

## NOTES

1. Robert Solomon, "Sex and Perversion," *Philosophy and Sex*, R. Baker and F. Eiliston, eds. (Buffalo: Prometheus, 1975).
2. The example is like one from Sara Ruddick, "Better Sex," *Philosophy and Sex*, p. 96.
3. See Michael Slote, "Inapplicable Concepts and Sexual Perversion," *Philosophy and Sex*.

## REVIEW AND DISCUSSION QUESTIONS

1. What is the plain-sex view that Goldman defends? How does he contrast it with means-end views?
2. Why does Goldman reject the reproductive and the sex-love models?
3. On what grounds does Goldman reject Kant's account of sexual morality?
4. Discuss Goldman's understanding of perversion and its connection with morality. Why does he think people tend to condemn perversion?
5. Compare Goldman's understanding of love with that of Finnis or Kant. Which one seems most reasonable to you? Why do you think that?

## Gay Basics: Some Questions, Facts, and Values

*Richard D. Mohr*

In this essay, Richard D. Mohr surveys the wide array of issues surrounding homosexuality. He begins with a discussion of some of the important facts about homosexuals and homosexuality, including a discussion of the most prominent stereotypes, which, he points out, are in fact contradictory. He then reviews different forms of discrimination experienced by gays, considers arguments that homosexuality is wrong, and concludes with a discussion of social policies that affect gays. Richard D. Mohr is professor of philosophy at the University of Illinois.

Over the last decade, gay men and lesbians have begun to make steady progress in getting our issues debated—in the courts, at city hall, in state houses, in Congress, and by the White House. But there remain structural impediments to lesbians and gay men making consistent progress in shepherding our interests across these debates on into public policy, social practice, and law. Ironically, just as the progress that gays have made to date has largely been cultural, so too are the undertows that trip up further progress. These undertows include: the persistence of anti-gay stereotypes; a belief held by some that discrimination against gays is slight and

so not a major social worry; a widespread belief, sometimes religiously based, that gays are somehow immoral, perverse, even willfully perverse; and a fear that changing social policies concerning lesbians and gay men will usher in other, undesirable, possibly cataclysmic changes. This essay seeks to address these problems and allay these fears.

Increasingly the average American knows someone who is lesbian or gay. In 1985, only one in five Americans claimed to have a friend or acquaintance who was a lesbian or gay man.<sup>1</sup> In 2004, forty percent of Americans claimed to have a close friend or family member who was a gay man or lesbian. If the

question was expanded to ask after acquaintances as well, then sixty-nine percent of American claimed to know a lesbian or gay male.<sup>2</sup> This is important progress. Even so, much, perhaps most, of America's experience with gay men and lesbians is not first-hand, but mediated—has cultural rather than personal sources. First among these cultural sources are stereotypes that warp people's perception of lesbians and gay men, and can even swamp or erase the benefits of first-hand experience. For people tend to hold onto stereotypes even when their own circle includes friends who directly contradict the stereotype.

Mainstream media—television first among them—abound in portrayals of gay people (particularly gay men) that reinforce stereotypes rather than undercut them, especially in the absence of any programming that presents a hearty number of ordinary gay people. For example, cultural critics have argued that *Queer as Folk* reinforces the stereotype of gay men as aggressively promiscuous, while *Queer Eye for the Straight Guy* reinforces the stereotype of gay men as flighty ditzes.

To their credit, these two television programs have helped to de-fang the term "queer" and even launch it into some areas of mainstream circulation with a positive valance. But the shows also may be seen as emblems of the two oddly-contradictory stereotypes of gay people that still persist in our culture. On the one hand, gay people are seen as confused about their gender identity: lesbians are females who want to be, or at least look and act like, men—thus, the aspersions *bull dykes* and *diesel dykes*; while gay men are males who want to be, or at least look and act like, women—thus the aspersions *queen*, *fairy*, *nance*, *limp-wrist*, *nelly*, *sissy*, and *auntie*. These stereotypes of mismatches between biological sex and socially defined gender roles provide the fodder for ethnic-like jokes, which, though derisive, basically view lesbians and gay men as ridiculous: "How many fags does it take to change a light bulb?" Answer: "Eight—one to replace it and seven to scream 'Faaaaaahbulous!'"

The other set of stereotypes casts gays as a pervasive, sinister, conspiratorial threat. The core stereotype here is that of gay people—especially gay men—as sex-crazed maniacs, and very likely child-molesters, but in any case vampire-like creatures which aggressively spread around a corruptive

contagion. These stereotypes carry with them fears of the very destruction of family and civilization itself. The contradiction between these two images is obvious: something that is essentially ridiculous can hardly have such a staggering and menacing effect. Something must be afoot.

Clarifying the nature of stereotypes can help make sense of this incoherent amalgam. Stereotypes are not simply false generalizations from a skewed sample of cases examined. . . .

[Stereotypes] have an active role in how a person takes in the world. They are part of the apparatus, lenses, if you will, through which the mind perceives the world. If you look through a lens with a tree painted on it, you see a tree everywhere. If you look through a pink lens, the world is pink. The lens filters out other colors. Stereotypes determine what we take to be "the facts," to be good evidence, sound ideas, even logical arguments. For they screen out any fact, idea, or argument that disagrees with what a person believes already.

Stereotypes can literally cause a person to see things. Consider, for example, the initial round of gay weddings in San Francisco during February 2004. When newly hitched lesbian and gay couples would emerge from City Hall, well-wishers in the plaza below would shout hurrahs. A week into these weddings, the Austrian-born Governor of California was in town for a state Republican convention. Two days later he reported to NBC's "Meet the Press" on the gay marriages he thought he had seen: "All of a sudden we see riots and we see protest and we see people clashing. The next thing we know is there's injured or there's dead people."<sup>3</sup> The *New York Times* reported of the very same events: "The San Francisco police reported no violence related to the same-sex marriage certificates." The stereotype of gays as destroyers of civilization made the governor see jubilation as civilization destroyed— anarchy. The stereotype caused the governor to project onto experience something he already believed and then use the stereotype-manipulated experience to reinforce beliefs he held already linking gays and anarchy—beliefs he felt so confident about that he would trot them out onto national television.

On this understanding of stereotypes, as culturally implanted lenses with a social agenda in mind, it is easy to see how the main anti-gay stereotypes operate in society's conception of itself. Stereotypes

about gays as gender-confused reinforce powerful gender roles that are still prevalent in American society. These stereotypes condemn the possibility of choosing a social role independent of one's biological sex—a possibility that might threaten many guiding social divisions, both domestic and commercial. Blurred would be the socially sex-linked distinctions between breadwinner and homemaker, boss and secretary, doctor and nurse, protector and protected, even God and His world. The accusations “fag” and “dyke” serve in significant part to keep women in their place and to prevent men from breaking ranks and ceding away theirs.

The stereotypes of gays as destroyers of civilization function to displace (possibly irresolvable) social problems from their actual source to a remote and (society hopes) manageable one. For example, the stereotype of the gay person as child-molester functions to give the traditionally-defined family unit a false sheen of innocence. It keeps the unit from being examined too closely for incest, child abuse, wife-battering, and the terrorizing of women and children by a father's constant threats. The stereotype teaches that the problems of the family are alien to it, not internal to it.

If this account of stereotypes holds, society has been profoundly immoral. For its treatment of gays is a grand scale rationalization, a moral sleight-of-hand. The problem is not that society's usual standards of evidence and procedure in decision-making have been misapplied to gays. Rather, when it comes to gays, the standards themselves have simply been ruled out of court and disregarded in favor of mechanisms that encourage unexamined fear and hatred.

## DISCRIMINATION

Partly because lots of people still suppose they don't personally know any gay people, and partly because of the on-going effects of stereotypes, society at large is not fully aware of the many ways in which lesbians and gay men are still subject to discrimination. Contributing to this ignorance is the difficulty for gay people, as an invisible minority, even to complain of discrimination, especially workplace discrimination. For if one is gay, to register a complaint would suddenly target oneself as a stigmatized person, and so, especially in the absence of any protection against

discrimination, would simply invite more discrimination. So, discrimination against lesbians and gay men, like rape, goes seriously under-reported. Even so, known discrimination is widespread.

Annual studies by the National Gay and Lesbian Task Force have consistently found that over ninety percent of gay men and lesbians have been victims of violence or harassment in some form on the basis of their sexual orientation. Greater than one in five gay men and nearly one in ten lesbians have been punched, hit, or kicked; a quarter of all gays have had objects thrown at them; a third have been chased; a third have been sexually harassed, and nearly one-seventh have been spit on, all just for being perceived to be gay.

The most extreme form of anti-gay violence is queerbashing—where groups of young men target a person who they suppose is a gay man and beat and kick him unconscious and sometimes to death amid a torrent of taunts and slurs. In July 1999 at Fort Campbell, Kentucky, Private Calvin Glover goaded Private Barry Winchell into a fistfight. Glover lost the fistfight to Winchell, a soldier widely perceived in the barracks to be gay. The next night, a third soldier egged on and taunted Glover to defend his lost manhood — after all what could be more humiliating than to be beaten by a sissy?—and so Glover clubbed Winchell to death with a baseball bat as he slept. Glover got a life sentence, the friend twelve and a half years.<sup>4</sup>

But many queerbashing cases never reach the courts. Those that do are frequently marked by inequitable procedures and results. Judges will describe queerbashers as “just All-American Boys.” In a particular disturbing case from the 1980s, a District of Columbia judge handed suspended sentences to queerbashers whose victim had been stalked, beaten, stripped at knife point, slashed, kicked, threatened with castration, and pissed on, because the judge thought the bashers were good boys at heart—they went to a religious prep school.<sup>5</sup> Current-day queerbashing functions somewhat similarly to past lynchings of blacks—to keep a whole stigmatized group in line. As with lynchings, society has routinely averted its eyes, giving its permission or even tacit approval to violence and harassment. These inequitable procedures show that the life and liberty of gays, like those of blacks, count for less than the life and liberty of members of the dominant culture.

There has been some progress on this front over the last decade. Thanks to the nationwide publicity given to the particularly brutal, Crucifixion-invoking murder of Matthew Shepard in Laramie, Wyoming, in October 1998, and to the subsequent trials and convictions of his assailants and their accomplices, queerbashers have had more difficulty mounting successful defenses which argue that their actions were a form of justified self-defense.<sup>6</sup> In such so-called "homosexual panic" defenses, the killer would simply claim his act was an understandable, automatic response to a sexual overture. It was the victim's fault; he provoked his own death. In the Shepard case, the judge barred the defense team from presenting such a defense, since it turns on and re-enforces prejudices against gays.<sup>7</sup> This ruling has set a judicial pattern for the rest of the country.

Still, as long as the stereotype of gays as child-molesters lives, many will believe, at least subconsciously, that when gays are attacked, they are just getting what they deserve. And young males can still find 'out there' in popular culture lots of support for the violence they direct against gay men. In February 2001, the white rap artist Eminem won three Grammy Awards, including best rap album, for his *Marshall Mathers LP*, which had sold 5.2 million copies in just two months after its May 2000 release.<sup>8</sup> Of the record's eighteen tracks, thirteen belittle gay men and lesbians, one portrays gay men as child-molesters, one ridicules gay marriage, many include threats of lethal violence against gay men and lesbians ("My words are like a dagger that'll stab you in the head whether you're a fag or les"), often with a side-appeal to a "homosexual panic" justification ("You faggots keep eggin me on til I have you at knifepoint"). The tracks culminate in a genocidal fantasy: "You faggots can vanish to volcanic ash. And re-appear in hell with a can of gas, and a match."

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. Until 1993, the bar was a Department of Defense directive that could have been changed by the President or Joint Chiefs of Staff. That year, it became a federal statute which can now be reversed only if Congress passes a new law or the federal courts declare the ban unconstitutional—something they have shown no inclination to do.

In 1996, Congress passed the so-called Defense of Marriage Act, which prevents the federal government from giving legal recognition to any same-sex marriages and permits states to do the same. By the Spring of 2004, thirty-eight states had taken up the federal offer and passed laws barring both in-state same-sex marriages and the recognition of those from out-of-state. A 1997 report which the Government Accounting Office researched and published in response to a request from the U.S. House Judiciary Committee found 1,049 federal laws which provide benefits, rights, and privileges only to those who are married.<sup>9</sup> By barring gays from military service and from marrying, governments do more than directly withhold rights and benefits from gays; they also set a precedent favoring discrimination in the private sector.

The federal government no longer has a blanket ban on gay employment in the CIA, FBI, National Security Agency, and the State Department—though these agencies continue to defend in the courts a right to discriminate and continue to take sexual orientation into account in making case-by-case hiring decisions.<sup>10</sup> State and local governments regularly fire gay teachers, policemen, firemen, social workers, and anyone who has contact with the public. Further, state licensing laws (though frequently honored only in the breach) officially bar gays from a vast array of occupations and professions—everything from doctors, lawyers, accountants, and nurses to hairdressers, morticians, even used-car dealers. Though gay sexual acts are now constitutionally protected, states still take them as marks of immoral personalities and so as making one unfit for whole swaths of employment opportunities. In its 2003 case, *Lawrence v. Texas* that declared sodomy laws unconstitutional, the Supreme Court punted on a perfect opportunity to block this whole line of discriminatory thinking.<sup>11</sup>

Gays are subject to discrimination in a wide variety of other ways, including private-sector employment, public accommodations, housing, child custody, adoption, and zoning regulations that bar "nonrelated" couples from living together.

Discrimination and the absorption by gay men and lesbians of society's traditional hatred of them interact to impede and, for some, block altogether the ability to create and maintain significant personal

relations with loved ones. Every facet of life is affected by discrimination. Only the most compelling reasons could justify it.

## MORALITY

Many people and, as noted, many states think society's treatment of gays is justified because they think gays are immoral. To evaluate this claim, different senses of "moral" must be distinguished. Sometimes "morality" just means the values generally held by members of a society—its mores, norms, and customs. On this understanding, gays are probably not moral: lots of people hate them, and social customs are designed to register widespread disapproval of gays. The problem here is that this sense of morality is merely a descriptive one. On this understanding, every society has a morality—even Nazi society, which had racism and mob rule as central features of its "morality" understood in this sense. What is needed in order to use the notion of morality to praise or condemn behavior is a sense of morality that is prescriptive or normative.

As the Nazi example makes clear, the fact that a lot of people in a society saying something is good, even over eons, does not make it so. The rejection of the long history of socially approved and state-enforced slavery is another good example of this principle at work. Slavery would be wrong even if nearly everyone liked it. If the only justification for viewing gays as immoral is that most people dislike or disapprove of them, then consistency and fairness require that one abandon the belief.

Furthermore, recent historical and anthropological research has shown that opinion about gays has been by no means universally negative. It has varied widely even within the larger part of the Christian era and even within the Church itself.<sup>12</sup> There are even current societies—most notably in Papua New Guinea—where compulsory homosexual behavior is integral to the rites of male maturity.<sup>13</sup> Within the last forty years, American society has undergone a grand turnabout from deeply ingrained, near total condemnation to near total acceptance on two emotionally charged "moral" or "family" issues—contraception and divorce. Society holds its current descriptive morality of gays not because it has to, but because it chooses to.

Clearly, popular opinion and custom are not enough to ground moral condemnation of homosexuality. Religious arguments are also frequently used to condemn homosexuality. Such arguments usually proceed along two lines. One claims that the condemnation is a direct revelation of God, usually through the Bible. The other sees condemnation in God's plan as manifested in nature; homosexuality (it is claimed) is "contrary to nature."

One of the more remarkable discoveries of recent gay research is that the Bible may not be as univocal in its condemnation of homosexuality as many have believed. Christ never mentions homosexuality. Recent interpreters of the Old Testament have pointed out that the story of Lot at Sodom is probably intended to condemn inhospitality rather than homosexuality. Further, some of the Old Testament condemnations of homosexuality seem simply to be ways of tarring those of the Israelites' opponents who happen to accept homosexual practices when the Israelites themselves did not. If so, the condemnation is merely a quirk of history and rhetoric rather than a moral precept.

What does seem clear is that those who regularly cite the Bible to condemn an activity like homosexuality do so by reading it selectively. Do clergy who cite what they take to be condemnations of homosexuality in Leviticus maintain in their lives all the hygienic, dietary, and marital laws of Leviticus? If they cite the story of Lot at Sodom to condemn homosexuality, do they also cite the story of Lot in the Cave to condone incestuous rape? It seems then not that the Bible is being used to ground condemnations of homosexuality as much as society's dislike of homosexuality is being used to interpret the Bible.<sup>14</sup>

Even if a consistent portrait of condemnation could be gleaned from the Bible, what social significance should it be given? One of the guiding principles of society, enshrined in the Constitution as a check against government, is that decisions affecting social policy are not made on religious grounds. The Religious Right has been successful in defunding gay safe-sex literature and gay art, and in blocking the introduction of gay materials into school curriculums. If the real ground of the alleged immorality invoked by governments to discriminate against gays is religious (as it seems to be in these cases), then one of the major commitments of our nation is violated. Religious belief is a fine guide around

which a person might organize his or her own life, but an awful instrument around which to organize someone else's life.

In the second kind of religious argument, people try to justify society's treatment of lesbians and gay men by saying they are unnatural.<sup>15</sup> Though the accusation of unnaturalness looks whimsical when taken as a general explanation of immorality, it is usually delivered with venom of forethought when applied to homosexuality. It carries a high emotional charge, usually expressing disgust and evincing queasiness. Probably it is nothing but an emotional charge. For people get equally disgusted and queasy at all sorts of things that are perfectly natural and that can hardly be fit subjects for moral condemnation. Two typical examples in current American culture are some people's responses to mothers' breastfeeding in public and to women who do not shave body hair. And nearly everyone thinks the idea of their own parents having sex, especially the sex that had them, is gross, gross, gross. But surely it's both perfectly natural and morally permissible. In like manner, people fling the term "unnatural" against gays in the same breath and with the same force as when they call gays "sick" and "gross." To explain his March 2004 vote in the Georgia House of Representatives for an amendment to the Georgia constitution barring gay marriage, the Rev. Randal Mangham emoted, "I don't appreciate having to explain to my 9-year-old why two big husky guys are kissing."<sup>16</sup> When people have strong emotional reactions, as they do in these cases, without being able to give good reasons for them, they can hardly be thought of as operating morally; more likely they are obsessed and manic.

... Finally, people sometimes attempt to establish the authority for a moral obligation to use bodily parts in a certain fashion simply by claiming that moral laws are natural laws and vice versa. On this account, inanimate objects and plants are good in that they follow natural laws by necessity, animals follow them by instinct, and persons follow them by a rational will. People are special in that they must first discover the laws that govern them. Now, even if a person believes the view—dubious in the post-Newtonian, post-Darwinian world—that natural laws in the usual sense ( $e = mc^2$ , for instance) have some moral content, it is not at all clear how he or she is to discover the laws in nature that apply to people.

On the one hand, if one looks to people themselves for a model—and looks hard enough—one finds amazing variety, including homosexual relations as a social ideal (as in upper class 6th century Athens) and even as socially mandatory (as in some Melanesian initiation rites today). When one looks to people, one is simply unable to strip away the layers of social custom, history, and taboo in order to see what's really there to any degree more specific than that people are the creatures who make over their world and are capable of abstract thought. Or as Hannah Arendt put it, human beings are the creatures whose nature it is to have no nature.<sup>17</sup> That this is so should raise doubts that neutral principles are to be found in human nature that will condemn homosexuality. . . .

## CHOICE

But (it might be asked) aren't gays willfully the way they are? Social scientists have found that people who believe being gay is something fixed in a person's basic constitution are much more likely to support gay rights than people who think that being gay is something that one can cast off, in the way one could cease being a liar, thief, or Elvis fan. And it is widely conceded that if sexual orientation is something over which an individual—for whatever reason—has virtually no control, then discrimination against gays is presumptively wrong, as it is against racial and ethnic classes. Indeed most of the popular debate on lesbian and gay issues has turned on this very issue. Groups like Parents and Friends of Lesbians and Gays (PFLAG) doggedly believe that being gay is biologically determined, while most fundamentalists believe that being gay is a form of habitual sinning that, like a penchant for sweets or alcohol, can be given up with effort.

Attempts to answer the question whether or not sexual orientation is something that is reasonably thought to be within one's own control usually appeal simply to various claims of the biological or "mental" sciences. But the ensuing debate over genes, hormones, hypothalamuses, twins, early childhood development, and the like is as unnecessary as it is currently inconclusive.<sup>18</sup> All that is needed to answer the question is to look at the actual experience of lesbians and gay men in recent

society and it becomes fairly clear that sexual orientation is not likely a matter of choice.

On the one hand, the "choice" of the gender of a sexual partner does not seem to express a trivial desire which might as easily be fulfilled by a simple substitution of the desired object. Picking the gender of a sex partner is decidedly dissimilar, that is, to such activities as picking a flavor of ice cream. If an ice cream parlor is out of one's flavor, one simply picks another. And if people were persecuted, threatened with jail terms, shattered careers, loss of family and housing and the like for eating, say, rocky road ice cream, no one would ever eat it. Everyone would pick another easily available flavor. That gay people abided in being gay even in the face of such persecution in the recent past suggests that being gay is not a matter of easy choice.

On the other hand, even if establishing a sexual orientation is not like making a relatively trivial choice, perhaps it is relevantly like making the central and serious life-choices by which individuals try to establish themselves as being of some type or having some occupation. Again, if one examines gay experience, or at least gay male experience, this seems not to be the case. For one virtually never sees anyone setting out to become a homosexual, in the way one does see people setting out to become doctors, lawyers, and bricklayers. One does not find gays-to-be picking some end — "At some point in the future, I want to become a homosexual" — and then set about planning and acquiring the ways and means to that end, in the way one does see people deciding that they want to become lawyers, and then sees them plan what courses to take and what sort of temperaments, habits, and skills to develop in order to become lawyers. Typically gays-to-be simply find themselves having homosexual encounters and yet, at least initially, resisting the identification of being homosexual. Such a person even very likely resists having such encounters, but ends up having them anyway. Only with time, luck, and personal effort, but sometimes never, does the person gradually come to accept her or his orientation, to view it as a given material condition of life, coming as materials do with certain capacities and limitations. The person begins to act in accordance with his or her orientation and its capacities, seeing its actualization as a requisite for an integrated personality and as a central component of personal well-being. As a

result, the experience of coming out to oneself has for gays the basic structure of a discovery, not the structure of a choice. And far from signaling immorality, coming out to others affords one of the few remaining opportunities in ever more bureaucratic, technological, and socialistic societies to manifest courage.

To be fair, not a few lesbian feminists believe that being a lesbian is a choice, in particular a political choice.<sup>19</sup> This view, at least, has to hurdle the fact that sexual arousal is something that comes over a person. It is a passion, not an act of will, like pulling a lever in a voting booth. So with this caveat, even this lesbian feminist stance differs from the fundamentalists' view that homosexuality is a (bad) habit, one caused by sexual pleasure that, in their view, rivets the initial sexual desire to the soul and so turns it into a conditioned response, an inclination, a propensity.

## SOCIAL CHANGE

How would society at large be changed if gays were socially accepted? Suggestions to change social policy with regard to gays are invariably met with claims that to do so would invite the destruction of civilization itself. After all isn't that what did Rome in? Actually, Rome's decay paralleled not the flourishing of homosexuality but its repression under the later Christianized emperors.

Still, the charge that gays are bent on destroying civilization is surprisingly persistent. In 1989, the U.S. Navy offered up a theory of a gay suicide bomber to explain the explosion of a gun-turret on the U.S.S. Iowa that killed forty-seven sailors. The Navy alleged that one of the dead, Clayton Hartwig, was a suicidal closet-case, who blew up himself and his fellow sailors to cover up the shame he felt at being gay. The charge turned out to be baseless.<sup>20</sup> When in 1999 Vermont's Supreme Court ruled that the state had, in one way or another, to give same-sex couples rights and benefits identical to those given different-sex married couples, Republican Presidential candidate and long time "family values" advocate Gary L. Bauer said that the decision was "worse than terrorism."<sup>21</sup> Two days after the September 11, 2001 terrorist attacks on the Pentagon and World Trade Center, the Rev. Jerry Falwell declared on Pat

Robertson's religious television program "The 700 Club" that gay rights proponents and abortion providers have "got to take a lot of the blame for this because God will not be mocked," that these groups had so weakened America's morality that God "lifted the curtain of protection" from around the country allowing the terrorists in: "I point the finger in their face and say, 'you helped this happen'."<sup>22</sup> If the U.S. Navy, Gary Bauer, and Jerry Falwell laid such charges against any other group, Jews, for instance, everyone would recognize the charges as blood libels.

But even so, predictions of American civilization's imminent demise have been as premature as they have been frequent. Civilization has shown itself to be rather resilient here, in large part because of the country's traditional commitments to respect for privacy, to individual liberties, and especially to people minding their own business. These all give society an open texture and the flexibility to try out things to see what works. And because of this, we now need not speculate about what changes reforms in gay social policy might bring to society at large. For many reforms have already been tried.

By the time the Supreme Court declared sodomy laws unconstitutional in 2003, two-thirds of the states had through their own legislative or judicial branches decriminalized same-sex sex acts. Empirical studies have shown that there was no increase in other crimes in these states.

Neither has the passage of legislation barring discrimination against gays ushered in the end of civilization. Over one hundred counties and municipalities, including some of the country's largest cities (like Chicago, Los Angeles, and New York City) have passed such statutes barring discrimination in housing, employment and public accommodations, as have, by 2003, fourteen states: Wisconsin, Massachusetts, Connecticut, Hawaii, New Jersey, Vermont, Minnesota, New Hampshire, Nevada, Rhode Island, Maryland, New York, New Mexico and California. Four of these states—Minnesota, Rhode Island, New Mexico and California—also protect "gender identity," which is to say a person's being or being perceived as transsexual, transgendered, transvestite, or ambiguously gendered. Again, no more brimstone has fallen in any of these places than elsewhere.

Berkeley, California, in 1984, followed by a couple dozen other cities including New York, have passed "domestic partner" legislation giving same-sex couples at least some of the same rights to city benefits that heterosexually married couples have, and yet Berkeley has not become more weird than it already was. In 2000, Vermont, prompted by a decision of its Supreme Court the previous year, passed "civil union" legislation giving gay and lesbian couples all the same rights and obligations as heterosexually married couples. In 2003 and 2004 respectively, California and New Jersey gave same-sex couples access to the core rights and obligations of marriage through legislation establishing "domestic partnership" registries. Most of northern European countries have instituted civil-union arrangements for same-sex couples—Denmark in 1989 and later Finland, France, Germany, Greenland, Iceland, Norway, and Sweden. In 2000, the Netherlands, followed by Belgium, gave lesbian and gay couples access to marriage in full.<sup>23</sup> Also in 2000, Brazil gave same-sex couples the right to inherit each other's pension and social security benefits.<sup>24</sup> The highest courts in three Canadian provinces have legalized gay marriage there—Ontario (2003), British Columbia (2003), and Quebec (2004).<sup>25</sup> In April 2004, the newly elected, left-of-center Prime Minister of Spain—yes, the country that brought you the Inquisition—announced his country would follow Belgium and the Netherlands by providing same-sex couples access to civil marriage.<sup>26</sup> England and Wales are inching toward civil unions for same-sex couples.<sup>27</sup>

In November of 2003, Massachusetts' highest court ruled that by May 17, 2004 the state had to start issuing marriage licenses to gay and lesbian couples. It then fortified its ruling in February 2004 by clarifying that a separate-but-equal civil-union arrangement for gay and lesbian couples, like Vermont's, would not pass constitutional muster as a substitute for same-sex couples having access to marriage.<sup>28</sup> On May 17, 2004, 1700 same-sex couples took out marriage licenses in the Commonwealth.<sup>29</sup>

In the private sector, a number of major universities (including Harvard, Stanford, the University of Chicago, and Southern Methodist University) are offering their employees domestic partnership benefits, as are, in increasing numbers, large and even conservative corporations, like Walt Disney Studios, Mobil Oil, Merrill Lynch, Delta Airlines,

Boeing, General Motors, Ford, Coors Brewing, even Wal-Mart.<sup>30</sup> Between 1992 and 2004, the number of Fortune 500 companies doing so shot up from 12 to over 200.<sup>31</sup>

One virtually unnoticed area of private-sector progress has occurred in the most surprising of quarters—the insurance industry. Surprising, because insurance companies are inherently conservative institutions. Their well-being and very existence depend upon the usual, the normal, the average, the steady, the predictable. Only cats hate change more. Yet during the 1990s, most insurance carriers began offering domestic partner benefits under group coverage. It used to be that companies and towns with domestic partnership statutes were unable to find any insurer at all willing to carry their health policies. Now they have the luxury of competitive bids. The Allstate Insurance Co, a division of Sears, now writes homeowners policies for same-sex couples that are identical to those for heterosexually married couples. The Prudential Insurance Company, the nation's largest life insurance carrier, began offering its employees domestic-partnership benefits in 1999. The same year, the conservative Chubb Group of Insurance Companies blitzed the mailboxes of gay and lesbian yuppie couples across the nation with six-color brochures inviting them to insure their art and antiques with Chubb, a provider of “major funding” for PBS's *Antiques Roadshow*. On the last page, the brochure offers seven bulleted reasons why the Chubb Group is “gay friendly”—its phrase. This private-sector progress is leading rather than following general governmental trends.

Seemingly hysterical predictions that the American family would collapse if such reforms would pass have proven false, just as the same dire predictions that the availability of divorce would lessen the ideal and desirability of marriage proved unfounded. Indeed if current discrimination, which drives gays into hiding and into anonymous relations, ended, far from seeing gays destroying American families, one would see gays forming them. Studies have found that virtually all gay men and lesbians express a desire to have a permanent lover. Yet, society makes gay coupling difficult. It is hard for people to live together as couples without having their sexual orientation perceived in the public realm, which in turn targets them for discrimination. Sharing a life in hiding is even more constricting than life in a small

nuclear family. Members of nongay couples are here asked to imagine what it would take to erase every trace of their own sexual orientation for even just one week.

Still, if nothing else, the groundswell of gay marriages made suddenly possible by San Francisco's and Portland, Oregon's municipal and county disobedience in the Spring of 2004 show how committed to commitment gays are. Nearly one-hundred percent of the same-sex couples issued licenses in San Francisco between February 12th and March 11th when California's Supreme Court suspended the issuing of them—3,955 out of 4,037 couples—subsequently returned to city hall to register their licenses with the city after solemnization, showing that the city-hall celebrations were not publicity stunts, mere political acts, or cases of people being swept up in the moment.<sup>32</sup> During the seven weeks of March-April 2004 in which Multnomah County (Portland), Oregon, issued marriage licenses to same-sex couples, 6000 people availed themselves of the opportunity.<sup>33</sup>

Society makes gay coupling difficult, but those lesbian and gay male couples who have survived the odds show that the structure of more usual couplings is not a matter of destiny, but of personal responsibility. The so-called basic unit of society turns out not to be a unique immutable atom, but can adopt different parts and be adapted to different needs.

If discrimination ceased, gay men and lesbians would enter the mainstream of the human community openly and with self-respect. The energies that the typical gay person wastes in the anxiety of leading a day-to-day existence of systematic disguise would be released for use in personal flourishing. From this release would be generated the many spin-off benefits that accrue to a society when its individual members thrive.

Society would be richer for accepting another aspect of human diversity. Families with gay members would develop relations based on truth, trust, and openness rather than lies, embarrassment, or fear. And the heterosexual majority would be better off for knowing that they are no longer trampling their gay friends and neighbors.

Finally and perhaps paradoxically, in extending to gay men and lesbians the rights and benefits it has reserved for its dominant culture, America would confirm its deeply held vision of itself as a

morally progressing nation, a nation itself advancing and serving as a beacon for others—especially with regard to human rights. The words with which our national pledge ends—“with liberty and justice for all”—are not a description of the present, but a call for the future. America is a nation prone to a prophetic political rhetoric which believes that morality is principled, not arbitrary, and that justice is more than the transient massings of a collective will. It is this vision that led the black civil rights

movement to its successes. Those senators and representatives who opposed that movement and its centerpiece, the 1964 Civil Rights Act on obscurantist grounds, but who lived long enough and were noble enough came in time to express their heartfelt regret and shame at what they had done. It is to be hoped and someday to be expected that those who now grasp at anything to oppose the extension of that which is best about America to lesbians and gay men will one day feel the same.

## NOTES

1. *Newsweek*, August 12, 1985, p. 23 (Gallup Poll).
2. *Washington Post*, March 8, 2004 (*Washington Post*–ABC Poll); *Los Angeles Times*, April 10, 2004 (*Los Angeles Times* Poll).
3. *New York Times*, February 23, 2004, p. 14.
4. *New York Times*, January 10, 2000, p. 11.
5. *Washington Post*, May 15, 1984, p. 1.
6. *New York Times*, November 5, 1999, p. 1.
7. *New York Times*, November 2, 1999, p. 14.
8. “Rapper’s Hate-Filled Lyrics Anger Some.” *USA Today*, July 27, 2000.
9. “1,049 Laws Benefit Married Couples, GAO Says,” *The Washington Blade*, February 21, 1997.
10. *New York Times*, December 12, 1993, p. 19.
11. *Lawrence v. Texas*, 539 U.S. 558 (2003).
12. John Boswell, *Christianity, Social Tolerance and Homosexuality* (Chicago: University of Chicago Press, 1980), Chapter 4.
13. Gilbert Herdt, *Guardians of the Flute* (New York: McGraw-Hill, 1981).
14. Leviticus 18:22, 21:3 (condemnations of same-sex sex acts); Leviticus 11:1–47, 15:19–27 (dietary and hygienic codes); Genesis 19:1–25 (Lot at Sodom), 19:30–38 (Lot in Cave).
15. See generally, Robert P. George, editor, *Natural Law Theory: Contemporary Essays* (Oxford: Oxford University Press, 1992).
16. *New York Times*, April 1, 2004, p. 1.
17. Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), Chapter 1.
18. See Edward Stein, *The Mismeasure of Desire* (New York: Oxford University Press, 2001).
19. See Claudia Card, *Lesbian Choices* (New York: Columbia University Press, 1995); Cheshire Calhoun, *Feminism, the Family, and the Politics of the Closet* (Oxford: Oxford University Press, 2000).
20. *The (Cleveland) Plain Dealer*, November 11, 1999, p. 1B.
21. *Baker v. State*, 170 Vt. 194; 744 A.2d 864 (1999); *New York Times*, December 28, 1999, p. 18.
22. *New York Times*, September 14, 2001, p. 13.
23. *New York Times*, December 20, 2000, p. 6.
24. *New York Times*, June 10, 2000, p. 6.
25. *New York Times*, March 20, 2004, p. 5.
26. *New York Times*, June 22, 2004, p. 5.
27. *New York Times*, December 7, 2002, p. 8; “Britain Proposes ‘Gay Marriage’ Plan,” *Irish Examiner.com*, April 1, 2004, [www.examiner.ie/pport/web/Full\\_Story/did.sgFIqm3hrTI3esg0aewFBADppk.asp](http://www.examiner.ie/pport/web/Full_Story/did.sgFIqm3hrTI3esg0aewFBADppk.asp) (accessed June 22, 2004).
28. *Goodridge v. Dept. of Public Health*, 798 N.E.2d 941 (Mass. 2003); *In re Opinions of the Justices to the Senate*, 802 N.E.2d 565 (Mass. 2004).
29. *New York Times*, May 23, 2004, section 4, p. 2.
30. *New York Times*, September 26, 2000, section 3, p. 2.
31. *New York Times*, February 29, 2004, section 2, p. 1.
32. *New York Times*, March 18, 2004, p. 21; *News Gazette* (Champaign, IL), Associated Press wire story (San Francisco), March 18, 2004, p. E1.
33. *New York Times*, April 21, 2004, p. 19.

## REVIEW AND DISCUSSION QUESTIONS

1. What are the leading gay stereotypes, according to Mohr?
2. How are stereotypes more pernicious than mere false generalizations?
3. In what ways does he argue gays experience discrimination? Is it important, in this connection, that according to Mohr sexual orientation is not chosen?
4. How does Mohr respond to the argument that homosexuality is immoral?
5. What social and public policy changes have occurred recently, and what are the consequences?