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A REVIEW OF BROCK THOMPSON’S 
THE UN–NATURAL STATE: ARKANSAS AND THE QUEER SOUTH 

By Katy Bosse

Brock Thompson begins his historical and anthropological account of the Southern gay and lesbian movement by outing his great-aunt Opal. Thompson examines the secretive life she led, living with her suspected partner Jerry, placing the story of growing up gay in the South in a personal context that frames the rest of his discussion. The Un–Natural State: Arkansas and the Queer South tells the stories of many gay and lesbian Arkansans from the 1930s to the present, and how their experiences are woven into the broader themes of queer identity politics in the American South.

Thompson, who received his PhD at King’s College in London and currently works at the Library of Congress, divides his book into three segments, each based on a different part of Arkansas history. He uses the term “queer” to describe not only gay men and women, but also acts of homosexuality and many other actions outside the social norm of the period. The first section of the book, The Diamond State, focuses on the culture of drag shows and its importance for gay community expression, beginning in the 1930s through modern times. The second section, The Natural State, focuses on Arkansas’s sodomy statute and its transformation from a generally antiquated and ignored law in the early seventies to one that existed solely to persecute homosexuals throughout the eighties and nineties. The final chapter, The Land of Opportunity, chronicles the attempts of many gays and lesbians, especially in the 1960s through the 1980s to form their own communities out of reach from an increasingly hostile society.

The unique character of The Un–Natural State stems not only from Thompson’s personal experiences growing up as a gay man in Arkansas, but his deep appreciation for Southern culture and the unique qualities that make it both a haven and a hell for queer persons and activities. Thompson correctly analyzes the many reasons many gays and lesbians still fight to make a home for themselves deep in the rural South when he says “There are certain things about Southern culture – the closeness to the land, church on Sunday – that so many do not want to give up to be another face in the city.”

While Thompson’s work focuses on the relationship between identity, community, and cultural visibility, the legal themes underlying his work show that the law has been a constant partner in the fight for establishing a gay Southern identity. This review provides a brief analysis of the legal issues in each section of Thompson’s book and explains how these issues have both helped and hurt the Southern gay movement.

The Diamond State

Thompson begins his discussion of the evolution of cross-dressing with a 1944 “womanless wedding.” These all-male productions, where the prominent men of the town would dress up to play all the characters of a wedding, were usually conducted as church or upper class fundraisers. Thompson compares these productions to blackface and minstrel shows throughout the South: a forum for powerful white men to bend gender and racial boundaries, demonstrating their ability to do so while others, mainly women and blacks, could not. Thompson points to World War II as the beginning of modern drag, where the same sex environment gave rise to “female impersonators” in an acceptable setting. He then traces the personal story of Norman Jones, the owner of the Miss Gay America Pageant,
to demonstrate the cross dressing transition from a rural fundraiser to a queer entertainment outlet.

The history of laws regulating clothing choice, generally called “sumptuary laws”, goes beyond the South and stretches back centuries. Early colonial laws, modeling themselves after Elizabethan laws, prohibited members of society who did not make a certain income from wearing certain clothing. Thompson discusses how Southern American culture regulated race in many of the same ways it regulated sex, as shown by South Carolina’s slave code, which mandated specific clothing for all slaves.

By the middle of the nineteenth century, many American states had begun to pass laws regulating clothing according to gender distinctions. In Toledo, Ohio it was a crime for any “perverted person” to appear in the clothing of the opposite sex. The act of cross-dressing was made a crime in many cities around the country, including Houston, San Francisco, and Kansas City. While Arkansas never had a cross dressing law on the books, the city of Little Rock passed several laws in 1868 banning “immoral plays” and “indecent behavior.” While not codified in Arkansas, it is clear that American culture, especially in the South, wanted to enact laws enforcing “appropriate” behavior.

Some legal scholars argue that the regulation of gender specific clothing still exists. In 1987, the Southern District Court of Ohio found that female students’ equal protection rights were not violated when police escorted them from the prom for wearing tuxedos. Males in the military have been court-marshaled for wearing women’s clothing, and male lawyers kicked out of courtrooms for not wearing a tie. However, in 2010, the Marion Arkansas school board ruled that a female student, who usually wore men’s clothing, could wear a tuxedo in her senior picture. Cross dressing challenges the presumed relationship between men and women and clearly shows the blatant societal construction of the terms “male” and “female” as Thompson subtly brings out in his history of drag queens in Arkansas.

The **Natural State**

The Natural State begins by comparing the 1976 Arkansas sodomy statute to the Georgia law upheld in *Bowers v. Hardwick*. The Arkansas sodomy statute created a misdemeanor offense if:

A: A person commits sodomy if such a person performs any act of sexual gratification involving:

1: The penetration, however slight, of the anus or mouth of an animal or a person by the penis of a person of the same sex or an animal; or

2: The penetration, however slight, of the vagina or anus of an animal or a person by any body member of a person of the same sex or animal.

The Arkansas statute criminalized only behavior between members of the same sex, unlike the Georgia statute, which criminalized the behavior regardless of the couple’s sexual orientation. In fact, Arkansas was one of only two states that reinstated their sodomy laws in the 1970s after legislators realized that the adoption of the Model Penal Code protected homosexual privacy. Thompson then discusses the repercussions that stem from branding homosexuals as criminals through the use of state sodomy laws. Most importantly, he highlights how the laws helped to create discrimination and intolerance within American society.

Throughout Thompson’s analysis of sodomy laws and their role in promoting discrimination, he draws attention to the similarities and differences of the African American experience in the modern American South. He states “This politics of skin – its color, its exposure, its usage – worked to specifically define the other, the queer, as the deviant outsider working to unseat the status quo in Arkansas.” Thompson addresses the unfortunate increased persecution of anything “queer,” with borrowed Southern laws previous used to keep African Americans out of society evolving into keeping gays and lesbians out of the “normal” social customs.

In 2002, one year before the U.S. Supreme Court overturned all sodomy laws in *Lawrence v. Texas*, Arkansas struck down its sodomy statute. In *Jegley v. Picado*, the Arkansas Supreme Court found
that section 5-14-22 of the Arkansas code, which imposed a sentence of up to a year or a $1000 fine for homosexual sex, infringes upon the right to privacy guaranteed to Arkansas citizens by the state constitution. The suit was brought by several Arkansas residents who all admitted they had violated the law in the past and intended to violate the law in the future. While none of the plaintiffs had previously been prosecuted for violating the law, the court found that because the plaintiffs had admitted to violating the statute, they faced a daily dilemma giving them standing. The Arkansas Supreme Court conceded that there is no explicit right to privacy or a right to engage in homosexual sodomy in the United States Constitution, but the court explored whether such a right exists in the Arkansas state constitution. By finding that the Arkansas constitution recognizes a right to privacy within the home, a right to not be deprived of life, liberty or property without due process, and a clause prohibiting the interpreting of rights in such a way that would disparage other rights, the court found that there is a right to privacy in the Arkansas constitution. Furthermore, the court found that the Arkansas Rules of Criminal Procedure comments also recognize a right to privacy, which affords an arrestee protection against invasions of privacy.

The court also found that the law violated Arkansas’s equal rights amendment because the law makes a classification based on gender. In examining the constitutionality of the sodomy law, the court turned to the Model Penal Code, which notes that such laws “sacrifice personal liberty, not because the actor’s conduct results in harm to another citizen but only because it is inconsistent with the majoritarian notion of acceptable behavior.” Combining these ideas of equal protection and a right to privacy, the Arkansas Supreme Court found section 5-14-122 unconstitutional.

One year later, the United States Supreme Court struck down a Texas statute criminalizing homosexual sodomy as unconstitutional in Lawrence v. Texas. The Texas statute stated “[a] person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex,” which the code defined as “(a) any contact between any part of the genitals of one person and the mouth or anus of another person; or (b) the penetration of the genitals or the anus of another person with an object.”

The court analyzed the statute in equal protection and due process terms and reached a similar verdict to the Arkansas Supreme Court decision. Justice Kennedy concluded that the state cannot make an adult’s private sexual conduct a crime and that the due process clause grants the right to engage in such conduct. The Supreme Court laid to rest all state sodomy laws criminalizing homosexual behavior and stated that the Founders “knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress.”

Land of Opportunity

The final section of the book juxtaposes the development of Eureka Springs, Arkansas, which served as both an escapist destination for many Southern homosexuals and the town’s evangelical tourist attraction, Gerald Smith’s, The Great Passion Play. The town, equipped with natural hot springs, first became an attraction in the 1890’s, post-Reconstruction. However, by the 1960’s, as the mystical allure of “hot springs” as places of healing fell out of fashion, the town of Eureka Springs fell by the wayside. Thompson describes the entrance of political figure Gerald Lyman Kenneth Smith, a devout Christian who built a 1,500 foot statue of Christ on the outskirts of town. Along with the statue, Smith constructed a Holy Land theme park with an amphitheater recreating the Passion of the Christ story nightly. The play and the theme park reinvigorated the town, providing a thriving business community deep in the Ozark Mountains. The reinvention of Eureka Springs and the natural remoteness of the town, began to hold a new appeal for many gays and lesbians seeking a community far away from the rest of society.

Thompson also begins the section with an analysis of the rural lesbian separatist movement and the attempts by several women to find their own space in the Ozark Mountains by forming lesbian-centered communes. Both of these narratives combine to depict the attempts by gay men and lesbian women to defy increasing societal rejection and create their own social constructs.

While Thompson provides a brief history of prior attempts to self-select out of modern society,
the many gays and lesbians who have tried to continue their lives within Southern society are still met with legalized discrimination. The 1968 Fair Housing Act provides no protection against discrimination on the basis of sexual orientation. Only twelve states and the District of Columbia prohibit discrimination on the basis of sexual orientation and gender identity and six additional states prohibit discrimination on the basis of sexual orientation only. Arkansas is not one of those states.

Arkansas has also codified a ban on same-sex marriages that reads: “Marriage shall be only between a man and a woman. A marriage between persons of the same sex is void.” Connecticut, D.C., Iowa, Massachusetts, New Hampshire, and Vermont are the only states that currently issue marriage licenses to same sex couples. Maryland and New York recognize same-sex marriages performed legally in another state. A handful of other states provide limited domestic partnership benefits to same sex couples, none of which fall within even a broad definition of the American South.

Only twelve states and D.C. have laws prohibiting employment discrimination based on sexual orientation and gender identity. Nine others prohibit discrimination based on sexual orientation only. None of the states listed fall within the American South.

Through his depiction of the dueling personalities of Eureka Springs, Thompson examines the growing Southern evangelical culture and the growing social and economic power of the gay movement. In this final section he addresses the appeal and benefits of rural culture to many Southern gays and lesbians, as well as the rising tide of bigotry and ostracism against them. While the history of the town of Eureka Springs seems to provide a utopian glimpse of a more tolerant American South, Thompson ends the book with a description of his childhood minister’s snub during a town hall meeting. Home from a year of graduate school in London, Thompson attended the town hall meeting on a resolution to ban the town from having a gay pride parade. He took the only seat available in the room, next to his childhood minister, who turned his back to Thompson and refused to say hello. While the fight for gay rights today seems to focus less on finding an isolated space for gay communities, in the face of the continued discrimination described above, it is not difficult to see why so many gay men and lesbian women once sought their own space.

As a whole, The Un–Natural State is Thompson’s attempt to combine his own history with Arkansas’ complicated queer past. The book is an homage to the unique space the American South provides to gays and lesbians. It is also an analysis of what it means to be a Southern gay man or woman and a critique of the intolerance that continues to pervade modern Southern culture. As analyzed above, the law has both helped and hurt the gay rights movement, providing protection one minute and persecution the next. The Un–Natural State provides rich oral recollections and historical narratives to the controversial legal issues that still plague the on-going fight for gay civil rights.

Endnotes

1 Katy Bosse is a second year student at American University Washington College of Law. She is on the Journal of Gender, Social Policy, and the Law, is a Legal Rhetoric Dean’s Fellow, and a staff writer for The Modern American. Prior to law school, she was the Senior Public Policy Associate at Matz, Blancato, and Associates and attended the University of the South.

2 Brock Thompson, The UnNatural State: Arkansas and the Queer South (2010).

3 Id. at 9.

4 See Bennett Capers, Cross Dressing and the Criminal, 20 YALE J.L. & HUMAN. 1, 7-10 (2008) (providing a history of sumptuary laws and their evolution in modern society).

5 See id. at 7 (citing a 1651 Massachusetts law that prevented those who made less than £200 from wearing gold, silver lace or buttons, silk hoods or “great boots”).

6 An Act for the Better Ordering and Governing Negroes and Other Slaves, No. 586, ¶ 36 (1735), reprinted in 7 STATUTES AT LARGE OF SOUTH CAROLINA 385, 396 (David J. McCord ed., 1840), available at http://www.archive.org/details/statutesatlarge07edit; see also Capers, supra note 11, at 8 (“It was not enough that their skin marked them subordinate in the eyes of whites; their clothing had to mark them as subordinate as well.”).
See Capers, supra note 11, at 8 (describing the post-Civil War and Reconstruction society that began to criminalize sexual deviancy).

Id.


See id. at 338 (showing Arkansas municipal ordinances criminalizing sexual behavior).

See Capers, supra note 11, at 9 (noting that it was not enough to check male or female on the census, one needed to act and appear the correct gender as well).

Id. at 10; see also Alan Hunt, Governance of the Consuming Passions: A History of Sumptuary Law, xviii (1996) (arguing that society still attempts to regulate dress).


See Capers, supra note 11, at 10 (citing cases that upheld gender distinctions in the military and the courtroom).


See Capers, supra note 11, at 15 (“At its most complex, [drag] is a double inversion that says ‘appearance is an illusion.’” (alteration in original) (quoting anthropologist Esther Newton)).


See Ga. Code Ann. § 16-6-2 (1984) (“A person commits the offense of sodomy when he performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another…”).

See Eskridge, supra note 17, at 106 (discussing the resurgence of sodomy laws in the 1960s and 1970s).

Thompson, supra note 2, at 92.


See id. at 334 (noting that among the plaintiffs were a teacher, a minister, a nurse, and a mother of two children).

Id. at 340-41; see also id at 343 (“[W]e cannot say that appellants are without some reason to fear prosecution for violation of the sodomy statute.”).

Id. at 345.

Id. at 346-47.

See id. at 348 (quoting commentary to Ark. R. Crim P. 2.2 (2002)).

See id. at 350-53 (Equal Protection analysis).

See id. at 353 (quoting Model Penal Code, pt. II, 362-63 (1980)).

Id. at 353-54.


See id. at 563 (quoting Tex. Penal Code Ann. § 21.01(1), §21.06(a) (West 2003)).

See id. at 578 (finding that the state has no legitimate interest that can justify its intrusion into the private sexual conduct of an adult).

Id.


Id.

Id.


Id. (adding Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Nevada, New Hampshire, New York, and Wisconsin).