in return, the State would put its coercive force at the disposal of

the Church. In this way, the particular moral notions of the early Christians were translated into law and enforced by the State power, with all the incredible brutality of the criminal “justice” system of those times. As a consequence, homosexuality—which had been a harmless, usually pleasant, sometimes deeply important part of life for many persons—now became, as a result of State interference, the “crime against nature” and a thing whose very name could not decently be mentioned.

Thus for centuries gays—and even those merely caught in the midst of some momentary gay experience—were the victims of Church-sanctioned State oppression. No secret was made of the “Final Solution” prepared for them, nor were verbal ambiguities considered necessary: the end-goal of their total extermination was written into the law books of the nations of the West. Through long ages, no public humiliation, degradation, torture or painful death was looked on as too cruel to be inflicted on such as them.

And yet, one must wonder, what could there be in *those* acts of love to provoke such continuing maniacal hatred? Samuel Johnson once wrote that a man is seldom as innocently occupied as when he is making money. To which we may add: Or engaging in consensual sexual activity. Let us be reasonable on this subject. Assume the *worst possible view* of homosexuality. Even then one would have to admit that conduct that includes at least a flickering concern and a reaching out—however “*twisted*”—for another is certainly morally better than the spiteful meanness, the “little murders,” that are the warp and woof of everyday life. This has been conceded in the case of gay love even by such austere Christian moralists as Dante and C.S. Lewis.

The fact is that homosexuals have chronically been used as *scapegoats*, in the sense attached to the term by Szasz in his book, *The Manufacture of Madness*. They have been viewed as Alien, as the Other, as a group whose invalidation and debasement served the function of validating and enhancing the officially sanctioned group. As Szasz puts it, a standing feature of human history has been

man’s greed to rob his neighbor of the meaning he has given his life . . . our ancestors were, and we remain, existential or

- Release of all individuals presently detained or imprisoned for any victimless crime.

Now, the regular reader may perhaps have noticed a certain omission here: namely, legislation forcing private persons who, for one reason or another, dislike homosexuals, nevertheless to hire them, admit them to “public accommodations” (which are not really “public” at all, but *privately* owned), and rent or sell apartment or houses to them. Many gay groups are presently advocating such laws. We, however, strenuously oppose them, as infringements on the rights of homophobic persons. Freedom, in our understanding, implies also the freedom to be wrong. We have always made it a point of honor that we are “the Party of Principle,” and our principles compel us to say that bigotry and prejudice, so long as they do not involve coercion, must also be tolerated. What justifies our freedom, justifies that of anti-gays as well.

There are further arguments against such proposals, pointed out by the Canadian libertarian gay activist and poet, Ian Young. First of all, such laws would tend to be relatively ineffective; an employer, for instance, could always come up with a rationalization for getting around the law. A more effective way to deal with this problem is through gay self-help: direct action, when the need arises, by means of negotiation, picketing, boycott, etc. As with all forms of self-help, this has the advantage also of nurturing the kind of self-assured, imaginative and independent individuals who some-day, we hope, will become the norm in our society. Secondly, these proposed laws, it should be noted, would also prevent gays from hiring or associating only with gays when they wish. Occasionally in business or the selection of residence, quite often in social situations, homosexuals prefer the exclusive company of other homosexuals; such laws would make this by and large illegal.

And I would add to Ian’s objections another one. In the long run, gay people do not need the “help” of the State, as their progress wherever they have been freed from governmental tyranny shows. Furthermore, there is a point which I find it somewhat hard to express, but this may give you an idea: when one has been brutally, systematically oppressed, there are certain relationships of trust and dependence which it would be improper and demeaning to enter into with one’s oppressor. For many centuries

respectful of gay people, more completely committed to the cause of the equal rights of homosexuals. At the close of the Convention, a caucus was formed, Libertarians for Gay Rights, which includes some of the most prominent officers and members of the Party.

During the Tuccille campaign in 1974, a position paper was issued on the subject, composed by Mike James, Western New York Libertarian and gay liberationist. It provides the basis for the position of the MacBride-Bergland ticket on the issue. Here is what our national candidates in 1976 specifically favor and will promote to the extent they can:

- Repeal of all laws regarding consensual sexual acts between adults (with the age of consent reasonably defined). This would include abolition of laws prohibiting prostitution and solicitation, whether gay or straight.
- Repeal of legislation prohibiting unions between members of the same sex, and the extension to such unions of all legal rights and privileges presently enjoyed by partners in heterosexual marriages.
- An end to the use of loitering statutes and entrapment procedures as a means of harassing gays and prostitutes.
- An end to the collection by government agencies of data on the sexual preferences of individuals.
- Elimination of regulations specifying homosexuality as a justification for denying or revoking state licenses (for doctors, lawyers, teachers, hairdressers, etc.).
- Repeal of laws prohibiting cross-dressing.
- Recognition of the right of a homosexual parent to be considered for custody of his or her natural child, and of the child to choose the homosexual parent as guardian.
- Elimination of laws specifying homosexuality as grounds for denying the right of adoption.
- Equality of treatment of gay people in regard to government service, including particularly membership in the armed forces.

spiritual cannibals. As a rule, we live off the meaning others give their lives, validating our humanity by invalidating theirs. In other words, so long as such social scapegoats exist, any debauched deadbeat, any innerly-corrupt Philistine, any robotized mass-man with the gnawing suspicion that he has thrown away his one chance for a worthwhile life, can *still* feel some self-esteem because at least he is not one of *them*. It must be granted that a system which allows an utter non-entity to feel superior to a W.H. Auden or a Paul Goodman—which *establishes* that superiority with a word—certainly has its . . . uses.

This has been the history of the Jews, of blacks, of “witches,” of the “mentally ill,” of the West Coast Japanese-Americans, and of other social scapegoats. That it is not more often recognized to be the history of gay people as well, is probably due to a continuing resistance operating at every single moment—unless one has succeeded in significantly raising one’s consciousness—to even thinking about such a supremely threatening phenomenon.

Why a *particular* group should be singled out as a scapegoat it is usually difficult to say, but in the case of homosexuals, as been indicated, the anti-sexualism of our culture doubtless played the key role. Acting as if it were in a perpetual state of post-coital disgust, Western culture tended to panic at the thought of a group which sexualized taboo parts of the body and which brought sex into areas of social reality where it was hoped that there, at least one could forget about it (most male-male and, less objectionably, most female-female relationships). The idea of people who were so “uncontrollably” lustful that they even did *that* and *that* tended to bring the mind to the edge of an “anarchical” abyss, on the other side of which there lay—who knew what?

But it cannot be too strongly emphasized that, in the nature of things, these deep hang-ups could not have endured as long as they did, if they had not been enforced and reinforced by State power.

As late as the 1750s men caught in homosexual acts were burned at the stake in Paris. But by then a philosophy was spreading in the Western world whose individualistic and humane doctrines were to alter public attitudes and legal codes. This was

Classical Liberalism or, as we would now say, Libertarianism, which insisted on limiting the power of the state to an absolute minimum. Thus Jeremy Bentham, the Classical Liberal philosopher and legal theorist, concluded that voluntary homosexual acts should not be prohibited by law, since they were “fictitious crimes,” at most harming no one but the free-choice participants. And John Stuart Mill, in 1859, in his Libertarian classic, *On Liberty*, set forth the following principle, which, more than any other formulation, has helped to free gay people from legal oppression in the English-speaking world:

The object of this essay is to assert one very simple principle as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control. . . . The principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. . . . His own good, either physical or moral, is not a sufficient warrant. . . . Over himself, over his own body and mind, the individual is sovereign.

Because of the climate of opinion of their day, most Classical Liberals were too prudish to draw out the logical implications of their philosophy specifically for homosexuality; still, with time it became more and more obvious that sovereignty over oneself necessarily included self-sovereignty for gays as well. In keeping with the spirit of free inquiry and reform in the direction of individual rights fostered by Classical Liberalism, gay liberation movements started up in the 19<sup>th</sup> century in a number of countries, including Britain and Germany. Evil laws were still on the books, however, and gay people continued to be martyred (Oscar Wilde is the best known example). Eventually, though, the contradictions between verbal adherence to the ideal of personal rights and persecution of homosexuality became too blatant; and the profound alteration that Classical Liberalism had worked in the consciousness of the Western world determined, that, increasingly, the contradiction would be resolved in favor of personal liberty.

(“New Party Makes a Debut in Denver,” February 6, 1972) lists as our *first* objective (even ahead of abolition of the draft, amnesty for draft-evaders and deserters, private ownership of gold, etc.): “Repeal of all criminal laws in which there is no victim.”

Gay rights have been an issue in practically every major Libertarian campaign since then, including John Hospers’ try for the Presidency in 1972 (he did get one electoral vote, thus coming in a close third to McGovern); Fran Youngstein’s campaign for Mayor of New York; Jerry Tuccille’s try for Governor of New York in 1974; and the 1975 bids of Ray Cunningham for Mayor of San Francisco, and Dave Long for Mayor of Boston. It is also an integral part of the campaign of Roger MacBride and David Bergland, our candidates for President and Vice-President in 1976.

At the Libertarian National Convention in New York City, in August, 1975, at which MacBride and Bergland were nominated, the following Platform planks were adopted unanimously.

We hold that only actions which infringe the rights of others can properly be termed crimes. We favor the repeal of all federal, state and local laws creating “crimes” without victims. In particular, we advocate: . . . (b) the repeal of all laws regarding consensual sexual relations, including prostitution and solicitation, and the immediate cessation of state oppression of homosexual men and women, that at last they be accorded their full rights as individuals . . . (e) the use of executive pardon to free all those presently incarcerated for the commission of these “crimes.”

We call for the end of Defense Department policy of discharging armed forces personnel for homosexual conduct when such conduct does not interfere with their assigned duties. We further call for the retraction of all less-than-honorable discharges previously assigned for such reasons and the deletion of such information from military personnel files.

I was a member of the Platform Committee of the Convention, and a delegate from New York. For me it would be extremely difficult to conceive of a gathering of men and women intent on political action in the United States who were more utterly

somehow been the House Un-American Activities Committee and the sainted FBI. In short, what conservatives lack—it's almost their defining characteristic—is any sense that politics should be about principle.

A few of the more intellectual of the conservatives are now belatedly coming to the point of view that the “social fabric” would suffer no very grave rupture if homosexual acts by consenting adults, performed in the very strictest privacy of course, were made legal. Thus these writers come up to the usual level of conservative statesmanship: drifting with the tide. Others, though, are still toying with the grand design of an alliance between subsidy-hunting Big Business and its hangers on, and the Wallacites. In this strategy, the raw meat to be thrown to the followers of George Wallace to induce them to come along will include repression of the “decadent,” “effete” counter-culture, of which the gay liberation movement is seen as a particularly threatening, though vulnerable, part.

For anyone interested in gay rights, it is a waste of time to consider associating oneself with either the conservatives or the Marxists. And I think there is serious reason to doubt the reliability or sincerity of most leftists and liberals on the question. Nonetheless, political action is necessary to attain the basic legal framework of equality of individual rights, from which we can then go on, through voluntary action, to total social acceptance and integration into a free culture. What to do?

### III. The Libertarian View

With the Libertarian Party, unlike other political groups, there was never any need laboriously to raise its consciousness on the issue of gay liberation, nor to compel it, after long, drawn-out battles, finally to concede the humanity and first class citizenship of gay men and women. Instead, the Libertarian Party was born believing in gay rights. The need to promote full freedom of individual development for all persons is what led to the formation of our Party; and the very first mention of us in *The New York Times*

## II. Attitudes of Other Political Movements and Parties

It will be enlightening, I think, to examine the attitudes adopted towards gay rights by political movements and parties other than the Libertarian Party.

The behavior of Marxists, once they have attained power, is the greatest contemporary exception to the generalization that gays are experiencing increased freedom. There exist no more brutal regimes of systematic oppression of homosexuals in the world today than those of certain Marxist governments. The persecution of gays in Castro's Cuba has by now become an international scandal (the interested reader may find a good study, in terms of the experience of gay members of the Venceremos Brigade who went to work in Cuba, in *Out of the Closets: Voices of Gay Liberation*, edited by Karla Jay and Allen Young). Here are some quotations from the report in *Granma*, the official daily organ of the Communist Party of Cuba, on the First National Congress on Education and Culture regarding Homosexuality:

An in-depth analysis was made of the preventive and educational measures that are to be put into effect against existing locuses, including the recontrol and relocation of isolated cases and degrees of deterioration . . . it was resolved that for notorious homosexuals to have influence in the formation of our youth is not to be tolerated on the basis of “artistic merits” . . . homosexuals should not have any direct influence on our youth through artistic and cultural activities. It was resolved that those whose morals do not correspond to the prestige of our revolution should be barred from any group of performers representing our country abroad. Finally it was agreed to demand severe penalties be applied to those who corrupt the morals of minors, depraved repeat offenders and irredeemable antisocial elements.

Helping to enforce this policy in Cuba will be the hundreds of thousands of revolutionary “militants: who act as volunteer police spies and are everywhere.

The situation in China is even worse. Bao Ruo-wang, who spent many years in Chinese Communist prison camps, for instance, reports that homosexuality in China is punished by long prison terms and often by death. This may be found in *Prisoner of Mao*, a book whose accuracy is vouched for by John K. Fairbank, of Harvard, well-known as long-time friend of “People’s China.” (Interestingly, as with the Church-State alliance, Nazi Germany and other authoritarian regimes, the penalties against gay acts in China, while the most severe, are simply the final term of a whole program of fanatical warfare waged against the human sexual drive.) If you want to know what degree of respect is accorded gay people in China, read the section of the on the summary shooting out of the brains of a gay barber who had been found with seventeen year old boy. The blood and brains splattered the by-standers, and the author had to throw up.

In the Marxist countries of Eastern Europe, homosexuals are treated better, of course. In most of them, as in most of Western Europe, homosexual acts between consenting adults are not illegal. But, completely consistent with the Marxist plan for centralized, State-directed control of the total life of society, no gay liberation movement is permitted in any European Communist country, and any gay subculture is on principle discouraged by the police, to whose power there is, naturally, no limit at all. Following their dreary, intellectually thread-bare Marxist ideology, the Communist rulers “know” that homosexuality is a social aberration, caused—so what else is new?—by” decaying capitalism.” Their tolerance for a gay lifestyle is determined accordingly.

So, as regards Marxist parties and groups, I think that a gay person should seriously consider, not the promises that are made when they are looking for every bit of support they can get, but the logical implications of their anti-individualist philosophy, and their actual conduct once they are securely in power.

Since they partially share the heritage of Classical Liberalism, democratic socialists and left-liberals have been much more helpful to the cause of gay liberation. Much of the progress in recent years in repealing laws in this area has been due to them. But too often, even when they are more or less rational on the subject, they are,

either for reasons of temperament or politics, much too timid. Just as they tend to support legalization of marijuana, but not—heaven forbid!—of “hard” drugs (or until the results of an indefinite number of tax-subsidized “studies” have come through), so many of them are *generally* in favor of gay rights, but nearly all shy away from the right of homosexual couples to adopt children, or even to have their unions legally recognized. Moreover, their attitudes are often tainted by an offensive, psychiatrically-rooted condescension: basically, a these-people-are-sick-and-need-help-not-punishment approach. What socialists and left-liberals lack—it’s almost a defining characteristic—is the fundamental *laissez-faire* slant on things: that, all in all, it’s best to leave peaceful people alone and let them arrange matters to suit themselves. It’ll all work out, no need to worry.—Actually, instead of fretting about them, why don’t you go out and do what you’re interested in . . . ?

And as for the run-of-the-mill liberal politicians, we have a right to suspect the extent of their genuine tolerance. Consider, for example, one of the more “liberal” of these men, Sergeant Shriver (who was McGovern’s Vice Presidential candidate in 1972). In a speech in Chicago to Mayor Daley’s precinct workers, on October 24, 1972, Shriver whiningly complained of the unfair attacks on McGovern in these terms: “And then they say that George McGovern wants to give blanket amnesty to everybody—draft dodgers, deserters, queers, kooks . . .” (*New Your Times*, November 12, 1972. Sec. 4—notice that, in his frenzy, Shriver does not even take the trouble to make sense: “blanket amnesty to queers?”) I think you and I have a good idea of the real feelings on homosexuals of anyone likely to become the candidate for President of the Democratic Party.

Last of all, it should be obvious that the conservatives cannot be trusted in this area. Even their rhetorical commitment to individual freedom has always been oddly selective: freedom of business enterprise—but not for the narcotics or pornography business; devotion to the right to life, liberty and the pursuit of happiness—but not when overseas imperialist adventures require the conscription of American youths; pride in being a citizen of “the freest land on earth”—but a central part of their image of America has always