

# APA Newsletters

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## NEWSLETTER ON PHILOSOPHY AND LESBIAN, GAY, BISEXUAL, AND TRANSGENDER ISSUES

FROM THE EDITOR, CAROL QUINN

FROM THE CHAIR, MARY BLOODSWORTH-LUGO

CURRENT COMMITTEE MEMBERSHIP

### FEATURED ESSAYS

MARY K. BLOODSWORTH-LUGO

“Transgender Bodies and the Limits of Body Theory”

RICHARD D. MOHR

“America’s Promise and the Lesbian and Gay Future: The Concluding  
Chapter of *The Long Arc of Justice*”

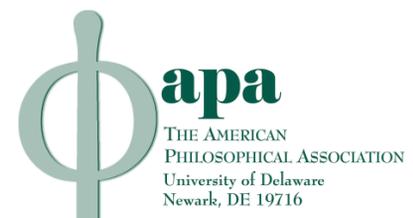
### BOOK REVIEWS

Richard D. Mohr: *The Long Arc of Justice*

REVIEWED BY JAMES S. STRAMEL

Laurence M. Thomas and Michael E. Levin: *Sexual Orientation and Human Rights*

REVIEWED BY RAJA HALWANI





APA NEWSLETTER ON

# Philosophy and Lesbian, Gay, Bisexual, and Transgender Issues

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Carol Quinn, Editor

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## FROM THE EDITOR

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### Carol Quinn

In this issue, we feature two terrific papers, "Transgender Bodies and the Limits of Body-Theory" by Mary Bloodsworth-Lugo, and "America's Promise and the Lesbian and Gay Future," which is the concluding chapter of Richard Mohr's new book *The Long Arc of Justice*. In her paper, Bloodsworth-Lugo discusses transgender bodies as possible limit cases to frameworks offered by feminist theories of sexual difference, and she engages the irony that discourses on bodies are often strangely *disembodied*. While sexual difference theorists have noted the importance of two sexually-marked bodies (rather than a neutrality of bodies), Bloodsworth-Lugo argues that sexual difference theorists might not press this claim far enough. Transgender bodies, she claims, illustrate the limits of a two-bodies model of difference. Additionally, while sexual difference theorists focus on a notion of the lived body, they do not adequately address intersections between and among various markers of identity (for example, race, class, gender, and sexual orientation). Thus, while bodies *are* lived at the intersections of such categories, the very theories that aim to theorize them do not appear to accommodate them within their frameworks.

Mohr's paper explores how both the nation's symbolic uses of gay issues and the nation's current progress in addressing gay issues suggest that a culturally-focused gay politics will have the best likelihood of drawing the country nearer to justice for lesbians and gay men. The essay ends by imagining America's future beyond the legal institutionalization of justice for lesbians and gay men and predicts that the current view of gays as internal aliens and presumption of universal heterosexuality will persist as cultural forms even after gay legal justice is achieved.

Also in this issue, James Stramel reviews Mohr's book *The Long Arc of Justice*. Finally, Raja Halwani reviews Laurence Thomas and Michael Levin's book *Sexual Orientation and Human Rights*.

### Contributions Invited

The Editor encourages contributions to the *Newsletter*, especially essays that might fall through the cracks elsewhere for being untraditional in scope or content. Contributions may range from opinion pieces to book reviews to short articles. Commentary on issues important to professional life—teaching, research, and service—are especially welcome. Early contact with the Editor is strongly encouraged. Please contact Mary Bloodsworth-Lugo at bloodswo@wsu.edu.

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## FROM THE CHAIR

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### Mary Bloodsworth-Lugo *Washington State University*

My term as chair of the APA Committee on the Status of Lesbian, Gay, Bisexual and Transgender People in the Profession began on July 1, 2004. The committee would like to thank Mark Chekola for his service as chair of the committee. Mark's term ended on June 30, 2004.

During the past year, the LGBT Committee sponsored programs at all three APA meetings. At the Eastern Division meetings in Boston, we sponsored a session on Continental Philosophy and the Discourse of Sexuality. At the Pacific Division meetings in San Francisco, we co-sponsored two sessions: one with the Society for Lesbian and Gay Philosophy on "Honoring Mark Chekola," and the second with the Commission on the Status of Women and the Inclusiveness Committee on "Considering Same-Sex Marriage: Spring 2005 Reflections." At the Central Division meetings in Chicago, we co-sponsored a session with the Society for Lesbian and Gay Philosophy on "LGBT Issues and Bioethics."

As of this year, the Chairs of APA Diversity Committees serve as *ex-officio* members on the APA Inclusiveness Committee, presently chaired by Joan Callahan. In this capacity, I have followed listserv discussions regarding various issues pertaining to inclusiveness in the profession and attended a breakfast meeting of the entire committee at the Pacific meetings. Also, the APA approved an additional seat on the Inclusiveness Committee for a philosopher with expertise in disability. Congratulations to Mark Chekola, who was selected to fill this position effective July 1, 2005.

During the year, I was contacted by a number of philosophy departments welcoming LGBT applicants for available positions, and I forwarded these notifications to the email list.

During Fall 2004, an APA Committee Chairs meeting was held in Newark, Delaware. Members of the APA Diversity Committees were invited to participate, and Carol Quinn agreed to attend this meeting on behalf of the LGBT Committee. Thank you to Carol for representing the committee at this event.

Warm and sincere thanks go to Carol Quinn, as well, for serving as newsletter editor for the *Newsletter on Philosophy and Lesbian, Gay, Bisexual, and Transgender Issues* for numerous years. Carol is stepping down from this position to pursue other professional interests. The LGBT Committee wishes to extend a call for a new newsletter editor and welcomes nominations for this position. Thank you again, Carol. The committee will greatly miss you.

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## FEATURED ESSAYS

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### *Transgender Bodies and the Limits of Body Theory*

Mary K. Bloodsworth-Lugo  
Washington State University

It wasn't as simple as my doctors made it sound. In the hospital, I turned control of my face over to my roommate Donna. She wanted to help. She tried to pinpoint exactly why my fifteen-year-old girl-face looked boyish. This turned out to be a bigger question than we could answer (Scholinski 1997, ix).

...there are at least two kinds of bodies; the male body and the female body... (Gatens 1991, 145).

#### I. Theorizing "The Body"

Given the volume of recent theoretical attention directed toward [the status of] bodies, it can be safely said that a redefinition of bodies has clearly emerged. A view of bodies as subject(ed) to interpretation has supplanted a notion of bodies as passive and static things, and these reconfigured bodies have proven liberating within many analyses. However, a disturbing claim has also been made about much bodily theorizing—that body-theory is often strangely *disembodied*. Kathy Davis remarks on this strangeness when she writes, "theorizing about the body has all too often been a cerebral, esoteric, and ultimately, disembodied activity. The danger is that theories on the body distance us from individuals' everyday embodied experiences" (1997, 14). Additional concern about the detachment of body-theories from the bodies they theorize is expressed by Carol Bigwood and Bibi Bakare-Yusuf as follows. Bigwood contends, "the poststructuralist body... is so fluid it can take on almost limitless embodiments. It has no

real terrestrial *weight*" (1991, 50); and Bakare-Yusuf asks, "What of the body...that is marked by racial, sexual, and class configurations? It is this body, this fleshy materiality that seems to disappear from much of the current proliferation of discourses on the body" (1999, 313). If body-theory *is* often disembodied—as these and other scholars suggest—then despite the potential for, and claims in favor of, conceptual transgression, bodily theorizing would nonetheless remain within a traditional theoretical framework.

Oftentimes, concerns about theoretical detachment appear in remarks on postmodern theory in general. Consider, for instance, the following disclaimer by Maria Lugones: "This writing is done from within a hybrid imagination, within a recently articulate tradition of latina writers who emphasize mestizaje and multiplicity as tied to resistant and liberatory possibilities. All resemblance between this tradition and postmodern literature and philosophy is coincidental" (1996, 275). Lugones aims to point out, I think, that reconceiving "positionalities" as liberatory and resistant potentials demands an attachment—to place, to location, to geography, to home—in ways contrary to a thorough-going postmodern anti-essentialism and disengagement of the subject. Specifically referring to bodies and postmodernism, Jacquelyn Zita indicates, "Postmodernism is right in bringing into focus the contingency of sex identity imposed on and incorporated into the body's soma but wrong in supposing these to be lightweight and detachable" (1998, 107). Here, Zita indicates ways in which bodies and the category "sex," while open to experiential possibilities, must nonetheless be *grounded*. That is to say, while bodies are able to assume various sex/gender configurations, bodies are also socially and historically constrained. As a serious example of this point, we can note that anti-queer/anti-trans violence serves to indicate and to remind us of the weightiness and historical gravity of bodies since no one is able to beat or to murder a detached and disembodied body. Queer/trans-bodies do not exist devoid of context or socio-historical import, and it is precisely from within certain anti-queer/anti-trans contexts that anti-queer/anti-trans violence assumes its meaning.

As body-theories, I propose, sexual difference theories provide a fruitful possibility. While they are precisely theories of "the body," they likewise have the virtue of not being postmodern theories.<sup>1</sup> Or, we could say that sexual difference theories avoid what Zita views as "wrong" with postmodernism. Given the centrality of a notion of *lived* bodies within sexual difference analyses, bodies as lived are—by definition—not detached bodies. "Positioned" *between* the biological (body) and the social (culture), lived bodies transcend the body's mere biology. At the same time, lived bodies do not float off into a disembodied space (that is, away from ordinary, corporeal, and lived experiences). Sexual difference theories both loosen the limitations on bodies (and the relation between sex and gender) and posit the conditions for those very constraints in the first place.

However, while in-between positions offer liberating and resistant potential, to exist between extremes is often difficult for individuals materially situated there. As Ann du Cille remarks in a different context, "One of the dangers of standing at an intersection...is the likelihood of being run over by oncoming traffic" (1996, 72). In the present case, this means that living one's body within an often-unrecognized social and theoretical space means being rendered "outside" of prescribed and exclusive boundaries of demarcation. To identify—or to be perceived—as transgendered, for example, is to embody a certain systemic "violation."

Importantly, sexual difference theories highlight the possibility that if bodies—*all* bodies—*always* exceed “their own boundaries,” as Judith Butler specifically states, and if bodies are *never* static and polarized (despite mainstream Western ideas to the contrary), then transgendered subjects make this persistent excess clear. Trans-bodies reveal that many presumed polarities are never quite polar and that identity itself is always already a matter of bleeding and extension.

## II. Questioning Sexual Difference

To return for a moment to the opening concerns about theoretical detachment, it still seems possible to ask the following question of sexual difference theories: If sexual difference theories presumably focus on lived bodies, and trans-bodies are lived bodies that nicely exemplify sexual difference theories, but sexual difference theories do not explicitly address trans-experiences, then do sexual difference theories err or contradict themselves in virtue of this (and other) neglect(s)? The puzzle I see is as follows: On the one hand, doesn't the very existence of trans-people force a re-thinking of concepts like the meaning and function of gender, the normative nature of sex/gender mappings, and the various complexities of sexual/social identities? On the other hand, don't sexual difference theories offer analyses and understandings of an engrained refusal to tolerate non-normative subject/body positions? In other words, would *theories about* bodies have any force without bodies and lives to which they might attach? And is there a proper role for theory in furthering the sort of “dichotomy-challenge” evidenced in the way that many people live their bodies on a daily basis?

As the opening epigraph makes clear, Gatens notes the existence of at least two kinds of bodies. Sexual difference theories *are* sexual difference theories, at least in part, by way of this recognition.<sup>2</sup> Gatens's observation is a claim against what she calls the presumed neutrality of the body (again, the idea that bodies are mere “blank slates”). While this point has been very significant for feminist theory, I nonetheless wish to raise a few questions in relation to sexual difference theories. First, I would like to ask how sexual difference theories, following the insight of two sexually-different bodies, might take up a case in which the very question of what constitutes a male or female body itself has been troubled. That is, how would sexual difference theories engage with Loren Cameron, whose self-portraits depict a sexed body itself in a state of perpetual transition? Cameron's self-portraits cannot fit neatly within traditional categories of “male” and “female.” Rather, Cameron's portraits suggest that “both sexes” can co-exist within one bodily inscription.<sup>3</sup> In the case of Cameron, the refusal to completely transition to “the opposite sex,” at least with respect to his body, demonstrates the deceit of the “two sexes” model. It renders implausible an easy notion of two mutually exclusive categories (male and female) for there is no male *or* female body in the portraits of Cameron.

Secondly, Butler raises the question of whether an emphasis on the irreducibility of sexual difference acts to prioritize sexual difference over other forms of difference, including racial difference—thereby relying, implicitly, on a *White* notion of sexual difference. I see this point as particularly valid when we consider that certain traditional dichotomies—such as “male” and “female,” or stereotypes of “male activity” and “female passivity”—do not consider other classic stereotypes of specific non-White racialized identities, for example, the emasculated Asian/Asian American man or the “super-strong” African American woman.

Thus, “male activity” and “female passivity” are most likely raced concepts—raced, primarily, it seems, as *White*. Not only

has there been an established binary between the categories of “male” and “female,” but there has been a division between “*White*” and “non-*White*” within these categories.<sup>4</sup>

Thirdly, I wonder how—or rather, *do*—sexual difference theories treat intersections between the lived categories of sex/gender, race, sexuality, class, ability, nationality, etc. I wonder what sexual difference theories would say about the scenario opening David Eng and Alice Hom's *Q&A: Queer in Asian America* (1998)? In the real-life example, a *White* woman “mistakes” a butch-looking Asian American lesbian for an Asian/Asian American man in a public women's restroom. Given mainstream racial[ized] and sexual[ized] stereotypes about Asian women and men, the Asian American lesbian is not seen as a lesbian; rather, she is seen as an emasculated Asian American man—who, the *White* woman “racistly” presumes, must be in the *women's* restroom because he cannot read English. Here, invisibility cannot be ascribed to sexual difference in any easy way. While the scenario involves theoretically interesting notions of ambiguity, the *White* woman's resolution of the situation fails to register that ambiguity. It is not a case, in Eng and Hom's example, of “having to decide” a perceived ambiguity one way or the other; instead, it is a matter of failing to perceive what is more ambiguous than one decides.

## III. Considering Possibilities

In arguing against assumptions of bodies as neutral, Gatens argues against what she calls “the postulated *arbitrary* connection between femininity and the female body; masculinity and the male body” (1991, 140). Gatens suggests that the *relation between* categories must be examined—remarking that “Gender is not the issue, sexual difference is” (145). This claim indicates, *contra* gender feminists, that patriarchy is not a system that valorizes the masculine gender over the feminine gender; rather, patriarchal structures value the masculine *male*. The sexed body residing behind the gender expression, in other words, is of vast importance. The fact that different meanings are attributed to various sex-gender mappings becomes clear when we consider our everyday awareness that the significance of a female body's masculinity differs from a female body's femininity, and a male body's masculinity differs from a male body's femininity. We could say that anti-queer/anti-trans violence, such as the murders of Brandon Teena or Eddie (Gwen) Araujo, and many unpublicized others, is a precise consequence of these different meanings and the demand that “normal” mappings be maintained. Likewise, the diagnosis of Gender Identity Disorder can exist for this same reason, permitting the institutionalization of trans-people like Daphne Scholinski who do not adhere to “normal” sex-gender combinations. Not accidentally, then, the murderer and the psychiatric institution mark two sites of trans-“treatment.”

Moreover, if bleeding and extension are aspects of *all* identities, and if identities are *never* clearly demarcated, then trans-identities reveal a great deal to non-trans people. Scholinski demonstrates much, for example, that the mental health professionals fail to adequately consider. Relaying her interactions with a patient named Bob, who identifies himself as Jesus, Scholinski remarks:

The more I talked to Jesus, the more I liked him, and the less crazy he seemed. ...I could imagine him in the outside world, preaching. He'd probably help some people. This posed an interesting dilemma: If I thought he was sane, what did that make me? Mental hospitals are rife with this kind of debate. ...The staff discouraged this sort of questioning. They liked the

line between sane and insane to be perfectly clear (1997, 19).

Scholinski's observation connects back, I think, with what Zita finds "right" with postmodernism, for Zita's comments on the "rightness" and "wrongness" of postmodern thinking are contained in her essay "Male Lesbians and the Postmodernist Body."<sup>5</sup> The question of the male lesbian—like the case of "Jesus"—offers no easy answers, since simply responding "yes" or "no" to suggestions of delusion does not adequately address the ways in which identities are fluid. Zita states:

The paradox of the "male lesbian" reveals some insights into how sex identity attributions are customarily established for all of us in our culture. ...The range of lived interpretations for the body is less determined by anatomy and more determined by the interpretations and prescriptions given to that anatomy... (1998, 105).

Likewise, I suggest, postmodernism makes the mental-patient-as-Jesus a serious consideration. However, to also incorporate constraints—such as those offered by sexual difference theories—means that Bob is most likely *both* Jesus *and* not-Jesus. A "both...and..." identity is importantly tied to *both* the fluidity *and* the historical gravity of the body-subject.

An additional connection can be made, here, to Judith Halberstam's (1998) work on female masculinity in that Halberstam conveys:

...a great example of denaturalized identification was featured as a comic device in the 1995 movie *Babe*. ...*Babe* depicts the triumph of function over form when the pig, Babe, proves to be a better sheepdog than a sheepdog. The success of Babe's dog performance depends on assumption of the role "dog" with a difference. ...Whereas the master sheepdog presumes his superiority over the sheep, Babe refuses to construct a new hierarchy or to preserve natural hierarchies; instead, he proves his willingness and ability to herd and show proper respect for the sheep and above all takes pleasure in his dogness (255).

Babe is a "'sheep dog' with a difference." Babe reconfigures the sheep dog-identity by *both* enacting *and* displacing it. The question of whether Babe could be disqualified from sheep-herding competition, on grounds that he is not a "real" sheepdog, is an important question. Indeed, self-identified male lesbians have been, at times, excluded from "the lesbian community proper" on grounds that they are not "real" lesbians. However, could a male lesbian prove to be a better lesbian than a lesbian?; and should a male lesbian be excluded from lesbian communities a priori? If the movie *Babe* is radical, its departure from the ordinary resides in its allowing Babe, a pig, not only to adopt a sheep dog identity but to be rewarded for this trans-species assumption. Babe emerges a hero. Such trans-associated heroism stands in opposition to the verdict that the mental-patient-as-Jesus is delusional, or the command that Scholinski apply make-up and curl her hair to earn institutional points as "treatment" for her "disorder."<sup>6</sup> Scholinski asks, with a dry sense of humor, that we look at her and determine whether the "treatment plan" was "effective." If Scholinski *still* embodies boyishness—perhaps due to her very comfort and pleasure in such—then is this boyishness, too, "'boyishness' with a difference"; and what *is* the difference?

Indeed, considerations of context often make a huge difference in asking and answering questions about community

inclusion and exclusion. Context may be said to offer constraints on our identity notions; and the historical gravity of bodies is central to how context is construed. After all, isn't it from within a context of a history of "lesbian separatism" and/or of "woman-only spaces" that the so-called male lesbian is rendered particularly suspicious? Isn't the weightiness of the male lesbian's body highlighted by these very circumstances? The male lesbian is perceived, it could be said, as a coyote in sheep's clothing. Is this a *real* sheep, or a potentially dangerous imposter? Moreover, does a formula to the effect of "lesbian = woman + sleeps with women" contribute to the uproar and community boundary reinforcement that occurs when a self-identified (female) lesbian sleeps with a man?<sup>7</sup> Is the woman who sleeps with a man *really* a lesbian? Is she a "'lesbian' with a difference"? What factors, in this scenario, serve to constitute a reply? And, as others have asked of similar phenomena, what is the force of the "really"—or of the *real*—in the first place?<sup>8</sup>

### Endnotes

1. As sexual difference theorists, I have in mind theorists such as Judith Butler (1990, 1993), Elizabeth Grosz (1994), Moira Gatens (1996), Rosi Braidotti (1994), Rosalyn Diprose (1994), and Luce Irigaray (1993, 1985). Common to these theorists is an aim to "uncover" the body from its hidden or neglected status within the discipline of (Western) philosophy *and* a history of (egalitarian) feminism. Sexual difference critiques suggest that feminists of equality, by emphasizing women's "sameness" to men rather than their bodily difference(s) from them, sought to downplay "the body" because a focus on women's bodily difference was feared to re-institute women's conceived inferiority to men. However, by rethinking bodies, sexual difference theorists have reconceived sexual difference in non-essential ways. That is, "the body" under investigation is not the biological, factual, given body at all; rather, the body is conceived as *both* produced by *and* (importantly) resistant to production by social, historical, and cultural practices.
2. See note above and Section III of the present paper.
3. See Cameron's *Body Alchemy: Transsexual Portraits* (1996).
4. I am thinking here, too, of cases in which White women have been rendered innocent, virginal, and pure while women of color have been considered sensual, aggressive, and over-sexed.
5. See chapter 3 of Zita's *Body Talk: Philosophical Reflections on Sex and Gender* (1998).
6. Scholinski is ordered to overcome her boyish behaviors and appearance at a cost, she notes, of one million dollars in paid health benefits.
7. A great discussion of this concern can be seen in an article by Lillian Faderman in an April 29, 1997, issue of *The Advocate*, entitled, "Why is it shocking when a lesbian leader falls for a man?" Faderman states: Shock waves pass through some enclaves of the lesbian community every time it happens [when lesbian leaders fall for men]. ...Observation tells us that the neat categories of sexual identity are often an illusion. ...The narrow categories of identity politics are obviously deceptive. They hide the complex, multifaceted nature of human beings. ...That being so, how can we not feel discomfort or loss or annoyance when anything or anyone reminds us how

simplistic and unstable the notion of identity truly is (80).

8. For example, Halberstam indicates:  
...far from being an imitation of maleness, female masculinity actually affords us a glimpse of how masculinity is constructed as masculinity. In other words, female masculinities are framed as the rejected scraps of dominant masculinity in order that male masculinity may appear to be the real thing. ...But what we understand as heroic masculinity has been produced by and across both male and female bodies (1998, 1-2).

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***America's Promise and the Lesbian and Gay Future: The Concluding Chapter of The Long Arc of Justice*** (*This is excerpted from The Long Arc of Justice: Lesbian and Gay Marriage, Equality, and Rights, by Richard Mohr, forthcoming from Columbia University Press. Copyright © 2005 Columbia University Press. All rights reserved.*)

**Richard D. Mohr**

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[This chapter covers events through June 2004.]

A perplexity: at the dawn of the twenty-first century, just as lesbians and gay men were making slow, steady, incremental progress in the direction of social and legal equality, suddenly interest in lesbian and gay issues exploded across the national scene and gay folk themselves significantly raised the bar up the standards of what they wanted, expected, and were willing to fight for. Chief among the new expectations was access to full marriage rights, something that gay organizations, both state-level and national, had not before pegged as a high priority. Indeed, when it came to same-sex marriage, gay political organizations had been saying to their constituents, "Go slow; be cautious; above all else, do no harm." Strangely, incremental progress did not dissipate reformist energies or produce satisfaction in what gays had already achieved. Just the opposite happened.

What is driving America's violet velvet revolution? Two things. First, gay men and lesbians re-thinking what is possible. Second, gay men and lesbians re-thinking what it means to be gay and lesbian.

The first impulse, as gay columnist Paul Varnell has pointed out, is an example of what Alexis de Tocqueville dubbed "the revolution of rising expectations." De Tocqueville observed that the French Revolution did not occur when the masses were crushed and desperate, oppressed and without resources, rather the Revolution occurred when prosperity was on the rise and intimations of liberty were in the air. He put it this way:

It is not always in going from bad to worse that one falls into revolution. It more often happens that a people who have borne without complaint, as if they did not feel them, the most burdensome laws, reject them violently once their weight is lightened. ...The inevitable evil that one bears patiently seems unbearable as soon as one conceives the idea of removing it. Every abuse that is then eliminated seems to highlight those that remain and makes them feel more biting; the evil has decreased, it is true, but the sensitivity to it is greater.<sup>1</sup>

This revolution of rising expectations fits recent gay and lesbian experience nicely. When gay men and lesbians began to conceive of the elements of marriage coming to them piecemeal and partial through domestic partnership registries, corporate largesse, and the like, they suddenly recognized what they still did not have and how unjust that lack is. A similar revolution swept gays' allies. When justice began to seem a live possibility, they were prompted by its call, even, in the case of some brave mayors and clergy, to the point of performing acts of civil disobedience in order to officiate at gay and lesbian civil weddings.<sup>2</sup> When, in this way, citizens are

motivated by goodness rather than (just) self-interest, America is likely to see not only a rise in pressure on politicians to do *some thing*, but also a rise in national consciousness to do the *right thing*.

The second source of the sudden press for justice configured around same-sex marriage is a raising level of consciousness among lesbians and gay men themselves—in particular, a dawning recognition that gayness is a form of connectedness. Too often, gays and our allies have argued that gayness does not matter, that gayness is irrelevant—that, after all, gays are “just people too.” These rhetorical moves are inadvertent, even well intentioned, erasures of gayness. They suppose that gayness is a property, like having an eye color or wearing an earring, which a person could have in isolation from all other people and without significant effect on others. And it is perfectly understandable that gays and others have in the past taken up this stance as a major premise in arguments and calls for lesbian and gay rights.

First, the lesbian and gay rights movement, for the longest part of its duration, was singularly focused on civil rights legislation. Indeed, as noted, in the 1970s and early 1980s, if one used the expression “gay rights,” one was presumed to be speaking of legislated civil rights for gays. And in this context, if gayness is irrelevant in general, then presumptively it is irrelevant to flying a plane, serving a meal, teaching a class, or being a cop. And so it would be unjust for society to discriminate on the basis of sexual orientation, since sexual orientation is not the basis for anything—or so it goes.

Second, if gayness is an irrelevant property, then it is easier to make analogies between gayness and race, especially if (as per one of the Right’s main fantasies) race is viewed simply as a matter of skin-color and not as a system of cultural expectations and subcultural inventions. Finally, the view that gayness doesn’t matter had a strategic pull. If a person’s being gay were an irrelevant characteristic, then other people would not have to be so afraid of it, afraid that they might be it or get it. As a tactic against persecution and a plea for tolerance, it wasn’t a bad strategy. But if lesbians and gay men stick with this view, we will be stuck indeed. In our social projects, gay men and lesbians need to be thinking more of gayness not as something that a person can have in splendid isolation from others. It takes two to be queer.

We need to conceptualize gayness as a relational property, a human bonding, one in need of tendance and social concern. Gayness places or situates the gay person in social and interpersonal contexts. It is both an outflow and a reception of perception, desire, affection and knowing—both Biblical and cognitive. We need to stop claiming that gayness is an irrelevant property and begin recognizing that it is crucially important to people’s lives and identities, to social history, and, as the “queer theory” crowd is showing, to understanding central components of many of society’s most important concepts and cherished institutions.<sup>3</sup>

The reason that gay marriage has become such a major issue for gays is that both gayness and marriage have their roots in everyday existence. Marriage becomes a way of incorporating gayness as connectedness into the everyday. It should not be surprising then that gay men and lesbians—as a matter of pride and need—are shifting issues of family life to the top of our political agenda. Gay sex, gay love, gay life, and gay presence all matter.

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Whether American law at large allows gays and marriage to merge or permanently blocks their union will depend on whether the social and private-sector progress now underway on gay issues induces a force field in the minds of the makers

and interpreters of law sufficient to affect their deliberations. Such progress on substantive issues has been impressive, even if still partial and contested, especially around the issue of gayness as connection.

Take religion. Catholicism, at least the Catholic hierarchy, has dug in its heels on gay issues. The reason: if in society’s eye, gayness turns out to be acceptable, then the Church loses the last clear example, and so too the intuitive appeal, of its view that morality is somehow grounded in the structures of nature—that good actions are those that follow nature, bad those that are unnatural, run “contrary to nature.” With the gay example gone, the Church would lose any psychological link to the foundations of its moral-metaphysical system, Natural Law, which it has held since Thomas Aquinas and the thirteenth century. Note that worries over the purported unnaturalness of masturbation and contraception just do not rile up the masses anymore; indeed, such worries simply seem silly to most people. Catholic women in America use contraceptives to the same degree that non-Catholic women do.<sup>4</sup> Appeals to unnatural uses of sex organs have even dropped out of public debate over abortion. That debate now turns entirely around the issue of whether abortion counts as murder or not. And no one in the pews supposes that Papal views on welfare policy and labor rights have anything to do with metaphysics. If the sinfulness of homosexuality goes, so goes that which was distinctive about the *grounds* of morality for Catholicism. At least for the short term, Catholicism is a lost cause for gay progress.<sup>5</sup>

By contrast, mainline Protestant denominations are now gripped in titanic struggles over issues of gay connectedness. This struggle should come as no surprise given the Christian commitment to an ethics of love, an ethics that says you are not alone. Religious bars to gay connectedness put Christian churches in the conceptually awkward position of telling some people that they do not have access to what most people—and they themselves—take to be the core forms and intensities of Christianity’s highest value. Struggles within mainline Protestant denominations over gay issues can be thought of as the exteriorization of this cognitive dissonance at the core of Christian thought, a dissonance caused by a clash between Levitical injunctions and revelations of love. And despite the current spate of heresy trials, excommunications, disfellowships, schisms,<sup>6</sup> threats of schism,<sup>7</sup> and the like, I expect that within ten years most mainline denominations will come around on gay issues, acknowledging that, yes, gay love is love, and recognizing, in turn, that gay love calls for social husbandry and institutional reform. The Unitarian-Universalist Association, Reform and Reconstructionist Judaism, and the United Church of Christ have already come around to this position—accepting gay clergy and performing gay holy union ceremonies and civil weddings, sometimes even to the point of civil disobedience.<sup>8</sup> After months of rancorous debate, the June 2003 national ratification of Gene Robinson’s election as the first openly gay bishop in the Episcopal Church was a watershed event in the history of American religion, especially when paired with the same national church council’s formal acknowledgment that its clergy are performing same-sex wedding ceremonies.<sup>9</sup>

In March 2004, a “jury nullification” of church doctrine upended heresy charges pressed against a lesbian United Methodist Church minister by the Church’s Judicial Council, the equivalent of its Supreme Court. The United Methodist Church is the second largest Protestant denomination in America. At the “ecclesiastical trial,” a jury of thirteen of the lesbian’s fellow ministers refused to find her guilty of being a self-avowed, practicing homosexual, even though she told them that that was exactly what she was.<sup>10</sup> Dogma cannot

long hold out against such forces. Love may not conquer all, but it is conquering where love is taken to be the most important of values.

*And take politicians and the judiciary themselves.* In July 2004, Senate Republicans bypassed the Senate Judiciary Committee to force a floor vote on a proposed constitutional amendment barring same-sex marriages, only to discover that in their haste they could not even muster a simple majority on a cloture motion.<sup>11</sup> Their forty-eight votes fell twelve short of the number needed for that and a whopping nineteen short of the votes needed to pass the amendment. Worse, some Republican senators said beforehand that solely for the sake of party unity they would vote for cloture, but would then vote against the amendment itself if it came to a final vote.<sup>12</sup> Altogether it was an embarrassing showing for the hard Right.

Still, the Senate's Republican leadership tried to put a good face on the defeat, claiming the vote would serve as a battle cry in upcoming elections and would rile up the populace distraught over the very thought of same-sex marriages. But even before the Senate vote, when the first unquestionably legal same-sex marriages had actually got rolling in Massachusetts two months earlier, the weddings were greeted with yawns in the pews and barrooms of America—to the consternation of leaders in the “family values” movement.<sup>13</sup> Unlike San Francisco's lesbian and gay weddings, which were continuously in the press through their February–March 2004 run, the Massachusetts marriages were in the papers for a day then vanished. The weekend after the start of the Massachusetts weddings on May 17, 2004, the *New York Times* Sunday “Week in Review” section devoted only two column-inches, “Gay Rites,” to a story that had been daily front-page news only five days earlier.<sup>14</sup> That quickly did gay marriage normalize, become an everyday event. When the sky failed to fall and the populace riot, there wasn't much to report.

The nation's judiciary will not fail to notice the collapse of the drive to amend the federal Constitution and the (perhaps surprising) absence of widespread, deep offense taken at actual, not just prospective, gay marriages. Perhaps after all it was just the prospect—the idea—of gay marriages that was scary, not real-world ones. In any case, within these political and cultural opportunities, the judiciary will find the wiggle room and interstices in which it may further pry open spaces for the advancement of lesbian and gay rights, presence, and connectedness.

There is already some evidence of a “grassroots” movement in the courts around gay marriage. In separate cases, criminal charges against a mayor and two Unitarian ministers who had “illegally” performed same-sex civil marriages were thrown out of court by New York trial judges on the grounds that the state's different-sex-only marriage law was an unconstitutional violation of equality.<sup>15</sup> And a circuit court in Oregon has upheld a trial judge's ruling that the state has to register the three thousand same-sex marriages conducted in Portland, Oregon, during March and April of 2004, even though the judge did not believe that the state constitution required the issuance of same-sex marriage licenses and indeed barred further issuance of them.<sup>16</sup> The ruling was in keeping with a general trend in American family law that tries to acknowledge wherever possible couples' relationships as marriages even in the face of legal niceties to the contrary.

Meanwhile, the hard Right seems driven to increasingly desperate, even panicked, measures around same-sex marriage. In the days immediately preceding the beginning of same-sex marriages in Massachusetts, family-values operatives resorted to a “Hail Mary” pass to the federal judiciary. They

tried to enlist the federal courts to block the marriages from happening by getting the courts to declare that the Massachusetts supreme court's same-sex marriage rulings violated the federal Constitution's obscure and all but forgotten Guarantee Clause, by which the federal government has an obligation to guarantee that the states have republican—that's small-r “republican”—forms of government. The Right's argument was that what four Massachusetts judges had done was so crazy that they had de facto turned Massachusetts into a monarchy with themselves as its kings and queens. The unprecedented argument went nowhere. The federal district court refused to grant a temporary injunction stopping the marriages. On a quick appeal, the federal circuit court did the same, though it said it would eventually hear the case on its merits. And the Supreme Court, without even one recorded dissent, declined to get involved. When the circuit court eventually heard the argument on its merits, it found none.<sup>17</sup>

Once the Federal Marriage Amendment failed in the Senate, Republicans in the House attempted an end run around the Constitution. They began efforts to pass a federal law that would prohibit the federal courts, including the Supreme Court, from hearing cases on the constitutionality of the Defense of Marriage Act (1996), which prohibits the federal government and insulates state governments from acknowledging same-sex marriages.<sup>18</sup> Especially after the Supreme Court's 2004 right-asserting, Right-denying terrorism cases, it seems hopelessly unlikely that the federal courts are going to say that another branch of government can totally shut down the courts' jurisdiction in a given area by claiming that some group has no rights that the courts can apply on its behalf.<sup>19</sup> More specifically, the proposed legislation also seems to forget *Romer v. Evans* and its promise to lesbians and gay men that government “cannot deem a class of persons a stranger to its law”—all the more so when the law in question is the fundamental law of the land.<sup>20</sup>

When the Right is not panicking, it is providing surprising and striking examples of shifts on gay family issues. Consider again Sen. Trent Lott. In 1998, he was comparing gay men and lesbians to child molesters, sex addicts, kleptomaniacs, and alcoholics.<sup>21</sup> In June 2004, during the same *New York Times Magazine* interview in which he held that the U.S. military's abuse of prisoners in Iraq was perfectly all right by his lights, he claimed that it was also fine with him if gay men jointly adopt and raise children and are treated legally as families: “It's so important that children have parents or family that love them. There are a lot of adopted children who have loving parents, and it comes in different ways with different people in different states.”<sup>22</sup> Call him Mister Diversity.

Even President Bush shifted. As the governor of Texas, he had defended in the courts the state's sexual-orientation-specific sodomy law by appealing to the purported educational value of the law for the state's young people. But after his state's sodomy law had been declared unconstitutional in *Lawrence v. Texas*, he redrew his line in the sand.<sup>23</sup> In the days leading up to the failed Senate vote on the Federal Marriage Amendment, he thought that same-sex sodomy was fine, indeed all-American, only just not same-sex marriage. He still managed, though, to do all this without actually naming gay people: “What they do in the privacy of their house, consenting adults should be able to do. This is America. It's a free society. But it doesn't mean we have to redefine traditional marriage.”<sup>24</sup> Bush's shift and the resulting instability of this jumble of thoughts hold great promise.

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And this progress is occurring because the culture itself is changing. The pictures of lesbian and gay newlyweds beaming

their love from the steps of San Francisco City Hall and the weddings pages of the *New York Times* turn not just heads, but hearts. Consistent political progress will be made only when those committed to justice change the general cognitive atmosphere and the effective feelings of the “common man,” constituted and driven as they are by stereotypes, bogeys, and vestiges of taboo. The needed change will occur not by accommodating these feelings or pandering to populism, but by changing the culture that bears and nurtures them. Change the culture and political forms will, in general and in the long run, follow suit. And the strength of cultural forces should not be underestimated. It was blue jeans and video cassettes that won the Cold War for the West—not hydrogen bombs and uranium clad tanks.

Now, the good news is that lesbians, gay men, and our allies have or are rapidly coming to have creative access to the machinery of cultural change—the media, even media empires, the arts, books, magazines, editorial pages, educational forums, talk-shows, movies, plays, computer networks, religious study groups, employee groups, and the like. To a large degree, hope for a better lesbian and gay future lies along these vectors of transformation rather than in poster-paint and cardboard.

When gay men and lesbians do choose to invest in politics narrowly understood, strategies should be chosen with an eye to their effect in transforming culture rather than specifically as means of garnering votes. Political participation itself is a cultural form which, if played out correctly, can have positive cultural consequences even in the face of electoral failure. Note that a placard that reads “No on 2: Stop Discrimination” or “Maine Won’t Discriminate” does no educating, changes no culture. Indeed it leaves gay issues entirely unmentioned, just exactly the way anti-gay forces want them. By contrast, placards that read, “I’m gay” or “My son is gay,” or “Straights for Gay Rights” both educate and change culture.

And they change culture in part because their message has a tug on people’s feelings, on the way people view things. Remember how stereotypes work: they are not (simply) false inductions from skewed samples, something that science could fix; rather they operate as mental lenses through which people perceive, evaluate, even construct the world, and so they tend to be self-perpetuating, for they cause people to notice only things that support what they already believe. In consequence, education, to be effective, cannot simply be an attempt to get the facts right—that effort is too easily derailed by the very stereotypes which “diversity” education is trying to dispel. To sloganize: America treats gays badly not because it has the wrong facts, but because it has the wrong ideas.

Taking a cultural view of politics helps sort out some of the currently tangled gay political scene. It means, for instance, that the current disarray of national gay and lesbian political organizations and especially the waning of traditional activist forms and of grassroots politicking may not be the disasters that they at first appear to be—if, that is, the general culture is moving in the right direction. Take Canada. There gays can serve openly in the armed forces, have been given the highest level of constitutional protections, have legislated civil rights protections in all provinces, have common law marital privileges right across the country, and access to full formal civil marriages in the provinces of Ontario, British Columbia, and Quebec.<sup>25</sup> These gains have been achieved even though the country had no national gay political organization until 1986, and that organization, Egale, now has only three thousand members. Things stand similarly for gay-progressive Norway. It’s the culture that counts.

More important for change now than gay political groups (whether national or grassroots) are *culturally*-engaged but locally or topically focused groups, groups like Parents and Friends of Lesbians and Gays, gay academic, religious, and labor caucuses, anti-defamation groups (like GLAAD), Men of All Colors Together, the Gay, Lesbian and Straight Educational Network, indeed any group that is open and pointed about working for gay and lesbian issues. What I’m suggesting is that if a sewing circle has a letter-writing potluck, it would be wise to write letters to the local television station and to CBS as well as to the mayor and senators. Those working for gays’ justice need to make active outreach efforts to libraries, school boards, PTA’s, religious roundtables, trade union coalitions, Chambers of Commerce, Elk, Moose, Eagle, Rotarian and Odd Fellow Clubs—and wherever it is that judges hangout.

In this broad culturally-oriented view of lesbian and gay politics, much that one might not at first think of as political actually is so. Activist leaders have bemoaned the fact that current lesbian and gay youth, though leading open lives, are most often apolitical. But these brave youth are key to culture’s change on lesbian and gay men’s issues. Thanks to them, increasingly people know someone for whom being gay is an issue. Thanks to them the lesbian and gay movement is achieving critical mass. When lesbians and gay men come out, what matters in political debates is drawn from the spectral world of fear and symbolism into, well, the neighborhood.

And some gay critics have rued the fact that virtually all of the mainstream media coverage of lesbian and gay events, though sometimes extensive, is “soft news”: personality profiles and entertainment coverage galore, yet nothing political, nothing about gay rights. But “soft news” changes culture. A newspaper feature in “Lifestyles” about a lesbian couple who run a real estate business is at least as culturally important as a gay pride parade pictured on page one. The parade is the extraordinary. The lesbians are America’s neighbors. To acknowledge their everydayness is to change the everyday.

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Now suppose—fantasize for a second—that down the road a decade or two or three, justice for gays and lesbians is fully achieved in the legal realm—all the laws are fixed. What, if anything, would then remain for the gay movement to achieve?

Even the most casual observation of the status of blacks in America after the Civil Rights era suggests that even after legal justice is achieved for gays, lots will likely remain to be done socially and culturally. There are currently no race-specific national laws that Black America is pressing for passage. The legislative agenda for blacks, as far as anyone can tell, is complete. With the Supreme Court’s acceptance, in 2003, of racially-keyed affirmative action programs in education, the judicial agenda for blacks too is largely complete.<sup>26</sup> Yet, socially and culturally, blacks are hardly equal in America. Schools are now more segregated by race in America than they were when *Brown v. The Board of Education* was announced in 1954.<sup>27</sup> Northern cities, like Chicago, are more racially segregated than rural Southern towns. Despite the reformation in black legal equality, white America has not let black America assimilate into mainstream culture. With respect to blacks, America has rejected not only a “melting pot” model of race relations, but even a “stir fry” model, in which distinctive modes of ethnicity are retained, if altered, as they are mixed together to the advantage of both the parts and the whole. Whites have voted with their feet and checkbooks to maintain the dominant culture as white culture. The few well-placed blacks in America, whether on the golf course or Supreme Court, operate like the single candle in Kafka’s cathedral. Its light

makes the darkness darker. They turn white a lighter shade of pale.

How things fare for lesbians and gays *after legal justice is achieved* will depend upon whether America lets gays and lesbians assimilate into mainstream culture—or rather, whether America undergoes a dialectical development between mainstream culture and gay and lesbian experience that incorporates ordinary, openly gay folk into the national jambalaya. An ideal American television series, for instance, would take ordinary gay and lesbian folk for granted, as a given foreground presence in social and familial landscapes, but also would have gays' and lesbians' distinctive experience make a difference to how the series' programs unfold. Just about the only piece of popular culture that I can think of to date which has clearly met this standard is practically an antiquity now: Rainer Werner Fassbinder's 1975 film *Fox and his Friends*. The movie has ordinary gay men as its lead characters, but it is not about being gay, even ordinarily gay; it's about love, money, gullibility, and trust, but how these themes play out turns on the distinctive life ways of the gay characters. Perhaps Alan Ball's television series for HBO *Six Feet Under* and Jonathan Caouette's 2003 art documentary *Tarnation* meet this standard as well.

There is some reason to think that America *will* add gay men and lesbians to the country's conglomeration. The trajectory of gays in America, after legal justice, will probably be more like that of Jews after the Civil Rights era than that of blacks. Jews were both a major constituency and major force in getting the 1964 Civil Rights Act passed. At the time, it was thought that Jews would be a major beneficiary of its provision, but in fact there are almost no Civil Rights Act cases with Jewish plaintiffs.<sup>28</sup> Blatant discrimination against Jews trailed off just as legal protections against such discrimination were coming into play. Discrimination against Jews now tends to be too sinuous and fine-grained to trigger or easily be addressed by either the 'smoking gun' or 'disparate impact' analyses that are the nuts-and-bolts of law suits under the 1964 Civil Rights Act.

Jews were allowed to assimilate because Jews were emblematic of The Modern. If Andrew Hacker is right, blacks have not been allowed to assimilate because the dominant culture takes blacks as emblematic of The Primitive.<sup>29</sup> As emblems of The Modern (and even of The Post-Modern) gays and Jews are fraternal twins. Try to think of the Manhattan or Los Angeles catchments without them. One can't.

And gays and lesbians have another leg up in the process of national inclusion. We were virtually all raised in straight families, and when we get our families to cease feeling embarrassed about us, and begin treating us as the loved and loving, helpful and winning folk they know us to be, then the constituency for the wider political, social, and cultural acceptance of gays suddenly becomes a force to be reckoned with.

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I expect, though, that one form of cultural resistance to the social acceptance of gay men and lesbians will be as long lasting as it is uniquely insidious. It is what I want to call "the heterosexual presumption." American culture, even as it now talks about gays—and so presumably believes that gays exist somewhere—can simultaneously operate upon a presumption that everyone is heterosexual. It is certainly capable of speaking that way.

American love songs presume that all sexuality is heterosexuality and often assume that this universality is underwritten by the cosmos itself. Thus Americans ritualize the passage of time and sing in the New Year with the lyrics,

"Woman needs man / And man must have his mate / That no one can deny... / The fundamental things apply / As time goes by."<sup>30</sup> This is an easy case. There are more complicated, tangled ones. Unlike the author of "As Time Goes By," the teller of fag jokes necessarily knows that gays exist—why tell jokes about creatures who don't—but the teller *speaks* both as though there are no gays in his audience and as though he speaks for and to 'everyman'. Everyone is his presumed co-conspirator, a sharer in the values that engine the joke's belittling fun. So at the same time and in the same respect, gays both do and do not exist. Philosophers call that a contradiction.

*Newsweek* magazine has managed to cast this contradiction into explicit, if still unacknowledged, form. Consider an astonishing cheek-to-jowl juxtaposition of a detailed knowledge of gays and an ability to assume that everyone is straight. It is the lead for an article on gay couples in the magazine's June 25, 2003 issue: "Yes, gay men are having more sex than you are. But if it makes you feel any better, lesbians are probably not." The article presumes that its entire potential audience—"you" Americans—has in it not one gay man or lesbian, even as the subject of the article is the lives of gay and lesbian Americans.

Or again: Dock-side news reports of soldiers and sailors shipping out to and returning from the Middle East presume that all the people coming and going are heterosexual, that is, are people who are expected in their comings and goings to hug and smooch their girlfriends, boyfriends, and spouses in public with gusto.<sup>31</sup> What does the American press think lesbian and gay couples with military members do on these docks? Mainstream advice columns—"Ten Ways to Catch a Guy," "What Not to Give Her on Valentine's Day" and dozens of other MSN.COM home-page links—all presume that all people are heterosexual. Ninety-nine and forty-four one-hundredths percent of references to "having children" do the same. And of course parents presume their children are straight, after all their children are people.

The heterosexual presumption is the culture's default position. The presumption does not govern thought the way an axiom governs thought in a mathematical proof, acting as an explicit, articulated premise. Rather it is an unarticulated background condition. It does not draw attention to itself, but is as pervasive as it is unobtrusive. It operates like air at room temperature or like a computer's software. People are not aware of it, though it conditions everything they do.

What does get noticed and articulated by culture is any sudden, unusual departure from the bland background. But just as quickly as such dislocations appear, they are re-absorbed into the presumption's fog, fall back below the cultural radar. The culture will speak of gays when there is a particular reason for attention to be drawn to them (say, in a news story, a court case, a gay-themed television program), but then slides back into the normal run of things and presumes again that everyone is straight—without ever having to articulate that this is what it is doing. A person in one breath will say, "Well, some of my best friends are gay," while singing "As Time Goes By" with the next.

Other groups are subject to a similar presumption. If I use the gender and race-neutral term "president," the image that probably springs to your mind is that of a White male, even if you are not a White male. Hardly anyone who is in the position to have the thought "Gosh, everyone on this airplane is white" ever does have it. And classically, English can use "mankind" to refer to both men and women even though it names only men.

The lines laid out by such cultural presumptions plat what is to count as a person worth acknowledging, a person of

relevance, a member of the moral community, one who belongs. The relevant analogy for the relation between the culturally presumed person and the irrelevant person is not the relation of a human to something viewed as having a lower moral standing than humans have, say, children, worms, fungus, excrement, the abject. Rather here the relevant analogy is the relation of citizen to alien. Gays are America's "internal aliens." America thinks of gays the way it thinks of Canadians, which is to say, as wholly forgettable. It is not that Americans don't think Canadians are people, it's just that Americans have arranged their thoughts so they don't have occasion to take cognizance of Canadians, except if something peculiar comes up that draws special attention to them (say, the sudden availability of full marriage for gays in Ontario). For Americans, the concept "North American" has no cultural content. What could have a thick content and denote important relations between diverse social types (Americans, Canadians, and others) is at best for Americans a geographic concept that they heard about for the last time in eighth grade. And it goes without saying that Americans don't think Canadians' interests count on a par with their own, and in a way they shouldn't, because they are there, not here. They have their own national interest, as do Americans. But gays *are* here. And so it appears we need to keep chanting the Queer Nation slogan, "We're here, we're queer, get used to it." But the slogan needs a suffix: "...get used to it, and don't forget it."

As the *Newsweek* example shows, culture can, without change or acknowledgement, absorb mountains of cognitive dissonance and contradiction: "Gays exist in the population, but no one of us is ever one of them." Race and gender examples show that such presumptions are deeply entrenched. As an invisible minority, gays are at an enormous disadvantage compared to visible minorities in trying to overcome the presumption that erases their existence even as it speaks of it. Gays and lesbians come "pre-erased," erased to appearance to begin with.

Being out is one means of nibbling away at the heterosexual presumption. Though when one challenges the presumption, the presumption itself prompts and falsely justifies the too-facile charge that one is "flaunting it." The presumption makes any "standing out" look like "acting out." Resistance in these circumstances is endlessly exhausting. This interpenetration of resistance and exhaustion, which usually occurs at the micro-level of social interactions, helps explain a significant part of the constant, diffuse uneasiness that gay men and lesbians feel in society, like having a low grade fever that you just can't shake.

Caricatures of heterosexuality are probably an even more effective means of addressing "the presumption," since parody makes a theme of the very issue in question—as in the last two lines of Billy Wilder's *Some Like It Hot* (1959). When Jack Lemmon, in drag, responds to Joe E. Brown's marriage proposal with the line, "You don't understand, I'm a man," Brown closes the show with "Nobody's perfect." Movies like Tim Burton's *Pee-Wee's Big Adventure* (1985) and Joel Coen's *Raising Arizona* (1987) manage to demythologize heterosexuality and attack its unacknowledged embeddedness without introducing any homosexual characters. I wonder whether there are additional ways to do this. Certainly additional ways are needed. Lesbians and gay men can use all the resources we can muster for addressing this problem, one that will probably still be with us even after gays are marrying in Utah.

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That America views gay men and lesbians as "internal aliens" was brought home to me during the early years of lesbian and gay participation in my hometown's Fourth of July

parades. Back then, knots of fraternity boys, good ol' boys, and generic hooligans would throw cans of beer and firecrackers at the heads of folk in the lesbian and gay contingent. Our ears would ring for hours after parade's end. But scarier than all that were the throngs gathered around the judging stand who, as the lesbian and gay contingent passed, would chant and stomp in unison, "Go home, go home, go home. Fags, go home." This rhythmic chanting was the phobic counterpart to the racist chant of the 1950s and beyond, "Niggers, back to Africa!" But in our case, I wondered where the crowd thought home was. After a few years of such unpleasantness, the police started citing open-container violations and those in the crowd who were not cheering the contingent started to fall temporarily silent as it passed by them. That too felt eerie, as though the contingent were a hearse. But it also felt powerful. The silent treatment, in this case, could hardly be a shaming ritual, an enactment of "don't ask, don't tell." For there we were, telling about us like crazy—and, in a way, telling on them too. They were forced to think about themselves for once. This reversed silencing may be a sign that the heterosexual presumption has its fissures, and so perhaps too that some progress is being made even on this front.

On all other fronts, gays are clearly making good, sometimes swimmingly good, progress—through the opportunities the collapse of the taboo has afforded, through lesbian and gay people telling our stories, through images that flash across television screens, movie screens, and the American mind, through family members coming out, through love.

Will Rogers correctly recognized the limited role of reason in politics when he quipped, "People's minds are changed through observation, not through argument." Certainly arguing Bible passages with fundamentalists has no point or prospect. But I think Will Rogers was wrong when he also claimed, "We do more talking progress than we do progressing." Though virtually everything remains to be done, on gay issues at least, America is gradually taking the talking cure.

#### Endnotes

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12. *Ibid.*

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16. “Court Orders Oregon to Record Same-Sex Marriages,” *Salem (Ore.) Statesman Journal* (AP wire story), July 9, 2004.
17. *Largess v. Supreme Judicial Court of Massachusetts*, 373 F.3d 219 (2004).
18. *New York Times*, July 15, 2004, p. 1.
19. *Rasul v. Bush*, 124 S.Ct. 2686 (2004); *Hamdi v. Rumsfeld*, 124 S.Ct. 2633 (2004).
20. *Romer v. Evans*, 517 U.S. 620 (1996).
21. *New York Times*, June 30, 1998, p. 1.
22. *New York Times Magazine*, June 20, 2004, p. 15.
23. *Lawrence v. Texas*, 539 U.S. 558 (2003).
24. *New York Times*, July 10, 2004, p. 14.
25. *New York Times*, March 20, 2004, p. 5.
26. *Grutter v. Bollinger*, 539 U.S. 244 (2003).
27. *Brown v. Board of Education*, 347 U.S. 483 (1954).
28. See Paul Burstein, *Discrimination, Jobs, and Politics* (Chicago: University of Chicago, 1985).
29. Andrew Hacker, *Two Nations: Black and White, Separate, Hostile, Unequal* (New York: Scribner’s, 1992).
30. Herman Hupfeld (1894–1951), “As Time Goes By” (New York: Harms, Inc., 1931).
31. *New York Times*, April 18, 2003, section 2, p. 9.

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## BOOK REVIEWS

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### ***The Long Arc of Justice: Lesbian and Gay Marriage, Equality, and Rights***

By Richard D. Mohr (Columbia University Press, Spring 2005.)

Reviewed by James S. Stramel  
*Santa Monica College*

At an easily digestible 136 pages, *The Long Arc of Justice (LAJ)* is a powerful little book of applied ethics in which Richard Mohr applies his characteristic analytical rigor and penetrating cultural analysis to the broad range of important gay and lesbian issues. For those familiar with Mohr’s work in the field of LGBT philosophy, much of this book’s philosophical machinery will be familiar as it draws from many of his prior publications, from his early and now oft-reprinted “Gay Basics” article to his work on the recent Supreme Court rulings. However, the book is primarily (as the copyright page acknowledges) a revised version of his 1994 Beacon book, *A More Perfect Union: Why Straight America Must Stand Up for Gay Rights*. Given the sudden national attention to the issue of gay marriage, the current release may find a wider audience; indeed, let us hope so. Certainly, the unwashed masses could use some help with their critical thinking skills on gay issues.

I’d like to begin where the book *ends*. In the final paragraph, Mohr quotes Will Rogers, who “correctly recognized the limited role of reason in politics when he quipped, ‘People’s minds are changed through observation, not through argument’” (136). It is interesting that an analytical philosopher writing a book of ethical argumentation would emphasize the *limited* power of reason and argument to effect social change. Throughout the book, Mohr stresses the importance of personal observation and experience—as when Americans witnessed their first gay marriages with no subsequent falling of the sky. This shift in public opinion has been provoked mainly by greater numbers of gays and lesbians achieving increasing levels of openness and visibility. The result of so much coming out and being out has been that the taboo against acknowledging and speaking of gay issues and gay lives is crumbling. Moreover, as Mohr writes in the introduction,

The collapse of the taboo and of its visceral effects means that antigay forces now have to argue for and give rational accounts of their positions. And the good news here is that the arguments are all on the side of gays. For the ground rules of reasoned discourse—commitments to honesty, consistency, openness, and fair play—make it inherently a force for liberalism (6).

“To a large degree,” Mohr writes, “hope for a better lesbian and gay future lies along these [cultural] vectors of transformation rather than in poster-paint and cardboard” (127). While many may bemoan the apparent lack of interest in recent years among gays in good old-fashioned political activism, the good news, Mohr thinks, is that gays and lesbians are—slowly but surely—winning the culture wars.

So it is somewhat ironic that Mohr frames his book of arguments with the acknowledgement that most progress on these issues has been a result of shifts in attitude and belief resulting from personal experiences and cultural change, rather than argument and activism. But we needn’t see this as an either-or choice and they aren’t mutually exclusive: we need both the arguments and the cultural shift, for the arguments clear away the last cognitive roadblocks to the acceptance and respect that many people’s experiences tell them we deserve.

Mohr cites, for example, the important role that “actually looking at the content of gay and lesbian issues” played in the Supreme Court’s 2003 reversal in *Lawrence v. Texas* of the noxious 1986 sodomy law case *Bowers v. Hardwick*. With this book, he hopes

to provide a similar reformation in thought across the central issues of lesbian and gay social policy. The book is intended as a handshake of greeting from gay experience to the hearts and minds of mainstream America. By drawing attention to that which is particular about gay and lesbian experience and applying to that experience moral precepts and arguments that Americans as a people have worked through in other areas of national life, the book aims at filling the gaps and enhancing the quality of argumentation in society’s thinking on policy issues affecting America’s lesbian and gay citizens (8).

One could scarcely do better in terms of “enhancing the quality of argumentation” (though it remains to be seen what impact this actually will have on society’s thinking). Moreover, he very nicely achieves the second goal—“filling gaps”—by discussing all the major gay/lesbian issues in a way that reveals the conceptual and theoretical—and also the practical—connections between them.

So Mohr's book should be welcomed for its contributions to the broader public debate about these issues, but it will also serve well as a (much-needed) text for courses. *LAJ* probably will be compared (and compete) with two recent books on gay marriage: *Gay Marriage* by Jonathan Rauch (Times Books, 2004) and *Why Marriage Matters* by Evan Wolfson (Simon & Schuster, 2004). Gay marriage figures prominently in *LAJ*'s thematic, but it is the subject of only one long chapter of six. This gives *LAJ* a distinct advantage: while the other books may have the advantage of depth and detail on the issue of marriage, Mohr covers essentially the same philosophical ground on that issue in less space while adding discussions of the nature of sex and sexual privacy, sodomy laws, equality and civil rights, and gays in the military. He does an excellent job of linking all of these issues together into a coherent narrative about the treatment of gays and lesbians in our society. This makes the book ideally suited to serve as a text in applied or social ethics courses in philosophy covering gay and lesbian issues. In fact, I plan to use the book in my own such course instead of the packet of articles I have cobbled together and sell through the campus bookstore because there has been no suitable text. Now there is.

Although the book is about much more than marriage, it seems to be its emotional heart, and Mohr has never written more eloquently or with such feeling; some of the harsher Kantian edges have been burnished away. (I suspect it has something to do with his own recent marriage to his partner of 25 years: Congratulations, Richard!) For example, he closes chapter 3 with a very brief but very powerful vignette of a gay male couple, long married in their own eyes, one on his deathbed, each professing their love.

Two men clutch each other; one is at the edge of life.

"In sickness and in health."

The other has sold the house to pay the medical bills, changed the hospital sheets himself, sacrificed even beyond the point where assistance could help.

"For richer for poorer."

They are married to each other in their own eyes, in the eyes of their church and community—in every eye but the law's.

"For better for worse."

And so now, as the doctor unplugs the respirator, as the lovers' duet ends, the law will put the living lover through a hell for which not even his beloved's decay could have prepared his imagination.

"Til death us do part" (72).

As Mohr emphasizes throughout the book, it is this sort of punch to the moral gut that is most effective in changing hearts, which makes it possible for minds to follow suit.

There is much to like in this little book and very little to complain about. But I'll give it a shot.

First, I have never been satisfied with Mohr's (albeit brief) discussion of natural law as it applies to the morality of homosexuality in "Gay Basics," and the same mistake reappears here. "Finally," Mohr writes, "people sometimes attempt to establish the authority for a moral obligation to use body parts in a certain fashion simply by claiming that moral laws are natural laws and vice versa." A few lines later, he again glosses the view as being "that natural laws in the usual sense ( $e = mc^2$ , for instance) have some moral content...."

This view is (as Mohr says) both dubious in its own right and it leaves us with no clear way of knowing how to discover the laws of nature that apply to people, but this is not the natural law theory as it derives from Aquinas. Natural laws are moral laws, but these are not our descriptions of law-like regularities (laws of gravity, etc.); rather, natural laws are moral laws that are logically derived from an understanding of our human nature. Whatever the purported details of the content of such laws, they are most emphatically not natural laws of the sort Einstein's equation is.

Second, toward the end of the first chapter, Mohr reviews a variety of ways in which our society discriminates against gays and lesbians. In the paragraph on the military, he writes: "Where young males are violent by government order, gay men and lesbians are also discriminated against. Lesbians and gay men are barred from military service." Now this last sentence is just false—and I'm sure Mohr knows it is false. Indeed, in the next lines, Mohr calls attention to 1993 as the year when "the ban" changed from a Department of Defense directive to a much harder to change federal statute. Yet, strangely, he fails to emphasize the change in the *content* of the policy (as opposed to the form of its legal enactment). The statute—dubbed "Don't Ask, Don't Tell"—was explicitly an *end* to the outright prohibition of homosexuals, allowing them to serve under strict (and, as Mohr later shows, unjust) restrictions on their speech and behavior. Later, in the chapter on the military, even while making trenchant and "penetrating" criticisms of "Don't Ask, Don't Tell," Mohr continues to speak of the new policy as "the ban." Perhaps he meant to say "the ban on *open* military service."

Third, and finally, I think Mohr mischaracterizes the Supreme Court's ruling in the Boy Scouts case (*Dale v. Boy Scouts of America*, 530 U.S. 640) as falling under freedom of speech and political rights rather than freedom of association. This leads him to worry unnecessarily about a dangerous precedent: "The gay scout case is particularly disturbing for it lays down a line of thought along which all civil rights laws could easily be declared unconstitutional. The case held that the Boy Scouts' firing of a gay employee had an expressive content. It made a political point, and so was protected by freedom of speech" (94). But the principal basis for ruling in favor of the scouts was that, as a private association of individuals, they had the right to discriminate against homosexuals by defining the membership and values of their association as they saw fit. It was not merely that the firing was deemed protected as speech making a political point. Yet, Mohr seems to hint (unwittingly?) at the correct basis when, in the opening lines of the next section, he says: "Even though civil rights legislation restricts somewhat the workings of free enterprise, it promotes other core values that far outweigh the slight loss of entrepreneurial freedom." The restriction on "entrepreneurial freedom" that must be justified by reference to other values is that civil rights laws require that employers not systematically exclude gays and lesbians from the workplace or otherwise discriminate against them, no matter how much they might like to. In other words, civil rights laws are justified even though they infringe on the rights of employers to freedom of association. The group's interest in political expression was given traction only insofar as the court deemed it essential to the definition of the association.

But these are quibbles that pale in comparison to the many virtues of the book. In fact, just as did his "Gay Basics" article, I expect this book will become the industry standard.

Finally, Mohr sees gay and lesbian rights (in the expansive sense) as the test-case of

whether [America] is fundamentally committed to the general values of liberty and equality, which permit and enable individuals to lead their lives by their own lights and with equal dignity, or whether the nation is committed to some specific vision of what constitutes proper living—be it Leftist or Rightist, populist or elitist, secular or religious, but which in any case the nation is willing to impose upon everyone (2).

It is frightening to see the choice presented by the socio-political moment summed up in such stark terms. Although Mohr is occasionally given to overstatement, I'm afraid he has pegged this one. With a bit of luck, and this kick in the pants, America may yet make the right choice.

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## ***Sexual Orientation and Human Rights***

By Laurence M. Thomas and Michael E. Levin  
(Lanham, MD: Rowman & Littlefield, 1990.) vii + 182 pp. (includes index).

**Reviewed by Raja Halwani**  
*School of the Art Institute of Chicago*

This book is part of the Rowman & Littlefield series "Point / Counterpoint," under the general editorship of James P. Sterba and Rosemarie Tong, whereby two philosophers argue for and against a certain issue. The books in this series are meant for class use, an issue I discuss briefly at the end. The structure of the book consists of Laurence Thomas's contribution, followed by Michael Levin's, followed by a response from Thomas, and, finally, a response from Levin. The main topic of concern in *Sexual Orientation and Human Rights* is whether society ought to protect gay people against discrimination. Levin discusses this protection specifically in terms of civil rights, whereas Thomas does not specifically mention "civil rights." I begin with Levin's contribution since it is the one with which I generally disagree. The space I devote to Thomas's is comparatively short, since I am in general agreement with Thomas's views and since some of my remarks about Levin's views touch also on Thomas's.

The claim that Levin defends is that there should be no laws enacted to protect gay people from "private discrimination" against them in areas such as hiring and leasing. So, for example, a private employer ought to be free to refuse employment to a gay man if the former simply does not want to hire a homosexual. And a landlord should be free to refuse renting to a gay man because the latter is gay. Levin also wants to refuse gay people marriage and service in the military, but since these institutions, in the United States, are not (purely) private ones, his arguments for these last two claims are different. I shall not address these, confining my remarks to the main issue of civil rights and the private sector.

Levin's argument against civil rights for gay people relies on John Stuart Mill's liberty principle: "The point to stress here is that civil rights and Mill's principle are on a collision course: If private discrimination does not harm homosexuals (or anyone else), the principle bars state action against it. A major goal of homosexual activism would be wrong" (84). Mill's principle states that the liberty of action of an individual should be curbed by law—or by opinion, when the harm is not in the form of violating the victim's rights—only if the individual's action harms another (or can be reasonably expected to harm another). Levin argues that since an employer refusing a gay man a job

does not leave the latter worse off than he was before applying for the job (the same reasoning applies to a landlord refusing rent to a gay man), the action of the employer (and the landlord) does not harm the gay man. Thus, the action is protected by the liberty principle and so the state should not interfere and force the employer to hire the gay man (89).

The above is, however, only part of Levin's argument. Using Mill's principle is somewhat strange here, for, if applied consistently, it would rule out civil rights for women, Blacks, and other protected groups. It thus seems that Levin's use of this principle makes the issue of homosexuality uninteresting, for the issue now is not about sexual orientation as such and extending civil rights to gay people but the justification of civil rights laws in general on Millian grounds. Levin is happy to reject all civil rights laws: "All civil rights laws impermissibly invade freedom of association, I say; individuals may rightfully decide whom to deal with on the basis of sex, race, religion, sexual orientation, pulchritude, shoe size, or any other criterion they please" (84). However, he also claims that there is something particularly repulsive about homosexuality that makes the refusal to extend civil rights to gay people especially appropriate. While no one is "revolted" by members of the opposite sex or members of other races, gay people are especially prone to give rise to aversion against them in non-gay people. This aversion can be explained biologically since homosexuality, according to Levin, is unnatural. Hence the non-extension of civil rights to gay people is especially justified because the revulsion to homosexuality is perfectly rational, given biological explanations. Levin delivers his coup de grace at the end of his contribution to the book by arguing that even if the preference to avoid homosexuals is merely non-rational (as opposed to being rational), individuals should still be free to avoid each other. So heterosexuals should still be free to avoid homosexuals since non-rational preferences "give life purpose" (144) and forbidding individuals from acting on these preferences, when such actions do not harm others, is a form of tyranny. (Note that Levin is not arguing for laws banning private homosexual sexual behavior; he is no fan of sodomy laws. And he has no difficulty, given Mill's principle, with gay landlords refusing to rent to heterosexuals and gay employers refusing to hire heterosexual potential employees.) This constitutes the skeleton of Levin's arguments against extending civil rights laws to gay people. I turn now to criticisms of the arguments.

In his response to Levin's contribution, Thomas only briefly addresses the aptness of using Mill's liberty principle in such a discussion (49-50). Rather, Thomas argues, in a Millian way (as will be clear below), that while one may freely choose, without legal interference, whom one wants to be friends with or to entertain at home, such complete freedom from legal interference should be absent in the public arena in a just society or in one that aspires to be just. Thomas includes in the public arena "schools, hospitals, businesses offering services to the general public, and so forth" (161). To Thomas, any society that allows the non-rational preferences of its members to hold sway is unjust because these preferences would impose "a burden of obligation upon these other individuals [those whose behavior is curbed by the non-rational preferences of others] that does not admit of a rational justification" (161). A just society does not allow the imposition of burdens that are not rationally justified upon its members. Thomas concludes, "Whether we have tyranny or not depends on the context in which people are being forced to put up with what they loathe. In their homes? Most certainly! At the bus depot, airport, or classroom? Absolutely not!" (161). Crucially, Thomas includes under public institutions "all institutions of the free market, where by definition the aim is

to offer a good (service, product, or item) for a profit” (24). These are public institutions, to Thomas, because any person “who can meet the fee, or offers the highest fee for the good in the case of competitive bids, should be entitled to receive the good in question; the resources of the state should guarantee that this is so” (24). The only relevant “physical” feature here is whether the person can meet the fee. Thomas concludes, “businesses that will not sell goods at the price advertised to an individual because she or he has a certain background should have their business license revoked” (24).

One issue here is whether Thomas and Levin have the same thing in mind when discussing “free-market.” Levin is not opposed to curbing people’s behavior when such behavior prevents others from using clearly public spaces (such as bus depots, public schools, and public hospitals, with “public” here meaning “government-run” or “government-owned”). So the issue is going to boil down to whether privately owned and run businesses and other institutions have the liberty to refuse service to certain people based simply on the background of these people, such as race and sexual orientation. Thomas thinks not, while Levin thinks yes. I side with Thomas on this point. While many businesses and other service-providing institutions are privately owned and operated, they do have an important public aspect to them (this is one main reason why the private-public distinction is tricky). This aspect is the one specifically mentioned by Thomas, namely, that such institutions offer the public goods and services, albeit for a fee. If the government wants to ensure a smoothly run market and, hence, society, then it ought to be in the business of making sure that members of the public are treated in a fair manner by these institutions. And this would seem to rule out arbitrary discrimination, which includes discrimination on the basis of sexual orientation.

Levin responds to the above point by arguing that Thomas is redefining the notion of “public” and offers instead “schmublic institution” as one that offers goods on the “schmee” market open only to heterosexuals. Within such a market, to Levin, people should be free to refuse service to homosexuals. But Thomas’s inclusion of the free market in the domain of the public is not based on some quirk; the definition is meant to track how our society functions. Thus Thomas is not redefining anything. Another relevant point that Levin raises here is who determines what the qualifications are for a certain job. Levin argues that only the employer can set the criteria of relevance. This is crucial to the issue at hand because if private businesses are the only ones in a position to decide what the qualifications are of those to whom they are selling, renting, and hiring then Thomas would be mistaken in his claim that in the free market the only relevant physical feature is whether one can meet the fee. Levin’s argument is this: “Jobs are not Platonic entities with qualifications internal to their essences; they exist in concrete bargaining positions where interactants impose whatever conditions they deem appropriate. Relevance is in the eyes of the bargainers” (92). This, however, is surely incorrect. Consider this non sequitur from Levin: “Since the employer with whom Bob [a gay man] is dealing considers sexual orientation relevant, it *is* relevant” (92). But the fact that *X* believes *A* does not entail that *A* is true. What is wrong with Levin’s argument is that while jobs are not Platonic entities, it does not follow that what qualifications are relevant is an issue solely left for the employer to decide. As a business employer, I cannot, for example, simply discard the fact that an applicant has an MBA from Harvard as irrelevant to the job. While employers have room for decision, they are constrained in setting criteria of relevance by the nature of the job, their needs, and other factual

considerations. So this claim by Levin will not work as a possible reply to Thomas.

While Thomas is right on the point of private businesses being public in important ways, it is unclear that his conclusion entails the extension of civil rights laws to gay people as a *group*. Consider: if Thomas is correct, then owners of private businesses offering public goods and services should not be free to discriminate on the basis of irrelevant criteria. It follows that they should be prohibited from discriminating against gay people on the grounds that sexual orientation is irrelevant. But this is not quite the same claim as that civil rights laws should be extended to gay people. These laws are meant to protect individuals as members of particular *groups*. But Thomas’s argument warrants only the conclusion that gay people are protected as individuals who happen to have the irrelevant aspect in question, not also as members of particular groups. The effect, of course, is the same: no discrimination against gay people would be allowed. But the theoretical point is different.

Because Levin arrives at his conclusions using Mill’s principle, a complete evaluation of Levin’s argument must address the use of this principle (something that Thomas briefly does, mostly in connection with what Mill might have thought about the issue of compensation by one group for past wrongdoing to another group). I do not propose to argue that Mill’s liberty principle can be used to support civil rights laws (a good case for which, I think, can be made). Rather, I will argue that there is no good reason to believe that Mill’s principle prohibits civil rights laws. One position that I set aside claims that Mill’s principle does not allow for enough interference in individuals’ lives. That is, this position claims that there are grounds for interference in addition to harm to others. This position might be true. But even if it were, it would be more interesting to see whether Mill’s principle on its own need not prohibit civil rights laws.

I find it astonishing that Levin does not mention that Mill himself was not against the government interfering in trade. Here’s Mill: “Again, trade is a social act. Whoever undertakes to sell any description of goods to the public does what affects the interests of other persons, and of society in general; and thus his conduct, in principle, comes within the jurisdiction of society” (*On Liberty*, chapter V, paragraph 4). Mill later states, in the same paragraph, “This is the so-called doctrine of ‘free trade,’ which rests on grounds *different from, though equally solid with,* the principle of individual liberty asserted in this essay” (my emphasis). There are three points to make. First, Mill distinguishes his principle from that of free trade. Second, Mill allows, at least in principle, society to interfere in the market to protect its interests. Thus, anyone, such as Levin, who wants to use the liberty principle to argue against interfering with private businesses and other institutions discriminating against members of the public *must* take into account the idea, as Thomas also claims, that such transactions are in the general interest of society, and so society would be justified in interfering with actions that could seriously hamper such transactions. Third, though Mill was not in favor of government interfering to fix prices, set taxes, and control the manufacture of goods, his grounds for not favoring such measures did not stem from his liberty principle but rather from his belief that such measures are usually inexpedient and that it is thus better to leave these to the market. And when Mill did object to society’s interference in the market on grounds of liberty, as in the case of the Maine Law (laws prohibiting the sale of alcohol, first enacted in Maine in 1851), he did so in favor of the buyer, not the seller: it is the latter’s liberty that is curbed. We can conclude, as a first step, that

Levin is mistaken in using Mill's principle to protect what he deems private market transactions from liberty-infringing laws. In principle, because market transactions are in the public's interest, and because these can potentially harm this interest, society and its representative government are justified in interfering when such interference is expedient and warranted.

This first conclusion does not, as such, touch on civil rights laws that protect groups. Yet there are two crucial points to be made here. First, Mill's discussion in *On Liberty* of how society should behave when it comes to the adverse treatment of some of its members, particularly those who belong to historically oppressed or subjugated groups, *seems* to lend itself favorably to civil rights laws. For example, in his discussion of husbands and wives (chapter V, paragraph 12), Mill allows for state interference. After warning that liberty is often granted where it should not be, he states, "The State...is bound to maintain a vigilant control over [an individual's] exercise of any power which it allows him to possess over others. This obligation is almost entirely disregarded in the case of family relations..." where, Mill claims, husbands have "almost despotic power" over their wives. Mill is sensitive to the fact that when a group of people, in this case men, generally, and husbands, specifically, wields power over another group, the state should monitor how relations between these two groups of people are conducted. Of course, Mill is talking about individual relationships between individual husbands and wives. But without the general underlying imbalance of power between the two groups, the force of his point about the state's role would be undercut. This leads me to believe that Mill would have been in favor of the state acting to ensure that relationships between individuals belonging to groups of disproportionate powers are well and equal. Since heterosexuals as a group have traditionally wielded tremendous power over homosexuals, Mill might have been in favor of civil rights laws. Consider: per Levin's argument, a husband who does not allow his wife to go to college does not harm her since, by not going to college, she is no worse off than she was. Yet surely Mill would have abhorred such treatment, for the husband's exercise of his liberty is a form of abuse of power, and it is an instance of the power that men generally have over women. Were the state to not interfere, it would allow a general condition of impairment in society to go unchecked. Similarly with gay and straight people: were the state to allow heterosexuals to discriminate against gay people, it would allow society to continue in a condition of impairment and inequality.

The second point is this. Mill justifies his liberty principle on utilitarian grounds: "I regard utility as the ultimate appeal on all ethical questions" (chapter I, paragraph 11). Moreover, the liberty he is concerned with is not the usual type of liberty that many philosophers are concerned with, such as the liberty to vote, to own property, and to even receive benefits from one's government. Rather, it is the individual's right to chart his life as he sees fit, including expressing his opinions on all sorts of subjects, his style of dress, his choice in how he spends his time and energy, and, among other things, his personal habits. Simply, Mill defends the individual's right to control his own life short of harming others from the "tyranny of the majority," since without such liberties societies and individuals cannot be free and happy. One might think that this is precisely what Levin has in mind, namely, that an employer is perfectly free to refuse employment to someone who is gay, since he ought to be free in what concerns him. But while such an individual is free to refuse gay guests in his own home, etc., it is hard to see, aside from a few quirky individuals, how hiring a gay man or renting to one can seriously affect the individual flourishing and expression of the employer and the landlord.

If I hire a gay man, this does nothing to stop me from expressing my opinions on all sorts of subjects, spending my nights playing poker, etc. Unless the mere idea of having a gay employee sends me into continuous psychological convulsions, a rare enough phenomenon, it is hard to see how the liberty that Mill is concerned with can be affected in such ways (unless, of course, the individual in question connects the hiring of a gay man with other aspects, a point to which I will return).

Thus, given that market transactions are in a crucial sense public and so society is in principle allowed to interfere in them, given that gay people were and are in a position of relative powerlessness to straight people (both numerically and in other aspects), and given that the type of liberty that Mill is concerned with is not affected by issues such as hiring gays or renting to them, there is no good reason to believe that Mill's principle would support Levin's conclusions. (Even if we accept the principle on Kantian grounds [and Levin defends it on such grounds, pp. 85-88], the first two points are sufficient to yield my conclusion.)

The above considerations are enough to put to rest Levin's claim that members of society ought to be able to act on their non-rational preferences without legal interference. But if aversion to homosexuality is somehow rational or justified, then Levin is on stronger grounds because then those who discriminate against gay people would have some ground for doing so. Thus, it is important to address Levin's claim that homosexuality is unnatural. Moreover, Levin relies on this claim to offer explanations as to why gay men are promiscuous and why gay people are relatively unhappy, and to refuse gay couples adoption. The question thus is, "In what sense are homosexuals unnatural, according to Levin, and why?"

Levin accepts the claim that homosexuality is genetically determined, at least partly (120). But he does not infer that homosexuality is thereby normal: "Such an interpretation of any heritable trait is overhasty because of pleiotropy, the expression of a single gene in several phenotypes. Just as a gene common among Blacks, for instance, confers both immunity to malaria and susceptibility to sickle-cell anemia, the gene for homosexuality, assuming there is one, may also control other phenotypes" (122-23). Keeping in mind that not all genetic effects are there to perpetuate the gene but can be mere by-products (such as susceptibility to sickle-cell anemia in Black people), Levin defines a trait as being intrinsically adaptive "if it would enhance the fitness of a gene that programmed it alone" (123). He defines a trait as being intrinsically maladaptive "if it would degrade the fitness of any gene that programmed it alone" (123), and he defines a trait as being derivatively adaptive "if it is not intrinsically adaptive but correlates an intrinsically adaptive trait through a common genetic origin" (123). According to Levin, a gene's "sole functions are its intrinsically adaptive expressions" (123). Since the sex drive "persists because it leads to reproduction via heterosexual intercourse," the function of sex is heterosexual intercourse (119). Thus it is reasonable to conclude, according to Levin, that homosexuality is a "dysfunction" since homosexuals are driven to have sex with members of their own sex and so "cannot reproduce, dooming to extinction any gene expressed as this drive" (119). The problem, then, is to explain why a genetic disposition for homosexuality persists. Levin states that even though homosexuality is intrinsically maladaptive, it persists in the gene pool possibly because it is *also* derivatively adaptive (123). That is, the gene that produces homosexuality might be a gene that also expresses itself as another trait needed for the organism to survive. While Levin does not speculate on what this positive trait might be, to him homosexuality is still intrinsically maladaptive. He concludes, "The intrinsic maladaptiveness of homosexuality means that

its production is not the aim of any gene, including those homosexuality expresses, and therefore not a normal state even of homosexuals” (124). So homosexuality is abnormal.

We have two options here. We can either insist that a gene for homosexuality is *not* intrinsically maladaptive and attempt to find explanations of how it could be adaptive. Or we can accept that it is maladaptive (whether the gene that expresses itself as homosexuality also expresses itself as another adaptive trait is irrelevant) but shrug our shoulders. Regarding the first option, Levin dismisses explanations as to how homosexuality can be adaptive: “Some commentators have conjectured that homosexuals spread their own genes by being unusually helpful to siblings, parents, nieces, and nephews. So far as I know, however, this hypothesis has never been tested against the fertility of the parents and siblings of homosexuals” (123). Yet it is hard to see how such an explanation *could* be tested in the way Levin desires. Evolutionary explanations are *backward* looking; they do not offer predictions of how we might behave in the future, including all of the past during which humanity has lived in civilizations. Because our lives are incredibly complex, socially, psychologically, politically, and culturally, no hypothesis as to how a certain trait was adaptive in the past can be easily tested against current norms of behavior. So even if some data tell us that current homosexuals do not generally exhibit especial help in the rearing of their nieces and nephews, it is hard to see how such data would disprove the proffered hypothesis as to how homosexuality is adaptive. In short, Levin’s reason for dismissing such hypotheses does not succeed given the difficulty we have in testing the adaptiveness of particular traits. For all we know, homosexuality is (or was) biologically adaptive.

Regarding the second option, Thomas notes the following: “Clearly some departures from the statistical norm are most unfortunate [such as having genetically-based diseases]; this is not so of others [such as being a genius]. In any case, whether a departure is fortunate or unfortunate depends not simply on the fact that there has been a departure, but upon what the content of that departure turns out to be” (14). Given that homosexuality is statistically in the minority, it is a departure from the norm. Even if it is maladaptive, the question is whether this statistical deviation is “fortunate” or “unfortunate.” The answer is not up to biology; it is up to rational and moral inquiry.

Levin thinks that it is unfortunate, specifically, in that it has negative repercussions for the happiness of homosexuals. He also takes the abnormality of homosexuality in another normative direction, to justify the rational discrimination against homosexuals. But, before addressing this point, one issue bears scrutiny: Levin’s reliance on the abnormality of homosexuality to explain heterosexuals’ aversion to it. Levin writes, “There are many ethnic and racial groups, and many people dislike members of groups other than their own, but none of these groups is unnatural and not even their enemies, whatever other unflattering beliefs they may hold, think of them this way...nobody really thinks of Whites, or Blacks, or Croatians, as outside the natural biological order. But homosexuals are. This distinguishes the antipathy towards this group from any sort of ethnic hostility; dislike of homosexuals is powered by—well-founded—intuitions of deviance” (125). One wonders in what sense homosexuals are outside of the “natural biological order” (as opposed to the “unnatural” biological order?) if homosexuality is a biological trait, maladaptive though it might be. In any case, does this abnormality adequately explain what Levin considers to be the aversion to it by heterosexuals? Levin writes, “Traditionalists are said to find homosexuality ‘immoral,’ and no doubt many talk as if they do think this. But I am not sure

this is what they have in mind. Traditionalists *deplore* homosexuality, and like most people they utilize the language of disapprobation that is handiest. ...But what they really mean is that homosexuality is disgusting, nauseating, closely connected with fecal matter” (145).

This is perplexing. To whom, exactly, is Levin attributing such reactions? People who hold negative views about homosexuality do not do so uniformly, whether in terms of intensity or other ways. Moreover, while I can easily imagine someone who considers homosexuality, say, wrong because it is unnatural (despite his mistaken inference), it is hard to see how someone who reacts in the ways that Levin describes does so *because* he has Levin’s biological views in mind. After all, people do not react in such ways when confronted with people who depart from the “biological order” in other, non-homosexually related ways, unless these ways involve matters that are usually disgusting (such as eating feces). Smokers surely use their lungs in “unnatural” ways. Yet non-smokers do not typically react by thinking that smokers are “disgusting, nauseating, closely connected with fecal matter.” Simply put, the explanation that Levin offers for such strong, negative reactions is implausible. It does not so much explain such reactions as serve to gloss over layers of social, religious, and other cultural ways of learning that many people have imbibed and that might help explain why some people, among those who hold negative views about homosexuality, have such extreme negative reactions to it. If Levin’s reliance on biology fails to adequately explain why some people react so strongly against homosexuality, then the claim that such reactions are rational also fails.

Levin also connects issues of normality with happiness: “The nexus is the eudaimonia—or positive hedonic tone, or happiness, or sense of reward—that accompanies adaptive behavior. Adaptive actions are more enjoyable than their rivals and in that sense ‘better’” (131). Since homosexuals do not use their sex organs for what they are adapted to do (heterosexual intercourse) they are likely to be unhappy relative to heterosexuals. Levin does not mean that gay people are unhappy in an absolute sense or that gay sex is “self-punishing” but that “homosexuals are less likely to find their sex lives, and their lives as a whole, as satisfying as heterosexuals find theirs. There may well be happy, faithful homosexual male couples, but they are relatively rare; the average male homosexual live-in relationship lasts less than three years” (132). (Levin’s source for this last claim is a book published by the Family Research Council, a group that is hostile to anything gay; this does not mean that the statistics are wrong but that they need to be approached with caution.)

These claims by Levin are unconvincing. To begin with, what does Levin exactly mean by happiness? Supposing that the sex lives of homosexuals, for the reason that Levin gives, are in general less satisfying than those of heterosexuals, why should it follow that the former are comparatively less happy than the latter? One cannot invoke an “everything else being equal” clause here because the issue is the general happiness of homosexuals as compared to heterosexuals, and this cannot be assessed solely on sexual dimensions. After all, homosexuals are first and foremost people, not homosexuals, and their happiness has multiple sources, not just sex.

Moreover, if homosexuals find the use of their sexual organs to be sexually satisfying, if they enjoy gay sex, then what would it mean to claim that such use of their sexual organs is unrewarding? The claim is baffling. From what we can tell, gay people enjoy and seek gay sex (many gay men have no problems with being promiscuous and many live in sexually open relationships). Yet Levin insists that this is somehow unrewarding and will lead to comparative

unhappiness. How so? He does not tell us. And he does not tell us what sense of happiness he has in mind. Levin mentions short-lived gay coupled relationships. But this shifts the issue from the happiness of gay people to the happiness of gay couples, and couples can be unhappy for all sorts of reasons. Of course, it is harder to maintain gay relationships, especially live-in ones, in a general atmosphere of dislike of homosexuals, and this partly explains the dissolution of gay relationships. Levin insists that such break-ups are due to lack of built-in rewards of gay sex. But this is an implausible explanation, and there is a better one: when gay couples do break up simply because of bad sex, this usually means the same thing as when heterosexual couples break up due simply to bad sex, namely, unsatisfying sex. There is nothing bad intrinsic to gay sex as such, given that gay people find gay sex enjoyable.

Levin partly explains homosexuals' purported unhappiness via the notion of promiscuity: the reason why gay men tend to be promiscuous is because gay sex is unrewarding: "The natural rewards of reproductive behavior are not found in substitutes, so homosexuals are forever seeking an unattainable satisfaction" (129). (Levin also explains gay male promiscuity by the fact that gay men are sexually unfettered by "female reticence" [129], but this would not explain homosexuals' purported unhappiness.) Levin discounts the explanation—accepted by Thomas (31-32)—that promiscuity is due to society's homophobia that leads gay men to have frequent, furtive sexual encounters rather than long-term coupled relationships. To Levin, this explanation has "worn thin," and society (at least pop culture) has generally come to accept homosexuals (129). Unless one argues that such homophobia leaves deep-rooted and hard-to-eradicate traits, Levin might be correct here: it is typically in major urban centers where venues for promiscuous gay sex are found, and yet it is in these very same centers that acceptance of homosexuality is at its highest. But this still leaves his own explanation open to scrutiny: Is gay promiscuity due to the lack of rewards of gay sex?

The answer is no. To begin with, lesbians are not nearly as promiscuous as gay men. Yet they engage in lesbian sex, too! So Levin's explanation utterly fails when it comes to gay sex between women. Moreover, Levin seems to forget that sex is, simply, pleasurable. Many gay men are promiscuous simply because they can, because there are venues that cater to unbridled, anonymous sexual activity, and many gay men avail themselves of these venues. There's no need to stretch explanations to the point of mystification when the explanation is right before our noses. In addition, while Levin is correct to claim that straight men are not nearly as promiscuous as gay men (127), he himself realizes that they would be were they to have unfettered access to willing women ("male homosexual tastes reflect what the male sex drive would be in a world where women were as eager as men for anonymous sex" [130]). Gay men's promiscuity has nothing to do with the "unrewardingness" of gay sex and has much to do with the power of the sex drive and the existence of venues for its expression. If the heterosexual world ever comes to have comparable venues, it would be interesting to see what the results will be. (Incidentally, both Levin and Thomas seem to think that promiscuity is morally undesirable; Levin thinks it is incompatible with virtue [174], while Thomas implies that it is an "undesirable" element of the "homosexual lifestyle" [32]; such claims merit close scrutiny, and I have done so in *Virtuous Liaisons* [Open Court, 2003].)

Thus, even if homosexuality were a maladaptive trait, contra Levin, this would not lend support to his view that homosexuals are comparatively unhappy, nor would it explain the promiscuity of many gay men, and it would not even begin

to address the issue of whether such promiscuity is morally permissible, or even desirable.

The final point I wish to address in Levin's contribution concerns, once again, the rationality of discriminating against gay people. We have seen that Mill's principle does not support such discrimination and that Levin's explanation for some gay men's promiscuity is unconvincing. Nonetheless, and regardless of what explanation one may offer, many gay men are promiscuous. Levin thinks that because of this employers and landlords are justified in discriminating against homosexuals (gay men, especially). He states:

It is perfectly rational for an employer to want to avoid such personalities and rational for him to believe that hiring homosexuals creates a greater risk of being saddled with one. Or consider a landlord disinclined to rent to homosexuals because of his reasonable and correct belief that homosexuals are much more promiscuous than heterosexuals. He may fear, again reasonably, that promiscuous tenants attract strangers who will threaten security and be heedless of his property. He may worry that homosexuals, ever on the prowl, will keep late hours annoying to other tenants, who themselves prefer heterosexual neighbors. The landlord may consider homosexuals unclean, another reasonable concern given the data about venereal disease. Homosexuality is a valid, information-rich proxy. Laws against 'arbitrary' discrimination, even if they survived Mill's principle, would permit discrimination based on sexual preference (127-28).

But what does it mean for an employer to be at risk of being saddled with a homosexual? Is the employer carrying the homosexual on his back all the time? Does the gay man have to live in the employer's house? And how will those strangers that promiscuous gay men might bring home threaten security? Are they going to rob the washing machines in the basement? If anything, they threaten the security of the gay tenant himself. And if gay men are ever on the prowl for sex (a claim that reduces gay men to not much more than a bundle of sexual desires whose every reason for living is calculated to secure a sexual encounter), then why is security the concern? Surely, the stranger is visiting the gay tenant for sexual purposes. Granted, there is the usual psycho every now and then, but this is a statistical minority that mailmen, plumbers, etc. can also exemplify. Moreover, how are gay men (ever on the prowl) annoying to other tenants? Granted, they keep late hours. But do they do so by pacing in their apartments, scratching at and banging on the walls? Yes, they will come back home late, but how is this annoying to other tenants in a way peculiar to gay men? Or do heterosexuals rarely come back home late at night? And how are venereal diseases connected to cleanliness, exactly? Does having an STD mean that one's apartment is rat-infested and with slime on the walls? If anything, gay men are noted for their obsession with cleanliness and tidiness. These questions cut to the heart of the issue of the rationality of hiring and renting to gay people. Consider: many gay people are employed, and many live in rented places. Are all of their employers and landlords (whether they themselves are gay or straight is irrelevant) downright irrational? Surely not, because the considerations that Levin adduces are not part, and rightly so, of a rational way of deciding whom to hire and whom to rent to. An employer hires someone based on his qualifications. It goes without saying that he has to be at work on time. If he happens to keep late hours and comes in late, then the employer can fire him, end of story. A landlord rents to someone who has a steady income, who looks

responsible, and who understands that certain things are simply not done, such as playing loud music late at night or coming home late singing at the top of his lungs. Were he to do so, the landlord can evict him or not renew his lease.

I have not discussed Levin's views on gay adoptions, gay marriage, gays in the military, public funding of research into curing AIDS and HIV, and the centrality of sex to gay people's lives as opposed to straight people's. His arguments here are all wanting. But one striking feature of Levin's contribution is his general ignorance of gay lives, and sometimes of straight ones. Consider these two examples: "This capacity [of gay men] to detach sexual urgency from emotion, this purity of lust, is foreign to heterosexuals" (127). Has Levin never heard of the plethora of straight men that seek female prostitutes for impersonal sexual acts? In the latest issue of *The Reader* (January 14, 2005), a Chicago weekly, a 27-year-old woman writes to the columnist Dan Savage telling him about how she hooked up with a complete stranger over the Internet so that he can come over to her house and fuck her (which he did), with no strings attached (she was seeking advice on how she can continue to do so without risking having the strangers coming back to her house). Consider this second example: "It is questionable, in my view, whether [homosexual males] ever experience the emotion of love, as opposed to lust, infatuation, and other drives also familiar to heterosexuals" (129). Anyone who doubts that gay people can experience the emotion of love is utterly unfamiliar with them, and this renders him almost—not fully, but almost—incapable of writing about them.

Thomas's contribution, with which I generally agree, begins with the argument that if society, particularly that of the United States, is right to protect the non-harmful activities of the Ku Klux Klan (KKK) (such as propagating hateful views about particular groups), then it also ought to protect gay people. Moreover, because both KKK members and gay people engage in behavior, the comparison between the two is apt (2). There are two powerful points that Thomas is making. The first is that even if homosexuality is immoral, the state still ought to protect gay people: "the discussion does not come to a screeching halt even if it were shown...that homosexuality is immoral" (2). The second is that protecting citizens stems from the respect that we owe each other; in accepting that KKK members have the right to free speech, I do so out of the respect I owe people; but I need not love KKK members nor agree with their views, let alone admire them: "A just society is founded not upon universal love, but the recognition that fundamental differences in lifestyles do not thereby make a person unworthy of respect" (165). With respect to homosexuality, the point is that gay people merit respect and protection by society, but this need not entail that they should be loved or "valorized": "Providing legal protection is, and must remain, separate from the issue of what aspects of a group's lifestyle society should valorize" (33). On the issue of what aspects should be "valorized," Thomas argues that, even though certain aspects associated with the gay lifestyle should not be "valorized," such as "having sex with reckless abandon" (33), gay people have also made significant contributions to society and so are owed gratitude (35). Thus, after making the argument that gay people are minimally owed respect, Thomas goes on to argue that, in certain respects, they are also owed gratitude.

The above constitutes the first part of Thomas's main argument. The second part concerns the issue of the family. Beginning with the point that "Tolerance for homosexual lifestyles no more calls into question the importance of a strong family than does the tolerance for celibate lifestyle," and that "There is no logical inconsistency whatsoever in a society's being tolerant of homosexuals and quite insistent that people

take family responsibilities ever so seriously" (45), Thomas argues that gay parents can make for good parents. He starts with the plausible idea that without taking proper care of children the world would not be a better place. Given that children constitute future generations, the issue of gay parenting becomes crucial. Thomas claims that the most important thing in rearing children is not "wealth or similar physical features or same ethnicity on the part of the parents," but a "stable and loving home environment" (50). Once this claim is accepted, then making the case for gay parenting is easier. Thomas states that "there is no mapping of moral virtues onto sexual orientation" (52), meaning that one's sexual orientation, be it gay or straight, can exhibit all sorts of virtues and all sorts of vices; straight people do not have a monopoly over moral goodness and virtue (that's an understatement). If so, gay couples can certainly be decent parents, providing their children with a stable and loving home environment. Thomas also makes the nice point that even if one believes that, ideally, and everything else being equal, having two parents of opposite sexes is better than having parents of the same sex, we nonetheless live in a non-ideal world, and so having a child grow up with loving gay parents is certainly much better than having her grow up in an orphanage (51).

Thomas also argues that, when it comes to marriage, society is in a sense mired in a confusing concept of marriage. On the one hand, we have the family concept of marriage. But on the other hand, there are people who want to marry with all sorts of aims that have nothing to do necessarily with wanting to spend their lives together or to raise children. The problem here is that Thomas is rather vague on what contrasts exactly with the family conception of marriage. He indicates that examples of the latter are ones that contain special money, live-in, or separation arrangements (55). But, on page 56, he characterizes the aim of committed personal partnerships (CPPs) as "living together with a special someone," while the aim of the family conception of marriage is to have a family. The former aim, however, need not involve the above-mentioned special arrangements. But we also get the claim that "[CPP's] contrast with marriage makes explicit the important difference between two people wishing to share their lives together forever and two people viewing having children as a central part of joining their lives together" (56). But note that the description of CPP-people does not include the clause, "and who do not want children." This is for good reason. For then no couple would want to enter a CPP, since no couple knows for certain that it might not change its mind about children. But then, with the wise omission of the above clause, it becomes hard to see why the aims are so sharply distinguished. Moreover, Thomas's allowances for how a CPP can later convert into a marriage when the couple adopts children just makes a confusing distinction more so. Part of the confusion here stems from the claim that the original idea behind marriage "represented the desire of two people to unite for the purpose of producing offspring" (54), coupled with the claim that "history shows that there has been much abuse of the family conception of marriage" (54). If, by "original idea," Thomas refers to historical origin, then it is difficult to see why future departures from this conception of marriage constitute abuse, for historical claims are not normative. But, if, by "original idea," Thomas refers to a basic, normative conception of marriage, Thomas gives us no reason to believe the claim to be true. Hence Thomas's grounds do not constitute a good reason to accept the distinction between the family conception of marriage and CPPs.

In connection with the above, Thomas claims that the family conception of marriage is not "appropriate for homosexuals seeking the blessings of the state with the aim

of spending their lives together” (55). He argues that “social priority is given to heterosexual couples” (57) not because gay people tend to be less moral than straight ones but because the priority is based on the idea “of persons joining their lives together for the purpose of having a family, where procreation is taken to be the preferred choice in how one goes about realizing this end” (57). It is not clear what “social priority” means or implies, especially as far as state action is concerned. But, this point aside, there is another troubling aspect to this passage. It is not as if gay couples have been able to marry for years and have consistently shown their aversion, compared to heterosexual couples, to having children. Were this true, it would make sense to give social priority to heterosexual couples that want children, given the importance of children. But discussions of gay marriages, gay adoptions, and gay parenting via ways other than adoption are fairly recent. This makes it mysterious as to why Thomas accords social priority to heterosexual couples. For if gay couples were allowed marriage and adoption in ways equal to straight people, it might be the case that most such couples would want to have and raise children. In such a situation, social priority ought to go to couples that want children, regardless of their sex. Moreover, it is not clear what role procreation plays in Thomas’s passage above. For while it is the usual way of begetting children, once gay couples are allowed to raise children, *how* one acquires one’s children (e.g., regular sexual intercourse, adoption, and surrogacy) becomes irrelevant, so long as it is morally permissible. Thus it is unclear what normative role procreation, a mainly biological process, plays in the above passage. (Nor is the phrase, “preferred choice” clear either: Is Thomas giving social priority to heterosexual couples that *prefer* usual sexual intercourse? But if yes, why?)

But not only should the family conception of marriage, to Thomas, be primarily for heterosexuals, it should also be religious: “I think that the family idea of marriage should be a strictly religious one backed by something like a two-year commitment of training, learning, and worship” (55). On the same page, he states, “As I think of the family conception of marriage, it is about two people standing before God endeavoring to participate in the family act of creation.” Yet Thomas gives no argument as to why this type of marriage should be religious. He attributes to the original idea of marriage an important religious aspect (54), but, even if this is historically true, it surely does not follow that the conception of marriage we ought to accept is to be religious. Should atheist couples wanting to raise a family be barred from marriage?

Thomas discusses many other issues that I shall not go into, such as the possible malleability of sexual orientation; the role, or lack thereof, of Biblical injunctions against homosexual sexual acts in helping us understand the ire of many people against homosexuality; and of biology and sexual orientation, in which Thomas defends the claim that whether a trait is adaptive or maladaptive depends on the “environmental context of the creature” possessing the trait (21). I want, however, to make one final, non-philosophical comment.

Thomas concludes his contribution with a quotation from Elie Wiesel. This comes at the heels of a discussion about the hypocrisy and double standards of society, whereby many of those who are against homosexuality, especially from the religious right, are willing to inveigh against it in the harshest of words, yet they have scarcely anything to say about God’s wrath against those who commit genocides and other terrible atrocities. But it is well known that Wiesel is a writer who, though having made interesting contributions to the Holocaust literature (and other human atrocities), employs double standards when it comes to the Palestinians. He believes in

serious restrictions on criticism of Israel (e.g., no one outside of Israel can properly criticize it), even though he is willing to criticize the immoral practices of other states, and he refuses to acknowledge that Palestinian refugees ought to be allowed to return to their homes in Israel (he clings to myths about the origin of the refugee problem and holds them responsible for their own status as refugees), even though he has called for the return of other refugees (e.g., Kosovar refugees). Quoting from Wiesel at the heels of a discussion of hypocrisy again undermines the power of Thomas’s points about it by making us doubt Thomas’s own commitments to combat hypocrisy. Thomas’s claims might be true, but they end up falling flat on the page.

*Sexual Orientation and Human Rights* lends itself well to class use. Both writers are generally clear and the language is more or less free of jargon, making it accessible to undergraduate students. One exception is the biological discussion in Levin’s contribution that, I suspect, an undergraduate student would find difficult to wade through (but that’s what teachers are for). In addition to accessibility, both authors discuss and raise a myriad of issues that students would find engaging. One thing, however, that both authors could have made clearer, given that they discuss a wide variety of issues, is how their numerous conclusions and arguments connect with each other so as to give the reader a better picture of the overall direction of the main argument. All in all, the book is rich, intelligent, and makes for compelling reading.